SENATE COMMITTEE ON BANKING AND FINANCIAL INSTITUTIONS

2015 – 2016 LEGISLATIVE SUMMARY

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SENATOR STEVEN GLAZER (03/16-PRESENT)

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UNSECURED LENDING AND SERVICING

BILLS SIGNED INTO LAW

SB 197 (Block), Chapter 761, Statutes of 2015

Co-sponsored by Opportunity Fund and the California Association for Micro Enterprise Opportunity. Provides that a California Finance Lenders Law (CFLL) licensee may pay compensation to an unlicensed person in connection with the referral of one or more prospective borrowers to that licensee, when all of the following conditions are met: 1) the referral by the unlicensed person leads to the consummation of a commercial loan between the licensee and the borrower; 2) the loan contract provides for an annual percentage rate that does not exceed 36%; 3) before approving the loan, the licensee obtains documentation from the prospective borrower documenting the borrower's commercial status, and performs underwriting and obtains documentation to ensure that the prospective borrower will have sufficient monthly gross revenue with which to repay the loan pursuant to the loan terms, as specified; 4) the licensee maintains records of all compensation paid to unlicensed persons in connection with the referral of borrowers for at least four years; and 5) the licensee annually submits information requested by the Commissioner of Business Oversight (commissioner) regarding the payment of referral fees.

Prohibits a person who receives compensation in connection with a referral pursuant to the provisions of the bill from doing any of the following: 1) making a materially false or misleading statement or representation to a prospective borrower about the terms or conditions of a prospective loan; 2) advertising, printing, displaying, publishing, distributing, or broadcasting any statement or representation with regard to the conditions for making or negotiating a loan that is false, misleading, or deceptive or that omits material information that is necessary to make the statements made not false, misleading, or deceptive; 3) engaging in any act in violation of Business and Professions Code Section 17200; 4) committing an act that constitutes fraud or dishonest dealings; or 5) failing to safeguard a prospective borrower's personally identifiable information.

Provides that when a licensee pays a referral fee to an unlicensed person in connection with a loan, that licensee is liable for any misrepresentation made to the borrower in connection with that loan.

SB 235 (Block), Chapter 505, Statutes of 2015

Sponsored by Insikt. Increases the types of activities in which finders authorized under the Pilot Program for Increased Access to Responsible Small Dollar Loans (pilot program) may engage. Allows finders with specified types of financial services licenses issued by California or the federal government to disburse loan proceeds to borrowers, receive loan payments from borrowers, and provide notices and disclosures to borrowers on behalf of licensees. Increases the maximum amount of compensation a pilot program lender may pay any of its finders to $65 per loan, plus $2 for each payment received by a finder on behalf of a pilot program lender, and clarifies that this compensation may be paid at the time of consummation, over installments, or

in a manner otherwise agreed upon by a pilot program lender and a finder. Notwithstanding the compensation rules above, the bill limits the total compensation that may be paid by a pilot program lender to a licensee in connection with a loan to no more than the sum of the origination fees and interest paid by the borrower to the lender over the life of that loan.

Requires pilot program lenders that use finders to submit specific information to the commissioner regarding the performance of loans consummated with the use of finders, clarifies that this information is exempt from public disclosure, and authorizes the commissioner to use this information when deciding whether a finder should be disqualified from performing services for one or more pilot program lenders.

SB 777 (Lara), Chapter 478, Statutes of 2016

Sponsored by The East Los Angeles Community Union. Provides that the CFLL does not apply to any person who makes one commercial loan in a 12-month period.

SB 984 (Hueso), Chapter 480, Statutes of 2016

Sponsored by Oportun. Extends the sunset date on the pilot program by five years, to January 1, 2023 and changes the content, due dates, and number of reports required to be issued by the Department of Business Oversight (DBO) summarizing utilization of the pilot program. Specifically, the report required to be issued in 2017 is now due by July 1, 2017, instead of January 1, 2017; DBO is now required to issue reports annually, from July 2017, through July 2021, inclusive, summarizing utilization of the pilot program; and DBO is no longer required to include the results of a random sample survey of borrowers who participated in the pilot program in its pilot program summary reports.

AB 2251 (Stone), Chapter 824, Statutes of 2016

Sponsored by Attorney General Kamala Harris. Enacts the Student Loan Servicing Act, operative July 1, 2018, which establishes a new licensing law applicable to student loan servicers, administered by DBO. Defines a student loan as any loan primarily for use to finance a postsecondary education and the costs of attendance at a postsecondary institution, as specified. Requires persons engaged in the business of servicing student loans in California, as defined, to apply for and obtain licenses from DBO. Requires licensees to submit to background information checks as a condition of licensure; maintain a minimum $25,000 surety bond and minimum net worth of $250,000 at all times; submit annual financial audits prepared by independent certified public accountants to DBO; refrain from engaging in certain prohibited practices deemed harmful to consumers; adhere to records retention requirements; and submit to periodic examinations by the commissioner. Further requires licensees to provide borrowers with information regarding repayment and loan forgiveness options that may be available to the borrowers; respond to requests for information from borrowers and to notices about borrower disputes within specified timeframes; ask borrowers how they wish any overpayments to be applied to their outstanding loan balances; and notify borrowers regarding the sale, assignment, or transfer of their student loans, as specified.

BILLS VETOED

None

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

AB 268 (Dababneh), 2015 and 2016

Author-sponsored. Would have created a new article under the CFLL, which would have authorized new rates, fees, and lending practices for unsecured, consumer-purpose installment loans in principal amounts of $3,000 or less, as specified. This new article would have authorized licensees to charge borrowers a flat fee of between 10% and 15% of the loan amount on loans of up to $1,000, and would have authorized licensees to charge borrowers annual interest rates between 125% and 150% on loan amounts between $1,001 and $3,000. Licensees would have been required to underwrite their loans and report borrower payment performance to at least one national credit bureau or to an alternative credit reporting agency designated by the commissioner.

The language described above was amended into the bill in the Senate and was presented by its author in the Senate Banking and Financial Institutions Committee. However, no vote was ever taken on the measure.

SB 1290 (Mendoza), 2016

Author-sponsored. Until January 1, 2021, would have required the commissioner to conduct single, consolidated examinations of certain licensees that shared the same common ownership, as specified. Specifically, the commissioner would have been required, when conducting an examination of a finance lender or broker that was under common ownership with one or more other persons licensed under the CFLL, to conduct a single consolidated examination that included all persons licensed under the CFLL, which shared the same common ownership. The bill would also have required the commissioner, when conducting an examination of a person licensed under the California Deferred Deposit Transaction Law (CDDTL), which was under common ownership with one or more other persons licensed under the CDDTL, to conduct a single consolidated examination that included all persons licensed under the CDDTL, which share the same common ownership. CFLL and CDDTL licensees that were examined as part of a consolidated examination would have been authorized to electronically submit all books, accounts, papers, records, and files required by the commissioner.

Held on the Senate Appropriations Committee Suspense File.

SB 1371 (Galgiani), 2016

Sponsored by the California Financial Services Association. Would have authorized CFLL licensees to offer credit disability insurance on a single premium basis (not just on a monthly or annual premium basis, as is allowed under existing law). If this bill had been enacted and a borrower had sought the type of insurance the bill would have authorized, that borrower would have been issued two checks at the time of loan origination – one made out to the borrower, and one made out to the credit disability insurer. The check to the insurer would have paid the insurance policy in full (i.e., on a single premium basis). The cost of the policy would have been added to the borrower's initial loan balance and paid back by the borrower over the life of the loan.

Passed the Senate but was never taken up by its author in the Assembly.

SECURED LENDING AND SERVICING, FORECLOSURE PREVENTION

BILLS SIGNED INTO LAW

SB 285 (Block), Chapter 245, Statutes of 2015

Sponsored by the California Pawnbrokers Association. Increases the maximum rates and fees that may be charged by California pawnbrokers. Authorizes a storage fee of up to $1 per month on items less than one cubic foot in size (previously, no storage fee was allowed on these small items). Increases the maximum allowable loan set-up fee to the greater of $5 or 3% of the loan principal, not to exceed $30 (up from the greater of $5 or 2% of the loan principal, not to exceed $10). Collapses the 21-tier rate schedule that previously applied during the first three months of a pawn loan into a 6-tier rate schedule. Increases the maximum allowable interest rate that may be charged during the fourth month and any subsequent months of a pawn loan to 3% of the loan principal (up from 2.5%). Authorizes a pawnbroker to notify a borrower electronically regarding the termination of the borrower's loan period, if such method of notice is acceptable to the borrower, and if the borrower has previously responded to an electronic communication sent by the pawnbroker to the borrower's last known electronic address. Requires representatives of the pawn industry to poll their members annually to gather data relating to the current financial condition of the California pawn industry.

SB 300 (Mendoza), Chapter 417, Statutes of 2015

Sponsored by the California Pawnbrokers Association. Authorizes pawnbrokers to extend replacement pawn loans electronically, clarifies that replacement pawn loans may also be taken out via mail or via personal representative of the borrower, clarifies the effective start dates of replacement pawn loans, and allows a pawnbroker to notify a borrower electronically regarding the termination of the borrower's loan period, if such method of notice delivery is acceptable to the borrower, and if the borrower has previously responded to an electronic communication sent by the pawnbroker to the borrower's last known electronic address.

SB 657 (Berryhill and Pan), Chapter 797, Statutes of 2016

Author-sponsored. Revises the definition of a lender under the California Residential Mortgage Lending Act (CRMLA) to include persons who act as loan processors or underwriters for residential mortgage loans. This change allows entities that are currently licensed under the CRMLA and currently doing business in California to continue doing business as licensed CRMLA lenders in the state, despite having lost their federal "non-supervised lender" designation following a policy change initiated by the federal Department of Housing and Urban Development in 2015.

SB 1150 (Leno and Galgiani), Chapter 838, Statutes of 2016

Co-sponsored by the California Association for Retired Americans, California Reinvestment Coalition, and Housing and Economic Rights Advocates. Sunsets on January 1, 2020. Requires mortgage servicers to provide successors in interest to deceased borrowers, as defined, with key information about outstanding mortgages previously held by the deceased borrowers (e.g., loan balance; interest rate and interest rate reset dates and amounts; the size and timing or balloon payments, if any; information about prepayment penalties, if any; the default and delinquency status of the loan; the monthly payment amount; and the payoff amount). Requires mortgage servicers to allow successors in interest to deceased borrowers to apply to assume mortgages previously held by the deceased borrowers and to apply and be considered for foreclosure prevention alternatives in connection with those mortgages, as specified; and provides certain successors in interest with all of the rights and remedies available to borrowers under the California Homeowners Bill of Rights (HBOR). In order to be eligible for HBOR rights and remedies, a successor in interest to a deceased borrower must be the spouse, domestic partner, joint tenant as evidenced by grant deed, parent, grandparent, adult child, adult grandchild, or adult sibling of the deceased borrower; must have occupied the property as his or her principal residence within the last six continuous months prior to the deceased borrower's death; and must currently reside in the property.

BILLS VETOED

None

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

None

SECURITIES LAW AND CORPORATE GOVERNANCE

BILLS SIGNED INTO LAW

AB 557 (Irwin), Chapter 363, Statutes of 2015

Author-sponsored. Creates a streamlined administrative dissolution and surrender process for nonprofit corporations. When a nonprofit public benefit corporation or nonprofit mutual benefit corporation has been dissolved without court proceedings, a majority of the directors then in office must sign and verify a certificate of dissolution, as specified, which must be accompanied by a written waiver of objections to the distribution of the corporation's assets issued by the Attorney General or a written confirmation that the corporation has no assets. This certificate of dissolution and accompanying waiver of objections or written confirmation must be filed with the Secretary of State (SOS). The bill provides a similar process by which nonprofit religious corporations may dissolve. Finally, the bill provides that when a foreign corporation which has qualified to transact business in California wishes to surrender that right, it must file a certificate of surrender signed by a corporate officer or trustee, and file a final franchise tax return with the Franchise Tax Board.

AB 667 (Wagner), Chapter 743, Statutes of 2015

Sponsored by the Corporations Committee of the Business Law Section of the California State Bar. Defines finders, as specified, and exempts finders from the requirement to be licensed as broker-dealers. Defines a finder as a natural person who, for direct or indirect compensation, introduces or refers one or more accredited investors to an issuer, or an issuer to one or more accredited investors, solely for the purpose of a potential offer or sale of securities of the issuer in an issuer transaction in California. Concurrent with each introduction or referral of a potential investor to an issuer, a finder must obtain the informed, written consent of the person introduced or referred, on an agreement that discloses information about the type and amount of compensation that has been or will be paid to the finder and that contains information regarding actual or potential conflicts of interest that may exist in connection with the finder's activities. Each person wishing to be recognized as a finder must submit a statement of information about him- or herself to DBO and pay a $300 filing fee, and must annually submit a renewal statement of information and a renewal fee of $275.

AB 792 (Chiu), Chapter 56, Statutes of 2015

Sponsored by the Nonprofit Organizations Committee of the Business Law Section of the California State Bar. Clarifies the ways in which nonprofit public benefit and nonprofit religious organizations are allowed to invest by providing that compliance with the Uniform Prudent Management of Institutional Funds Act (Probate Code Sections 15000 et seq.) constitutes compliance with the investment standards applicable to these corporations.

AB 816 (Bonta), Chapter 192, Statutes of 2015

Co-sponsored by the East Bay Community Law Center and the Sustainable Economies Law Center. Renames the Consumer Cooperative Corporation Law as the Cooperative Corporation Law; authorizes the creation of worker cooperatives, as specified; and increases, from $300 to $1,000, the maximum aggregate investment that may be made by a shareholder in shares or by a member in memberships of a cooperative corporation.

Worker cooperatives are businesses that are owned by their workers and governed by their worker-owners. Prior to enactment of AB 816, California's Consumer Cooperative Corporation Law did not prohibit the creation of worker cooperatives, but it did not contain any provisions specific to the formation and governance of those cooperatives. AB 816 authorizes the creation of worker cooperatives and adds language to the Cooperative Corporation Law specific to the formation and governance of worker cooperatives.

AB 1471 (Perea), Chapter 189, Statutes of 2015

Sponsored by the SOS. Makes technical changes to provisions of the Corporations Code administered by the SOS by reducing statutory inconsistencies within the Corporations Code, updating the code to reflect changes made by recent legislation, and standardizing the processing and handling of specified SOS business customer transactions. Continues a multi-year effort, spearheaded by the SOS, to standardize business filing procedures in anticipation of the rollout of the California Business Connect (CBC) online filing project. Once implemented, CBC will modernize and streamline the SOS's paper-based business filing processes, and allow customers to file documents and request records online, 24 hours a day, seven days a week.

AB 2759 (Levine), Chapter 390, Statutes of 2016

Author-sponsored. Authorizes victims of corporate fraud to pursue compensation from the Victims of Corporate Fraud Compensation Fund (compensation fund) for fraudulent acts committed by an officer or director of a corporation, as specified. Defines an agent for purposes of the compensation fund as a person who was an officer or director of a corporation at the time fraudulent acts occurred, was named in a final criminal restitution order in connection with the fraudulent acts, and was acting in his or her capacity as the corporation's officer or director when committing the fraudulent acts. Provides that, when an aggrieved person obtains a criminal restitution order against an agent based upon the agent's fraud, misrepresentation, or deceit, made with intent to defraud while acting in the agent's capacity as the corporation's officer or director, the aggrieved person may, upon the judgment becoming final and after diligent collection efforts are made, file an application with the SOS for payment from the compensation fund.

SB 351 (Committee on Banking and Financial Institutions), Chapter 98, Statutes of 2015

Co-sponsored by the Corporations Committee of the Business Law Section of the California State Bar and the Nonprofit Organizations Committee of the Business Law Section of the California State Bar. Cleans up various provisions of the Corporations Code to correct drafting errors in prior legislation and clarify the intent of existing law. Adds emergency powers and

bylaw provisions to the Cooperative Corporation Law to ensure that cooperative corporations do not incur liability for specified actions taken in good faith to further the corporations' ordinary business operations, in anticipation of or during an emergency. Updates and corrects sections of the Corporations Code which refer to chair, chairperson, chairman, chairwoman, and chair of the board to ensure that these terms may be used interchangeably.

BILLS VETOED

None

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

SB 577 (Hueso), 2015

Sponsored by the Sustainable Economies Law Center. Would have authorized three new securities permitting exemptions and increased, from $300 to $1,000, the maximum allowable aggregate investment of any shareholder in shares of a cooperative corporation or member in memberships of a cooperative corporation. The securities permitting exemptions were provided for: 1) any offer or sale of any evidence of indebtedness, where the aggregate amount of securities sold to all purchasers by the issuer within any 12-month period did not exceed $500,000; 2) any offer or sale of any security, where the aggregate amount of securities sold to all purchasers by the issuer within any 12-month period did not exceed $2 million, and at least 75% of the amounts raised through the offering were reserved or allocated to specified agricultural purposes; and 3) any offer or sale of any security, where the aggregate amount of securities sold to all purchasers by the issuer within any 12-month period did not exceed $2 million, and at least 75% of the amounts raised through the offering were reserved or allocated to the purchase of solar photovoltaic panels and related equipment or wind turbines and related equipment.

Never taken up in the Senate Judiciary Committee. However, the increase, from $300 to $1,000, in the maximum allowable aggregate investment in cooperative corporations was enacted as part of AB 816, Bonta, described elsewhere in this legislative summary.

FINANCIAL SERVICES LAW ADMINISTRATION, MISCELLANEOUS

BILLS SIGNED INTO LAW

AB 283 (Dababneh), Chapter 181, Statutes of 2015

Co-sponsored by the California Bankers Association and California Independent Bankers Association (since renamed the California Community Banking Network). Extends, until January 1, 2021, the sunset date on the provision of existing law which grants local agencies the authority to invest surplus funds in deposits other than certificates of deposit (CDs) at depository institutions that use a private sector entity to assist in the placement of deposits. Prior to enactment of AB 283, local agencies could invest up to 30% of their surplus funds in CDs with depository institutions that used a private sector entity to assist in the placement of those deposits, but could only invest up to 10% of their surplus funds in other types of deposits that were placed using a private sector entity. AB 283 applies the same 30% cap to both types of deposits, until local agencies' authority to invest surplus funds in deposits other than CDs sunsets on January 1, 2021.

AB 607 (Dodd), Chapter 216, Statutes of 2015

Sponsored by the California Association of Realtors. Prescribes the circumstances under which withdrawals may be made from a real estate broker's trust fund account. Provides that withdrawals may be made from a trust fund account only upon the signature of the broker; a real estate salesperson licensed to the broker; another broker acting pursuant to a written agreement with the broker that controls the trust fund account; or an unlicensed employee of the broker, if the broker has fidelity bond coverage equal to or greater than the maximum amount of the trust funds to which the unlicensed employee has access at any time. Provides that fidelity bonds providing coverage for unlicensed employees with access to trust fund accounts may be written with deductibles of up to 5% of their coverage amounts, but that when a bond is written with a deductible, the employing broker must have evidence of financial responsibility, as specified, sufficient to cover the amount of the deductible.

AB 704 (Cooley), Chapter 370, Statutes of 2015

Sponsored by the California Land Title Association. Revises the escrow rules applicable to underwritten title companies (UTCs). Repeals, effective July 1, 2016, a requirement that a UTC deposit $7,500 with the Insurance Commissioner for each county in which it conducts business and provides a process by which prior deposits can be returned to UTCs. Effective July 1, 2016, adds a requirement that a UTC maintain a surety bond of $50,000 or $100,000, depending on the volume of documents filed in counties where the UTC will offer escrow services, or make a deposit with the Insurance Commissioner in lieu of, and in the amount of, the bond. Authorizes the Insurance Commissioner to permit a UTC to provide a letter of credit in lieu of, and in the

same amount of the bond or deposit, if there is no reasonable or adequate admitted market for surety bonds, or upon a showing of good cause by the UTC.

AB 1113 (Chau), Chapter 110, Statutes of 2015

Author-sponsored. Specifies 30 days as the amount of time in which a person wishing to contest a desist and refrain order issued under the Check Sellers, Bill Payers and Proraters Law has in which to request a hearing on that order from the commissioner and 15 days as the amount of time within which the commissioner must hold that hearing, as specified.

AB 1292 (Dababneh), Chapter 750, Statutes of 2015

Author-sponsored. Establishes the Bank On California Program within DBO and requires DBO to report annually, no later than August 30th of each year, to the chairpersons of the Senate Committee on Banking and Financial Institutions and Assembly Committee on Banking and Finance regarding the activities of the Bank On California Program.

AB 1446 (Dababneh), Chapter 310, Statutes of 2015

Author-sponsored. Clarifies that the commissioner is authorized to issue a desist and refrain order under the CFLL for a violation of an order or regulation adopted under that law (not just for a violation of a provision of that law).

AB 1517 (Committee on Banking and Finance), Chapter 190, Statutes of 2015

Author-sponsored. Makes changes intended to improve DBO's ability to administer the laws under its jurisdiction. These changes: 1) correct drafting errors, update code sections, reflect the merger of the Department of Financial Institutions and Department of Corporations into DBO, and reflect the shifting of certain responsibilities from the Department of Corporations to the Department of Managed Health Care; 2) return the wording of the code section that prohibits fraudulent marketing of securities to the way in which it read prior to 2014; 3) clarify that a person who is issued a desist and refrain order under the California Commodity Law of 1990 has 30 days in which to request a hearing to contest that order; 4) provide that, if a federal insurance agency accepts appointment by the commissioner as conservator, liquidator, or receiver of a financial services licensee whose property and business have been seized by the commissioner, that federal agency has all of the powers conferred on the commissioner pursuant to Chapter 7 of Division 1 of the Financial Code, in addition to any powers conferred by applicable federal law; 5) delete a code section limiting the amount of funds that one bank or trust company may invest in another financial institution other than a Federal Reserve Bank; 6) modify the definition of facility for purposes of the Banking Law to provide that facility means an office at which a bank engages in noncore banking business and does not engage in core banking business; and 7) delete the requirement that an industrial loan company whose certificate has been surrendered or revoked submit a closing audit report to the commissioner within 105 days after the effective date of that surrender or revocation, as specified.

AB 1784 (Dababneh), Chapter 180, Statutes of 2016

Sponsored by the California Bankers Association. Authorizes a bank to participate in a financial education program that involves receiving deposits or paying withdrawals on the premises of, or at a facility used by, a school. Provides that the school premises or facility will not be considered a branch office of the bank, if specified conditions are met, and provides that a bank, which participates in a financial education program at a school, is liable for all deposits made on the premises of, or at a facility used by the school as if the deposit was made directly at a branch office of the bank.

AB 2274 (Dababneh), Chapter 353, Statutes of 2016

Sponsored by the California Credit Union League. Makes several changes to the California Credit Union Law, which are intended to provide state-chartered credit unions greater flexibility to conduct their operations. These changes: 1) require the board of directors of a credit union to meet on a regular basis, as reasonably determined by the board, but not less than quarterly; 2) uphold the authority of a credit union board of directors to delegate the power to approve membership applications to any officer, director, committee member, or employee of that credit union, pursuant to a written membership plan adopted by the board of directors, but delete the requirement that the board review a report of membership applications approved by those delegates at least quarterly; 3) authorize a credit union to establish an audit committee, as specified, in lieu of a supervisory committee, and make conforming changes; 4) authorize a credit union to permit non-members to act as joint applicants, co-obligors, *coborrowers, sureties, or guarantors* on loans or extensions of credit taken out by members (the bill adds the language in italics); 5) delete the requirement that a credit union ask loan applicants and applicants for extensions or guarantees of credit the purpose for which the loan, extension, or guarantee is being sought; 6) authorize a credit union to extend a loan to a business customer, which exceeds that business' investment in the credit union, without requiring the loan to be authorized in the credit union's bylaws and approved by the commissioner; and 7) clarify the definition of an official in the provision of law that imposes conditions on loans made by a credit union to one of its officials. Under the clarified definition, a credit union "official" is a director, member of the supervisory committee, member of the credit committee, *member of the audit committee, credit manager, president, or chief executive officer* of a credit union (the bill adds the titles in italics).

AB 2907 (Committee on Banking and Finance), Chapter 277, Statutes of 2016

Author-sponsored. Makes technical changes to provisions of law administered by DBO. Corrects and updates cross-references, updates terminology, corrects unintended errors contained in prior legislation, and re-adds a provision that was mistakenly allowed to sunset, which clarifies what information is sufficient to reasonably identify items paid on a statement of account sent or made available by a bank to a customer.

AJR 25 (Lackey), Resolution Chapter 202, Statutes of 2015

Co-sponsored by Board of Equalization Members Fiona Ma and George Runner. Memorializes the President of the United States and the United States Congress to support legislation that will provide a comprehensive solution to allow banks and credit unions to perform financial services for marijuana businesses.

SB 501 (Wieckowski), Chapter 800, Statutes of 2015

Author-sponsored. When referred to the Senate Banking and Financial Institutions Committee, SB 501 would have reduced the amount of disposable earnings that could be levied from a judgment debtor under an earnings withholding order; provided that an earnings withholding order could not be used to enforce a judgment to collect on private student loan debt; and stipulated the contents of an "application for issuance of earnings withholding order enforcing a judgment for student loan debt " and a "request to terminate an earnings withholding order enforcing a judgment for student loan debt." Before being taken up in the Senate Banking and Financial Institutions Committee, the bill was amended to delete all provisions relating to the collection of student loan debt. With those amendments, the bill fell outside the jurisdiction of this Committee and was withdrawn by the Senate Rules Committee. When chaptered, the bill was outside of this Committee's jurisdiction.

SB 647 (Morrell), Chapter 263, Statutes of 2015

Sponsored by the California Mortgage Association. Modifies the provisions of the Real Estate Law that govern the activities of threshold brokers. Adds a category of property (land that produces income from crops, timber, or minerals) and a maximum loan-to-value ratio (60%) to the list of property types and maximum loan-to-value ratios for which threshold brokers are authorized to solicit investors. Clarifies the requirement for threshold brokers to obtain a completed investor questionnaire from persons to whom they offer or sell notes and deeds of trust by specifying that the investor questionnaire must be obtained at least two business days and not more than one year prior to completing each sale. Further clarifies that, after a broker obtains an initial questionnaire, any subsequent questionnaire obtained from the same person need only reflect any material changes from the immediately preceding questionnaire. Deletes the requirement that threshold brokers obtain updated annual questionnaires from persons to whom notes and deeds of trust are offered or on whose behalf they are serviced. Deletes the requirement that persons who are engaged in the business of purchasing, selling, financing, or brokering real estate, who rely upon a securities law exemption authorized by Corporations Code Section 25100(p), submit information about their offering to DBO.

BILLS VETOED

AB 1782 (Maienschein), 2016

Sponsored by the Franchise Law Committee of the Business Law Section of the California State Bar. Would have allowed franchisors and prospective franchisors to display their concepts at franchise trade shows in California, without first having to register their offerings with DBO.

Franchisors and prospective franchisors wishing to utilize the trade show exemption would have had to do all of the following: 1) notify the commissioner, in a form established by the commissioner, of its intent to attend and display its concept at a franchise trade show at least 30 days before the show; 2) provide specified, comprehensive information to the commissioner about its franchise offering; 3) conspicuously post, in public view within its franchise trade show booth, a notice, in a form established by the commissioner, which stated the that it was not offering a franchise for sale in California and was not legally able to offer such a franchise for sale; and 4) pay a fee of $225 per day to the commissioner for each day the franchisor or prospective franchisor exhibited at the trade show.

In his veto message, the Governor wrote: "Registration gives the Department the opportunity to review franchise disclosure documents and ensure that franchisors are providing accurate information to potential customers. Allowing unregistered franchisors to market at these events without verifying their eligibility to do business in California is a step in the wrong direction."

AB 2637 (Wilk), 2016

Sponsored by the Franchise Law Committee of the Business Law Section of the California State Bar. Would have eliminated the current law requirement that franchisors provide prospective California franchisees with information about each material negotiated term to which the franchisor agreed during prior negotiations with California franchisees. In place of this requirement, the bill would have required franchisors to provide prospective California franchisees with a document stating, "You and the franchisor may agree to sign the forms of franchise agreement and other agreements attached to this disclosure document. However, California law does not prohibit you and the franchisor from negotiating changes to the franchise agreement and other agreements, nor does it require you or the franchisor to negotiate any changes."

In his veto message, the Governor wrote: "While it is important to promote bringing new business into California, doing so at the expense of transparency could be detrimental to potential franchisees, as this bill proposes to do. The current process, which allows the Department to review contract changes, ensures that franchisees are not placed at a disadvantage in their final agreement."

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

AB 1326 (Dababneh), 2015 and 2016

Author-sponsored. When heard and passed by this Committee the first time, the bill would have established a framework for the licensing and regulation of virtual currency businesses by DBO, effective July 1, 2016. Under this framework, virtual currency business licensees would have been required to provide specified disclosures to consumers, informing them of the potential risks of virtual currency and instructing them how to file complaints with DBO; provide receipts to consumers upon completion of virtual currency transactions, as specified; maintain levels of capital that the commissioner determined were sufficient to ensure the safety and soundness of

the licensees; and maintain bonds or trust accounts in United States dollars for the benefit of their consumers, in forms and amounts specified by the commissioner. In lieu of the requirements above, the bill would have authorized a person or entity conducting virtual currency business with less than $1 million in outstanding obligations, whose business model represented no or low risk to consumers, as determined by the commissioner, to apply for and be granted a provisional virtual currency license. The commissioner would have been given full discretion to prescribe the terms and conditions applicable to provisional licensees.

After passing the Senate Banking and Financial Institutions Committee and Senate Appropriations Committee in the form described above, AB 1326 was gutted and amended to establish the Digital Currency Business Enrollment Program (DCBEP), until January 1, 2022. The DCBEP was designed to enable DBO to identify all of the businesses providing digital currency services in the state; enable businesses to provide digital currency services in the state in a lawful and transparent manner; enable DBO to gather from businesses providing digital currency services any information helpful to determining whether and how the industry should be licensed and regulated in the future; and ensure that customers received appropriate risk disclosures and information about digital currency and digital currency-related services. This amended bill was withdrawn from the Senate Floor and re-referred to the Senate Banking and Financial Institutions Committee, but was never taken up by its author in this Committee.

SB 736 (Vidak), 2015

Author-sponsored. Would have stated the intent of the Legislature that, whenever possible, the commissioner should utilize the services of one or more qualified private individuals with relevant prior experience to act as conservator, liquidator, or receiver of a failed escrow agent. Would have directed Escrow Law penalty revenue to the commissioner for use in compensating persons appointed to act as conservators, liquidators, or receivers of failed escrow agents, and would have clarified that the commissioner could use all or a portion of an escrow agent's surety bond and any assets remaining following conservation, liquidation, or receivership of an escrow agent to compensate the agent's conservator, liquidator, or receiver.

Held on the Assembly Appropriations Committee Suspense File.

2015–2016 INFORMATIONAL AND OVERSIGHT HEARINGS

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

MAY 6, 2015, SACRAMENTO, CA: ENDING DEBT TRAPS OR RESTRICTING ACCESS TO SAFETY NETS? INITIAL REACTIONS TO THE CONSUMER FINANCIAL PROTECTION BUREAU'S LENDING PROPOSALS

On May 6th, 2015, the California Senate Banking and Financial Institutions Committee convened an oversight hearing to solicit feedback on payday and installment loan proposals released on March 26th, 2015 by the federal Consumer Financial Protection Bureau (CFPB). The proposals that formed the basis for the hearing were released in advance of a future CFPB rulemaking intended to provide greater protections for consumers who take out payday loans, high-interest rate installment loans, and car title loans. Full text of the proposals are available at http://files.consumerfinance.gov/f/201503_cfpb_outline-of-the-proposals-from-small-business-review-panel.pdf.

Once finalized, the CFPB regulations will have a significant impact in California. Statewide, they are likely to affect over 12 million payday loans, totaling over $3.1 billion annually, and over 500,000 installment loans, totaling approximately $1 billion annually. The new rules will not require legislative or congressional approval to become effective; instead, they will become operative automatically following the conclusion of CFPB's rulemaking.

Because the CFPB's rulemaking will have such a significant impact in California, and because the CFPB actively sought feedback on its preliminary proposals, the Senate Banking and Financial Institutions convened a hearing designed to help Committee members, interested members of the public, and the CFPB understand the potential impacts of the CFPB proposals on California consumers, California businesses, and the California economy as a whole. Sixteen invited witnesses, testifying across four panels, provided input on those questions, and offered specific recommendations regarding which aspects of the CFPB's proposals can be implemented as drafted, and which will require modification in order to be workable.

During the course of the hearing, the Committee heard consensus from witnesses on four general points, described immediately below. There was, however, considerable disagreement on the finer aspects of these points and on many other issues.

<u>Both Short-Term and Longer-Term Loans Should Be Underwritten</u>

Consumer advocate witnesses were unanimous in their views that all covered loans, both short-term and longer-term, should be underwritten to evaluate a borrower's ability to repay those loans. Consumer advocates favor the types of underwriting envisioned by the CFPB proposals, as they believe that lenders should consider a borrower's income *and* expenses, using verifiable information.

Lenders were also unanimous in agreeing that all loans must be underwritten. Lenders look not only at a borrower's ability to repay, but also at a borrower's willingness to repay his or her loan. There is considerable variability in ways in which different lenders underwrite their borrowers. Many of the lenders that testified use proprietary underwriting models that do not rely on the types of verifiable income and expense information the CFPB is considering requiring; instead, the lenders' proprietary models tend to focus on alternative sources of information, much of which is "big data analytics"-driven. "Big data" is an evolving term, which refers to extremely large data sets that can be mined for information. "Big data analytics" is the process of examining these large data sets to identify hidden patterns, previously unknown correlations, market trends, customer preferences and other information that can be useful to the entity performing the analysis.

The alternative data sources utilized by many lenders can be less time-consuming and less expensive to obtain than the types of information the CFPB is considering requiring, and can, in the minds of the lenders, be equally as predictive of borrower behavior as the more traditional underwriting methods the CFPB proposals envision.

Online lenders lean particularly heavily on big data to vet borrowers; these lenders are not only evaluating a borrower's ability and willingness to repay, but are also verifying the borrower's identity to minimize the likelihood of fraud.

Some lenders voiced concern that the CFPB's traditional approach to underwriting would discourage the development and use of innovative new underwriting models that rely on big data. Many lenders believe that technology holds great promise for vetting borrowers, and want to ensure that new rules do not preclude development and use of these data-driven tools.

<u>The Debt Trap Protection Options Are Not Workable As Proposed</u>

As discussed immediately above, consumer advocates believe that all covered loans, both short-term and longer-term, must be underwritten to evaluate a borrower's ability to repay those loans. Because of this view, the consumer advocates did not favor the debt trap *protection* alternatives contained in the CFPB's proposals, which do not require underwriting, but instead focus on limiting repeat borrowing and limiting borrowers' debt load. Consumer advocates believe that some elements of the debt trap protection alternatives could be paired with up-front underwriting to form the basis for an acceptable regulatory scheme, but the debt trap protection alternatives, viewed alone, are unacceptable, because they do not require income and expense underwriting.

Lenders of all types and sizes agreed with the consumer advocates that the debt trap protection alternatives were unworkable, albeit for very different reasons than those offered by the consumer advocates. In the short-term (e.g., payday) lending space, lenders observed that the debt trap protection alternative would require them to turn certain customers away, if those customers had reached their pre-determined loan frequency maximums. The idea that a business would be required to turn away a loyal customer, and be unable to direct that customer to alternate sources of credit, was very problematic for the short-term lenders.

In the longer-term installment loan space, lenders expressed concern that the maximum allowable loan lengths in the debt trap protection alternative were too short and the maximum allowable loan amounts in that alternative too small to adequately address consumers' needs. In addition, the proposal's prohibition against extending a loan to a borrower whose loan payment exceeds 5% of that borrower's gross income is likely to exclude a significant number of otherwise-qualified borrowers.

Pre-Emption Issues Must Be Clarified

Possible pre-emption issues will arise in two key contexts: states' rights and Native American tribal sovereignty issues. With respect to states, clarity will be needed from the CFPB regarding the extent to which the regulations, once finalized, will pre-empt state lending laws versus the extent to which the regulations will form a regulatory floor, beyond which states are free to go, if they wish. California's lending regulator and the consumer advocates that testified strongly favor the latter option (i.e., that the CFPB's regulations form a regulatory floor and do not pre-empt state laws that are more protective of consumers).

With respect to tribally-affiliated lenders, clarity will be needed around two key questions. First, will the CFPB regulations, once finalized, apply to lenders that affiliate with Native American tribes to offer short- or longer-term covered loans? Second, if so, what entity or entities will have the power to enforce those regulations over tribally-affiliated lenders?

Evasion of the Rules Must Be Minimized

Nearly all of the lenders that testified expressed concern that a significant number of borrowers will lose access to sources of credit that are currently available to them, if the CFPB proposals are enacted in a form similar to what is being proposed. Consumer advocates are hopeful that borrowers who are denied for loans under the new regulatory scheme envisioned by the CFPB will figure out ways to make due, without taking out loans they cannot afford. These advocates envision that borrowers may be able to seek out loans from family or friends, pawn some of their possessions, reduce their expenses, and/or seek out social service safety nets to help bridge their gaps between income and expenses.

However, if borrowers who are denied loans under the new regulatory scheme turn to lenders that are outside the regulatory reach of the CFPB and states, many of the benefits sought by the CFPB and the proposals' supporters will not be realized. Borrowers in many cases will be worse off, because they will lose the consumer protections they are currently afforded under state lending laws. Both lenders and consumer advocates agree that the rules will not achieve their intent, if widespread evasion of those rules is possible. There is, however, no consensus around how best to minimize such evasion.

NOVEMBER 28, 2016, SACRAMENTO, CA: AN EXAMINATION OF WELLS FARGO'S SALES PRACTICES AND MANAGEMENT AND BOARD OVERSIGHT

On September 8, 2016, the CFPB, Office of the Comptroller of the Currency (OCC), and Office of Los Angeles City Attorney Mike Feuer announced they had entered into separate regulatory

settlements with Wells Fargo Bank, N.A., in connection with Wells Fargo's illegal practice of opening deposit and credit card accounts that have not been requested or authorized by their accountholders. As a condition of these settlements, Wells Fargo agreed to pay full restitution to customers who had unauthorized accounts opened in their names, hire an independent consultant to conduct a thorough review of its procedures, and pay a $100 million fine to the CFPB's Civil Penalty Fund, $50 million fine to the City and County of Los Angeles, and $35 million fine to the OCC.

The September, 2016 settlement agreements referenced above brought to light activities that had been allowed to go on at the bank at least as far back as 2011, and possibly earlier. According to Wells Fargo, on the basis of an analysis performed by Pricewaterhouse Coopers, Wells Fargo employees opened as many as 1.5 million checking and savings accounts and as many as 565,000 credit card accounts that may not have been requested or authorized by their accountholders. Despite reaching settlements with the CFPB, OCC, and L.A City Attorney, Wells Fargo remains under investigation by the United States Department of Justice; several state Attorneys General, including California Attorney General Harris; the Securities and Exchange Commission; and others in connection with these unauthorized accounts.

On November 28, 2016, the California Senate Banking and Financial Institutions Committee convened an oversight hearing to highlight new information that had come to light since Wells Fargo entered into the September, 2016 settlement agreements referenced above and to identify key questions that remain unanswered about Wells Fargo's actions. A significant amount of that new information is contained in the appendices to the background paper for the hearing. Those appendices include three different responses provided by Wells Fargo to a series of questions posed to the bank by Chairman Glazer, and an additional response to a series of questions posed by members of the United States Senate Committee on Banking, Housing and Urban Affairs. All together, the responses total close to 120 pages.

Witnesses that testified at the hearing included representatives from the L.A. City Attorney's Office, State Treasurer's Office, California State Teachers' Retirement System, and consumer advocacy groups. Outstanding questions addressed during the hearing include why Wells Fargo employees engaged in wrongdoing; when that wrongdoing was first discovered and by whom; when Wells Fargo's Board of Directors first learned of the wrongdoing; how the wrongdoing was allowed to continue for as long as it did; who has been and will be held accountable within the company; and whether changes to Wells Fargo's Board of Directors and corporate governance structure is appropriate. Witnesses agreed that definitive answers to those questions, and others, are the subject of multiple investigations and will likely not be known for quite some time.