

Highlights of 2013 State Chaptered Legislation

The legislation noted below is a compendium of many, but not necessarily all of the chaptered bills that may have an impact on or be of interest to licensees of the Department of Business Oversight. The full text of these bills may be found at:

<http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

I. Legislation Impacting the Lending, Servicing or Brokering of Residential Mortgage Loans

AB 1091 (Skinner)

Finance and mortgage lenders

[AB 1091, Chapter 243, Statutes, 2013](#)

(Financial Code)

This bill enacts reforms to the Department's mortgage lending and servicing programs. The bill allows administrative citations under the California Finance Lenders Law (CFLL) and the California Residential Mortgage Lending Act (CRMLA), allows enforcement of unfair and deceptive practices law under the CFLL, and extends other protections under the CRMLA to the CFLL in order to facilitate broader borrower protections. The protections include prohibiting: (1) the knowing concealment of any material aspect or information regarding a transaction; (2) fraud or dishonest dealings; (3) unfair business practices; (4) taking unconscionable advantage of a property owner in foreclosure; and (5) engaging in business in an unsafe or injurious manner.

Additionally, the bill clarifies that the exemption from licensure for pawnbrokers and lenders that participate in federal lending programs applies only to loans made under those programs, sets forth a de minimis licensure exemption for commercial lending by permitting a lender to make up to five commercial loans in a year without obtaining a license under the CFLL, and prohibits engagement in unfair business practices by these licensees.

SB 310 (Calderon)

Mortgages: foreclosure notices: Title companies

[SB 310, Chapter 251, Statutes 2013](#)

(Civil Code)

SB 310 exempts title companies and underwritten title companies from the strict liability of specific portions of the Homeowners Bill of Rights requirements, when they record notices of default or notices of sale in the normal course of their business activities, in good faith, at the request of a trustee or beneficiary; but not when acting in the capacity of a trustee.

SB 426 (Corbett)

Mortgages: Deficiency on mortgage loans

[SB 426, Chapter 65, Statutes 2013](#)

(Code of Civil Procedure)

The bill clarifies that the “purchase money” and “non-judicial foreclosure” provisions of California’s anti-deficiency laws prohibit mortgage loan creditors and debt collectors from using non-judicial means to collect from a borrower mortgage debt remaining after foreclosure of the borrower’s home.

II. Legislation Impacting State Licensed Banks and Credit Unions

AB 32 (John Perez)

Insurance taxes: Income taxes: Credit: Community development financial institutions

[AB 32, Chapter 608, Statutes 2013](#)

(Revenue and Taxation Code)

AB 32 requires the California Organized Investment Network (COIN), when accepting and evaluating applications for certification from any community development financial institution on behalf of the taxpayer and issuing certificates, to grant highest priority to those applications where the intended use of the investments has the greatest aggregate benefit for low-to-moderate income areas, households or rural areas. It requires a community development financial institution to provide in the application a detailed description of the intended use of the investment funds and to provide specified information about the taxpayer and prohibits the total amount of investments certified by COIN in any calendar year to any one community development financial institution from exceeding 30% of the annual aggregate amount of qualified investments, except as specified.

AB 279 (Dickinson)

Financial affairs: Local agency security program

[AB 279, Chapter 228, Statutes 2013](#)

(Government Code)

AB 279, until January 1, 2017, (1) authorizes a local agency to invest in deposits of all types (rather than just certificates of deposit) at a commercial bank, savings bank, savings and loan association or credit union that uses a private sector entity to help place deposits with other depository institutions within the private sector entity’s network; (2) requires each private sector entity to maintain policies and procedures to ensure that deposits placed on behalf of local agencies are federally insured at all times and that each institution where deposits are placed is sufficiently capitalized pursuant to applicable federal regulations; and, (3) excluding certificates of deposit, limits deposits placed by any one private sector entity to no more than 10 percent of the local agency’s surplus funds that may be invested.

AB 978 (Blumenfield)

Financial institutions: Iran sanctions

[AB 978, Chapter 139, Statutes 2013](#)

(Financial Code)

AB 978 requires the Commissioner, when conducting examinations of state-chartered banks, foreign (other nation) banks, trust companies and credit unions that maintain correspondent accounts or payable-through accounts for foreign financial institutions, to examine for compliance with the federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, associated federal regulations, and any related presidential executive orders; and to forward evidence of any violations to the United States Department of the Treasury. This bill authorizes the Commissioner to bring an action for such violations pursuant to specified sections of the Financial Code.

AB 1282 (Bonta)

Financial institutions: Credit unions

[AB 1282, Chapter 115, Statutes 2013](#)

(Financial Code)

AB 1282 amends the Credit Union Law to require the amount of the annual assessment for credit union licensees to be the greater of \$2,000 (currently \$1,500) or the amount determined by multiplying increments of the credit union's total assets by percentages of the base assessment rate in accordance with a newly established table that increases the number of assessment tiers from four to ten.

III. Legislation Impacting California Finance Lenders

SB 318 (Hill, Steinberg and Correa)

Small loans: Pilot program for increased access to responsible small dollar loans

[SB 318, Chapter 467, Statutes 2013](#)

(Financial Code)

SB 318 abolishes the existing consumer loan pilot program under the California Finance Lenders Law (CFLL) and creates in its place, until January 1, 2018, a new small loan program, the Pilot Program for Increased Access to Responsible Small Dollar Loans, to increase the availability of unsecured installment loans between \$300 and \$2,499.

Establishing the new pilot program will require the Department to develop before January 1, 2014, new regulations, a new application form, and a new reporting format for the annual report.

IV. Legislation Impacting the Corporations Code

AB 457 (Torres)

Notice to shareholders

[AB 457, Chapter 109, Statutes 2013](#)

(Corporations Code)

The General Corporation Law specifies that a corporation may take certain actions without a meeting and without prior notice, if a written consent for the action is provided to specified shareholders. Where written consent is not solicited, a special notice must be given to certain shareholders ten days before consummation of specified transactions, including reorganizations.

AB 457 eliminates the requirement that a special notice be given to shareholders ten days before consummation of a reorganization.

AB 1255 (Pan)

Corporations: Consumer cooperatives

[AB 1255, Chapter 538, Statutes 2013](#)

(Corporations Code)

This bill allows a corporation organized under the Consumer Cooperative Corporations Law (Corp. Code § 12200 *et seq.*) to (1) include preferred memberships and/or nonvoting memberships in its articles of incorporation, (2) divide a membership class into one or more series, and (3) authorize the board of directors to fix the rights, privileges, preferences, restrictions, and conditions connected to any wholly unissued class or series of memberships. This bill also allows the issuance of preferred, nonvoting shares by a cooperative corporation.

V. Legislation Impacting Escrow Agents

AB 1169 (Daly)

Escrow agent rating services: Escrow agents

[AB 1169, Chapter 380, Statutes 2013](#)

(Civil Code)

This bill, until January 1, 2017, requires third-party escrow agent rating services to be regulated under certain applicable provisions of California's existing Consumer Credit Reporting Agencies Act.

Third-party escrow agent rating companies have access to confidential financial and personal information of title and escrow agents, but are not licensed or subject to regulatory oversight. AB 1169 provides escrow agents being rated by these companies with the same credit reporting protections afforded to consumers.

VI. Legislation Impacting Franchisors

SB 537 (Committee on Banking and Financial Institutions)

Business and finance

[SB 537, Chapter 334, Statutes 2013](#)

(Financial Code)

This bill makes technical and clarifying changes to numerous sections of the Financial Code (formerly administered by the Department of Financial Institutions) and to provisions of the Franchise Investment Law (formerly administered by the Department of Corporations).

This bill standardizes the length of time in which franchisors have to deliver disclosure documents to prospective franchisees at 14 calendar days, and updates state statutory references to the document used by franchisors to provide specified information to prospective franchisees, by referring to this document as a “franchise disclosure document” rather than as an “offering circular.”

VII. Legislation Impacting Money Transmitters

AB 786 (Dickinson)

Money transmissions

[AB 786, Chapter 533, Statutes 2013](#)

(Financial Code)

This bill makes several changes to the Money Transmission Act (MTA). Specifically, it: reduces minimum tangible shareholders’ equity required for money transmitters to between \$250,000 and \$500,000, and authorizes the commissioner to increase tangible shareholders’ equity based on enumerated criteria; provides an exemption from the ownership requirements for eligible securities for funds held for the benefit of a money transmitter’s customers; provides an exemption from licensure for payroll processing companies; specifies that a receivable due from a bank through an automated clearinghouse transaction is an eligible security; eliminates receipt and notice requirements when money transmission is for payment of goods or services; allows the commissioner to exempt a person or transaction from all or part of the MTA and requires web publication of such exemptions; requires the commissioner to publish written decisions, opinion letters and other formal written guidance regarding the MTA; and requires the Department of Business Oversight to issue implementing regulations.

VIII. Legislation Impacting Securities

AB 1391 (Committee on Insurance)

Insurance: Omnibus

[AB 1391, Chapter 321, Statutes 2013](#)

(Insurance Code)

Existing law prohibits the Insurance Commissioner from granting authority to transact variable contracts unless the life agent or applicant furnishes proof that he or she is registered to sell securities in accordance with the rules of the United States Securities and Exchange Commission or the Financial Industry Regulatory Authority. This bill clarifies that the life agent or applicant is required to furnish proof that he or she is registered to sell securities in California.

SB 538 (Hill)

Securities: Broker-dealers and investment advisers

[SB 538, Chapter 335, Statutes 2013](#)

(Corporations Code)

SB 538 amends the Corporate Securities Law of 1968 and the California Commodity Law of 1990 to:

- 1) Eliminate the Corporate Securities Law requirement that a consent to service of process be filed by California limited partnerships and California limited liability companies;
- 2) After an administrative hearing seeking penalties and costs under the Corporate Securities Law, allow the Department to apply to superior court for a judgment for the amount awarded in a final Commissioner's decision;
- 3) Expand the anti-fraud provision in the Corporate Securities Law to the broader language of the Uniform Securities Act of 2002;
- 4) Expand the Commissioner's authority to bring desist and refrain orders under the Corporate Securities Law, and include broader administrative restitution and ancillary relief authority;
- 5) Authorize broker-dealer agent and investment adviser representative annual renewal fees of up to \$35;
- 6) Amend the time to request a hearing under the Commodity Law to 30 days after the order is served; and
- 7) Make technical changes.

This bill also includes legislative intent that the renewal fees authorized by the bill are to be used for regulatory examinations of broker-dealer agents and investment adviser representatives at least once every four years.

IX. Legislation Impacting GRP 2

AB 1317 (Frazier)

Governor's reorganization plan 2

[AB 1317, Chapter 352, Statutes 2013](#)

(Various California Codes)

AB 1317 codifies the Governor's Reorganization Plan No. 2 of 2012 and makes conforming changes throughout the California Codes.

SB 820 (Committee on Governmental Organization)

State government: Department of Business Oversight

[SB 820, Chapter 353, Statutes 2013](#)

(Various California Codes)

This bill makes changes to the Governor's Reorganization Plan No. 2 of 2012 to effectively implement the reorganization and functions of specific departments and agencies and makes specific changes to the duties, functions and practices of the Department of Business Oversight.

X. Legislation Impacting Privacy

AB 370 (Muratsuchi)

Consumer: Internet privacy

[AB 370, Chapter 390, Statutes 2013](#)

(Business and Professions Code)

Requires privacy policies posted by an operator of a commercial Web site or online service that collects personally identifiable information (PII) to disclose how the operator responds to Web browser "do not track" signals regarding the collection of PII, and to disclose whether other parties may collect PII about an individual consumer's online activities.

SB 46 (Corbett)

Personal information: Privacy

[SB 46, Chapter 396, Statutes 2013](#)

(Civil Code)

This bill imposes additional requirements on the disclosure of a security breach of a system or database in situations where the breach involves personal information that would permit access to an online or email account and would revise certain data elements included within the definition of personal information, by adding certain information that would permit access to an online account.

XI. Miscellaneous

AB 1029 (Maienschein)

Trusts and estates: Allocations of receipts

[AB 1029, Chapter 105, Statutes 2013](#)

(Probate Code)

This bill revises and recasts the requirements by which a trustee is to determine whether money received from a distributing entity is to be treated as a partial liquidation; provides that a trustee is not liable for any claim of improper allocation of the receipt that is based on information that was not received or actually known by the trustee as of the date of allocation, provided that the trustee satisfies specified requirements; and makes various technical changes.

AB 1220 (Skinner)

Consumer credit reporting: Adverse action

[AB 1220, Chapter 433, Statutes 2013](#)
(Civil Code)

This bill makes it unlawful for a consumer credit reporting agency to prohibit an entity that uses consumer credit reports (“user”), from providing a consumer with a written copy of the consumer’s credit report if the user has taken adverse action against the consumer based on information in the credit report. The bill also provides for a new cause of action, authorizing civil penalties of up to \$5,000.