

**SENATE COMMITTEE
ON BANKING AND FINANCIAL
INSTITUTIONS**

2017 – 2018 LEGISLATIVE SUMMARY

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TABLE OF CONTENTS

<u>Subject</u>	<u>Page</u>
<i>UNSECURED LENDING AND SERVICING</i>	
Bills signed into law	3
Bills vetoed	4
Bills acted upon, which failed to reach the Governor	4
<i>SECURED LENDING AND SERVICING, FORECLOSURE PREVENTION, REAL ESTATE</i>	
Bills signed into law	7
Bills vetoed	13
Bills acted upon, which failed to reach the Governor	14
<i>SECURITIES LAW AND CORPORATE GOVERNANCE</i>	
Bills signed into law	15
Bills vetoed	16
Bills acted upon, which failed to reach the Governor	16
<i>FINANCIAL SERVICES LAW ADMINISTRATION, MISCELLANEOUS</i>	
Bills signed into law	17
Bills vetoed	20
Bills acted upon, which failed to reach the Governor	20
2017 – 2018 INFORMATIONAL AND OVERSIGHT HEARINGS	22

UNSECURED LENDING AND SERVICING

BILLS SIGNED INTO LAW

AB 38 (Stone), Chapter 379, Statutes of 2018

Author-sponsored. Makes a series of amendments to the Student Loan Servicing Act, intended to clarify its scope and aid its implementation. Among its more significant changes, the bill: 1) modifies the definition of a student loan to provide that a student loan is one made solely (rather than primarily) for use to finance a postsecondary education and costs of attendance at a postsecondary institution; 2) provides that a student loan servicer does not include a debt collector whose student loan debt collection business and business operations involve collecting or attempting to collect on defaulted student loans; 3) provides that a student loan servicer does not include a state or nonprofit private institution or organization that has an agreement with the United States Secretary of Education in connection with its responsibilities as a guaranty agency engaged in default aversion; 4) gives licensees an additional five business days (ten business days rather than five business days) to acknowledge receipt of a qualified written request from a borrower; and 5) provides that the burden of proving an exemption or an exception from a definition in the Student Loan Servicing Act falls upon the person claiming it.

AB 237 (Gonzalez-Fletcher), Chapter 1016, Statutes of 2018

Author-sponsored. Increases the maximum dollar amount of loans that may be made under California's Pilot Program for Increased Access to Responsible, Small-Dollar Loans (pilot program) from \$2,500 to \$7,500; requires pilot program licensees to reduce the interest rates charged on the second and subsequent loans they make to a borrower by at least one percentage point, as specified, not to exceed a total of four percentage points; establishes a maximum allowable debt-to-income ratio of 36% for borrowers who are seeking pilot program loans above \$2,500; requires pilot program finders to be examined at least once every 24 months; requires pilot program licensees to perform reasonable background checks on their finders; authorizes the Commissioner of Business Oversight (commissioner) to charge licensees who use finders an additional fee, on top of the fees already authorized, to offset the commissioner's costs to oversee the activities of those finders; and requires the commissioner to include finder-specific information in the pilot program annual report.

SB 266 (Dodd), Chapter 514, Statutes of 2017

Author-sponsored. Updates provisions of the Banking Law, California Credit Union Law, California Financing Law (CFL), and California Deferred Deposit Transaction Law (CDDTL) to reflect new federal lending rules applicable to members of the military and their dependents. In 2007, California enacted legislation providing that violations of specified federal law and regulations by state-chartered banks, state-chartered credit unions, CFL licensees, and CDDTL licensees represented violations of those entities' state licensing laws. In 2015, the federal government updated and strengthened the laws referenced in California's 2007 legislation. SB 266 updates the provisions of law added by AB 7 to reflect the 2015 federal rule changes.

SB 1235 (Glazer), Chapter 1011, Statutes of 2018

Author-sponsored. Applies to offers of commercial financing of up to \$500,000. Requires providers of commercial financing, as defined, to provide disclosures about the cost of that financing to persons being offered the financing. Requires all of the following information to be disclosed to a recipient, as defined, at the time the provider extends a specific commercial financing offer to that recipient and requires the provider to obtain the recipient's signature on the disclosure before consummating the commercial financing transaction: total amount of funds provided; total dollar cost of financing; term or estimated term; method, frequency, and amount of payments; description of prepayment policies; and, until January 1, 2024, the total cost of the financing expressed as an annualized rate.

Requires the Department of Business Oversight (DBO) to promulgate regulations, which must include all of the following regarding the required disclosures: definitions, contents, or methods of calculating each of the disclosures; requirements concerning the time, manner, and format of the disclosures; a determination of which method should be used to disclose the annualized rate; when providers may be permitted to disclose an estimated annualized rate; the accuracy requirements and tolerance allowances for annualized rate calculations; and the types of fees and charges to be included in the annualized rate calculations.

AJR 5 (Medina), Resolution Chapter 207, Statutes of 2017

Sponsored by the California Pawnbrokers Association. Urges Congress to prevail upon the United States Department of Defense to realign its criteria for the safe harbor provision in the federal Military Lending Act by eliminating the requirement that creditors collect social security numbers from prospective borrowers.

BILLS VETOED

None

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

AB 2953 (Limon), 2018

Author-sponsored. Would have prohibited CFL licensees from charging interest rates greater than 36% per year on auto title loans of \$2,500 or more. Would have defined an auto title loan as a nonpurchase money loan with a bonafide principal amount of \$2,500 or more, where the lender obtains a security interest in a motor vehicle.

Failed passage in the Senate Banking and Financial Institutions Committee.

AB 3010 (Limon), 2018

Author-sponsored. Would have imposed a limit of one deferred deposit transaction (i.e., payday loan) at a time per borrower, across all deferred deposit transaction law licensees, enforced by a database; and authorized a new, alternative set of rules for installment loans made under the CFL in amounts of up to \$2,500. The CFL rules would have authorized simple interest rates of up to 36%, plus specified administrative and late fees, but would have capped total interest plus fees at 50% of the principal amount borrowed and would have required loans to be underwritten to ensure that monthly payment amounts did not exceed 5% of a borrower's gross monthly income or 6% of a borrower's net monthly income.

Failed for lack of a motion in the Senate Banking and Financial Institutions Committee.

AB 3207 (Limon), 2018

Author sponsored. Would have modified the definition of a broker under the CFL and modified the rules applicable to finance brokers and to finance lenders that use the services of brokers. Would have defined brokering as engaging in one or more of the following activities: 1) transmitting confidential data about a prospective borrower to a finance lender with the expectation of compensation, in connection with making a referral; 2) making a referral to a finance lender under an agreement with the finance lender that a prospective borrower referred by the person to the finance lender meet certain criteria involving confidential data and with the expectation that the person making the referral will receive compensation that is contingent upon whether the finance lender and the prospective borrower enter into a loan agreement; 3) participating in any loan negotiation between a finance lender and a prospective borrower; 4) counseling, advising, or making recommendations to a prospective borrower about a loan based on the prospective borrower's confidential data; 5) participating in the preparation of any loan document; 6) communicating to a prospective borrower a finance lender's loan approval decisions; and 7) charging a fee to a prospective borrower for any services related to a prospective borrower's application for a loan from a finance lender.

Would have established two different sets of rules under the CFL, one applicable to lenders and brokers in connection with installment loans made with the involvement of brokers who engaged in either or both of the activities described in Numbers 1 and 2 above, and the other applicable to lenders and brokers in connection with installment loans made with the involvement of brokers who engaged in any of the activities described in Numbers 3 through 7 above.

Would also have required the Department of Business Oversight (DBO) to examine CFL licensees at least once every 48 months, as specified.

Held on the Senate Appropriations Committee Suspense File.

SB 297 (Dodd), 2017

Author-sponsored. Would have modified the definition of a broker under the CFL and added a definition of lead generator. Would have defined brokering as matching a prospective borrower

with a finance lender, using information provided by both parties, or negotiating the price, length, or any other loan term between a finance lender and a prospective borrower. Would have defined lead generation as performing any one or more of the following activities for another or others: 1) soliciting or collecting nonpublic personal information from prospective borrowers in anticipation of selling or submitting that information to one or more lead generators or finance lenders; 2) introducing prospective borrowers and prospective lenders after comparing prospective borrowers' attributes with prospective lenders' preferences, in anticipation of compensation by prospective lenders; 3) offering to the public a means through which the lead generator compiles and publishes comparison information on various loans made pursuant to the CFL; and 4) purchasing, soliciting, or otherwise acquiring nonpublic personal information from a lead generator in anticipation of selling or submitting that information to one or more finance lenders.

Would have required lead generators to register with DBO, provide specified disclosures, adhere to specified rules, and refrain from engaging in prohibited activity; and would have given the commissioner regulatory and enforcement authority over lead generators.

Held on the Senate Appropriations Committee Suspense File.

SB 674 (Allen), 2017

Author-sponsored. Would have modified the California Student Loan Refinancing Program (Program) by expanding eligibility to more borrowers, covering more types of private student loan debt, and changing the mechanism by which moneys are set aside to help backfill losses by financial institutions that enroll loans into the Program. Would have appropriated \$25 million in General Fund monies to fund the Program.

Specifically, SB 674 would have expanded eligibility for the Program beyond student loan borrowers who have bachelor's degrees, to student loan borrowers who have graduate and professional degrees, as well as to those who received associate's degrees or degrees, certificates, or diplomas from nonprofit trade schools. SB 674 would also have expanded the Program beyond student loan borrowers who are working in public service or for a nonprofit, to California residents who have been employed for at least six continuous months with the same employer.

Held on the Senate Appropriations Committee Suspense File.

SECURED LENDING AND SERVICING, FORECLOSURE PREVENTION, REAL ESTATE

BILLS SIGNED INTO LAW

AB 1284 (Dababneh), Chapter 475, Statutes of 2017

Author-sponsored. Renames the California Finance Lenders Law as the California Financing Law (CFL); requires Property Assessed Clean Energy (PACE) program administrators, as defined, to be licensed under CFL effective January 1, 2019; establishes a regulatory scheme for the oversight of PACE solicitors and PACE solicitor agents, as defined; and adds new rules that must be followed before PACE assessments may be recorded (see immediately below).

Effective January 1, 2018, prohibits a program administrator from submitting, presenting, or otherwise approving for recordation by a public agency an assessment contract, unless specified criteria are satisfied. Among the requirements: all property taxes on the subject property must be current; the property may not have any recorded, unrescinded notices of default or any recorded, outstanding involuntary liens in excess of \$1,000; the property owner may not have been party to any bankruptcy proceedings during the prior seven years, except as specified; the property owner must be current on all mortgage debt and may not have been late on his or her mortgage more than once during the prior 12 months; the amount financed may not exceed certain caps (15% of the market value of the property up to \$700,000 market value and 10% of the market value above \$700,000); the sum of PACE assessments and mortgage-related debt on the property may not exceed 97% of the property's market value; the term of the assessment contract may not exceed the estimated useful life of the measure to which the greatest portion of funds disbursed under the assessment contract is attributable; the property must be within the geographic boundaries of the applicable PACE program; and the installed efficiency measures must be eligible under the terms of the applicable PACE program.

Effective April 1, 2018, prohibits a program administrator from approving an assessment contract for funding and recordation by a public agency, unless the program administrator makes a reasonable good faith determination that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment, based on the property owner's income, assets, and current debt obligations, as specified.

However, in the case of an emergency or immediate necessity involving a PACE assessment to finance a heating, ventilation, and air conditioning system, boiler, or other system whose primary function is temperature regulation, allows a program administrator to avoid the requirement to verify income using third-party records, as long as the amount of the assessment contract is no greater than \$15,000 in total or \$1,500 per year (whichever is larger) and the property owner confirms the emergency or immediate necessity of the improvement.

Provides that, in the case of all assessments (those underwritten using verified income and those underwritten using the rules applicable to emergencies), if there is a difference between the amount for which a property owner qualifies based on the ability-to-pay underwriting requirements and the actual amount for which the property owner is obligated on the underlying home improvement contract, and if

the difference is not due to intentional misrepresentation by the property owner, the program administrator is responsible for the difference.

NOTE: Provisions of AB 1284 were modified by AB 2063 (Aguiar-Curry; see page 10, below) and SB 1087 (Roth; see page 11, below).

AB 2884 (Irwin), Chapter 285, Statutes of 2018

Sponsored by the California Association of Realtors. Modifies provisions of the Business and Professions Code under which licensed real estate activities are conducted to reflect commonly used terms and practices and to provide greater clarity for consumers and practitioners with regard to terminology, definitions, and existing practice.

Among the specific changes in AB 2884: 1) defines the terms “manager,” “broker associate,” “professional identity,” “retained,” “seller,” “listing agent,” “seller’s agent,” “buyer,” “buyer’s agent,” “real property,” “single-family residential property,” “commercial real property,” “sell,” “sale,” “sold,” “dual agent,” “appraiser,” “listing agreement,” “exclusive right to sell listing agreement,” “seller reserved listing agreement,” and “open listing agreement;” 2) replaces the terms bureau, transfer, purchaser, employ, and employing broker with the terms department, sale, buyer, retain, and responsible broker; 3) adds the surrender of a license issued by another agency of this state, another state, or the federal government, as specified, to the list of acts that may cause the denial of a real estate license application or the suspension or revocation of a real estate license; 4) requires licensees to notify the Department of Real Estate (department) if they have been the subject of a criminal complaint; 5) allows a licensee to provide a person who signs a contract retaining that licensee with an electronic copy of the signed agreement as soon as reasonably practicable after the person’s signature on that agreement is obtained; 6) provides a means by which a corporation may continue to operate in the event of the death or incapacity of its sole designated broker-officer; 7) clarifies that when a corporation wishes to act as a real estate broker, the corporation must be licensed by the department through qualified broker officers, as specified; 8) deletes a provision requiring a broker employer to maintain a copy of the license of any real estate salesperson employed by that broker until that license is canceled or until the salesperson leaves the employ of the broker; and 9) revises the procedures by which a responsible broker is required to provide notice to the Commissioner of Real Estate regarding his or her affiliations with other real estate licensees, as specified.

Provides that nothing in the bill shall be construed to affect a real estate broker’s duties under existing law as an agent of a person who retains that broker to perform acts for which a license is required; any fiduciary duties owed by a real estate broker to a person who retains that broker to perform acts for which a license is required; any duty of disclosure or any other duties or obligations of a real salesperson, real estate broker, or a broker associate; or a responsible broker’s duty of supervision and oversight for the acts of retained salespersons or broker associates.

AB 1289 (Arambula), Chapter 907, Statutes of 2018

Sponsored by the California Association of Realtors. Modifies provisions of the Civil Code applicable to real estate transactions to update terminology, consolidate definitions, clarify vague provisions, and make minor modifications to the laws relating to real estate brokers and real property transactions. Among the specific changes made by AB 1289: 1) deletes the definitions of various real estate terms from the Civil Code and replaces them with a reference to the chapter of the Business and Professions Code where revised definitions for those terms can now be found; 2) revises the definitions of certain real estate terms that remain in the Civil Code to ensure parallelism with the way in which those terms will be defined in the Business and Professions Code following enactment of AB 2884; 3) clarifies that a person who is a trustee of a property placed in a revocable trust, whether single or married, is not exempt from existing law requiring a transfer disclosure statement (TDS) and natural hazard disclosure statement to be provided when the property is sold in the course of administering the trust; 4) authorizes a revised TDS to be provided to a buyer through electronic means, as specified, and provides a buyer who receives an electronic version of a revised TDS up to five days in which to terminate his or her offer to purchase; 5) clarifies that a TDS is not required in connection with the sale of any property other than single-family residential property; 6) provides that the period of time a prospective buyer has in which to terminate his or her offer to purchase a property after receiving a revised TDS begins when Sections I, II, and III of the revised TDS are completed and delivered to the buyer or buyer's agent; 7) provides that a real estate agent may complete his or her portion of the TDS by providing all of the information on the agent's inspection disclosure; 8) updates existing law to reflect current practice discontinuing use of the seller's agent subagency model, a model which used to treat the buyer's agent as a subagent of the seller's agent; 9) provides that a dual agent may not, without the express permission of the respective party, disclose confidential information, including, but not limited to, facts relating to either the buyer's or seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than the price offered; 10) clarifies that an agent's duty to disclose his or her agency relationship to the buyer and seller in a real estate transaction may be performed by a real estate sales person or broker associate affiliated with the broker who has the duty to disclose; and 11) adds a leasehold interest in real property consisting of multiunit residential property with more than four dwelling units to the list of contracts that must contain a specified notice about the state's sex offender Web site (www.meganslaw.ca.gov).

Provides that nothing in the bill shall be construed to affect a real estate broker's duties under existing law as an agent of a person who retains that broker to perform acts for which a license is required; any fiduciary duties owed by a real estate broker to a person who retains that broker to perform acts for which a license is required; any duty of disclosure or any other duties or obligations of a real salesperson, real estate broker, or a broker associate; or a responsible broker's duty of supervision and oversight for the acts of retained salespersons or broker associates.

AB 2063 (Aguiar-Curry), Chapter 813, Statutes of 2018

Author-sponsored. Modifies provisions of AB 1284 (Dababneh, Chapter 475, Statutes of 2017) and SB 242 (Skinner, Chapter 484, Statutes of 2017). Requires program administrators to comply with the underwriting requirements of AB 1284 before they execute a PACE assessment contract, before a home improvement contract financed by that PACE assessment contract is executed, and before work may commence under that home improvement contract.

Modifies PACE underwriting criteria, as follows:

Reduces, from seven years to four years, the length of time that must pass before a property owner who has been a party to a bankruptcy proceeding may apply for PACE financing, as specified. Provides that a property owner may have been a party to a bankruptcy proceeding that was discharged or dismissed between two and four years before that property owner applies for PACE financing, as long as the property owner has had no payments more than 30 days past due on any debt other than medical debt during the 12 months immediately preceding the application date.

Reduces, from twelve to six, the number of months prior to the PACE application date during which a property owner is limited to one late mortgage payment exceeding 30 days past due, in order to be eligible to apply for PACE financing.

Allows a program administrator to consider the income of a property owner's legal spouse or domestic partner, who is not on title to a property, when performing "ability-to-pay" underwriting in connection with a PACE assessment on that property, as long as that spouse or partner consents to the use of their income in writing. Provides that, if a program administrator considers the income of a property owner's legal spouse or domestic partner who is not on title to the property to determine whether the property owner has a reasonable ability to pay the PACE assessment, the recorded assessment must include the name of the spouse or domestic partner whose income was considered.

Sunsetts the provision of existing law that requires a program administrator to be responsible for the difference, in cases where there is a difference between the determination of the property owner's ability to pay the annual PACE obligation and the actual amount financed.

Requires program administrators to inform property owners, on the confirmation of key terms call that must be held between a program administrator and at least one owner of the property on which the energy efficiency improvement is to be installed, that it is the responsibility of the property owner to contact his or her home insurance provider to determine whether the efficiency improvement to be financed by the PACE assessment is covered by his or her property insurance plan.

Makes other minor clean-up changes to AB 1284.

SB 764 (Moorlach), Chapter 248, Statutes of 2017

Author-sponsored. Authorizes a real estate broker to use insurance in lieu of a fidelity bond to cover an unlicensed employee who is authorized to withdraw money from that broker's trust fund account. Provides that, regardless of whether a fidelity bond or insurance is used, the broker must be covered for intentional wrongful acts committed by his or her employee, including theft, dishonest acts, or forgery. Clarifies that the fidelity bond or insurance may be written with a deductible of up to five percent of the coverage amount, but that, for bonds and insurance with a deductible, the employing broker must have evidence of financial responsibility that is sufficient to protect members of the public against a loss subject to the deductible amount.

SB 818 (Beall), Chapter 404, Statutes of 2018

Co-sponsored by Housing and Economic Rights Advocates and the National Housing Law Project. Permanently re-enacts the provisions of SB 900 (Leno, Chapter 87, Statutes of 2012; i.e., the Homeowners Bill of Rights, HBOR) and makes the following changes: 1) revises the circumstances under which larger servicers, as defined, must provide borrowers with a single point of contact (SPOC) by requiring a SPOC to be provided to any borrower who requests a foreclosure prevention alternative; 2) provides that a servicer is not required to attempt to contact a borrower by telephone to explore options for that borrower to avoid foreclosure if the borrower or his or her authorized agent notifies the mortgage servicer in writing, asking the servicer to cease further communication with that borrower; 3) requires a borrower to submit his or her complete application for a first lien loan modification at least five business days before a scheduled foreclosure sale in order to be eligible for HBOR protections from foreclosure; and 4) provides that the amendment, addition, or repeal of any section or part of a section of HBOR does not release, extinguish, or change any liability under the law.

SB 1087 (Roth), Chapter 798, Statutes of 2018

Author-sponsored. Clarifies, corrects, and cleans up provisions of AB 1284 (Dababneh, Chapter 475, Statutes of 2017) relating to the PACE program. Makes it unlawful to commence work under a home improvement contract or deliver any property or perform any services other than obtaining building permits preliminary to the commencement of work, and makes a home improvement contract unenforceable, if a property owner enters into a home improvement contract based on the reasonable belief that the work will be covered by the PACE program and the property owner applies for but is not approved for PACE financing in the amount he or she requests.

Authorizes an expedited process for use by DBO to demand corrective actions when the department has reasonable grounds to believe that a person is conducting business as a PACE solicitor or PACE solicitor agent in an unsafe or injurious manner. Requires DBO to issue a public order when it cancels the enrollment of a PACE solicitor or PACE solicitor agent for disciplinary reasons and requires the DBO to post the identities of those disenrolled solicitors and solicitor agents on its Internet Web site. Requires DBO, effective January 1, 2020, to post the identities of enrolled PACE solicitors and PACE solicitor agents on its Internet Web site, as specified.

Allows a program administrator to rely on an appraisal obtained from a property owner only if that appraisal was conducted within six months of the PACE assessment application date by a state-licensed or state-certified real estate appraiser and the appraisal was conducted in connection with a consumer credit transaction secured by the subject property, as specified.

Applies to program administrators all of the provisions of the California Financial Information Privacy Act that are applicable to financial institutions.

Makes other minor clean-up changes to AB 1284, most of which were also contained in AB 2063.

The following provisions of SB 1087 were chaptered out by AB 2063 and will not become operative:

Would have required program administrators who approved a property owner for PACE under the emergency or immediate necessity exemption to verify a property owner's income in a timely manner after executing the PACE assessment contract.

Would have required PACE assessment contracts to disclose that if there is a difference between the determination of a property owner's ability to pay the annual PACE obligations and the actual amount financed for the property owner, the program administrator is responsible for that difference if the property owner is obligated on the underlying home improvement contract.

SB 1139 (Morrell), Chapter 90, Statutes of 2018

Sponsored by the California Land Title Association (CLTA). Deletes the sunset date on the provision of law that provides a procedure by which an entitled person, as defined, can, with the approval of a borrower, request the suspension and closure of a home equity line of credit (HELOC).

In 2013, CLTA sponsored AB 1770 (Dababneh, Chapter 206, Statutes of 2013) to create a standardized process for closing a HELOC when the home securing that HELOC was in escrow. AB 1770 was intended to prevent a series of problems that could be triggered when a borrower drew down his or her HELOC after escrow was opened in connection with a home sale or a mortgage loan refinancing. However, because the process was unproven, AB 1770 was contained a sunset date. SB 1139 deletes the sunset date.

SB 1183 (Morrell), Chapter 136, Statutes of 2018

Sponsored by the United Trustees Association. Provides that specified, mortgage-related protections for survivors of mortgage borrowers do not apply to survivors of reverse mortgage borrowers. In 2016, California enacted SB 1150 (Leno, Chapter 838, Statutes of 2016) to protect the rights of successors in interest to real property on which there is an outstanding mortgage or mortgages. However, SB 1150 can lead to significant confusion among survivors if servicers attempt to comply with that statute in connection with reverse mortgages. Because SB 1150 did not expressly exempt reverse mortgages, and because penalties for failing to comply with SB

1150 can be severe, some servicers of reverse mortgages followed that statute. SB 1183 clarifies that SB 1150 does not apply to reverse mortgages.

SB 1201 (Jackson), Chapter 356, Statutes of 2018

Author-sponsored. Updates existing law by requiring a supervised financial organization that negotiates the terms of a loan or extension of credit secured by residential real property in Spanish, Chinese, Tagalog, Vietnamese, or Korean to provide the borrower with a translated copy of either the Good Faith Estimate disclosure form or with translated copies of both the Loan Estimate and Closing Disclosure forms developed by the federal Consumer Financial Protection Bureau. Clarifies which supervised financial organizations are subject to which disclosure requirements by reference to specified provisions of federal law.

Requires a supervised financial organization that offers a borrower a final loan modification in writing, after negotiating the terms of that modification in Spanish, Chinese, Tagalog, Vietnamese, or Korean, to provide the borrower with a written disclosure summarizing the modified terms of the loan in the same language as the negotiation.

Provides, under the California Residential Mortgage Lending Act, that if the Department of Business Oversight (DBO) issues an order revoking the license of a licensee for failure to file a certified financial statement, and if the licensee served with that revocation order files a written request for an administrative hearing within 30 days from the date the order is served, a hearing on the order must be held within 90 days of the filing. If a hearing is not held within 90 days of the filing, the order is deemed rescinded.

BILLS VETOED

AB 354 (Calderon), 2017 and 2018

Author-sponsored. Would have required institutional investors, as defined, to register with and provide specified information to DBO regarding residential properties they own, and would have required DBO to submit a report to the Legislature annually, regarding the information submitted by institutional investors. Would have defined an institutional investor as a publicly traded company or corporation, which owns more than 100 single-family homes in California during a calendar year that are occupied by renters and that have a total value of more than \$10 million. Would have required institutional investors to submit all of the following information to DBO annually: the total number and total dollar value of single-family homes in California owned by the institutional investor in each county, including the number and total dollar value of those occupied by renters; the total number of offers made by the institutional investor to purchase single-family homes in the state and the total number of single-family homes purchased; and the total number of single-family homes that are sold by the institutional investor to existing tenants.

In his veto message, the Governor stated, “This bill is beyond the expertise and jurisdiction of the Department of Business Oversight. Even if the Department collected all the information about institutional investors, the number of renters living in the investor owned properties and private sales to existing tenants, collecting the data would not stop the purchase of these homes by private investors.”

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

SB 1174 (Stone), 2018

Author-sponsored. Would have expanded the definition of substantial misrepresentation under the Real Estate Law and authorized the provision of certified commercial real property disclosures, as specified. Would have provided that a substantial misrepresentation, for purposes of the provision of the Real Estate Law that subjects licensees to license suspension or revocation for making any substantial misrepresentation, includes, but is not limited to the inaccurate reporting of, or the failure to report, any of the following: 1) any and all dues associated with the property, including but not limited to, dues charged by a common interest development; 2) taxes imposed on the property, including but not limited to special taxes; 3) fees associated with the property; 4) liens on the property; 5) environmental issues on the property; 6) health concerns or issues on the property; 7) any obligations or agreements with associations that create a financial impact on the property; 8) all active and current reports regarding the property that affect the value of the property; and 9) all ongoing or pending litigation affecting the property.

Would also have authorized transferors of commercial property to provide a new type of disclosure to prospective transferees and provided that, if a transferor opted to provide this disclosure, it would have to be provided free of charge to a prospective transferee and would have to include a provision allowing the transferee to rescind the real estate contract without financial loss, within a specified period of time after receiving the disclosure.

Failed passage in the Senate Banking and Financial Institutions Committee.

SECURITIES LAW AND CORPORATE GOVERNANCE

BILLS SIGNED INTO LAW

AB 1535 (Maienschein), Chapter 721, Statutes of 2017

Sponsored by the Conference of California Bar Associations. Clarifies that a corporation's articles of incorporation may include a reference to a separate, written agreement between two or more shareholders pertaining to the purchase of shares in connection with the dissolution of a corporation.

AB 2237 (Maienschein), Chapter 76, Statutes of 2018

Sponsored by the Conference of California Bar Associations. Provides a variety of different ways in which the shareholders and holders of voting trust certificates of California corporations may review the books, records, and minutes of those corporations at locations in this state in lieu of having to travel outside the state to the corporation's headquarters to conduct the review. Authorizes corporations to make a true and accurate copy of books, records, and minutes available, if the original has been lost, destroyed, or is not normally physically located in the state. Alternately, allows the inspection to occur at the corporation's principal physical office in this state or, if none exists, at the physical location for the corporation's registered agent for service of process in this state. Finally, authorizes a shareholder or holder of a voting trust certificate to request that a corporation produce desired documents by mail or electronically, if that shareholder pays for the reasonable costs for copying or converting the requested documents to electronic format.

AB 2557 (Maienschein), Chapter 322, Statutes of 2018

Sponsored by the Nonprofit Organizations Committee of the Business Law Section of the California Lawyers Association. Provides that, if authorized in the articles or bylaws of a nonprofit public benefit corporation, nonprofit mutual benefit corporation, nonprofit religious corporation, or cooperative corporation, all or any portion of the directors of that corporation may hold office ex-officio by virtue of holding a specified position, either within or outside the corporation. Requires the term of office of an ex-officio director to coincide with that director's term of office in the specified position entitling him or her to serve on the board and provides that, once that ex-officio director resigns or is removed from his or her specified position, his or her term on the board immediately ceases, and he or she is replaced on the board with the person who succeeds him or her in the specified position.

Also makes a technical correction to Corporations Code Section 5234.

SB 826 (Jackson), Chapter 954, Statutes of 2018

Sponsored by the National Association of Women Business Owners – California. Requires each publicly held, domestic or foreign corporation with its principal executive offices in California to have at least one female director on its board, commencing December 31, 2019. Provides that if

no board seat opens up on an all-male board before that date, a corporation must increase its authorized number of directors by one and must fill that seat with a woman. Further requires each publicly held, domestic or foreign corporation whose principal executive offices are located in California, and whose board contains more than four board members, to increase the number of female directors on its board, no later than the close of the 2021 calendar year, as follows: 1) if the authorized number of directors is five, the corporation must have at least two female directors on its board; 2) if the authorized number of directors is six or more, the corporation must have at least three female directors on its board.

Requires the Secretary of State (SOS), no later than July 1, 2019, to publish a report on his or her Internet Web site, documenting the number of publicly held, domestic and foreign corporations whose principal executive offices are located in California, which have at least one female director on their boards. Further requires the SOS, no later than March 1, 2020, and annually thereafter, to publish a report on his or her Internet Web site regarding all of the following: 1) the number of corporations subject to the provisions of the bill, which were in compliance with the requirements of the bill during at least one point during the preceding calendar year; 2) the number of publicly held corporations that moved their United States headquarters into California from another state, or that moved their United States headquarters out of California and into another state during the preceding calendar year; 3) the number of publicly held corporations that were subject to this bill during the preceding year, which were taken private.

Authorizes the SOS to fine corporations for violating the provisions of this bill and provides that the money derived from those fines shall be used to offset the SOS's cost to administer the bill, subject to appropriation by the Legislature. Counts as a violation each director seat, which is required to be held by a female by the end of a calendar year, and which is not held by a female during at least a portion of that calendar year. Sets the fines at \$100,000 for a first violation, \$300,000 for a second or subsequent violation, and \$100,000 for failure to timely file board member information with the SOS.

SB 838 (Hertzberg), Chapter 889, Statutes of 2018

Author-sponsored. Authorizes corporations to include a provision in their articles of incorporation authorizing the use of blockchain technology to record and track the issuance and transfer of stock certificates

BILLS VETOED

None

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

None

FINANCIAL SERVICES LAW ADMINISTRATION, MISCELLANEOUS

BILLS SIGNED INTO LAW

AB 611 (Dababneh), Chapter 408, Statutes of 2017

Sponsored by the California Bankers Association. Authorizes a mandated reporter of suspected elder or dependent adult financial abuse to refuse to honor a power of attorney, if that mandated reporter makes a report to an adult protective services agency or local law enforcement agency of any state that the elder or dependent adult who granted the power of attorney may be subject to financial abuse by the person seeking to act under the authority of the power of attorney.

Clarifies that if a mandated reporter does not allow a person authorized to act under the authority of a power of attorney to conduct business on behalf of the elder or dependent adult who granted the power of attorney, because the mandated reporter suspects that the person seeking to act under the authority of that power of attorney may be engaging in elder or dependent adult financial abuse, that power of attorney remains enforceable as to every other person granted authority under the power of attorney about whom a report of suspected elder or dependent adult financial abuse has not been made.

AB 1636 (Aguiar-Curry), Chapter 329, Statutes of 2017

Author-sponsored. Authorizes the Commissioner of Business Oversight (commissioner) to impose a penalty on any California Financing Law (CFL) licensee that fails to do either of the following within the time period specified in any written demand of the commissioner: 1) make and file with the commissioner any report required by law; or 2) furnish any material information required by the commissioner to be included in any report required by law. Provides, however, that a penalty may not be imposed on a licensee, if the commissioner requests new information from that licensee and fails to notify that licensee about the requirement to submit that new information less than 90 days before it is due. Sets the amount of the penalty at a maximum of \$100 per business day for each of the first five business days the report or information is overdue and a maximum of \$500 per business day thereafter, not to exceed \$25,000 in the aggregate.

Authorizes the commissioner to require each California Deferred Deposit Transaction Law (CDDTL) licensee to file an annual report with the commissioner, giving the relevant information that the commissioner reasonably requires concerning the business and operations conducted by the licensee within the state during the preceding calendar year for each licensed place of business. Provides that a CDDTL licensee's annual report shall be made available to the public for inspection, but further provides that nonpublicly traded persons, as defined, may request that their balance sheets be kept confidential

AB 2862 (Limon), Chapter 267, Statutes of 2018

Sponsored by the California Credit Union League. Enacts five provisions intended to modernize the California Credit Union Law and increase parity between state-chartered and federally-chartered credit unions. Those provisions: 1) authorize a credit union to invest in charitable donation accounts, as a means of providing charitable contributions and donations to nonprofit entities exempt from taxation under Internal Revenue Code Section 501(c)(3); 2) authorize a credit union to purchase, in whole or in part, from any source, loans made to its members; to sell, in whole or in part, to any source, loans made to its members; and to purchase, in whole or in part, any of the following: a loan originated by another credit union, which is made to a member of the originating credit union, even though the member is not also a member of the credit union purchasing the loan, and a loan from any source, if the purchase will facilitate the purchasing credit union's packaging a pool of those loans to be sold or pledged on the secondary market; 3) authorize a credit union that is investing to fund an employee benefit plan obligation to purchase an investment that would otherwise be impermissible, as long as the investment is directly related to the credit union's obligation or potential obligation under the employee benefit plan, and the credit union holds the investment for only as long as it has an actual or potential obligation under the employee benefit plan; 4) delete the requirement that the board of directors of a credit union establish a written savings capital structure policy; and 5) add credit unions to the list of financial institutions that are not subject to the Escrow Law.

AB 3229 (Burke), Chapter 288, Statutes of 2018

Sponsored by Attorney General Xavier Becerra. Adds special agents of the California Department of Justice to the list of law enforcement personnel who may request specified information regarding customer accounts from financial institutions, and who must be furnished with that information, when a crime report is filed involving specified acts of alleged financial fraud.

SB 363 (Committee on Insurance, Banking and Financial Institutions¹), Chapter 516, Statutes of 2017

Author-sponsored. Corrects an unintentional drafting error by clarifying that the CFL does not apply to any person who makes *no more than* one commercial loan in a 12-month period (SB 363 adds the language in italics).

Authorizes the Trustees of the California State University (CSU) to deposit money in an uninsured account in one or more depository institutions located outside the United States, if the amounts on deposit are necessary to support a program of foreign study attended by CSU students, a depository institution offering deposit insurance is unavailable in the country in which the program of foreign study is conducted, and if amounts that are not insured under a foreign law do not exceed \$100,000 per depository institution.

¹ The Senate Banking and Financial Institutions Committee was temporarily renamed the Senate Insurance, Banking, and Financial Institutions Committee from May, 2017 through March, 2018. In March, 2018, it returned to its prior designation as the Senate Banking and Financial Institutions Committee.

Reduces, from 110% of the amount deposited to 100% of the amount deposited, the size of a Federal Home Loan Bank letter of credit that may be used as security for demand and time deposits made by the State Treasurer.

Also make technical corrections to provisions of the Corporations Code.

SB 1055 (Bradford), Chapter 847, Statutes of 2018

Author-sponsored. Authorizes state- and federally-chartered banks and credit unions to offer prize-linked savings promotions in California. Defines a savings promotion as a contest or promotion to encourage savings deposits, which is sponsored by one or more banks or credit unions, or by a bank or credit union trade association or its subsidiary in conjunction with one or more banks or credit unions, in which bank or credit union depositors are offered a chance to win designated prizes.

Authorizes a bank or credit union to sponsor or participate in a savings promotion if all of the following criteria are satisfied: 1) depositors are not required to pay any fee or otherwise provide any consideration in order to enter the savings promotion; 2) all material terms of and fees charged by a bank or credit union in connection with a qualifying account are comparable to those of comparable nonqualifying accounts offered by that institution; 3) each entry in the savings promotion has an equal chance of winning; and 4) participants in the savings promotion are not required to be present at a prize drawing to win.

States that a savings promotion is not a lottery or a raffle within the meaning of applicable sections of the Penal Code that define those terms.

SB 1361 (Bradford), Chapter 699, Statutes of 2018

Author-sponsored. Deletes the provision of existing law, which prohibits DBO from disclosing or permitting the disclosure of any civil penalty imposed by the commissioner against a financial services licensee, unless the disclosure is authorized or requested by the affected licensee or subsidiary or is taken in connection with a knowing violation. Adds the imposition of civil penalties against financial services licensees to the list of enforcement actions DBO is required to make public on its Internet web site.

Requires every licensee subject to the commissioner's jurisdiction to establish and maintain an electronic service address designated for receiving communications and documents sent by the commissioner to licensees, notify the commissioner before changing that service address, and ensure that communications sent to that service address may contain attachments. Provides that a communication sent to an electronic service address by the commissioner does not satisfy any notice requirement or displace any law or regulation that requires notice to be served in a different manner, if a hearing right attaches to that notice.

Requires the commissioner to provide each licensee that establishes and maintains an electronic service address with an electronic service address designated for receiving correspondence from licensees subject to the commissioner's jurisdiction and requires this service address to be capable of receiving attachments that accompany messages sent by licensees, as specified.

BILLS VETOED

None

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

SB 551 (Hueso), 2017 and 2018

Sponsored by Opportunity Fund. When SB 551 passed the Senate Insurance, Banking and Financial Institutions Committee and the Senate Floor, it reduced the minimum amount that had to be contributed by the California Pollution Control Financing Authority (the authority) into a California Capital Access Loan Program for Small Business loan loss reserve account from 2% to 1%. The bill also authorized the authority to recapture its own contribution for each enrolled loan from each loan loss reserve account, upon the maturation of the loan or after five years from the date of loan enrollment, whichever happened first. Once recaptured, the money had to be applied to future program and administrative expenses. The bill capped the total amount that could be recaptured, based on specified formulas.

SB 551 was gutted in the Assembly and amended to transfer authority over the California Capital Access Loan Program for Small Business from the authority to the California Small Business Finance Center within the California Infrastructure and Economic Development Bank. This amended version was held on the Assembly Appropriations Committee Suspense File.

SB 930 (Hertzberg), 2018

Sponsored by Board of Equalization Member Fiona Ma. Would have established a new division within the Financial Code, authorizing the creation of cannabis limited charter banks (CLCBs) and cannabis limited charter credit unions (CLCCUs). Would have required an entity wishing to form as a CLCB or CLCCU to obtain a license from the Department of Business Oversight (DBO), as specified, and to comply with all requirements of Division 1 of the Financial Institutions Law (which generally cover administrative and enforcement functions) and with either Division 1.1 of the Financial Code (the Banking Law) or Division 5 of the Financial Code (the California Credit Union Law), as applicable, but would have provided that any requirement of any of those laws that was inconsistent with the division applicable to CLCBs and CLCCUs did not apply to that CLCB or CLCCU.

Would have requires CLCBs and CLCCUs to obtain and maintain private insurance for themselves and their assets at all times they were engaged in banking services. Would have authorized CLCBs and CLCCUs to issue special purpose checks, which would have been valid only for specified purposes (to pay fees or taxes to the state or a local jurisdiction; pay rent on property that was leased by or on behalf of the account holder's cannabis business; pay a vendor physically located in California for expenses related to goods and services associated with the account holder's cannabis business; or purchase bonds or interest-bearing notes or warrants backed by the full faith and credit of the state, or bonds or warrants of any local jurisdiction, as specified). Clarified that entities presented with a special purpose check were not required to accept it.

Held on the Assembly Appropriations Committee Suspense File.

SB 1379 (Hernandez), 2018

Author-sponsored. Would have required DBO to conduct a comprehensive study of unbanked and underbanked populations and moved the Bank on California Program from DBO to the State Treasurer's Office. DBO's study would have been required to replicate the methodology and topics contained in the most recently available Federal Deposit Insurance Corporation (FDIC) Survey of Unbanked and Underbanked Households, but would have been required to focus only on regions in California and to provide greater demographic and regional, California-specific detail than is contained in the FDIC's report.

Held on the Senate Appropriations Committee Suspense File.

2017–2018 INFORMATIONAL AND OVERSIGHT HEARINGS

The agendas, background papers, and videos of the hearings summarized below are available on the Committee's Internet Web site.

MARCH 22, 2017, SACRAMENTO, CA: THE CHANGING FACE OF STUDENT LOAN SERVICING IN CALIFORNIA

Large and growing student loan debt loads represent a challenging public policy issue on which many are focusing at both state and federal levels. Members of the Class of 2016 carried an average student loan debt burden of \$37,200. At the end of 2016, 44 million Americans owed over \$1.3 trillion in outstanding student loans, an amount triple the student loan debt owed ten years earlier. Although it is most common among recent college graduates, student loan debt is held by every demographic. Over 11% of outstanding student loans are delinquent.

On March 22nd, 2016, the California State Senate Banking and Financial Institutions Committee focused on one element of the student loan policy challenge: loan repayment. Although the committee does not have jurisdiction over topics related to the causes of growing debt loads, it does have a role to play in helping ensure that borrowers not only understand the loan repayment and forgiveness options available to them, but are treated fairly and with respect by those who collect their payments from them.

During the March 22nd hearing, invited experts introduced the many different types of student loans and student loan repayment options that exist, described the rules that apply to student loan servicers (those who collect student loan repayments from borrowers), discussed the options available to student loan borrowers who are struggling to repay their loans, and explained the ramifications for those who default. Witnesses also addressed the extent to which they believe existing servicing rules are adequate to protect the interests of borrowers, and how, if at all, they believe those rules should be improved.

Witnesses included a subject matter expert from the Legislative Analyst's Office, regulators from the federal Consumer Financial Protection Bureau and California Department of Business Oversight, industry experts from the Student Loan Servicing Alliance, Measure One, and the law firm of Duane Morris, and consumer advocates from Consumers Union and Student Debt Crisis.

MAY 17, 2017, SACRAMENTO, CA: WELLS FARGO'S SALES PRACTICES AND CORPORATE ACCOUNTABILITY (Jointly held with the Assembly Banking and Finance Committee)

On May 17th, 2017, the Senate Banking and Financial Institutions Committee held its second oversight hearing to examine the origin and evolution of Wells Fargo's improper sales practices and the company's corrective actions in response. During the Committee's first hearing on this topic, on November 28, 2016, the Committee reviewed key information that came to light after Wells Fargo entered into settlement agreements with the federal Consumer Financial Protection Bureau, federal Office of the Comptroller of the Currency, and Office of Los Angeles City

Attorney Mike Feuer and identified key questions that remained unanswered about Wells Fargo's actions.

During the Committee's May, 2017 hearing, the Senate Banking and Financial Institutions Committee convened jointly with the Assembly Banking and Finance Committee to review the findings of the April, 2017 Sales Practices Investigation Report commissioned by Wells Fargo's Board of Directors. Corporate governance experts from the State Treasurer's Office, California State Teachers' Retirement System, and Stanford University addressed the committee regarding what information they learned from reading the Sales Practices Investigation Report; what questions they had for Wells Fargo Bank and Wells Fargo's Board of Directors after having read the report; whether they believed that the actions taken to address the root causes of the scandal and mitigate future inappropriate acts by employees and management of Wells Fargo would protect the bank and its customers going forward; and whether there are any additional actions they would recommend be taken by Wells Fargo or its Board of Directors in light of the findings of the report.