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Important 2014 New Consumer Laws

(*Effective January 1, 2014, Unless Otherwise Noted*)

Advertising

Automobiles

Credit & Finance

Elder Financial Abuse

Health & Insurance

Immigration Fraud

Privacy

Real Estate & Housing

Updated Jan. 6, 2014

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This Legislative Digest contains the more significant California consumer bills, plus select federal regulations, enacted in 2013. You can find the full text of all California bills on the **Official California Legislative Information Website.**

The Legislative Digest is organized as follows:

- The laws are grouped in major categories (i.e., Advertising, Automobiles, etc.), and are listed numerically by bill number: Assembly bills are listed first, Senate bills second.
- Federal laws and regulations are listed at the end of each major category.

California Legislative Process: The California legislature operates on a two-year cycle. 2013 was the first year of the current cycle. Some bills introduced, but not enacted, in 2013 will carry over to 2014.

Generally, bills the governor signs become law on January 1. But emergency bills, which must be passed by two thirds in each house, can become law on the date the governor signs them. ***The laws in this Legislative Digest go into effect on January 1, 2014, unless noted otherwise.***

The Legislature has many rules concerning the introduction and amendment of bills. For example, bills have to be introduced before a certain date. They are assigned to a policy committee. And, occasionally, they are assigned to more than one committee. Bills must be passed by their policy committee or committees by a certain date. If the bill involves any significant expenditure, it must be passed by a Fiscal Committee by a certain date. Bills must pass the first house by a certain date and this procedure continues in the second house.

There are two rules that impact the timing of bills. But they are violated so often that they can hardly be called rules. **Rule one:** No amendment can be made to any bill, other than bills to implement the Budget, which relate to a different subject than, is intended to accomplish a different purpose than, or require a title essentially different than, the original bill. **Rule two:** No spot bill can begin the process by being heard by a committee. A spot bill, sometimes called a placeholder bill, is a bill that is not substantive, but is introduced only to meet the deadline for bill introduction, and to make it available for amendment at a future date. You never know when a bill covering a certain subject will suddenly appear.

CALIFORNIA CODE ABBREVIATIONS

B&P.....Business and Professions Code
CC .....Civil Code
CCP .....Code of Civil Procedure
Educ ..... Education Code
Fam .....Family Code
Fin ..... Financial Code
Govt .....Government Code
H&S ..... Health and Safety Code
Ins ..... Insurance Code
Pen ..... Penal Code
UIC..... Unemployment Insurance Code
Veh ..... Vehicle Code
W&I ..... Welfare and Institutions Code

CALIFORNIA LEGISLATION TIMELINE:

Jan. 5 .....legislature opens
Jan. 30 .....last day to submit bills to leg counsel
Feb. 27 .....last day to introduce bills
May 1 .....last day for policy committee to report bill to fiscal committee
May 15 ..... last day for policy committee to submit non-fiscal bill to the floor
May 29 ..... last day for fiscal committee to submit bill to the floor
June 5 ..... last day for house of origin to pass a bill
July 10 ..... last day for policy committee in the second house to report bill
Aug. 28 ..... last day for fiscal committee to report bill
Sept. 11 ..... last day for legislature to enroll bill
Oct. 11..... last day for governor to sign bill

Advertising and Disclosures

AB 329: ELECTRONIC TICKET SCALPING

Adds Business and Professions Code Section 22505.5

Existing law provides for the comprehensive regulation of ticket sellers, and, among other things, requires disclosure of specified information to consumers and the maintenance of records and a permanent business address. Existing law provides that a violation of the laws regulating ticket sellers is a misdemeanor.

AB 329 prohibits "bot" ticket scalping. "Bots" are robotic ticket buying software programs that allow users to buy tickets online before the general public can buy them. These software programs are used by some ticket scalpers to jump ahead of casual consumers, purchase a large number of tickets in seconds, then turn around and sell the same tickets at increasingly higher prices. **AB 329 also makes** it a misdemeanor to intentionally use or sell software to circumvent a security measure, access control system, or other control or measure on a ticket seller's website aimed at ensuring an equitable ticket buying process.

SB 12: "MADE IN CALIFORNIA" LABELING PROGRAM

Adds Civil Code Section 1770(a)6; adds Government Code Section 12098.10 et seq.

Existing law prohibits any acts and practices that are unfair or deceptive if they are undertaken by any person in a transaction intended to result, or that results, in the sale or lease of goods to any consumer.

SB 12 also makes unlawful the act of representing a non-agricultural product as made in California by using a specified Made in California label, unless the product complies with the requirements of the "Made in California Program" established by the Governor's Office of Business and Economic Development (Office). To be eligible to use the Made in California label, a company must establish that the product is substantially made by an individual located in the state. "Substantially made" is defined as completing an act that adds at least 51% of a final product's wholesale value by manufacture, assembly, fabrication, or production to create a final, recognizable product; and specifies that the definition does not include the act of packaging a product. As part of the Made in California Program, each company must register with the Office for use of the Made in California label and submit a qualified third-party certification at least once every three years that the product is made in accordance with this law.

SB 50: PAY PHONE SURCHARGES

Amends, repeals, adds Public Utilities Code sections 741, 742

Effective on January 1, 2015

There are still about 30,000 pay telephones in California, largely in the Los Angeles basin, San Francisco Bay area, and the Interstate 5 corridor.

Existing law requires an owner or operator of a coin-activated telephone for public use, which is not a telephone corporation and which provides operator-assisted services by other than a telephone corporation tariffed to provide those services, to post on or near the telephone equipment certain information, as prescribed. *Starting January 1, 2015*, **SB 50 requires** the owners and operators of public telephones that accept any form of payment to post on or near the telephone equipment a notification informing customers that calls activated by a card or other payment device may cost more than coin-activated calls, and requires the owner or operator of all public telephones to identify itself before the consumer incurs any charges, to quote the complete rates and charges for the call, and to permit the customer to terminate the call before it is connected. SB 50 becomes effective on January 1, 2015.

Existing law requires the Public Utilities Commission to adopt and enforce operating requirements for coin-activated and credit card-activated telephones available for public use owned or operated by corporations or persons other than telephone corporations. *Starting January 1, 2015*, **SB 50 applies** this provision to telephones available for public use that accept any form of payment.

SB 272: GOVERNMENT AND MILITARY ENDORSEMENTS

Amends Business and Professions Code Section 17533.6

Existing law makes it unlawful for any person, firm, corporation, or association that is a nongovernmental entity to solicit funds or information, or the purchase of goods or services, by means of a mailing, electronic message, or Internet Web site that contains a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government connection, approval, or endorsement, unless certain criteria are met. A violation of this provision is a crime.

SB 272 prohibits implying that any military veteran or military veteran service organization has a connection with, or has given approval or endorsement of any

financial product, goods or services unless there is an expressed connection to, or approval or endorsement by that military veteran entity.

SB 465: DECEPTIVE PRODUCT PACKAGING

Amends Business and Professions Code sections 12606, 12606.2; amends Health and Safety Code Section 110375

Existing law establishes the Department of Food and Agriculture and sets forth its powers and duties, including enforcement of the Fair Packaging and Labeling Act. The act prohibits specified persons from distributing any packaged commodity that is not in conformity with prescribed packaging and labeling requirements, except as provided. The act prohibits a container wherein commodities are packed to have a false bottom, false sidewalls, false lid or covering, or to be constructed or filled as to facilitate the perpetration of deception or fraud. The act prohibits a commodities container, or a food container subject to the Federal Food, Drug, and Cosmetic Act from being made, formed, or filled as to be misleading. The act provides that a container that does not allow a consumer to fully view its contents violates this provision if it contains nonfunctional slack fill. The act provides that nonfunctional slack fill is the empty space in a package that is filled to less than its capacity for other than specified reasons. However, existing law provides that these state provisions regarding food containers are operative only to the extent they are identical to specified federal requirements.

Existing law, the Sherman Food, Drug, and Cosmetic Law, also provides for the regulation by the State Department of Public Health of the packaging and labeling of foods, drugs, devices, and cosmetics, and provides requirements for containers containing these commodities that are similar to the requirements for containers under the Fair Packaging and Labeling Act.

SB 465 instead defines nonfunctional slack fill as the empty space in a package that is filled to substantially less than its capacity for other than any one or more of the applicable reasons. **SB 465 provides** that slack fill in a package shall not be used as grounds to allege a violation of the applicable provisions based solely on its presence in any of these types of packages unless it is nonfunctional slack fill. For food containers, this would apply only to the extent that it is identical to the federal requirement.

SB 465 substantially weakens the previous slack fill statute and makes it more difficult to prevent deceptive packaging by allowing the exemptions with or without deception.

SB 482: PRICING ACCURACY

Repeals Business and Professions Code Section 13357

Existing law provides the criteria and methodology by which local officials are to measure and verify the accuracy of a point-of-sale systems (POS) used by retail establishments as a means for determining the price of an item being purchased by a consumer. POS is "any computer or electronic system used by a retail establishment such as, but not limited to, Universal Product Code scanners, price lookup codes, or an electronic price lookup system as a means for determining the price of a product.

The current law authorizes a city or county to charge inspection fees, inspect, and take enforcement actions for violations of pricing accuracy on retail POS systems. In the County of Los Angeles, for example, the Agriculture Commissioner/Weights and Measures charges a registration fee for electronic scanners and the revenue is used to conduct pricing accuracy inspections and take needed enforcement actions.

Existing law was scheduled to sunset on January 1, 2014. **SB 482 removes** the sunset provision allowing local governments to verify the pricing accuracy of point of sale. By removing the sunset date, SB 482 extends the authority of counties to continue inspecting POS systems for pricing accuracy indefinitely.

SB 568: ONLINE ADVERTISING TO MINORS

Adds Business and Professions Code Chapter 22.1 (commencing with §22580)

Existing law requires an operator of a commercial Web site or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its commercial Web site or online service to make its privacy policy available to consumers.

Existing federal law requires an operator of an Internet Web site or online service directed to a child, as defined, or an operator of an Internet Web site or online service that has actual knowledge that it is collecting personal information from a child to provide notice of what information is being collected and how that information is being used, and to give the parents of the child the opportunity to refuse to permit the operator's further collection of information from the child.

Starting January 1, 2015, **SB 568 prohibits** an operator of an Internet Web site, online service, online application, or mobile application from marketing or advertising specified products or services to a minor, including:

1. Alcoholic beverages, tobacco products or paraphernalia, drug paraphernalia, electronic cigarettes;

2. Firearms, ammunition, BB devices, handguns safety certificates, products described in California statutes as “less lethal” weapons.
3. Etching cream or aerosol container of paint that can deface property;
4. Tanning in an ultraviolet tanning device;
5. Dietary supplement products containing ephedrine group alkaloids;
6. Body branding, permanent tattoos, obscene matter;

SB 568 also prohibits an operator from using, disclosing, compiling, or allowing a third party to use, disclose, or compile, the personal information of a minor for the purpose of marketing or advertising the products or services listed above. And the operator of an Internet website, online service, online application, or mobile application must permit a minor who is registered user to remove content or information publicly posted on the operator's site. The operator is required to provide notice to a minor that the minor may remove the content or information.

Automobiles

AB 443: MOTOR VEHICLE TITLE TRANSFERS

Amends and adds Vehicle Code Sections 4764, 4774, and 4767

Existing law generally prohibits the Department of Motor Vehicles (DMV) from registering a vehicle if the registered owner or lessee has failed to pay outstanding parking or toll evasion penalties, unless the registered owner or lessee pays the penalties at the time of the application for renewal. Under existing law, the DMV is not required to continue to attempt collection of outstanding parking or toll evasion penalties if a vehicle is transferred or the registration is not renewed for 2 renewal periods and the DMV has notified each local jurisdiction that is owed penalties of that fact. But existing law allows a car owner to transfer the car’s title to a relative (spouse, parent, grandparent, child, brother, sister) or revocable trust without first paying delinquent parking tickets or toll penalties.

SB 443 prohibits DMV from transferring the ownership and registration of a vehicle to a relative or a revocable trust if delinquent parking or toll violations have been reported to DMV, unless the transferee pays the amount of the fines and penalties for those violations to DMV, or provides requested documentation showing the fines and penalties have been cleared.

AB 791: REPOSSESSION AGENCIES

Amends and adds Business and Professions Code sections 7505.2, 7506.9, 7507.4, 7507.12, 7508.2, 7508.7 and 7508.8

Existing law, the Collateral Recovery Act, provides for the licensure and regulation of repossession agencies by the Bureau of Security and Investigative Services (BSIS). "Collateral" is defined as any specific vehicle, trailer, boat, recreational vehicle, motor home, appliance, or other property that is subject to a security agreement.

Existing law requires an applicant for an initial registration or a reregistration to submit an application to BSIS, and include certain personal information in the application that is confidential and is prohibited from being disclosed to the public, except for the registrant's full name, the licensee's name and address, and the registration number. A violation of the act is a crime. **AB 791 prohibits** a repossession agency from disclosing to the public, without a court order, the residence address, residence telephone number, cellular telephone number, driver's license number, work schedule, past, present, or future location, or any other personal information of any licensee, registrant, manager, employee, or independent contractor that it employs.

Existing law allows repossessors to take personal effects (car stereos, upgraded rims, etc.) that are connected or affixed to the collateral if taking them is reasonably necessary to conduct the repossession in a safe manner or to protect the collateral or personal effects. **AB 791 authorizes** the removal of a locking mechanism or security device on the collateral, before, during, or after a repossession.

Existing law allows repossessors to seize a vehicle without the debtor's knowledge or consent by simply seizing a vehicle that is publicly accessible (usually parked on the street or in the driveway). Once the vehicle is hitched to the tow truck, repossession is technically complete and a debtor cannot stop the repossessor from driving away with the seized vehicle. **AB 791 declares** that repossession is also complete when the repossessor moves the entire collateral or gains control of the collateral.

Existing law allows a licensed repossession agency to demand payment in lieu of repossession. **AB 791 prohibits** a licensed repossession agency from demanding for payment in lieu of repossession.

While the majority of repossessed vehicles are sold at auction, existing law allows repossession agencies to personally sell the collateral. The proceeds of the repossessed collateral, minus the costs for repossession and resale, are then deducted from a debtor's outstanding balance owed to a creditor. This practice is problematic because it does not guarantee that the repossessed collateral will be sold at fair market value because the repossession agency is not required to sell the collateral at auction. **AB 791 prohibits** repossession agencies from accepting payment on behalf of creditors either by selling the seized collateral or by demanding payment in lieu of repossession. AB 791 authorizes BSIS to assess and increase administrative fines for violations.

AB 791 allows a person affiliated with a repossession agency to wear an oval, shield, round, square, or non-7-point badge, cap insignia, or jacket patch if it bears on its face all or a substantial part of the repossession agency's name, the repossession agency license number, and the word "repossessor. BSIS has to approve all badges, cap insignias, and jacket patches worn by a repossessor. And repossessors are prohibited from wearing a badge on their belts and from hanging a badge around their necks.

SB 459: SMOG CHECK ASSISTANCE

Chapter 437, an act to amend Health and Safety Code §§ 44062.3 and 44125

Existing law establishes a motor vehicle inspection and maintenance program, referred to as a Smog Check Program, developed, implemented, and administered by the California Department of Consumer Affairs under their Bureau of Automotive Repair (Department).

Existing law requires the Department to have a program for the retirement of high-polluting vehicles that pays $1,500 to a low-income motor vehicle owner who retires his or her vehicle and $1,000 to all other motor vehicle owners. To qualify a motor vehicle must have:

1. Been registered in California during at least the past two years, and
2. Failed any type of smog check inspection lawfully performed in California.

SB 459 authorizes, rather than requires, the Department to permit vehicle retirement for any motor vehicle that has:

1. Been registered without substantial lapse in the state for at least 2 years prior to vehicle retirement (but not necessarily the two most recent years), and
2. Failed any type of smog check inspection lawfully performed in California.

SB 459 also requires the Department to update the guidelines for the enhanced fleet modernization program by June 30, 2015, and increases compensation for replacement vehicles for low-income vehicle owners at not less than $2,500.

Credit and Finance

AB 166: FINANCIAL LITERACY FOR K–12

Amends Education Code sections 51284, 51280

Existing law requires a school district, as part of its adopted course of study for grades 7 to 12, to offer courses in specified areas of study, including anthropology, economics, geography, history, political science, psychology, and sociology.

Existing law requires the State Board of Education (concurrently with the next revision of textbooks or curriculum frameworks in the social sciences, health, and mathematics) to ensure that these academic areas integrate components of human growth, human development, human contribution to society, and financial preparedness.

AB 166 requires the State Board of Education to integrate financial literacy, including budgeting and managing credit, student loans, consumer debt, and identity theft security with those specified academic areas.

AB 480: SERVICE CONTRACTS FOR OPTICAL PRODUCTS

Amends Business and Professions Code Section 9855

Existing law, the Electronic and Appliance Repair Dealer Registration Law (Act), regulates service contracts relating to maintenance or repair of, among other things, specified sets and appliances, and makes it unlawful for any person to act as a service contract administrator or a service contract seller without first registering with the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation (Bureau). A violation of these provisions is deemed to be unlawfully transacting the business of insurance, and therefore subject to specified criminal penalties.

AB 480:

1. Includes in the definition of service contract a written contract for the performance of services relating to the maintenance, replacement, or repair of optical products, thereby making administrators and sellers of those contracts subject to registration with the Bureau and other requirements of the Act.
2. Provides that a contract in which a consumer agrees to pay a provider of vision care services for a discount on optical products or contact lenses for a specified duration is not included in the definition of service contract.
3. Defines optical products for purposes of these provisions as prescription and nonprescription eyewear and not contact lenses of any kind.

The Electronic and Appliance Repair Dealer Registration Law regulates service contracts relating to maintenance or repair of various products.

AB 480 does not include a contract in which a consumer agrees to pay a provider of vision care services (optometrists and ophthalmologists) for a discount on additional

optical products or contact lenses for a specified duration.

AB 502: SECURED CREDIT

Amends Business and Professions Code Section 23399.3

Effective July 1, 2014

The Uniform Commercial Code governs security interests in collateral, including personal property and fixtures, as well as certain sales of accounts, contract rights, and chattel paper. The code, among other things, specifies requirements and procedures regarding perfecting a security interest, including the filing of a financing statement with the Secretary of State, amending a financing statement, transferring a security interest, and terminating a security interest. The code also governs the effectiveness of a security interest when a debtor changes locations to another jurisdiction.

Starting July 1, 2014, **AB 502 revises** certain provisions governing security interests, including:

1. Defines a "public organic record" and revises the definitions of "authenticate," "certificate of title," and "registered organization."
2. Specifies an additional requirement for determining whether a secured party has control of electronic chattel paper.
3. Specifies rules that apply to collateral to which a security interest attaches within 4 months after the debtor changes its location to another jurisdiction. Under current law, that security right continues for 4 months, but it applies only with respect to collateral owned by the debtor at the time of the change of jurisdiction. AB 502 will include "after-acquired property." After the 4 months, the creditor must follow the rules of the new jurisdiction.
4. Revises the requirements for a record to sufficiently provide the name of a registered organization, a decedent's estate, or an individual.
5. Provides for a secured party of record with respect to a financing statement to file an information statement with respect to a record if the secured party believes that the person that filed the record was not entitled to do so.
6. Enacts changes relating to the subordination of security interests, the assignment of security interests, and the refusal of a filing office to accept a record for filing.

AB 786: ELECTRONIC MONEY TRANSMISSIONS

Amend, adds Finance Code sections 2003, 2010, 2011, 2040, 2082, 2084, 2101, 2102, 2174, 2175

Existing law, the Money Transmission Act (Act), provides for the regulation of money transmissions by the Department of Financial Institutions and the Commissioner of Financial Institutions. The Governor's Reorganization Plan No. 2, as of July 1, 2013, abolished the Department of Financial Institutions and transferred its responsibilities to the Department of Business Oversight and the Commissioner of Business Oversight.

Existing law requires a person who engages in the business of money transmission in California to be licensed and provides that only a corporation or limited liability company may be issued a license.

The Act was written before recent technological advances. For example, innovation in the payments industry has exploded as money transmission has transcended into mobile applications and new point of sale (POS) devices. Five years ago the bulk of money transmission activity involved international remittances where the customer would go to a brick and mortar location to send money to friends or family in other countries. Today, mobile phone users can use apps to pay for goods and services where they submit payment through a third-party provider that then directs the payment to the provider of goods and services. Technically, this might be a money transmission.
AB 786 exempts from the Act money transmission for the payment of goods or services.

AB 786 also exempts from the Act a person who delivers wages or salaries on behalf of employers to employees or facilitates the payment of payroll taxes to state and federal agencies, makes payments relating to employee benefit plans, makes distribution of other authorized deductions from employees' wages or salaries, or transmits other funds on behalf of an employer in connection with transactions related to employees.

Existing law requires a licensee or its agent to forward all money received for transmission or give instructions committing equivalent money to the person designated by the customer within 10 days after receiving that money, unless otherwise ordered by the customer. In the case of money received for transmission, existing law requires a receipt to be provided by a licensee or its agent to all customers and requires the receipt to include a statement in this regard. **SB 786 provides an exception** to these requirements when the money transmission is for the payment of goods or services.

AB 1091: FINANCE AND MORTGAGE LENDERS OVERSIGHT

Amends, adds Finance Code sections 22050, 22161, 22712, 22707.5, 50501.5

Existing law, the California Finance Lenders Law (CFLL), provides for the licensure and regulation of finance lenders and brokers. Existing law, the California Residential Mortgage Lending Act (CRMLA), provides for the regulation and licensure of residential mortgage lenders, servicers, and originators. Existing law makes the Commissioner of Corporations responsible for administering the law and act until July 1, 2013, and thereafter the Deputy Commissioner of Business Oversight for the Division of Corporations (DOC) will be responsible.

Existing law exempts California business and industrial development corporations, licensed pawnbrokers, and persons making no more than one commercial loan in a 12-month period from the California Finance Lenders Law. **AB increases the exception** to those making five or fewer commercial loans in a 12-month period as long as the loans are incidental to the business of the person relying on the exemption.
In addition, **AB 1091 provides DOC** with an additional enforcement tool: On-the-spot "fix-it tickets." At present, DOC lacks the authority to issue an on-the-spot "fix-it ticket" to a licensee that has been found to have violated or to be violating one or more provisions of the California Finance Lenders Law or the California Residential Mortgage Lending Act. Thus, if a DOC examiner identifies a violation during a routine audit or investigation, the examiner must return to the office and write up findings, then send those findings up the chain of command for review and approval. In all but the most serious cases, DOC sends a letter to the licensee once the examiner's findings have been approved, informing the licensee of the violation(s), and ordering that corrective action be taken. While a lengthy review of examination findings may be appropriate in complex cases, simpler cases could be more efficiently handled by granting DOC examiners on-the-spot citation authority.

AB 1091 also allows DOC to issue a written citation to a licensee under CFLL or CRMLA or any other person violating the law to correct the violation or violations, and an assessment of an administrative fine not to exceed $2,500. **AB 1091 also requires** that if the Commissioner has reasonable grounds to believe that a person is conducting business under the CFLL in an unsafe or injurious manner, he or she issue a written order directing the discontinuance of the unsafe or injurious practice.

SB 233: FAIR DEBT BUYERS PRACTICES ACT

Adds Civil Code Title 1.6C.5 (commencing with §1788.50) and amends sections 700.010, 706.103-104, 706.108, 706.122; adds Code of Civil Procedure Section 581.5

Existing state and federal law regulate debt collections. Among other things, existing law prohibits debt collectors from:

1. Threatening to have the consumers arrested, jailed, or physically harmed.
2. Repeatedly calling consumers debtor to harass them.
3. Calling consumers before 8 a.m. or after 9 p.m.
4. Using foul language when talking to consumers.

5. Threatening to sue consumers if they don't intend to do it.
6. Telling consumers that the collector is an attorney, a police officer, or someone else they are not.

SB 233 enacts the Fair Debt Buyers Practices Act, which imposes additional restrictions on debt collectors when collecting purchased consumer debt. SB 233 only applies to debt buyers with respect to consumer debt sold or resold on or after January 1, 2014.

Perhaps the most important provision prohibits a debt buyer from bringing suit, initiating another proceeding, or taking any other action to collect a consumer debt if the applicable statute of limitations on the cause of action has expired. These are some of the important consumer protections SB 233 provides:

1. Prohibits a debt buyer from making any written statement in an attempt to collect a consumer debt unless the debt buyer possesses certain information, including:
    a) The debt balance at charge off.
    b) The date of default or last payment.
    c) The name and address of the charge-off creditor at the time of charge off, and all persons or entities that purchased the debt after charge off.
    d) A statement that the buyer is the sole owner of the debt or has authority to assert the rights of all owners of the debt.
2. Prohibits a debt buyer from making any written statement to a debtor in an attempt to collect a consumer debt, unless the debt buyer has access to a copy of a contract or other document evidencing the debtor's agreement to the debt, or if no signed contract exists, demonstrating that the debtor incurred the debt.
3. Requires a debt buyer to provide all of the above information or documents to the debtor without charge within 15 calendar days of receipt of a debtor's written request for information regarding the debt or proof of the debt, or to cease all collection of the debt until the debt buyer provides the information or documents to the debtor.
4. Requires the debt buyer to provide a specified written notice with its initial written communication to the debtor that, among other things, informs the debtor of his or her right to request records from the debt buyer showing information that the debt buyer is required to possess as a condition of collecting on the debt.
5. Requires specific information regarding the underlying debt, the debt buyer, the debtor, and charge-off creditors to be so stated in any action brought by a debt buyer on a consumer debt.

6. Provides that in an action initiated by a debt buyer, no default of other judgment may be entered against a debtor unless the following authenticated documents have been submitted by the debt buyer to the court:
    (a) Business records establishing facts about the debt, debtor, and charge-off creditors that are required by this act to be alleged in the complaint; and
    (b) A copy of a contract or other document evidencing the debtor's agreement to the debt, or if no signed contract exists, demonstrating that the debtor incurred the debt.

A debt buyer who violates any provision of SB 233 with respect to any person is liable to the person in an amount equal to the sum of the following:

1. Actual damages sustained as a result of the violation.
2. Statutory damages, as specified for an individual or class action.
3. Costs of the action and reasonable attorney's fees, but is exempt from such liability under this bill if it can prove by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, and occurred notwithstanding the maintenance of procedures reasonably designed to avoid any such error.

Additionally, whenever a writ of execution or an earnings withholding order is served upon the judgment debtor or the debtor's employer, SB 233 requires that the levying officer must provide a Claim of Exemption Form and related financial statement forms.

SB 318: SMALL CONSUMER LOANS REGULATIONS

Amends, adds, repeals Financial Code sections 22750, 22365, 22348

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Corporations and makes a willful violation of its provisions a crime. Existing law regulates the charges a licensee may impose or receive on loans it makes, and authorizes a licensee to contract for and receive specified alternative charges and administrative and delinquency fees.

Existing law establishes, until *January 1, 2015*, the Pilot Program for Affordable Credit-Building Opportunities for the purpose of increasing the availability of credit-building opportunities to under-banked individuals seeking low-dollar-value loans. Under the program, licensees must file an application with, and pay a fee to, the Commissioner of Corporations (Commissioner) to participate in the program.

Existing law authorizes a licensee approved by the Commissioner to participate in the program to impose specified alternative interest rates and charges, including an administrative fee and delinquency fees, on loans of at least $250 and less than $2,500. Existing law also authorizes licensees to use the services of "finders," defined as entities that, at the finder's physical location for business, bring licensees and prospective borrowers together for the purpose of negotiating loan contracts at the finder's location.

The Governor's Reorganization Plan No. 2 of the 2011–12 provides that, on and after July 1, 2013, certain responsibilities of the Department of Corporations and the Commissioner of Corporations will be transferred to the Department of Business Oversight and the Commissioner of Business Oversight (Commissioner) will be the head of the Department of Business Oversight.

SB 318 abolishes the Pilot Program for Affordable Credit-Building Opportunities and establishes instead, until January 1, 2018, the Pilot Program for Increased Access to Responsible Small Dollar Loans for loans in principal amounts of at least $300 but less than $2,500. The goal of this new Program is to make small loans a profitable business, while creating lending standards that will make it a "responsible product," including:

1. Requires licensees and other entities to file an application and pay a specified fee to the Commissioner of Business Oversight to participate in the program.
2. Loans must be for at least 90 days when principal balance upon origination is less than $500, 120 days for $500 to $1,500, and 180 days at least $1,500.
3. The annual simple interest rate (calculated as of the date of loan origination and fixed for the life of the loan) is not to exceed:
    a. 36% for loans up to $1,000 (or 32.75% plus the US prime lending rate, if that is less); and
    b. 35% for portions of a loan from $1,000 to $2,500, 35% (or 28.75% plus the US prime lending rate, if that is less);
4. A lender can charge only an administrative fee of 7% of the principal amount, or $90, whichever is less, on the first loan made to a borrower; and 6% or $75, whichever is less, on the second and subsequent loans.
5. A lender cannot charge the same borrower an administrative fee more than once in any four-month period.
6. Lenders may not refinance a loan unless additional principal is added and these conditions are met at the time the borrower submits an application to refinance:
    a. At least 60% of the outstanding principal remaining on the loan has been repaid by the borrower,
    b. The borrower is current on the present loan,
    c. The lender underwrites the new loan, and
    d. If loan proceeds of both the original loan and refinance loan are used for personal, family, or household purposes, the lender has not

previously refinanced the outstanding loan more than once.

7. For delinquencies of at least 7 days, there can be a fee of $14; for delinquencies for at least 14 days, $20. No more than one delinquency fee may be imposed per delinquent payment; no more than two delinquency fees may be imposed during any period of 30 consecutive days.
8. No delinquency fee may be imposed on a borrower who is 180 days or more past due if that fee would result in the sum of the borrower's remaining unpaid principal balance, accrued interest, and delinquency fees exceeding 180% of the original principal amount of the borrower's loan.
9. The lender must report each borrower's payment performance to at least one consumer credit reporting agency.
10. The lender may not require the borrower to purchase credit insurance.
11. Requires a licensee to have a credit education program that the consumer will undergo prior to disbursement of loan proceeds.

SB 484: TAX PREPARERS DISCIPLINE

Amends, adds Business and Professions Code sections 22251, 22253, 22255-6, 22259, 22251.1-.2, 22251.3, 22253.1.5, 22253.3-.4

Existing law requires all tax preparers (other than CPAs, or enrolled agents, licensed California attorneys, trust companies, federal or state regulated financial institutions, or employees of exempt corporations) to register with the California Tax Education Council (CTEC), a non-governmental entity, before preparing tax returns for another person for a fee. Registration requires the tax preparer to complete an annual application and pay an application fee, take out a bond, and complete specified educational requirements.

Existing law does not give the CTEC authority to discipline registrants for unprofessional conduct. **SB 484 outlines a code of conduct** for registered tax preparers, and grants CTEC the authority to deny registration to an applicant, or discipline a registrant, who is found to be in violation of Tax Preparers Law. A tax preparer that has been disciplined has one year to challenge the decision in Superior Court.

DEBT COLLECTIONS (CONSUMER FINANCIAL PROTECTION BUREAU)

CFPB regulates debt collectors that have annual receipts of more than $10 million. Although that is only roughly 175 of the 4,500 known debt collection companies, they account for about 63%, or $7.7 billion, of the industry's $12.2 billion in annual collections. The Federal Trade Commission (FTC) has jurisdiction of debt collectors generally and California also has debt collection statutes.

CFPB has prepared the **following five formatted letters** consumers can use to contact debt collectors, whether or not the collectors are under its jurisdiction:

1. **Needs more information on the debt**. The first letter is for consumers who need more information about a debt the collector has told them that they owe. The letter states that the consumer is disputing the charges until the debt collector answers specific questions about what is owed. This letter may be useful, for example, for a consumer who may not immediately recognize the debt as their own or for those who want to find out more about the debt before they pay it.
2. **Disputing a debt.** This letter tells the collector that the consumer is disputing the debt and instructs the debt collector to stop contacting the consumer until it provides evidence that the consumer is responsible for that debt. For example, consumers who do not want to discuss the debt until they have additional information verifying the debt might use this template.
3. **Contact restrictions.** Fair Debt Collection Practices Act prohibits debt collectors from contacting a consumer about a debt at a time or place they should know is inconvenient. With this letter, the consumer is able to tell the debt collector how they would like to be contacted. This may be a useful option for consumers who want to work with a collector to resolve their debt.
4. **Have a lawyer**. If a consumer has hired a lawyer, generally, the debt collector should be contacting the lawyer instead of the consumer. This letter template provides a way for the consumer to give the debt collector the lawyer's information and instruct the collector to contact only the lawyer.
5. **Stop contact**. Consumers have the right to tell a debt collector to stop all communication. It is important to note that stopping contact from a debt collector does not cancel the debt or prohibit the collector from pursuing other remedies, such as filing a lawsuit. This letter template could help consumers who feel they are being harassed by a collector's communications.

Elder Financial Abuse

AB 140: ABUSE: UNDUE INFLUENCE:

Adds Probate Code Section 86; amends Welfare and Institutions Code sections 15610.30, 15610.70

Existing law prohibits financial abuse of seniors and dependent adults when there is

undue influence. Undue influence is defined in the Civil Code, but not in the Probate Code or in the Elder and Dependent Adult Civil Protection Act in the Welfare and Institutions Code.

AB 140 adopts the Civil Code definition with subtle differences, including:

1. Removes the term “coercion,” and
2. Emphasizes unfairness.

Courts in Civil Code cases have described undue influence as "a shorthand legal phrase used to describe persuasion as utilization of high pressure, a pressure which works on mental, moral, or emotional weakness to such an extent that it approaches the boundaries of coercion” The courts have called this “over persuasion” and have held that the characteristics of over-persuasion might include factors like:

1. Discussion of the transaction at an unusual or inappropriate time,
2. Consummation of the transaction in an unusual place,
3. Insistent demand that the business be finished at once,
4. Extreme emphasis on consequences of delay,
5. The use of multiple persuaders by the dominant side against the victim,
6. Absence of third-party advisers to the victim, and
7. Statements that there is no time to consult financial advisors or attorneys.

AB 140 avoids referring to “coercion” since it is often identified as the use of force or threat. So it seemed to the legislature that courts might exact a heavier burden of proof than is necessary to prove over-persuasion. AB 140 refers to "excessive persuasion” but it incorporates considerations of the equity (or fairness) of the result as opposed to only looking to the methods and context of persuasion that overcomes the will. An unfair result would not in itself be evidence of excessive persuasion, but it would be something that a court would consider along with the methods and context of persuasion.

AB 1217: HOME CARE SERVICES CONSUMER PROTECTION ACT

Adds Health and Safety Code Chapter 13 (from §1796.10)

Effective January 1, 2015

California law currently provides for two types of in-home care for the elderly, disabled, and those in need of home-based care: IHSS (in-home supportive services) and HHA (Home Health Agencies). HHAs provide an array of medical and non-medical care and services, including skilled nursing services, based upon a plan of treatment prescribed by the patient's physician or surgeon. IHSS is a county operated service, which provides in-home care to low-income elderly or disabled persons.

However, under existing law many other home care organizations (HCOs) are not subject to IHSS or HHA regulations. An HCO is a person, a corporation, or other organization that arranges home care services by an affiliated home care aide. "Home care services" means nonmedical services and assistance provided by a registered home care aide to a client, but does not authorize the aide to assist with medication that require administration or oversight by a licensed health care professional.

Effective January 1, 2015, **AB 1217 enacts** the Home Care Services Consumer Protection Act, which provides for the licensure and regulation of HCOs and the registration of their affiliated home care aides by the State Department of Social Services (Department). Non-affiliated home care aides are still not required to register but they may do so voluntarily. Extended family members, guardians, foster parents in a foster home, and hospices are also exempt from registration.

Some of the Home Care Services Consumer Protection Act's regulations include:

1. Requiring the Department to establish and continuously update a home care aide registry, which would include information relating to home care aide applicants and registered home care aides.
2. Requiring background clearances for home care aides.
3. Requiring a home care aide applicant to submit to the Department of Justice a signed declaration under penalty of perjury regarding any prior criminal convictions.
4. Prescribing enforcement procedures, fines, and penalties for violations of the Act by a home care organization or a home care aide.
5. Providing that is a misdemeanor for a person to falsely represent or present himself or herself as a home care aide applicant or registered home care aide.

AB 1339: CONSERVATORS AND FIDUCIARIES

Amends, adds Probate Code sections 1510, 1821, 2250, 2643, 2614.7, 2614.8, 2643.1

It has been reported that some conservatees, wards and beneficiaries of special needs trusts have had problems challenging the exorbitant fees charged by some professional fiduciaries. A six-month investigation by the Mercury News found a small group of Santa Clara County's court-appointed personal and estate managers were handing out costly and questionable bills - and charging even more if they were challenged.

Under existing law, when a petition to appoint a professional conservator or a temporary conservator is filed the petition must include specified information. The required information includes the petitioner's license information and a statement explaining how the petitioner was engaged to file the petition, and what prior

relationship the petitioner had with the proposed conservatee or the conservatee's family or friends.

AB 1339 requires that when a petition to appoint a professional conservator or a temporary conservator is filed the petition also include the petitioner's or proposed conservator's proposed hourly fee schedule or another statement of the proposed compensation from the estate of the conservatee for services performed. And the Court has discretion to reduce the proposed hourly fees or other compensation.

AB 1339 also requires, when a petition to appoint a guardian or temporary guardian is filed, and the petitioner is a professional fiduciary, the petition to include the same information as when a professional fiduciary files a petition to appoint a conservator or a temporary conservator. And the Court has discretion to reduce the proposed hourly fees or other compensation.

Existing law requires, within 90 days of a guardian's or conservator's appointment, the guardian or conservator to file an inventory and appraisal. **AB 1339 requires** the guardian or conservator, if he or she is a professional fiduciary, to file concurrently with the inventory and appraisal a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed. And the Court has discretion to reduce the proposed hourly fees or other compensation.

Existing law permits the court, on petition by the guardian or conservator, to authorize periodic payments to the guardian or conservator for the services rendered by those persons during the period covered by each payment. **SB 1339 permits** the court, on petition by a guardian or conservator who is a professional fiduciary, to authorize periodic payments only if the guardian or conservator filed a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed with the inventory and appraisal and only after addressing all objections to the petition.

Health and Insurance

AB 119: WATER TREATMENT DEVICES – ADVERTISEMENT

Amends Business and Professions Code Section 17577.2; amends, adds or repeals Health and Safety Code Sections 116825, 116840, 116860, 116831-2, 116836, 116830, 116835, 116845, 116850, and 116855

Existing law prohibits claims that a water treatment device affects the health or

safety of drinking water, unless the device has been certified by the State Department of Public Health.

AB 119 requires that each manufacturer that offers for sale a water treatment device in California, and makes health claims, must submit to DPH the manufacturer's contact information, product identification information, the specific contaminants claimed to be removed or reduced by the device, and a "product information worksheet" for inclusion on DPH's Website. The manufacturer must also submit to DPH independent third-party verification of all claims.

After July 1, 2015, the exterior packaging of water treatment devices must clearly identify the contaminants that the device has been certified to remove or reduce, and to place the following label on the container:

> *"Please refer to the owner's manual for proper maintenance and operation. If this device is not maintained and operated as specified in the owner's manual, there is a risk of exposure to contaminants. For more information, visit the manufacturer's Internet Web site at Manufacturer's Internet Web Site or the California Department of Public Health's Internet Web site at ----"*

AB 1308: MIDWIVES – NO DOCTOR SUPERVISION REQUIRED

Amends, adds Business and Professions Code sections 2507-8, 2513, 2516, 2519, 2510; amends Health and Safety Code Section 1204.3

Existing law, the Licensed Midwifery Practice Act of 1993, provides for the licensing and regulation of midwives by the Board of Licensing of the Medical Board of California. The license to practice midwifery authorizes the holder, under the supervision of a licensed physician and surgeon, to attend cases of normal childbirth and to provide prenatal, intrapartum, and postpartum care, including family-planning care for the mother, and immediate care for the newborn. The Act requires a midwife to immediately refer all complications to a physician and surgeon. Under the Act, a licensed midwife is required to make certain oral and written disclosures to prospective clients. Under the Act, the board is authorized to suspend or revoke the license of a midwife for specified conduct, including unprofessional conduct consisting of incompetence or gross negligence in carrying out the usual functions of a licensed midwife. A violation of the act is a crime.

AB 1308 provides that:

1. A midwife is not required to be supervised by a physician or surgeon.
2. If a potential midwife client fails to meet the conditions of a normal pregnancy or childbirth, but still desires to be a client, the licensed midwife

refer the woman to a physician and surgeon for examination. The Medical Board is required to adopt regulations specifying certain of those conditions.

3. A licensed midwife is authorized to assist the woman only if the physician and surgeon determine, after examination, that the risk presented by the woman's condition are not likely to significantly affect the pregnancy and childbirth.
4. Requires a licensed midwife to immediately refer or transfer the client to a physician and surgeon if at any point during pregnancy, childbirth, or postpartum care a client's condition deviates from normal.
5. Authorizes the licensed midwife to resume primary care of the client if the physician and surgeon determine that the client's condition or concern has been resolved, and to provide concurrent care if the client's condition or concern has not been resolved, as specified.
6. Authorize a licensed midwife to directly obtain supplies and devices, obtain and administer drugs and diagnostic tests, order testing, and receive reports that are necessary to his or her practice of midwifery and consistent with his or her scope of practice.
7. Require a licensed midwife to make additional disclosures to prospective clients, including, among other things, the specific arrangements for referral of complications to a physician and surgeon, and to obtain written, informed consent of those disclosures, as prescribed.
8. Authorizes the Medical Board to suspend or revoke the license of a licensed midwife for failing, when required, to consult with a physician and surgeon, to refer a client to a physician and surgeon, or to transfer a client to a hospital.

SB X1 AND AB X1: MEDI-CAL COVERAGE EXPANSION

Adds, amends, repeals Welfare and Institutions Code sections 11026, 14005.39, 14132, 14008.85, 14005.28, 14005.31-.32, 14007.1, and 14007.6, 14000.7,14005.63, 14005.65, 14005.66-.68, 14007.15, 14011.66, 14014.5, 14057, 14102-3, 14132.02-.03, 14189

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions.

These bills implement the expansion of federal Medicaid coverage in California. Major provisions of this bill include establishing the Medi-Cal benefit package for the expansion population as the same benefit package for the current Medi-Cal population. In addition, the bill requires the existing Medi-Cal program to cover additional mental health and substance abuse benefits that are provided under the Kaiser Product Essential Health Benefit plan. The bill also provides coverage to

former foster youth and makes a number of changes to make the enrollment process easier.

SB X1-2 AND AB X1- 2: HEALTH CARE DISCRIMINATION

Adds, amends, repeals Health and Safety Code sections 1357.51, 1357.500, 1357.503-504, 1357.509, 1357.512, 1363, 1389.5, 1399.829, 1399.825, 1389.4, 1389.7, 1348.96, 1399.836, 1399.845, 1399.816

Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), enacts various health care coverage market reforms that take effect January 1, 2014. Among other things, PPACA requires each health insurance issuer that offers health insurance coverage in the individual or group market in a state to accept every employer and individual in the state that applies for that coverage and to renew that coverage at the option of the plan sponsor or the individual. PPACA prohibits a group health plan and a health insurance issuer offering group or individual health insurance coverage from imposing any preexisting condition exclusion with respect to that plan or coverage. PPACA allows the premium rate charged by a health insurance issuer offering small group or individual coverage to vary only by rating area, age, tobacco use, and whether the coverage is for an individual or family and prohibits discrimination against individuals based on health status, as specified. PPACA requires an issuer to consider all enrollees in its individual market plans to be part of a single risk pool and to consider all enrollees in its small group market plans to be part of a single risk pool, as specified. PPACA also requires each state to, by January 1, 2014, establish an American Health Benefit Exchange that facilitates the purchase of qualified health plans by qualified individuals and qualified small employers, as specified.

These bills:

1. Prohibit health plan or solicitors, from directly or indirectly, employing marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health care needs, or discriminate based on an individual's race, color, national origin, present or predicted disability, age, sex, gender identity, sexual orientation, expected length of life, degree of medical dependency, quality of life, or other health conditions;
2. Prohibit a health plan from requiring an individual applicant or his/her dependent to fill out a health assessment or medical questionnaire prior to enrollment;
3. Require a health plan or insurer to fairly and affirmatively offer, market, and sell all of the plan's health benefit plans that are sold in the individual market to all individuals and dependents in each service area in which the plan

provides or arranges for health care services;

4. Prohibit in the individual market a health plan from imposing any preexisting condition provision upon any individual;
5. Prohibit in the individual market a health plan from establishing rules for eligibility;
6. Establish in the individual market an initial open enrollment period from Oct. 1, 2013 to March 31, 2014, and annually after that from Oct. 15 to Dec. 7;
7. Permit in the individual market only using specified characteristics of an individual, and any dependent thereof, for purposes of establishing the rate of the health benefit plan;
8. Require a health plan outside Covered California to inform applicants for coverage that they may be eligible for lower-cost coverage through Covered California (but does not apply to grandfathered plans, but requires a grandfathered health benefit plan to issue such notice annually and in any renewal material).

SB X3 AND AB X3: BRIDGE HEALTH INSURANCE FOR LOW-INCOME CONSUMERS

Amends, repeals, adds Government Code sections 100501, 100503, 100504.5, 100504.6; amends, repeals, adds Health and Safety Code section 1366.6, 1399.864; amends, repeals, adds Insurance Code sections 10112.3, 10961; adds, repeals Welfare and Institutions Code Section 14005.70

Existing law, the federal Patient Protection and Affordable Care Act, requires each state to, by January 1, 2014, establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and small employers.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive health care benefits. Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law also provides for the regulation of health insurers by the Department of Insurance.

Under existing law, carriers that sell any products outside the California Health Benefit Exchange (Exchange) are required to fairly and affirmatively offer, market, and sell all products made available to individuals or small employers in the Exchange to individuals or small employers, respectively, purchasing coverage outside the Exchange. Existing law also requires carriers that participate in the

Exchange to fairly and affirmatively offer, market, and sell in the Exchange at least one product within 5 levels of specified coverage.

Under these bills, a bridge health insurance plan (bridge plan) is a plan for low-income individuals, the parents of Medi-Cal and HFP-eligible individuals, and individuals moving from Medi-Cal coverage to subsidized coverage through Covered California (California's new health insurance exchange) that promotes continuity of care, provides an additional coverage choice and reduces the negative effects of "churning" back and forth between systems of coverage where individuals are required to shift health plans and health coverage programs because of changes in their household income.

By allowing individuals to remain within their current health plan when they shift health subsidy these bills prevent disruptions in individuals' provider networks and improves continuity of care. In addition, these bridge plans make it more likely that Covered California-eligible parents of Medi-Cal enrolled children are covered by a single health plan with the same provider network.

There are a number of life experiences that affect an individual's income eligibility for health subsidy programs (through Medi-Cal and Covered California), such as the birth of a child, marriage or divorce, getting or losing a job or receiving a pay raise or pay reduction, and the aging out of a child from coverage. These bills authorize health care service plans and health insurers to offer a bridge plan product to limit the product to a specified group of individuals and exempts bridge plans from being subject to the requirement to sell products within each of the five levels of coverage available in Covered California and the guaranteed issue requirement, inside and outside Covered California.

SB 353: HEALTH CARE LANGUAGE TRANSLATIONS

Adds Health and Safety Code Section 1367.041; adds Insurance Code Section 10133.10

Under the federal Affordable Health Care, health plans are required to place a notice of the availability of language assistance services on all English versions of all enrollment materials, all correspondence from the plan confirming a new or renewed enrollment, brochures, newsletters, outreach and marketing materials, and other materials routinely disseminated to enrollees. Interpretation services are also required to be provided to enrollees at all plan points of contact where the enrollee might have need for such services, and health plans are required to provide interpretation services for any language requested by an enrollee, irrespective of whether the language is identified as one of the plan's threshold languages.

SB 353 fulfills that requirement and specifically refers to: Applications for enrollment

and any information pertinent to eligibility or participation; Notices advising prospects of the availability of no-cost translation and interpretation services; Notices pertaining to the right to file a grievance and instructions on how an enrollee may file a grievance; and, Uniform summaries of benefits of coverage required by the Patient Protection and Affordable Care Act (ACA) and any of its rules or regulations.

SB 509: HEALTH BENEFIT EXCHANGES - EMPLOYEE BACKGROUND CHECKS

Adds Government Code Section 1043

Under the federal Patient Protection and Affordable Care Act (PPACA), each state is required, by January 1, 2014, to establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and small employers. Existing state law establishes the California Health Benefit Exchange (Exchange) within state government, specifies the powers and duties of the Executive Board (Board) governing the Exchange, and requires the Board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers by January 1, 2014.

SB 509 requires:

1. The Board to submit to the Department of Justice (Department) fingerprint images and related information of employees, prospective employees, contractors, subcontractors, volunteers, or vendors whose duties include or would include access to specified information for the purposes of obtaining prescribed criminal history information.
2. Any services contract, interagency agreement, or public entity agreement, that includes or would include access to those types of information to include a provision requiring the contractor to agree to criminal background checks on its employees, contractors, agents, and subcontractors who will have access to that information as part of their services contract, interagency agreement, or public entity agreement.
3. The Department to forward to the Federal Bureau of Investigation (FBI) requests for federal summary criminal history information, and requires the Department to review the information returned from the FBI and compile and disseminate a response to the board. The bill would require the department to charge a fee sufficient to cover the costs of processing requests pursuant to the bill.

Immigration Fraud and Issues

AB 35: DEFERRED ACTION FOR CHILDHOOD ARRIVALS

Adds Business & Professions Code Section 22449, adds Vehicle Code Section 13001, and amends Unemployment Insurance Code Section 1264

Following enactment of the DREAM Act (Development, Relief, and Education for Alien Minors), the Secretary of the U.S. Department of Homeland Security issued a directive calling for prosecutorial discretion in the enforcement of the country's immigration laws toward DREAMers [undocumented immigrants who (a) entered the U.S. before the age of 16, (b) have graduated from a U.S. high school, (c) have served at least two years in college or in the military and (d) have committed no felonies nor serious criminal offenses]. The program is called the Deferred Action for Childhood Arrivals (DACA).

AB 35 provides additional consumer protections, including:

1. No one can charge for services associated with filing a DACA application except attorneys, organizations accredited by the U.S. Board of Immigration Appeals, immigration consultants that are in full compliance with applicable California law, and for notary public services only, notaries public.
2. Prohibits "price gouging" fees for services to file a DACA application. "Price gouging" is defined as any practice that pressures the consumer, by statements or implications, to buy services right away because buying the same services later would cost more.
3. If otherwise eligible, a DACA-eligible person can get a **California Identification Card**. Prior to AB 35, California law authorized only a State Driver License.
4. Clarifies that DACA-approved applicants are eligible for unemployment compensation benefits. Prior to AB 35, only U.S. citizens and those lawfully admitted to the country qualified for unemployment compensation benefits.

AB 60: DRIVER LICENSES FOR UNDOCUMENTED IMMIGRANTS

Amends, repeals, and adds Vehicle Code Sections 1653.5, 12800, 12801, 12801.5, 12801.9, 12801.10, and 12801.11

Existing law requires an applicant for an original California Driver License or Identification Card to submit acceptable proof that federal law authorizes the applicant's presence in the U.S.

AB 60 requires DMV to issue a California Driver License to applicants who are **unable** to submit acceptable proof that federal law authorizes their presence in the United States (or that they are eligible under DACA), as long as they meet all other qualifications for licensure, satisfy California residency requirements, and provide satisfactory proof of identity. The stated purpose of AB 60 is to improve driving safety since there are as many as 1.4 million drivers in California who are unlicensed, and are therefore uninsured.

A Driver License issued pursuant to AB 60 cannot be used as evidence of the holder's citizenship or immigration status. These licenses must have this statement on their face: "This card is not acceptable for official federal purposes. This license is issued only as a license to drive a motor vehicle. It is acceptable for driving privileges only. It does not establish eligibility for employment, voter registration, or public benefits."

To encourage people to apply for these licenses, they cannot be used as the basis for a criminal investigation, arrest, or detention in circumstances where those who **can** prove they are lawfully in the U.S. would not be criminally investigated, arrested, or detained. Information collected pursuant to those provisions is not a public record and DMV shall not disclose it, except as required by law.

AB 263: EMPLOYER RETALIATION BASED ON IMMIGRATION STATUS

Amends and adds Labor Code Sections 98.6, 98.7, 1019, 1024.6, 1102.5, and 1103

Existing law prohibits an employer from discharging an employee or in any manner discriminating against any employee or applicant for employment because the employee or applicant has engaged in protected conduct relating to the enforcement of the employee's or applicant's rights. Existing law provides that an employee who made a bona fide complaint, and was consequently discharged or otherwise suffered an adverse action, is entitled to reinstatement and reimbursement for lost wages. Existing law makes it a misdemeanor for an employer to willfully refuse to reinstate or otherwise restore an employee who is determined to be eligible for reinstatement.

AB 263 prohibits employers from taking certain retaliatory or adverse actions against employees or applicants, including:

1. Expands the protected conduct to include a written or oral complaint by an employee that he or she is owed unpaid wages.
2. Provides that an employee who was retaliated against or otherwise was subjected to an adverse action is entitled to reinstatement and reimbursement for lost wages.
3. Subjects a person who violates the bill's provisions to a civil penalty of up to $10,000 per violation.

4. Provides that it is not necessary to exhaust administrative remedies or procedures in the enforcement of specified provisions.

Existing law declares that an individual who has applied for employment, or who is or has been employed in California, is entitled to the protections, rights, and remedies available under state law, regardless of his or her immigration status. AB 263 makes it unlawful for an employer or any other person to engage in, or direct another person to engage in, an unfair immigration-related practice against a person for the purpose of, or with the intent of, retaliating against any person for exercising a right protected under state labor and employment laws or under a local ordinance applicable to employees. The bill also creates a rebuttable presumption that an adverse action taken within 90 days of the exercising of a protected right is committed for the purpose of, or with the intent of, retaliation.

AB 524: EXTORTION

Amends Penal Code Section 519

Existing law defines extortion as the obtaining of property from another, with consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right. Existing law further provides that fear sufficient to constitute extortion may be induced by certain threats, including a threat to accuse the threatened individual, or his or her relative or family, of a crime.

To clarify the definition of extortion in criminal prosecutions, **AB 524 provides** that a threat to report the immigration status or suspected immigration status of an individual or the individual's family may induce fear sufficient to constitute extortion. Thus, if a creditor threatens to report the consumer to immigration officials unless the bill is paid, that can constitute extortion just as in the present law that applies to threats of criminal action unless the bill is paid.

AB 1159: IMMIGRATION SERVICES FRAUD

Amends, adds, or repeals Business and Professions Code sections 22442, 22442.3, 22443.1, 6126.7, 6240, 22442.5-.6
Effective October 5, 2013

Under existing law, only licensed attorneys and individuals authorized by the Board of Immigration Appeals can provide legal advice or representation to consumers.

Existing California law (the Immigration Consultants Act – B & P Code Chapter 19.5) defines all other individuals who charge consumers a fee for immigration-related services as “Immigration Consultants.” ICA prohibits Immigration Consultants from

providing legal advice or information to consumers, including whether they qualify to adjust their immigration status, how to qualify, and what forms to use. Instead, ICA allows Immigration Consultants to provide only very limited immigration assistance services (i.e., completing forms requested by consumers, translating documents, submitting applications to U.S. Citizenship an Immigration Services). And prior to offering any services, ICA requires that Immigration Consultants to first comply with the ICA's provisions, including:

1. File a $50,000 bond, register, and submit to criminal background check with the California Secretary of State. Each individual, at each location, who interacts with consumers, must comply with these requirements, not just the owners or principals.
2. Give a written contract to the consumer that has a 3-day right to cancel without charge, describes the services promised and total cost, has the Immigration Consultant's name and information, warns that the Immigration Consultant can't make false promises, and is signed and dated by the Immigration Consultant. (Non-profit corporations that help clients complete application forms for a nominal fee need not provide a contract.)
3. Post a visible sign in the place of business that contains the Immigration Consultant's personal information, bond number, a list of service fees, and a warning that the Immigration Consultant is not an attorney and can't provide legal advice.
4. Not display the word "Notario Publico" in a place of business where immigration consultant services are being offered.
5. Retain customer files for at least three years and not keep original documents.

AB 1159 expands consumer protections relating to immigration services, including:

1. Prohibits all immigration consultants **AND** attorneys from demanding or accepting advance payment for any services related to the "Immigration Reform Act" before such Act is enacted.
2. Requires Immigration Consultants and attorneys who accepted payment from consumers after October 5, 2013 for Immigration Reform Act-related services to return the payment in full within 30 days after the receipt of any funds.
3. Requires Immigration Consultants and attorneys who took payment from consumers prior to October 5, 2013 for Immigration Reform Act-related services that were not provided by that date to refund the funds to the client or place them in a trust fund. If the funds are deposited in a trust fund, the client must be given a written notice advising so in English and in the language in which the contract was negotiated (at least in Spanish, Chinese,

Tagalog, Vietnamese, Korean, Armenian, Persian, Japanese, Russian, Hindi, Arabic, French, Punjabi [A Pakistan dialect], Portuguese, Mon-Khmer, Hmong, Thai, and Gujarati [An Indian dialect]). Failure to comply with the notice and translation renders the contract voidable at the option of the client. Penalties for violation are up to $1,000 per day for each violation.

4. Commencing July 1, 2014, increases an Immigration Consultant's bond amount to $100,000. (Non-profit corporations who help client complete application forms for a nominal fee need not post a bond.)
5. Prohibits any person who is not a licensed attorney to literally translate from English into another language, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material, any words or titles, including "notary public," "notary," "licensed," "attorney," or "lawyer," that imply that the person is an attorney. "Literal translation of" of a word, title, or phrase from one language means the translation of a word, title, or phrase without regard to the true meaning of the word or phrase in the language that is being translated (and translating "notary public" into Spanish by a non-attorney as "notario publico" or "notario" is expressly prohibited). Penalties for violation are up to $1,000 per day per violation in a civil action by the State Bar.

Privacy

AB 370: ONLINE TRACKING

Amends Business and Professions Code Section 22575

Existing law, the California's Online Privacy Protection Act (CalOPPA), requires operators of websites and online services that collect personal identification information (PII) to:

1. Conspicuously post their privacy policies on the website,
2. Comply with their privacy policies,
3. Identify the categories of PII collected, the categories of third-parties with whom that PII may be shared, the process for consumers to review and request changes to their PII, and the process for notification of changes to the policy.

A website or online service operator has 30 days to comply after receiving notice of noncompliance with the posting requirement.

Of particular concern is online tracking, also called online behavioral tracking, which is the monitoring of an individual across multiple websites to build a profile of

behavior and interests. In the age of smart phones and other mobile devices, similar tracking is also done by monitoring individuals as they use different applications and phone features. The resulting profiles are commonly used to deliver targeted advertisements. Many popular Web browsers incorporate a voluntary do-not-track signal that a consumer can use, but websites are not legally required to honor that signal. **AB 370 requires** operators of commercial websites and other online services that collect PII to:

1. Disclose whether they will honor a signal from the consumer's Web browser requesting that the website not collect the consumer's PII.
2. Disclose whether other parties may collect PII when a consumer uses the operator's website or service.

AB 1220: CREDIT REPORT INFORMATION SHARING

Adds Civil Code Section 1785.10.1

Existing law requires a consumer credit reporting agency (CRA), upon request and proper identification of any consumer, to allow the consumer to visually inspect all files maintained regarding that consumer at the time of the request. Existing law additionally grants a consumer the right to request and receive a written copy of the file. Existing federal law prohibits a CRA from prohibiting a user of a consumer credit report furnished by the CRA from disclosing the contents of the report to the consumer if adverse action has been taken against the consumer by the user based on the report.

AB 1220 makes it unlawful for a CRA to prohibit or dissuade a user of a consumer credit report furnished by the CRA from providing a copy of the credit report to the consumer, upon the consumer's request, if the user has taken adverse action against the consumer based upon the report. **AB 1220 authorizes** the Attorney General to bring a civil action for a civil penalty not to exceed $5,000, against any CRA that violates AB 1220.

SB 46: ELECTRONIC DATA BREACHES

Chapter 396, an act to amend §§1798.29 and 1798.82 of the Civil Code

Existing law requires any agency, and any person or business conducting business in California, that owns or licenses computerized data that includes personal information to disclose in specified ways any breach of the security of the system or data to any California resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. Existing law defines "personal information" for these purposes to include an individual's first name and last name, or first initial and last name, in combination with one or more

designated data elements relating to, among other things, social security numbers, driver's license numbers, financial accounts, and medical information.

SB 46 adds passwords, usernames, and answers to security questions to the list of data breaches that require notification. The bill also requires real-time notification that someone may have obtained a password, username, or answers to security questions so clients or customers can immediately change their access information and prevent limit financial losses and theft of personal data.

Real Estate and Housing

AB 433: RESIDENTIAL FIRE SPRINKLERS

Amends, repeals Business and Professions Code sections 7026.12, 7057, 7026.13; adds Health and Safety Code Section 13110

The California Building Standards Code requires fire protection systems to be installed in all new single and two-family homes beginning January 1, 2011. The Contractors' State License Law provides for the licensure and regulation of contractors by the Contractors' State License Board within the Department of Consumer Affairs. Existing law provides that the installation of a fire protection system may be performed only by a contractor holding a fire protection contractor classification, or by an owner-builder of an owner-occupied, single-family dwelling, as specified.

AB 433 additionally authorizes, until January 1, 2017, the installation of a residential fire protection system for a single- or 2-family dwelling by a contractor holding a fire protection contractor classification or a plumbing contractor classification.

AB 1169: RATING ESCROW AGENTS

Adds, repeals Civil Code Chapter 3.6 (from §1785.28)

Existing law, the Consumer Credit Reporting Agencies Act, requires every consumer credit reporting agency (CRA), upon request and proper identification of any consumer, to allow the consumer to visually inspect all files maintained regarding that consumer at the time of the request. Existing law requires every CRA to advise the consumer of the CRA's obligation to provide a decoded written version of the file. Existing law requires the CRA to disclose to the consumer the recipients who have received a copy of the consumers' credit report.

Existing law requires every CRA to maintain reasonable procedures designed to avoid disclosing certain information and to limit the furnishing of consumer credit reports to specified purposes. If the completeness or accuracy of any item of information in a consumer's credit report file is disputed by the consumer, existing law requires the CRA to reinvestigate and record the current status of the disputed information within a specified period of time.

Existing law authorizes any consumer suffering damages as a result of a violation of the Consumer Credit Reporting Agencies Act by any person to bring a court action for damages or injunctive relief, as specified.

AB 1159 requires, until January 1, 2017, an escrow agent rating service to comply with the provisions described above. The bill makes an escrow agent rating service subject to the requirements applicable to a reseller of credit information if it acts in that capacity. The bill also requires an escrow agent rating service to establish policies and procedures to protect the personal information it obtains from escrow agents.

SB 261: COUNTERFEIT CONTRACTOR LICENSES

Adds Business and Professions Code Section 7114.2

Under existing law, the Contractor's State License Board (CSLB) can take administrative action and issues citations against a suspended contractor for unlicensed activity. Existing law, however, does not authorize CSLB to take administrative action or issue citations against a contractor for creating counterfeit licenses. Instead, CSLB refers all counterfeit license cases to the District Attorney to prosecute as a misdemeanor under B&P Code §119. Because of budgetary and workload restraints, prosecutors rarely prosecute contractors who counterfeit contractor licenses. **SB261 allows** CSLB to issue administrative citations whether or not a DA pursues these violations.

SB 262: CONTRACTORS LICENSE SUPERVISION

Amends Business and Professions Code Section 7068.1

Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law authorizes an applicant for a license to qualify the applicant's knowledge and experience with a responsible managing officer, employee, member, or manager who has certain qualifications. The person qualifying on behalf of an individual or firm is responsible for exercising direct supervision and control of his or her employer's or principal's construction operations as necessary to secure full

compliance with the Contractors' State License Law and the regulations of the Contractors' State License Board relating to construction operations.

SB 262 makes the qualifying person responsible for exercising that direct supervision and control to secure compliance with that law and those regulations. **SB 262 makes** a violation of these provisions grounds for disciplinary action, and a misdemeanor punishable by imprisonment in a county jail not to exceed 6 months, by a fine of not less than $3,000, but not to exceed $5,000, or by both that imprisonment and fine. By creating a new crime, the bill would impose a state-mandated local program.

SB 269: RENTAL LISTING SERVICES

Amends, ads Business and Professions Code sections 149, 10080.9, 10167.3, 10167.9, 10470-1, 10475, 10167.95

The Real Estate Law provides for the licensure and regulation of prepaid rental listing services by the Real Estate Commissioner. Existing law prohibits a person from engaging in the business of a prepaid rental listing service unless licensed in that capacity or licensed as a real estate broker. A willful violation of these provisions is a crime. **SB 269 authorizes** the Commissioner to issue citations to a person who does not possess a prepaid rental listing service license or a real estate broker license if the Commissioner has cause to believe that the person is engaged or has engaged in activities for which a license is required.

Existing law imposes a $100 fee for an application for a license as a prepaid rental listing service for the first location, and a $25 fee for each additional location. Existing law imposes additional fees for obtaining or renewing a broker license or salesperson license when, on June 30 of any year, the balance remaining in the Consumer Recovery Account, a continuously appropriated account in the Real Estate Fund, is less than $200,000, and for 4 years thereafter. **SB 269 increases** those application fees to $125 and $50, respectively, and requires that $25 of each application fee to be credited to the Consumer Recovery Account. SB 269 also imposes an additional fee of $1 on every person obtaining or renewing a prepaid rental listing service license for 2 years after the balance in that account is less than $200,000.

Existing law requires a prepaid rental listing service licensee to offer the prospective tenant a written contract prior to the acceptance of a fee. The contract must include, among other things, the licensee's name. **SB 269 also** requires the contract to include the licensee's license number. **SB 269 also requires** a written notice about refunds to be provided to the prospective tenant prior to the acceptance of a fee.

Existing law authorizes an aggrieved person, who obtains a final judgment, including a criminal restitution order, or an arbitration award based on a defendant's acts for

which a real estate license was required, to apply to the bureau for payment from the Consumer Recovery Act. Existing law requires the license of a broker or salesperson to be automatically suspended when the commissioner pays from the Consumer Recovery Account any amount in the settlement of a claim or toward the satisfaction of a judgment against that broker or salesperson. **SB 269 applies** those provisions to the license of a prepaid rental listing service licensee.

SB 310: MORTGAGE FORECLOSURE NOTICES

Adds, repeals Civil Code sections 2924.26, 2924.25

Existing law requires a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent to, among other things, contact the borrower prior to filing a notice of default to explore options for the borrower to avoid foreclosure. Existing law, until January 1, 2018, prohibits a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent from recording a notice of default if a foreclosure prevention alternative is approved in writing prior to the recordation of a notice of default under certain circumstances. Existing law, operative January 1, 2018, prohibits a mortgage servicer, trustee, mortgagee, beneficiary, or authorized agent from recording a notice of sale or conducting a trustee's sale while a foreclosure prevention alternative application submitted by the borrower is pending. Existing law, until January 1, 2018, prohibits a mortgage servicer, trustee, mortgagee, beneficiary, or authorized agent from recording a notice of default, notice of sale, or conducting a trustee's sale while a complete first lien loan modification application submitted by the borrower is pending. Existing law, until January 1, 2018, authorizes a borrower to bring an action for injunctive relief to enjoin a material violation of certain of these provisions if a trustee's deed of sale has not been recorded.

SB 310 exempts a licensed title company or underwritten title company, except when it is acting as a trustee, from liability for a violation of the provisions above if it records or causes to record a notice of default or notice of sale at the request of a trustee, substitute trustee, or beneficiary, in good faith and in the normal course of its business activities.

SB 426: FORECLOSURE DEFICIENCY JUDGMENTS

Amends Code of Civil Procedure sections 580b, 580d

Existing law prohibits deficiency judgment following a judicial foreclosure with respect to certain enumerated circumstances, including after a sale of real property for failure of the purchaser to complete his or her contract of sale. Existing law also prohibits a judgment to be rendered for a deficiency on a note secured by a deed of trust or mortgage on real property.

SB 426 clarifies existing law relating to the status of deficiency after a home foreclosure. It seems that some lenders are attempting to collect deficiencies after foreclosure, although the purpose of the anti-deficiency statutes is to relieve the borrower who has been foreclosed upon from any remaining debt. Although a creditor is unable to obtain a judgment from the court, some creditors do not believe that the underlying debt is extinguished and that they can continue trying, short of obtaining a judgment, to collect it, such as threatening to report the debt to a credit-reporting agency.

SB 426 declares that no such deficiency shall be owed or collected.

SB 652: HOME DEFECTS DISCLOSURES

Amends Civil Code Section
Effective July 1, 2014

Existing law requires the transferor of residential property to make certain disclosures to a prospective transferee and requires these disclosures to be made on a specified form. However, there is presently no statutory requirement that a homeowner notify a potential buyer of a construction defect within the home. For example, under present law, if a homeowner had received a cash settlement from the builder based on an alleged constructive defect, the homeowner does not need to disclose the nature of the defect to the prospective purchaser nor even disclose whether a repair had been made.

SB 652 requires such disclosure. The new provisions become operative on July 1, 2014.

SB 676: REAL ESTATE RECORDS DESTRUCTION

Amends Business and Professions Code Section 10148

Existing law requires a licensed real estate broker to retain for 3 years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. Existing law provides that after notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the Real Estate Commissioner or his or her designated representative during regular business hours, and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature. Existing law provides that any person who willfully violates or knowingly participates in the violation of these provisions is guilty of a misdemeanor with specified penalties.

SB 676 additionally authorizes the Bureau of Real Estate to suspend or revoke the license of any real estate broker, real estate salesperson, or corporation licensed as a real estate broker, if the real estate broker, real estate salesperson, or any director, officer, employee, or agent of the corporation licensed as a real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books, papers, writings, documents, or tangible objects that are required to be maintained and provided pursuant to notice, as described above, or that have been sought in connection with an investigation, audit, or examination.

BORROWERS ABILITY TO PAY (CONSUMER FINANCIAL PROTECTION BUREAU)

CFPB has extended its "ability to pay" rules to cover all mortgage loans and not only "high cost" mortgages. This is now a final rule effective on Jan.1, 2014.

A lender in a mortgage loan transaction must make a reasonable, good-faith determination before consummating a closed end mortgage loan that the consumer has a reasonable ability to repay the loan, considering at least the following eight factors:

1. Current or reasonably expected income or assets (other than the value of the property that secures the loan) that the consumer will rely on to repay the loan
2. Current employment status (if the lender relies on employment income when assessing the consumer's ability to repay)
3. Monthly mortgage payment for this loan, the higher of the introductory or fully-indexed rate
4. Monthly payment on any simultaneous loans secured by the same property
5. Monthly payments for property taxes and required insurance and certain other costs related to the property such as homeowners association fees
6. Debts, alimony, and child support obligations
7. Monthly debt-to-income ratio or residual income and the total of all of the mortgage and non-mortgage obligations listed above, as a ratio of gross monthly income
8. Credit history

The verification must be based on reasonably reliable third-party records and not upon the claims of the consumer.

If consumers have trouble repaying a loan and can prove that the lender failed to make a reasonable, good-faith determination of their ability to repay before the loan was made, the lender could be liable for up to three years of finance charges and

fees the consumer paid as well as the consumer's legal fees (There is a three year statute of limitations on such consumer action).

MORTGAGE SERVICERS (CONSUMER FINANCIAL PROTECTION BUREAU)

Mortgage servicers are responsible for collecting payments from mortgage borrowers on behalf of loan owners. They also typically handle customer service, escrow accounts, collections, loan modifications, and foreclosures. Generally, borrowers have no say in choosing their mortgage servicers. Even before the financial crisis, there were reports of bad practices and sloppy recordkeeping in the mortgage servicing industry. Even after exposure of those problems, many borrowers continue to experience those problems when they seek loan modifications or other alternatives to avoid foreclosure.

In 2013, CFPB issued the following interim final mortgage service rules, to be effective on January 1, 2014. Consumer comments were complete as of November 20, 2013. These are the probable final rules. Some are new and some clarify pre-existing rules.

1. **Home retention efforts after a borrower dies:** If a borrower dies, servicers will now be required to have policies and procedures in place to ensure that they promptly identify and communicate with family members, heirs, or other parties who have a legal interest in the home, including allowing for continued payment on the mortgage as well as evaluating the heir (or whomever the legal interest in the home passes to) for assumption of the mortgage and, if appropriate, for loss mitigation measures.
2. **Early intervention requirement to contact delinquent borrowers:** Servicers must attempt to contact borrowers each time they miss a payment to provide important information that can help get them on track. This requirement may also be met through other contact that servicers have with such borrowers, for example, when evaluating them for loss mitigation or during collection calls. Also, the method of attempted contact may vary depending on how long a borrower is delinquent or on whether the borrower has responded to earlier servicer attempts to communicate.
3. **Interplay between the servicing rules, bankruptcy code, and the Fair Debt Collection Practices Act (FDCPA):** Even if delinquent borrowers have instructed servicers to stop communicating with them pursuant to the FDCPA, certain notices and communications mandated by CFPB servicing rules and the Dodd-Frank Wall Street Reform and Consumer Protection Act are still required. Specifically, servicers must communicate with the borrower with regard to requests for loss mitigation, information requests, error resolution, force-placed insurance, initial interest rate adjustment of

adjustable-rate mortgages, and periodic statements. However, they will not be required to provide certain early intervention contacts or ongoing notices of interest rate adjustments to delinquent borrowers who have instructed the servicer to stop communicating with them and they will not be required to provide periodic account statements and certain early intervention contacts with borrowers who are in bankruptcy.

4. **Written notices:** Servicers by Jan. 10, 2014 have to give consumers a written mortgage statement each billing cycle showing:
    a. What they owe on the current bill, and how much, if any, will be applied to principal, interest, and escrow. If the mortgage loan has multiple payment options, the statement must show whether the principal balance will increase, decrease, or stay the same for each option listed
    b. Payments made since the last statement
    c. How previous payments were applied
    d. Transaction activity (including any fees or charges to their account)
    e. Notice that three days before the loan closing, the lender must give a free copy of all appraisals it obtained.
    f. How to contact a housing counselor for help
    g. Late payment information (if the consumer is behind in payments)
    h. However, if the consumer has a fixed-rate mortgage, the servicer is authorized to skip the monthly statement if it sends a book of coupons to send in with payments. The coupon book must also contain certain information about the account and about how to contact the servicer.

5. **Change in adjustable rate interest rates**: If consumers have an adjustable-rate mortgage (ARM), the servicer must:
    a. Give at least 60 days' notice before the interest rate changes if that change will result in a new payment amount. The first time the interest rate is scheduled to change, there will be even more advanced warning. Seven to eight months before the first payment is due at the new rate, the consumer will receive a notice stating what is going to happen.
    b. Promptly credit consumer payments.

6. **Credit for payment**: Servicers have to give credit for full payments as of the day they come in. If only part of what the consumer owes is paid, the servicer may hold the partial payment(s) in a special account, but, the servicer must inform the consumer about this on the monthly statement. When that special account collects enough money to make a full payment of principal, interest, and any escrow, the servicer has to credit that payment to the account.

7. **Pay-off**: Servicers must respond quickly when asked about paying off the

loan. If the request is in writing, the servicer generally has 7 business days to respond and disclose the payoff amount is, including the difference between the payoff amount and the current balance:

8. **Insurance**: If the consumer fails to keep the home insured, the lender has the right to buy and charge for insurance to cover the lender's interest in the home. This insurance, called "force-placed insurance", is usually more expensive than a policy the consumer would buy and generally only protects the lender, not the consumer. The servicer must warn the consumer at least 45 days before it charges for a force-placed insurance policy, and the servicer must warn again at least 30 days later if consumers have failed to provide proof to the servicer that they have purchased the needed insurance. If there is an escrow account from which the servicer pays insurance bills, it generally must continue the existing insurance policy, rather than buy force-placed insurance. The servicer cannot charge for unneeded insurance or over-charge for force-placed insurance.

9. **Resolving complaints**: When a complaint or request for information regarding errors, the lender generally has five days to acknowledge the letter and 30 to 45 days (excluding Saturdays, Sundays and federal holidays) to fix the error or send the information requested or investigate and explain why no error occurred or why the information is not available. Examples of "errors" include when the servicer:
    a. Does not apply a payment correctly.
    b. Charges improper fees.
    c. Starts a foreclosure or foreclosure sale in violation of the loss mitigation rules.
    d. Makes any error relating to the servicing of the mortgage loan.

10. **Policies and procedures**: Servicers must create systems in which they can:
    a. Access correct information about their loans
    b. Respond promptly and correct problems
    c. Pass along correct information about each account when they sell loan servicing to another company.
    d. Properly evaluate an application for relief if the consumer has difficulties paying a loan.
    e. Keep records for at least one year after a loan pay-off.
    f. They must try to contact and talk to consumers no later than 36 days after a payment is past due, discuss mortgage workout options that may be available no later than 45 days after a missed payment, and work with consumers before starting or continuing foreclosure. If a consumer requests that he or she is interested in a loan workout, the servicer must describes what information is needed in an application for assistance and the servicer has 5 days to state whether it needs more information and, if so, what information it needs. Within 30 days after submission of a complete application, the servicer has to

inform the consumer whether there is an option to save your home.

If the consumer has not completed an application, the servicer can initiate foreclosure proceedings once the consumer is 20 days behind in required payments. Even after foreclosure has started, if an application is sent in more than 37 days before a scheduled foreclosure sale, the servicer generally has to see if the consumer is eligible for a loan workout before completing foreclosure.

A consumer who sends in a loan workout application at least 90 days before the foreclosure sale can seek review of the servicer's decision. The servicer has to assign the review to someone who was not involved in the initial decision.