

2004

## 2003-2004 Summary of Legislation

Assembly Committee on Banking and Finance

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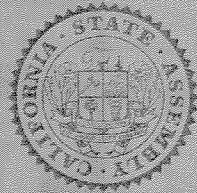
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# ASSEMBLY COMMITTEE ON BANKING AND FINANCE

2003-2004

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## SUMMARY OF LEGISLATION



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November 2004

Dear Interested Parties:

During the 2003-2004 Legislative session, the Assembly Committee on Banking and Finance passed significant legislation protecting consumers and making the laws governing lenders and other financial institutions more user-friendly. During this legislative session, many of the bills considered by the Committee focused on ensuring financial privacy, preventing identity theft and providing other consumer safeguards.

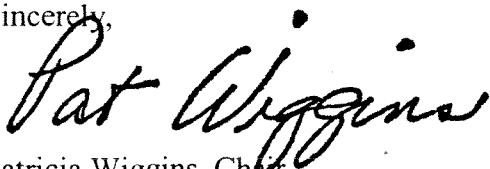
The Committee passed the toughest financial privacy bill in the nation, SB 1 (Speier), which limits financial institutions' ability to share consumers' most sensitive information. In addition, SB 27 (Figueroa) requires companies that share personal information for marketing purposes to disclose what type of information has been disclosed and to whom.

Identity theft is one of the fastest growing crimes in the nation. In 2002, the Federal Trade Commission received 161,800 complaints of identity theft – an 88 percent increase from the year before. California leads the nation in laws to prevent identity theft. The Committee continued to address this issue by passing numerous bills that help guard consumers' personal information, provide victims with additional protections and give law enforcement more investigative tools.

The goal of the Assembly Committee on Banking and Finance is to ensure that state policy helps all California consumers access affordable financial products and services to meet their needs and that the state's financial services industry remains strong and competitive to fuel our economic growth.

The following legislation was heard in the Committee during the 2003-2004 legislative session and includes a brief summary of each bill. For questions regarding this report, please contact the Committee at 916-319-3081.

Sincerely,



Patricia Wiggins, Chair  
Assembly Committee on Banking and Finance

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## **Bank, Credit Union Oversight**

### **AB 1226 (Montañez)**

Corporation Tax Law: credit unions: study: Directs the Legislative Analyst's Office (LAO) to study certain credit unions to determine whether statutory changes are needed relating to community reinvestment, conflict of interest laws and required capitalization. Directs the LAO to study the feasibility of taxing certain credit unions.

**Held in committee**

### **AB 1355 (Wiggins)**

Financial institutions: Authorizes the Commissioner of the Department of Financial Institutions to impose civil money penalties for acts that violate applicable laws relating to financial institutions.

**Signed by the Governor, Chapter 445, Statutes of 2003**

### **AB 1774 (Banking and Finance Committee)**

Financial institutions: Enables the Department of Financial Institutions (DFI) to deliver fingerprints of any person involved with any licensee to law enforcement agencies for certain purposes. Clarifies DFI's authority to regulate the types of corporations in which banks and trust companies can invest. Makes various technical changes and corrections.

**Signed by the Governor, Chapter 404, Statutes of 2003**

### **AB 2014 (Banking and Finance Committee)**

Credit unions: home mortgage assistance: Allows a credit union with total assets of less than \$10 million to file an alternative procedures audit acceptable to the Department of Financial Institutions, as specified. Repeals an obsolete division in the Financial Code.

**Signed by the Governor, Chapter 324, Statutes of 2004**

### **AB 2671 (Pacheco)**

Commercial law: banking transactions: Extends the operation of a current provision of law pertaining to a bank's statement of account.

**Signed by the Governor, Chapter 131, Statutes of 2004**



**SB 1292 (Dunn)**

Credit unions: Authorizes a credit union to cash checks and sell negotiable and money transfer instruments to any credit union member, depositor, or person within the field of membership.

**Failed passage in committee**

**SB 1637 (Banking, Commerce, and International Trade)**

Financial institutions: Makes various technical changes to provisions of the Financial Code administered by the Department of Financial Institutions.

**Signed by the Governor, Chapter 176, Statutes of 2004**

## **Consumer Protection**

### **AB 73 (Lowenthal)**

Unsolicited checks: Requires financial institutions that send loan or credit offers in the form of unsolicited checks, unsolicited convenience checks, or other unsolicited negotiable instruments to provide consumers with a mechanism that enables them to "opt-out" or not receive future offers. Establishes that any check or instrument requested or authorized by a consumer through an application or other communication prior to receiving the check or instrument is not an unsolicited check, unsolicited convenience check, or unsolicited negotiable instrument.

**Hearing cancelled at request of author. Died in Senate Judiciary Committee**

### **AB 403 (Correa)**

Check sellers and proraters: exemptions: Specifies additional duties and best practices for nonprofit community service organizations providing debt-counseling services.

**Signed by the Governor, Chapter 360, Statutes of 2004**

### **AB 971 (Correa)**

Deferred deposit transactions: Delays the operative date of the California Deferred Deposit Transaction Law to December 31, 2004 or 30 days after an Executive order of the Governor, whichever is earlier.

**Signed by the Governor, Chapter 17, Statutes of 2004**

### **AB 1610 (Pavley)**

Consumer credit reporting agencies: use of reports: Requires that credit grantors who discover the consumer's first and last name, address, or social security number on an application for credit does not match the respective information in the credit report must take reasonable steps to verify the accuracy of the information provided on the application.

**Signed by the Governor, Chapter 41, Statutes of 2003**

**AB 1775 (Banking and Finance)**

Money transmitters: Increases the amount of shareholders' equity that transmitters of money abroad must maintain.

**Signed by the Governor, Chapter 456, Statutes of 2003**

**AB 1776 (Banking and Finance)**

Foreign corporations and financial institutions: production of records: Requires foreign corporations to produce records when a subpoena is properly served by law enforcement. For this purpose, "properly served" means delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile. Expands law enforcement's existing ability to obtain certain consumer records from out-of-state financial institutions without a search warrant, but only with the consent of the consumer.

**Signed by the Governor, Chapter 629, Statutes of 2004**

**AB 1810 (Frommer)**

Automated teller machines: Requires automated teller machine operators who are not financial institutions to be registered with an electronic funds transfer network through a sponsorship agreement with a financial institution that is a member of the network. Establishes civil penalties for failing to register and violating the requirements of the agreement.

**Vetoed by the Governor**

**AB 2092 (Liu)**

Credit cards: minors: Prohibits a business that has personal information that it knows or reasonably should know to be about an unemancipated minor from disclosing that information to a third party, as defined, for the purpose of enabling the third party to make a personalized, unsolicited offer for an extension of credit to the minor. Includes related findings and declarations.

**Died on the Inactive File**

**AB 2094 (Liu)**

Credit: preprinted checks: Requires an activation process for preprinted checks or drafts attached to a credit card account.

**Failed passage in committee**

**AB 2156 (Reyes)**

Deferred deposit transactions: advertisements: Requires the Department of Corporations (DOC) to include information regarding advertising practices in its December 1, 2007 report on the implementation of the California Deferred Deposit Transaction Law. Provides that DOC may include in the report recommendations for additional regulation of advertising practices.

**Signed by the Governor, Chapter 312, Statutes of 2004**

**AB 2312 (Dutra)**

Point-of-sales devices: Requires that when a point-of-sale (POS) system is upgraded to include a video touch screen or nontactile keypad the POS device must also be equipped with a tactually discernible numerical keypad meeting specified requirements. Except as provided for business with only two POS devices, all devices must be upgraded by January 1, 2010. Businesses with two POS devices must have at least one upgraded by that date. A manufacturer or distributor must offer touch screen devices that satisfy tactually discernible requirements as of January 1, 2006.

**Signed by the Governor, Chapter 760, Statutes of 2004**

**AB 2868 (Nuñez)**

Refund Anticipation Loan Act: Establishes the Refund Anticipation Loan (RAL) Act which requires a person who facilitates RALs to register with the Department of Corporations. Facilitators must comply with various requirements and provide specific disclosures to RAL applicants.

**Vetoed by the Governor**

**AB 3013 (Pavley)**

Credit cards: Restricts credit card companies' use of account numbers in various circumstances.

**Held in committee**

**SB 27 (Figueroa)**

Personal information: disclosure to direct marketers: Requires a business that discloses personal information to third parties for direct marketing purposes to provide, upon request, specified information to customers.

**Signed by the Governor, Chapter 505, Statutes of 2003**

**SB 146 (Escutia)**

Contracts: Spanish translation: Establishes new requirements for any Spanish language translation required under existing law for specified contracts negotiated in Spanish.

**Signed by the Governor, Chapter 589, Statutes of 2003**

**SB 1721 (Bowen)**

Consumer contracts: packing: Specifies prohibited activities for a seller.

**Failed passage in committee.**

**SB 1904 (Florez)**

Banks: cashing of paychecks: Prohibits a bank from assessing a charge or fee to cash a paycheck for a person who does not have an account at the bank if the paycheck was issued by the bank for a business client of the bank that provides the paychecks to its employees.

**Failed passage in committee**

## **Corporate Governance**

### **AB 309 (Chu)**

Contracts: foreign languages: Requires a person who negotiates certain contracts in any of four languages to provide, prior to execution, an unexecuted translated copy of the contract in the language it was negotiated.

**Signed by the Governor, Chapter 330, Statutes of 2003**

### **AB 2752 (Chu)**

Corporations: elections: Requires publicly traded corporations to have a process in place for its shareholders to recommend a candidate for election as director. That process must be filed with the Secretary of State and made available to shareholders.

**Vetoed by the Governor**

### **AJR 79 (Chu)**

Corporate elections: Requests the Securities and Exchange Commission to implement its proposed shareholder participation rules in order to address the need for reform in corporate transparency and give shareholders access to proxy.

**Chaired by Secretary of State, Resolution Chapter 92, Statutes of 2004**

### **SB 735 (Ackerman)**

Corporations: board meetings: Deletes the January 1, 2004 sunset date for the law permitting corporate board of director meetings to be conducted using electronic video screen communications or similar communication equipment.

**Signed by the Governor, Chapter 168, Statutes of 2003**

### **SB 996 (Alarcon)**

Socially responsible business: Establishes two new categories of business known as "California transparent enterprises" and "California socially responsible businesses." To qualify as either a business must meet specified requirements and provide certain information and filing fees to the Secretary of State.

**Failed passage in committee**

**SB 1306 (Ackerman)**

Corporations: partnerships: limited liability companies: electronic transmissions: Permits corporations, partnerships and limited liability companies (LLCs) to use electronic transmissions as a means of communication between the corporation and its directors, officers and shareholders, between LLCs and its members, and between partners.

**Signed by the Governor, Chapter 254, Statutes of 2004**

**SB 1528 (Alarcon)**

Corporations: director's duties: Allows directors of a corporation to consider a variety of factors in carrying out their duty to look after the best interests of the corporation.

**Hearing cancelled at request of author**

## **Identity Theft and Privacy**

### **AB 1294 (Wiggins)**

Debt collectors: responsibilities: identity theft: Requires debt collectors to cease collection efforts until they review and make a determination of the validity of specified information indicating that the debts they are trying to collect are as a result of identity theft. The specified information may include a written statement where the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the debt collector.

**Signed by the Governor, Chapter 287, Statutes of 2003**

### **AB 1000 (Dutra)**

Corporations: disclosure statement: Makes various changes to the requirements for corporate statements that must be filed annually with the Secretary of State.

**Signed by the Governor, Chapter 819**

### **AB 1772 (Banking and Finance Committee)**

Identity theft: Adds mail forwarding and receiving services and office rental services to the list of entities that must provide application or account information to a victim of identity theft or a law enforcement officer when the victim discovers that an unauthorized person has used his or her name to obtain services from these entities.

**Signed by the Governor, Chapter 90, Statutes of 2003**

### **AB 1773 (Banking and Finance Committee)**

Search warrants: identity theft: Allows a magistrate to issue a warrant for the search and seizure of property located in another county if related to an identity theft investigation, and if the victim of the identity theft lives in the same county as the issuing court.

**Signed by the Governor, Chapter 137, Statutes of 2003**

### **AB 3016 (Pavley)**

Privacy: social security numbers: Deletes the exception that allows a person or business to use a consumer's social security number (SSN) in specified ways when the SSN has been in continuous use.

**Signed by the Governor, Chapter 282, Statutes of 2004**



**SB 1 (Speier)**

Financial institutions: nonpublic personal information: Creates the California Financial Privacy Information Act that limits a financial institution's ability to share consumers' nonpublic personal information.

**Signed by the Governor, Chapter 241, Statutes of 2003**

**SB 25 (Bowen)**

Personal information: security: Requires creditors to verify a consumer's identity before granting credit if a security alert is on the credit file. Restricts the use of social security numbers by public entities.

**Signed by the Governor, Chapter 907, Statutes of 2003**

**SB 602 (Figueroa)**

Personal information: Establishes the Identity Theft Prevention and Assistance Act that provides various protections and support for victims of identity theft.

**Signed by the Governor, Chapter 533, Statutes of 2003**

**SB 684 (Alpert)**

Identity theft: application: Provides that a victim of identity theft may obtain information about a fraudulent renewal of a credit account in the victim's name or about additional names added to the account.

**Signed by the Governor, Chapter 534, Statutes of 2003**

**SB 1451 (Figueroa)**

Privacy guarantees: Prohibits anyone who obtains private information from an entity covered by a specified privacy law and who is not subject to the privacy law from disclosing the information in a way that is prohibited. Any person in violation shall be civilly liable in a California court.

**Vetoed by the Governor**

## **Mortgage Lending, Real Estate**

### **AB 313 (Dutra)**

Mortgage lending: Deletes the sunset date which, if allowed to become effective, would repeal provisions in the California Residential Mortgage Lending Act permitting residential mortgage lenders to broker mortgages with other lenders, and revises the requirements on when the payment of interest on residential mortgages accrues after disbursement of loan proceeds.

**Signed by the Governor, Chapter 554, Statutes of 2003**

### **AB 479 (Maldonado)**

Escrow agents: Revises licensing, penalty and surety fund requirements for escrow companies.

**Signed by the Governor, Chapter 382, Statutes of 2003**

### **AB 620 (Leno)**

Real estate: Allows construction or rehabilitation loans with multiple lenders to be made based on the value of the property after improvements are completed.

**Signed by the Governor, Chapter 902, Statutes of 2003**

### **AB 679 (Chavez)**

Real estate: Expands the provisions of the multi-lender law to be applicable to transactions involving notes secured by more than one parcel of real property or undivided interests in a note secured directly by more than one parcel of real property.

**Signed by the Governor, Chapter 901, Statutes of 2003**

### **AB 1870 (Maldonado)**

Escrow agents: Makes clarifying and technical changes to the Escrow Law.

**Signed by the Governor, Chapter 180, Statutes of 2004**

### **AB 1979 (Wiggins)**

Financial transactions: Adds licensed finance lenders and licensed residential mortgage lenders to those that are exempt from a provision of law governing variable interest rate disclosures in security documents and evidences of debt. Provides that a lienholder's copy of cancellation of insurance notice is deemed

mailed if, with the lienholder's consent, it is delivered by electronic transmittal, facsimile, or personal delivery.

**Signed by the Governor, Chapter 939, Statutes of 2004**

**AB 2069 (Chavez)**

Real estate: Corrects an error in signing order by repealing a provision in law enacted last year that allows construction or rehabilitation loans with multiple lenders to be made based on the value of the property after improvements are completed. By repealing this, another provision in a related bill, also enacted last year will remain in effect. That measure included all of the provisions described above and it expanded the multi-lender law to be applicable to transactions involving notes secured by more than one parcel of real property or undivided interests in a note secured directly by more than one parcel of real property.

**Signed by the Governor, Chapter 140, Statutes of 2004**

**AB 2693 (Wiggins)**

Lending: Makes various changes to laws governing residential mortgage lenders, finance lenders and real estate brokers. Provides that a lienholder's copy of cancellation of insurance notice is deemed mailed if, with the lienholder's consent, if it is delivered by electronic transmittal, facsimile, or personal delivery.

**Signed by the Governor, Chapter 940, Statutes of 2004**

**SB 1277 (Ackerman)**

Mortgages: foreclosure: Changes the definition of foreclosure consultant and specifies the notice requirements that a foreclosure consultant must provide. Makes other substantive and technical changes to the provisions governing notice of default and the process of foreclosure.

**Signed by the Governor, Chapter 177, Statutes of 2004**

## Public Finance

### **AB 853 (Corbett)**

State funds: deposit of interest earned: Requires interest earned on various funds in the Surplus Money Investment Fund to be distributed quarterly instead of semi-annually.

**Signed by the Governor, Chapter 100, Statutes of 2003**

### **AB 1368 (Kehoe)**

Bonds: Requires annual reports to be made to the Legislature and the Department of Finance on state general obligation bond expenditures.

**Signed by the Governor, Chapter 770, Statutes of 2003**

### **AB 1498 (Wiggins)**

State Assistance Fund for Enterprise, Business, and Industrial Development Corporation: Changes the membership of the State Assistance Fund for Enterprise, Business, and Industrial Development Corporation board. Makes various other substantive and technical changes.

**Signed by the Governor, Chapter 25, Statutes of 2004**

### **SB 562 (Ackerman)**

Bonds: Limits administrative costs of implementing general obligation bond programs.

**Held in Assembly Appropriations Committee**

### **SB 787 (Battin)**

Local agency investments: Explicitly allows a local agency to invest its surplus or temporarily idle funds in asset-backed commercial paper. The commercial paper must be of prime quality and of the highest ranking as determined by a nationally recognized statistical-rating organization.

**Signed by the Governor, Chapter 197, Statutes of 2003**

## **Securities and Franchise Law**

### **AB 1031 (Correa)**

Financial institutions: Enhances penalties for violation of corporate security laws and gives the Commissioner of the Department of Corporations (DOC) greater authority to discipline broker-dealers and investment advisors licensed by DOC, and makes other related changes.

**Signed by the Governor, Chapter 473, Statutes of 2003**

### **AB 2167 (Correa)**

Securities: corporate liability: Authorizes a person who purchases a security from or sells a security to an uncertified broker-dealer to bring an action for rescission of the sale or purchase. Extends the period for filing a civil action against a person who willfully violates provisions of the Corporate Securities Act.

**Signed by the Governor, Chapter 575, Statutes of 2004**

### **AB 2921 (Cox)**

Franchises: Makes significant changes to the Franchise Investment Law (FIL). Provides that offers and sales of a franchise and material modifications to franchise agreements are exempt from registration if specified requirements are met. Creates additional enforcement powers for the Department of Corporations and increases various penalties for franchisors who violate the FIL. Creates an exemption in the California Finance Lenders Law for a franchise loan made by a franchisor to a franchisee.

**Signed by the Governor, Chapter 458, Statutes of 2004**

### **AB 3070 (Banking and Finance Committee)**

Securities: finance lenders: Provides for the electronic filing of notice for a sale of securities in certain circumstances. Changes the time period for appeal from one year to 30 days when the Department of Corporations orders a person to refrain from actions that violate the corporate securities law. Makes other corrections and technical changes.

**Signed by the Governor, Chapter 461, Statutes of 2004**

## Miscellaneous

### **AB 169 (Chavez)**

Finance lending: Exempts bridge loans made by a venture capital company from the provisions of the Finance Lenders law.

**Signed by the Governor, Chapter 163, Statutes of 2003**

### **AB 1265 (Benoit)**

Engineers and land surveyors: limited liability partnerships: Permits engineers and land surveyors to operate within their licensed scope of practice as a limited liability partnership.

**Subject matter retained in Senate Judiciary Committee**

### **AB 1859 (Nakano)**

Limited liability companies: certificate of cancellation: Provides a process of dissolution for a domestic limited liability company (LLC) that has not conducted any business and dissolves within one year of its formation. A LLC meeting the criteria for this process of dissolution is not subject to additional minimum franchise taxes but is not entitled to a refund of any taxes or fees already paid.

**Signed by the Governor, Chapter 416, Statutes of 2004**

### **AB 2261 (Parra)**

Limited liability companies: Expands the definition of "person" under the Real Estate Law to include a limited liability company (LLC). LLCs licensed under the Real Estate Law must maintain security for claims as specified.

**Died in the Senate Judiciary Committee**

### **SB 283 (Sher)**

Commercial law: secured transactions: Makes technical changes to the laws relating to security interests involved in commercial transactions.

**Signed by the Governor, Chapter 235, Statutes of 2003**

**SB 1406 (Ackerman)**

Usury exemption: Establishes that the exemption from the usury provision of the California Constitution that must be satisfied for certain evidences of indebtedness would apply only to persons or entities that are not in violation of either the California Finance Lenders Law or the Real Estate Law.

**Vetoed by the Governor**

**SJR 20 (Florez)**

Regulation of financial institutions: Urges the United States Congress to disapprove the rule submitted by the Office of the Comptroller of the Currency.

**Chaptered by the Secretary of State, Resolution Chapter 107, Statutes of 2004**

## **Bills Not Heard**

### **AB 3 (Calderon)**

Consumer credit reporting: Requires consumer credit reporting agencies to remove adverse information within a specified period of time.

**Hearing cancelled at request of author. Died in committee**

### **AB 485 (Ridley-Thomas)**

Consumer loans: Repeals provision allowing the state to make changes quickly in mortgage-related rules in order to respond to actions of the federal government. Allows certain cities and counties to enact predatory lending laws that go further than state law.

**Hearing cancelled at request of author**

### **AB 747 (Montañez)**

Public records: customer lists.

**Died in committee**

### **AB 832 (Montañez)**

Consumer loans: discrimination.

**Died in committee**

### **AB 849 (Lieber)**

Public agency investments

**Died in Committee**

### **AB 1013 (Campbell)**

Corporations: dissenters' rights:

**Taken off at request of author**

### **AB 1664 (Montañez)**

Bank Customer Bill of Rights Act:

**Taken off at author's request. Died in committee**



**AB 2282 (Campbell)**

Corporations: dissenters' rights.

**Hearing cancelled at request of author**

**AB 2374 (Bates)**

Debt collection: notices:

**Hearing cancelled at request of author**

**SB 1496 (Romero)**

Corporations: tax disclosure statement:

**Hearing cancelled at request of author**

**SB 1916 (Banking, Commerce, and International Trade)**

State agency contracts: check charges: Requires a contract between the Controller or the Treasurer and a bank for the deposit of state funds for the payment of a state employee's wages to contain a provision requiring the bank to cash the paycheck, warrant or negotiable instrument without charge if the holder provides proper identification. This provision is applicable to any contract in effect 12 months or longer.

**Hearing cancelled at author's request**