

Senate Bill No. 2148

CHAPTER 1015

An act to amend Section 163 of, and to repeal Section 201.3 of, the Corporations Code, to amend Sections 100, 102, 103, 105, 107, 109, 116, 200, 256, 258, 274, 275, 276, 277, 600, 1500.1, 1800.3, 1913.5, 3100, 3371, 3390, 3391, 3392, 3392.5, 3800, 3824, 3825, 3826, 3827, 3903, 4805.01, 4821.5, 4823, 4826.5, 4827, 4827.7, 4871.5, 4877.03, 4901.5, 12307.4, 18003, 22050, 22154, and 31220 of, to add Sections 105.2, 105.5, 105.7, 107.5, 4805.02, 4805.10, 18003.2 to, to add Chapter 11 (commencing with Section 1400) to Division 1 of, and to repeal Section 139.6 of, the Financial Code, relating to financial institutions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2000. Filed
with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2148, Polanco. Financial institutions.

Existing law, the Banking Law, regulates all banks in the state. Existing law, the Industrial Loan Law, regulates industrial loan companies, including premium finance agencies that provide insurance premium financing.

This bill would change the name of "industrial loan company" to "industrial bank", except in the case of a premium finance agency, and would make industrial banks subject to the Banking Law, as revised, which would permit industrial banks to engage in all the activities of a commercial bank, including engaging in the trust business. This bill would make related changes to provisions governing former industrial loan companies. However, existing provisions of the Industrial Loan Law would continue to govern industrial loan companies that act as premium finance agencies and that provide insurance premium financing. These entities would not be governed by the Industrial Bank Law.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 163 of the Corporations Code is amended to read:

163. "Corporation subject to the Banking Law" (Division 1 (commencing with Section 99) of the Financial Code) means:

(a) Any corporation which, with the approval of the Commissioner of Financial Institutions, is incorporated for the



purpose of engaging in, or which is authorized by the Commissioner of Financial Institutions to engage in, the commercial banking business under Division 1 (commencing with Section 99) of the Financial Code.

(b) Any corporation which, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Financial Institutions to engage in, the industrial banking business under Division 1 (commencing with Section 99) of the Financial Code.

(c) Any corporation (other than a corporation described in subdivision (d)) which, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Financial Institutions to engage in, the trust business under Division 1 (commencing with Section 99) of the Financial Code.

(d) Any corporation which is authorized by the Commissioner of Financial Institutions and the Commissioner of Insurance to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business; or

(e) Any corporation which, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Financial Institutions to engage in, business under Article 1 (commencing with Section 3500), Chapter 19, Division 1 of the Financial Code.

SEC. 2. Section 201.3 of the Corporations Code is repealed.

SEC. 3. Section 100 of the Financial Code is amended to read:

100. This division is applicable to the following:

(a) All corporations engaging in commercial banking, industrial banking, or the trust business.

(b) All national banking associations authorized to transact business in this state to the extent that the provisions of this division are not inconsistent with and do not infringe paramount federal laws governing national banking associations.

(c) All other corporations as shall subject themselves to the special provisions and sections of this division.

(d) All other persons, associations, copartnerships, or corporations who, by violating any of its provisions, become subject to the penalties provided for in this division.

SEC. 4. Section 102 of the Financial Code is amended to read:

102. The word “bank” as used in this division means any incorporated banking institution that shall have been incorporated to engage in commercial banking business, industrial banking, or trust business.

SEC. 5. Section 103 of the Financial Code is amended to read:

103. Banks are divided into the following classes:



- (a) Commercial banks.
- (b) Industrial banks.
- (c) Trust companies.

SEC. 6. Section 105 of the Financial Code is amended to read:

105. “Commercial bank” means a corporation organized for the purpose of engaging in the commercial banking business.

SEC. 7. Section 105.2 is added to the Financial Code, to read:

105.2. “Commercial banking business” includes, but is not limited to, the business of soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing, provided that nothing herein shall apply to or include money or its equivalent left in escrow, or left with an agent pending investment in real estate or securities for, or on account of, his or her principal. In addition, “commercial banking business” means to lend money on the security of real or personal property or without security; to discount or deal in bills, notes, or other commercial paper; to buy and sell for the account of customers, and, if eligible for investment, for its own account, securities, gold and silver bullion, foreign coins, and bills of exchange; and generally to transact a commercial banking business.

SEC. 8. Section 105.5 is added to the Financial Code, to read:

105.5. “Industrial bank” means a corporation organized for the purpose of engaging in the industrial banking business.

SEC. 9. Section 105.7 is added to the Financial Code, to read:

105.7. “Industrial banking business” includes the making of loans and acceptance of deposits, including deposits evidenced by investment or thrift certificates, but excluding demand deposits.

SEC. 10. Section 107 of the Financial Code is amended to read:

107. “Trust company” means a corporation, industrial bank, or a commercial bank that is authorized to engage in the trust business.

SEC. 11. Section 107.5 is added to the Financial Code, to read:

107.5. It shall be unlawful for any person, corporation, limited liability company, partnership, firm, or any other form of business entity allowed by law, to engage in or transact commercial banking business, industrial banking business, or trust business within this state except by means of a corporation duly organized for that purpose.

SEC. 12. Section 109 of the Financial Code is amended to read:

109. “Bank” or “banks” includes commercial banks, industrial banks, and trust companies unless the context otherwise requires. However, “bank” does not include a savings association or a credit union.

SEC. 13. Section 116 of the Financial Code is amended to read:

116. No corporation shall hereafter be organized under the laws of this state to transact the business of a commercial bank, industrial bank, or trust company except as provided in this division.



SEC. 14. Section 139.6 of the Financial Code is repealed.

SEC. 15. Section 200 of the Financial Code is amended to read:

200. (a) In this section:

(1) “Business and industrial development corporation” means a corporation licensed under Division 15 (commencing with Section 31000).

(2) “Payment instrument” has the same meaning as set forth in Section 33059.

(3) “Traveler’s check” has the same meaning as set forth in Section 1852.

(b) There is in the state government, in the Business, Transportation and Housing Agency, a Department of Financial Institutions which has charge of the execution of, among other laws, the laws of this state relating to any of the following: (1) banks or trust companies or the banking or trust business; (2) savings associations or the savings association business; (3) credit unions or the credit union business; (4) persons who engage in the business of receiving money for transmission to foreign nations or such business; (5) issuers of traveler’s checks or the traveler’s check business; (6) issuers of payment instruments or the payment instrument business; (7) business and industrial development corporations or the business and industrial development corporation business, or (8) insurance premium finance agencies or the insurance premium finance business.

SEC. 16. Section 256 of the Financial Code is amended to read:

256. On or before May 31 of each year, the commissioner shall, through the Secretary of the Business, Transportation and Housing Agency, report to the Governor and to the Legislature. The report shall contain the following information:

(a) A list of the California state banks that were authorized by the commissioner to transact business as of the end of the preceding calendar year.

(b) A list of the foreign (other nation) banks that were licensed by the commissioner to maintain offices in California as of the end of the preceding calendar year.

(c) A list of the California state savings associations that were authorized by the commissioner to transact business as of the end of the preceding calendar year.

(d) A list of the foreign savings associations that were authorized by the commissioner to maintain offices in California as of the end of the preceding calendar year.

(e) A list of the California state credit unions that were authorized by the commissioner to transact business as of the end of the preceding calendar year.

(f) A list of the credit unions organized and qualified as credit unions in other states of the United States that were certified by the



commissioner to act as credit unions in California as of the end of the preceding calendar year.

(g) A list of the persons that were licensed by the commissioner under Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), or Division 16 (commencing with Section 33000) to transact business as of the end of the preceding calendar year.

(h) In case during the preceding calendar year the commissioner took possession of the property and business of any California state bank, foreign (other nation) bank, savings association, credit union, or person licensed under any of the laws cited in subdivision (g) to transact business, a list of those California state banks, foreign (other nation) banks, savings associations, credit unions, or licensees.

(i) In case at any time during the preceding calendar year the commissioner was the liquidator of any California state banks, foreign (other nation) banks, savings associations, credit unions, or persons licensed under any of the laws cited in subdivision (g) to transact business, a list of those California state banks, foreign (other nation) banks, savings associations, credit unions, or licensees.

(j) Other information as the commissioner deems appropriate.

SEC. 17. Section 258 of the Financial Code is amended to read:

258. At least once each month, the commissioner shall issue and disseminate as the commissioner deems appropriate a bulletin containing the following information:

(a) Information regarding any the following actions taken since issuance of the previous bulletin:

(1) The filing, approval, or denial under Chapter 3 (commencing with Section 350) of an application for authority to organize a California state bank, or the issuance under Chapter 3 of a certificate of authority to a California state bank.

(2) The filing, approval, or denial under Article 1 (commencing with Section 5400) of Chapter 2 of Division 2 of an application for the issuance of an organizing permit for the organization of a California savings association, or for the issuance under Article 2 (commencing with Section 5500) of Chapter 2 of Division 2 of a certificate of authority to a California savings association.

(3) The filing, approval, or denial under Article 2 (commencing with Section 14150) of Chapter 2 of Division 5 of an application for a certificate to act as a credit union, or the issuance of a certificate to engage in the business of a credit union.

(4) The filing, approval, or denial under Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), or Division 16 (commencing with Section 33000) of an application for a license to engage in business,



or the issuance under any of those laws of a license to engage in business.

(5) The filing, approval, or denial under Chapter 13.5 (commencing with Section 1700) of an application by a foreign (other nation) bank to establish its first office of any particular class (as determined under Section 1701) in this state, or the issuance under that chapter of a license in connection with the establishment of such an office.

(6) The filing, approval, or denial under Division 1.5 (commencing with Section 4800) of an application for approval of a sale, merger, or conversion.

(7) The filing, approval, or denial under Article 6 (commencing with Section 5700) of Chapter 2 of Division 2 of an application for approval of a conversion of a federal savings association into a state savings association, or the filing of a federal charter of a state savings association that has converted to a federal savings association.

(8) The filing, approval, or denial under Article 7 (commencing with Section 5750) of Chapter 2 of Division 2 of an application for approval of a reorganization, merger, consolidation, or transfer of assets of a state savings association.

(9) The filing, approval, or denial under Chapter 9 (commencing with Section 15200) of Division 5 of an application for approval of a merger, dissolution, or conversion of a credit union.

(10) The taking of possession of the property and business of a California state bank, savings association, credit union, or person licensed by the commissioner under any of the laws cited in paragraph (2).

(b) Other information as the commissioner deems appropriate.

SEC. 18. Section 274 of the Financial Code is amended to read:

274. Except as otherwise provided in Section 276 or 277, all salaries and other expenses of the department, other than those incurred in administering laws relating to savings associations or the savings association business, credit unions or the credit union business, industrial banks, the industrial banking business, insurance premium finance agencies, the insurance premium finance business, or Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, shall be paid out of the State Banking Account in the Financial Institutions Fund. Salaries and other expenses incurred in the liquidation or conservation of any bank (other than an industrial bank) or of any person licensed under Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), Division 15 (commencing with Section 31000), or Division 16 (commencing with Section 33000), including the compensation of employees of the department to the extent that they are engaged in that liquidation or conservation, if possible, and if advanced from the State Banking Account in the Financial Institutions Fund, shall constitute a first



charge against the assets of the bank or licensee, as the case may be. Salaries and other expenses incurred in the liquidation or conservation of any industrial bank, including the compensation of employees of the department to the extent that they are engaged in that liquidation or conservation, if possible, and if advanced from the Industrial Bank Account in the Financial Institutions Fund, shall constitute a first charge against the assets of the industrial bank.

SEC. 19. Section 275 of the Financial Code is amended to read:

275. The commissioner shall deliver all moneys received or collected by the commissioner under Section 270, 271, or 272 or otherwise, other than moneys received or collected by the commissioner under laws relating to savings associations, the savings association business, credit unions, the credit union business, industrial banks, the industrial banking business, insurance premium finance agencies, the insurance premium finance business, or Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, to the Treasurer, who shall deposit the moneys to the credit of the State Banking Account of the Financial Institutions Fund.

SEC. 20. Section 276 of the Financial Code is amended to read:

276. (a) In this section, "assessment statute" means any statute that authorizes the commissioner to make or collect an assessment (other than a fine) on financial institutions, including the following:

- (1) Sections 270 to 271.5, inclusive.
- (2) Section 1801.1.
- (3) Section 33302.

(4) Article 2 (commencing with Section 8030) of Chapter 7 of Division 2.

(5) Article 4 (commencing with Section 14350) of Chapter 3 of Division 5.

- (6) Section 1402.

(b) The commissioner may charge to and collect from the Financial Institutions Fund, the Credit Union Fund, each of the accounts included in the Financial Institutions Fund, and each of the programs included in the State Banking Account an amount equal to the fund's, account's, or program's pro rata share of those expenses of the department which, in the opinion of the commissioner, it is not feasible to attribute to any single one of the funds, accounts, or programs. The fund's, account's, or program's pro rata share shall be determined and paid in the manner and at the time ordered by the commissioner.

(c) The provisions of any assessment statute that authorize the commissioner to make or collect an assessment for the purposes specified in the assessment statute include authority for the commissioner to make and collect an assessment for the additional purpose of providing money in an amount that will, in the



commissioner's judgment, be sufficient to make payments that may be required under subdivision (b).

SEC. 21. Section 277 of the Financial Code is amended to read:

277. Notwithstanding any other provision of this code or of Section 53667 of the Government Code, the commissioner may, at any time during a fiscal year, pay any expense of the department from any of the following accounts and funds: the State Banking Account, the Savings and Loan Account, the Industrial Bank Account, the Financial Institutions Fund, the Credit Union Fund, and the Local Agency Deposit Security Fund. However, if the commissioner pays an expense of the department from an account or fund from which the expense is not, except for this section, permitted to be paid, the commissioner shall, as of a date within that fiscal year, reimburse the account or fund from which the expense was paid by making a transfer from the account or fund from which the expense would have been permitted to be paid.

SEC. 22. Section 600 of the Financial Code is amended to read:

600. The articles of each bank shall contain the applicable one of the following statements:

(a) In case the bank is, or is proposed to be, a commercial bank not authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank.

(b) In case the bank is, or is proposed to be, a commercial bank authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank authorized to engage in trust business.

(c) In case the bank is, or is proposed to be, an industrial bank not authorized to engage in trust business, that the purpose of the corporation is to engage in industrial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to an industrial bank.

(d) In case the bank is, or is proposed to be, an industrial bank authorized to engage in trust business, that the purpose of the corporation is to engage in industrial banking business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to an industrial bank authorized to engage in trust business.

(e) In case the bank is, or is proposed to be, a trust company (other than a commercial bank authorized to engage in trust business), that the purpose of the corporation is to engage in trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a trust company.



SEC. 23. Chapter 11 (commencing with Section 1400) is added to Division 1 of the Financial Code, to read:

CHAPTER 11. INDUSTRIAL BANKS

Article 1. General Provisions

1400. Chapter 11 (commencing with Section 1400) of Division 1 is a restatement of Division 7 (commencing with Section 18000) as that division pertains to the licensing and regulation of industrial banks and to the insurance of deposits of industrial banks. Chapter 11 is a continuation, simplification, and recodification of the licensing and regulation of deposit-taking industrial banks.

1401. (a) Any reference in a provision of any statute or regulation of this state to banks or commercial banks includes industrial banks.

(b) Subdivision (a) does not apply in any of the following cases:

(1) In case the provision or a related provision expressly provides otherwise.

(2) In the case of any provision of Division 1.5 (commencing with Section 4800) or this division.

1402. The Industrial Loan Account of the Financial Institutions Fund is renamed to be the Industrial Bank Account.

1403. (a) The commissioner shall annually levy on and collect from industrial banks authorized to transact industrial banking business in this state, pro rata on the basis of total assets, an assessment in a total amount that is sufficient in the commissioner's judgment to (1) meet the expenses of the department in administering laws relating to industrial banks or to the industrial banking business that are not otherwise provided for and (2) provide a reasonable reserve for contingencies.

(b) The amount of the annual assessment on any industrial bank authorized to transact the industrial banking business shall be the greater (1) five thousand dollars (\$5,000) or (2) the sum of the products determined by multiplying (A) increments of the bank's or trust company's total assets by (B) percentages of the base assessment rate according to the following table:

Total Assets (In Percentage of Base Millions)	Assessment Rate
First \$2	100.0
Next \$18	50.0
Next \$80	12.0
Next \$100	6.25
Next \$800	6.0
Next \$1,000	4.0



Next \$4,000	3.5
Next \$14,000	3.0
Next \$20,000	2.5
Excess over \$40,000	1.5

(c) (1) For purposes of the annual assessment, the total assets of an industrial bank authorized to transact industrial banking business shall be determined as of a date fixed by the commissioner. However, if an industrial loan company is not authorized to transact industrial banking business as of that date but is so authorized as of the date when the annual assessment is levied, its total assets for purposes of the annual assessment shall be determined as of the date of the levy.

(2) (A) In determining for purposes of the annual assessment on the total assets of industrial banks that are authorized to transact industrial banking business and that have one or more foreign (other state) branch offices or facilities, the assets of the foreign (other state) branch offices and facilities shall be excluded from total assets. However, the commissioner may order the assets of foreign (other state) branch offices and facilities to be included in total assets if and to the extent that it is necessary or advisable in the commissioner's judgment to (i) meet the expenses of the department on account of foreign (other state) branch offices and facilities that are not otherwise provided for and (ii) provide a reasonable reserve for contingencies.

(B) If the commissioner finds that an industrial bank authorized to transact industrial banking business allocated any asset to a foreign (other state) branch office or facility for the purpose, in whole or in part, of reducing its annual assessment, the commissioner may, for purposes of calculating the annual assessment on the industrial bank, reallocate the asset to the industrial bank's head office.

(d) The base assessment rate for each annual assessment shall be fixed by the commissioner but shall not exceed two dollars and twenty cents (\$2.20) per one thousand dollars (\$1,000) of total assets.

Article 2. Business of Industrial Banks

1410. Each industrial bank shall be an insured bank at all times while it is engaged in the industrial banking business.

1411. Subject to any order or regulation of the commissioner, an industrial bank may accept deposits evidenced by investment or thrift certificates, which are redeemable prior to their stated maturity, but may not accept demand deposits.

1412. In addition to other provisions of this division that are otherwise applicable to an industrial bank, the following provisions of this division apply to the industrial bank as if it were a California state commercial bank:



- (a) Chapter 4 (commencing with Section 490).
- (b) Chapter 5 (commencing with Section 600).
- (c) Chapter 6 (commencing with Section 750).
- (d) Chapter 6.5 (commencing with Section 800).
- (e) Chapter 7 (commencing with Section 850).
- (f) Chapter 8 (commencing with Section 952).
- (g) Chapter 10 (commencing with Section 1200).
- (h) Chapter 12 (commencing with Section 1500).
- (i) Chapter 13 (commencing with Section 1650).
- (j) Chapter 15 (commencing with Section 1900).
- (k) Chapter 17 (commencing with Section 3100).
- (l) Chapter 18 (commencing with Section 3350).
- (m) Chapter 20 (commencing with Section 3600).
- (n) Chapter 21 (commencing with Section 3700).
- (o) Chapter 21.5 (commencing with Section 3750).
- (p) Chapter 22 (commencing with Section 3800).
- (q) Division 1.5 (commencing with Section 4800).

SEC. 24. Section 1500.1 of the Financial Code is amended to read:

1500.1. Any commercial bank or industrial bank, with the prior authorization of the commissioner, may engage in the trust business, if its articles comply with the requirements of subdivision (b) of Section 600. Any bank so authorized shall, in the conduct of its trust business, comply with and be governed by all of the provisions of this chapter, except the provisions of Section 1560. An application for such authorization shall be in such form and contain such information as the commissioner may require, and be accompanied by a fee of one thousand dollars (\$1,000).

SEC. 25. Section 1800.3 of the Financial Code is amended to read:

1800.3. (a) No person shall engage in the business of receiving money for the purpose of transmitting the same or its equivalent to foreign countries without first obtaining a license from the commissioner.

(b) This chapter shall not apply to any of the following:

(1) A commercial bank or industrial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, or any foreign (other nation) bank which is licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 or which is authorized under federal law to maintain a federal agency or federal branch office in this state.

(2) A trust company licensed pursuant to Section 401 or a national association authorized under federal law to engage in a trust banking business.

(3) An association or federal association, as defined in Section 5102 the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor.



(4) Any federally or state chartered credit union the member accounts of which are insured or guaranteed as provided in Section 14858.

SEC. 26. Section 1913.5 of the Financial Code is amended to read:

1913.5. (a) For the purposes of this section, the following definitions are applicable:

(1) “Account holder” includes, in the case of a deposit account, the depositor; in the case of a trust account, each trustor and beneficiary of the trust account; and, in the case of any other fiduciary account, each person who occupies, with respect to the account, a position that is similar to the position that a trustor or beneficiary occupies with respect to a trust account.

(2) “Bank” means the following:

(A) Any commercial bank, industrial bank, or trust company incorporated under the laws of this state.

(B) Any foreign (other state) state bank that maintains a branch office in this state, with respect to the branch office and any other office in this state.

(C) Any foreign (other state) state bank that is licensed by the commissioner under Article 4 (commencing with Section 3860) of Chapter 22 to maintain a facility (as defined in Section 3800) in this state, with respect to that office.

(D) Any foreign (other nation) bank that is licensed by the commissioner under Chapter 13.5 (commencing with Section 1700) to maintain an office in this state, with respect to that office.

(E) Any corporation incorporated under the laws of this state that is incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(F) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business under Article 1 (commencing with Section 3500) of Chapter 19, with respect to that office.

(3) “Order” means any approval, consent, authorization, permit, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner, including, without limitation, any condition thereof. “Order” does not include any certificate of authority or license issued by the commissioner but does include any condition of a license and any written agreement made by any person with the commissioner under this division.

(4) “Subject person of a bank” means any director, officer, or employee of the bank, or any person who participates in the conduct of the business of the bank. However, “subject person of a bank” does not include a controlling person of the bank that is registered as a bank holding company with the Board of Governors of the Federal Reserve System pursuant to the Bank Holding Company Act of 1956



(12 U.S.C. Sections 1841, et seq.). “Subject person of a bank” does not include an individual who is a director, officer, or employee of a controlling person of the bank unless the individual is a director, officer, or employee of the bank or participates in the conduct of the business of the bank. For purposes of this paragraph, “controlling person” has the meaning set forth in Section 700.

(5) “Violation” includes, without limitation, any act done, alone or with one or more persons, for or toward causing, bringing about, participating in, counseling, aiding, or abetting a violation.

(b) If, after notice and a hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(1) (A) That the subject person has violated any provision of this division or of any regulation or order issued under this division, or any provision of any other applicable law relating to the business of the bank; or

(B) That the subject person has engaged or participated in any unsafe or unsound act with respect to the business of the bank; or

(C) That the subject person has committed or engaged in any act that constitutes a breach of his or her fiduciary duty as a subject person; and

(2) (A) That the bank has suffered or will probably suffer substantial financial loss or other damage by reason of the violation, act, or breach of fiduciary duty; or

(B) That the interests of the bank’s accountholders have been or are likely to be seriously prejudiced by reason of the violation, act, or breach of fiduciary duty; or

(C) That the subject person has received financial gain by reason of the violation, act, or breach of fiduciary duty; and

(3) That the violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the subject person, or one that demonstrates a willful or continuing disregard for the safety or soundness of the bank.

(c) If, after notice and a hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(1) That the subject person’s conduct or practice with respect to another bank or business institution has resulted in substantial financial loss or other damage; and



(2) That the conduct or practice has evidenced personal dishonesty or willful or continuing disregard for the safety and soundness of the other bank or business institution; and

(3) That the conduct or practice is relevant in that it demonstrates unfitness to continue as a subject person of the bank.

(d) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(1) That it is necessary for the protection of the bank or the interests of the bank's accountholders that the commissioner issue the order immediately; and

(2) (A) That any of the factors set forth in paragraph (1) of subdivision (b), any of the factors set forth in paragraph (2) of subdivision (b), and any of the factors set forth in paragraph (3) of subdivision (b) are true with respect to the subject person; or

(B) That any of the factors set forth in paragraph (1) of subdivision (c), any of the factors set forth in paragraph (2) of subdivision (c), and the factor set forth in paragraph (3) of subdivision (c) are true with respect to the subject person.

(e) (1) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(A) That the subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime that is punishable by imprisonment for a term exceeding one year and that involves dishonesty or breach of trust; and

(B) That the person's continuing to serve as a subject person of the bank may pose a material threat to the interests of the bank's accountholders or may threaten to materially impair public confidence in the bank. In case the criminal proceedings are terminated other than by a judgment of conviction, the order shall be deemed rescinded.

(2) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank, or a former subject person of a bank, from his or her office, if any, with the bank and prohibiting the person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:



(A) That the person has been finally convicted of a crime that is punishable by imprisonment for a term exceeding one year and that involves dishonesty or breach of trust; and

(B) That the person's continuing to serve or resumption of service as a subject person of the bank may pose a material threat to the interests of the bank's accountholders or may threaten to materially impair public confidence in the bank.

(3) The fact that any subject person of a bank charged with a crime involving dishonesty or breach of trust is not finally convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this division.

(f) (1) Within 30 days after an order is issued pursuant to subdivision (d) or (e), the person to whom the order is issued may file with the commissioner an application for a hearing on the order. The commissioner shall, upon the written request of the person, extend the 30-day period by an additional 30 days provided the request is filed with the commissioner within 30 days after the order is issued. If the commissioner fails to commence the hearing within 15 business days after the application is filed, or within a longer period to which the person consents, the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any person to whom an order is issued under subdivision (d) or (e) to petition for judicial review of the order shall not be affected by the failure of that person to apply to the commissioner for a hearing on the order pursuant to this subdivision.

(g) (1) Any person to whom an order is issued under subdivision (b), (c), (d), or (e) may apply to the commissioner to modify or rescind that order. The commissioner shall not grant that application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when he or she becomes a subject person of a bank, comply with all applicable provisions of this division and of any regulation or order issued thereunder.

(2) The right of any person to whom an order is issued under subdivision (b), (c), (d), or (e) to petition for judicial review of that order shall not be affected by the failure of the person to apply to the commissioner pursuant to paragraph (1) to modify or rescind the order.

(h) (1) A notice issued under this section shall state the facts constituting the grounds for removal, suspension, or prohibition.

(2) A hearing held before the commissioner pursuant to this section shall be private unless the commissioner, in his or her discretion, after fully considering the view of the party afforded the



hearing, determines that a public hearing is necessary to protect the public interest.

(i) (1) It is unlawful for any subject person of a bank or former subject person of a bank to whom an order is issued under subdivision (b), (c), (d), or (e) to do any of the following, except with the prior consent of the commissioner, so long as the order is effective:

(A) To serve or act as a director, officer, employee, or agent of any bank.

(B) To vote any shares or other securities of a bank having voting rights, for the election of any person as a director of the bank.

(C) Directly or indirectly, to solicit, procure, or transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of any bank having voting rights.

(D) Otherwise to participate in any manner in the conduct of the business of any bank.

(2) Any person who violates paragraph (1) shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000) or imprisoned in the state prison, or in a county jail not to exceed one year, or by both that fine and imprisonment.

(3) If, after notice and a hearing, the commissioner finds that any person has violated paragraph (1), the commissioner may order that person to pay to the commissioner a civil penalty in an amount as the commissioner may specify, provided that the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each violation or, in the case of a continuing violation, one thousand dollars (\$1,000) for each day for which the violation continues.

In determining the amount of a civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations by the person, and other factors that in the opinion of the commissioner may be relevant.

SEC. 27. Section 3100 of the Financial Code is amended to read:

3100. The commissioner may, whenever it appears to him or her that any of the conditions described in subdivisions (a) to (h), inclusive, exist with respect to a bank, forthwith take possession of the property and business of the bank and retain possession until the bank resumes business or its affairs are finally liquidated as herein provided. The bank, with the consent of the commissioner, may resume business subject to any conditions that may be prescribed by the commissioner. The term "bank" wherever used in this chapter includes trust companies.

(a) The tangible shareholders' equity of the bank is less than:

(1) In case the bank is a commercial bank or industrial bank, the greater of three percent of the bank's total assets or one million dollars (\$1,000,000); or



(2) In case the bank is a trust company other than a commercial bank authorized to engage in trust business, one million dollars (\$1,000,000).

(b) The bank has violated its articles or any law of this state.

(c) The bank is conducting its business in an unsafe or unauthorized manner.

(d) The bank refuses to submit its books, papers, and affairs to the inspection of any examiner.

(e) Any officer of the bank refuses to be examined upon oath touching the concerns of the bank.

(f) The bank has failed to pay any of its obligations as they came due or that is reasonably expected to be unable to pay its obligations as they come due.

(g) The bank is in a condition that it is unsound, unsafe, or inexpedient for it to transact business.

(h) The bank neglects or refuses to observe any order of the commissioner made pursuant to Section 1913 unless the enforcement of the order is restrained in a proceeding brought by the bank.

SEC. 28. Section 3371 of the Financial Code is amended to read:

3371. As used in this article:

(a) “Bank” means:

(1) Any commercial bank, industrial bank, or trust company incorporated under the laws of this state.

(2) Any foreign (other nation) bank that is licensed by the commissioner under Article 3 (commencing with Section 1750) of Chapter 13.5 of this division to maintain a depository agency or branch office (as defined in Section 1700) in this state, with respect to any office of that type.

(3) Any corporation incorporated under the laws of this state that is incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(4) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 of this division to maintain an office in this state and to transact at the office business under that article, with respect to any office of that type.

(5) When used to designate a person that extends credit, any subsidiary of a bank, as defined in paragraph (1), (2), (3), or (4).

(b) “Company” has the meaning set forth in subdivision (b) of Section 215.2 of Regulation O.

(c) “Executive officer” has the meaning set forth in paragraph (1) of subdivision (e) of Section 215.2 of Regulation O. Also, “executive officer,” when used with respect to any bank of the type described in paragraph (2) or (4) of subdivision (a), includes the manager of each office of the type referred to in paragraph (2) or (4) of subdivision (a) that the bank maintains in this state.



(d) “Extension of credit” has the meaning set forth in Section 215.3 of Regulation O. However, for purposes of this subdivision, the term “member bank,” as used in Section 215.3, means a bank.

(e) “Regulation O” means Regulation O (Part 215 (commencing with Section 215.1) of Title 12 of the Code of Federal Regulations) of the Board of Governors of the Federal Reserve System, as amended from time to time.

(f) “Subsidiary” has the meaning set forth in Section 1841(d) of Title 12 of the United States Code. However, for purposes of this subdivision, the term “bank holding company,” as used in Section 1841(d) of Title 12 of the United States Code, means a bank holding company, as defined in Section 1841(a) of Title 12 of the United States Code, or a bank, and the term “board,” as used in Section 1841(d) of Title 12 of the United States Code, means the commissioner.

SEC. 29. Section 3390 of the Financial Code is amended to read:

3390. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall solicit or receive deposits, issue certificates of deposit with or without provision for interest, make payments on check, or transact business in the way or manner of a commercial bank, industrial bank, or trust company.

SEC. 30. Section 3391 of the Financial Code is amended to read:

3391. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall advertise that it is accepting deposits, and issuing notes or certificates therefor, or make use of any office sign, at the place where its business is transacted, having thereon any artificial or corporate name, or other words indicating that the place or office is the place or office of a bank or trust company, that deposits are received there or payments made on check, or any other form of banking business is transacted, nor shall any person make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates, or circulars, or any written or printed paper, whatever, having thereon any artificial or corporate name or other words indicating that the business is the business of a bank or trust company, or transact business in a way or manner as to lead the public to believe that its business is that of a bank or trust company, except to the extent expressly authorized by this division.

SEC. 31. Section 3392 of the Financial Code is amended to read:

3392. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall transact business under any name or title which contains the word “bank” or “banker” or “banking” or “industrial bank” or “industrial loan company” or “investment and loan” or “savings bank” or “thrift and loan” or “trust” or “trustee” or “trust company” and which indicates that the business is the business of a bank or trust company. Any building and loan association or savings association having in its



corporate name words not clearly indicating the nature of its business shall state, on all signs, letterheads, and advertising matter, “This is a building and loan association” or “This is a savings association” or words to that effect.

SEC. 32. Section 3392.5 of the Financial Code is amended to read:

3392.5. No provision of Section 3390, 3391, or 3392 prohibits any of the following from transacting any business or performing any activity if it is authorized by applicable law to transact the business or perform the activity and is not prohibited by any applicable law (other than Sections 3390, 3391, and 3392) from transacting the business or performing the activity:

(a) Any California state commercial bank, industrial bank, or trust company.

(b) Any national bank.

(c) Any insured foreign (other state) state bank.

(d) Any foreign (other state) state bank that is licensed by the commissioner under Article 4 (commencing with Section 3860) of Chapter 22 to maintain a facility (as defined in Section 3800) in this state.

(e) Any foreign (other nation) bank that is licensed by the commissioner under Chapter 13.5 (commencing with Section 1700) to maintain an office in this state.

(f) Any foreign (other nation) bank that maintains a federal agency (as defined in subdivision (g) of Section 1700) or federal branch (as defined in subdivision (h) of Section 1700) in this state.

(g) Any California state corporation that is incorporated for the purpose of engaging in, and that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(h) Any corporation incorporated under Section 25A of the Federal Reserve Act (12 U.S.C. Sec. 612 et seq.).

(i) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business under Article 1 (commencing with Section 3500) of Chapter 19.

(j) Any industrial bank that is organized under the laws of another state of the United States and is insured by the Federal Deposit Insurance Corporation.

SEC. 33. Section 3800 of the Financial Code is amended to read:

3800. In this chapter, unless the context otherwise requires:

(a) “Branch business unit” has the meaning set forth in subdivision (a) of Section 4840.

(b) “Core banking business” means the business of receiving deposits, paying checks, making loans, and other activities that the commissioner may specify by order or regulation. “Core banking business,” when used to describe the trust business, includes receiving fiduciary assets and administering fiduciary accounts.



(c) “Facility,” when used with respect to a foreign (other state) bank, means an office in this state at which the bank engages in noncore banking business but at which it does not engage in core banking business.

(d) “Noncore banking business” means all activities permissible for commercial banks, industrial banks, or trust companies, except core banking business, and except those activities prohibited by law or determined by the commissioner by regulation or order not to be noncore banking business.

(e) “Whole business unit” has the meaning set forth in subdivision (g) of Section 4840.

SEC. 34. Section 3824 of the Financial Code is amended to read:

3824. (a) (1) No foreign (other state) bank may merge as the surviving corporation with a California bank, except that an insured foreign (other state) bank may do so in accordance with federal law, the law of the domicile of the foreign (other state) bank, this chapter, and Division 1.5 (commencing with Section 4800).

(2) No foreign (other state) bank may purchase the whole business unit of a California bank, except that an insured foreign (other state) bank may do so in accordance with federal law, the law of the domicile of the foreign (other state) bank, this chapter, and Division 1.5 (commencing with Section 4800).

(3) No foreign (other state) bank that does not already maintain a California branch office may establish or maintain a California branch office except in the manner described in paragraph (1) or (2) and in accordance with federal law, the law of the domicile of the foreign (other state) bank, and this chapter.

(b) This section constitutes:

(1) An election to permit early interstate merger transactions pursuant to Section 44(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(a)(3)).

(2) An express prohibition against interstate branching through the acquisition of a branch business unit located in this state of a California bank (without acquisition of the whole business unit of the California bank) pursuant to Section 44(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(a)(4)).

(3) An express prohibition against interstate branching through de novo establishment of California branch offices pursuant to Section 5155 of the Revised Statutes (12 U.S.C. Sec. 36) or Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1828(d)).

SEC. 35. Section 3825 of the Financial Code is amended to read:

3825. (a) No foreign (other state) bank that does not already maintain a California branch office may:

(1) Merge as the surviving bank with a California bank pursuant to paragraph (1) of subdivision (a) of Section 3824, unless the California bank has been in existence for at least five years.



(2) Purchase the whole business unit of a California bank pursuant to paragraph (2) of subdivision (a) of Section 3824 unless the California bank has been in existence for at least five years.

(b) For purposes of this section, a California bank that is established solely for the purpose of, and does not open for business prior to, acquiring the whole business unit of a second California bank through a merger or purchase is deemed to have been in existence for the same period of time as the second California bank.

SEC. 36. Section 3826 of the Financial Code is amended to read:

3826. The minimum age requirement set forth in Section 3825 does not apply in any case in which the factor set forth in subdivision (a) and any of the factors set forth in subdivision (b) apply.

(a) The foreign (other state) bank, by itself or in concurrent transactions with other depository corporations (as defined in Section 4805.06), acquires the whole business unit of the California bank or, if the California bank has been closed or placed in conservatorship, all or substantially all of the insured deposits of the California bank.

(b) (1) If the California bank is a national bank, one of the following:

(A) The bank is in default or in danger of default, as defined in Section 3(x) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(x)).

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(2) If the California bank is a state bank, one of the following:

(A) The commissioner has taken possession of the property and business of the bank pursuant to Section 3100.

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(C) The commissioner finds that one or more of the factors listed in Section 3100 exists and that imposing the minimum age requirement of Section 3825 is not in the public interest.

SEC. 37. Section 3827 of the Financial Code is amended to read:

3827. (a) In case a foreign (other state) state bank that maintains a California branch office is a commercial bank, in addition to other provisions of this division that are otherwise applicable to the bank, the following provisions of this division apply to the bank with respect to its business in this state as if the bank were a California state commercial bank:

(1) Sections 764, 765, 775, 777.5, and 779.

(2) Chapter 7 (commencing with Section 850).

(3) Chapter 8 (commencing with Section 952).



- (4) Sections 1227.2, 1227.3, 1338, 1380, 1381, and 1382.
- (5) Chapter 13 (commencing with Section 1650).
- (6) Article 1 (commencing with Section 3350) of Chapter 18.
- (7) Chapter 20 (commencing with Section 3600).

(b) In case a foreign (other state) state bank that maintains a California branch office is an industrial bank, in addition to other provisions of this division that are otherwise applicable to the bank, the provisions cited in paragraphs (1) to (7), inclusive, of subdivision (a) and the provisions of Chapter 11 (commencing with Section 1400) apply to the industrial bank with respect to its business in this state as if the bank were a California state industrial bank.

(c) In case a foreign (other state) state bank that maintains a California branch office is authorized pursuant to the law of its domicile to transact trust business, in addition to other provisions of this division that are otherwise applicable to the bank, the following provisions of Chapter 12 (commencing with Section 1500) apply to the bank with respect to its business in this state as if the bank were a California state bank authorized to transact trust business:

(1) Article 3 (commencing with Section 1540). For purposes of Article 3 (commencing with Section 1540), the bank's principal place of business is deemed to be situated in the city in which its California branch office is located or, if it maintains California branch offices in two or more cities, in the city with the largest population.

(2) Article 4 (commencing with Section 1560), except Section 1560.

(3) Article 5 (commencing with Section 1580), except Sections 1583, 1584, 1585, 1588, and 1590.

(d) Subject to the provisions of subdivision (d), in case a foreign (other state) state bank that maintains a California branch office is authorized pursuant to the law of its domicile to transact trust business, the bank may engage in and conduct trust business in this state and may be appointed by any court to act in any fiduciary capacity in which a California state trust company is authorized to act.

(e) No foreign (other state) state bank that maintains a California branch office may transact at the branch office any business that it is not authorized to transact or is prohibited from transacting under the law of its domicile or that banks organized under the laws of this state are not authorized to transact or are prohibited from transacting.

(f) Whenever any provision of this chapter or of any regulation or order issued under this chapter that is applicable to or with respect to a foreign (other state) state bank that maintains a California branch office is inconsistent with any provision of any other chapter of this division, the former provision applies, and the latter provision does not apply.

SEC. 38. Section 3903 of the Financial Code is amended to read:



3903. If the commissioner finds, with respect to an application for a certificate of approval of the subject name of a nonbank corporation, that the subject name does not indicate that the nonbank corporation is engaged in the banking, industrial banking, or trust business, the commissioner shall issue a certificate of approval of the subject name. If the commissioner finds otherwise, the commissioner shall deny the application.

SEC. 39. Section 4805.01 of the Financial Code is amended to read:

4805.01. Subject to additional definitions contained in this division that are applicable to specific provisions of this division and unless the context otherwise requires:

(a) The definitions in this article apply throughout this division.

(b) The definitions in Chapter 1 (commencing with Section 99) of Division 1 and in Section 1700 apply throughout this division. For this purpose, “this division,” as used in Sections 123 and 124, means:

(1) In the case of a California state bank, Division 1 (commencing with Section 99) and this division.

(2) In the case of a California state savings association, this division and Division 2 (commencing with Section 5000).

SEC. 40. Section 4805.02 is added to the Financial Code, to read:

4805.02. (a) In this division, “bank” means a commercial bank or trust company (other than an industrial loan company authorized to engage in trust business). “Bank” does not include an industrial loan company.

(b) Notwithstanding subdivision (a), “foreign (other nation) bank” has the meaning set forth in Section 139.4(b)(1).

SEC. 41. Section 4805.10 is added to the Financial Code, to read:

4805.10. In this division, “industrial loan company” means an industrial bank as defined in Section 105.5.

SEC. 42. Section 4821.5 of the Financial Code is amended to read:

4821.5. Any certificate of authority, license, or other authorization issued under subdivision (b) of Section 4858, subdivision (b) of Section 4877.13, subdivision (b) of Section 4888, subdivision (b) of Section 4928, or Section 4948 or 4949 is deemed to have been issued under the provisions of Division 1 (commencing with Section 99) or Division 2 (commencing with Section 5000) that would otherwise apply to the issuance of the certificate of authority, license, or other authorization.

SEC. 43. Section 4823 of the Financial Code is amended to read:

4823. References in this division to shareholders’ equity mean shareholders’ equity determined in accordance with generally accepted accounting principles, subject (a) in the case of California state banks or California industrial loan companies, to the provisions of Section 118, and (b) in the case of California state savings associations, to the provisions of Division 2 (commencing with Section 5000).



SEC. 44. Section 4826.5 of the Financial Code is amended to read:

4826.5. Notwithstanding any other provision of this division:

(a) The provisions of Chapter 22 (commencing with Section 3800) of Division 1 apply to any transaction which is subject to this division. Whenever any provision of Chapter 22 (commencing with Section 3800) of Division 1 or of any regulation or order issued under Chapter 22 (commencing with Section 3800) of Division 1 is inconsistent with any provision of this division or of any regulation or order issued under this division, the provision of Chapter 22 (commencing with Section 3800) of Division 1 or of the regulation or order issued under Chapter 22 (commencing with Section 3800) of Division 1 applies, and the provision of this division or of the regulation or order issued under this division does not apply.

(b) Nothing in this division authorizes any sale or merger in a case where the purchasing or surviving depository corporation is a foreign depository corporation if the sale or merger is prohibited by Chapter 22 (commencing with Section 3800) of Division 1.

(c) Nothing in this division constitutes an election by this state under federal law to prohibit or permit interstate sales or mergers between banks or industrial loan companies.

SEC. 45. Section 4827 of the Financial Code is amended to read:

4827. Except as expressly provided otherwise in this division:

(a) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state savings association, in which the purchasing or surviving depository corporation is a California state bank, a California industrial loan company, or a California state-licensed foreign (other nation) bank, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 2 (commencing with Section 5000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 2 (commencing with Section 5000).

(2) No conversion in which the converting depository corporation is a California state savings association in which the resulting depository corporation is a California state bank or a California industrial loan company, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 2 (commencing with Section 5000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 2.

(b) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state bank, a California state-licensed foreign (other nation) bank, or a California industrial loan company, in which the purchasing or surviving depository corporation is a California state savings association, and which may be effected with



the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1, except as may be required under the provisions of Chapter 22 (commencing with Section 3800) of Division 1.

(2) No conversion in which the converting depository corporation is a California state bank or a California industrial loan company, in which the resulting depository corporation is a California state savings association, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1, except as may be required under the provisions of Chapter 22 (commencing with Section 3800) of Division 1.

SEC. 46. Section 4827.7 of the Financial Code is amended to read:

4827.7. (a) (1) Except as otherwise provided in paragraph (2):

(A) No California state depository corporation may, as the selling or disappearing depository corporation, make a sale or merger pursuant to this division in which it would transfer to a California state-licensed or federally licensed foreign (other nation) bank any deposit or fiduciary account that the foreign bank is not authorized to accept.

(B) No California state-licensed foreign (other nation) bank may, as the purchasing or surviving depository corporation, make a sale or merger pursuant to this division in which it would acquire any deposit or fiduciary account that it is not authorized to accept.

(2) Notwithstanding paragraph (1) and Section 1755, a California state depository corporation may, as the selling or disappearing depository corporation, make a sale or merger pursuant to this division in which it transfers to a California state-licensed or federally licensed foreign (other nation) bank deposits or fiduciary accounts that the foreign bank is not authorized to accept, and a California state-licensed foreign (other nation) bank may, as the purchasing or surviving depository corporation, make a sale or merger pursuant to this division in which it acquires deposits or fiduciary accounts that it is not authorized to accept, if, concurrently with the effective time of the sale or merger, the foreign bank, pursuant to Article 5 (commencing with Section 4879.01) of Chapter 3 or other applicable law, sells all those deposits and fiduciary accounts to a depository corporation that is authorized to accept them.

(b) (1) Except as otherwise provided in paragraph (2):

(A) No California state bank or industrial loan company may, as the selling, disappearing, or converting depository corporation, make



a sale, merger, or conversion pursuant to this division in which it would transfer to a savings association any deposit or fiduciary account that the savings association is not authorized to accept.

(B) No California state savings association may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would acquire any deposit or fiduciary account that it is not authorized to accept.

(2) Notwithstanding paragraph (1) and Division 2 (commencing with Section 5000), a California state bank or industrial loan company may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it transfers to a savings association deposits or fiduciary accounts that the savings association is not authorized to accept, and a California state savings association may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it acquires deposits or fiduciary accounts that it is not authorized to accept, if, concurrently with the effective time of the sale, merger, or conversion, the savings association, pursuant to Article 5 (commencing with Section 4879.01) of Chapter 3 or other applicable law, sells all those deposits and fiduciary accounts to a depository corporation that is authorized to accept them.

(c) (1) Except as otherwise provided in paragraph (2):

(A) No California state bank or savings association may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would transfer to an industrial loan company any deposit or fiduciary account that the industrial loan company is not authorized to accept.

(B) No California industrial loan company may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would acquire any deposit or fiduciary account that it is not authorized to accept.

(2) Notwithstanding paragraph (1) and Division 1 (commencing with Section 99), a California state bank or savings and loan association may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it transfers to an industrial loan company deposits or fiduciary accounts that the industrial loan company is not authorized to accept, and a California industrial loan company may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it acquires deposits or fiduciary accounts that it is not authorized to accept, if, concurrently with the effective time of the sale, merger, or conversion, the industrial loan company, pursuant to Article 5 (commencing with Section 4879.01) of Chapter 3 or other applicable law, sells all those deposit accounts and fiduciary accounts to a depository corporation that is authorized to accept them.



SEC. 47. Section 4871.5 of the Financial Code is amended to read:

4871.5. (a) No provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, prohibits or restricts a sale in a case where the seller is a California state bank or a California industrial loan company.

(b) No provision of Division 2 (commencing with Section 5000) prohibits or restricts a sale in a case where the seller is a California state savings and loan association.

SEC. 48. Section 4877.03 of the Financial Code is amended to read:

4877.03. No provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, prohibits or restricts a sale in a case where the seller is a California state bank or a California industrial loan company.

SEC. 49. Section 4901.5 of the Financial Code is amended to read:

4901.5. (a) No provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, prohibits or restricts the merger of a California state bank or California industrial loan company.

(b) No provision of Division 2 (commencing with Section 5000) prohibits or restricts the merger of a California state savings and loan association.

SEC. 50. Section 12307.4 of the Financial Code is amended to read:

12307.4. Whenever the commissioner has taken possession of the property and business of a licensee the commissioner may petition the superior court for the appointment of a receiver to liquidate the affairs of the licensee. During the time that the commissioner retains possession of the property and business of a licensee the commissioner shall have the same powers and authority with reference to the licensee as are vested in the Commissioner of Financial Institutions with respect to banks pursuant to Chapter 17 (commencing with Section 3100) of Division 1 and the licensee shall likewise have the same rights to hearings and judicial review as are granted to banks. While in possession of the property and business of a check seller, a receiver shall have the same powers and authority as are vested in the Commissioner of Financial Institutions while in possession of the property and business of a bank.

SEC. 51. Section 18003 of the Financial Code is amended to read:

18003. "Industrial loan company," "thrift and loan company," or "company" as used in this division means a premium finance agency as defined in Section 18560. Notwithstanding any other provision of this chapter, these terms and this division do not apply to an industrial bank subject to and governed by Chapter 11 (commencing with Section 1400) of Division 1.



SEC. 52. Section 18003.2 is added to the Financial Code, to read:

18003.2. (a) Any reference in a provision of any statute or regulation of this state to an industrial loan company or a thrift and loan company means an insurance premium finance agency as defined in Section 18560.

(b) Subdivision (a) does not apply in any of the following cases:

(1) In case the provision or a related provision expressly provides otherwise.

(2) In the case of any provision of Division 1 (commencing with Section 99) or Division 1.5 (commencing with Section 4800).

SEC. 53. Section 22050 of the Financial Code is amended to read:

22050. (a) This division does not apply to any person doing business under any law of this state or of the United States relating to banks, trust companies, savings and loan associations, insurance premium finance agencies, credit unions, small business investment companies, California business and industrial development corporations, or licensed pawnbrokers.

(b) This division does not apply to a broker-dealer acting pursuant to a certificate, then in effect, issued pursuant to Section 25211 of the Corporations Code.

(c) This division does not apply to a college or university making a loan for the purpose of permitting a person to pursue a program or course of study leading to a degree or certificate.

(d) This division does not apply to a check cashier who holds a valid permit issued pursuant to Section 1789.37 of the Civil Code when acting under the authority of that permit.

(e) This division does not apply to any person who makes no more than one loan in a 12-month period as long as that loan is a commercial loan as defined in Section 22502.

(f) This division does not apply to any public corporation as defined in Section 67510 of the Government Code, any public entity other than the state as defined in Section 811.2 of the Government Code, or any agency of any one or more of the foregoing, when making any loan so long as the public corporation, public entity, or agency of any one or more of the foregoing complies with all applicable federal and state laws and regulations.

SEC. 54. Section 22154 of the Financial Code is amended to read:

22154. (a) No licensee shall conduct the business of making loans under this division within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as is authorized in writing by the commissioner upon the commissioner's finding that the character of the other business is such that the granting of the authority would not facilitate evasions of this division or of the rules and regulations made pursuant to this division. An authorization once granted remains in effect until revoked by the commissioner.



(b) The products or services of an affiliated corporation of the licensee that is a supervised financial institution, or a parent or subsidiary of a supervised financial institution that is an affiliate of the licensee, may be provided, offered, or sold at the licensed location of the licensee without authorization by the commissioner pursuant to subdivision (a) if (1) the activity is not prohibited by, or in violation of, the laws applicable to the affiliate or supervised financial institution, and (2) the products and services are not offered and sold in a manner that restricts the ability of the borrower or customer to individually select or reject a product or service that is offered.

(c) The following definitions govern the construction of this section:

(1) “Affiliated” or “affiliate” means the following: A corporation is an affiliate of, or a corporation is affiliated with, another specified corporation if it directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other specified corporation.

(2) “Supervised financial institution” means any commercial bank, industrial bank, credit card bank, trust company, savings and loan association, savings bank, credit union, California finance lender, residential mortgage lender or servicer, or insurer, provided that the institution is subject to supervision by an official or agency of this state or of the United States.

SEC. 55. Section 31220 of the Financial Code is amended to read:

31220. Notwithstanding any other law of this state, but subject to the provisions of Section 31550:

(a) Any commercial bank, industrial bank, or trust company organized under the laws of this state may, with the prior approval of the commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by the commercial bank, industrial bank, or trust company shall not at any time exceed $2\frac{1}{2}$ percent of the shareholders' equity of the commercial bank, industrial bank, or trust company. This subdivision shall not apply to any loan or other extension of credit made by a commercial bank or industrial bank organized under the laws of this state to a licensee in accordance with the Banking Law (Division 1 (commencing with Section 99)).

(b) Any savings association organized under the laws of this state may, with the prior approval of the commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such savings association shall not at any time exceed $\frac{1}{2}$ percent of the total outstanding loans of such savings association.

(c) Any insurance company admitted to transact insurance business in this state may, with the approval of the Insurance Commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by



licensees which are held by such insurance company shall not at any time exceed 2¹/₂ percent of the unassigned surplus of such insurance company.

(d) Any public utility licensed or regulated by the Public Utilities Commission may, with the approval of the Public Utilities Commission, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such public utility company shall not at any time exceed ¹/₂ percent of the total assets of such public utility company.

SEC. 56. In Sections 57 to 59, inclusive, of this act:

(a) (1) "Industrial Loan Law" means the Industrial Loan Law (Division 7 (commencing with Section 18000) of the Financial Code) as in effect immediately prior to the operative date of this act.

(2) "Order" means any approval, written approval, consent, exemption, denial, prohibition, requirement, or other administrative action, applicable to a specific case. "Order" does not include any certificate of authorization but does include any condition of a certificate of authorization. Also, order includes any written agreement with the commissioner.

(3) "Revised Banking Law" means the Banking Law (Division 1 (commencing with Section 99) of the Financial Code) as in effect on the operative date of this act.

(4) "Subject industrial bank" means a California corporation which, immediately prior to the operative date of this act, was authorized under the Industrial Loan Law to operate as an industrial loan company. However, "subject industrial bank" does not include any subject insurance premium finance agency as defined in Section 18560 of the Financial Code.

(b) Except as otherwise provided in subdivision (a), the definitions in Chapter 1 (commencing with Section 99) of the Revised Banking Law apply.

SEC. 57. (a) (1) Each subject industrial bank shall, as of the operative date of this act, be deemed to be authorized under the Revised Banking Law to transact industrial banking business.

(2) The commissioner shall, as of the operative date of this act, issue to each subject industrial bank a certificate of authority authorizing it to transact industrial banking business at the location which was the location of its head office immediately prior to the operative date of this act. The certificate of authority shall be deemed to be issued under Section 401 of the Revised Banking Law.

(b) In case a subject industrial bank, immediately prior to the operative date of this act, was authorized under the Industrial Loan Law to, and did, maintain a branch office at any location:

(1) The subject industrial bank shall, as of the operative date of this act, be deemed to be authorized to open and operate a branch office at the location.



(2) The commissioner shall, as of the operative date of this act, issue to the subject industrial bank a certificate of authority authorizing it to open and operate a branch office at the location. The certificate of authority shall be deemed to be issued pursuant to Section 504 of the Revised Banking Law.

(c) In case a subject industrial bank, immediately prior to the operative date of this act, was authorized under the Industrial Loan Law to, and did, maintain a place of business at any location:

(1) The subject industrial bank shall, as of the operative date of this act, be deemed to be authorized under the Revised Banking Law to open and operate a place of business at the location.

(2) The commissioner shall, as of the operative date of this act, issue to the subject industrial bank a certificate of authority authorizing it to open and operate a place of business at the location. The certificate of authority shall be deemed to be issued pursuant to Section 544 of the Revised Banking Law.

(d) (1) Each certificate of authority which was issued to a subject industrial bank under the Industrial Loan Law and which was in effect immediately prior to the operative date of this act shall be deemed canceled as of the operative date of this act.

(2) Each subject industrial bank shall, promptly after the operative date of this act, surrender to the commissioner all certificates of authority which were issued to it under the Industrial Loan Law and which were in effect immediately prior to the operative date of this act.

SEC. 58. (a) The articles of incorporation of each subject industrial bank shall, as of the operative date of this act, be deemed to provide that the purpose of the subject industrial bank is to engage in industrial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to an industrial bank.

(b) (1) Within 90 days of the operative date of this act, each subject industrial bank shall amend its articles of incorporation to comply with the provisions of subdivision (c) of Section 600 of the Revised Banking Law.

(2) Notwithstanding Section 902 of the Corporations Code, the amendment of the articles of a subject industrial bank called for in paragraph (1) may be adopted by approval of the board alone.

SEC. 59. Each order which was issued to or with respect to a subject industrial bank under the Industrial Loan Law before the operative date of this act and which was in effect immediately before the operative date of this act shall continue in effect on and after the operative date of this act.

SEC. 60. (a) Sections 642 and 643 of the Financial Code relating to distributions shall apply to industrial banks on January 1, 2001, unless an industrial bank makes the election provided for in subdivision (b).



(b) Within 30 days of January 1, 2001, an industrial bank shall file with the commissioner a notice of election to delay the applicability of Sections 642 and 643 of the Financial Code to that industrial bank until January 1, 2005.

(c) Within 15 days of receipt of the notice of election, the commissioner shall acknowledge in writing that the notice of election has been received and filed. The acknowledgment of the filing by the commissioner shall act to delay the applicability of Sections 642 and 643 of the Financial Code as to that industrial bank until January 1, 2005.

(d) Until January 1, 2005, Chapter 5 (commencing with Section 500) of Division 1 of the Corporations Code applies to any distribution to shareholders made by an industrial bank that has been issued an acknowledgment in accordance with subdivision (c).

(e) Sections 642 and 643 of the Financial Code relating to distributions shall apply to all industrial banks on and after January 1, 2005.

SEC. 61. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for a more appropriate regulatory structure and comprehensive regulatory oversight at the earliest possible time, it is necessary that this act take effect immediately.

