censee in the exercise of retail privileges in specified situations. This bill was signed by the Governor on September 25 (Chapter 903, Statutes of 1989).

SB 1351 (Boatwright), as amended September 7, authorizes peace officers employed by ABC to enforce any penal provisions of law prohibiting various acts involving alcoholic beverages or intoxicating liquors while in the course of employment. This bill was signed by the Governor on September 29 (Chapter 1166, Statutes of 1989).

SB 771 (Nielsen, Dills), as amended August 21, requires that all wines produced within Napa County on or after January 1, 1990, must be labeled as being derived from that county and authorizes ABC to suspend or revoke the licenses of violators. This bill was signed by the Governor on September 20 (Chapter 588, Statutes of 1989).

AB 151 (Floyd) would require applicants for an alcoholic beverage license to post a notice of intention to engage in the sale of alcoholic beverages at each entrance of the premises. In addition, the bill would specify the contents of that notice. This bill is a two-year bill pending in the Senate Committee on Governmental Organization.

AB 585 (Friedman), which would have enacted the Drunk Driving Prevention Responsible Server Practices Act of 1989, and imposed liability upon holders of ABC retail licenses for specified acts relating to the serving of alcoholic beverages to a minor or to an obviously intoxicated person, was defeated in the Assembly on August 28.

The following bills, which were discussed in detail in CRLR Vol. 9, No. 3 (Summer 1989) at pages 75-76, were made two-year bills, and may be pursued when the legislature reconvenes in January: *AB 78 (Hansen)*, which would require a fourth drunk driving offense within seven years to be prosecuted as a felony; *AB 205 (Floyd)*, which would specify the contents of notices which license applicants are required to mail to property owners within a 500-foot radius of the premises for which the license is sought; *AB 213 (Floyd)*, which would repeal certain provisions of the Penal Code prohibiting the sale of alcohol near certain institutions, such as prisons; *AB 261 (Floyd)*, which would allow a holder of an alcoholic beverage wholesaler's license to hold ownership in any on-sale alcoholic license only in counties with a population less than 25,000; *AB 767 (Eaves)*, which would authorize licensed beer manufacturers or holders of out-of-state beer manufacturer's certificates to give away promotional items of nominal value, except for beer or nonalcoholic beverages, under specified conditions; *AB 1742 (Friedman)*, which, as amended July 17, would prohibit the issuance or renewal of any club license to a club, as defined, which makes any discrimination, distinction, or restriction for the purpose of membership against any person on account of the person's color, race, religion, ancestry, national origin, sex, or age; *AB 2066 (Killea)*, which would provide for specified increases in excise taxes on beer, wine, and distilled spirits, and would designate how that tax revenue would be used; *SB 327 (Beverly)*, which would authorize any person who holds any other ABC license and who has been in the restaurant business outside California to hold an on-sale general license, provided specified conditions are met; *SB 346 (Nielsen)*, which would authorize a licensed winegrower to hold, directly or indirectly, the ownership of any interest in an on-sale license under specified conditions; and *SB 760 (Campbell)*, which would require all state and local law enforcement agencies to notify ABC of any arrests they make for violations over which ABC has jurisdiction, and would make it unlawful for any person over 21 years of age to purchase alcohol for a minor.

LITIGATION:

Under pressure from Assembly Speaker Willie Brown and at the behest of Democratic Caucus counsel Joseph Remcho, Assemblymember Johan Klehs has decided to drop *Klehs v. Gregory, et al.*, No. 351501 (Sacramento Superior Court), his action seeking a preliminary injunction to bar the Assembly from applying a two-thirds vote requirement to AB 16 (Klehs). (See CRLR Vol. 9, No. 3 (Summer 1989) p. 76 for background information.) Section 3 of Proposition 13 requires a two-thirds vote of the Assembly on any bill which proposes increased tax rates or a change in the method of computation for the purpose of increasing tax revenues. Reform efforts led by California Common Cause have long sought to allow the removal of "tax loopholes" by majority vote, contending that special interests are easily able to prevent the 53 Assembly and 27 Senate votes necessary to end them. AB 16 was a vehicle prepared by those reformers to test the constitutionality of the two-thirds vote requirement applicable to the termination of those loopholes. AB 16 (which would eliminate the tax-exempt status of social clubs which discriminate) received a simple majority, but failed to garner enough votes to satisfy the two-thirds vote requirement, and had therefore succeeded in qualifying as a test case. According to counsel for Klehs and others, the Assembly leadership persuaded the assemblymember that pursuit of this case would set a bad precedent (and possibly transgress the separation of powers doctrine) in allowing a legislator to challenge a ruling from the floor and enabling the courts to resolve it. According to the Litigation Chairperson for California Common Cause, the withdrawal of Assemblymember Klehs from this case, after positioning it for court test and obtaining the reliance of those who believe that the current application of the two-thirds vote requirements is overly broad, undemocratic, and unconstitutional, has caused substantial bitterness and disappointment.

BANKING DEPARTMENT

Superintendent: James E. Gilleran
(415) 557-3232

The State Banking Department administers all laws applicable to corporations engaging in the commercial banking or trust business, including the establishment of state banks and trust companies; the establishment, operation, relocation, and discontinuance of various types of offices of these entities; and the establishment, operation, relocation, and discontinuance of various types of offices of foreign banks.

The superintendent, the chief officer of the Department, is appointed by and holds office at the pleasure of the Governor. The superintendent approves applications for authority to organize and establish a corporation to engage in the commercial banking or trust business. In acting upon the application, the superintendent must consider:

(1) the character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company;

(2) the need for banking or trust facilities in the proposed community;

(3) the ability of the community to support the proposed bank or trust company, considering the competition offered by existing banks or trust companies; the previous banking history of the community; opportunities for profitable use of bank funds as indicated by the average demand for credit; the number of potential depositors; the volume of bank trans-

actions; and the stability, diversity and size of the businesses and industries of the community. For trust companies, the opportunities for profitable employment of fiduciary services are also considered;

(4) the character, financial responsibility, banking or trust experience and business qualifications of the proposed officers; and

(5) the character, financial responsibility, business experience and standing of the proposed stockholders and directors.

The superintendent may not approve any application unless he/she determines that the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company; conditions in the locality of the proposed bank or trust company afford reasonable promise of successful operation; the bank is being formed for legitimate purposes; the proposed name does not so closely resemble as to cause confusion the name of any other bank or trust company transacting or which has previously transacted business in the state; and the applicant has complied with all applicable laws.

If the superintendent finds that the proposed bank or trust company has fulfilled all conditions precedent to commencing business, a certificate of authorization to transact business as a bank or trust company will be issued.

The superintendent must also approve all changes in the location of a head office, the establishment or relocation of branch offices and the establishment or relocation of other places of business. A foreign corporation must obtain a license from the superintendent to engage in the banking or trust business in this state. No one may receive money for transmission to foreign countries or issue travelers checks unless licensed. The superintendent also regulates the safe-deposit business.

The superintendent examines the condition of all licensees. However, as the result of the increasing number of banks and trust companies within the state and the reduced number of examiners following passage of Proposition 13, the superintendent now conducts examinations only when necessary, but at least once every two years. The Department is coordinating its examinations with the FDIC so that every other year each agency examines certain licensees. New and problem banks and trust companies are examined each year by both agencies.

The superintendent administers the Small Business Loan Program, designed to provide long-term capital to rapidly growing small businesses whose growth exceeds their ability to generate internal earnings. Under the traditional standards used by banks, these small businesses cannot provide adequate security to qualify for regular bank loans.

The superintendent licenses Business and Industrial Development Corporations which provide financial and management assistance to business firms in California.

Acting as Administrator of Local Agency Security, the superintendent oversees all deposits of money belonging to a local governmental agency in any state or national bank or savings and loan association. All such deposits must be secured by the depository.

Governor Deukmejian recently appointed James E. Gilleran as the new Superintendent of Banks. Mr. Gilleran had been president of the Commonwealth Group, a San Francisco investment banking firm. He is a certified public accountant and was formerly associated with the firm of Peat, Marwick, Main & Company, most recently as the managing partner of its San Francisco office.

MAJOR PROJECTS:

Banking Department Comments on AB 2521. In an August 15 letter addressed to Assembly Finance and Insurance Committee Chair Patrick Johnston and Senate Banking and Commerce Committee Chair Rose Ann Vuich, the Superintendent set forth the Department's views on particular provisions in and the overall need for AB 2521, the California Bankers Association's "recodification" of the entire Banking Law. (*See supra* FEATURE ARTICLE for extensive background information and discussion of AB 2521.) The Superintendent recognized the need for amendments to the existing statutes, but because the Banking Law is not in danger of imminent collapse, the need for a complete recodification is neither critical nor urgent. Superintendent Gilleran noted that, although AB 2521 for the most part reorganizes and restates provisions of the existing Banking Law, "in other places [it] goes beyond the scope of a recodification and plows fresh ground, setting forth entirely new provisions."

One of the Superintendent's primary recommendations is that AB 2521 be amended to contain a statement of purposes. He suggested the following purposes be included: to protect the interests of depositors, other creditors, other customers, and security holders of banks; to provide for the safety and soundness of banks; to ensure a stable, reliable, and efficient banking system; to maintain public confidence in banks; to promote the public convenience and advantage, to enable banks to serve the convenience and needs of depositors, borrowers, and other customers, and to promote the economic progress of California; to provide to competition among banks as well as competition between banks and other types of financial institutions; and to enable the management of banks, consistent with the other purposes, to exercise business judgment.

The Superintendent was critical of AB 2521 because several of its provisions restrict and restrain the Department, "clearly tilt[ing] the balance in favor of banks over the Department." The Superintendent stated that the Banking Law "should not be an instrument to regulate the regulator," but should be a statute for the regulation of banks, and urged that the Department be given adequate power and discretion to administer the Banking Law effectively.

The Superintendent noted that the Department had played an extremely limited role in the preparation of AB 2521. The California Bankers Association (CBA) established a task force composed of fourteen bankers and in-house attorneys, and further hired two law firms to draft AB 2521. The Department was allowed to provide comments on early drafts of the bill and could participate in task force discussions; however, the Department was not allowed to vote at task force meetings, nor was it invited to participate in the drafting of AB 2521.

Following are some of the Superintendent's comments on specific sections of AB 2521:

(1) Proposed section 191 would provide that the enactment of the new Banking Law would not require existing banks, for the most part, to change any lawful investments previously made or powers lawfully exercised. The Superintendent opposes section 191 because not all banks and their activities and investments would be treated equally under the new Banking Law. The Superintendent supports an adjustment period for existing banks to comply with the new Banking Law provisions and amendments, after which all banks would be treated on an equal basis.

(2) Proposed section 415 would prohibit the Superintendent from disclosing so-called "confidential reports." In light of suggestions that bank regulatory agencies operate in a more open and public manner, the Department believes that it would be unwise to mandate a strictly confidential regulatory system

for California.

(3) Proposed Chapter 3 would establish strict timeframes for the Department's handling of applications. The Superintendent is opposed to this chapter because allocation of the Department's resources would be dictated by application filings rather than by functions that support the safety and soundness of banks. According to the Superintendent, it is appropriate to set guidelines as to timeframes, but the Superintendent should be left with discretion and flexibility.

(4) Proposed section 447 contains a "cure provision" that would grant protection to a bank against any civil liability on account of any violation of any law if the violation was not intentional and is cured by the bank within sixty days of discovery. The Department is opposed to the provision in the belief that it is inappropriate to provide a means by which a violation, no matter how innocent, may be transformed into compliance.

(5) Proposed section 520 *et seq.* would prohibit certain activities and transactions by banks and their personnel. Because of the potential for abuse as banks expand their corporate relationships, the Department believes the scope of the proposed sections should be expanded to, among others, subsidiaries of banks and their personnel.

(6) Proposed section 1200 would exempt a bank which offers or sells any of its securities from the whole of the Corporate Securities Law. Currently, banks are exempt only from the qualification requirements of the Corporate Securities Law. The Superintendent supports the part of section 1200 which exempts banks from the qualification requirement if banks are under a similar requirement pursuant to the Banking Law, but opposes exemption from the provisions of the Corporate Securities Law that prohibit issuers of securities from engaging in fraudulent practices.

(7) Proposed Chapter 14 would eliminate the right of insured depositors to remove their money without penalty when their deposits are sold to another bank. The Department believes that depositors should retain their right to withdraw in purchase, sale, and merger transactions. The chapter also eliminates an existing Financial Code requirement that an agreement for the sale of assets of a bank must make provision for responsibility for all liabilities of the selling bank; the Department believes this provision should be retained.

(8) Proposed Chapter 21 sets forth "bank powers"—an issue not addressed in the existing Banking Law and one which the Superintendent considers "the most important of all the issues in AB 2521." In its notes pertaining to the bill, CBA made it clear that the intent of the bill is to authorize banks to engage in any activity without limitation, other than as specifically prohibited or limited in the proposed Banking Law or other statutes. The Superintendent urged the legislative committees to address bank powers as a new issue, and to study them carefully before making a decision.

(9) Proposed sections 115 and 4301 would redefine the term "bank" to exclude national banks and would have the effect of giving national banks in California all the benefits and none of the burdens of the proposed Banking Law. The Superintendent does not believe the Department should be required to relinquish all authority over national banks operating in California.

Quarterly Report. At the close of business on June 30, the 270 California state-chartered banks of deposit with 1,643 branches had total assets of $96.7 billion, an increase of $2.8 billion, or 2.9%, from June 30, 1988. During this one-year period, there was a net decrease of six banks and 60 branches. The 270 California state-chartered banks had aggregate earnings of $550.8 million for the first six months of 1989, resulting in a return on assets of 1.14% and a return on equity of 16.89%—the highest ratios in recent history. At this pace, projected aggregate earnings for 1989 should exceed $1 billion for the first time ever.

The number of unprofitable banks for the period was 12, but the number of profitable banks has continued to rise since 1983 when there was a high of 87 unprofitable banks. Loan charge-offs and delinquencies have declined from prior year-end levels.

Fiduciary assets of the 36 trust departments of the state-chartered banks, one title insurance company, and 19 nondeposit trust companies totalled $128.2 billion, a decrease of $79 billion, or 38.1%, from June 30, 1988. The assets of 102 agencies and branches of foreign banking corporations with 122 offices decreased .4% to $72.3 billion.

Seventy-Ninth Annual Report of the State Banking Department. The Department recently released its Seventy-Ninth Annual Report, for the calendar year ending December 31, 1988. According to the report, the strategic plan reported on in the last annual report is continuing to progress. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 87 and Vol. 8, No. 2 (Spring 1988) pp. 82-83 for background information.) Several task forces were created to study and submit proposals on various aspects of the Department's operation including the development of new application and examination procedures, reporting, and training. Under the strategic plan, a Financial Analysis Unit was created to devise and implement a financial analysis support strategy.

In 1988, the Department (in conjunction with the FDIC) examined over 91% of all state-chartered banks, which falls short of the Department's goal stated in previous annual reports of examining every bank at least annually. According to the report, the exercise by state-chartered banks of expanded powers (*e.g.*, the authority to invest in, develop, own, and sell real estate) has been conservatively used and carefully supervised.

The report also stated that training increased significantly over the past two years, and that a full-time training officer was hired by the Department in 1988. The Department expanded training to keep pace with expanded banking powers, deregulation, and emerging technologies and products. The aim of the training program is to equip Department staff to perform its bank regulatory and supervisory duties effectively while quickly responding to the changing banking environment.

LEGISLATION:

SB 988 (Beverly) would expand the exemption of specified financial institutions from real estate licensure, and from certain provisions prohibiting taking unconscionable advantage of owners of real property in foreclosure to include bank subsidiaries, bank holding companies and their subsidiaries, and savings banks and their subsidiaries, among other institutions. This bill is a two-year bill pending in the Senate Appropriations Committee.

The following is a status update on bills described in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 78:

AB 438 (Lancaster) exempts (among others) banks, savings associations, and credit unions from existing requirements relating to the contents of mortgage contracts, deeds of trust, real estate sales contracts, or any note or negotiable instrument issued in connection with any of these documents used to finance the purchase or construction of real property containing four or fewer residential units when the security document or evidence of debt provides for a variable rate of interest. This bill was signed by the Governor on July 20 (Chapter 188, Statutes of 1989).

SB 270 (Stirling) creates reporting requirements when a state-chartered bank converts into a national banking association. This bill requires the national banking association created by such a conversion to file a prescribed officers' certificate with the Secretary of State, and would require the Secretary of State to enter the fact of the conversion on the corporate records of the state bank so converted. This bill was signed by the Governor on September 6 (Chapter 291, Statutes of 1989).

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: *AB 643 (Calderon)*, which would require financial institutions to provide handicap access to automated teller machines; *AB 1024 (Calderon)*, which would require the Department to conduct a survey on interstate banking, and report to the legislature by June 30, 1990 on the identities of California financial institutions which maintain branches in other states, California financial institutions owned by foreign entities, and financial institutions which do not meet the federal definition of "bank" that maintain home offices or branches in California; *SB 476 (Robbins)*, which would extend the requirement that banks disclose information regarding consumer bank account charges to include certificate of deposit accounts; *AB 2521 (Johnston and Vuich)*, which would repeal the entire existing Banking Code and replace it with 468 new sections of code; and *AB 244 (Calderon)*, which would require financial institutions operating automated teller machines outside or away from their premises to comply with certain lighting, landscaping, and location requirements.

DEPARTMENT OF CORPORATIONS

Commissioner: Christine W. Bender
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The Department of Corporations is a part of the cabinet-level Business and Transportation Agency. A Commissioner of Corporations, appointed by the Governor, oversees the Department.

The Department administers several major statutes. The most important is the Corporate Securities Act of 1968, which requires the "qualification" of all securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to the traditional stocks and bonds. Many securities may be "qualified" through compliance with the Federal Securities Acts of 1933, 1934, and 1940. If the securities are not under federal qualification, the commissioner must issue a "permit" for their sale in California.

The commissioner may issue a "stop order" regarding sales or revoke or suspend permits if in the "public interest" or if the plan of business underlying the securities is not "fair, just or equitable."

The commissioner may refuse to grant a permit unless the securities are properly and publicly offered under the federal securities statutes. A suspension or stop order gives rise to Administrative Procedure Act notice and hearing rights. The commissioner may require that records be kept by all securities issuers, may inspect those records, and may require that a prospectus or proxy statement be given to each potential buyer unless the seller is proceeding under federal law.

The commissioner also licenses agents, broker-dealers, and investment advisors. Those brokers and advisors without a place of business in the state and operating under federal law are exempt. Deception, fraud, or violation of any regulation of the commissioner is cause for license suspension of up to one year or revocation.

The commissioner also has the authority to suspend trading in any securities by summary proceeding and to require securities distributors or underwriters to file all advertising for sale of securities with the Department before publication. The commissioner has particularly broad civil investigative discovery powers; he/she can compel the deposition of witnesses and require production of documents. Witnesses so compelled may be granted automatic immunity from criminal prosecution.

The commissioner can also issue "desist and refrain" orders to halt unlicensed activity or the improper sale of securities. A willful violation of the securities law is a felony, as is securities fraud. These criminal violations are referred by the Department to local district attorneys for prosecution.

The commissioner also enforces a group of more specific statutes involving similar kinds of powers: Franchise Investment Statute, Credit Union Statute, Industrial Loan Law, Personal Property Brokers Law, Health Care Service Plan Law, Escrow Law, Check Sellers and Cashiers Law, Securities Depositor Law, California Finance Lenders Law, and Security Owners Protection Law.

A Consumer Lenders Advising Committee advises the commissioner on policy matters affecting regulation of consumer lending companies licensed by the Department of Corporations. The committee is composed of leading executives, attorneys, and accountants in consumer finance.

MAJOR PROJECTS:

Warning Regarding Investment Fraud on Religious Communities. The Department of Corporations, in cooperation with the Council of Better Business Bureaus, the Evangelical Council of Financial Accountability, and the North American Securities Administrators Association, issued an Investor Alert Bulletin entitled *Preying on the Faithful: The False Prophets of the Investment World.* The Bulletin describes how con artists use religious faith or membership in a religious community to gain the trust and confidence of a group and induce its members to invest in fraudulent investment schemes. In the past five years, more than 15,000 people have lost nearly one-half billion dollars to these investment swindlers.

Enforcement. In response to a lawsuit brought by the Department, the San Diego County Superior Court on September 8 appointed a receiver to take over the Greater San Diego Health Plan (GSDHP). State attorneys said there was an "extensive, extraordinary, and illegal course of conduct" in the operation of GSDHP. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 79 for background information.) According to the Department, the health plan "failed to operate in a fiscally sound manner and to provide adequate resources against the risk of insolvency." The state has requested that the responsibility for GSDHP members be transferred to Choice Healthcare Plan, which is owned by Aetna Insurance Company and seven local hospitals.

Proposed Regulatory Changes Adopted. The Commissioner recently adopted several proposed changes in the Department's regulations under the Corporate Securities Act of 1968 as set forth in Chapter 3, Title 10 of the California Code of Regulations (CCR). The Commissioner adopted a proposed amendment to section 260.101.1 which narrows the obligation of a broker-dealer or shareholder who elects to file a notice on behalf of an issuer; and an amendment to section 260.105.28 which alters the exemption from the non-issuer qualification requirement status of offerors and sellers of securities based upon whether they filed notice. (See CRLR Vol. 9, No. 3 (Summer 1989) pp. 79-80 for background information.) These amendments