

2014 California Chapter Laws

All Acts take effect on January 1, 2015, unless otherwise noted.

December 2014

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 expect to continue to work together to provide a broad range of services to clients in the financial services industry.

The 2014 California legislative session did not bring any major legislative changes in the areas of consumer finance, payments and financial privacy. For the most part, the new legislation signed by the Governor expands and clarifies existing laws—laws that will very likely continue to change as legislators attempt to keep up with the ever-evolving payments and privacy landscape.

Privacy and Data Security

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
A.B. 1710	855	Civil C. §§ 1798.81.5, 1798.82, 1798.85	Likely requires business responsible for a data breach to provide appropriate identity theft prevention and mitigation services to potentially affected consumers for 12 months. Expands data security requirements for entities that own, license or maintain personal data about California residents. Prohibits most offers to sell, or sales of, an individual's Social Security number.	Data security is becoming a high priority for regulators. Compliance with these new rules, while demanding, should help establish a safe harbor for financial services providers.

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General Statutes

There were several statutes enacted that will affect general business practices, with regard to the impact of technological advances in documentation and record-keeping:

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A.B. 129	74	Corp.C. §107 (repealed)	This Act repeals the statute which had prohibited a person from issuing or putting into circulation, as money, anything but lawful money of the United States.	Intended to decriminalize virtual currencies. Apparently also permits the circulation of private scrip or specie?
S.B. 1050	197	Civil C. §§ 1189 & 1195 Gov't C. § 8202	Revises the notary public Certificate of Acknowledgment. The notice must warn that notarization does not verify the truthfulness, accuracy, or validity of the document.	Notaries should obtain new acknowledgement materials immediately.
A.B. 2136	107	B&P C. § 10148 Civil C. § 1624	Provides that text messages and instant messages cannot constitute written contracts to convey real property, and licensed real estate dealers do not to have to retain them for three years.	A limiting step in the electronic age, as lawmakers strive to determine what constitutes a "writing." Protects the centuries-old rule that conveyances of real property must be in writing.
A.B. 2365	308	Civil C. § 1670.8	Prohibits any contract for the sale or lease of consumer goods or services to require the consumer to waive his/her right to make a statement about the consumer's experience with the seller or lessor (or their agents) or concerning the goods or services. Provides for a private right of action, and civil penalties.	An unfortunate overreaching measure in the ongoing on-line battle between the right to free speech and the right not to be defamed.

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General Statutes (cont'd)

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A.B. 2289	782	Corp. C. §§ 25620, 31116, 31121, 31158, Fin.C. §§ 12201, 17201, 22101, and 23005	This Act makes consistent amendments to the Franchise Investment Law, the Check Sellers, Bill Payers and Proraters Law, the Escrow Law, the California Finance Lenders Law, and the California Deferred Deposit Transactions Law to permit the Department of Business Oversight to prescribe circumstances under which it may accept electronic records or electronic signature.	The Department of Business Oversight continues to move toward minimizing the use of paper in favor of electronic media in all of its operations. This should encourage regulated entities to continue to do the same.

Consumer Credit: General

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
S.B. 245	117	Civil C. § 1632	This Act does not change any active portion of the statute that requires that a business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, must provide a translation in the language in which the contract was negotiated. It revises the legislative findings, to provide updated data about the extent to which these languages are spoken at home by Californians.	This is a word to the wise about the importance of being sure that consumers are able to understand the contracts they enter into. Expect this to be an examination hot button.

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Alternative Dispute Resolution

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A.B. 802	870	CCP § 1281.96	Expands the information that private consumer arbitration companies are required to collect and post on their web sites. Adds: (1) whether the arbitration was demanded pursuant to a contractual pre-dispute arbitration clause; (2) whether the consumer or the nonconsumer party was the initiator of the arbitration; (3) the nature of the dispute, in one of 12 categories; (4) which was the prevailing party; (5) the total number of occasions the nonconsumer party used the company; (6) the total number of occasions the nonconsumer party used the company's mediation services; (7) the name of the attorney and law firm used by the nonconsumer party; (8) the nature of the resolution, in one of seven categories; (9) the manner in which the hearing was conducted; (10) whether equitable relief was requested; (12) the amount of any monetary awarded, and of any attorneys' fees awarded; (13) whether a fee waiver was granted, and, if so, the amount. This information must be available in a manner readily searchable by the public.	Seems intended to keep pressure on AAA, JAMS, BBB, and other private arbitration providers. It is difficult to see how this information will be useful to consumers, and it is unfortunate that the Act does not require private consumer arbitration companies to collect and post the number of hits this data engenders.

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Repossessors Law

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
A.B. 2503	390	B&P C. §§ 7500.2, 7502.2, 7507.115, 7508.1, 7508.4, 7508.5 Govt. C §§ 28, 4000, 11705, 41612 Veh. C. § 10856	This Act is a major clean-up of the Collateral Recovery Act and related laws. Most of its provisions pertain to operational details that are inappropriately addressed in the current law. Substantive matters include (1) a requirement that a licensed repossession agency may only transact business with another entity as an independent contractor; (2) a requirement that only a qualified certificate owner or the agency's owner or officer to manage the day-to-day operations of a repossession agency; (3) a prohibition on a repossession agency determining the value of any collateral; (4) simplifying the required repossession report to law enforcement agencies; (5) clarifying that an unregistered vehicle may be driven as part of the repossession or impound process; (6) clarifying that an impounder may not refuse to release collateral to someone who is legally entitled to it; and (7) including buy-here-pay-here dealers as a class of entity subject to discipline by the DMV for violations of the Act. This Act took effect on an urgency basis, on September 17, 2014.	Most of these changes appear unremarkable and positive for the administration of repossessions.

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California Finance Lenders Law

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
S.B. 896	190	New Fin.C. §§ 22066-22067	<p>Creates an exemption from CFL Law for a nonprofit organizations that (1) “facilitates” zero-interest loans; (2) pays no broker’s fee in connection with the loans; and (3) no part of the organization’s net earnings inure to the benefit of a private organization or shareholder. the finance lenders law. An organization must apply to the DBO for the exemption and file an annual report. The DBO must post an annual report on its web site.</p> <p>Covered loans must be (1) unsecured; (2) may charge an administrative fee of the lesser of 7% of principal or \$90 on the first loan and 6% of principal or \$75 on subsequent loans, no more often than every four months; (3) may charge a late fee of \$10 (no grace period required), up to twice monthly; (4) for principal balances of \$500-\$2,500 at specified loan terms of 90-180 days; (5) made after a credit education seminar; (6) reported to a national credit reporting agency; (7) underwritten and documented to payents 50% of GMI (8) the other protections of the Pilot Program for Increased Access to Responsible Small Dollar Loans.</p>	<p>Let us hope that the Department will examine entities licensed under this scheme with the same stern eye that it applies to licensees whose taxes contribute to the common weal. Unlike the Pilot Program, this Act has no sunset date.</p>

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Money Transmitter Law

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A.B. 2209	499	Fin.C. §§ 2001, 2003, 2010, 2013, 2032, 2036, 2038, 2039, 2043, 2082, 2088, 2102, 2103, 2105, 2124, 2176, 2176	This Act is clean-up legislation for new Money Transmission Act, enacted in 2010. It is largely administrative, but contains some interesting additions. It defines “E-commerce,” as “any transaction where the payment for goods or services is initiated via a mobile application or an internet web site.” AB 2209 adds an “agent of a payee” exemption from licensure. It exempts contact bill payment from the definition of the MT Act. It revises the receipt required under the MT Act and broadens customers’ refund rights. It broadens and strengthens the DBO’s authority to interpret and implement the MT Act.	Other than the new receipt form, this Act should have minimal impact on MT Act licensees’ operations.

Mortgage Lending

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
A.B. 1393	152	R&T C. § 17144.5	Amends California law to conform to federal income tax law on excluding the discharge before January 1, 2014, of qualified principal residence indebtedness.	One last salvo in the mortgage crisis cleanup.
A.B. 1730	457	Civil C. §§ 2944.7, 2944.8, 2944.10	Authorizes government officials to sue for civil penalties against those who unlawfully charge advance fees for mortgage loan modifications. Extra penalties on those who charge seniors or persons disabled. Enacts a four-year statute of limitations for such actions.	Part of the post-mortgage crisis effort to crack down on unscrupulous entities who promise more relief to borrowers than can be

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An imbalance between rich and poor is the oldest and most fatal ailment of all republics. – Plutarch