SENATE COMMITTEE ON BANKING AND FINANCIAL INSTITUTIONS

2011 – 2012 LEGISLATIVE SUMMARY

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MORTGAGE LENDING AND SERVICING, FORECLOSURE FILINGS, REAL ESTATE LAW ADMINISTRATION

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AB 1599 (FEUER and FONG), Chapter 556, Statutes of 2012

Whenever a notice of default or a notice of sale is recorded for a residential real property containing four or fewer dwelling units, requires a summary of the notice of default or notice of sale to be provided to the borrower in English, and in each of the five foreign languages specified in Civil Code Section 1632. These summaries are not required to be recorded, nor to be posted or published, but are required to be attached, as separate documents, to each notice of default and notice of sale. The Department of Corporations (DOC) is required to prepare sample summary translations, and to make those translations available, free of charge, on its Internet Web site. The bill is operative April 1, 2013, or 90 days following the issuance of summary translations by DOC, whichever is later. Failure to provide these summaries to a borrower has the same effect as if the notice of default or notice of sale were incomplete or not provided.

AB 1950 (DAVIS), Chapter 569, Statutes of 2012

Sponsored by Attorney General Kamala Harris. Deletes the sunset date on two of three provisions contained in SB 94 (Calderon), Chapter 630, Statutes of 2009. In doing so, AB 1950 permanently prohibits real estate licensees and persons subject to the Civil Code from charging up-front fees in connection with offers to help borrowers obtain mortgage loan modifications or other forms of mortgage loan forbearance from their lenders. AB 1950 also extends the statute of limitations from one to three years for certain misdemeanors, including acting as a lawyer without a law license, acting as a real estate licensee without a real estate license, and violating the provisions of SB 94. Finally, AB 1950 clarifies that it is a violation of the Real Estate Law to engage in the business of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within California without first having obtained a license endorsement.

AB 2666 (COMMITTEE ON BANKING AND FINANCE), Chapter 264, Statutes of 2012

Sponsored by DOC. Makes technical and clarifying changes to provisions of the California Finance Lenders Law (CFLL) and California Residential Mortgage Lending Act (CRMLA) that implement the federal Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) of 2008. Specifically, AB 2666: 1) adds California's Penal Code definition of "expungement" to the CFLL and CRMLA; 2) exempts the following individuals from the definition of a mortgage loan originator: a) employees of federal, state, or local government agencies or housing finance agencies, who act as mortgage loan originators only in their official duties as employees of those agencies; and b) employees of bona fide nonprofit organizations, who exclusively originate residential mortgage loans for those bona fide nonprofit organizations, and who act as mortgage loan originators only with respect to residential mortgage loans with terms that are favorable to the borrower, as defined; 3) amends the CFLL to authorize companies that are “not subject to” the CFLL and amends the CRMLA to authorize companies that are “exempt from” the CRMLA to apply to the Commissioner of Corporations for exempt company registrations; 4) amends the CFLL and CRMLA to clarify that applications and other documents held in the Nationwide Mortgage Licensing System and Registry are deemed to be valid original records, upon printing to paper; and 5) clarifies the CFLL by expressly stating that: a) an individual may not engage in the business of a mortgage loan originator with respect to any dwelling located in this state, without first obtaining and maintaining annually a license in accordance with the requirements of the CFLL; b) a registered mortgage loan originator is exempt from licensure under the CFLL, when that individual is employed by a depository institution, a subsidiary of a depository institution owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration; and c) a finance lender, finance broker, or mortgage loan originator licensed under the CFLL may not pay any commission, fee, or other compensation to an unlicensed individual for conducting activities that require a license, unless that unlicensed individual is exempt from licensure pursuant to the CFLL.

SB 6 (CALDERON and VARGAS), Chapter 716, Statutes of 2011

Makes several changes to ensure the integrity of real property valuations performed by both appraisers and real estate licensees. Amends the Real Estate Law to provide that: 1) no real estate licensee shall knowingly or intentionally misrepresent the value of that property; and 2) no real estate licensee that offers or provides an opinion of value of residential real property that is used as the basis for a mortgage loan origination may have a prohibited interest in that property, within the meaning of Section 226.42(d) of Title 12 of the Code of Federal Regulations.

Amends the Appraisal Law to provide that: 1) no person or entity acting in the capacity of an appraisal management company shall improperly influence or attempt to improperly influence the development, reporting, result, or review of any appraisal, through coercion, extortion, inducement, collusion, bribery, intimidation, compensation, or instruction; and 2) no person or entity preparing an appraisal or performing appraisal management functions in connection with the origination, modification, or refinancing of a mortgage loan may have a direct or indirect interest, financial or otherwise, within the meaning of Section 226.42(d) of Title 12 of the Code of Federal Regulations, in the property or the transaction for which the appraisal or appraisal management functions are performed.

Amends the Civil Code to provide that no person with an interest in a real estate transaction involving a valuation shall improperly influence or attempt to improperly influence the development, reporting, result, or review of any appraisal, through coercion, extortion, inducement, collusion, bribery, intimidation, compensation, or instruction, as specified.

SB 53 (CALDERON and VARGAS), Chapter 717, Statutes of 2011

Makes several changes to California’s Real Estate Law, to give the Department of Real Estate (DRE) more enforcement tools with which to crack down against mortgage fraud and other real estate violations, and adds safeguards to protect consumers who seek out services from real estate licensees. Also makes technical changes, intended to clean up certain portions of the Real Estate Law. The six substantive provisions contained in SB 53: 1) authorize DRE to issue citations, and fines of up to $2,500, to licensees found to be in violation of the Real Estate Law, and to unlicensed persons found to be operating in a manner that requires a real estate license; 2) authorize DRE to delay the license renewal of a licensee under investigation for a serious violation of the Real Estate Law, as specified: 3) authorize DRE to publicize the names of licensees under investigation for serious violations of the Real Estate Law, which DRE finds are posing an immediate risk of grievous harm to the public; 4) require licensees that engage in large amounts of escrow activity, as defined, to notify DRE about those escrow activities; 5) ensure DRE's continued access to certain Department of Motor Vehicles records, to aid in DRE's ability to enforce the Real Estate and Subdivided Lands Laws; and 6) authorize DRE to go to court, to enforce an administrative subpoena related to review of a real estate licensee's records. Four of the six aforementioned provisions are operative January 1, 2012 (provisions 1, 3, 5, and 6). Provisions 2 and 4 are operative July 1, 2012.

SB 217 (VARGAS), Chapter 444, Statutes of 2011

Updates California's Secure Enforcement for Mortgage Licensing Act (SAFE Act) law to reflect recently-released federal regulations, by clarifying that an expunged or pardoned felony conviction does not require denial of a mortgage loan originator license by DOC or denial of a mortgage loan originator license endorsement by the DRE. Instead, SB 217 authorizes both departments to consider the underlying crime, facts, and circumstances of the expunged or pardoned felony conviction, when reviewing the license or license endorsement application of an applicant with an expunged or pardoned felony conviction.

Also helps solve SAFE Act compliance challenges for certain companies whose employees require SAFE Act licenses, but whose business activities do not otherwise require licensure by California. Does so, by authorizing persons who are exempt from licensure under the CFLL to apply to the Commissioner of Corporations for an exempt company registration, for purposes of sponsoring one or more individuals required to be licensed as mortgage loan originators under the SAFE Act. Further allows a mortgage loan originator who is an insurance producer for an insurer authorized to transact business in California to originate loans through a licensed finance lender or a person with an exempt registration.

SB 510 (CORREA), Chapter 709, Statutes of 2011

Sponsored by the California Association of Realtors. Effective July 1, 2012, authorizes an employing real estate broker or corporate officer appointed by an employing real estate broker to: 1) appoint a licensee to manage a branch office or division of the employing broker's real estate business; and 2) delegate to the appointed manager the responsibility to oversee day-to-day operations, supervise the licensed activities of licensees, and supervise clerical staff employed in the branch office or division. Subjects any licensee who accepts appointment as a branch office or division manager to disciplinary action for failure to properly supervise licensed activity over which the appointee is given authority. Specifies experience and other requirements that must be met by licensees appointed as branch managers.

SB 980 (VARGAS), Chapter 563, Statutes of 2012

Extends the sunset date on three provisions of SB 94 (Calderon), Chapter 630, Statutes of 2009, from January 1, 2013 to January 1, 2017. However, because AB 1950 (Davis) was chaptered after SB 980, two of the sunset date *extensions* enacted by SB 980 were chaptered out by the sunset date *eliminations* contained in AB 1950. The only provision of SB 980 that was not chaptered out by AB 1950 is the provision that extends the sunset date of Civil Code Section 6106.3 to January 1, 2017. That section expressly authorizes the State Bar to discipline an attorney who violates the Civil Code prohibition against collecting up-front fees in connection with offers to help borrowers obtain mortgage loan modifications or other forms of mortgage loan forbearance.

BILLS VETOED

None

BILLS ACTED UPON BY THE COMMITTEE, WHICH FAILED TO REACH THE GOVERNOR

Bills that were referred to the Senate Banking and Financial Institutions Committee, but which were never heard by the Committee, are not included in this list.

AB 1745 (TORRES), 2012

Would have prohibited mortgage servicers from recording a notice of sale on a property owned by a person to whom that servicer had provided written approval for a short sale. Would have clarified that mortgage servicers could rescind written approval for a short sale, if a homeowner failed to comply with one or more conditions of the short sale agreement, and would have prescribed rules to be followed by servicers who wished to withdraw their approvals. Never taken up in the Senate Judiciary Committee.

SB 412 (VARGAS), 2011

Would have clarified the scope of SB 931, Ducheny, Chapter 701, Statutes of 2010, by: 1) ensuring that a short sale of a property has the same impact on the lender, borrower, and any guarantor as a nonjudicial foreclosure sale of the same property for the same sales price would have had on these parties; and 2) clarifying that the provisions of SB 931 do not apply, if the borrower is a corporation, limited liability company, limited partnership, or political subdivision of the state. After SB 412 passed the Senate Banking and Financial Institutions Committee, its provisions were amended into SB 458 (Corbett), a bill that was ultimately chaptered (Chapter 82, Statutes of 2011). SB 412 (Vargas) was never taken up in the Senate Judiciary Committee.

SB 729 (LENO), 2011

Would have required mortgage loan servicers to complete additional actions before recording a notice of default (NOD), and record a new document, called a declaration of compliance, as an attachment to every NOD; and would have established specific penalties to be applied to servicers that failed to comply with the provisions of the bill. Would have included the following, among the additional actions that servicers would have been required to perform, prior to recording a NOD: mail borrowers a notice informing them of their foreclosure-related rights and regarding foreclosure avoidance options that may be available to them; mail borrowers an application for a loan modification or other alternative to foreclosure; evaluate borrowers who submit a written request for a loan modification or other alternative to foreclosure for that modification or other alternative; and mail borrowers who have been denied a loan modification or other alternative to foreclosure a detailed denial explanation letter explaining the reasons for their denial. Failed passage in the Senate Banking and Financial Institutions Committee.

BILLS ANALYZED BY THE COMMITTEE, BUT PULLED BY THEIR AUTHORS BEFORE A HEARING

SB 1470 (LENO, PAVLEY, and STEINBERG), 2012

Sponsored by Attorney General Kamala Harris. Would have enacted several changes to the rules governing the nonjudicial foreclosure process for residential real property, established an Office of Homeowner Protection to help respond to borrower inquiries about and complaints regarding compliance with the new rules, and provided for enforcement mechanisms, as specified. A modified version of this bill was later incorporated into the foreclosure conference committee report, which was enacted as AB 278 (Eng, Feuer, Mitchell, and J. Perez), Chapter 86, Statutes of 2012, and SB 900 (Leno, Corbett, DeSaulnier, Evans, Pavley, and Steinberg), Chapter 87, Statutes of 2012.

SB 1471 (DESAULNIER and PAVLEY), 2012

Sponsored by Attorney General Kamala Harris. Would have required servicers, as defined, to offer borrowers a single point of contact with whom those borrowers could communicate regarding options to avoid foreclosure, would have prohibited any robosigned document, as defined, from being recorded or filed with any court, and would have enacted rules limiting the ability of an entity to exercise the power of sale in a mortgage or deed of trust. A modified version of this bill was later incorporated into the foreclosure conference committee report, which was enacted as AB 278 (Eng, Feuer, Mitchell, and J. Perez), Chapter 86, Statutes of 2012, and SB 900 (Leno, Corbett, DeSaulnier, Evans, Pavley, and Steinberg), Chapter 87, Statutes of 2012.

OTHER TYPES OF LENDING

BILLS SIGNED INTO LAW

AB 424 (ENG), Chapter 318, Statutes of 2011

Increases the limits on the compensation pawnbrokers are allowed to charge for their services, standardizes time references in the pawnbroker statutes to refer to months rather than days, and defines a month in the pawnbroker statutes as a period of time consisting of 30 consecutive days. Under the provisions of the bill, pawnbrokers are allowed to charge customers the greater of $3 per month or 2.5% per month on the unpaid principal balance of loans greater than three months old, and below $2,500. Previously, pawnbrokers had been required to adhere to a stair-step formula, which capped allowable interest rates on loans below $2,500 between 1% and 2.5%, depending on the unpaid principal balance.

AB 901 (V. MANUEL PEREZ), Chapter 483, Statutes of 2011

Adds small business financial development corporations and microbusiness lenders to the list of financial institutions that are eligible to participate in the California Capital Access Loan Program, administered by the California Pollution Control Financing Authority. Increases the types of information that financial institutions participating in the Capital Access Loan Program are required to provide to the California Pollution Control Financing Authority, and which the Authority is required to summarize in annual reports. Also adds a definition of “microbusiness lender” to the California Codes.

AB 1076 (ACHADJIAN), Chapter 326, Statutes of 2011

Loosens the restrictions on the ability of a credit union to extend a loan to a director, officer, or member of the supervisory committee of the credit committee of that credit union. Authorizes credit unions to enter into obligations with directors, officers, or members of the supervisory committee of the credit committee of that credit union, if all of the following requirements are satisfied: 1) upon the making of the obligation, the aggregate amount of obligations outstanding to all officials of the credit union, except obligations fully secured by shares, may not exceed 20% of the aggregate dollar amount of all savings capital of the credit union; 2) the obligation, except any portion of the obligation fully secured by shares, may not exceed 10% of the aggregate dollar amount of the credit union’s savings capital; and 3) any obligation that would cause the aggregate amount of obligations outstanding to the official to exceed $50,000, excluding any portion fully secured by shares, must be approved by the credit committee or the credit manager and by the board of directors. Prohibits any state-chartered credit union from entering into any obligation with any official of that credit union, directly or indirectly, on terms that are more favorable than those extended to other members of the credit union.

AB 1525 (ALLEN and ALEJO), Chapter 632, Statutes of 2012

Requires licensed money transmitters to provide each of their agents under contract with training materials on how to recognize signs of elder or dependent adult financial abuse, and how to appropriately respond if the agent suspects that he or she is being asked to engage in money transmission for a fraudulent transaction involving an elder or dependent adult. Exempts from its requirements money transmitter licensees that are engaged solely in selling or issuing stored value and licensees that exclusively offer their services via the Internet.

AB 2006 (JOHN A. PEREZ), Chapter 246, Statutes of 2012

Authorizes state-chartered credit unions to offer so-called lifeline services to nonmembers in their fields of membership, for a fee not to exceed the cost of providing the services. Allowable lifeline services include check cashing, issuance and cashing of money orders, and sending and receiving domestic and international money transfers.

SB 976 (VARGAS), Chapter 328, Statutes of 2012

Exempts community advantage lenders, who are authorized by the United States Small Business Administration to offer community advantage loans, from the requirement to be licensed pursuant to the CFLL.

SB 1116 (LENO), Chapter 274, Statutes of 2012

Until January 1, 2017, decreases the minimum contribution required to be paid into a Capital Access Loan Program loan loss reserve account by a qualified business borrower from 2% of the principal amount of the loan to 1% of the principal amount of the loan. Also until January 1, 2017, increases from ten days to fifteen days the length of time that a participating financial institution has in which to enroll a qualified loan in the Capital Access Loan Program.

BILLS VETOED

SB 586 (PAVLEY), 2011

Would have regulated the issuance of signature stamps by state-chartered banks and credit unions and the use of these stamps by accountholders. Would have increased the penalties for perpetrating financial fraud of an elder or dependent adult, using a signature stamp.

SB 931 (EVANS), 2011

Would have expressly authorized employers to pay their employees' wages by means of payroll cards, as long as the employers and payroll card issuers complied with specified rules. These rules required the employer and payroll card issuer to provide specified services to card holders, such as automated teller machine withdrawals and point of sale transactions, and capped the fees that could be charged for these services at specified rates. SB 931 was the successor bill to AB

51 (Yamada), a bill pulled by the author from the Senate Banking and Financial Institutions Committee hearing agenda, before it was heard.

SB 956 (LIEU), 2012

Would have regulated buy-here-pay-here automobile dealers, as defined, pursuant to the CFLL, and would have capped allowable interest rates charged by these lenders at the federal funds rate plus 17 percent. Would also have allowed buy-here-pay-here customers, who became delinquent on their loans and became the subject of repossession proceedings, to bring their accounts current, by paying the delinquent amount in full. These customers would have had up to up to 45 days in which to pay the buy-here-pay-here dealer the amount of any delinquency charges, penalty, interest, and fees arising out of the delinquency and commencement of repossession proceedings.

BILLS ACTED UPON BY THE COMMITTEE, WHICH FAILED TO REACH THE GOVERNOR

Bills that were referred to the Senate Banking and Financial Institutions Committee, but which were never heard by the Committee, are not included in this list.

AB 1158 (CHARLES CALDERON)

Would have increased the maximum allowable value of a check used to obtain a payday loan from $300 to $500. Never taken up in the Senate Judiciary Committee.

BILLS ANALYZED BY THE COMMITTEE, BUT PULLED BY THEIR AUTHORS BEFORE A HEARING

SB 365 (Lowenthal), 2011

Two versions of this bill were analyzed, but neither was heard. The first version (later amended out) would have required the Commissioner of Corporations to implement a database, or contract with a third party to implement a database, to track deferred deposit transactions, as specified, and would have authorized the cost of that database to be borne by both licensees and payday loan customers. Would also have added a provision to the California Deferred Deposit Transaction Law, allowing customers to rescind their loans at no cost, if they notified the licensees who made those loans of their desire to do so.

The second version would have stated the intent of the Legislature to enact legislation authorizing the Commissioner of Corporations to contract with a third party to implement a deferred deposit transaction database, and would have made it a violation of the California Deferred Deposit Transaction Law for a licensee to extend a payday loan to a borrower who already has a payday loan outstanding.

SECURITIES LAW AND CORPORATE GOVERNANCE

BILLS SIGNED INTO LAW

AB 361 (HUFFMAN), Chapter 728, Statutes of 2011

Authorizes the creation of a new, blended type of corporate form called a benefit corporation, which allows a corporation's board of directors to pursue both profit and societal good, with the knowledge and consent of that corporation's shareholders. Benefit corporations may be formed for the purpose of creating general public benefit, defined as a material positive impact on society and the environment, taken as a whole, as assessed against a third party standard, as defined, that satisfies certain requirements. Benefit corporations may also identify one or more specific public benefits, as additional purposes of the corporation, including providing low-income or underserved individuals or communities with beneficial products or services, promoting economic opportunity for individuals or communities beyond the creation of jobs in the ordinary course of business, preserving the environment, and improving human health. Benefit corporations are required to prepare annual benefit reports, each of which must include a description of the ways in which the benefit corporation pursued its general public benefit and any specific public benefits, the extent to which those benefits were created, a statement indicating whether, in the board's opinion, the benefit corporation failed to pursue its general public benefit and any specific public benefit, and the process and rationale for selecting the third party standard used to prepare the benefit reports.

AB 571 (HAGMAN), Chapter 203, Statutes of 2011

Sponsored by the Corporations Committee of the Business Law Section of the California State Bar, to update sections of the Corporations Code governing the issuance of dividends and redemption of shares by California corporations. The bill: 1) simplifies and clarifies the formula pursuant to which California corporations may make distributions to shareholders; 2) removes unnecessarily rigid restrictions on the ability of financial healthy California corporations to make distributions to shareholders; 3) eliminates material differences between the standards relating to dividends and distributions by California corporations and the standards relating to dividends and distributions by California limited liability companies and limited partnerships; 4) enables shareholders of S Corporations to receive dividends and/or distributions to satisfy their tax obligations, just as partners or members of LLCs and LPs are able to do; and 5) aligns the approach used by California to restrict the issuance of dividends and distributions with the approach used by other states, and, in doing so, remove an existing competitive disadvantage experienced by California corporations.

AB 657 (GORDON), Chapter 204, Statutes of 2011

Sponsored by the Secretary of State, to allow businesses to elect to receive electronic notices, in lieu of hard copy notices, from the Secretary of State; standardize the filing requirements imposed on different types of business entities by the Secretary of State; and make other technical changes intended to improve the Secretary of State's ability to administer the laws under her jurisdiction.

AB 1211 (SILVA), Chapter 442, Statutes of 2011

Sponsored by the Nonprofit and Unincorporated Organizations Committee of the Business Law Section of the California State Bar. Makes a variety of technical and clarifying changes to the laws governing nonprofit corporations and unincorporated associations. Specifically, the bill: 1) more clearly specifies the rules governing actions taken by boards of directors without a meeting (i.e., the rules for written consent); 2) clarifies that a quorum is necessary to approve an action by written consent; 3) strikes references to "members of the board" and "members" in the portions of the Corporations Code relating to nonprofits and unincorporated associations, and replaces them with references to directors; strikes references to "death" and replaces them with references to "nonincumbency"; 4) adds references to the Corporations Code, citing requirements in other codes with which nonprofits and unincorporated associations must comply; 5) exempts nonprofit public benefit ballot measure corporations from the requirement to obtain a waiver from the Attorney General's office prior to filing dissolution documents with the Secretary of State; 6) clarifies that both directors and nondirectors may serve on committees that do not exercise the authority of the board of directors of a nonprofit corporation; and 7) clarifies that a dissolving nonprofit corporation must file all final returns required under the Revenue and Taxation Code, prior to dissolving.

AB 1680 (WIECKOWSKI), Chapter 473, Statutes of 2012

Amends California's dissenting shareholders' rights statute, which governs shareholders rights in mergers and acquisitions, in two key ways. First, the bill eliminates the so-called 5% rule, which ensures that, if more than 5% of the shareholders of a publicly traded company being acquired perfect their dissenters' rights, those shareholders must be cashed out for the value of their shares at those shares' fair market values. By deleting that rule, AB 1680 requires dissenting shareholders of publicly held companies to sell their shares on the open market, if they do not wish to hold shares in the acquiring company. Second, the bill requires the fair market value of public or private companies to be measured as of the day of, and immediately prior to the first announcement of the terms of the proposed reorganization or merger, rather than as of the day before the first announcement.

SB 201 (DESAULNIER), Chapter 740, Statutes of 2011

Authorizes the creation of a new, blended type of corporate form called a flexible purpose corporation (FPC), which allows a corporation's board of directors to pursue both profit and societal good, with the knowledge and consent of that corporation's shareholders. In its articles of incorporation, each FPC must list its flexible purposes, which may be any of the following: 1) one or more charitable or public purpose activities that a nonprofit public benefit corporation is authorized to carry out; or 2) promoting positive short-term or long-term effects of, or minimizing adverse short-term or long-term effects of the FPC's activities on the FPC's employees, suppliers, customers, and creditors; the community and society; and/or the environment.

Requires each FPC to prepare an annual report, which must include a management discussion and analysis (MD&A) regarding the FPC's stated purpose or purposes. The MD&A is required to: 1) identify and discuss the short-and long-term objectives of the FPC that relate to its special purpose(s); 2) identify and explain any changes made to those special purpose objectives during the fiscal year; 3) identify and discuss material actions taken by the FPC during the fiscal year to achieve its special purpose objectives; 4) identify and describe the financial, operating, and other measures used by the FPC during the fiscal year to evaluate its performance in achieving its special purpose objectives, 5) identify and discuss any material operating and capital expenditures incurred by the FPC during the fiscal year in furtherance of its special purpose objectives, make a good faith estimate of any additional material operating or capital expenditures the FPC expects to incur over the next three fiscal years in order to achieve its special purpose objectives, and identify and discuss other material expenditures of resources incurred by the FPC during the fiscal year, including employee time, in furtherance of achieving its special purpose objectives.

SB 918 (ANDERSON) Chapter 89, Statutes of 2011

Sponsored by the Farm Mutual Water Company. Authorizes a mutual water company incorporated as a general corporation to elect directors to staggered 4-year terms, and allow the initially-elected directors to determine by lot which of them shall instead serve a 2-year term. Requires any mutual water company that elects to exercise this authority to notify its shareholders, prior to the election, that the directors will determine the lengths of their terms by lot.

SB 978 (VARGAS), Chapter 669, Statutes of 2012

Adds investor protections to the sections of state law governing real estate investment solicitations. Requires those who file claims of exemption with DOC for purposes of issuing real estate securities to file separate paperwork with DOC, containing more information about the nature of their offerings. Requires DOC to publish an annual report, summarizing the activities of its permit holders, and authorizes the department to perform periodic examinations of its permit holders. Imports the loan-to-value caps and suitability requirements that apply to real estate licensees who solicit investors for multi-lender, hard money loans into the sections of the Real Estate Law that apply to real estate licensees who solicit investors for single-lender, hard money loans. Amends the Real Estate Law to require that anyone who solicits prospective investors for the purpose of raising funds for one or more real estate ventures to evaluate the suitability of those real estate investments for those investors.

BILLS VETOED

None

BILLS ACTED UPON BY THE COMMITTEE, WHICH FAILED TO REACH THE GOVERNOR

Bills that were referred to the Senate Banking and Financial Institutions Committee, but which were never heard by the Committee, are not included in this list.

AB 2081 (ALLEN), 2012

Until January 1, 2016, would have added a state securities permitting exemption for securities issuers who use general solicitation and general advertising, including the use of unsolicited telephone calls to a prospective investor's residence or cellular telephone. Would have: 1) required any issuer relying on this exemption to take reasonable steps to verify that prospective investors were accredited investors, before soliciting them; 2) prohibited an issuer relying on the exemption from selling a security pursuant to the exemption, before receiving a completed investor questionnaire from a prospective investor; 3) capped the maximum investment of any investor in a security sold pursuant to the exemption at five percent of the investor's net worth, or joint net worth together with that investor's spouse or domestic partner; and 4) capped the maximum amount raised by an issuer pursuant to the exemption at $1 million per security. Failed passage on the Senate Floor.

BILLS ANALYZED BY THE COMMITTEE, BUT PULLED BY THEIR AUTHORS BEFORE A HEARING

SB 982 (Evans), 2012

Sponsored by the California Public Interest Research Group. Would have required corporations to notify their shareholders at least 24 hours before making political contributions or expenditures, as defined, and to annually summarize and report to their shareholders on the political contributions and expenditures they made during the prior year, as specified.

FINANCIAL SERVICES LAW ADMINISTRATION, MISCELLANEOUS

BILLS SIGNED INTO LAW

AB 597 (ENG), Chapter 612, Statutes of 2011

Establishes the California Financial Literacy Fund (CFLF) in the State Treasury, administered by the State Controller, to support partnerships with the financial services community and other stakeholders, for the purpose of improving Californians' financial literacy. Authorizes the Controller to accept private donations for deposit into the CFLF, and makes those funds available, subject to appropriation in the annual Budget Act. Authorize the Controller to convene a financial literacy advisory committee to provide additional oversight of the CFLF and develop strategies to improve financial literacy. Beginning in 2013, requires the Controller to submit a brief annual summary by August 30th of each year, regarding the use of the funds in the CFLF, to the chairpersons of the Assembly Committee on Banking & Finance and the Senate Committee on Banking and Financial Institutions.

AB 2364 (WAGNER), Chapter 484, Statutes of 2012

Sponsored by the Consumer Financial Services Committee of the Business Law Section of the California State Bar, to modernize the service of levies on bank accounts and safe deposit boxes, and ensure that judgment creditors will no longer have to identify the branch of a bank at which an account or safe deposit box is maintained in order to serve a levy. Among its provisions, AB 2364: 1) authorizes depository institutions with fewer than ten California branches, and requires depository institutions with ten or more California branches, to designate a central location for service of process for attachments and enforcement of judgments against deposit accounts and the contents of safe deposit accounts held by those institutions; 2) requires that service of such process be made at the central location in all cases where there is such a designation, and restricts the reach of levies served at the central location to deposit accounts and safe deposit boxes maintained at those financial institutions' California locations; 3) establishes mechanisms for use by judgment creditors, in cases where a financial institution has not designated a central location for service of process; and 4) makes other technical, conforming, and clarifying changes.

SB 33 (SIMITIAN and WOLK), Chapter 372, Statutes of 2011

Deletes the January 1, 2013 sunset date on the Elder and Dependent Adult Financial Abuse Reporting Act, originally enacted in 2005. That 2005 law requires officers and employees of financial institutions, as defined, to act as mandated reporters of suspected cases of elder and dependent adult financial abuse, as specified.

SB 664 (COMMITTEE ON BANKING AND FINANCIAL INSTITUTIONS), Chapter 243, Statutes of 2011

Renumbers the sections of the Financial Code administered by the Department of Financial Institutions (DFI), to reflect a multi-year Financial Code reorganization initiated by DFI beginning in 2008. The contents of the Financial Code sections remain unchanged; only the code numbers are revised, and the code sections reorganized. Also conforms California's Banking Law to Section 613 of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, by authorizing national banks and foreign (out-of-state) banks to branch into California, as if those banks were organized in California.

SB 708 (CORBETT), Chapter 392, Statutes of 2012

SB 708 was heard and passed by the Senate Banking and Financial Institutions Committee three different times, in three different forms. In April 2011, the Committee passed a version of SB 708 that would have enacted the Debt Settlement Consumer Protection Act, administered by DOC, to license and regulate debt settlement providers, as specified. Those provisions were subsequently amended out of the bill.

When next heard and passed by the Committee, SB 708 would have extended the sunset date on SB 1137 (Perata, Corbett, Machado), Chapter 69, Statutes of 2008 from January 1, 2013 to January 1, 2018. Those provisions were subsequently amended out of the bill.

When last heard and passed by the Committee, SB 708 was sponsored by the California Bankers Association, and provided that, notwithstanding certain changes to made to the Electronic Funds Transfer Act by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Division 11 of the California Commercial Code continues to apply to funds transfers made between commercial entities.

SB 979 (VARGAS), Chapter 356, Statutes of 2012

Requires DFI to make its formal, final enforcement actions public, but allows DFI to delay publication of a final order or decision for a reasonable time, if such publication would seriously threaten the safety or soundness of a regulated institution subject to that order or decision. Also allows the Commissioner of Financial Institutions to redact from an order or decision any information that would identify any customer of the subject institution.

Also makes several technical corrections to the Money Transmission Act, administered by DFI.

SB 1058 (LIEU), Chapter 564, Statutes of 2012

Amends the rules governing claims from the Victims of Corporate Fraud Compensation Fund, administered by the Secretary of State, to make it easier for people who have been victims of corporate fraud to obtain restitution from the Fund. Among its specific changes, SB 1058: 1) allows applicants to use court documents to substitute for the detailed narrative of facts previously required by the Secretary of State; 2) reduces the number of documents the Secretary of State may require from applicants; 3) amends the Fund's rules regarding bankrupt corporations, to eliminate a Catch-22 that previously prevented certain applicants from receiving compensation from the Fund; 4) increases the maximum award each claimant is eligible to receive, from $20,000 to $50,000; 5) allows awards to be paid as they are approved, rather than paying out all awards at the end of each fiscal year, and establishes a set of rules that can be used to compensate claimants for waiting to receive their awards, if there is insufficient money in the Fund to compensate them, at the time their awards are approved; 6) establishes a 90-day timeframe for the Secretary of State to approve or deny applications; 7) no longer automatically excludes restitution, when a victim's spouse or family member is associated with the corporation that defrauded that victim; and 8) deletes the requirement that applicants must provide notice to the corporation that defrauded them, relying instead on the Secretary of State to perform this notice.

BILLS VETOED

AB 38 (BRADFORD), 2011

Would have required DFI to work with local agencies to compile a list of underserved communities or regions that lack a concentration of banks and services, in order to provide banks with a clear demonstration of those areas that are most in need. Would have required DFI to post that list on its Internet Web site.

AB 750 (HUESO), 2011

Would have created a task force to study the creation of the California Investment Trust, which would have been a state bank receiving deposits of state funds. The California Investment Trust was intended to do all of the following, at a minimum: 1) support the economic development of California by increasing access to capital for businesses in the state; 2) provide financing for housing development, public works infrastructure, educational infrastructure, student loans, and community quality of life projects; 3) provide stability to the local financial sector; 4) reduce the cost paid by state government for banking services; and 5) lend capital to banks, credit unions, and nonprofit community development financial institutions, to assist in meeting their goals of increasing access to capital and providing banking services.

BILLS ACTED UPON BY THE COMMITTEE, WHICH FAILED TO REACH THE GOVERNOR

Bills that were referred to the Senate Banking and Financial Institutions Committee, but which were never heard by the Committee, are not included in this list.

None

BILLS ANALYZED BY THE COMMITTEE, BUT PULLED BY THEIR AUTHORS BEFORE A HEARING

AB 1617 (Dickinson), 2012

Would have required that, to the maximum extent consistent with liquidity requirements and prudent management of surplus moneys, the State Treasurer must ensure that at least 30 percent of the moneys invested in the Time Deposit program are invested with community banks and credit unions, as defined.

AB 2481 (Morrell), 2012

Would have authorized the use of a letter of credit issued by any Federal Home Loan Bank as acceptable security for demand and time deposits placed by the State Treasurer or any county treasurer with the eligible bank posting that security. Existing law restricts acceptable letters of credit to those issued only by the Federal Home Loan Bank of San Francisco.

SB 447 (DeSaulnier), 2011

Would have required financial institutions, as defined, doing business in California, to provide specified data to the California Research Bureau. Among the information the financial institutions would have to provide: 1) percentage of California branches of the financial institution in low- and moderate-income census tracts; 2) percentage of multifamily loans in low- and moderate-income census tracts in the state, 3) total community development lending in the state, expressed as a percentage of total banking deposits; 4) percentage of California community development loans to nonprofit borrowers; 5) percentage of California home purchase loans to low- and moderate-income borrowers; 6) percentage of total deposits spent on philanthropic or charitable donations in the state; 7) the extent of participation in the California Housing Finance Agency's Unemployment Mortgage Assistance Program, Mortgage Reinstatement Assistance Program, and Principal Reduction Program; and 8) the extent of participation in the federal Home Affordable Modification Program.

SB 1508 (Lowenthal), 2012

Would have added the California Infrastructure and Economic Development Bank (the I-Bank) to the list of banks eligible to receive deposits of state money from the State Treasurer, to increase the resources available to the I-Bank, and in doing so promote economic growth and revitalization of California communities.

2011– 2012 INFORMATIONAL HEARINGS

Agendas, background papers, summary reports, and transcripts for the hearings summarized below are available on the Committee's Internet Web site.

March 23, 2011, The Dodd-Frank Wall Street Reform and Consumer Protection Act: Initial Reactions, Initial Steps, and Likely Impacts

In March 2011, the Senate Banking and Financial Institutions Committee and Assembly Banking and Finance Committee held a joint hearing to introduce their membership to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank," or "the Act"). Given the enormity of the Act and the long-term nature of its likely impacts, the hearing was designed to provide an introduction and a broad overview; there was no attempt to focus in depth on any single aspect of the Act, nor on any single impact likely to result from the Act. Further, more in-depth hearings will likely be warranted to study individual aspects of the Act, as more studies are completed, and more regulations are released.

The hearing lasted approximately three hours and included testimony from fifteen invited witnesses and four members of the public. It was attended by four members of the Senate Banking and Financial Institutions Committee (Chairman Vargas, Senator Walters, Senator Kehoe, and Senator Padilla) and four members of the Assembly Banking and Finance Committee (Chairman Eng, Vice-Chair Achadjian, Assemblymember Harkey, and Assemblymember Torres).

Virtually every witness agreed that the myriad studies and regulations required by Dodd-Frank will render its impact uncertain for many years to come. The Act represents the most sweeping change to the United States financial services marketplace ever enacted at one time. It will undoubtedly have many impacts in California, but there is currently no consensus on the nature of those impacts, because so few of the entities established by Dodd-Frank have been created, and so few of the studies and regulations required by Dodd-Frank have been issued.

Industry witnesses and state regulators urged the Committees and the Legislature to move slowly to enact legislation in response to Dodd-Frank, given the many uncertainties that exist regarding the nature of future rulemakings required by the Act. These witnesses also encouraged the Committees to consider eliminating inconsistencies between state and federal law, if and when the Legislature does take action to respond to Dodd-Frank. Industry warned the Committees that access to credit could decrease even more than it already has, if the Legislature continues to pile more and more financial regulation onto lenders.

Consumer advocates urged the Committees to move forward with legislation in areas not directly related to Dodd-Frank, such as foreclosure avoidance and mortgage servicing reform. These advocates believe that California should use some of the enhanced authority granted to states by Dodd-Frank to enact consumer protection legislation.

Several witnesses and members of the public also chose to comment on the Durbin amendment, a last-minute addition to Dodd-Frank, which requires the Federal Reserve Board to promulgate regulations capping the size of debit card interchange fees. The controversial amendment has been categorized by its supporters as pro-consumer and pro-small business, and categorized by its opponents as anti-consumer and anti-small bank. The testimony of those who spoke on the Durbin amendment during the hearing mirrors the controversy being played out at the national level; no consensus was reached.

<u>January 18, 2012: Hard Money Lending in California</u>

In June 2011, investigative reporters Charles Piller and Robert Lewis of the Sacramento Bee co-authored a two-part series on hard money lending fraud in Nevada County. That investigation stirred interest among legislators, who wished to learn more about the complicated topic, and who were concerned about the potential existence of regulatory gaps that could place consumers in harm's way. On January 18, 2012, the Senate Banking and Financial Institutions Committee and Senate Business, Professions and Economic Development Committee held a joint oversight hearing to investigate the following questions:

- What is hard money lending?
- How is it regulated, and by whom?
- Is the existing regulatory structure protective of consumers who obtain hard money loans? Is it protective of persons who invest money used to fund hard money loans?
- Does the existing regulatory structure allow members of the regulated industry to engage in regulatory arbitrage (i.e., to structure their business activities in ways that allow them to pick and choose their regulator and the laws under which they are regulated, to ensure the least possible oversight)?
- Are changes to the laws under which hard money lenders and brokers raise and lend money necessary or desirable?

The background paper developed for Committee members answered many of these questions, and contained eight sets of findings and recommendations to help plug existing loopholes and increase consumer protection. The bulk of the recommendations stemming from the hearing were enacted into law, through passage of SB 978, Chapter 669, Statutes of 2012.

As noted in the legislative summary section above, SB 978: 1) requires those who file claims of exemption with the Department of Corporations (DOC) for purposes of issuing real estate securities to file separate paperwork with DOC, containing more information about the nature of their offerings than is currently required in exemption filings; 2) requires DOC to publish an annual report, summarizing the activities of those permit holders, and authorizes the department to perform periodic examinations of its permit holders; 3) imports the loan-to-value caps and suitability requirements that apply to real estate licensees who solicit investors for multi-lender, hard money loans into the sections of the Real Estate Law that apply to real estate licensees who solicit investors for single-lender, hard money loans; and 4) amends the Real Estate Law to require anyone who solicits prospective investors for the purpose of raising funds for one or more real estate ventures to evaluate the suitability of those real estate investments for those investors. All of these changes, taken together, will shine a regulatory spotlight on investor solicitations that are currently carried out (legally) with virtually no regulatory oversight, and improve the quality of vetting that issuers perform on prospective investors, to ensure that investments are suitable for those who place their money into them.

March 7, 2012: Update on SAFE Act Implementation

On Wednesday, March 7, 2012, the California Senate Banking and Financial Institutions Committee and the California Senate Budget and Fiscal Review Subcommittee Number 4 on State Administration and General Government reviewed the status of California's implementation of a comprehensive mortgage loan originator licensing system enacted in 2009 (SB 36, Calderon, Chapter 160, Statutes of 2009).

In California, two departments – the Department of Real Estate (DRE) and the Department of Corporations (DOC) – have jurisdiction over laws that authorize mortgage loan origination activity, which requires licensing pursuant to the SAFE Act. During the hearing, the committees asked both departments to review their actions to date, and to offer testimony responding to the following questions: How many licenses have been issued? How many disciplinary actions have been brought? What new information has been collected from licensees? What implementation challenges have been encountered? What staffing issues have arisen? By jointly reviewing these topics, both the budget subcommittee and the policy committee with jurisdiction over the mortgage loan activities of DOC and DRE hoped to work together to ensure that the California public receives the protections intended by the Legislature, when it enacted California's mortgage loan originator licensing scheme.

At the hearing, DOC testified that it had received 22,117 mortgage loan originator applications as of February 29, 2012; as of that date, there were 17,562 current mortgage loan originator licenses held by licensees. Through February 29, 2012, DOC had denied 26 applications; 2,843 loan originator licenses were abandoned by license applicants, and 561 were withdrawn.

To handle the initial workload of licensing over 20,000 individuals, DOC was forced to reassign several dozen examination staff from their examination duties to licensing, with the result that fewer examinations of Financial Services Division licensees were performed, and fewer violations by those licensees were detected. Since the initial licensing rush, however, the number of redirected examiners has declined to a total of eight.

During the 2011 calendar year, DOC examiners found SAFE Act violations at nine Residential Mortgage Lending Act locations (out of 66 examined) and at 54 Finance Lenders Law locations (out of 1140 examined). DOC staff testified that they believe SB 36 and the federal SAFE Act have increased consumer protections in California, due to the increased vetting of persons who engage in mortgage loan origination. Licensing discourages persons who cannot qualify for licenses due to their backgrounds or their lack of mortgage-specific knowledge, and puts licensees on notice that their activities will be subject to greater scrutiny than during pre-licensing times.

During the hearing, DRE testified that there were 24,086 active mortgage loan originator license endorsements as of March 1, 2012. Through that date, an additional 6,500 applicants had submitted applications, which were found to be deficient in some manner, and which resulted in no license endorsement being issued. Another 166 applications were undergoing greater scrutiny by DRE, to look into issues that arose during the background checks required of every applicant; another 1,384 were in some form of non-endorsed status that DRE believed could be remedied quickly, if the individual so chose (e.g., nonpayment of renewal fees, missing continuing education).

Responding to questions about staffing and workload, DRE staff testified that the department initially estimated it would need 120 new employees to handle the workload driven by SB 36. Of those 120, the vast majority (82) would be focused on proactive enforcement, using information submitted to DRE by licensees pursuant to SB 36. DRE received only 27 of those positions, spread across licensing, enforcement, and administrative staff. DRE is handling its existing SAFE Act workload with the 27 positions they received, but they have been unable to do the types of proactive enforcement they originally envisioned. At the time of the hearing, DRE had 1,083 open enforcement actions against real estate licensees holding license endorsements.

March 15, 2012: Flexible Purpose Corporations, Benefit Corporations, and California's Nonprofit Sector: Opportunities for Collaboration

In October 2011, Governor Jerry Brown signed two bills creating new corporate forms. As described in more detail in the legislative summary above, SB 201 (DeSaulnier), Chapter 740, Statutes of 2011, authorized the creation of flexible purpose corporations (FPCs), and AB 361 (Huffman), Chapter 728, Statutes of 2011, authorized the creation of benefit corporations. Both of these new corporate forms authorize so-called blended corporations – i.e., companies whose articles of incorporation authorize the simultaneous pursuit of public good and private wealth, with the knowledge and support of the companies' shareholders.

During legislative hearings, individuals representing the California Association of Nonprofits (CAN) and the California Society of Association Executives (CalSAE) testified in opposition to both bills. CAN's concerns were centered on four issues -- capacity, sustainability, efficiency, and oversight. In its letters of opposition, CAN posed the following questions:

- Will either of the new corporate forms reduce demands on the capacity of already over-extended, existing nonprofit and public entities to meet social, educational, cultural, and environmental needs? Or will they simply dilute the pool of funds available to meet these needs?

- Will either of the new corporate forms be independently self-sustaining, or will they compete in the philanthropic and financial marketplace with existing nonprofit entities?

- Will the addition of these new corporate forms as potential competitors with nonprofits result in more innovative, more efficient, and more effective use of public, private, and charitable resources?

CalSAE shared many of CAN's concerns, and raised questions about the extent to which the new corporate forms would be externally accountable. CalSAE, in particular, recommended that both

FPCs and benefit corporations should be encouraged to partner with existing nonprofits to pursue public benefits.

Both CAN and CalSAE asked the Legislature to convene one or more informational hearings to evaluate the potential impact of the bills, before moving either bill to the Governor. Although CAN's and CalSAE's arguments in opposition were insufficient to prevent either bill from becoming law, the organizations' requests for further legislative study did not fall on deaf ears. On Thursday, March 15, 2012, the California Senate Banking and Financial Institutions Committee convened an informational hearing on the Stanford University campus, in the heart of social entrepreneurship, to study the potential impact of both new corporate forms on the nonprofit sector, and to explore opportunities for collaboration that could benefit both sectors. The committee heard from eleven witnesses, including academics and practitioners with expertise in these topics, and from the advocates who had originally expressed concern about the impact of the new corporate forms.

The majority of the academics and practitioners testified that the new corporate forms were unlikely to have negative impacts on nonprofits, as nonprofits were the entities most likely to take advantage of the new type of corporate structures. Many nonprofits have for-profit subsidiaries. Benefit corporations and flexible purpose corporations allow these nonprofits to look at turning their for-profit subsidiaries into blended corporations, which have access to investment dollars, but whose missions are anchored in public benefit. There was no concern expressed by the academics and practitioners that the creation of new, blended corporations would siphon money away from the non-profit sector; instead, they believed it would increase the level of social entrepreneurship among for-profits. However, some of the witnesses did express concern about the potential impact of offering tax preferences to persons who invest in FPCs or benefit corporations; that could skew philanthropic giving, and has the potential to siphon money away from the nonprofit sector. A few also acknowledged that the only way we will truly learn what impact the new corporate forms will have on the nonprofit sector is to study the issue over time. A few also commented on the increasing trend toward a blurring of the lines between the for-profit and nonprofit sectors, and encouraged the committee to view SB 201 and AB 361 as reflecting that "blurred line" trend.

Witnesses representing the nonprofit sector were less confident than the other witnesses about the positive impacts of the new corporate forms on the nonprofit sector. They encouraged the Department of Corporations to continue to provide oversight over the new corporate forms, protecting both investors and consumers by establishing disclosure standards and enforcement decisions. They believe that this is particularly important, given the high potential for these corporations to mislead the public, intentionally or unintentionally, though "greenwashing." They also testified that flexible purpose and benefit corporations should not be eligible for state grants, contracting, or procurement preferences, set asides, tax advantages, or any other privileges based solely on their designations as flexible purpose or benefit corporations (this is a topic on which both the nonprofit and academic witnesses strongly agreed). Finally, the nonprofits urged further study, and increased collaboration between flexible purpose corporations, benefit corporations, and the nonprofit sector, in hopes that these types of corporations could mine the wealth of knowledge within the nonprofit community.