

2016 California Chapter Laws

All Acts take effect on January 1, 2017, 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 expect to continue to work together to provide a broad range of services to clients in the financial services industry.

The 2016 California legislative session was unusually quiet in the areas of consumer finance, payments and financial privacy. Only a handful of bills were passed and signed, as summarized below.

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. 2828	337	Civil C. §§ 1798.29, 1798.82	Current law requires disclosure by businesses of security breaches that may compromise personal data. This Act expands that requirement to include a breach where the data holder reasonably believes that encrypted information <i>and</i> the encryption key have been breached.	Businesses will no longer be able to avoid disclosing a breach of encrypted personal information when an encryption key has been acquired that “could render that personal information readable or useable.” This will likely result in more reports of data breaches by businesses as encrypting data will no longer be sufficient as this will require better safeguarding of passcodes, security credentials and the like—no more writing them down on sticky notes!

Student Loan Servicing

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
A.B. 2251	824	Financial C. §§ 28100 <i>et seq.</i>	Effective July 1, 2018, this Student Loan Servicing Act provides the licensure, regulation, and oversight of student loan servicers by the DBO. It prohibits engaging in the business of servicing a student loan in California, directly or indirectly, without a license, or exemption.	The servicing of unsecured and personal property-secure lending has hitherto not been an entity-related regulated activity in California. This is the first statute that regulates the servicing of any unsecured loan in California.

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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. 777	478	Financial C. § 22050.5	Amends the CFL Law to add an exemption for any person who makes only one loan in a 12-month period, so long as that loan is a commercial loan as defined in the CFL Law.	This continues the accretion of special-purpose exemptions to the CFL Law's licensing requirements. Note that such a loan will still be subject to the usury laws.
S.B. 984	480	Financial C. §§ 22370, 22380, 22381	Cleans up a typographical error in the Pilot Program for Increased Access to Small Dollar Loans. Modifies the report DBO must prepare on the Pilot Program. Extends the sunset date of the Pilot Program to January 1, 2023.	The extension of the sunset date provides further certainty for Pilot Program licensees.

Real Estate Law

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
A.B. 1807	558	B&P C. § 10082.3	Permits a real estate licensee to petition to petition to remove a record of disciplinary action that has been posted on the DRE's web site for 10 years or more. The licensee must present evidence of rehabilitation showing that the posting is no longer necessary to prevent a credible risk to the public. The DRE may issue regulations to implement this new rule. This Act takes effect on January 1, 2018.	The fact that disciplinary and enforcement actions remain on regulatory agencies' web sites until the Earth falls into the sun has been drawn to various regulators' attention as a violation of fundamental fairness. This Act represents the first legislative recognition that there should be an opportunity, at least in some circumstances, to expunge such postings. For that reason, it is significant far beyond its limited immediate effect.

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Bank Deposit Operations

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
A.B. 1784	180	Financial C. § 1083	Authorizes banks to participate in a financial education program that involves receiving deposits or paying withdrawals on the premises of a school or school facility, and provides that the school premises or facility will not be considered a branch office of the bank if certain conditions are met. This implements parity with current national bank guidance.	This new effort stems from the FDIC's Youth Savings Pilot Program to encourage depository institutions to provide youth with access to banking. A handful of student run banks have been launched by Union Bank in the state. These efforts may satisfy CRA requirements, provide good publicity and may capture a small number of youth to be future banking customers.

Collections

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
A.B. 1723	376	Civil C. §§ 1785.16.2, 1788.18	Strengthens existing law requiring a debt collector who that receives a copy of a police report on an identity theft crime and a written statement of identity theft from the debtor to to cease collection activities until completion of a review. The debt collector must now notify each consumer credit reporting agency to which it has reported that the account is disputed; initiate its review within 10 business days; and send notice of its determination within 10 business days after concluding the review. If the review supports the claim of identity theft, the debt collector that does not recommence collection activities must notify the creditor and each consumer credit reporting agency to which it reported within than 10 business days after making its determination. The Act also prohibits a creditor from selling a consumer debt to a debt collector if the creditor has received notice that the debt collector has terminated debt collection activities, as described above.	The Act seems merely to enact best practices, in a standardized format.

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Mortgage Lending

<i>Bill #</i>	<i>Chapter Law #</i>	<i>Statutes Affected</i>	<i>Summary of Provisions</i>	<i>Comments</i>
S.B. 657	797	Financial C. §§ 50003, 50201	This Act requires licensing of any entity or natural person who is an independent contractor, of a Residential Mortgage Lender (RML) who engages in the activities of a loan processor or underwriter for residential mortgage loans, even if that person does not solicit loan applicants, originate mortgage loans, or fund mortgage loans. The bill would authorize the commissioner may require a licensee who is engaged in the processing or underwriting of residential mortgage loans to continuously maintain a minimum tangible net worth of the lesser of the lesser of (1) \$250,000, or (2) the net worth required of an approved lender by the Federal Housing Administration.	This Act conforms the RML's licensing eligibility rules to new HUD definitions.
S.B. 1150	838	New Civil C. § 2920.7	This Act adds a protection to the California Homeowner's Bill of Rights (HBOR) to protect the successor(s)-in-interest of a deceased homeowner who was entitled to a mortgage modification under that law, by permitting the assumption of the mortgage loan and the applicability of other HBOR protections to such a successor-in-interest who can demonstrate that he or she qualifies under the this Act and the HBOR for such protection.	Closes a perceived loophole that some mortgage servicers were apparently using to accelerate foreclosures and evict elderly widows from their homes.

No government can be long secure without formidable opposition.

- Benjamin Disraeli