

**2013 California Chapter Laws**

All Acts take effect on January 1, 2014, unless otherwise noted.

This summary is provided as a joint effort of Paul Soter and Michelle Jun. We have recognized that our practices are highly complimentary and that our expertise overlaps but are not identical. We hope to work together in the future to provide a broad range of services to clients in the financial services industry.

The 2013 California legislative session did not bring any surprising legislative changes in the areas of consumer finance, payments and financial privacy. For the most part, relevant legislation signed by Governor Brown expanded and clarify existing laws —laws that will very likely continue to change as legislators attempt to keep up with the ever-changing payments and privacy landscape.

**Consumer Privacy**

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
A.B. 370	390	Bus.& Prof. Code §§ 22575, 22577	<p><b><i>E-Commerce: Commercial Web Site Activities:</i></b> Current law requires the operator of a website that collects personally identifiable information on consumers residing in California who use or visit the site to conspicuously post its privacy policy on the site.</p> <p>This Act requires such an operator to include in its privacy policy a description of how the operator responds to do-not-track settings in consumers’ browsers. This can be done “by providing a clear and conspicuous hyperlink in the operator’s privacy policy to an online location containing a description, including the effects, of any program or protocol the operator follows that offers the consumer that choice.” The Act also requires an operator to disclose in its privacy policy whether, when a consumer uses the operator’s website or service, other parties can collect personally identifiable information about a consumer’s online activities “over time and across different Web sites.”</p>	The California Legislature continues to take an expansive view of its jurisdiction over the Internet. Each operator must therefore decide whether it is a better business decision to comply – and if so, how – or potentially have to resist in the future.

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**Consumer Privacy (cont'd)**

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
S.B. 46	396	Civil Code §§ 1798.29, 1798.82	Amendment to CA data breach notification law. Requires notice when a California resident's username or email address is breached, or reasonably believed to have been breached, with its password or security question and answer that provides access to an online account. Some additional notification methods have been added for this new category: If no other PI breached, notice can be made electronically. If email account login credentials breached, notice to be made ""by clear and conspicuous notice"" to the IP address or online location known to the business to be regularly accessed by the customer.	California continues to expand upon its breach notification requirements, which will likely increase the numbers of reported data breaches and apply additional pressure to enhance security measures.

**California Finance Lenders Law: Pilot Program for Affordable Credit-Building Opportunities**

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S.B. 318	640	Repeals Financial Code §§ 22348 <i>et seq.</i> and replaces them with Financial Code §§ 22365 <i>et seq.</i>	<p>(1) Updates the Pilot Program by increasing interest rates permitted for loans of less than \$2,500 from 28%-30% to 30%-36%; increases the permitted administrative loan fee to the lesser of 5% of principal or \$65, and increases permitted late charges;</p> <p>(2) Addresses operational issues that Pilot Program-licensed CFL's have experienced over the past three years by adjusting rules pertaining to loan refinancings and credit reporting;</p> <p>(3) The application disclosure must now be loan-specific; and the lender must notify the borrower notification prior to each payment due date (may be waived);</p> <p>(4) Revises the studies that the DBO must conduct and publish on the effect of the Pilot Program.</p> <p>(5) Authorizes experiments permitting the DBO to examine on a company-wide basis rather than being required to examine each branch on a rigid schedule, and to allow one person to be the designated manager of more than one branch location;</p> <p>(6) Extends the sunset date of the Pilor Program from January 1, 2015,to January 1, 2018.</p>	The Legislature responded to Pilot Program licensees' pleas for further rate relief and operational flexibility to continue to experiment with the Pilot Program as astimulus to small-dollar installment lending. The DBO has already issued draft implementing regulations.

**Military Borrowers: Mortgage Loans**

<i>Bill</i>	<i>Chapter</i>	<i>Statutes</i>	<i>Summary of Provisions</i>	<i>Comments</i>
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#	Law #	Affected		
S.B. 720	220	Mil. & Vets. Code § 409.3	<p>At present, a court may order, upon application, a stay of the enforcement of the obligation during (1) any period of military service, and (2) for period equivalent to the term of service after the termination of such military service (or from the date of the application if made after the service).</p> <p>This Act prohibits, during such a period the following acts for credit secured by a mortgage:</p> <ul style="list-style-type: none"> <li>- The accrual of penalties for nonpayment of principal or interest;</li> <li>- The charging or accrual of interest;</li> <li>- Foreclosure or repossession of property on which payment has been deferred;</li> <li>- Mortgage payments deferred during this period to be due and payable upon the occurrence of specified conditions.</li> </ul> <p>The Act further provides:</p> <ul style="list-style-type: none"> <li>- A service member with a mortgage subject to an impound account is not relieved from the requirement to make monthly payments, as specified; and</li> <li>- A service member is permitted to make prepayments on mortgage payments deferred, as specified.</li> </ul>	The Act clarifies and systematizes the protections applicable to covered borrowers.

**Military Reservists Called to Duty On or After January 1, 2014: Various Financial Obligations**

Bill #	Chapter	Statutes	Summary of Provisions
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	<i>Law #</i>	<i>Affected</i>	
A.B. 526	236	Health & Safety Code § 1386; Mil. & Vets. Code § 830-831	<p>Current law authorizes persons called to active duty as a result of the Iraq or Afghanistan conflicts, to defer payments on mortgages, credit cards, retail installment accounts and contracts, real property taxes and assessments, and vehicle leases for the period of active duty, plus 60 calendar days, or 180 days, whichever is the lesser, as specified, and extends those benefits to a spouse or legal dependent of a covered person.</p> <p>This Act extends those provisions to a reservist called to active duty on and after January 1, 2014, and to a spouse or legal dependent, as specified. It also limits the deferment period on financial obligations to not more than 180 days within a 365-day period.</p> <p>The Act requires the borrower to provide a copy of the activation or deployment orders and any other information that substantiates the duration of the service member's military service to be delivered to an obligor in order for an obligation of a reservist to be deferred, as provided, and makes false application a crime.</p>

**Money Transmitter Law**

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
A.B. 786	533	Financial Code §§	(1) Adds an exemption to the MT Law for payroll services that deliver wages or salaries to employees, make tax payments or employee benefit plan	This is cleanup legislation to the Money Transmitter Law enacted in

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		<p>2003, 2010, 2011, 2040, 2082, 2084, 2101, 2102, 2174, 2175</p>	<p>disbursements, etc.;</p> <p>(2) Authorizes the Commissioner of Business Oversight to exempt from all or part of the MT Law any person, transaction, or class of persons or transactions by regulation or order, to be published on the DBO’s web site;</p> <p>(3) Authorizes a flexible determination of the minimum tangible shareholders’ equity required for a MT Law license in an amount from \$250,000 to \$500,000, depending on estimated or actual transaction volume, as determined by the DBO based on specified factors; this amount may be increased by the DBO determined necessary based on those factors. The DBO must the commissioner to adopt regulations to carry out and implement those factors.</p> <p>(4) The list of eligible securities required to be considered in a licensee’s net worth shall include any receivable owed by a bank and resulting from an ACH or credit-funded transmission (as a cash equivalent) and certain securities held in a custodial capacity, as determined by the DBO based on specified factors.</p> <p>(5) Eliminates receipt requirements for money transmissions for goods and/or services.</p> <p>(6) The requirement that a licensee or its agent to forward all money received for transmission within 10 days after receiving that money shall not apply where the transmission is for the payment of goods or services;</p> <p>(6) The DBO is authorized to prepare written decisions, opinion letters, and other formal written guidance, which shall be posted on the DBO’s Internet Web site subject to certain limitations.</p> <p>(7) The DBO may offer guidance to a prospective licensee regarding the conditions of licensure and must provide such an inquirer with the minimum net worth required.</p>	<p>2010.</p> <p>The exemption provisions address the desire to provide flexibility for the development of new payment products.</p> <p>The net worth provisions address issues that have arisen in determining the net worth that should be required of MT Law licensees.</p> <p>The provisions pertaining to formal and informal guidance are intended to permit both flexibility on the part of the DBO to assist in the development of the payments industry, and certainty to prospective MT Law license applicants.</p>
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**Repossession Act**

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A.B. 791	340	B&P Code §§ 7505.2, 7506.9, 7507.4, 7507.12, 7507.2, 7508.7, 7508.8	<p>Cleans up specific areas of ongoing controversy:</p> <p>(1) Generally prohibits a repossession agency from disclosing to the public, without a court order, personal information about its employees or contractors;</p> <p>(2) Clarifies law pertaining to the using or taking of personal effects related to the collateral to clarify that the a reposessor is not prohibited from removing a locking mechanism or security device on the collateral in connection with a repossession;</p> <p>(3) Alters the current law that permits a licensed repossession agency to make demand for payment in lieu of repossession as specified. This Act prohibits a licensed repossession agency from making a demand for payment in lieu of repossession or from selling collateral recovered.</p> <p>(4) Will allow a person affiliated with a repossession agency to wear an oval, shield, round, square, or non-7-point badge, cap insignia, or jacket patch if it bears on its face all or a substantial part of the repossession agency’s name, the repossession agency license number issued by the Director of Consumer Affairs to that individual or agency, and the word “reposessor.” All such regalia must be clearly visible and be of a a standard design approved by the Director and to. A reposessor may not wear the badge on his or her belt or hanging around his or her neck. Fines may be assessed for violations of these rules.</p> <p>(5) Clarifies existing law as to when a vehicle repossession is complete. To the current rules (when the reposessor gains entry to the collateral, or when the collateral becomes connected to a tow vehicle), adds that a repossession is complete when the reposessor moves the entire collateral present or the reposessor gains control of the collateral.</p>	The Act represents industry-supported initiatives to improve the success and minimize controversy related to repossessions.
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**Unclaimed Property Law**

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A.B. 212	362	Code of Civil Proc. §§ 1513.5, 1530	Amends the escheat rules to decrease the reporting for items other than deposit accounts and traveler's checks from \$50 to \$25: multiple amounts of less than \$25 may be combined in an aggregate report. Permits a financial institution could impose a service charge for the reporting if the value of the property it holds is greater than \$2.	This Act takes effect on July 1, 2014.
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**State Issued Benefit Payments**

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
A.B. 1280	557	Add UIC 1339.1, Amend Cal Welfare and Inst. 11006.2	Prepaid card issuers or managers must ensure benefit payments directed to prepaid accounts must be FDIC insured, FDIC insurance must be provided to the individual recipient, there must not be attached to any credit or overdraft feature, and must provide the same consumer protections as provided to payroll cards under Reg E.	Codifies and extends consumer protections for state benefit payments as provided under the Department of Treasury's interim rule for federal benefit payments to prepaid cards.

**California Fair Debt Collection Practices Act**

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S.B. 233	64	Civil Code 1788.50 CCP	<p>Amends the California Fair Debt Collection Practices Act to crack down on collection practices that have received much public attention recently.</p> <p>(1) Addresses the scandalous practices engaged in by some of the large credit card-issuing banks of selling charged-off accounts without providing the debt buyer with the documentation necessary to prove the debt. The debt buyers have then been filing Small Claims Court Complaints, swearing to the accuracy of the alleged debt, without having the slightest idea whether the alleged debts were valid.</p> <p>(2) Addresses “time-barred debt:” i.e., debt that is barred by the applicable statute of limitations. The courts have generally held that debt collectors can try to collect time-barred debt so long as they do not do so in a misleading manner. This bill seeks to prevent any such misleading conduct by requiring a disclosure that clearly explains that the collector cannot sue for the debt, but may report it.</p> <p>(3) Requires that compromise agreements be provided in writing. This is intended to prevent unscrupulous debt collectors’ dishonestly memorializing settlement agreements reached with debtors.</p> <p>(4) Tightens procedures for execution and wage garnishments: again to prevent dishonest practices by unscrupulous debt collectors.</p>	<p>Again, the bad actors – and again, mostly entities that were large enough to have known better – have brought enhanced procedural burdens on the whole industry. Reputable debt collectors and debt buyers will be able to comply with this Act: although, of course, doing so will increase collection costs.</p>
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**California Finance Lenders Law: General**

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
A.B. 1091	243	Financial Code 22050, 22161, and	(1) Expands the incidental-loan-activity exemption from the CFL Law from one loan/12-month period to up to five loans/ 12-month period, so long as such loans are commercial loans and are incidental to the	(1) Provides some helpful working room for incidental lenders;

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		22712, and add Fin C 22707.5 and 50501.5	business of the person relying upon the exemption; adds an exemption for “community advantage lenders” authorized by the Small Business Administration to make community advantage loans; (2) Prohibits any person subject to the CFL Law from knowingly misrepresenting any material information regarding a transaction and committing any act that constitutes fraud or dishonest dealings; authorizes the Commissioner of Business Oversight to issue citations and levy fines for violations; (3) Authorizes the Commissioner to issue a written citation to a CFL or RML or other person and to order the correction of violations, and an assessment of an administrative fine of up to \$2,500.	(2) & (3) Specifically set forth in unmistakable language authority that the Commissioner probably had already.
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