

**SENATE COMMITTEE
ON BANKING AND FINANCIAL
INSTITUTIONS**

2021 - 2022 LEGISLATIVE SUMMARY

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UNSECURED LENDING AND SERVICING

BILLS SIGNED INTO LAW

AB 424 (Stone), Chapter 559, Statutes of 2021

Private Student Loan Collections Reform Act: collection actions.

Sponsored by Student Borrower Protection Center. Establishes the Private Student Loan Collections Reform Act which prohibits lenders or collectors from making any written statement to a debtor in an attempt to collect a private education loan unless that person has specified documentation related to the alleged debt. Prohibits a court from entering a judgment for an amount owed related to a private student loan unless specified documentation is provided by the plaintiff. Provides a cause of action for a violation of the act.

AB 430 (Grayson), Chapter 265, Statutes of 2021

Debt collection: identity theft.

Sponsored by California Low Income Consumer Coalition. Allows the use of a Federal Trade Commission identity theft report, in lieu of a police report, when a victim of identity theft seeks civil protections pursuant to the Rosenthal Fair Debt Collection Practices Act, the Identity Theft Law, and the Penal Code, as specified

AB 2001 (Grayson), Chapter 181, Statutes of 2022

California Financing Law: remote work.

Author-sponsored. Authorizes a finance lender, broker, or program administrator licensed pursuant to the California Financing Law to allow employees to work from a remote location if specified criteria are satisfied. Such criteria include prohibiting employees from in-person interactions with a consumer at a remote location, prohibiting the transmission or storage of certain sensitive information at remote locations unless such information is stored on encrypted hardware, and adopting and implementing policies and procedures to oversee the work of employees related to data security.

AB 2380 (Maienschein), Chapter 548, Statutes of 2022

Online pet retailers: retail financing options.

Sponsored by Animal Legal Defense Fund. Prohibits an online pet retailer from offering, brokering, making a referral for, or otherwise facilitating a loan or other financing for the adoption or sale of a dog, cat, or rabbit. While in the possession of the Senate Banking Committee, the author amended the bill to better achieve his intent based on suggestions from committee staff; the amendments triggered a re-referral to a different committee and, thus, was not acted upon by the Senate Banking Committee.

SB 531 (Wieckowski), Chapter 455, Statutes of 2021
Consumer debt.

Author-sponsored. Requires a debt collector to whom a delinquent debt has been assigned to provide the debtor, upon request and within 30 days, a statement including specified information about the delinquent debt, such as the balance and reason for all interest and fees, and a copy of the contract evidencing the debtor's agreement to the debt. Prohibits a debt collector to which delinquent debt has been assigned from making a written statement to a debtor in an attempt to collect a delinquent consumer debt unless the debt collector has access to specified information, such as a copy of the contract or other document evidencing the debtor's agreement to the debt.

BILLS NOT SENT TO THE GOVERNOR

AB 2540 (Berman), 2022
Qualifying accounts for direct deposit of publicly administered funds.

Author-sponsored. For specified programs administered by the state, would have allowed funds to be deposited in a qualifying account with a credit or overdraft feature if specified requirements were met, including that any voluntary fee, charge, or cost paid could be refunded at the request of the consumer.

Died in Senate Banking and Financial Institutions Committee without a hearing.

SB 373 (Min), 2021
Consumer debt: economic abuse.

Sponsored by California Partnership to End Domestic Violence, Public Law Center, and Law Foundation of Silicon Valley. Would have prohibited a debt collector from collecting or attempting to collect a consumer debt if the consumer provided documentation to the collector that the debt is the result of economic abuse. Specified sufficient documentation of economic abuse. Deemed information regarding a consumer debt documented to result from economic abuse as incomplete or inaccurate for the purposes of a consumer credit report.

Died in Senate Banking and Financial Institutions Committee without a hearing.

SB 754 (Hertzberg), 2021
Economic development: low- to moderate-income communities: Equity in Lending and Fair Recovery Act.

Sponsored by Fiona Ma, State Treasurer. Would have established a loan guarantee fund for the purpose of supporting, facilitating, and encouraging lenders to increase the volume of responsible installment loans to low- and moderate-income individuals. The fund would have been administered by the California Pollution Control Financing Authority, which is chaired by the Treasurer.

Died in Senate Banking and Financial Institutions Committee without a hearing.

SB 1324 (Durazo), 2022

Rosenthal Fair Debt Collection Practices Act: rental debt.

Sponsored by California Low Income Consumer Coalition. Would have added rental debt to the types of debts covered by the Rosenthal Fair Debt Collection Practices Act.

Held on the Senate Appropriations Committee Suspense File.

SECURED LENDING AND SERVICING, REAL ESTATE

BILLS SIGNED INTO LAW

SB 360 (Wilk), Chapter 105, Statutes of 2021

Consumer Credit Reporting Agencies Act: escrow agent rating services and escrow agents.

Sponsored by the California Escrow Association. Extends the sunset date on the provision of law applicable to escrow agent rating services from January 1, 2022, to January 1, 2027.

SB 1348 (Bradford), Chapter 846, Statutes of 2022

Escrow agents: controlled substances.

Author-sponsored. Removes an offense involving controlled substances from the list of offenses that disqualify a person from serving in any capacity as an officer, director, stockholder, trustee, agent, or employee of an escrow agent, or in any position involving any duties with an escrow agent.

BILLS NOT SENT TO THE GOVERNOR

AB 1172 (O'Donnell), 2021

Escrow agents: asset and accounting requirements.

Sponsored by the Escrow Institute of California. Would have allowed a licensed escrow agent to submit financial statements pursuant to the Escrow Law that did not comply with a specified accounting standard related to leases.

Died in Senate Banking and Financial Institutions Committee without a hearing.

SB 476 (Min), 2021

California Financing Law: program administrators.

Sponsored by California Low Income Consumer Coalition and National Consumer Law Center. Would have prohibited a Property Assessed Clean Energy (PACE) program administrator from executing an assessment contract unless the associated property had undergone an energy audit, as specified, and prohibited a PACE program administrator from disbursing funds to a PACE solicitor or PACE solicitor agent without specified proof of project completion.

Failed passage in Assembly Local Government Committee.

SECURITIES LAW AND CORPORATE GOVERNANCE

BILLS SIGNED INTO LAW

AB 283 (Chen), Chapter 512, Statutes of 2021 **Corporate securities: exemption from requirements.**

Sponsored by Nonprofit Organizations Committee, Business Law Section, California Lawyers Association. Exempts from qualification requirements any shares, memberships, or credits to a member's capital as all, or part of, any patronage distributions. In effect, the exemption allows co-ops to issue patronage distributions in the form of equity shares without first paying for a permit from the Department of Financial Protection and Innovation (DFPI).

AB 511 (Muratsuchi), Chapter 617, Statutes of 2021 **Securities transactions: qualification requirements, exemptions, and liability.**

Sponsored by Small Business California. Establishes a new exemption from the qualification requirements of the Corporate Securities Law of 1968 for the offer or sale of a security that meets the requirements of federal Regulation CF, except the offering could include accounting statements certified by management of the corporation to be accurate, rather than – as required by Regulation CF – accounting statements reviewed by an independent public accountant, for offerings of less than \$300,000. For offerings that rely on the new exemption, issuers are prohibited from requiring a purchaser to waive the right of a jury trial, and judges are required to award reasonable attorney's fees to a prevailing investor for specified violations.

AB 663 (Chen), Chapter 523, Statutes of 2021 **Corporations: electronic transmissions: bylaws: emergency powers.**

Sponsored by Corporations Committee and Nonprofit Organizations Committee, Business Law Section, California Lawyers Association. Permits a corporation, in anticipation or during an emergency, to take any action that it determines to be necessary or appropriate to respond to the emergency, mitigate the effects of the emergency, or comply with lawful federal and state government orders, unless the action requires a vote of the shareholders. Expands and clarifies the definition of a qualifying emergency to include epidemic, pandemic, disease outbreak, an attack on or within the state or on the public security of its residents, or any state of emergency proclaimed by the Governor. Permits a corporation to hold annual meetings entirely via teleconference or other remote means when either (a) all shareholders consent, or (b) the board determines it is necessary to do so because of an emergency, as defined.

AB 676 (Holden), Chapter 728, Statutes of 2022 **Franchises.**

Sponsored by American Association of Franchisees and Dealers and Franchisee Advocacy Consulting. Makes a series of revisions to the laws governing the business relationship between franchisors and franchisees. Key provisions include: (1) prohibiting franchisors from demanding that franchisees waive contractual rights in exchange for assistance during states of emergency; (2)

stating that franchisors may not discriminate when considering applications from franchisees; (3) providing for additional transparency about the approval process when franchises change hands; (4) clarifying the accounting and payment processes when a franchise relationship ends; and (5) preventing franchisors from attempting to evade accountability for representations made to prospective franchisees.

AB 769 (Grayson), Chapter 12, Statutes of 2022
Corporations: meetings: state of emergency.

Author-sponsored. Allows corporations to hold annual meetings of shareholders or members solely by remote communication if the meeting is conducted on or before June 30, 2022.

AB 1780 (Chen), Chapter 951, Statutes of 2022
Corporations: shareholders' meetings: remote communication.

Author-sponsored. Authorizes the board of directors of a corporation, in its sole discretion and irrespective of whether any shareholder has opted out of electronic transmission by the corporation, to determine that a meeting of shareholders may be conducted by electronic transmission by and to the corporation or by electronic video screen communication, conference telephone, or other means of remote communication, if the meeting is conducted on or before December 31, 2025, and includes a live audiovisual feed for the duration of the meeting, as specified.

SB 218 (Jones), Chapter 217, Statutes of 2021
Corporations: ratification or validation of noncompliant corporate actions.

Sponsored by Corporations Committee of the Business Law Section of the California Lawyers Association. Authorizes otherwise lawful corporate actions not in compliance with the General Corporation Law or the articles, bylaws, or a plan or agreement to which the corporation is a party in effect at the time of a corporate action, to be ratified, or validated by the superior court, in conformity with certain procedures. Requires that the ratification of a corporate action pursuant to the bill's provisions be approved by the board and, as applicable, approved by the shareholders or approved by the outstanding shares in accordance with the General Corporation Law and the articles, bylaws, and any plan or agreement to which the corporation is a party in effect at the time of ratification, except as specified.

SB 1202 (Limón), Chapter 617, Statutes of 2022
Business entities: Secretary of State: document filings.

Sponsored by Shirley Weber, Secretary of State. Harmonizes various provisions of the Corporations Code in order to facilitate the Secretary of State's ongoing implementation of the California Business Connect electronic filing system. Corrects an error that granted overly broad standing to sue a limited liability company on behalf of a limited liability company (LLC) member. Removes an overly broad protection from California Public Records Act disclosure in the Commercial and Industrial Common Interest Development Act. Makes numerous technical and clarifying amendments, largely to the Corporations Code

BILLS NOT SENT TO THE GOVERNOR

SB 288 (Jones)

Corporations: conversions: foreign corporation or foreign other business entity.

Sponsored by Corporations Committee of the Business Law Section of the California Lawyers Association. Would have established procedures for use by domestic corporations wishing to convert into business entities organized under the laws of another state.

Failed passage in the Assembly Judiciary Committee.

SB 449 (Stern)

Climate-related financial risk.

Author-sponsored. Would have required certain companies with legal ties to California and annual revenues of at least \$500 million to publish an annual report of the company's climate-related financial risk.

Held on the Senate Appropriations Committee Suspense File.

SB 638 (Hertzberg)

Corporate records: articles of incorporation: blockchain technology.

Author-sponsored. Would have extended the sunset date for a provision that authorized 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 certificate.

Passed the Senate Floor but was not presented by the author in the Assembly. The bill was later gut-and-amended to address a different subject, but the bill was not taken up on the Assembly Floor.

SB 1318 (Melendez)

Secretary of State: new businesses: filing fees.

Author-sponsored. Would have waived the filing fees for the formation of a new business entity in California, as specified, during calendar year 2023.

Died in Senate Banking and Financial Institutions Committee without a hearing.

SJR 16 (Hertzberg)

Financial services: investor certification examination process.

Author-sponsored. Would have urged the United States Congress to enact legislation to institute a free online investor certification examination, renewable every four years.

Died in Senate Banking and Financial Institutions Committee without a hearing.

FINANCIAL SERVICES LAW ADMINISTRATION, MISCELLANEOUS

BILLS SIGNED INTO LAW

AB 1177 (Santiago), Chapter 451, Statutes of 2021 California Public Banking Option Act.

Sponsored by California Public Banking Alliance, California Reinvestment Coalition, and SEIU California. Requires the State Treasurer to convene, on or before September 1, 2022, the CalAccount Blue Ribbon Commission (“the commission”), chaired by the Treasurer and comprised of eight other members, as specified. Requires the commission to conduct and deliver, on or before July 1, 2024, a market analysis to determine if it is feasible to implement a CalAccount Program (“program”), which would offer Californians access to a voluntary, zero-fee, zero-penalty, federally insured transaction account and related payment services at no cost to accountholders.

Specifies requirements of the market analysis and requires the commission to contract with one or more independent entities with the appropriate expertise to conduct the market analysis. Requires the commission to hold at least one public hearing within 12 months of entering into a contract for the market analysis in order to solicit input from members of the public, and requires the commission to hold a public hearing to review the market analysis. Requires the commission to deliver, and upon request present, the market analysis and any report issued by the commission that accompanies the market analysis to the Chair of the Senate Committee on Banking and Financial Institutions and the Chair of the Assembly Committee on Banking and Finance.

AB 1320 (Bauer-Kahan), Chapter 453, Statutes of 2021 Money transmission: customer service.

Author-sponsored. Requires, as of July 1, 2022, a money transmitter to prominently display on its internet website a toll-free telephone number through which a customer may contact the licensee for customer service issues and receive live customer assistance. Requires that the telephone line to be operative at least 10 hours per day, Monday through Friday, excluding federal holidays. Requires a money transmitter to include on receipts to customers issued on or after July 1, 2022, a telephone number through which the customer can contact the money transmitter.

AB 1405 (Wicks), Chapter 454, Statutes of 2021 Debt settlement practices.

Sponsored by California Low-Income Consumer Coalition. Establishes the Fair Debt Settlement Practices Act which regulates the activity of providing debt settlement services and related payment processing services. Prohibits a debt settlement provider from engaging in false, deceptive, or misleading acts or practices when providing debt settlement services.

Requires a debt settlement provider to provide a disclosure to a consumer at least three days prior to execution of a debt settlement contract. The disclosure contains warnings about the risks related to debt settlement services, including that there is no guarantee the consumer's debts will be reduced or settled, that the consumer's credit score may be negatively impacted, and other specified disclosures. Requires that a debt settlement contract include specified information, including a list of debts covered by the contract, an estimate of the time it will take to settle all debts, a transparent explanation of charges and fees, and contact information of the debt settlement provider. Prohibits various other practices.

AB 2433 (Grayson), Chapter 188, Statutes of 2022

Department of Financial Protection and Innovation: unlawful practices.

Author-sponsored. Clarifies that administrative orders for a person to discontinue a violation of law may be issued by the Department of Financial Protection and Innovation whether the violation is ongoing or has ceased.

SB 239 (Committee on Banking and Financial Institutions), Chapter 635, Statutes of 2021

Government finance: surplus investments: savings and loan associations or credit unions.

Sponsored by Fiona Ma, State Treasurer. Reduces – from 110% of the amount deposited to 100% of the amount deposited – the required value of a Federal Home Loan Bank (FHLB) letter of credit that a credit union or a savings and loan association may use as security for a deposit of state funds by the State Treasurer into the credit union or savings and loan association and authorizes the State Treasurer to invest surplus state funds in money market mutual funds, as specified.

SB 269 (Portantino), Chapter 762, Statutes of 2021

Credit unions.

Sponsored by California Credit Union League. Updates provisions of the California Credit Union Law and increases parity between state law applicable to state-chartered credit unions and federal law applicable to federally-chartered credit unions.

SB 497 (Limón), Chapter 546, Statutes of 2021

Qualifying accounts for direct deposit of publicly administered funds.

Sponsored by National Consumer Law Center. Revises the definition of qualifying accounts that can receive direct deposits related to unemployment compensation, child support, and other public assistance payments and requires the Employment Development Department to additionally provide direct deposit options for recipients of disability or family temporary disability insurance benefits, as specified. For accounts provided by nonbank entities, requires the accounts to be protected by deposit insurance and prohibits the account to have a credit or overdraft feature that has a fee, charge, or cost, whether direct, required, voluntary, or involuntary.

SB 577 (Limón), Chapter 16, Statutes of 2022

Financial institutions: money transmission: escrow agents: lenders and brokers: banking.

Author-sponsored. Reinstates a provision that sunset on January 1, 2022, which provides an exemption to the requirements of the California Financing Law for a person that makes only one commercial loan in a 12-month period, as specified. Repeals the requirement that DFPI submit a brief annual summary regarding the activities of the Bank on California Program to the chairpersons of the Senate Committee on Banking and Financial Institutions and the Assembly Committee on Banking and Finance. Replaces references to the Department of Business Oversight with references to the DFPI and updates the department's address. Corrects obsolete references in the Escrow Law by replacing a reference to the Federal Savings and Loan Insurance Corporation with a reference to the Federal Deposit Insurance Corporation and replacing a reference to the former Chapter 18 of Division 1 of the Financial Code with a reference to Chapter 10 of Division 1.1 of the Financial Code.

SB 1415 (Limón), Chapter 847, Statutes of 2022
Financial Institutions Law: annual report: overdraft.

Author-sponsored. Requires banks and credit unions subject to the examination authority of DFPI to report annually the revenue earned from overdraft fees, as specified, and requires DFPI to publish that information in a publicly available report.

SB 1498 (Committee on Banking and Financial Institutions), Chapter 452, Statutes of 2022
Financial institutions: Department of Financial Protection and Innovation: money transmissions.

Author-sponsored. Replaces outdated references to "Department of Business Oversight" and "Commissioner of Business Oversight" with references to "Department of Financial Protection and Innovation" and "Commissioner of Financial Protection and Innovation," respectively. Specifies that the activities considered "money transmission" pursuant to the Money Transmission Act must be in relation to a person located in California.

BILLS VETOED

AB 2269 (Grayson)
Digital financial asset businesses: regulation.

Sponsored by Consumer Federation of California. Would have established the Digital Financial Assets Law, providing a licensing and regulatory framework administered by DFPI for businesses that exchange, transfer, or store a digital financial asset or issue a digital financial asset with the authority to redeem the asset. Would have defined "digital financial asset" to mean a digital representation of value that is used as a medium of exchange, unit of account, or store of value, and that is not legal tender, whether or not denominated in legal tender, except as specified. Would have required a licensee, before engaging in digital financial asset business activity with a resident, to make certain disclosures to the resident, including a schedule of fees and charges the licensee may assess, the manner by which fees and charges will be calculated if they are not set in advance and disclosed, and the timing of the fees and charges. Would have provided DFPI with the responsibility and authority to examine licensees for compliance with the law and to take enforcement actions for violations of the law.

The veto message included the following comments from the Governor:

“On May 4, 2022, I issued Executive Order N-9-22 to position California as the first state to establish a transparent regulatory environment that both fosters responsible innovation, and protects consumers who use digital asset financial services and products - all within the context of a rapidly evolving federal regulatory picture. Over the last several months, my Administration has conducted extensive research and outreach to gather input on approaches that balance the benefits and risk to consumers, harmonize with federal rules, and incorporate California values such as equity, inclusivity, and environmental protection.

It is premature to lock a licensing structure in statute without considering both this work and forthcoming federal actions. A more flexible approach is needed to ensure regulatory oversight can keep up with rapidly evolving technology and use cases, and is tailored with the proper tools to address trends and mitigate consumer harm. Additionally, standing up a new regulatory program is a costly undertaking, and this bill would require a loan from the general fund in the tens of millions of dollars for the first several years. Such a significant commitment of general fund resources should be considered and accounted for in the annual budget process.

I am committed to working collaboratively with the Legislature to achieve the appropriate regulatory clarity once federal regulations come into sharper focus for digital financial assets, while ensuring California remains a competitive place for companies to invest and innovate.”

BILLS NOT SENT TO THE GOVERNOR

AB 561 (Ting)

Help Homeowners Add New Housing Program: accessory dwelling unit financing.

Author-sponsored. Would have required the State Treasurer to establish and administer a new program intended to incentivize lending by financial institutions for the construction of assessor dwelling units. The proposed program was modeled after the Small Business Loan Guarantee Fund, administered by the California Pollution Control Financing Authority, which is chaired by the State Treasurer.

Died in Senate Banking and Financial Institutions without a hearing.

AB 2314 (Petrie-Norris)

State-guaranteed commercial financial products for small businesses: Small Business Expansion Fund and Capital Access Loan Program.

Sponsored by California Association of Micro Enterprise Organizations (CAMEO). Would have required all loans that receive a loan guarantee issued under the state's Small Business Loan Guarantee Program or are enrolled in the California Capital Access Program (CalCAP) to meet specified fair lending practices, if the funding used to back those credit enhancements are moneys received by the state from the federal State Small Business Credit Initiative (SSBCI).

While in the possession of the Senate Banking Committee, the author amended the bill to create a study requirement, and the bill was re-referred out of the committee's jurisdiction. The amended version was held on the Senate Appropriation Committee Suspense File.

SB 1176 (Limón)

Department of Financial Protection and Innovation: loan-related activities: data analysis and practices.

Sponsored by California Reinvestment Coalition. Would have required DFPI to conduct an analysis of whether nonbank lenders licensed by the department are meeting the credit needs of underserved communities, as compared to depository institutions currently subject to the Community Reinvestment Act (CRA). Would have required DFPI to seek information from regulators in other states that have enacted laws modeled after the CRA and analyze whether those laws have resulted in an increase in lending to underserved communities, compared to states that have not enacted similar state laws. Would have required DFPI to review its statutory authority, regulations, and processes related to the examination of a licensee and determine whether the department has adequate authority to examine a licensee for how well the licensee meets the financial services needs of underserved communities.

Passed the Senate but was not taken up in the Assembly Banking and Finance Committee.

2021-2022 INFORMATIONAL AND OVERSIGHT HEARINGS

The agendas and background papers for the hearings summarized below are available on the Committee's Internet Web site. Videos of the hearings are available on the hearing archive portion of the Senate's Internet Web site.

February 8, 2022 JOINT INFORMATIONAL HEARING WITH SENATE BUDGET SUBCOMMITTEE NO. 5 AND THE SENATE LABOR, PUBLIC EMPLOYMENT, AND RETIREMENT COMMITTEE REGARDING THE PERFORMANCE OF THE EMPLOYMENT DEVELOPMENT DEPARTMENT AND BANK OF AMERICA RELATED TO CALIFORNIA UNEMPLOYMENT INSURANCE BENEFIT DELIVERY

California State Auditor Elaine Howle published two audits in 2020 related to the performance of the Employment Development Department (EDD) in administering unemployment benefits in the immediate aftermath of the COVID-19 shutdowns. Given that EDD contracted with Bank of America to distribute benefits on prepaid debit cards, the Senate Banking Committee was asked to participate jointly with Senate Budget Subcommittee No. 5 and Senate Labor, Public Employment, and Retirement Committee to hold a hearing to review the findings of the audit, to hear comments and responses to the audit from EDD, and to hear testimony from Bank of America.

May 4, 2022 THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION: A REVIEW OF THE IMPLEMENTATION OF NEW CONSUMER PROTECTION AUTHORITY

In 2020 the Legislature passed and the Governor signed AB 1864 (Limón, Chapter 157) which enacted the California Consumer Financial Protection Law (CCFPL). Along with an accompanying appropriation in the budget, the new law renamed the state financial regulator to the Department of Financial Protection and Innovation, significantly expanded the department's responsibilities and authorities related to consumer financial products and services that had not previously been under the department's purview, and provided additional resources to fund the additional activities. The Legislature included in AB 1864 a provision requiring the department to publish an annual report of the department's activities in implementing the CCFPL and a provision requiring the department to present annually to the Senate Banking and Financial Institutions Committee and the Assembly Banking and Finance Committee. The hearing was held jointly by the two committees, who heard from senior management at the department about the department's progress in hiring new staff, initiating rulemaking packages required by AB 1864, and enforcement actions related to unfair or deceptive acts or practices perpetrated against California consumers.