

Summary of California Laws Enacted in 2018 Impacting the State's Financial Services Industry: What to Look Forward to (and Prepare for) in California in 2019

Introduction

2018 was an active year for the California legislature in enacting laws that will impact the financial services industry—both directly and indirectly. We summarize below the most pertinent. As a general rule, legislation enacted in 2018 becomes effective on January 1, 2019. We note where that is not the case.

Privacy

Comprehensive New Privacy Protections for Individuals – AB 375 and SB 1121. The California Consumer Privacy Act of 2018 (CCPA) imposes a privacy regime in California that is unlike anything seen in the United States. It was enacted as a defensive response to a ballot referendum that, if passed, would have imposed impossible privacy standards and practices for financial service providers and many other industries. The two CCPA bills were enacted to try to mitigate the potential impact of that referendum.

The CCPA establishes new privacy rights applicable to "Personal Information" that a covered commercial enterprise "collects" about a consumer. The CCPA has a delayed effective date of January 1, 2020 with implementing regulations to be issued by the California Attorney General's Office no later than July 1, 2020. The categories of Personal Information and businesses covered by the CCPA, and the consumers whose information is protected by the CCPA, is broad—far broader than under the Gramm-Leach-Bliley Act (GLBA) and California's Consumer

Financial Information Privacy Act (CFIPA). Similarly, while the CCPA exempts Personal Information governed by federal statutes, including the GLBA and Fair Credit Reporting Act, from its coverage, the exemption does not extend to the covered businesses maintaining the Personal Information.

The Personal Information covered by the CCPA includes information that "identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household." This includes, for example:

- A person's name, alias, signature, physical characteristics or description, telephone number, address, unique personal identifier, IP address, email address, account name, social security number, passport number, driver's license or state identification card number or other similar identifiers, insurance policy number—this list goes on, and on and on.
- Characteristics of protected classifications under California or federal law (for example, race, color, sex, age, religion, national origin, disability, citizenship status, and genetic information).
- Commercial information, such as records products or services purchased or considered, or other purchasing or consuming histories or tendencies.
- Biometric information.
- Internet or other electronic network activity information, including, but not limited to,

browsing history, search history, and information regarding a consumer's interaction with an Internet website, application, or advertisement.

- Geolocation data.
- Inferences drawn from any of the information identified in the CCPA to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, preferences, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

The entities to which the CCPA applies is equally broad, applying to for-profit commercial businesses that do business in California and that satisfy one of the following criteria: (1) businesses that have annual gross revenues in excess of \$25 million as adjusted; (2) businesses that buy, receive, sell or share for commercial purposes the Personal Information of 50,000 or more customers, or (3) businesses that derive at least 50 percent of their revenues from selling consumers' Personal Information.

Covered businesses are required to disclose to consumers what categories of their Personal Information are being collected, sold or disclosed about them, and to whom the Personal Information is being sold or disclosed. The disclosure must also inform consumers that they have the right to delete their Personal Information from the business' database and/or prevent the business from selling or disclosing their Personal Information to others.

Primary enforcement under the CCPA resides with the California Attorney General. Violators are subject to civil penalties of no more than \$2,500 per violation or \$7,500 for each intentional violation. The CCPA also gives consumers a private right of action, but only for security breaches of non-encrypted or non-redacted Personal Information resulting from a violation of reasonable security practices and procedures, and regardless of whether the affected consumer(s) can prove injury.

Law Enforcement Agencies' Right to Request Account Information – AB 3229. AB 3229 expands the list of state and local law enforcement agencies that are authorized to request customer

depository account information from banks, credit unions and savings associations to include a special agent with the Department of Justice. To gain access to depository account information, existing law requires these law enforcement agencies to certify that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders drawn upon the account. Account information that is accessible is limited to customer depository transactions occurring thirty (30) days before, and up to thirty (30) days after the date of occurrence of the alleged act. *Statutory citation: CA Government Code Section 7480.*

Mortgage – Default Servicing

New and Reinstated Foreclosure Protections – SB 818; Chapter 404. SB 818 reinstates provisions of the California Homeowner Bill of Rights or “CHBOR” that were sunsetted.

Under SB 818, residential mortgage servicers who have foreclosed on more than 175 real properties in the prior calendar year must again follow CHBOR loss mitigation procedures that were enacted in 2012 and repealed on January 1, 2018.

CHBOR provides loss mitigation measures prior to instituting a non-judicial foreclosure for homeowners in default on their first lien mortgages secured by owner-occupied residential property. Before a Notice of Default can be recorded, SB 818 requires mortgage servicers to make a good faith attempt to contact their defaulted borrower, assess the borrower's current financial situation, and explore options for the borrower to avoid foreclosure, including loan modification. If the borrower in default submits a complete loan modification application at least five (5) business days prior to a scheduled foreclosure sale, the mortgage servicer must suspend the pending sale while the application is being reviewed. If a borrower executed a permanent foreclosure alternative prior to the foreclosure sale date, the Notice of Default must be rescinded and any pending trustee sale canceled. *Statutory citation: CA Civil Code Sections 2923.4, et seq.*

Successors-in-Interest on Residential

Mortgage Loans – SB 1183; Chapter 136. SB 1183 addressed "successor-in-interest" provisions of existing law. It revises current mortgage servicing laws to remove reverse mortgage products from the successor-in-interest requirements that are applicable to first lien residential mortgages secured by owner-occupied real property. Existing law prohibits mortgage servicers from recording a notice of default (NOD) when notified by a person claiming to be a successor-in-interest to a borrower that the borrower has died. The servicer must refrain from recording the NOD while the claimant is given the opportunity to prove that he or she is the borrower's legitimate successor-in-interest. Existing law further requires mortgage servicers to allow legitimate successors-in-interest to assume the deceased borrower's loan or to apply for foreclosure prevention alternatives on an assumable loan, as specified. As a result of SB 1183, these prohibitions and requirements will not apply to reverse mortgages. *Statutory citation: CA Civil Code Sections 2920.7.*

Foreign Language Translations – SB 1201;

Chapter 356. SB 1201 expands California's loan document translation requirements to loan modifications. Specifically, SB 1201 now requires a "supervised financial organization" that negotiates a loan modification on a residential mortgage loan in Spanish, Chinese, Tagalog, Vietnamese, or Korean to deliver a specified form at the time the final loan modification offer is made. That disclosure form must summarize the offered loan modification terms in the same foreign language as was used in the negotiation. The Department of Business Oversight is tasked with creating the form documents in each of the foreign languages. These provisions will take effect ninety (90) days after the translated loan modification summary forms are published by the Department of Business Oversight. *Statutory citation: CA Civil Code Sections 1632.5.*

Debt Collection

Collecting Time-Barred Debt – AB 1526;

Chapter 247. AB 1526 amends California's Rosenthal Fair Debt Collection Practices Act to expressly prohibit a debt collector from sending a written communication to a debtor attempting to collect a time-barred debt without providing specific written notice stating that the debtor may not be sued for the debt, but that the debt, depending on its age, may be reported as unpaid to credit reporting agencies. AB 1526 sets forth two alternative statutory notices, depending on whether the debt is past the date for obsolescence under the federal Fair Credit Reporting Act. AB 1526 further establishes a four-year statute of limitation for collecting on a "book account" or "account stated," starting from the date of the last account item sought to be collected. When the four-year period has run, no person may bring suit or initiate an arbitration or other legal proceeding to collect the debt. The four-year period may be extended, but only in very limited circumstances. *Statutory citation: CA Civil Code Section 1788.14 and CA Code of Civil Procedure Section 337.*

Department Of Business Oversight – Administration

Audit Requirements of Licensed Lenders –

SB 1201; Chapter 356. SB 1201 amends the Residential Mortgage Lending Act to give the Commission of the Department of Business Oversight additional power when a licensee fails to have a year-end audited financial statement prepared (which licensees are required to do to maintain their license). In that instance, the Commissioner is now authorized to have the audit made by an independent certified public accountant at the licensee's expense. SB 1201 further provides that the revocation of an RMLA license does not (adversely) affect the powers of the Commissioner to act. *Statutory citation: CA Financial Code Section 50200.*

Requirement of Licensed Lenders to Maintain an Email Address – SB 1361;

Chapter 699. SB 1361 requires any licensed financial institution that is subject to the jurisdiction of the Commissioner of the Department of Business Oversight to establish and maintain an email address for receiving communications and documents from the Commissioner. The address cannot be the email address for an individual employee; rather, it must be a domain address such as “Licensing@xyzlending.com.” Licensees are further required to inform the Commissioner of any change in the address prior to the change and provide the new email address. Failure to comply subjects the licensee to a fine of up to \$50 per day, not to exceed \$1,000. *Statutory citation: CA Financial Code Section 331.5.*

Commercial Loan Disclosures – Senate Bill 1235; Chapter 1011. Senate Bill 1235 amends the California Financing Law (CFL) to require certain providers of “commercial financing” to disclose information to a recipient at the time of extending a commercial financing offer that is \$500,000 or less and to obtain the recipient’s signature on the disclosure before consummating the commercial financing transaction. SB 1235 does not create new licensing obligations. Rather, it imposes new disclosure requirements on those who fall within SB 1235’s coverage, including both those who are licensed under the CFL and those who are not required to obtain a CFL license.

This change will impact a broad range of non-bank fintech companies offering smaller balance commercial loans. In fact, one purpose of the bill was to require disclosures in so-called bank partnership arrangements, when a commercial finance provider works through an online platform.

While the disclosures vary slightly depending on the type of commercial financing involved, a provider would generally need to disclose the following information: (i) total amount of funds provided; (ii) total dollar cost of the financing; (iii) term or estimated term; (iv) method, frequency and amounts of payments; (v) description of prepayment policies;

and (vi) total cost of the financing expressed as an annualized rate. Because the law covers commercial open-end credit plans, accounts receivable transactions and certain lease financing transactions, alternative disclosures for factoring or asset-based lending are provided. *Statutory citation: CA Financial Code Sections 22780.1, 22800-22805.*

Hazard Insurance – CA Wildfire Claims

Hazard Insurers’ Obligation to Provide Copies of Policies – AB 1799; Chapter 69. AB 1799 amends the California Insurance Code requirements that specify the documents an insurer must provide a homeowner when a claim of loss under a fire insurance policy is submitted. AB 1799 requires insurers to provide a complete copy of the fire insurance policy in effect at the time of the loss, including any endorsements to the policy and policy declarations page. These documents can be provided electronically if the covered loss is the result of a state of emergency and the electronic copy is requested by an insured who has not elected to receive electronic documents. *Statutory citation: CA Insurance Code Section 2084.*

Obligation of Insurers to Provide Estimates of Replacement Costs – AB 1797; Chapter 205. Underinsurance is one of the hard lessons learned from the 2017 California wildfires. Many wildfire survivors were underinsured due to outdated or inaccurate replacement cost models. AB 1797 requires residential property insurers that offer replacement cost coverage in California to provide, every other year, an estimate of the cost necessary to rebuild or replace the insured structure at the time an offer to renew a residential hazard insurance policy is made to the policyholder. AB 1797 takes effect on July 1, 2019. *Statutory citation: CA Insurance Code Section 10103.4.*

Cybersecurity – Credit Reporting Agencies

Credit Reporting Agencies’ Data Security Obligations – AB 1859; Chapter 532. AB 1859 requires a credit reporting agency “that owns, licenses, or maintains personal information about a

California resident” or a third party that maintains that Personal Information on behalf of a credit reporting agency to implement available software updates to address security vulnerabilities. Specifically, a credit reporting agency, or applicable third party that knows or reasonably should know, that a system maintaining Personal Information is subject to a security vulnerability must, within three (3) days, begin testing for implementation of an available software update, and complete the update no later than ninety (90) days after becoming aware of the vulnerability. This law requires the credit reporting agency to employ “reasonable compensating controls” to reduce the risk of breach until the software update is complete. Additionally, regardless of whether a software update is available, the law requires the credit reporting agency to comport with industry best practices, including (i) identifying, prioritizing, and addressing the highest risk security vulnerabilities most quickly; (ii) testing and evaluating compensating controls and how they affect security vulnerabilities; and (iii) requiring, by contract, that third parties implement and maintain appropriate security measures for Personal Information. The Attorney General has exclusive authority to enforce this requirement. *Statutory citation: CA Civil Code Section 1798.81.6.*

Corporations – Boards Of Directors

Publicly Held Corporations Requirement to Have One Female Board Member – SB 826; Chapter 954. SB 826 requires a publicly held domestic or foreign corporation whose principal executive offices are located in California to have a minimum of one female on its board of directors by the end of 2019. A corporation may increase the number of directors on its board to comply with this requirement. By the end of 2021, the minimum number would rise to two (2) female directors if the corporation has five (5) directors; or three (3) female directors if the corporation has six (6) or more directors. Corporations with four (4) or fewer directors would have to have one (1) female director. Additionally, the Secretary of State will publish various online reports documenting the number of

corporations in compliance with the law. The Secretary of State will also have the authority to impose fines for violations of the law, including \$100,000 for failure to timely file board member information with the Secretary, or for a first-time violation of the law. *Statutory citation: CA Corporations Code Sections 301.3 and 2115.5.*

Employment – Sexual Harrassment Training

Sexual Harassment Training – SB 1343; Chapter 956. SB 1343 requires an employer with five or more employees to provide at least two hours of sexual harassment training to all supervisory employees, and at least one hour of sexual harassment training to all nonsupervisory employees by the start of 2020. After 2020, employers must provide the training once every two years. The training may be completed by employees individually or as part of a group presentation, and may also be completed in shorter segments (provided that the applicable hourly total is met). The training must include information and practical guidance regarding federal and state laws concerning the prohibition, prevention and correction of sexual harassment. In addition, the training must discuss the remedies available to victims. The Department of Fair Employment and Housing will develop a set of one-hour and two-hour online sexual harassment training courses. The Department will also make existing informational posters and fact sheets, as well as the online training courses, available in English and alternate languages, including Spanish, Simplified Chinese, Tagalog, Vietnamese, and Korean. *Statutory citation: Government Code Sections 12950 and 12950.1.*

Employment – Criminal History

Criminal History Checks of Employees – SB 1412; Chapter 987. SB 1412 modifies existing law to carve out circumstances where an employer is permitted to ask about an applicant’s convictions. The first carve out applies if federal or state law requires the employer to obtain information regarding a “particular conviction.” The second carve

out applies if the applicant would be required to possess or use a firearm in the course of his or her employment. The final carve out applies when an individual with a “particular conviction” is legally prohibited from holding the position sought, or when an employer is legally prohibited from hiring an applicant with a “particular conviction.” Each of these scenarios applies even if the conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation.

The law defines “particular conviction” broadly as “a conviction for specific criminal conduct or category of criminal offenses prescribed under federal law or regulation, or under state law, that expressly contains certain requirements, exclusions or both, expressly based on the criminal offense conviction.

The Bill also clarifies that an employer may seek or receive an applicant’s criminal history report when it is legally required to conduct criminal background checks for employment purposes. *Statutory citation: Labor Code Section 432.7.*

Student Loans – Licensing

Student Loan Servicing – Assembly Bill 38; Chapter 379. Assembly Bill 38 amends California’s Student Loan Servicing Act by subjecting them to licensure, regulation and oversight by the California Department of Business Oversight. Among other things, AB 38 clarified the criteria the Department may use to deny a license application. The Department now also has the ability to require both license applicants and licensees to submit required filings with the Department through the Nationwide Multistate Licensing System and Registry and to report violations of the act, enforcement actions, and information to the licensing system and registry to the extent the information is a public record.

Excluded from the Act, however, are debt collectors that exclusively service defaulted student loans. *Statutory citation: Financial Code Sections 28102, 28104, 28106, 28110, 28111, 28114, 28116, 28117, 28120, 28122, 28125, 28125.1, 28125.2, 28128,*

28130, 28134, 28136, 28142, 28144, 28153, 28153.5 and 28154.

Military – Servicemembers’ Rights

Servicemember Protections – Assembly Bill 3212. Assembly Bill 3212 does many things. The provisions most pertinent to financial service providers expands the protections of the Military and Veterans Code. The existing provisions require creditors to reduce interest bearing obligations of certain servicemembers to a rate of six (6) percent during military service. For an obligation mortgage loan, this prohibition extends to one (1) year after the period of military service. AB 3212 extends this prohibition (a) for student loans, to one (1) year after the period of military service, and (b) for other obligations that are not mortgage or student loans to one hundred and twenty (120) days after the period of military service. This Bill also contains provisions (a) concerning written responses to good faith requests for relief, (b) mirroring the federal Servicemembers Civil Relief Act’s protections for motor vehicle lease terminations and cancelations, and (d) permitting a court to stay for one hundred and twenty (120) days an action or proceeding during the period of military service (this is twice the prior sixty (60) days).

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