

2002

## 2001-2002 Legislative Summary

Assembly Banking and Finance Committee

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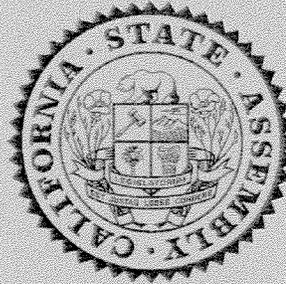
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# ASSEMBLY COMMITTEE ON BANKING AND FINANCE



## 2001-2002 LEGISLATIVE SUMMARY

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October 2002

Dear Interested Parties:

This brochure recapitulates legislation considered by the Assembly Committee on Banking and Finance, for the two-year legislative session 2001-2002, and reflects action taken either by the Governor or action taken by the committee. Most of the bills signed into law will take effect on January 1, 2003. The full text of legislation summarized in this booklet may be viewed on the Internet via the Legislative Counsel's website ([www:assembly.ca.gov](http://www:assembly.ca.gov)).

This year the committee evaluated legislation that fully encompassed the scope of the committee's jurisdiction and included many hours of testimony on the subject of privacy, and identity theft. No bill relating to the protection of personal financial information and arising out of the perceived inadequacy of the Gramm-Leach-Bliley Act (P.L. 106-102) was sent to the Governor. However the Legislature did pass ACR 125 (Papan) (Resolution Chapter 167 Stats. 2002) which requested the California Law Revision Commission to study the issues relating to the protection of personal financial information and recommend appropriate legislation.

We hope this publication will be informative and useful as a reference tool. For additional copies or other information concerning committee activities, please contact Betty Yearwood, Committee Secretary or Bill George, Chief Consultant at (916) 319-3081.

Respectfully,



Louis J. Papan  
Chairman

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## COMMITTEE ON BANKING AND FINANCE ASSEMBLY MEMBER LOUIS J. PAPAN, CHAIR

### Committee 2001-2002 Legislative Summary

If there were a sine qua non for legislation that is within the subject matter jurisdiction of the Banking and Finance Committee, it would be "financial risk," i.e., "The risk of a loss of wealth in relation to expectations." Specifically, the committee jurisdiction includes:

- California Pollution Control Financing Authority
- Charitable and cooperative corporation law
- Consumer finance and credit reporting
- Corporate securities law
- Financial institutions
- Foreign banking
- Foreign investments in California
- Formation of new corporate entities
- Franchises, except for arbitration of disputes between franchisor / franchisee
- Industrial development bonds
- Insurance finance and lending practices
- Real property finance
- State investment practices

The common attribute of the aforementioned entities is that they are financial intermediaries<sup>[1]</sup>, in the broad sense, making money on others' money.

Following is a list of the bills, by subject matter, which were at some point heard in the committee.

## Access to Capital

### AB 29 (Papan) Ch 160 Stats. 2001

Existing law establishes the Capital Access Loan Program and authorizes the California Pollution Control Financing Authority to contract with a financial institution to participate in the program. Existing law defines the term "financial institution" for purposes of the program as one that is domiciled or has its principal office in the State of California. This bill would limit that requirement to a lending institution that has executed a participation agreement with the Small Business Administration under a guaranteed loan program or a specified small business investment company.

### AB 690 (Wiggins) Ch 939 Stats. 2002

Existing law defines "community development financial institution" for certain purposes related to taxation. This bill would provide that the State Assistance Fund for Enterprise, Business, and Industrial Development Corporation (SAFE-BIDCO) meets the definition of community development financial institution for purposes of taxpayer eligibility for certain tax credits.

## **Banks and Banking**

### **AB 551 (Papan) Ch 1162 Stats. 2002**

Existing law provides for the regulation of financial institutions, including industrial banks, by the Commissioner of Financial Institutions and by various federal agencies. This bill would prohibit a person, except as specified, from acquiring control of an industrial bank unless the person is engaged only in the activities that are permitted for a financial holding company as provided in federal law, or the person is a credit union when the industrial bank is a credit union service organization as provided in state law.

### **AB 1893 (Papan) Ch 158 Stats. 2002**

Existing law imposes limitations on the amount of money that a person, partnership, or association may owe a commercial bank. Existing law authorizes exceptions to these limitations if a loan is, among other things, secured by obligations of the United States or is covered by a guarantee or commitment by any Federal Reserve Bank, any department or bureau of the United States, or any specified small business development corporation. This bill would add another exception for obligations secured by a segregated deposit account in a lending bank provided the security interest in the deposit has been perfected and meets specified conditions.

### **AB 2373 (Papan)**

Existing law provides for the regulation of banks, credit unions, and industrial loan companies by the Commissioner of Financial Institutions. Existing law authorizes the commissioner to issue an order suspending or removing a subject person of a bank or a subject person of an industrial loan company, or censuring or suspending an officer, director, or employee of a credit union, if that person has violated the law regulating those financial institutions. This bill would repeal those provisions of law authorizing the commissioner to issue an order of censure, suspension, or removal and would instead enact new provisions of law authorizing the commissioner to suspend or remove a subject person of a financial institution, as defined, for violating the laws regulating the particular category of financial institution. The bill would provide that it is a crime for a person to engage in various acts after an order suspending or removing the person has been issued by the commissioner and would also authorize the commissioner to impose civil penalties for those acts. Measure failed passage.

### **AB 2871 (Goldberg)**

Existing law provides for the regulation of state-chartered banks by the Commissioner of Financial Institutions. This bill would establish a Community Bank Advisory Committee in the Department of Financial Institutions to advise the commissioner on matters relating to community banks. The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. This bill would exempt the Community Bank Advisory Committee from these requirements. Measure failed passage.

SB 1225 (Committee on Banking, Commerce and International Trade) Ch 61 Stats. 2001

Existing law, the Banking Law, permits an industrial bank to engage in all the activities of a commercial bank. Existing law prohibits an industrial bank from accepting demand deposits but authorizes an industrial bank to accept deposits evidenced by investment or thrift certificates. This bill would authorize an industrial bank to accept deposits evidenced by deposit accounts or certificates instead of by investment or thrift certificates.

SB 1237 (Speier)

Existing law provides uniform rules governing, among other things, the relationship of banks with their depositors in connection with the collection and payment of items. This bill would provide that banks shall not require but may use an individual's mother's maiden name as an account identifier on accounts established after July 1, 2003. The bill would require banks that have used an individual's mother's maiden name as an identifier for accounts established as of July 1, 2003, to send a written notification to its current account holders indicating that the use of the identifier may pose a potential risk for identity theft and that the individual may contact the bank and request that the use of the identifier be discontinued and that a descriptive word be used. The bill would require that the written notification be placed in a prominent location on a mailing and would authorize it to be sent as a supplement to a current mailing or by a separate mailing. Measure failed passage.

## Business Entities

### AB 55 (Shelley) Ch. 1015 Stats. 2002

Existing law, the General Corporation Law, requires a domestic corporation and a foreign corporation to file statements with the Secretary of State disclosing specified information concerning its operation biennially. This bill would require the statement to instead be filed annually. The bill would specify additional information that a publicly traded corporation is required to include in these statements. The bill would make the information contained in the statements open to public inspection and would require the Secretary of State, prior to December 31, 2004, to make this information available on an online database. The bill would also require a corporation to pay a \$5 disclosure fee when filing the statement in addition to any other fees required. The bill would specify the use of this fee, including the deposit of one-half of the fee revenue into the Victims of Corporate Fraud Compensation Fund, which would be established by the bill. The bill would require the Secretary of State to administer the fund and to adopt regulations regarding its administration and the eligibility of victims to receive compensation.

### AB 119 (Chavez) Ch. 547 Stats. 2001

Existing law provides for the licensing and regulation by the Commissioner of Corporations of broker-dealers handling transactions of securities. Existing law authorizes the Department of Justice to furnish state summary criminal history information (otherwise known as a background check) concerning an individual to various persons and entities that are authorized to receive that information, including banks and other financial institutions. This bill would authorize a licensed broker-dealer, or affiliate, or any officer or employee thereof, to submit to the department fingerprints of an applicant for employment for the purpose of obtaining information on whether that applicant has a conviction or an arrest for which the applicant was released on bail or on his or her own recognizance pending trial, as established by the department. The bill would provide that fingerprints includes fingerprints taken by the use of fingerprint live-scan technology.

### AB 601 (Leach) Ch 179 Stats. 2002

Existing law authorizes a person who sells the goodwill of a business and a shareholder disposing of all of his or her shares in the corporation or its subsidiary or disposing of all or substantially all of the assets of the corporation or those of a division or subsidiary together with the goodwill of the corporation or its division or subsidiary, to contract with the buyer to refrain from competing with the business so sold, under certain conditions. Existing law additionally authorizes a member of a limited liability company and a partner of a partnership to agree to refrain from competing with a business upon the dissolution of the company or partnership, upon the sale of the member's or partner's interest in the entity, or upon the disassociation of the partner from the partnership. This bill would extend this authorization to any owner's sale or other disposition of the ownership interest or assets, together with the goodwill, of a business entity or a division or subsidiary thereof. The bill would define "business entity," "owner," and "ownership interest" for purposes of these provisions. The bill would include a partnership and a limited liability company within the definition of a business entity and would make related changes with respect to partnerships and limited liability companies.

AB 1596 (Shelley) Ch 595 Stats. 2001

Existing law provides for the formation of various types of legal entities, including limited liability partnerships and foreign limited liability partnerships. Existing law authorizes, until January 1, 2002, the formation of registered limited liability partnerships and foreign limited liability partnerships to engage in the practice of architecture. This bill would extend until January 1, 2007, the authorization to form limited liability partnerships and foreign limited liability partnerships to engage in the practice of architecture.

AB 1875 (Nakano) Ch 390 Stats. 2002

The General Corporations Law sets forth procedures for the creation and dissolution of a corporation. This bill would authorize the filing of articles of dissolution with the Secretary of State relative to the dissolution of a corporation that has not issued shares and would revise certain related provisions.

AB 2355 (Bill Campbell) Ch 451 Stats. 2002

Limited liability companies are regulated pursuant to the Beverly-Killea Limited Liability Company Act. Existing law authorizes a court of competent jurisdiction, upon application by a judgment creditor of a member of a limited liability company, to charge the membership interest of the member with payment of an unsatisfied judgment. Existing law provides that, to the extent charged, the judgment debtor has only the rights of an assignee of the membership interest. This bill would extend these provisions to an application by a judgment creditor against an assignee of the membership interest, and would provide that service of a notice of motion for a charging order on a judgment debtor and on all members or the limited liability company creates a lien on the judgment debtor's assignable membership interest in the limited liability company. The bill would provide that the lien continue under the terms of the charging order, if granted, and would authorize the court to order a foreclosure on the membership interest at any time, subject to the charging order. The bill would delete the provision that, to the extent charged, a judgment creditor has only the rights of an assignee of the membership interest. The bill would provide that the purchaser at the foreclosure sale has the rights of an assignee. This bill would also provide that, at any time before foreclosure, a membership interest charged may be redeemed by the judgment debtor, by other members with property other than property of the limited liability company, or by other members with property of the limited liability company with the consent of the members whose membership interests are not so charged. This bill would authorize a court that has issued a charging order to appoint a receiver of the share of the distributions of the limited liability company and to make other orders, directions, accounts, and inquiries that the judgment debtor might have made or that the circumstances may require.

AB 2519 (Keeley) Ch 112 Stats. 2002

Existing law, the Nonprofit Corporation Law, sets forth procedures for the voluntary dissolution of a nonprofit public benefit corporation. Under existing law, the directors of that corporation are required to file with the Secretary of State a certificate of dissolution stating, among other matters, that the corporation's assets have been distributed or that none were acquired by the corporation. This bill would delete this statement from the required information on a certificate of dissolution and would require that a document issued by the Attorney General either waiving

objections to the distribution of the corporation's assets or confirming that the corporation has no assets be attached to the certificate of dissolution before being filed with the Secretary of State.

SB 263 (Johnson) Ch 425 Stats. 2001

Existing law provides for the creation of various forms of business organizations, including limited liability partnerships and limited liability companies. Existing law requires the Secretary of State to prescribe a form relative to filing with the Secretary of State of a certificate of registration by limited liability partnerships and articles of organization by limited liability companies. This bill would require the Secretary of State to include with instructional materials provided in conjunction with these forms a notice that filing the registration will obligate the limited liability partnership or limited liability company to pay an annual tax for that calendar year to the Franchise Tax Board. The bill would require the notice to be updated annually to specify the dollar amount of the tax.

SB 399 (Ackerman) Ch 480 Stats. 2002

Existing law provides for the creation of various forms of business organizations, including various forms of partnerships, corporations, and limited liability companies, and provides for conversion of certain of these forms of business organizations, other than corporations, into other forms of business organizations. Under existing law, a business organization is required to file specified documents with the Secretary of State. The Secretary of State is authorized to charge a fee in connection with the filing that is paid into the Secretary of State's Business Fees Fund. This bill would establish procedures for the conversion of California corporations into domestic limited liability companies, limited partnerships, or general partnerships. The bill would also establish procedures for the formation of a California corporation upon the conversion of a foreign or domestic limited liability company, limited partnership, or general partnership or upon the conversion of a foreign corporation. The bill would impose a fee of \$250 for the conversion of an entity under these provisions, which would be decreased to \$150 on January 1, 2005.

SB 1472 (Romero) Ch 173 Stats. 2002

Existing law sets forth various requirements applicable to a corporation with outstanding shares of record held by 100 or more persons relative to a supermajority vote requirement for an amendment of the articles of incorporation or a certificate of determination. A corporation is exempt from these requirements if it meets 4 conditions. This bill would delete one of these conditions and make other related changes.

## Credit Cards

### AB 521 (Koretz) Ch 294 Stats. 2001

(1) Existing law, known as the Song-Beverly Credit Card Act of 1971, prohibits the issuance of a credit card, as defined, except in response to an oral or written request or application, or as a renewal of, or in substitution for, an accepted credit card. This bill would define a student credit card as a credit card that is provided to a student at a public or private college or university, and that is provided to that student solely based on his or her enrollment in a public or private university, or is provided to a student who would not otherwise qualify for that credit card on the basis of his or her income. The bill would provide that a student credit card does not include a credit card issued to a student who has a co cardholder or cosigner who would otherwise qualify for a credit card other than a student credit card. (2) Existing law establishes the various segments of the higher education system in the state. These segments include the University of California, which is administered by the Regents of the University of California, the California State University, which is administered by the Trustees of the California State University, the California Community Colleges, which is administered by the Board of Governors of the California Community Colleges, and various private and independent colleges and universities. This bill would request the regents and the governing body of each accredited private or independent college or university in the state, and require the trustees and the board of governors, to adopt policies to regulate the marketing practices used on campuses by credit card companies.

### AB 865 (Hertzberg) Ch 711 Stats. 2001

Existing law regulates credit card issuers, as specified. This bill, operative July 1, 2002, except as otherwise specified, and applicable as specified, would require a credit card issuer to provide to the cardholder in each billing statement various statements regarding the length of time it will take, at various payment rates, to pay off the balance due on an open-end credit card account, as well as related information, and a certain table to be developed by the Department of Financial Institutions, as specified.

### AB 1876 (Lowenthal)

Existing law regulates various practices of charge card issuers, financial institutions, and other lenders, as specified. This bill would provide that a solicitation for an extension of credit for a consumer loan may not be made through the use of an unsolicited check, unsolicited convenience check, or other unsolicited negotiable instrument sent by a charge card issuer, financial institution, or other lender to a consumer who resides in this state. If a charge card issuer, financial institution, or other lender includes an unsolicited check or other negotiable instrument in a solicitation to a consumer for an extension of credit that the consumer has not applied for or requested, in violation of the bill, the charge card issuer, financial institution, or lender, and not the consumer, would be liable for the amount of the check or other instrument and any non-sufficient funds fees. The bill would also specify that it does not apply to a solicitation for a consumer loan made on or before, or a consumer loan in existence on, January 1, 2003. Measure failed passage.

AB 2119 (Washington)

The Song-Beverly Credit Card Act of 1971 and the federal Truth in Lending Act regulate the issuance of credit cards, establish limitations on liability for unauthorized use of credit cards, and require card issuers to correct billing errors made by the card issuer within 2 complete billing cycles, but in no event later than 90 days, after receiving an inquiry. This bill would require that, if a cardholder provides a payment in excess of the amount currently due, the card issuer shall refund the excess amount to the cardholder by check within 60 days. The bill would require the card issuer to pay a fee and interest on the refund amount, as specified, if the card issuer fails to provide the refund check in this period. The bill would require that specified information be included on the cardholder's billing statement and be provided to a consumer credit reporting agency. (2) The Consumer Credit Reporting Agencies Act regulates the content and provision of consumer credit reports. This bill would require a consumer credit reporting agency to include in the consumer's file information it receives that indicates that the consumer made payments above the minimum amount required on the account or in advance of the repayment date. Measure failed passage.

SB 1617 (Karnette) Ch 862 Stats. 2002

Existing law provides for the issuance of credit cards, as specified, and permits a card to be issued as a renewal of, or in substitution for, an accepted credit card. The bill would permit a credit card to be issued in substitution for an accepted credit card only if the card issuer provides an activation process whereby the cardholder is required to contact the card issuer to activate the credit card prior to using the card. The bill would state that its provisions do not prohibit the completion of an overdraft protection advance or recurring-charge transaction that a cardholder has previously authorized on an accepted credit card.

## Credit Reports

### AB 371 (Koretz)

Existing law governs the disclosure of consumer credit reports. A consumer credit reporting agency must make specified disclosures of information contained in a consumer credit report upon the request of a consumer and must provide a free disclosure if the consumer has been turned down for credit, employment, insurance, or a rented dwelling because of information in his or her credit report within the preceding 60 days. This bill would require a consumer credit reporting agency to notify a consumer when, within a 60-day period, the consumer credit reporting agency has received 5 credit inquiries about the consumer, as specified, and to provide such a consumer with one free copy of his or her file upon request. The bill would exempt from these provisions persons who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engage in the practice of evaluating checking account experiences of consumer customers of banks or other financial institutions, as specified. The bill would also exempt the above persons from other disclosure requirements of consumer credit reporting agencies, and would make related changes. Measure failed passage.

### AB 488 (Kehoe) Ch 236 Stats. 2001

Existing law, operative July 1, 2001, governs the collection and disclosure of consumer credit reports. A consumer credit reporting agency must disclose the recipients of any consumer credit report regarding a consumer which the agency has furnished under specified circumstances. A consumer credit reporting agency must also make specified disclosures of, or provide notice regarding, information contained in a consumer credit report upon request of the consumer. This bill, operative January 1, 2003, would require a consumer credit reporting agency to disclose, upon request of the consumer, the addresses and, if provided by the sources and recipients of the consumer's credit information, telephone numbers identified for customer services for the sources and recipients. This bill would exempt any consumer credit reporting agency that procures a credit report from another credit reporting agency for the purpose of reselling the report from requirements that they provide to the consumer upon request the address and telephone number of the source and recipient of the consumer credit information, and a record of specified inquiries not initiated by the consumer. This bill would also exempt any consumer credit reporting agency that provides a consumer credit report to another consumer credit reporting agency that procures the consumer credit report for the purpose of resale from requirements that they provide to the consumer upon request the address and telephone number of the prospective user of the consumer credit information. Existing law also provides that any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in the practice of assembling, evaluating, or disseminating information on the checking account experiences of consumer customers is subject to the same laws that govern consumer credit reporting agencies. This bill, operative January 1, 2003, would exclude this person from the proposed requirements upon consumer credit reporting agencies to provide the address and, if available, the phone number of sources and recipients of consumer credit information to the consumer upon request.

AB 521 (Koretz) Ch 294 Stats. 2001

(1) Existing law, known as the Song-Beverly Credit Card Act of 1971, prohibits the issuance of a credit card, as defined, except in response to an oral or written request or application, or as a renewal of, or in substitution for, an accepted credit card. This bill would define a student credit card as a credit card that is provided to a student at a public or private college or university, and that is provided to that student solely based on his or her enrollment in a public or private university, or is provided to a student who would not otherwise qualify for that credit card on the basis of his or her income. The bill would provide that a student credit card does not include a credit card issued to a student who has a co cardholder or cosigner who would otherwise qualify for a credit card other than a student credit card. (2) Existing law establishes the various segments of the higher education system in the state. These segments include the University of California, which is administered by the Regents of the University of California, the California State University, which is administered by the Trustees of the California State University, the California Community Colleges, which is administered by the Board of Governors of the California Community Colleges, and various private and independent colleges and universities. This bill would request the regents and the governing body of each accredited private or independent college or university in the state, and require the trustees and the board of governors, to adopt policies to regulate the marketing practices used on campuses by credit card companies.

AB 655 (Wright) Ch 354 Stats. 2001

Existing law requires consumer credit report agencies to allow a consumer to elect to have his or her name removed from any list provided by the consumer credit reporting agencies for firm offers of credit that are not initiated by the consumer, as specified. This bill would permit a consumer to specify, either verbally or in writing, that his or her name shall be removed from lists that a consumer credit reporting agency furnishes for credit card solicitations for a minimum of two years, and that consumer credit reporting agencies would be required to inform a consumer of this option, as specified. Existing law provides a process by which a consumer may dispute the accuracy of information in a consumer credit report. Existing law requires a consumer credit reporting agency to promptly and permanently block certain information when a consumer provides a valid copy of a police report indicating that another person has unlawfully used the consumer's personal identifying information. This bill additionally would require a consumer credit reporting agency to promptly and permanently block certain information when a consumer provides a valid copy of a Department of Motor Vehicles investigative report indicating that another person has unlawfully used the consumer's personal identifying information. The bill would set forth requirements regarding the unblocking of certain information by a consumer reporting agency after an allegation of identity theft by a consumer, and would permit a consumer reporting agency to disregard a consumer's version of disputed information, as specified.

AB 1068 (Wright) Ch 1030 Stats. 2002

(1) The Consumer Credit Reporting Agencies Act regulates consumer credit reporting agencies and the manner in which these agencies assemble and evaluate consumer credit information, as specified. Existing law prohibits the sale of a consumer debt if the file of the consumer is blocked, as specified, or if the consumer provides in writing that the debt is not his or her obligation due to identity theft. Existing law exempts from those prohibitions the sale of a debt

to a subsidiary or affiliate of the creditor. This bill would revise and recast those provisions, and define the term "debt collector." The bill would additionally require, for continual exemption from those prohibitions, that a subsidiary or affiliate not take any action to collect on the debt. (2) Existing law establishes a process by which any person who uses a consumer credit report in connection with a credit transaction is required to verify the address of the consumer; confirm that the transaction is not the result of identity theft, and verify the identity of the consumer, under specified circumstances. This bill would delete those provisions and establish a different process by which any person who uses a consumer credit report in connection with the approval of credit based on an application for an extension of credit is required to make verifications and confirmations, under specified circumstances. The bill would require a creditor to provide written notice to a victim of identity theft of his or her rights, pursuant to specified provisions.

#### AB 1531 (Kehoe) Ch 9 Stats. 2002

Existing law requires a consumer credit reporting agency, upon consumer request, to allow consumer inspection of its files regarding that consumer. Existing law requires those files to include the telephone numbers of a source of information included in the report, of a recipient of a consumer credit report of the consumer, and of others making certain inquiries of the credit report of the consumer, if provided. This bill instead would suspend those requirements regarding the disclosure of those telephone numbers until January 1, 2003.

#### AB 1808 (Kehoe)

The existing Consumer Credit Reporting Agencies Act provides for the regulation of consumer credit reporting agencies that regularly engage in the business of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to 3rd parties. The act prescribes civil remedies for a violation of the act and provides a statute of limitations for actions brought pursuant to the act of 2 years from the date the plaintiff knew or should have known of the violation, but no more than 7 years from the earliest date on which the liability could have arisen. In cases in which the defendant materially and willfully misrepresented information required by the act, an action may be brought at any time within 2 years after the plaintiff discovers the misrepresentation. This bill would revise the statute of limitations to instead provide that the plaintiff may bring an action within 2 years after discovery of the violation but no more than 7 years after the liability could have arisen, except in cases in which the defendant materially and willfully misrepresented information, as specified. Measure failed passage.

#### AB 2161 (Maddox)

Under existing law, an investigative consumer reporting agency is prohibited from making or furnishing any investigative consumer report containing, among other things, records of conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than 7 years. This bill instead would prohibit those agencies from making or furnishing an investigative consumer report that contains records of misdemeanor convictions that, from the date of disposition or release, antedate the report by more than 7 years. The bill also would prohibit information contained in an investigative consumer report from being used by any public agency to disqualify a person from voting or render a person ineligible to register to vote. Measure failed passage.

AB 2293 (Liu) Ch 779 Stats. 2002

The Check Sellers, Bill Payers and Proraters Law provides for licensing and regulation by the Commissioner of Corporations of various licensees. That law provides for licensing and regulation of proraters, defined as persons who receive money from a debtor for the purpose of distributing the money among the debtor's creditors in full or partial payment of the debtor's obligations. Existing law provides an exemption from licensing and regulation under these provisions for certain nonprofit community service organizations that provide prorating services if those organizations comply with certain requirements. This bill would establish new regulatory provisions exempting nonprofit community service organizations that engage in prorating activities from regulation if certain requirements are met. The new regulatory provisions would, among other things, authorize the commissioner to investigate violations of the Check Sellers, Bill Payers and Proraters Law, impose various civil penalties for a violation of that law, and would require moneys collected from certain penalties to be deposited in the State Corporations Fund. The bill would require the Department of Corporations to conduct a study of the consumer credit counseling industry in California and make certain recommendations to the Legislature by March 1, 2003.

AB 2498 (Jackson)

Existing law governs the collection and disclosure of information in consumer credit reports by consumer credit reporting agencies, also known as credit bureaus. This bill would prohibit a person or entity from calculating a consumer's credit score in a manner that results in an adverse impact based upon the fact that inquiries have been received, or upon the number of inquiries that have been received which are related to transactions not initiated by the consumer. Measure failed passage.

AB 2573 (Runner)

Existing law prohibits an investigative consumer reporting agency from including in an investigative consumer report records of arrest, indictment, information, or a misdemeanor complaint if at any time it is learned that a conviction did not result or if there was a conviction that a full pardon was granted. This bill would revise that provision to authorize investigative consumer reporting agencies, as specified, to include in a report written admissions of theft against any business by the person who is the subject of the report. Measure failed passage.

SB 168 (Bowen) Ch 720 Stats. 2001

(1) The Consumer Credit Reporting Agencies Act and the federal Fair Credit Reporting Act provide for the regulation of consumer credit reporting agencies, commonly known as credit bureaus, which collect credit-related information on consumers and report this information to subscribers. The Consumer Credit Reporting Agencies Act requires certain notices and disclosures to be provided to consumers with a mailing address in California, including a requirement for providing a copy of a consumer's credit file to the consumer for a reasonable fee not exceeding \$8, and a requirement to provide a toll-free telephone number for certain purposes, including the opportunity for a consumer to elect to have his or her name removed from lists supplied to creditors that are used to make firm offers of credit, as defined, that were not initiated by the consumer. This bill would require, beginning July 1, 2002, consumer credit reporting agencies to also accept security alerts, as defined, by written request or via a toll-free telephone number, from consumers, and would allow a consumer to request a consumer credit reporting agency to impose a security freeze on release of any information from his or her file. The bill

would require a consumer credit reporting agency to place a security alert in a consumer credit report within 5 business days of receiving a request to do so and to notify persons using consumer credit reports of the existence of a security alert. The bill would require that the security alert remain in effect for at least 90 days and would allow a consumer to renew it. The bill would also require, beginning January 1, 2003, a consumer credit reporting agency to place a security freeze, as defined, on a consumer credit report within 5 business days of receiving a request to do so in writing by certified mail, and would prohibit the release of information from a consumer credit report while the freeze is in place, except as provided.

SB 1239 (Figueroa) Ch 860 Stats. 2002

Existing law, the Consumer Credit Reporting Agencies Act, governs the disclosure of consumer credit reports. A consumer credit reporting agency is required to make specified disclosures of information contained in a consumer credit report upon the request of a consumer and to provide a free disclosure if the consumer has been turned down for credit, employment, insurance, or a rented dwelling because of information in his or her credit report within the preceding 60 days. Existing law also requires consumer credit reporting agencies to provide a specified written summary of rights to consumers. This bill would enact provisions, effective July 1, 2003, that would additionally require a consumer credit reporting agency to provide a statement describing the statutory rights of victims of identity theft, as specified, and to provide one free copy each month, for up to 12 consecutive months, of a consumer's file, upon the request of a consumer who is a victim of identity theft. The bill would except from its provisions certain credit reporting agencies that act only as resellers of credit information collected from other credit reporting agencies, as specified. The bill would also revise the content of the written summary of rights provided to consumers, as specified.

SB 1730 (Bowen) Ch 786 Stats. 2002

(1) Existing law authorizes a consumer to place a security alert in his or her credit report by making a request in writing or by telephone to a consumer credit reporting agency, as specified. Existing law requires consumer credit reporting agencies to take specified actions in response to a request by a consumer to place a security freeze, as defined, on his or her credit report. Existing law makes various entities exempt from that requirement. This bill would additionally exempt from those requirements the use of a consumer credit report by any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed or by any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request. The bill would also exempt a fraud prevention services company from the requirement to place a security alert or a security freeze in a credit report, as specified.

(2) Existing law prohibits a person or entity, except as specified, from publicly posting or displaying an individual's social security number, printing that social security number on a card required for the individual to access products or services or on materials mailed to the individual, or otherwise requiring an individual to transmit or use that social security number. These provisions become operative in the case of a health care service plan, a provider of health care, and other, specified health care related entities as the requirements pertain to individual policyholders, employer groups, and enrollees of state medical insurance programs on various dates, as specified. This bill would revise those provisions to additionally provide that they shall become operative in the case of the provision by any person or entity of administrative or other services relative to health care or insurance products or services on various dates, as specified.

## **Credit Unions**

### AB 2157 (Papan) Ch 734 Stats. 2002

The California Credit Union Law provides for the organization and regulation of credit unions by the Department of Financial Institutions, headed by the Commissioner of Financial Institutions. This bill would recast the provisions of the law and revise the regulatory requirements with respect to a number of subjects, including organization, filing and certification, formation, and enforcement.

## Escrow

### AB 392 (Maddox) Ch 660 Stats. 2001

Existing law subjects the escrow industry to various laws and regulations under the oversight of the Real Estate Commissioner, the Commissioner of Corporations, or the Insurance Commissioner. This bill would require the commissioners to notify each other when taking enforcement or disciplinary action related to certain escrow services. The bill would require the Department of Real Estate, the Department of Corporations, and the Department of Insurance to each maintain a Web site that displays a database of individuals who have been subject to disciplinary action related to the escrow industry.

### AB 459 (Nation) Ch 499 Stats. 2001

Existing law provides for the collection by the Commissioner of Corporations of various fees relating to the practice of escrow agents. Under existing law, until January 1, 2002, among other fees and assessments, an annual license fee of \$2,000 is required to be paid to the commissioner by an escrow agent for each office or location for the commissioner's administration of the Escrow Law. After January 1, 2002, in place of this annual licensing fee, an escrow agent is required to pay the commissioner a pro rata share, as estimated by the commissioner, of all costs and expenses reasonably incurred in the administration of the Escrow Law. This bill would extend from January 1, 2002, to January 1, 2006, the operation of the current fee and assessment procedure, but would authorize the imposition of an annual license fee of up to \$2,800 for an escrow agent. The bill, correspondingly, would delay until January 1, 2006, the requirement that an escrow agent pay the commissioner an annual charge equal to its pro rata share of the administrative costs and expenses of the commissioner under the Escrow Law. Existing law provides for examination by the commissioner of the business, accounts, and records of every person performing as an escrow agent not less than every other calendar year. This bill would require the commissioner to conduct an examination of each licensed escrow agent as often as deemed necessary and appropriate, but not less than once every 48 months. The bill would provide for an examination of a new licensee within 2 years of the issuance of the license.

### AB 544 (Maldonado) Ch 662 Stats. 2001

Existing law, the Escrow Law, provides for licensing and regulation by the Commissioner of Corporations of persons engaged in business as escrow agents, unless specifically exempted. Existing law requires persons licensed as escrow agents to be members of the Escrow Agents' Fidelity Corporation, which is established as a nonprofit corporation to indemnify its members against loss, subject in certain cases to a deductible, and which is funded by fees and assessments on its members. Existing law requires employees of escrow agents and various other persons to obtain a certificate from the corporation as a condition of employment or compensation. This bill would provide that the protection provided by the Escrow Agents' Fidelity Corporation does not extend to any transaction involving a branch or business location of a member outside of California. The bill would also increase to 100% the amount of the deductible applicable to a member who suffers a loss of trust obligations caused by a person who is required to have a

certificate from the corporation but has failed to obtain one or has had a certificate denied, suspended, or revoked. The bill would make other related changes.

SB 364 (Alpert) Ch 302 Stats. 2001

Existing law provides that interest on the principal obligation of a promissory note secured by a mortgage or deed of trust on real property improved by one to 4 residential dwelling units shall not commence to accrue prior to close of escrow if the loan proceeds are paid into escrow or, if there is no escrow, the date upon which the loan proceeds have been made available for withdrawal as a matter of right. This provision does not apply if the funds are paid or made available from a federally insured financial institution with an office in this state. This bill instead would provide that a borrower may not be required to pay interest on a principal obligation under a promissory note secured by a mortgage or deed of trust on real property improved with between one to 4 residential dwelling units for a period of more than one day prior to recording the mortgage or deed of trust, if the loan proceeds are paid into escrow or, if there is no escrow, the date upon which the loan proceeds have been made available for withdrawal. The bill would additionally provide that interest may begin accruing on the business day immediately preceding the day of recording, if the borrower requests and the lender agrees that the recording will occur on Monday or a day immediately after a bank holiday, and if the lender makes specified disclosures. This bill would also delete the limitation for federally insured financial institutions within an office of this state thereby applying these provisions to those institutions. The bill would also exempt specified loans from these provisions.

## **Finance Lenders**

### AB 1230 (Papan) Ch 392 Stats. 2001

Existing law, the California Finance Lenders Law, requires the licensure of a person by the Commissioner of Corporations to engage in the business of a finance lender or broker. Existing law requires the commissioner to investigate specified individuals if an applicant for licensure is a corporation, trust, or association. This bill would require the commissioner, if an applicant is a corporation, trust, or association, to investigate the applicant's principal officers, as defined.

## Financial Privacy

### AB 21 (Leslie)

Financial institutions: privacy. Existing law provides for the regulation of specified financial institutions by the Department of Financial Institutions. This bill would enact the Financial Privacy Act. The bill would require a financial institution, as defined, to make certain disclosures to a consumer before collecting or disclosing any nonpublic personal information, including the disclosure of information either provided by the consumer to the financial institution in connection with any transaction with the consumer or service performed for the consumer, or otherwise obtained by the financial institution. The bill would permit a consumer to notify a financial institution in writing not to disclose or share his or her nonpublic personal information with an affiliate of the financial institution or a nonaffiliated 3rd party. The bill would require the Department of Financial Institutions to adopt regulations to implement the provisions of this bill for all financial institutions, and would provide penalties for violations of its provisions. The bill would provide an exception from the disclosure requirements for a financial institution that files an affidavit with the department certifying that it does not share nonpublic personal information with 3rd parties. Measure failed passage.

### AB 203 (Jackson)

This bill would enact the Consumers' Financial Privacy Act. The bill would prohibit a financial institution, as specified, without a consumer's prior written consent, from disclosing or making an unrelated use of the personal information collected by the financial institution in connection with any transaction with the consumer involving any financial product or any financial service or otherwise obtained by the financial institution. The bill would provide a specified exception to these requirements for any person or entity licensed as an insurance agent, life agent, or life and disability insurance analyst, as specified, and any person or entity licensed to sell securities. The bill would require various disclosures by financial institutions to consumers. The bill would provide that an individual may bring an action against a financial institution, or affiliate, or nonaffiliated 3rd party that has negligently disclosed or used personal information in violation of this chapter. Measure failed passage.

### AB 1775 (Nation)

Existing law prohibits the dissemination of certain personally identifying information by specified businesses. This bill would enact the Financial Privacy Protection Act of 2002, which would prohibit a financial institution from disclosing sensitive information, as defined, for marketing products or services from an affiliated company of the financial institution or a nonaffiliated 3rd party unless authorization is obtained from a customer and certain other requirements are satisfied. The bill would require the provisions of the act to be administered and enforced by the Department of Financial Institutions, the Department of Corporations, the Department of Insurance, and the Department of Consumer Affairs. The bill would authorize the assessment of civil penalties by the departments and the Attorney General against any financial institution that negligently, or knowingly and willfully obtains, discloses, or uses nonpublic personal information in violation of the act in the amount of \$2,500 per customer, not to exceed \$250,000 per occurrence for negligent acts and \$500,000 per

occurrence for knowing and willful acts. The bill would express the intent of the Legislature that the act provide greater consumer protections in the disclosure of nonpublic personal information than currently exist under the federal Gramm-Leach-Bliley Act. The bill would also express the intent of the Legislature to require financial institutions to give customers clear, unambiguous notice of their financial privacy rights and more meaningful choices about how that information is disclosed. The bill would also make a statement of legislative findings and declarations. Measure failed passage.

#### AB 2347 (Goldberg)

Existing law provides for the regulation of banks, savings associations, credit unions, and industrial loan companies by the Department of Financial Institutions and by certain federal agencies. Existing federal law, the Gramm-Leach-Bliley Act, requires financial institutions to provide a notice to consumers relative to the use by the financial institution of nonpublic personal information, and in that regard authorizes consumers to direct that the information not be shared with nonaffiliated third parties. This bill would enact the California Financial Information Privacy Act, which would require a financial institution, as defined, to provide a specified written form to a consumer relative to the sharing of the consumer's confidential consumer information, as defined. The bill would allow a consumer to direct the financial institution to not share the confidential consumer information with affiliated companies or with nonaffiliated financial companies with which the financial institution has contracted to provide financial products and services. The bill would require the permission of the consumer before the financial institution could share the confidential consumer information with other nonaffiliated companies. The bill would provide that a financial institution is not required to provide this written form to its consumers if the financial institution does not disclose any confidential consumer information to any nonaffiliated 3rd party or to any affiliate. This bill would provide that a financial institution shall not deny a consumer a financial product or service because the consumer has not provided the necessary consent that would authorize the financial institution to disclose or share confidential consumer information. The bill would require a financial institution to comply with the consumer's request regarding confidential consumer information within 45 days of receipt of the request. This bill would provide that the bill would not apply to disclosures between certain types of member-owned financial institutions and their affiliates provided that certain requirements are met. The bill would also provide that a financial institution may disclose confidential consumer information to an affiliate or a nonaffiliated 3rd party in order for it to perform certain services on behalf of the financial institution if specified requirements are met. The bill would provide other exceptions from its provisions applicable to particular situations. The bill would provide that confidential consumer information may be released in order to identify or locate missing children, witnesses, criminals and fugitives, parties to lawsuits, and missing heirs and that it would not change existing law regarding access by law enforcement agencies to information held by financial institutions. The bill would also provide for disclosure of confidential consumer information under various other specified circumstances. The bill would provide on January 1, 2003, that enactment of these provisions preempts all local agency ordinances and regulations relating to this subject. The bill would enact other related provisions. The bill would also provide various civil penalties for negligent, or knowing and willful violations of these provisions. The bill would, except as provided above, become operative on November 1, 2003, except that penalties under the bill would not become operative until July 1, 2004. Measure failed passage.

#### SB 773 (Speier)

For description see AB 2347 above for description and result.

## Identity Theft

AB 2868 (Wright) Ch 1029 Stats. 2002

(1) Existing law relating to defamation provides that libel is a false and unprivileged written publication that injures the reputation, and that slander is a false and unprivileged publication, orally uttered, that injures the reputation, as specified. Existing law makes privileged, and therefore protected from the threat of civil action, certain publications and communications, including those communications regarding job performance and qualifications, as specified. This bill would revise the provisions concerning the privileged character of communications regarding job performance and qualifications to specify their application to applicants for employment and to authorize a current or former employer, or the employer's agent, to answer whether or not the employer would rehire a current or former employee. (2) Existing law establishes a process by which a consumer may dispute the accuracy of information in a consumer credit report. Existing law requires a consumer credit reporting agency to promptly and permanently block information in specified instances, and establishes requirements for unblocking information after an allegation of identity theft. This bill would exclude from these provisions a consumer reporting agency that acts only as a reseller of credit information, as specified, and that does not maintain a permanent database of credit information from which new credit reports are produced. (3) Existing law requires an investigative consumer reporting agency to keep a copy of an investigative consumer report for at least 3 years. This bill would reduce the period of time the report must be made available to the consumer to 2 years after the report is provided. (4) Existing law prohibits an investigative consumer reporting agency from making or furnishing an investigative consumer report containing specified items of information, except where the report is used in the underwriting of life insurance, as specified. This bill would provide an additional exception to the above-described prohibition on specified items of information when an employer is explicitly required by a governmental regulatory agency to check for records that investigative consumer reports are prohibited from containing when the employer is reviewing a consumer's qualification for employment. (5) Existing law requires an investigative consumer reporting agency to require that prospective users of information identify themselves and to certify the purposes for which the information sought will be used. Existing law further requires an investigative consumer reporting agency to keep a record of the purposes for which information is sought. Existing law provides that an investigative consumer reporting agency that violates these and other specified provisions is liable to the affected consumer for not less than \$25,000, in addition to liability for actual damages or \$10,000, whichever is greater, as specified, reasonable attorneys' fees, costs of the action, and punitive damages, in the discretion of the court, when the violation is willful or grossly negligent. This bill would permit an investigative consumer reporting agency to assume that the purpose for which a user seeks information remains the same as that which a user has previously stated. The bill would require the investigative consumer reporting agency to inform the user that the user is obligated to notify the agency of any change in the purpose for which information will be used. The bill would also limit the liability of an investigative consumer reporting agency as described above, to an amount not less than \$25,000, reasonable attorneys' fees, and the costs of the action, as specified. (6) Existing law requires an investigative consumer reporting agency to promptly notify a consumer, as specified, when information deleted from a consumer's file is reinserted, and requires the agency to provide a notice to the consumer stating that the consumer has a right to a

reinvestigation of the information and to add a statement to the file, as specified. This bill would provide an exception to the notice regarding reinvestigation of the information and the right to add a statement when the reinsertion results from the resolution of a prior dispute, and was made at the request of, or with the prior approval of, the consumer. (7) Existing law requires an investigative consumer reporting agency to provide certain notices to specified parties who have received, in the prior 2 years, an investigative consumer report regarding a consumer when information is deleted from a consumer's file or following the filing of a specified dispute regarding the information, unless the consumer explicitly requests this notification not be given. This bill would provide that the notifications described above be furnished, instead, to any person specifically designated by the consumer.

SB 125 (Alpert) Ch 493 Stats. 2001

Existing law provides that every person who willfully obtains personal identifying information, as defined, of another person without the authorization of that person, and uses that information for any unlawful purpose in the name of the other person without the consent of that person is guilty of a public offense. Existing law further provides that a person who learns or reasonably suspects that his or her personal identifying information has been used by another to commit a crime may initiate a law enforcement investigation by contacting the local law enforcement agency. Under existing law, the law enforcement agency must take a police report of the matter and provide the complainant with a copy of that report. This bill would entitle a person who discovers that an unauthorized person has applied for a loan, credit line or account, credit card, charge card, or utility service or has opened an account with a bank, other financial institution, or utility, in his or her name to receive, or specify a law enforcement officer to receive, a copy of the application or information related to that application, loan, credit line or account, credit card, charge card, or utility service. Before receiving these copies, the bill would require the entity with which the application was filed or the account was established to inform the requesting person of the categories of identifying information that the unauthorized person used to complete the application and would require the requesting person to provide identifying information in those categories and a copy of the police report. Additionally, before the entity provides copies to a specified law enforcement officer, the entity would be permitted to require the requesting person to provide them with a signed and dated statement by which the person authorizes the disclosure, as specified. Existing law generally prescribes procedures for the disclosure of financial records in order to ensure customers' financial privacy. Existing law provides for specified exceptions to these requirements. This bill would include among those exceptions disclosure by a financial institution to a peace officer provided the financial institution has complied with the requirements of the above provisions.

## Investment Of Public Funds

### AB 609 (Kelley) Ch 57 Stats. 2001

Existing law authorizes the legislative body of a local agency having money in a sinking fund of, or surplus money in, its treasury not required for the immediate needs of the local agency to invest any portion of the money that it deems wise or expedient in specified securities and financial instruments. One of the types of eligible securities is commercial paper of prime quality as described. Existing law establishes essentially parallel provisions concerning the investment of local agency funds that belong to, or are in the custody of, the local agency. One of the authorized investments is negotiable certificates of deposit issued by a state or federal credit union. This bill instead would authorize the investment of a local agency's money in a sinking fund or money, rather than surplus money, in its treasury not required for its immediate needs. The bill would revise the definition of commercial paper. The bill would revise these parallel provisions to incorporate references to the other provisions, consolidate duplicate provisions, delete obsolete provisions, and make conforming changes. This bill would prohibit the legislative body of a local agency and the treasurer or other official having custody of the money from investing in negotiable certificates of deposit of a state or federal credit union if a member of the legislative body or any other specified city officer or employee also serves on the board of directors or certain committees of that credit union.

### AB 743 (Robert Pacheco) Ch 430 Stats. 2001

Existing law provides for regulation of credit unions and other financial institutions by the Department of Financial Institutions, and by various federal agencies, if the financial institutions are federally chartered. Existing law, with respect to deposit of various funds held by certain public agencies and officials, or for other finance-related purposes, specifies appropriate financial institutions that may be used for those purposes by those public agencies and officials, including county superintendents of schools, school districts, Director of Education, Treasurer, directors of overseas trade offices, and county boards of retirement for various public agency employees. This bill would provide that credit unions may also be appropriately used for these purposes by the above-mentioned agencies and officials.

### AB 2122 (Washington) Ch 83 Stats. 2002

Existing law authorizes the legislative body of a local agency having money in a sinking fund of, or surplus money in, its treasury not required for the immediate needs of the local agency to invest any portion of the money that it deems wise or expedient in specified securities and financial instruments. One of the types of eligible securities is commercial paper of prime quality, as described. Existing law limits counties and cities and counties to investing no more than 40% of their money in eligible commercial paper and limits other local agencies, such as cities, to investing no more than 25% of their money in eligible commercial paper. This bill would make the City of Los Angeles subject to the same concentration limits for investment in eligible commercial paper as counties and cities and counties.

AB 2182 (John Campbell) Ch 162 Stats. 2002

Existing law prescribes the types of investments in which a local agency generally may invest its funds for deposit, including United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest. This bill would provide, until January 1, 2007, that, notwithstanding the above-described provisions, a county or city and county may invest any portion of the funds that it deems wise or expedient using prescribed criteria that authorize investments in various securities, obligations, and other financial instruments, including direct obligations of the United States Treasury or any other obligation guaranteed as to principal and interest by the United States government, bonds, notes, debentures, or other obligations of, or securities issued by, any federal government agency, instrumentality, or government-sponsored enterprise, and state treasury notes, bonds, or registered state warrants.

SB 68 (Battin) Ch 761 Stats. 2002

Under existing law, all money in the possession of or collected by any state agency or department is state money and is subject to provisions governing its deposit and handling in trust accounts. Existing law also establishes the Local Agency Investment Fund, authorizes a local government having money in its treasury not required for immediate needs to remit it to the Treasurer for deposit in that fund for the purpose of investment, and prescribes the handling of that money. This bill would designate money in the Local Agency Investment Fund as non-state money and would enact additional separate provisions governing the deposit and handling of that money in trust accounts.

## Money Transmitters

### AB 714 (Firebaugh)

Existing law provides for the regulation and licensure by the Commissioner of Financial Institutions of persons engaged in the business of transmitting money abroad. Existing law requires a licensee to file with the commissioner, within 45 days after the end of each quarter except for the 4th quarter of its fiscal year, a report containing specified information unless an exemption is granted by the commissioner. Existing law requires a licensee or its agent to refund to a customer within 10 days of receipt of the customer's written request any and all moneys received for transmission to a foreign country unless certain conditions have been satisfied. Existing law requires a licensee's window and exterior signs concerning rates of exchange, and interior signs and all advertising if rates are quoted, to clearly state, in the language principally used by the licensee and its agents, the rates of exchange for exchanging the currency of the United States for foreign currency. A violation of the provisions regulating money transmitters is a crime. This bill would instead require that those advertisements include the specific products associated with any fees quoted. The bill would delete the provision exempting the filing of the report with the commissioner at the end of the 4th quarter of a licensee's fiscal year. The bill would require the report to include certain information relating to rates of exchange for foreign currencies and would exempt certain financial statements from being included in a report for a 4th quarter. The bill would repeal the provisions requiring a licensee or its agent to refund to a customer within 10 days of receipt of a customer's written request for a refund all moneys received for transmission to a foreign country. The bill would enact new provisions requiring a licensee or its agent to refund to a customer any fees and any moneys received for transmission to a foreign country. The bill would require that at each office where a licensee or its agent receives money for transmission to a foreign country, rates of exchange and fees be disclosed for currencies of a country to which 20% of the licensee's total number of money transmissions were made during the previous calendar year. The bill would require the posting to be updated daily and would require a licensee to offer a uniform exchange rate in its California offices, as specified. The bill would prohibit the foreign exchange spread of each licensee and each agent of a licensee from exceeding 5 percent for specified money transmissions. The bill would also provide that it is a misdemeanor punishable by a specified penalty if a licensee completes a transaction where the exchange rates and fees are less favorable to consumers than the exchange rates required to be posted in its office. Measure failed passage.

### SB 426 (Polanco)

Existing law provides for the regulation and licensure by the Commissioner of Financial Institutions of persons engaged in the business of transmitting money abroad. Existing law requires a licensee to file with the commissioner, within 45 days after the end of each quarter except for the 4th quarter of its fiscal year, a report containing specified information unless an exemption is granted by the commissioner. Existing law requires a licensee or its agent to refund to a customer within 10 days of receipt of the customer's written request any and all moneys received for transmission to a foreign country unless certain conditions have been satisfied. Existing law requires a licensee's window and exterior signs concerning rates of exchange, and interior signs and all advertising if rates are quoted, to clearly state, in the language principally used by the licensee and its agents, the rates of exchange for exchanging the currency of the

United States for foreign currency. A violation of the provisions regulating money transmitters is a crime. This bill would instead require that those advertisements include the specific products associated with any fees quoted. The bill would delete the provision exempting the filing of the report with the commissioner at the end of the 4th quarter of a licensee's fiscal year. The bill would require the report to include certain information relating to rates of exchange for foreign currencies and would exempt certain financial statements from being included in a report for a 4th quarter. The bill would repeal the provisions requiring a licensee or its agent to refund to a customer within 10 days of receipt of a customer's written request for a refund all moneys received for transmission to a foreign country. The bill would enact new provisions requiring a licensee or its agent to refund to a customer any fees and any moneys received for transmission to a foreign country. The bill would require that at each office where a licensee or its agent receives money for transmission to a foreign country, rates of exchange and fees be disclosed for currencies of a country to which 20% of the licensee's total number of money transmissions were made during the previous calendar year. The bill would require the disclosure to be updated, as specified. The bill would also provide that it is a misdemeanor punishable by a specified penalty if a licensee completes a transaction where the exchange rates and fees are less favorable to consumers than the exchange rates required to be posted in its office. Measure failed passage.

#### SB 2081 (Machado)

Existing law provides for the regulation and licensure by the Commissioner of Financial Institutions of persons engaged in the business of transmitting money abroad. Existing law exempts certain entities from the provisions regulating transmissions of money abroad. Under these provisions, a licensed money transmitter is required to provide written receipt containing certain information to customers transmitting money abroad. Existing law requires a licensed money transmitter to maintain tangible shareholders' equity of at least \$250,000. Existing law authorizes the commissioner to revoke or suspend a license to transmit money if, after a hearing, the commissioner makes certain findings, including that the licensee has violated any of the provisions regulating money transmissions. Existing law also authorizes the commissioner to take possession of the property and business of a licensed money transmitter if the licensee has violated any law of this state. A violation of the provisions regulating money transmitters is a crime. The bill would require a licensed money transmitter to maintain tangible shareholders' equity of at least \$500,000. The bill would require the commissioner to provide notice and a hearing to revoke or suspend a license to transmit money in addition to making those findings. The bill would authorize the commissioner to immediately revoke or suspend the license of a licensed money transmitter if the commissioner finds that the licensee has engaged in certain acts and that an immediate suspension or revocation of the license is necessary or advisable for the protection of persons engaging in business with the licensee or for the public. The bill would also authorize the commissioner to take possession of the property and business of a licensed money transmitter if the licensee has violated any law applicable to its operation. Because a violation of this bill's requirements with respect to money transmitters would be a crime, the bill would impose a state-mandated local program. This bill, effective January 1, 2004, would require commercial banks, savings associations, and credit unions to provide a receipt containing certain information to a customer for each consumer transaction involving a transmission of money abroad that is less than \$750. Measure failed passage.

## **Pawnbrokers**

### **AB 1297 (Papan) Ch 505 Stats. 2001**

Existing law limits pawnbroker loan setup fees, handling and storage charges, and fees for certain notices to specified amounts. Existing law provides that a pawnbroker may collect a handling and storage charge for each article pawned and that an item smaller than one cubic foot is not subject to an additional storage charge. Furthermore, existing law provides that a broker may charge an additional fee for a vehicle larger than 6 cubic feet. This bill would increase the amounts that may be charged for these services. The bill would also authorize an additional storage charge on all items larger than 6 cubic feet.

### **AB 2344 (Correa) Ch 404 Stats. 2002**

Existing law regulates the sale and redemption of pledged property by pawnbrokers. Existing law requires a loan to which an original loan debit is applied to be processed as a new loan and deemed a new loan subject to loan origination fees, storage fees, and minimum fees when applicable. This bill would allow a pledgor to pay all charges and interest due on the original loan in a form acceptable to the pawnbroker. The bill would also subject the new loan to allowable fees rather than minimum fees. The bill would authorize an original pledgor and pawnbroker to agree to a new loan on forfeited property or to agree to allow redemption of the forfeited property, and to annul the forfeiture of the original loan if all interest and charges on the original loan are paid by the pledgor upon issuance or redemption. The bill would require that, if the property is stored off the business premises of a pawnbroker, the property be returned the next calendar day when the pawnbroker's store and the off business premise storage facility are open, not to exceed 2 business days.

## Payday Loans

### AB 1581 (Frommer)

Existing law defines certain terms for purposes of the provisions regulating deferred deposit transactions by check cashers. This bill would define the terms "consecutive transaction" and "loan repayment plan" for the purposes of the above provisions. A consecutive transaction would be defined to mean a deferred deposit loan transaction in which a check casher enters into a new deferred deposit loan transaction with the same customer within one calendar day of a previous transaction. Existing law requires that the face amount of a deferred deposit check not exceed \$300, that a deferred deposit transaction be made pursuant to a written agreement, and that a deposit may be deferred for up to 30 days. Existing law further provides that a customer who enters into a deferred deposit agreement shall not be subject to criminal penalty for the failure to comply with that agreement. This bill would instead require that the face amount of a deferred deposit check may not exceed \$300 or 25% of a customer's gross monthly income, whichever is less, and would require a check casher to permit a customer to repay in cash the amount owed. This bill would permit a deposit to be deferred for up to 31 days, or up to 3 months under a loan repayment plan, as specified. This bill would further require that a check casher distribute a notice to a customer before entering into a deferred deposit transaction, written in the same language principally used in negotiations concerning the transaction, that informs the customer about his or her rights and responsibilities related to deferred deposit transactions. This bill would further require that an agreement for a deferred deposit transaction shall be in writing, and that it be completed and signed in the customer's presence, in a specified form. The bill would prohibit a check casher from engaging in certain activities in conducting a deferred deposit business and would require a check casher in a deferred deposit transaction to immediately stamp a check received from a customer with a specified notice. This bill would permit a customer to request to retire the debt of a consecutive deferred deposit transaction, as defined, by entering into a loan payment plan, as specified, and for which the customer would be charged an administrative fee of 15% of the face amount of the check and a 3% monthly interest rate on the remaining balance.

### SB 898 (Perata) Ch 777 Stats. 2002

Existing law provides for regulation by the Department of Corporations of finance lenders engaged in the business of making consumer or commercial loans. Existing law requires every owner of a check casher's business to obtain a permit from the Department of Justice. This bill would enact the California Deferred Deposit Transaction Law, which except for specified provisions would become operative March 1, 2004, to provide for specific regulation of persons engaged in the business of making or negotiating deferred deposit transactions, which are transactions in which the lender defers depositing a consumer's personal check until a specific date pursuant to a written agreement. The bill would provide for the licensing of those persons by the Commissioner of Corporations and for the charging of unspecified fees. The bill would impose various duties on a person engaged in the business of making or negotiating deferred deposit transactions, and would specify the rights of a consumer in that regard. The bill would enact certain transition provisions relative to the transfer of responsibilities from the Department of Justice to the Department of Corporations. The bill would exempt persons engaged in the

business of making or negotiating deferred deposits under the bill from the usury limitation in Section 1 of Article XV of the California Constitution. Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program by creating new crimes. The bill would make related changes.

## Private Mortgage Insurance

### SB 270 (Speier) Ch 137 Stats. 2001

Existing law requires a lender or other person making or arranging a loan to make certain disclosures about the borrower's potential right to cancel private mortgage insurance or mortgage guaranty insurance on any loan for which private mortgage insurance or mortgage guaranty insurance is maintained. Existing law further requires specified disclosures to contain a clear and conspicuous written statement indicating that the borrower may be able to cancel this insurance. This bill, operative July 1, 2002, would additionally require the above disclosures to specify that cancellation may be based on various factors, including appreciation in property value based on a current appraisal.

## Real Estate Brokers

### AB 407 (Correa)

This bill would enact the Consumer Equity Protection Act that would impose various requirements on lenders and covered loans, as defined. The bill would place limits on the imposition of prepayment fees or penalties on covered loans by a lender. The bill would prohibit a lender from making a covered loan unless a specific notice is provided to the persons that would be required to pay the loan. The bill would impose a similar notice requirement on a lender before the lender could sell an individual or group credit life, accident and health, or disability or unemployment insurance product. The bill would also require a lender or its servicer to report information on a consumers favorable and unfavorable payment history to a nationally recognized consumer credit reporting agency. Measure failed passage.

### AB 2548 (Nation) Ch 167 Stats. 2002

The Real Estate Law provides for the licensing and regulation of real estate brokers and salespersons by the Department of Real Estate with respect to certain activities. Existing law provides that certain persons are exempt from regulation under these provisions, including any person authorized in writing by a savings institution to act as an agent of that institution if authorized under state law or comparable authority of the Federal Home Loan Bank Board. This bill would delete an obsolete reference to the Federal Home Loan Bank Board and would instead refer to the Office of Thrift Supervision of the United States Department of the Treasury.

## Securities

### AB 288 (Oropeza)

The Real Estate Law imposes certain requirements on transactions that involve the sale of or offer to sell a series of notes secured directly by an interest in real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, otherwise known as a multilender transaction, including requiring that the aggregate principal amount of the notes or interest sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, do not exceed certain percentages of the current market value of the real property. A violation of the Real Estate Law is a crime. This bill would define "current market value" for construction or rehabilitation loans to mean the value of the completed project where certain conditions have been met, including, among other things, that the current market value is verified by an independent appraisal report. Measure failed passage.

### AB 1048 (Frommer) Ch 264 Stats. 2001

The Corporate Securities Law of 1968 provides for the licensing of agents and broker-dealers and the registration of investment advisers and investment adviser representatives by the Department of Corporations, subject to certain exceptions. Existing law requires these persons to pay certain fees and assessments to the department. This bill would delete a provision that exempts from certification requirements a licensed broker-dealer who acts as an investment adviser. The bill would require the Commissioner of Corporations to make certain information concerning investment advisers that is in the possession of the commissioner available to the public on request. The bill would revise various fee provisions and would make other related changes. Existing law prohibits a state or local public agency from asking or requiring an applicant for a license, certificate, or registration to reveal a record of arrest that did not result in a conviction or plea of nolo contendere. This bill would provide that this prohibition is not applicable to the department relative to persons regulated by the department when using a national, uniform application that is required by the Securities and Exchange Commission and other entities for participation in certain national registration depositories. The bill would authorize the department to participate in those depositories. Existing law prohibits the Commissioner of Corporations and his or her assistants, clerks, or deputies from having certain interests in entities regulated by the department. Existing law authorizes the holding or purchasing of securities by these public officials under certain conditions. This bill would revise the provisions governing the holding or purchasing of securities by the commissioner, as specified. Existing law requires that the Department of Corporations' administration be supported from the State Corporations Fund. This bill would instead require that the administration and enforcement of, and the education of the public relative to, the laws and programs of the department be supported from the fund.

### AB 1644 (John Campbell)

Existing law, contained in the Corporate Securities Law of 1968, provides for exemptions from qualification for certain securities transactions. This bill would exempt from qualification offerings or sales of securities using a general solicitation or general advertising, provided the

transaction meets specified requirements, including a requirement that the sales are made to accredited investors. Measure failed passage.

AB 2126 (Robert Pacheco) Ch 433 Stats. 2002

Existing law authorizes a trust company to invest or reinvest in the securities or other interests of any mutual fund for which the trust company or its affiliate is providing services. Existing law requires trust companies that invest or reinvest in those securities or interests to provide a copy of the prospectus relating to the securities to certain persons unless specifically waived in writing

AB 2187 (Lowenthal)

Existing law, the Corporate Securities Law of 1968, provides that it is unlawful for a person to offer or sell in this state any security in an issuer transaction unless the sale has been qualified or the security or transaction is exempted or not subject to qualification. This bill would create an exemption where an offer or sale of a security issued by a corporation or limited liability company pursuant to a purchase plan or agreement, or issued pursuant to an option plan or agreement, at the time of issuance or grant would have been exempt from registration except for the fact that the issuer is subject to specified reporting requirements of the Securities Exchange Act of 1934.

AB 2969 (Florez) Ch 964 Stats. 2002

Existing law provides exemptions from state usury provisions for loans that meet certain requirements, with specified financial statements as necessary evidence. The financial statements are required to meet specified requirements, including being prepared (1) in accordance with generally accepted accounting principles and, if the entity has consolidated subsidiaries, on a consolidated basis, and (2) in accordance with the rules and requirements of the Securities Exchange Commission. This bill would instead require the financial statements to meet one of the above requirements, rather than both of those requirements. Existing law prohibits a person from offering or selling securities in certain manners unless the security is qualified for sale or unless the security or transaction is exempted or not subject to qualification.

SB 400 (Ackerman) Ch 58 Stats. 2001

Existing law, the Corporate Securities Law of 1968, provides that it is unlawful for a person to offer or sell in this state any security in an issuer transaction unless the sale has been qualified or the security or transaction is exempted or not subject to qualification. This bill would provide, with respect to certain offers and sales of securities issued by a corporation or limited liability company that are exempted, that the failure of the corporation or limited liability company to file a notice of transaction does not limit the availability of the exemption if the notice is filed within 15 business days after a demand by the Commissioner of Corporations.

## Miscellaneous

**Although the following bills were within the committee subject matter jurisdiction, they were substantially amended to fall outside of committee jurisdiction.**

AB 610 (Kelley) Ch 121 Stats. 2002

AB 684 (Kehoe)

AB 1163 (Calderon) Ch 941 Stats. 2002

AB 1190 (Papan)

AB 2764 (Papan)

ACR 125 (Papan) Resolution Ch 167 Stats. 2002

Although this resolution was not heard in the Banking and Finance Committee, its author was the Committee Chair, Louis J. Papan. The resolution is noteworthy because no other significant financial privacy measure was passed by the Legislature this session and this measure will at least commence a thorough study on a topic that is both important and contentious. It will be designed to be introduced as an original measure on the subject or as a basis for amendment of legislation that may be enacted during the coming session.

This measure would request and authorize the California Law Revision Commission to study, report on, and prepare recommended legislation concerning the protection of personal information relating to or arising out of financial transactions. Specifically the Legislature requests that the California Law Revision Commission study, report on, and prepare recommended legislation by January 1, 2005 concerning the protection of personal information relating to, or arising out of, financial transactions, and accomplish the following objectives:

- (a) Provide consumers with notice and the opportunity to protect and control the dissemination of their personal information by, and between, companies and their affiliates and non-affiliated third parties;
- (b) Authorize and direct affected regulators to prepare regulations that will recognize the inviolability and confidentiality of a consumer's personal information and the legitimate needs of entities that lawfully use the information to engage in commerce at the behest of consumers or for their benefit;
- (c) Assure that regulated entities will be treated in a manner so that, regardless of size, an individual business, holding company, or affiliate will not enjoy any greater advantage or suffer any burden that is greater than any other regulated entity;

(d) Be compatible with, and withstand any preemption by the Gramm-Leach-Bliley Act or the federal Fair Credit Reporting Act; and

(e) Provide for civil remedies and administrative and civil penalties for a violation of the recommended legislation, including, but not limited to, attorney's fees, costs, actual and compensatory damages, and exemplary damages, including, but not limited to, relief as provided pursuant to Article 3 (commencing with Section 3294) of Chapter 1 of Title 2 of Part 1 of Division 4 of the Civil Code, and as provided in unfair business practices actions brought under Article 1 (commencing with Section 17000) of Chapter 4 of Part 2 of Division 7 of the Business and Professions Code.

□ A financial institution that receives funds from savers (investors) and lends them to borrowers. In a broad sense, the term financial intermediary is applicable to all financial institutions, including commercial banks, mutual savings banks, savings and loan associations, insurance companies, finance companies, pension trusts and investment trusts. In a narrower sense the term excludes commercial banks. The McGraw-Hill Dictionary of Modern Economics (1983) page 180

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