2023 Annual **Legislative** Summary

CALIFORNIA BANKERS ASSOCIATION

Foreword

This *2023 Annual Legislative Summary* includes a review of state and federal legislative measures that the association engaged on throughout the year. The effective date for each state legislative measure is January 1, 2024, unless otherwise noted in the narrative of the bill.

While the *Summary* is prepared with detailed care, it is not intended to be exhaustive. The purpose of the *Summary* is to highlight measures that directly affect financial services in California. Please examine the full text of any measure of interest to you and consult with interested departments within your institution and your legal counsel.

The California Bankers Association wishes to thank our member banks who responded to our many requests, such as attending the Annual Legislative Forum, Washington, D.C. visits, and sending letters or making phone calls to legislators on specific measures. We also extend our gratitude to the volunteer members of CBA's many policy committees who assist us in analyzing and adopting positions on the myriad bills each year. We could not have had such a successful year without your participation.

The *Summary*, which CBA members can download free of charge, is located in the password-protected section of CBA's website under "State Government Relations Resources" at www.calbankers.com. If you need assistance with your CBA user ID and password to access the *Summary*, please contact us at governmentrelations@calbankers.com or (916) 438-4400.

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State Executive Summary

While many predicted a "red wave" in the 2022 November election, Democrats in California held on to super-majorities in both houses and swept all statewide office elections, including the Governorship. When the 2023 legislative session commenced in January, more than one-third of the Legislature was brand new and had never held statewide office before. The influx of freshman members was partly due to several legislators announcing early retirement, but also due to the redrawn legislative district maps that are required each decade after the national census recalculates the state's population. Twenty-two new members of the Assembly were sworn in for the current legislative session, and the Senate added 11 new members to its roster.

The year started with two major issues looming over legislators when they returned to the Capitol. While California enjoyed a $90 billion surplus in 2022, lawmakers returned to a state budget deficit of $25 billion, which grew to $31.5 billion by June. Following negotiations with Governor Newsom, the Legislature ultimately approved a $310 billion budget which included cuts to future spending previously allocated in past budgets. Additionally, the Governor's executive order calling for a special session on gas prices consumed much of the Legislature's time in the first few months of the session. An agreement was struck to create a new consumer watchdog dedicated to monitoring gas prices. The state watchdog has the authority to impose fines on refiners in the event of significant profit increases.

Pertinent to the banking industry, however, was the discussion around the failure of Silicon Valley Bank. The California Assembly Committee on Banking and Finance convened a hearing on April 10 titled, "The Collapse of Silicon Valley Bank: What Happened and What it Means for Banking Regulation." Shortly thereafter, the California Senate Committee on Banking and Financial Institutions held a joint hearing with the Assembly Committee on Banking in May titled, "The Failure of Silicon Valley Bank: Where Regulation and Supervision Fell Short." Additionally, three reports were issued by federal agencies following the failures of Silicon Valley Bank and Signature Bank. The Federal Reserve Board released its review of the supervision and regulation of Silicon Valley Bank. The FDIC issued its report detailing the supervision of Signature Bank. And, on the same day, the Government Accountability Office furnished its preliminary review of agency actions related to March 2023 bank failures. In addition, the FDIC released an "overview of the deposit insurance system and options for reform to address financial stability concerns stemming from recent bank failures." The topic of deposit insurance reform, in particular, was a popular discussion item during CBA's multiple Capitol Hill visits this year.

Legislatively, CBA was successful in opposing *SB 278 (Dodd)*. Sponsored by the Consumer Attorneys of California, this measure makes financial institutions liable for elder financial abuse if the institution should have known that the likely result of a transaction initiated by an accountholder

would result in fraud, and the institution failed to stop it. We opposed this expanded liability, which fundamentally alters the relationship between banks and their senior accountholders. Under the measure, a bank employee could take the appropriate steps to warn an accountholder that the transaction they've initiated with the bank may result in fraud, but if the employee honors the transaction, the bank could still be held liable.

We successfully negotiated several mortgage-related measures. We secured amendments requiring lender consent for borrowers who wish to separately convey an accessory dwelling unit from the parcel. We helped redraft a measure as a means to improve compliance that requires a transferor mortgage servicer to furnish to a transferee mortgage servicer material written records regarding damaged residential 1-4 property resulting from a disaster where a state of emergency has been called. A measure adopting remote online notarization in California, supported by CBA, was also signed into law.

As anticipated, the Climate Accountability Package containing the reintroduction of measures that attempt to mandate climate-related disclosures was put before legislators. Measure *SB 253 (Wiener) [Chapter 382, Statutes of 2023]* requires all entities that do business in California and earn an annual revenue of more than $1 billion to publicly disclose their greenhouse gas emissions, including scope 3 emissions associated with supply chains. Last year, this measure — as *SB 260 (Wiener)* — almost reached the Governor but ultimately stalled, coming within one vote of passage on the Assembly floor. Meanwhile *SB 261(Stern) [Chapter 383, Statutes of 2023]* is modeled on a framework proposed by the Task Force on Climate-Related Financial Disclosures, mandating the report for entities doing business in California with more than $500 million in annual revenue.

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State Legislative Summary

AGRICULTURAL LENDING

AB 460 (Bauer-Kahan): State Water Resources Control Board: Water Rights and Usage: Interim Relief: Procedures

[Two-Year Bill]

This measure provides broad statutory authority for the State Water Resources Control Board (SWRCB) to issue interim relief orders to apply or enforce a variety of statues, doctrines, and water policies.

CBA adopted an oppose lower priority position, joining an opposition coalition led by Northern California Water Association. The coalition's concerns center around: the expansive authority to the SWRCB and third parties to issue immediate interim relief orders; broaden the scope of the matters upon which the SWRCB could impose interim relief; granting SWRCB extraordinary ability to impose new and costly conditions and requirements on water rights holders as part of the interim relief proceeding process; and the fact that there are existing alternative pathways through the courts for granting immediate relief.

Shortly after CBA expressed opposition, this measure was held in the Senate Committee on Natural Resources and Water; it is eligible to move forward in 2024 as a two-year measure.

AB 1205 (Bauer-Kahan): Water Rights: Sale, Transfer, or Lease: Agricultural Lands

[Two-Year Bill]

As introduced, this measure proposed to find and declare that speculation or profiteering by an investment fund in the sale, transfer, or lease of an interest in any surface water right or groundwater right previously put to beneficial use on agricultural lands within the state is a waste or an unreasonable use of water within the meaning of the reasonable use doctrine.

CBA adopted an oppose lower priority position, joining an opposition coalition led by Northern California Water Association. The coalition removed opposition when the measure was amended to instead require the State Water Resources Control Board to, on or before January 1, 2027, conduct a study and report to the Legislature and appropriate policy committees on the existence of speculation or profiteering by an investment fund in the sale, transfer, or lease of an interest in any surface water right or groundwater right previously put to beneficial use on agricultural lands.

This measure was held on the Senate Floor; it is eligible to move forward in 2024 as a two-year measure.

AB 1337 (Wicks): State Water Resources Control Board: Water Diversion Curtailment

[Two-Year Bill]

This measure gives the State Water Resources Control Board unprecedented statutory authority to curtail the diversion or use of water under any claim of right during any water year — even years when California receives record precipitation.

CBA adopted an oppose lower priority position, joining an opposition coalition led by Northern California Water Association. The coalition's concerns center around: the instability of water rights will make investing in projects and purchasing water through transfers more expensive, which will lead to higher water rates for Californians; the measure will make investment in new water infrastructure more expensive, including critical projects to store, treat, and deliver reliable water; the measure hinders water agencies from meeting demands of new development, including affordable housing projects, due to an unreliable water supply; and, because less investments in infrastructure and housing projects

will lead to fewer job opportunities and curtails new housing development jobs.

Shortly after CBA expressed opposition, this measure was held in the Senate Committee on Natural Resources and Water; it is eligible to move forward in 2024 as a two-year measure.

SB 389 (Allen): State Water Resources Control Board: Investigation of Water Right

[Enacted: Chapter 486]

As introduced, this measure authorizes the State Water Resources Control Board (SWRCB) to investigate the validity and scope of any water right holder without demonstrating a reason for initiating an investigation.

CBA adopted an oppose lower priority position, joining an opposition coalition led by Northern California Water Association. The coalition's concerns center around: the measure being unnecessary because it is duplicative of existing SWRCB authority; the measure threatening to undermine reliability in water rights by authorizing the SWRCB to strip claimants of their rights with little due process; and the measure strips public agencies of water rights that have been used to sustain communities for decades. The coalition successfully worked with the author to address concerns and secured amendments to remove opposition from the measure.

BANK OPERATIONS

AB 1247 (Alvarez): Consumer Savings Accounts

[Two-Year Bill]

In 2021, the Legislature passed the California Public Banking Option Act, which requires the Treasurer to convene the CalAccount Blue Ribbon Commission and requires the commission to contract with one or more entities with appropriate expertise to deliver a market analysis to determine if it is feasible to implement a CalAccount program. If implemented, CalAccounts will partner with a participating commercial bank to offer fee-free checking and savings accounts to consumers who lack access to traditional banking services and to protect those consumers from predatory, discriminatory, and costly alternatives.

This measure, modeled after the California Public Banking Options Act, enacts the California Emergency Savings Account Option Act. The measure requires the Treasurer to convene, on or before September 1, 2024, the Emergency Savings Account Commission to be composed of certain members, including appointees by the Legislature, the Governor, the Commissioner of the Department of Financial Protection and Innovation and the Treasurer or their respective designees. The measure requires the commission to contract with one or more entities with appropriate expertise to deliver an analysis on the extent of the problem of Californians who do not have access to sufficient funds when faced with financial emergencies. The study must include an analysis related to the "causes of the problem, solutions for fixing it, including whether requiring an emergency savings account is a viable solution, and the state's role in those solutions." The study is required to be completed by July 1, 2026.

CBA monitored this measure but did not take a position on it since it did not directly impact member banks.

SB 390 (Limón): Voluntary Carbon Offsets: Business Regulation

[Vetoed]

Under existing law, it is unlawful for a person to make an untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. This

measure makes it unlawful for a person to certify or issue a voluntary carbon offset, to maintain on a registry a voluntary carbon offset, or to market, make available or offer for sale, or sell a voluntary carbon offset if the person knows or should know that the greenhouse gas reductions or greenhouse gas removal enhancements of the offset project related to the voluntary carbon offset are unlikely to be quantifiable, real, and additional. A violation of the bill's provisions is not a crime, but is subject to enforcement by any available civil remedies.

CBA adopted a neutral position on this measure since it did not directly impact member banks.

SB 637 (Min): Financial Institutions Doing Business with Firearms Manufacturers: Ban on Doing Business with the State

[Two-Year Bill]

As introduced, this measure sought to prohibit a state agency from entering into a contract with, depositing state funds with, or receiving a loan from, a financial institution that invests in or makes loans to a company that manufactures firearms or ammunition. The measure authorizes a state agency that is a party to a contract prohibited by that provision to remain a party to that contract until the contract expires.

Upon introduction of the measure, the author issued a press release stating, "[gun violence] is being bankrolled by financial institutions that have turned a blind eye towards the horrors that their investments in the gun industry have created. Measure SB 637 will force Wall Street to make a choice between the blood money offered by the gun industry and doing business with the State of California, sending a clear message and more importantly a strong market signal that the State of California will not, either directly or indirectly, finance gun violence."

CBA adopted an oppose higher priority position due to precedence set by the measure as well as the harmful ramifications to the state of California and the state's ability to contract with financial institutions equipped for those contracts. The measure was double referred to Senate Committees on Governmental Organization and Banking & Financial Institutions. The measure was set aside and did not receive a policy committee hearing. In the final days of the 2023 Legislative Session, the author amended the measure instead as an unrelated intent bill addressing elections.

CANNABIS

AB 420 (Aguiar-Curry): Cannabis: Industrial Hemp

[Two-Year Bill]

California's existing law, the Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), also known as Proposition 64, permits adults to become licensed to sell cannabis. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) consolidates the licensure and regulations of selling medicinal and adult-use cannabis. The Sherman Food, Drug, and Cosmetic Law regulates the labeling of food, beverages and cosmetics and making sure that they all meet requirements.

Existing law exempts industrial hemp from the definition of cannabis and from MAUCRSA but requires the Department of Cannabis Control to prepare a report, on or before July 1, 2022, to the Governor and the Legislature outlining the steps necessary to allow for the incorporation of hemp cannabinoids into the cannabis supply chain. Existing law also governs the cultivation of industrial hemp in this state and establishes a registration program administered by county agricultural commissioners and the Department of Food and Agriculture for growers of industrial hemp, hemp breeders, and established agricultural research institutions.

This measure revises MAUCRSA so as not to prohibit a licensee from manufacturing, distributing, or selling products that contain industrial hemp or cannabinoids, extracts, or derivatives from industrial hemp, if the product complies with all applicable state laws and regulations. The measure also recasts the provisions with the Sherman Food, Drug, and Cosmetic Law to expand the prohibition that raw hemp extract not exceed 0.3 percent of a tetrahydrocannabinol comparable cannabinoid, and prohibit the manufacture, distribution, or sale of an industrial hemp product that contains a cannabinoid that is not present in nature in commercially meaningful quantities, unless authorized by the department in regulation. The measure requires an out-of-state hemp manufacturer who produces an industrial hemp product that is a food or beverage for sale in this state to register with the department.

Due to the measure's subject matter on a Schedule I illegal substance, CBA monitored but did not take a position on AB 420, which was held on the Suspense File of the Senate Committee on Appropriations. The measure is eligible to move forward in 2024 as a two-year measure.

CLIMATE-RELATED REPORTING

SB 253 (Wiener): Climate Corporate Data Accountability Act

[Enacted: Chapter 382]

The California Global Warming Solutions Act of 2006 requires the California Air Resources Board (CARB) to adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with the act. The act requires the state board to make available, and update at least annually, on its website the emissions of greenhouse gases, criteria pollutants, and toxic air contaminants for each facility that reports to the state board.

This measure, the Climate Corporate Data Accountability Act, and substantively similar to last year's *SB 260 (Wiener, 2021)*, which failed passage on the Assembly Floor, requires CARB, on or before January 1, 2025, to develop and adopt regulations requiring specified partnerships, corporations, limited liability companies, and other business entities with total annual revenues in excess of $1billion and that do business in California, defined as "reporting entities," to publicly disclose to the emissions reporting organization, as defined, and obtain an assurance engagement starting in 2026 on a date to be determined by the state board, and annually thereafter, their scope 1 and scope 2 greenhouse gas emissions, as defined, and, starting in 2027 and annually thereafter, their scope 3 greenhouse gas emissions, as defined, from the reporting entity's prior fiscal year, as provided.

Under the measure, CARB is required to review in 2029, and update as necessary on or before January 1, 2030, these deadlines to evaluate trends in scope 3 emissions reporting and to consider changes to the deadlines. The act requires CARB, in developing these regulations, to consult with the Attorney General, other government stakeholders, investors, stakeholders representing consumer and environmental justice interests, and reporting entities that have demonstrated leadership in full-scope greenhouse gas emissions accounting and public disclosure and greenhouse gas emissions reductions. The act also requires the state board to ensure that the assurance process minimizes the need for reporting entities to engage multiple assurance providers and ensures sufficient assurance provider capacity, as well as timely reporting implementation.

Under the act, reporting entities are required to obtain an assurance engagement, performed by an independent third-party assurance provider, of the entity's public disclosure as provided. Further, CARB

is required to contract with an emissions reporting organization to develop a reporting program to receive and make publicly available the required disclosures; CARB is to provide the report to the emissions reporting organization to post on a digital platform that would be required to be created by the emissions reporting organization, and publicly accessible, to house the state board's report and the reporting entities' public disclosures. The emissions reporting organization is required to provide the state board's report to the relevant policy committees of the Legislature.

CARB is also required, on or before July 1, 2027, to contract with the University of California, the California State University, a national laboratory, or another equivalent academic institution to prepare a report on the public disclosures made by reporting entities to the emissions reporting organization. In preparing the report, consideration is required to be given to, at a minimum, greenhouse gas emissions from reporting entities in the context of state greenhouse gas emissions reduction and climate goals. The board is authorized, starting in 2033 and every five years thereafter, to assess the global greenhouse gas accounting and reporting standards and to adopt an alternative standard if it determines that using the alternative standard would more effectively further the goals of the measure.

This measure requires a reporting entity, upon filing its disclosure, to pay to the state board an annual fee set by the state board, as provided. In doing so, this measure creates the Climate Accountability and Emissions Disclosure Fund, and requires the proceeds of the fees to be deposited in the fund, and continuously appropriates the moneys in the fund to the state board for purposes of the act. CARB is also required to adopt regulations that authorize it to seek administrative penalties for violations of these provisions.

CBA adopted an oppose position and joined a substantial and broad coalition in opposition to the measure, expressing concerns about both reporting entities' and supply chain entities' ability to accurately and completely meet the reporting requirements; feasibility and timelines associated with scope 3 emissions reporting in particular; penalties associated with compliance; filing fees that do not specify a cap; complications with a sub-national reporting requirement especially in light of the pending climate-related disclosures proposed at the Security and Exchange Commission; and the general nascent stage of global-level discussions surrounding infrastructure, materiality and agreed-upon standards of climate-related disclosures. The coalition expressed concern about sequence of consequence related to scope 3. For example, small businesses that do not qualify as reporting entities as defined by SB 253 but that do business with a reporting entity would likely still need to collect and supply some level of emissions data, as they would be within the reporting entity's supply chain and therefore a required report according to scope 3 protocol for which a reporting entity would be liable under the measure's original language. Conversely, under the provisions of the measure, a reporting entity is permitted to use data sets rather than relying on actual third-party data, however these fledgling data sets are known to be unreliable, often times resulting in widely different results of the same calculation by different entities. Additionally, the coalition called into question the feasibility, cost and jurisdiction of the state and state agencies attempting to regulate out-of-state emissions through the international supply chain rather than building upon California's already robust programs and policies that regulate in-state emissions.

In response to these concerns, the authored amended the measure to eliminate general civil action and civil penalty empowerment of the Attorney General in instances when the Attorney General finds that a reporting entity has violated or is violating this section, or upon a complaint received from the state board, in favor of administrative penalties for nonfiling, late filing, or other failure to meet the requirements at an amount not to exceed $500,000 in a reporting year. The author also adjusted timelines in order to allow

for delayed reporting of scope 3 disclosures and delayed implementation for penalties associated with scope 3 reporting. In response to the Department of Finance's assessed high cost to implement the measure, the author amended in a filing fee that is limitless in nature, directing CARB employ an annual fee to cover the costs of implementation of the reporting mandate.

To supplement the broad coalition advocacy effort, CBA established a dialog with the proponents and expressed an "oppose unless amended" position on the measure, sharing amendments that remove our opposition from the measure. Among other helpful changes, CBA's draft proposal ties scope 3 emissions reporting to a reporting entity's publicly stated targets and goals. While CBA's draft amendments were rejected by the proponents, the association was successful in securing the following changes to the measure: non-liability for good faith efforts associated with scope 3 disclosures made with a reasonable basis, limited assurance auditing level for scope 1 and 2 emissions reporting with limited assurance beginning in 2030 for scope 3, and delaying scope 3 disclosures until 2027.

However, amendments adopted throughout the legislation session fell short of addressing both CBA's and the coalition's primary concern, which center around the reliability, timeliness, feasibility, cost and accuracy of scope 3 reporting.

Along with the American Bankers Association, the Bank Policy Institute and the Securities Industry and Financial Markets Association, California Credit Union League and Credit Union National Association, CBA offered feedback on concerns specific to the financial sector, highlighting the concept of scope 3 category 15 "financed emissions," as well as the high potential for conflict between the measure and climate disclosure regimes simultaneously pending at the federal and international level. Scope 3 guidance measures "financed emissions" of companies through their investment and lending activities. Reported emissions of banking institutions will therefore include not only the scope 1, 2, and 3 emissions of their own operations, but also a portion of scope 1, 2, and 3 emissions of each borrower or company in their loan portfolios.

It is also worth mentioning that the Department of Finance opposes the measure because it results in significant General Fund and special fund costs, which are not included in the state's current spending plan. In addition, CARB estimated the fiscal impact of this measure to be approximately $3 million and the need for 12 permanent positions in 2023-2024; $7.7 million and an additional 14 permanent positions in 2024-2025; $7 million in 2025-2026 and ongoing.

In the end, the Governor signed SB 253 after signaling that he would also require subsequent "clean up" of the legislation. In his signing message, Governor Newsom stated, "Implementation deadlines in this bill are likely infeasible, and the reporting protocol specified could result in the inconsistent reporting... I am directing my administration to work with the bill's author and the Legislature next year to address these issues."

SB 261 (Stern): Greenhouse Gases: Climate-Related Financial Risk

[Enacted; Chapter 383]

The California Global Warming Solutions Act of 2006 requires the California Air Resources Board (CARB) to adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with the act. The act requires the state board to make available, and update at least annually, on its website the emissions of greenhouse gases, criteria pollutants, and toxic air contaminants for each facility that reports to the state board.

As introduced, this measure is substantially similar to last year's *SB 449 (Stern, 2021)*, which died in the Senate Committee on Appropriations. As signed, SB 261 requires, on or before January 1, 2026, and biennially thereafter, a covered entity to prepare a climate-related financial risk report disclosing the entity's climate-related financial risk and measures adopted to reduce and adapt to climate-related financial risk. The measure requires the covered entity to make a copy of the report available to the public on its own website.

The measure also requires CARB to contract with a climate reporting organization to biennially prepare a public report that contains specified information, including a review of the disclosure of climate-related financial risk contained in a subset of publicly available climate-related financial risk reports and an analysis of the systemic and sector wide climate-related financial risks facing the state. CARB is required to adopt regulations that authorize it to seek administrative penalties from covered entities for failing to make the report publicly available on its website or publishing an inadequate or insufficient report.

The measure requires covered entities to pay an annual fee for the state board's actual and reasonable costs to administer and implement the measure, in doing so, the measure creates the Climate-Related Financial Risk Disclosure Fund, requiring the proceeds of the fees to be deposited in the fund, and continuously appropriates the moneys in the fund to the state board for purposes of the measure.

CBA adopted an oppose unless amended position and established an early dialog with the author based on preexisting negotiations and conversations related to his prior *SB 449 (Stern, 2021)*. Through direct negotiations, CBA was successful in securing amendments that: delay implementation to 2026; require reporting on a biennial rather than annual basis; include a comply or explain provision that allows covered entities to explain any gaps in reporting; clarify that reports may be consolidated at the parent company level and that subsidiaries of parent companies that qualify as covered entities are not required to prepare a separate report; clarify that a reporting entity satisfies the requirement if it prepares a publicly accessible report that includes climate-related financial risk disclosure information pursuant to laws or regulations by other governmental entities; clarify that a reporting entity satisfies the requirement if it voluntarily uses a framework that meets the requirements of the International Financial Reporting Sustainability Disclosure Standards as issued by the International Sustainability Standards Board and publicly discloses that report; change civil penalties to administrative with a cap adjustment from $500,000 to $50,000 in a reporting year; and, include a good faith clause within the penalty provisions.

Along with the California Mortgage Bankers Association and California Credit Union League, CBA offered feedback on concerns specific to the financial sector. The coalition additionally advocated for a change in the annual revenue threshold of a reporting entity from $500 million to $1billion as well as to eliminate section 2 (b)(1)(A)(ii) from the measure, a section that also requires reporting entities to report on measures adopted to reduce and adapt to climate-related financial risk disclosures on the basis that the mandate may result in the unintended consequence of climate "blue lining." Neither of those changes were accepted by the author.

In response to the Department of Finance's opposition to the measure because it results in significant General Fund and special fund costs, which are not included in the state's current spending plan, the author amended the measure to also include a filing fee, the cost of which is to be determined by CARB to cover the cost of administration and implementation.

In the end, the Governor signed SB 261 after signaling that he would also require subsequent "clean up" of the legislation. In his signing message, Governor Newsom stated, "the implementation deadlines fall short in providing CARB with sufficient

time to adequately carry out the requirements... I am concerned about the overall financial impact on businesses, so I am instructing CARB to closely monitor the cost impact."

COMMERCIAL LENDING

SB 95 (Roth): Commercial Transactions

[Enacted: Chapter 210]

This measure makes various revisions to the California Commercial Code proposed by the Uniform Law Commission through their formally adopted 2022 amendments to the Uniform Commercial Code (UCC). More specifically, this measure adds provisions governing control of and rights to electronic money, controllable electronic records, controllable accounts, and controllable payment intangibles. The measure updates various other articles in the UCC, including provisions relating to negotiable instruments and secured transactions.

CBA reviewed this measure and was generally supportive. One provision dealing with series and protected series raises some concerns given that series and protected series are not officially recognized under existing California law, but this concern did not result in CBA opposing the measure.

SB 666 (Min): Small Business: Commercial Financing Transactions

[Enacted: Chapter 881]

The California Financing Law (CFL) prohibits a person from engaging in the business of a finance lender or broker without obtaining a license from the Commissioner of the Department of Financial Protection and Innovation. Among other financially-related activities, the CFL regulates commercial loans made by licensees.

This measure prohibits a covered entity from charging certain fees in connection with a commercial financing transaction with a small business or small business owner, including: a fee for accepting or processing a payment required by the terms of the commercial financing contract as an automated clearinghouse transfer debit; a fee for providing a small business with documentation prepared by the covered entity that contains a statement of the amount due to satisfy the remaining debt; and, a fee in addition to a loan origination fee that does not have a clear corresponding service provided for the fee.

CBA originally adopted an oppose unless amended position and requested amendments exempting depository institutions from the underlying provisions consistent with exemptions for depository institutions currently contained in the Commercial Financing Disclosure Law. The author accepted our amendment request thereby allowing CBA to remove its opposition.

CONSUMER LENDING

AB 74 (Muratsuchi): Vehicles: Street Takeovers, Sideshows, and Racing

[Two-Year Bill]

Existing law makes it a crime for a person to engage in a motor vehicle speed contest on a highway. The holder of a California driver's license may have that license suspended for 90 days to six months for an exhibition of speed or aiding and abetting an exhibition of speeding if the violation occurred as part of a sideshow. Existing law defines "sideshow" as two or more persons blocking or impeding traffic on a highway for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle

exhibitions of speed, or reckless driving for spectators.

This measure will make it a crime for a person to knowingly attend, participate in, or aid and abet the commission of a vehicle sideshow or street takeover. The measure will make a violation of this offense punishable as a misdemeanor or felony if the person convicted is a performing driver.

Measure AB 74 authorizes city or county authorities to seize any vehicles used in the commission of the crime. Unlike the statutory precedent found elsewhere in the vehicle code where the legal owner of the property can repossess vehicles used in a crime, AB 74 requires financial institutions wishing to lay claim to a vehicle where there is an underlying debt obligation, to petition the court and go before a judge. The judge could, at their discretion, order the vehicle to be sold by the city or county government. Should that order be issued, the lender will be third in line to receive the sale proceeds, after the city and county government are reimbursed for towing and impound cost and those authorities are also reimbursed for all costs associated with the sale of the vehicle.

CBA opposes this measure, which makes it more difficult for lenders to access their collateral when vehicles are seized by local authorities. The measure was made a two-year bill and is eligible to be taken up again in 2024.

SB 478 (Dodd): Consumers Legal Remedies Act: Advertisements

[Enacted: Chapter 400]

The False Advertising Law makes it a crime for a person or a firm, corporation, or association, or any employee thereof, to engage in specified false or misleading advertising practices. The Unfair Competition Law makes various unfair competition practices unlawful, including any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising.

The Consumers Legal Remedies Act makes unlawful certain unfair methods of competition and certain unfair or deceptive acts or practices undertaken by a person in a transaction intended to result in the sale or lease of goods or services to a consumer, including advertising goods or services with intent not to sell them as advertised. Existing law authorizes a consumer who suffers damage as a result of the use or employment by a person of a method, act, or practice declared to be unlawful by that provision to bring an action against that person to recover or obtain certain relief, including actual damages of at least $1,000.

This measure is a response to the national political discussion on "junk fees" and amends the Consumer Legal Remedies Act to prohibit unlawful advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges other than taxes or fees imposed by a government on the transaction.

CBA worked to secure amendments to specify that the measure does not apply to a financial entity required to provide disclosures in compliance with federal or state acts or regulations with respect to a financial transaction. These acts include the Truth In Lending and Truth In Savings Acts.

CBA removed opposition once the measure was amended with a financial institution exemption.

DEBT COLLECTION

AB 716 (Boerner): Ground Medical Transportation

[Enacted: Chapter 454]

This measure proposes a number of changes concerning emergency medical services facilitated by ambulance providers. Although the measure provides strong protection for consumer to prevent

overbilling and overcharging for services, the measure also contains an overboard provision that prohibits the use of wage garnishment even for amounts owed under the provisions restricting charges and overbilling.

CBA adopted an oppose position on this measure based on the precedent that the measure removes a tool from the tool-box for original creditors seeking to be made whole after providing goods or services. Over the past two legislative sessions, the Legislature further restricted the use of wage garnishments based on income, providing significant protections to debtors; a complete ban is unwarranted based on California's already strict limitations and protections on the wage garnishment tool.

AB 1119 (Wicks): Enforcement of Judgments

[Enacted: Chapter 562]

Existing law permits a judgment creditor to apply to the court for an order requiring the judgment debtor, or another person who is in possession and control of property of the judgment debtor, to appear before the court to provide information to aid in the enforcement of a money judgment. Existing law requires the judgment creditor to personally serve a copy of that order on the judgment debtor not less than 10 days before the date set for the examination. Existing law permits the court to issue a warrant for the arrest of, a warrant to compel the attendance of, and may hold in contempt, a judgment debtor who fails to appear in response to such an order.

This measure authorizes a judgment debtor in a case involving consumer debt to file and serve a judgment debtor's financial affidavit under penalty of perjury, in lieu of appearing for the examination. If the judgment debtor files the affidavit, the measure requires the court to cancel the financial examination unless the judgment creditor files, under oath, a notice of opposition and a notice of motion for an order determining the need for the debtor to appear for a debtor's examination. If the judgment creditor files such pleadings in a timely manner, the measure requires the court to hold a hearing to determine whether the judgment debtor must appear for a debtor's examination. The measure also extends the notice of the examination required to be given to the judgment debtor to not less than 30 days before the examination.

Additionally, AB 1119 prohibits a court from issuing a warrant for the arrest of a judgment debtor in a case concerning consumer debt based on the judgment debtor's failure to appear or failure to file a judgment debtor's financial affidavit. In these circumstances, the measure authorizes the court to issue an order to show cause to determine whether a warrant to compel the judgment debtor's attendance should be issued, which the judgment debtor could satisfy by filing a judgment debtor's financial affidavit described above.

As introduced, this measure proposed to ban in perpetuity a debtor's examination in instances where the judgment debtor files the affidavit. Due to the ban, CBA adopted an oppose unless amended position. CBA secured amendments to allow for financial institutions to continue an examination after a financial affidavit has been tendered in the event that the institution is not satisfied with the representation of liabilities and assets and therefore we changed to a neutral as amended position.

AB 1414 (Kalra): Civil Actions: Consumer Debt

[Enacted: Chapter 688]

Existing law prescribes periods for commencement of various actions. Among others, an action upon book account must be commenced within four years of the date of the last item on the account. Existing law defines "book account" for these purposes as a detailed statement constituting the principal record of transactions between a debtor and a creditor. Existing

law permits actions to recover money damages. Under existing case law, courts recognize that common counts may be used to do so as a simplified form of pleading to assert the existence of various forms of monetary indebtedness.

This measure prohibits the use of common counts to recover consumer debt.

This measure excludes consumer debt from the definition of "book account." The measure defines consumer debt to mean any obligation or alleged obligation, incurred on or after July 1, 2024, of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services that are the subject of the transaction are primarily for personal, family, or household purposes and where the obligation to pay appears on the face of a note or written contract.

CBA adopted an oppose position on the premise that the measure adversely impacts collections activities in terms of limiting the types of acceptable claims and, from an operational standpoint, making the burden of proof associated with the collection of valid debts more difficult. Because the measure also initially impacted collections for small businesses, the changes adversely impacted small businesses, such as pool maintenance or landscapers and gardeners, from collecting their debts in addition to making it more difficult for creditors to be made whole after lending.

As introduced it was unclear which types of debt would be impacted, specifically whether credit cards were included in the measure's change to judiciary procedure. Amendments adopted on April 12 in section 337a.(b), intended to be clarifying, added to that confusion, stating that the debt "is initially payable of the face of the note or contract." Along with the California Creditors Bar Association and the California Credit Union League, CBA drafted amendments that remove our opposition. Those amendments respond to concerns expressed by senators in the Senate Judiciary Committee hearing, by: limiting the prohibition on common counts to debt buyers or debt collectors acting on behalf of a debt buyer and removing specific types of debts presently ineligible under the measure's language through common counts. The proponents rejected CBA's request and the coalition remained opposed.

SB 71 (Umberg): Jurisdiction: Small Claims and Limited Civil Case

[Enacted: Chapter 861]

Existing law provides that the small claims court has jurisdiction over actions seeking certain forms of relief, including money damages and claims brought by natural persons, not exceeding $10,000. Existing law requires an action or special proceeding to be treated as a limited civil case if certain conditions exist, including, among others, that the amount in controversy does not exceed $25,000.

This measure increases the small claims court jurisdiction over actions brought by a natural person, if the amount does not exceed $12,500, and also increases the amount in controversy permitted in other actions within the jurisdiction of the small claims court. The measure also increases the limit on the amount in controversy for an action or special proceeding to be treated as a limited civil case to $35,000.

CBA adopted an oppose position on the measure as introduced, as it proposed to increase the thresholds to $25,000 and $100,000 respectively. CBA removed opposition when the increase in those thresholds was lowered.

SB 727 (Limón): Human Trafficking: Civil Actions

[Enacted: Chapter 632]

Existing law authorizes a person who has been the victim of human trafficking to bring a civil action for damages and also to be awarded attorney's fees and costs. Existing law authorizes a plaintiff to be awarded up to three times the plaintiff's actual damages or $10,000, whichever is greater. Recently enacted *AB 2517 (Gloria) [Chapter 245, Statutes of 2020]*, authorizes courts to make a finding in a domestic violence restraining order issued after notice and a hearing that specific debts were incurred as a result of domestic violence and without the consent of the victim. In addition, *AB 1243 (Blanca Rubio) [Chapter 273, Statutes of 2021]* provides that restraining orders for elder or dependent adults may include certain remedies related to financial abuse or isolation, including a finding that specific debts are incurred as a result of financial abuse. Last year, *SB 975 (Min) [Chapter 989, Statutes of 2022]* creates a non-judicial process for addressing a debt incurred in the name of a debtor through duress, intimidation, threat, force, or fraud of the debtor's resources or personal information for personal gain; that measure also authorizes a cause of action through which a debtor can enjoin a creditor from holding the debtor personally liable for such "coerced debts" and a cause of action against the perpetrator in favor of the claimant.

Following the model of the aforementioned *AB 2517*, this measure authorizes a plaintiff to seek from the court a finding that specific debts attributed to the plaintiff were incurred as a result of trafficking and without the consent of the plaintiff. The measure authorizes the court to base its finding upon evidence that a debt attributed to the plaintiff was incurred as the result of any illegal act in which the plaintiff was the victim. The measure provides that the finding will not affect the priority of any lien or other security interest.

CBA adopted a neutral position on this measure. Amendments that caused some concern were adopted into the measure on June 14 subsequent to the measure's hearing in the Assembly Committee on Judiciary, as the amendments presented potentially unclear overlap with prior aforementioned legislation. With a coalition of financial services industry trade associations, CBA sought and secured clarifying amendments to ensure that the type of debt that a court can find to be incurred as the result of trafficking, and without consent of the plaintiff, is not overly broad and is defined clearly in statute.

ELDER FINANCIAL ABUSE

SB 278 (Dodd): Elder Abuse

[Two-Year Bill]

The California Elder Abuse Law of the Welfare Institutions Code specifies that a person is guilty of elder financial abuse when a person or entity takes, secretes, appropriates, obtains, or retains real or personal property of an elder for a wrongful use or with intent to defraud, or both, and when a person or entity assists in the aforementioned conduct for a wrongful use or with intent to defraud, or both, or when a person or entity commits either of the above actions by undue influence. "Wrongful use" encompasses when a person or entity knew or should have known that its conduct is likely to be harmful to the elder. "Undue influence" is defined as "excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity, which entails consideration of the vulnerability of the victim, the influencer's apparent authority, the actions or tactics used by the influencer, and the equity of the result."

Since the enactment of this law, there have been numerous efforts by plaintiff attorneys alleging violations of the statute. Specifically, plaintiff's attorneys have alleged violations of section 15610.30(a)(2) of the California Welfare and Institutions Code, claiming in each of those cases a bank assisted in the financial abuse of an elder by processing fraudulent transactions and that the legislative intent regarding section 15610.30(a)(2) does not require the 'assister' have actual knowledge of the third-party scammer's wrongful conduct. The courts have disagreed with this analysis and have looked to the aiding and abetting standard to determine liability – a standard that requires actual knowledge of fraud.

Senate Bill 278, sponsored by the Consumer Attorneys of California, makes financial institutions liable for elder financial abuse if the institution failed to act as a reasonable person in a like position would, considering the surrounding facts and circumstances, including the transaction history of the elder or dependent adult, whether the transaction is aligned with prevailing business practices, and whether the elder or dependent adult exhibits multiple red flags, in executing the transaction.

CBA opposes this new liability on financial institutions. At its core, the measure fundamentally alters the relationship between banks and their senior customers by making bank employees fiduciaries. Under the measure, a financial employee could take the appropriate steps to warn an accountholder that the transaction they've initiated with the bank may result in fraud, but if the employee honors the transaction, the bank could be held liable. Without a safe harbor for institutions to utilize to avoid liability, banks will be forced to reevaluate their customer relationship with accountholders over the age of 65.

With no clear agreement between the sponsor and the opposition on safe harbor language, the measure was made a two-year bill and is eligible for reconsideration in 2024.

FINANCIAL LITERACY

AB 431 (Papan): Pupil Instruction: Financial Literacy: Instructional Materials: Professional Development

[Two-Year Bill]

This measure requires the Superintendent of Public Instruction, subject to an appropriation of one-time funds for this purpose, to allocate funding for the purchase of standards-aligned instructional materials in financial literacy for kindergarten and grades one to 12, inclusive, and for professional development in that content. The measure requires the Superintendent to allocate these funds to school districts, county offices of education, charter schools, and the state special schools on the basis of an equal amount per unit of average daily attendance, as those numbers were reported at the time of the first principal apportionment for the 2022–23 fiscal year. The measure requires a school district, county office of education, charter school, or state special school to expend allocated funds for professional development or instructional materials in financial literacy that is aligned to the history-social science curriculum framework adopted by the state board and the financial literacy subject matter recommended considered by the commission.

CBA adopted a support position on this measure, as it attempts to foster the development and adoption of financial literacy curriculum frameworks for K-12 students and schools in California. Greater resources and services to local education agencies may lead to greater financial empowerment, particularly in lower socio-economic districts, which is a commendable and desirable result. The measure was set aside prior to a first policy committee hearing; it will be eligible to move forward as a two-year measure in 2024.

AB 526 (Ta): Pupil Instruction: Financial Literacy: Instructional Materials: Professional Development

[Two-Year Bill]

This measure requires the Superintendent of Public Instruction, subject to an appropriation of one-time funds for this purpose, to allocate funding for the purchase of standards-aligned instructional materials in financial literacy for kindergarten and grades one to 12, inclusive, and for professional development in that content. The measure requires the Superintendent to allocate these funds to school districts, county offices of education, charter schools, and the state special schools on the basis of an equal amount per unit of average daily attendance, as those numbers were reported at the time of the first principal apportionment for the 2022–23 fiscal year. The measure requires a school district, county office of education, charter school, or state special school to expend allocated funds for professional development or instructional materials in financial literacy that is aligned to the history-social science curriculum framework adopted by the state board and the financial literacy subject matter recommended considered by the commission.

CBA adopted a support position on this measure, as it attempts to foster the development and adoption of financial literacy curriculum frameworks for K-12 students and schools in California. Greater resources and services to local education agencies may lead to greater financial empowerment, particularly in lower socio-economic districts, which is a commendable and desirable result. The measure was set aside prior to a first policy committee hearing; it will be eligible to move forward as a two-year measure in 2024.

AB 984 (McCarty): Pupil Instruction: High School Graduation Requirements: Economics: Personal Finance

[Two-Year Bill]

Existing law requires a pupil to complete designated coursework while in grades nine to 12 in order to receive a diploma of graduation from high school. These graduation requirements include the completion of three courses in social studies, including a one-semester course in economics. Existing law requires the Instructional Quality Commission to consider including age-appropriate information on financial literacy when the history-social science curriculum framework is next revised after January 1, 2017.

This measure requires the one-semester course in economics to include content in personal finance aligned to the history-social science curriculum framework adopted by the state board.

Because communities are more likely to thrive through financial education, financial capability and financial stability, CBA was pleased to support this measure, which was ultimately held on the Suspense File of the Assembly Appropriations Committee. It will be eligible to move forward as a two-year measure in 2024.

AB 1161 (Hoover): Pupil Instruction: History-Social Science Curriculum Framework: Financial Literacy: Estate Planning and Trusts

[Two-Year Bill]

Existing law requires a pupil to complete designated coursework while in grades nine to 12, inclusive, in order to receive a diploma of graduation from high school. These graduation requirements include the completion of three courses in social studies,

including a one-semester course in economics. Existing law requires the Instructional Quality Commission to consider including age-appropriate information on financial literacy when the history-social science curriculum framework is next revised after January 1, 2017.

This measure requires the commission, when the history-social science curriculum framework is revised after January 1, 2017, to also consider including age-appropriate information and content for kindergarten and grades one to 12, inclusive, on the importance of estate planning and the use of trusts.

CBA adopted a support position on this measure which proposes steps toward promoting and enhancing financial literacy among California's youth and greater access to financial literacy programs may help lead to greater financial empowerment in communities. This measure was set aside and is eligible to move forward in 2024.

ACR 34 (Chen): Financial Capability Month

[Enacted: Chapter 58]

This measure designates the month of April 2023 as Financial Capability Month and includes relevant legislative findings.

CBA was pleased to adopted a support position on this resolution which was signed by the Governor. This non-binding resolution includes a number of legislative findings, stating the importance of financial literacy among California's youth which the association has long supported.

SB 342 (Seyarto): Pupil Instruction: History-Social Science Curriculum Framework: Financial Literacy

[Two-Year Bill]

Existing law requires a pupil to complete designated coursework while in grades nine to 12 in order to receive a diploma of graduation from high school. These graduation requirements include the completion of three courses in social studies, including a one-semester course in economics. Existing law requires the Instructional Quality Commission to consider including age-appropriate information on financial literacy when the history-social science curriculum framework is next revised after January 1, 2017.

This measure requires the commission, when the history-social science curriculum framework is revised after January 1, 2024, to include – rather than consider – age-appropriate information and content for kindergarten and grades one to 12, inclusive, regarding those financial literacy topics.

CBA adopted a support position on this measure, as the measure attempts to necessitate the inclusion of financial literacy education throughout K-12 schooling; financial literacy curriculum in the classroom will help California's students become financially empowered long-term. The measure received a hearing in the Senate Committee on Education, where it failed passage. It will be eligible to move forward as a two-year measure in 2024.

HUMAN RESOURCES/ LABOR AND EMPLOYMENT

AB 489 (Calderon): Workers' Compensation: Disability Payments

[Enacted: Chapter 63]

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of the employee's employment. Existing law governs temporary and permanent disability indemnity payments. Existing law, until January 1, 2024, allows an employer to commence a program under which disability indemnity payments are deposited in a prepaid card account for employees.

This measure extends an existing pilot program by one year to deposit indemnity payments in a prepaid card account until January 1, 2025.

CBA did not take a position on this measure, which extends a sunset established in *SB 880 (Pan) [Chapter 730, Statutes of 2018]* that authorized employers to conduct a pilot program to transmit workers' compensation disability indemnity benefits via prepaid card, rather than paper check.

AB 524 (Wicks): Discrimination: Family Caregiver Status

[Vetoed]

Existing law, the California Fair Employment and Housing Act (FEHA), which is enforced by the Civil Rights Department, prohibits various forms of employment discrimination and recognizes the opportunity to seek, obtain, and hold employment without forms of discrimination as a civil right. The act also makes it an unlawful employment practice for an employer, among other things, to refuse to hire or employ a person because of various personal characteristics, conditions, or traits.

This measure prohibits employment discrimination on account of family caregiver status and recognizes the opportunity to seek, obtain, and hold employment without discrimination because of family caregiver status as a civil right.

CBA joined a coalition of business trade associations in opposition to this measure because the provisions will result in an expansion of litigation under the FEHA. In addition to creating a new protected class under FEHA, the measure also includes broadly defined terms and creates a de facto accommodation requirement that will burden small businesses in particular.

AB 594 (Maienschein): Labor Code: Alternative Enforcement

[Enrolled: Chapter 659]

Existing law establishes the Department of Industrial Relations in the Labor and Workforce Development Agency, administered by the Director of Industrial Relations, and vests it with various powers and duties to foster, promote, and develop the welfare of the wage earners of California. Existing law establishes within the department, among other entities, the Division of Labor Standards Enforcement, the Division of Workers' Compensation, and the Division of Occupational Safety and Health, with enforcement duties and powers.

Existing law authorizes the Division of Labor Standards Enforcement, the head of which is the Labor Commissioner, to enforce the Labor Code and all labor laws of the state the enforcement of which is not specifically vested in any other officer, board, or commission. Existing law relating to payment of wages for general occupations provides that nothing in those

provisions limits the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations or to enforce those provisions independently and without specific direction of the Division of Labor Standards Enforcement.

This measure authorizes a public prosecutor to prosecute an action, either civil or criminal, for a violation of specified provisions of the Labor Code or to enforce those provisions independently and without specific direction of the Division of Labor Standards Enforcement. The measure limits the action of a public prosecutor under the bill to redressing violations occurring within the public prosecutor's geographic jurisdiction. The measure authorizes a public prosecutor, in addition to any other remedies available, to seek injunctive relief to prevent continued violations.

This measure provides that, in any action initiated by a public prosecutor, a division within the department, or the Department of Justice to enforce the Labor Code, any individual agreement between a worker and employer that purports to limit representative actions or to mandate private arbitration shall have no effect on the proceedings or on the authority of the public prosecutor, the division, or the Department of Justice to enforce the code. The measure provides that any subsequent appeal of the denial of any motion or other court filing to impose such restrictions on a public prosecutor, a division, or the Department of Justice shall not stay the trial court proceedings.

Existing law prohibits any person or employer from engaging in willful misclassification of an individual as an independent contractor instead of an employee and in specified acts relating to the misclassified individual's compensation. Existing law, if the Labor and Workforce Development Agency or a court makes one of several prescribed determinations regarding the violation of those prohibitions, subjects the violator to civil penalties. Existing law also authorizes the Labor Commissioner to determine such a violation through investigation and informal hearing and, on making that determination, to issue a citation to assess those civil penalties pursuant to prescribed procedures for issuing, contesting, and enforcing judgments. Existing law, the Labor Code Private Attorneys General Act of 2004 (PAGA), authorizes an aggrieved employee to bring a civil action to recover civil penalties that would otherwise be assessed and collected by the Labor and Workforce Development Agency on behalf of the employee and other current or former employees for the violation of certain provisions affecting employees.

This measure authorizes the recovery of willful misclassification penalties by the employee as a statutory penalty pursuant to the informal hearing provisions or by the Labor Commissioner as a civil penalty through the issuance of a citation or pursuant to existing law that authorizes action on behalf of a person financially unable to employ counsel. The measure authorizes an employee to either recover statutory penalties under these provisions or to enforce civil penalties under PAGA, but not both, for the same violation.

CBA joined a coalition of business trade associations to oppose this measure, on the basis that it will lead to inconsistent enforcement of the law, increased cost for businesses, and allows for private attorney contracting for enforcement.

AB 747 (McCarty): Business: Unlawful Employee Contracts and Requirements

[Two-Year Bill]

Existing law provides that every contract that restrains anyone from engaging in a lawful profession, trade, or business of any kind is, to that extent, void. Existing law authorizes any person who sells the goodwill of a business, any owner of a business entity selling or otherwise disposing of all of their ownership interest in the business entity, or any owner of a business

entity that sells assets or ownership interests to agree with the buyer to refrain from carrying on a similar business within a geographic area in which the business is sold, or that of the business entity, division, or subsidiary has been carried on, if the buyer, or any person deriving title to the goodwill or ownership interest from the buyer, carries on a like business therein. Existing law defines "ownership interest" as a partnership interest, membership interest, or a capital stockholder.

This measure modifies the definition of "ownership interest" to require the partnership interest, membership interest, or capital stock to be more than a 10 percent interest of the total partnership interest, more than a 10 percent interest of the total membership interest, or more than 10 percent of the total shares of ownership of the entity, respectively. This measure prohibits an employer from entering into a contract or contract term that requires a debtor to pay for a debt if the debtor's employment or work relationship with the employer is terminated, except as specified. This measure prohibits an employer from imposing any penalty, fee, or cost on an employee or independent contractor for terminating the employment relationship.

This measure provides that an employer that enters into, attempts to enter into, or seeks to enforce a contract in violation of these provisions is liable for actual damages and an additional penalty of up to $5,000 per employee or prospective employee in a civil action brought by the employee or prospective employee. The measure authorizes an employee or prospective employee to bring an action for injunctive relief and would provide that a prevailing employee or prospective employee is entitled to recover reasonable costs and attorney's fees. The measure requires the Attorney General to receive and investigate allegations of a violation of this provision and authorizes the Attorney General to bring an action enforcing this provision.

Existing law provides for a system of labor standards enforcement administered by the Labor Commissioner. This measure requires the Labor Commissioner to enforce the above-described prohibition against entering into a contract or contract term that requires a debtor to pay for a debt if the debtor's employment or work relationship with the employer is terminated and requires the Attorney General and the Labor Commissioner to coordinate responsibility with respect to enforcement of those provisions, and would make a contract entered into in violation of that prohibition void.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law provides that it is cause for suspension, disbarment, or other discipline for any licensee, whether acting on their own behalf or on behalf of someone else, whether or not in the context of litigation, to solicit, agree, or seek agreement that, among other things, misconduct or the terms of a settlement of a claim for misconduct shall not be reported to the State Bar.

This measure provides that it may be cause for suspension, disbarment, or other discipline for any licensee to enter into with an employee, prospective employee, or former employee, present an employee, prospective employee, or former employee as a term of employment, or attempt to enforce any employee contract or other agreement on the licensee's behalf, or on behalf of their client, that violates the above-described prohibition against entering into a contract or contract term that requires a debtor to pay for a debt if the debtor's employment or work relationship with the employer is terminated.

Existing law prohibits an employer from requiring an employee who primarily resides and works in the state to agree, as a condition of employment, to a provision that requires the employee to adjudicate outside of the state a claim arising in the state or will deprive the employee of the substantive protection of state law with respect to a controversy arising in the state. Existing law provides that this prohibition does not apply to a contract with an employee who is in fact individually

represented by legal counsel in negotiating the terms of an agreement to designate either the venue or forum in which a controversy arising from the employment contract may be adjudicated or the choice of law to be applied.

This measure provides that, for a contract entered into, modified, or extended on or after January 1, 2024, the above-described prohibition does not apply to a contract with an employee who is individually represented by legal counsel, excluding when the counsel is paid for by, or was selected based upon the suggestion of, the employee's employer, in negotiating the terms of an agreement and, at the option of the employee, designates either the venue or forum in which a controversy arising from the employment contract may be adjudicated or the choice of law to be applied.

CBA joined a coalition of business trade associations in opposing this measure on the basis that: AB 747 will disincentivize voluntary benefits programs for employees and impose significant penalties even for good faith errors, including potential disbarment for an attorney. Because the measure jeopardizes benefits, including bonuses or education, the measure has a detrimental impact to the workforce within the financial services sector. This measure was set aside when it reached the Assembly Floor; it is eligible to move forward in 2024 as a two-year measure.

AB 1100 (Low): Employment: Workweek

[Two-Year Bill]

Existing law generally establishes that eight hours of labor constitutes a day's work and further establishes a 40-hour workweek.

This measure seeks to establish the 32-hour Workweek Pilot Program under the administration of the Department of Industrial Relations to provide grants to employers with five or more employees for the purposes of administering pilot programs that provide each employee the option to work a 32-hour workweek. The measure authorizes an employer to apply for a grant from the department by submitting an application that includes, among other things, a 12-month plan for the implementation of a 32-hour workweek. The measure requires the department to award grants quarterly, beginning July 1, 2024, and to prioritize employers with hourly employees. The measure requires an employer, upon receipt of a grant, to implement the program within 90 days, and would require the employer, within the first six months, and upon the completion of the pilot program, to evaluate the impact of the pilot program on employer and employee satisfaction. The measure requires the department to submit a report to the Legislature on or before January 1, 2028, on the 32-hour Workweek Pilot Program, including findings and recommendations on expanding the pilot program on a statewide basis or for an extended period of time. The measure seeks to make these provisions operative upon appropriation by the Legislature and will repeal these provisions on January 1, 2029.

CBA monitored but did not take a position on this measure, which failed to receive a policy committee hearing.

AB 1355 (Valencia): Employment: Benefits: Electronic Notice and Documents

[Enacted: Chapter 277]

The Personal Income Tax Law allows various credits against the taxes imposed by that law, including certain credits that are allowed in modified conformity to credits allowed by federal income tax laws. Federal income tax laws allow a refundable earned income tax credit for certain low-income individuals who have earned income and who meet certain other requirements. In modified conformity with federal income tax laws, that law also allows an earned income

credit against personal income tax, and a payment in excess of that credit amount, to an eligible individual that is equal to that portion of the earned income tax credit allowed by federal law as determined by the earned income tax credit adjustment factor as set forth in the annual Budget Act.

Existing law, the Earned Income Tax Credit Information Act, requires an employer to notify all employees that they may be eligible for the federal and California earned income tax credit by handing documents directly to the employee or mailing the documents to the employee's last known address.

This measure, until January 1, 2029, also authorizes the employer to provide the above-described notification via email to an employee's email account, if the employee affirmatively, and in writing or by electronic acknowledgment, opts into receipt of electronic statements or materials. The measure prohibits the employer from discharging or taking other adverse action against an employee who does not opt into receipt of electronic statements or materials.

Existing law prescribes a system for the payment of benefits to unemployed individuals who meet eligibility criteria. Existing law requires an employer to supply, pursuant to authorized regulations, each individual at the time they become unemployed with copies of printed statements or materials relating to claims for benefits. Existing law provides that the failure of an employer to comply with these provisions is a misdemeanor.

This measure, until January 1, 2029, authorizes the employer to provide the above-described notification concerning statements and materials for benefits via email to an employee's email account, if the employee affirmatively, and in writing or by electronic acknowledgment, opts into receipt of electronic statements or materials. The measure prohibits the employer from discharging or taking other adverse action against an employee who does not opt into receipt of electronic statements or materials.

CBA joined a coalition of business trade associations in supporting this measure, as it provides both employers and employees with the flexibility to provide and receive information by electronic means if they so choose.

AB 1356 (Haney): Relocations, Terminations, and Mass Layoffs

[Vetoed]

Existing law, the California Worker Adjustment and Retraining Act (WARN Act), governs relocations, terminations, and mass layoffs. Existing law prohibits an employer from ordering a mass layoff, relocation, or termination at a covered establishment unless, 60 days before the order takes effect, the employer gives written notice of the order, including the local workforce investment board and the chief elected official of each city and county government within which the termination, relocation, or mass layoff occurs. Existing law exempts certain types of employment from the act, including seasonal employment where the employees were hired with the understanding that their employment was seasonal and temporary (seasonal employment exemption). Existing law makes an employer who fails to give notice as required liable to each employee entitled to notice who lost their employment for prescribed compensation, calculated for the period of the employer's violation, up to a maximum of 60 days, or one-half the number of days that the employee was employed by the employer, whichever period is smaller. Existing law authorizes the Labor Commissioner to enforce provisions of existing law. Existing law defines "mass layoff" for purposes of the act to mean a layoff during any 30-day period of 50 or more employees at a covered establishment and defines "covered establishment" as an industrial or commercial facility that employs, or has employed within the preceding 12 months, 75 or more persons.

This measure requires the notice 75 days before the order takes effect and makes a conforming change to the calculation of employer liability. Measure AB 1356 modifies the requirement for notice to the local workforce investment board and the chief elected official of each city and county government within which the termination, relocation, or mass layoff occurs to apply only to a termination, relocation, or mass layoff that impacts 50 or more employees at a single location. The measure requires a labor contractor to remit to the employee the payment provided to the client employer in the full amount calculated for a violation of the notice requirement, and would define a "labor contractor" for purposes of the act.

This measure includes within the term "employer" a client employer of a labor contractor. The measure includes within the term "employee" a person employed by a labor contractor and performing labor with the client employer for at least six months of the 12 months and for at least 60 hours preceding the date on which notice is required. The measure revises the definition of "covered establishment" to instead mean a place of employment that employs, or has employed within the preceding 12 months, 75 or more persons, and would specify that a "covered establishment" may be a single location or a group of locations. The measure revises the definition of "mass layoff" to also include employees reporting to a covered establishment.

This measure prohibits an employer from utilizing compliance with the act in connection with a severance agreement and waiver of an employee's right to claims. The measure provides that any general release, waiver of claims, or non-disparagement or nondisclosure agreement that is made a condition of the payment of amounts for which the employer is liable is void as a matter of law and against public policy. The measure prohibits an employer who is required to give notice from offering an employee a separate agreement that includes a general release, waiver of claims, or non-disparagement or nondisclosure agreement, unless the agreement is offered in exchange for reasonable consideration that is in addition to anything of value to which the individual already is entitled and includes a statement to this effect. The measure provides that any agreement in violation of this prohibition is void as a matter of law and against public policy, and would make an employer who violates this provision subject to a civil penalty of up to $500 for each violation.

CBA closely monitored this measure, which applies existing WARN Act requirements to employees of a labor contractor, including failing to take into account the amount of time a contractor works for a company or the terms of a contract or agreement between the labor contractor and client.

AB 1389 (Carrillo, Wendy): Notice of Levy

[Enacted: chapter 839]

Existing law requires the Employment Development Department (EDD) to implement and administer the unemployment insurance program in this state and provides for the payment of unemployment compensation benefits to eligible individuals who are unemployed through no fault of their own. Existing law provides for penalties and interest if any person or employing unit is delinquent in the payment of any contributions for unemployment insurance and authorizes the Director of Employment Development to enforce any state tax liens against a delinquent account receivable or account held by a financial institution if proper notice is given. Existing law requires the person receiving a notice of levy, if the levy is made on an account receivable, to remit any credits or personal property owing to the delinquent person or employing unit to the department within five days of receipt of the notice of levy. Existing law also requires a person that comes into possession of credits or property owing to a delinquent person or employing unit within one year of receipt of the notice of an accounts receivable levy to remit the credits or property to the department within five days of coming

into possession of the credits or property. Existing law requires a financial institution receiving a notice of levy to remit the property to the department within five days of receiving the notice of levy, but does not require the financial institution to remit property that is not in their possession at the time the notice of levy is served.

This measure instead requires the person in possession of credits or property owing to the delinquent person or employing unit to remit the credits or property to the department after 10 but no later than 14 business days after service of the levy. The measure also requires a person coming into possession of credits or property owing to the delinquent person or employing unit within one year of receipt of the notice of levy to remit the credits or property to the department after 10 but no later than 14 days after coming into possession of the credits or property.

We adopted a neutral position on this measure, which seeks to improve customer service for taxpayers and claimants by providing them with more time to resolve their outstanding tax liabilities or fraudulent overpayments before a levy is remitted to the EDD.

SB 375 (Alvarado-Gil): Employment: Employer Contributions: Employee Withholdings: COVID-19 Regulatory Compliance Credit

[Two-Year Bill]

The Personal Income Tax Law imposes taxes on taxable income. Under existing law, every employer who pays wages to a resident employee for services performed either within or without this state, or to a nonresident employee for services performed in this state, is required to deduct and withhold from those wages for each payroll, a tax computed in an amount substantially equivalent to the amount reasonably estimated to be due under the Personal Income Tax Law. Under existing law, every employer required to withhold those taxes is required to, for each calendar quarter, file a withholding report, a quarterly return, and a report of wages in a form prescribed by the Employment Development Department, and pay over the taxes required to be withheld.

This measure authorizes an employer to claim, for the 2023 and 2024 calendar years, a COVID-19 regulatory compliance credit. The measure requires the credit to be claimed on the employer's last quarterly return, as described, for the relevant calendar year. The measure requires any amount claimed by an employer to be credited against employee personal income tax withholding amounts required to be remitted to the department for the last quarter of the relevant calendar year.

This measure provides that its provisions do not change the amount of personal income taxes required to be withheld from employees and required to be reported to the employee, the department, the Franchise Tax Board, and the Internal Revenue Service. The measure specifies that its provisions do not require additional taxes to be paid by the employee or otherwise alter the employee's tax liability under the Personal Income Tax Law. The measure states that it is the intent of the Legislature that the operation of the bill's provisions not require an appropriation of moneys by reducing moneys remitted by the employer to the department that would otherwise be deposited in the General Fund. This measure authorizes the department to adopt rules and regulations that are necessary or appropriate to implement the bill and would repeal its provisions on December 1, 2025.

CBA joined a coalition of business trade associations in supporting this measure, which reimburses employers for the cost of compliance with the new COVID-19 Prevention Non-Emergency Regulations in 2023 and 2024. Ultimately, the measure was held on the Suspense File of the Senate Committee on Appropriations.

SB 399 (Wahab): Employer Communications: Intimidation

[Two-Year Bill]

Existing law relating to employment prohibits employers from making, adopting, or enforcing rules, regulations, or policies that forbid or prevent employees from engaging or participating in politics or from becoming candidates for public office, and from controlling or directing, or tending to control or direct, the political activities or affiliations of employees.

This measure seeks to prohibit an employer from subjecting, or threatening to subject, an employee to discharge, discrimination, retaliation, or any other adverse action because the employee declines to attend an employer-sponsored meeting or affirmatively declines to participate in, receive, or listen to any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinion about religious or political matters. The measure also seeks to require the Division of Labor Standards Enforcement, upon the filing of a complaint by an employee, to enforce the bill's provisions. The measure also authorizes any employee who the employer has subjected, or threatened to subject, to adverse action on account of the employee's refusal to attend an employer-sponsored meeting to bring a civil action and to petition for injunctive relief.

CBA opposed this measure on the basis that it would generally have a chilling impact on employer speech regarding undefined political matters and beyond, and specifically could hamper financial institutions' ability to review or discuss pending or recently enacted legislation or regulation – potentially negatively impacting an institution's ability to comply, protection of consumer privacy and data, etc. CBA joined a coalition of business trade associations in opposing this measure, which also lacks definition of key terms, such as "employer-sponsored" meeting. The coalition also asserted that SB 399, which was labeled a "Job Killer" by the California Chamber of Commerce, violates the First Amendment as a content-based restriction on speech and that the measure's prohibition against employers speaking about unionization is already preempted by the NLRA. In addition, CBA, along with other financial services industry trade associations, expressed significant industry-specific concerns that SB 399 presented. Ultimately the measure was held on the Suspense File of the Assembly Committee on Appropriations; it is eligible to move forward in 2024 as a two-year measure.

SB 403 (Wahab): Discrimination on the Basis of Ancestry

[Vetoed]

Existing law, the Unruh Civil Rights Act, provides that all persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Existing law, the California Fair Employment and Housing Act (FEHA), establishes the Civil Rights Department to enforce civil rights laws with respect to housing and employment, as prescribed. The FEHA declares the public policy of the state that it is necessary to protect and safeguard the right of all persons to seek, obtain, and hold employment without discrimination, and recognizes and declares to be a civil right the opportunity to seek, obtain, and hold employment without discrimination, based on specified characteristics, including ancestry. The FEHA makes certain discriminatory employment practices based on those characteristics unlawful.

This measure adds a definition of "ancestry" for purposes of the act to include, among other things, caste and additionally includes ancestry as a protected characteristic in that policy statement, defining "ancestry" and "caste" for purposes of those provisions. The measure defines "ancestry" for purposes of the FEHA to include, among other things, caste, and would also define "caste" for purposes of those provisions.

Although this measure received significant attention from both the public and the press, CBA adopted a "no position" position on the measure and monitored its progress.

SB 553 (Cortese): Occupational Safety: Workplace Violence: Restraining Orders and Workplace Violence Prevention Plan.

[Enacted: Chapter 289]

Existing law authorizes any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual that can reasonably be construed to be carried out or to have been carried out at the workplace, to seek a temporary restraining order and an order after a hearing on behalf of the employee and other employees at the workplace.

Commencing January 1, 2025, SB 553 authorizes a collective bargaining representative of an employee, as described, to seek a temporary restraining order and an order after hearing on behalf of the employee and other employees at the workplace. The measure requires an employer or collective bargaining representative of an employee, before filing such a petition, to provide the employee who has suffered unlawful violence or a credible threat of violence from any individual an opportunity to decline to be named in the temporary restraining order. Under the measure, an employee's request to not be named in the temporary restraining order would not prohibit an employer or collective bargaining representative from seeking a temporary restraining order on behalf of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.

While allowing collective bargaining representatives to seek workplace violence restraining orders on behalf of their members is a reasonable change to ensure that workers are protected, as introduced SB 553 also proposed changes that would interrupt an ongoing regulatory process and create wasteful obligations for all employers, regardless of size, that would not result in the prevention of workplace violence. CBA joined a coalition of business trade associations in opposing the measure and removed that opposition when the September 1 amendments were adopted. Those amendments, among other things, ensure that the rulemaking of the California Division of Occupational Safety and Health (Cal/OSHA) at least match the provisions in SB 533. The measure still requires employers to have workplace violence plans as well as incident logs – which Cal/OSHA has prepared to begin requiring of employers as well.

SB 592 (Newman): Labor Standards Information and Enforcement

[Two-Year Bill]

Existing law creates with the Department of Industrial Relations and establishes within the department the Division of Labor Standards Enforcement (DLSE), which is headed by the Labor Commissioner. The DLSE is generally charged with enforcing employment statutes and regulations, either in administrative actions or through litigation. Existing law imposes various administrative sanctions, civil fines and penalties, and criminal penalties for violations of employment statutes or regulations.

This measure proposes to prohibit the imposition of punishment or liability for costs upon a person who has relied upon a published opinion letter or an enforcement policy of DLSE that is displayed

on the website of the division, except for restitution of unpaid wages, for violations of statutes or regulations in judicial or administrative proceedings if the person pleads and proves specified facts. The measure requires a person asserting this defense to have acted in good faith, to have relied upon, and conformed to, the applicable opinion letter or enforcement policy, and to have provided true and correct information to the division, among other things. The measure requires a person asserting this defense to post a bond and would prescribe requirements in this regard. The measure applies its provisions to actions and proceedings that commence on or after January 1, 2024. Additionally, the measure seeks to require the Labor Commissioner to translate each of its websites in their entirety, and all materials available on those websites, into Spanish, Chinese, Tagalog, and Vietnamese by January 1, 2026.

CBA joined a coalition of business trade associations in supporting this measure, which seeks to bolster labor law compliance by requiring DIR to translate its website, in its entirety, into the languages most spoken by Californians and to prevent any employer who relies in good faith upon the written advice of the DLSE regarding how to comply with the law from being punished. Ultimately, SB 592 failed its first policy committee hearing. It was granted reconsideration and may be acted upon in January 2024.

SB 616 (Gonzalez): Sick Days: Paid Sick Days Accrual and Use: Unpaid Sick Leave for Railroad Employees

[Enacted: Chapter 309]

Existing law, with certain exceptions, entitles an employee to paid sick days for certain purposes if the employee works in California for the same employer for 30 or more days within a year from the commencement of employment. Existing law imposes procedural requirements on employers regarding the use of paid sick days, including by prohibiting retaliation for using paid sick days, by prohibiting the imposition of certain conditions on the use of paid sick days, and by requiring the use of paid sick days for health care and specified situations. Existing law requires the leave to be accrued at a rate of no less than one hour for every 30 hours worked, and to be available for use beginning on the 90th day of employment.

Existing law requires accrued paid sick days to carry over to the following year of employment. Existing law, however, authorizes an employer to limit an employee's use of accrued paid sick days to 24 hours or three days in each year of employment, calendar year, or 12-month period. Under existing law, this provision is satisfied, and no accrual or carryover is required if the full amount of leave is received at the beginning of each year of employment, calendar year, or 12-month period. Existing law defines "full amount of leave" for these purposes to mean three days or 24 hours.

This measure raises the employer's authorized limitation on the use of carryover sick leave to 40 hours or five days in each year of employment, increases the cap that employers can place on sick days from six to 10 days and 48 to 80 hours, and increases the number of paid sick days an employee can roll over to the next year from three to five days. This measure also extends procedural and anti-retaliation provisions in existing paid sick leave law to employees covered by a valid collective bargaining agreement that is exempt from other provisions of the paid sick leave law.

CBA joined a coalition of business trade associations in opposing this measure. As introduced, the measure more than doubled the number of paid sick days employers are currently required to provide from three days to seven, increased the cap that employers can place on paid sick days from six to 14, and increased the number of paid sick days an employee can roll over to the next year from three to seven days. It is important to note that this paid benefit does not exist in isolation and must be viewed

in the context of all of California's existing paid benefits and other leave options. That same coalition also expressed support for a business-supported alternative in SB 881 (see page 32), which was voted down in its first policy committee hearing.

Despite helpful amendments of the Assembly Committee on Appropriations to SB 616, the measure still fails to address existing problems with the usage of paid sick leave in California, wherein existing law prohibits employers from asking for documentation, even though local ordinances such as Los Angeles and San Diego allow employers to request reasonable documentation. The coalition also continued to assert that the state should provide incentives to employers to offer more expansive benefits rather than mandating the additional days.

SB 627 (Smallwood-Cuevas): Displaced Workers: Notice: Opportunity to Transfer

[Vetoed]

Existing law, until December 31, 2024, requires an employer to offer certain employees laid off due to the COVID-19 pandemic information about job positions that become available for which the laid-off employees are qualified, and to offer positions to those laid-off employees based on a preference system, in accordance with timelines and procedures. Existing law requires an employer that declines to recall a laid-off employee on the grounds of lack of qualifications and instead hires someone other than a laid-off employee to provide the laid-off employee a written notice within 30 days including reasons for the decision, and other information on those hired. Existing law prohibits an employer from taking adverse action against any laid-off employee for seeking to enforce their rights under existing law.

Existing law gives the Division of Labor Standards Enforcement jurisdiction over enforcement of these provisions and prescribes enforcement, remedies, and civil penalties for violations. Existing law prohibits the imposition of criminal penalties for a violation of these provisions. Existing law authorizes the division to promulgate and enforce rules and regulations, and issue determinations and interpretations concerning existing law.

This measure requires a chain employer to provide each covered worker and their exclusive representative, if any, a displacement notice at least 60 days before the expected date of closure of a covered establishment. The measure defines terms for its purposes, including defining a "covered establishment" as a chain establishment that is subject to closure resulting in layoffs of workers, a "chain" as a business in this state that consists of 100 or more establishments nationally that share a common brand and are owned and operated by the same parent company, and a "chain employer" as any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, owns or operates a chain and employs or exercises control over the wages, hours, or working conditions of workers. A "chain employer" also includes a franchisee that owns and operates 100 or more establishments nationally under an agreement with one franchisor.

CBA joined a coalition of business trade associations in opposing this measure, as it imposes an onerous and stringent process to hire employees based on seniority alone for nearly every industry, including hospitals, retail, restaurants, and movie theaters, which delays hiring and eliminates contracts for at-will employment.

SB 703 (Niello): Employment: Work Hours: Flexible Work Schedules

[Two-Year Bill]

Existing law establishes eight hours as a day's work and a 40-hour workweek and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by two-thirds of employees in a work unit of alternative

workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek.

This measure proposes to enact the California Workplace Flexibility Act of 2023 and permits an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek and allows the employer to implement this schedule without the obligation to pay overtime compensation for those additional hours in a workday. The measure also prescribes a method for calculating the payment of overtime for hours worked in excess of the permitted amounts and would establish requirements for termination of these agreements.

CBA adopted a support position on SB 703, as it allows for an employee-selected flexible work schedule, relieving employers of the administrative cost and burden or adopting an alternative workweek schedule per division; these provisions accommodate employees, helps retain employees, and allows the employer to invest those saving into growing its existing workforce. Ultimately, this measure failed in the Senate Committee on Public Employment and Retirement, where it received its first policy hearing.

SB 723 (Durazo): Employment: Rehiring and Retention: Displaced Workers

[Enacted: Chapter 719]

Existing law, until December 31, 2024, requires an employer to offer its laid-off employees specified information about job positions that become available for which the laid-off employees are qualified, and to offer positions to those laid-off employees based on a preference system, in accordance with timelines and procedures. Existing law, until December 31, 2024, also prohibits an employer from refusing to employ, terminating, reducing compensation, or taking other adverse action against a laid-off employee for seeking to enforce their rights under these provisions. These provisions are enforced by the Division of Labor Standards Enforcement.

This measure redefines "laid-off employee" to mean any employee who was employed by the employer for six months or more and whose most recent separation from active employment by the employer occurred on or after March 4, 2020, and was due to a reason related to the COVID-19 pandemic, including a public health directive, government shutdown order, lack of business, reduction in force, or other economic nondisciplinary reason due to the COVID-19 pandemic. The measure also creates a presumption that a separation due to a lack of business, reduction in force, or other economic, nondisciplinary reason is due to a reason related to the COVID-19 pandemic, unless the employer establishes otherwise by a preponderance of the evidence.

CBA joined a coalition of business trade associations in opposing this measure, as it creates an onerous recall process for specific employers to return former employees to the workforce for specified industries, including hotels and restaurants that have been disproportionally impacted by this pandemic by extending the current law past the previously imposed sunset date. Although substantial changes were made since SB 723's introduction, the coalition continued to oppose a "right to recall" policy that may continue to slow down hiring and add administrative costs for the hospitality and service industry, which is harmful to communities.

SB 809 (Smallwood-Cuevas): California Fair Employment and Housing Act: Fair Chance Act: Conviction History

[Two-Year Bill]

Existing law, the Investigative Consumer Reporting Agencies Act, prohibits certain persons, including a person intending to use an investigative consumer report for employment purposes, from procuring

or causing to be prepared the report unless certain conditions are met. Under that act, one of those conditions require the person procuring or causing the report to be made to provide a clear and conspicuous disclosure in writing to the consumer, at any time before the report is procured or caused to be made and in a document that consists solely of the disclosure, certain information.

This measure seeks to require that information also include either all laws and regulations that impose restrictions or prohibitions for employment on the basis of a conviction, if any, or all the specific job duties of the position for which a conviction may have a direct and adverse relationship that has the potential to result in an adverse employment action, as described.

CBA joined a coalition of business trade associations in opposing this measure, which as introduced undermines years of negotiations that culminated in the existing California Fair Chance Act, which strikes a careful balance between the need to consider conviction history for certain job positions with removing barriers to enter into the workforce. Although amendments adopted on April 27 made the measure somewhat less onerous, the coalition continued to oppose and asserted the need to prohibit unintended consequences and exorbitant liability that may be imposed on an employer even for good-faith mistakes.

The measure was held on the Suspense File of the Senate Appropriations Committee; it may be acted upon in January 2024.

SB 848 (Rubio): Employment: Leave for Reproductive Loss

[Enacted: Chapter 724]

Existing law, the California Fair Employment and Housing Act, makes it an unlawful employment practice for an employer to refuse to grant a request by any employee to take up to five days of bereavement leave upon the death of a family member. This additionally makes unlawful an employer's refusal to grant a request by an eligible employee to take up to five days of reproductive loss leave following a reproductive loss event, as defined. The measure requires that leave be taken within three months of the event and pursuant to any existing leave policy of the employer. The measure provides that if an employee experiences more than one reproductive loss event within a 12-month period, the employer is not obligated to grant a total amount of reproductive loss leave time in excess of 20 days within a 12-month period. In the absence of an existing policy, the reproductive loss leave may be unpaid; the measure also authorizes an employee to use certain other leave balances otherwise available to the employee, including accrued and available paid sick leave.

CBA adopted an oppose position, requesting that the measure be narrowed to clarify which events qualify as triggering events for reproductive loss leave and to implement a cap on the total amount of leave that can be taken within a 12-month period.

SB 881 (Alvarado-Gil): Paid Sick Days: Accrual and Use

[Two-Year Bill]

Existing law entitles an employee to paid sick days for certain purposes if the employee works in California for the same employer for 30 or more days within a year from the commencement of employment. Existing law requires the leave to be accrued at a rate of no less than one hour for every 30 hours worked, and to be available for use beginning on the 90th day of employment. Existing law authorizes an employer to use a different accrual method as long

as an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. Existing law also provides that an employer may satisfy the accrual requirements by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of the employee's 120th calendar day of employment.

Under existing law, an employer has no obligation under these provisions to allow an employee's total accrual of paid sick leave to exceed 48 hours or six days, provided that an employee's rights to accrue and use paid sick leave are not otherwise limited. Under existing law, sick leave carries over to the following year of employment, but an employer is permitted to limit the use of the carryover amount, in each year of employment, calendar year, or 12-month period, to 24 hours or three days.

This measure proposes to modify the employer's alternate sick leave accrual method to require that an employee have no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment or each calendar year, or in each 12-month period. The measure also modifies that satisfaction provision to authorize an employer to satisfy accrual requirements by providing not less than 40 hours or five days of paid sick leave that is available to the employee to use by the completion of the employee's 200th calendar day of employment. The measure provides that an employer is under no obligation to allow an employee's total accrual of paid sick leave to exceed 80 hours or 10 days. The measure raises the employer's authorized limitation on the employee's use of carryover sick leave to 40 hours or five days.

CBA joined a coalition of business trade industry associations in supporting this measure as a business-friendly alternative to the more aggressive approach in SB 616 (see page 29). Because the measure increases paid sick leave from three to five days while also including other desirable and necessary changes, like addressing inconsistencies and confusion with local ordinances, allowing employers to seek documentation after three consecutive days, and including the important clarification that penalties through the Private Attorney General Act are not recoverable and do not apply to paid sick leave claims, CBA was pleased to offer support of this measure, which died upon its first hearing in policy committee.

SCA 7 (Umberg): Employment: Workers' Rights

[Two-Year Bill]

Existing state law forbids a public employer from deterring or discouraging public employees from becoming or remaining members of an employee organization. Existing federal law forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining, or assisting a labor organization for collective bargaining purposes, or from working together to improve terms and conditions of employment, or refraining from any such activity.

Referred to as the Right to Organize and Negotiate Act, SCA 7 ensures that all Californians have the right to join a union and to negotiate with their employers, through their legally chosen representative, to protect their economic well-being and safety at work. This measure requires the Legislature to provide for the enforcement of these rights. This also prohibits, after January 1, 2023, the passing of any statute or ordinance that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and workplace safety.

CBA joined a coalition of business trade industry associations in opposing this measure on the premise that it is an unprecedented proposal to enshrine special benefits into the State Constitution that will damage government operations and destabilize the

California economy. The measure stalled in policy committee in the first house; it is eligible to continue in the legislative process in January 2024.

MILITARY LENDING

AB 1143 (Chen): Military: Lending Protections

[Two-Year Bill]

Federal law provides various protections regarding credit extended to members of the Armed Forces called to active duty, including, among others, limitations on the interest charged and mandatory disclosures. Existing law makes a security interest in personal property, other than specified modes of transportation, void if it would cause a loan procured by a covered member in the course of purchasing the personal property to be exempt from the federal protections. Existing law also makes a security interest in a motor vehicle void if it would cause a loan procured by a covered member to be exempt from the federal protections and that loan also funds the purchase of a credit insurance product or credit-related ancillary product.

This measure exempts from those provisions loans that comply with provisions of those federal protections.

CBA adopted a support position on AB 1143, which was introduced as a means to assert clean up efforts to last year's *SB 1311 (Eggman) [Chapter 620, Statutes of 2022]*, for which the financial services sector expressed significant concerns specifically relating to Section 5, which creates unintended consequences that may harm service members and California military households by preventing access to GAP waiver and other credit-related ancillary products. This measure did not receive a policy committee hearing.

PAYMENT SYSTEMS

AB 39 (Grayson): Digital Financial Asset Businesses: Regulatory Oversight

[Enacted: Chapter 792]

This measure creates the Digital Financial Assets Law and grants regulatory authority to the Department of Financial Protection and Innovation (DFPI) to license and supervise all digital asset activity in the state unless the activity is conducted by a commercial bank or credit union. The measure broadly defines "digital assets" as any digital representation of value that is used as a medium of exchange, unit of account, or store of value, and that is not legal tender. This measure requires that the implementation of the department's new authority be finalized by January 1, 2024.

This measure adopts some of the provisions of the Uniform Law Commission's Uniform Regulation of Virtual Currency Businesses Act of 2017 and requires a licensee to maintain a surety bond or trust account for the benefit of its customers in a form and amount as determined by DFPI for the protection of the licensee's customers. The measure also requires a licensee to maintain capital in an amount and form as DFPI determines is sufficient to ensure the financial integrity of the licensee and its ongoing operations based on an assessment of risks applicable to the licensee.

Additionally, the measure authorizes the DFPI to conduct examinations and grantes enforcement authority to the DFPI, to include license revocation, issuance of cease-and-deist orders or a request that the court appoint a receiver for the assets of a person engaged in digital financial asset business activity. The measure also includes new disclosure requirements for licensees, including a schedule of

fees and charges, whether the product or service provided is covered by insurance or other guarantees from loss, a description of specified terms related to their customers' rights and responsibilities, a generic disclosure that states that no digital financial asset is currently recognized as legal tender by California or the United States, and disclosure of instances over the past 12 months when the licensee's service was unavailable to 10,000 or more customers due to a service outage.

Other regulatory requirements imposed by this measure include the requirement that digital asset licensees align their customer service operations to those that apply to licensed money transmitters. Additionally, the measure requires any crypto exchange, prior to listing a token or crypto asset for sale, transfer, or exchange, to self-certify that the exchange has conducted a comprehensive risk assessment and provided full and fair disclosure of all materials related to conflicts of interest, among other topics.

Previous versions of this measure prohibited crypto companies from making "stablecoins" available for exchange, transfer, or storage unless the stablecoin's value is backed by reserve assets, but only until January 1, 2028. This version of the measure, however, requires stablecoins to be fully backed by reserves in perpetuity.

CBA has long supported the creation of a crypto currency regulatory framework that increases consumer protections. Consistent with this position, CBA supported AB 39.

AB 1587 (Ting): Financial Transactions: Firearms Merchants: Merchant Category Code

[Enacted: Chapter 247]

In 2023, the International Standards Organization approved the creation of a merchant category code (MCC) for gun retailers. After the adoption of the code, several states took action to prevent financial institutions from tracking firearms purchases. Introduced late in the legislative session, AB 1587 requires banks and credit card networks to implement the new code for firearms merchants that are expected to have the highest portion of their sales volume from firearms, firearms accessories, or ammunition.

CBA worked with the sponsors of the measure on definitional amendments to specify that the measure applies only to firearm retailers located in California, and to payment networks and merchant acquirer banks. "Merchant acquirer" means an entity that establishes a relationship with a merchant for the purposes of processing credit, debit, or prepaid transactions. "Payment card network" means an entity that provides services that route transactions between bank participants to conduct debit, credit, or prepaid transactions for the purpose of authorization, clearance, or settlement.

Importantly, this measure does not require financial institutions to track or report gun purchases, nor does it include a private right of action for enforcement. Additionally, CBA secured delayed implementation to give payment processors and acquiring banks time to comply. The measure requires, by July 1, 2024, a payment card network to make the merchant category code for firearms and ammunition businesses available for merchant acquirers that provide payment services for firearms merchants. It also requires merchant acquirers to assign to and enforce the usage of the MCC for firearms businesses by May 1, 2025.

CBA did not take a position on this measure.

SB 728 (Limón): Plastic Gift Cards: Prohibition

[Vetoed]

The California Legislature has passed legislation regulating the manufacture, sale, and disposal of various plastic products, including, single-use foodware accessories, single-use carryout bags, trash bags, packaging containers, and microbeads.

This measure prohibits a retailer from selling, offering for sale, or distributing a gift card made from plastic in the state after January 1, 2027. The measure defines "gift card" to exclude any gift card usable with multiple sellers of goods or services, provided the expiration date is printed on the card. Retailers may continue to sell or distribute an existing stock of gift cards through January 1, 2028. The measure authorizes the Attorney General, a district attorney, a county counsel, or a city attorney to enforce the requirements of the measure.

According to the author, approximately 3.5 billion gift cards were sold in the United States in 2021. Based on their average weight of 1-2 ounces, approximately 89 tons of gift card waste were generated. Since California comprises about 10 percent of the population, roughly 8.9 tons of gift cards are generated in the state annually.

CBA adopted a neutral position on this measure because the provisions of the measure do not apply to debit cards, credit cards or pre-paid cards.

PRIVACY

AB 302 (Ward): Department of Technology: High-Risk Automated Decision Systems: Inventory

[Enacted: Chapter 800]

Existing law establishes the Department of Technology within the Government Operations Agency and requires the Director of Technology to supervise the Department of Technology and report directly to the Governor on issues relating to information technology.

This measure requires the department, in coordination with other interagency bodies, to conduct, on or before September 1, 2024, a comprehensive inventory of all high-risk automated decision systems that have been proposed for use, development, or procurement by, or are being used, developed, or procured by, state agencies. The measure requires the comprehensive inventory to include a description of, among other things, the categories of data and personal information the automated decision system uses to make its decisions. On or before January 1, 2025, and annually thereafter, the measure requires the department to submit a report of the above-described comprehensive inventory to the Legislature.

CBA monitored but did not take an official position on AB 302. The measure was sponsored by the Greenlining Institute and received no registered opposition.

AB 331 (Bauer-Kahan): Automated Decision Tools

[Two-Year Bill]

The Unruh Civil Rights Act provides that all persons within the jurisdiction of this state are free and equal, and regardless of their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This measure requires a deployer and a developer of an automated decision tool to perform an impact assessment for any automated decision tool the deployer uses. The measure requires a deployer or developer to provide the impact assessment to the Civil Rights Department within 60 days of its completion.

This measure requires a deployer to, at or before the time an automated decision tool is used to make a consequential decision, notify any natural

person that is the subject of the consequential decision that an automated decision tool is being used to make, or be a controlling factor in making the consequential decision and to provide that person with a statement of the purpose of the automated decision tool. If a consequential decision is made solely based on the output of an automated decision tool, the measure requires a deployer to accommodate a natural person's request to not be subject to the automated decision tool and to be subject to an alternative selection process or accommodation.

The measure prohibits a deployer from using an automated decision tool that results in algorithmic discrimination and authorizes a person to bring a civil action against a deployer or developer for violations.

CBA adopted an oppose position on this measure for a number of reasons, including ambiguous and potentially duplicative requirements on both developers and deployers and significant legal exposure through a private right of action. While the measure failed to advance this year, it will be eligible for consideration next year.

AB 386 (Nguyen, Stephanie): California Right to Financial Privacy Act

[Enacted: Chapter 433]

In cases of elder financial abuse, law enforcement agencies may request a financial institution to furnish certain accountholder financial records for a period 30 days before, and up to 30 days following, the date of occurrence of an alleged illegal act involving the account. The types of records that may be provided are limited to dishonored items, overdrafts, dates and amounts of deposits and debits, account balances, information provided at, or related to, the opening of the account, and surveillance footage of persons accessing the crime victim's financial account from an ATM or from within the financial institution.

This measure expands the types of documents that Adult Protective Services and law enforcement may request to include new bank cards issued, address changes and power of attorney or trust documents.

Additionally, the measure expands the time period that law enforcement may request documents to 90 days before, and up to 60 days following, the date of occurrence of the alleged illegal act involving the account.

CBA supported this measure because it provides law enforcement greater access to information they need to find and prosecute perpetrators of senior fraud.

SB 362 (Becker): Data Broker Registration: Accessible Deletion Mechanism

[Enacted: Chapter 709]

The California Consumer Privacy Act of 2018 grants a consumer rights with respect to personal information that is collected or sold by a business, including the right to request that a business disclose information that has been collected about the consumer, to request that a business delete personal information about the consumer that the business has collected from the consumer, and to direct a business not to sell or share the consumer's personal information.

Existing law requires a data broker to register with the Attorney General and provide information on or before January 31 following each year in which a business meets the definition of data broker. Banks are exempt since existing law excludes application to entities to the extent that they are covered by the Gramm-Leach-Bliley Act and implementing regulations.

Among other provisions, this measure requires the California Privacy Protection Agency to establish, by January 1, 2026, an accessible deletion mechanism to allow a consumer, through a single verifiable consumer

request, to request that every data broker that maintains any personal information delete any personal information related to that consumer held by the data broker or associated service provider or contractor. The measure requires a data broker to delete all personal information of the consumer at least once every 31 days and prohibits the data broker from selling or sharing new personal information of the consumer, unless the consumer requests otherwise.

CBA adopted an oppose position on this measure given concerns that it will create unintended and indirect negative consequences to entities that rely on information from data brokers to improve fraud detection and deterrence. Amendments to the measure near the end of the legislative session addressed our concerns allowing the association to remove its opposition.

REAL PROPERTY LENDING

AB 572 (Haney): Common Interest Developments: Imposition of Assessments

[Enacted: Chapter 745]

The Davis-Stirling Common Interest Development Act regulates common interest developments, including the establishment and imposition of assessments. Existing law limits increases in regular assessments and the aggregate of special assessments that a board may impose without the approval of a majority of a quorum of members.

This measure prohibits an association that records its original declaration on or after January 1, 2024, from imposing an increase of a regular assessment on the owner of a deed-restricted affordable housing unit that is more than five percent greater than the preceding regular assessment for the association's preceding fiscal year or more than the percentage change in the cost of living, whichever is larger, not to exceed 10 percent.

CBA opposed earlier versions of the measure that sought to retroactively constrain an existing common interest development from increasing assessments on deed-restricted units. We raised concern with market rate units subsidizing deed-restricted affordable housing units and the possibility that it could create financial hardships for those paying an unequal assessment. Amendments applying the measure prospectively allowed us to remove our opposition as new owners within a development will have a choice of whether to purchase a unit within the development.

AB 919 (Kalra): Residential Real Property: Sale of Rental Properties: Right of First Offer

[Two-Year]

This CBA-opposed measure requires an owner of residential real property, defined to include a single-family residential property that is occupied by a tenant or a multifamily residential property to take various actions before offering the residential real property for sale to any purchaser, soliciting any offer to purchase the residential real property, or otherwise entering into a contract for sale of the residential real property. The measure exempts certain transfers of a residential real property from its provisions, including, among others, a transfer between spouses, domestic partners, parent and child, siblings, grandparent and grandchild, a transfer pursuant to a court order, and a transfer by eminent domain.

This measure requires the owner of the residential real property to notify each tenant and each qualified entity of the owner's intent to sell the residential real property. The measure provides each qualified entity with 10 days to notify the property owner of their interest in purchasing the property and further provide a qualified entity with either 60 days or 40 days, depending on the number of units of the property, to submit an offer to purchase the residential real property.

This measure allows a property owner to sell the property to any party if the property owner does not receive any interest to purchase the property from a qualified entity or receive an offer from a qualified entity within these timeframes. The measure allows a property owner to reject any offer received from a qualified entity and sell to a party that is not a qualified entity, but provides a qualified entity that submits a rejected offer with 10 days to invoke a right of first refusal to match a subsequent offer accepted by the property owner.

This measure requires the Department of Housing and Community Development to develop a process for qualified entities, including a local public entity, eligible nonprofit corporation, limited equity housing cooperative, and resident organizations formed for the purpose of acquiring a multifamily residential real property, to notify the department of their interest in purchasing residential real property. The measure requires the department to maintain a list of those organizations that have submitted this notice on its website.

Existing law imposes various requirements to be satisfied prior to exercising a power of sale under a mortgage or deed of trust. Existing law, with respect to residential real property containing up to four dwelling units, requires a mortgagee, trustee, beneficiary, or authorized agent to provide to the mortgagor or trustor a copy of the recorded notice of default and a copy of the recorded notice of sale.

This measure additionally requires a mortgagee, trustee, beneficiary, or authorized agent to, upon filing a notice of default, provide to the mortgagor or trustor a list of qualified entities located within the county of the residential real property. The measure also requires the mortgagee, trustee, beneficiary, or authorized agent to notify the tenant of the residential real property of the filing of a notice of default.

This measure never received a hearing in a policy committee but is eligible for consideration next year.

AB 968 (Grayson): Single-Family Residential Property: Disclosures

[Enacted: Chapter 95]

Existing law requires certain disclosures upon any transfer by sale, exchange, real property sales contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of any single-family residential property.

This measure requires a seller of a single-family residential property who accepts an offer for the sale of the single-family residential property within 18 months from the date that title for the single-family residential property was transferred to the seller to disclose to the buyer information, including any room additions, structural modifications, other alterations, or repairs made to the property since title to the property was transferred to the seller that were performed by a contractor and the name of each contractor with whom the seller entered into a contract with for the room additions, structural modifications, other alterations, or repairs.

The measure alternatively authorizes a seller to satisfy these obligations by providing a list of room additions, structural modifications, other alterations, or repairs performed by, and provided by, the contractor with whom the seller contracted for the room additions, structural modifications, other alterations, or repairs. The measure requires the seller to provide a copy of any permit for any room additions, structural modifications, other alterations, or repairs to the buyer or, if the seller contracted with a third party and was not provided with a copy of the permits, by informing the buyer that information on permits may be obtained from a third party and providing the third party's contact information.

These new provisions apply to the sale of a single-family residential property where the seller accepts an offer from a buyer to purchase the property on or after July 1, 2024.

CBA reviewed the measure and did not identify any direct concerns applicable to banks and was sympathetic to the author's concerns about work performed by entities seeking to "flip" properties. Therefore, CBA adopted a neutral position.

AB 1033 (Ting): Accessory Dwelling Units: Local Ordinances: Separate Sale or Conveyance

[Enacted: Chapter 752]

The Planning and Zoning Law authorizes a local agency, by ordinance or ministerial approval, to provide for the creation of accessory dwelling units in areas zoned for residential use. Existing law prohibits the accessory dwelling unit from being sold or conveyed separate from the primary residence. However, existing law narrowly allows an accessory dwelling unit to be sold or conveyed separately from the primary residence if the property was built or developed by a qualified nonprofit corporation and that the property is held pursuant to a recorded tenancy in common agreement.

This measure authorizes a local agency to adopt an ordinance allowing the separate conveyance of the primary dwelling unit and accessory dwelling unit as condominiums.

While CBA opposed earlier versions of the measure, we removed our opposition once we secured amendments requiring lienholder consent to the separate conveyance. Lienholders are allowed to deny consent or grant consent and may condition their consent on any terms and conditions. In addition, CBA requested amendments requiring local agencies to provide disclosures to those that may wish in the future to separately convey an accessory dwelling unit at the time they are seeking a construction permit.

AB 1043 (Essayli): Residential Real Property: Foreclosure

[Two-Year Bill]

Existing law prescribes various requirements before the exercise of a power of sale under a mortgage or deed of trust. This measure prohibits a person from contacting, soliciting, or initiating communication with an owner to claim the surplus funds from a foreclosure sale of the owner's residence before 90 days after the trustee's deed has been required.

In performing acts pertaining to the exercise of a power of sale under a mortgage or deed of trust, existing law provides that the trustee does not incur liability for errors. This measure adds that a trustee does not incur liability when responding to requests for payoff or reinstatement information.

Existing law grants eligible tenant buyers and other eligible bidders rights and priorities to make bids on the property after an initial trustee sale. Existing law provides that a trustee's sale of property under a power of sale contained in a deed of trust or mortgage on real property cannot be finalized until the earliest of: 1) the date upon which a representative of all of the eligible tenant buyers submits to the trustee a bid and 2) 45 days after the trustee's sale. Existing law requires prospective owner-occupants, eligible tenant buyers, and eligible bidders to submit affidavits or declarations regarding bidder eligibility. Existing law authorizes the trustee to reasonably rely on these affidavits and declarations regarding bidder eligibility and requires these affidavits or declarations of the winning bidder to be attached as an exhibit to the trustee's deed and recorded.

This measure removes the requirement that the bid be limited to a single bid amount and not contain instructions for successive bid amounts. If the winning bidder is not required to submit an affidavit or declaration, the measure requires the trustee to attach as an exhibit to the trustee's deed a statement that no affidavit or declaration is required by these provisions and provides that the lack of an affidavit or declaration shall not prevent the deed from being recorded and shall not invalidate the transfer of title pursuant to the trustee's deed.

The COVID-19 Small Landlord and Homeowner Relief Act of 2020, requires a mortgage servicer to provide a written notice to a borrower if the mortgage servicer denies forbearance during the effective time period that states the reasons for that denial if the borrower was both current on payments as of February 1, 2020, and is experiencing a financial hardship that prevents the borrower from making timely payments on the mortgage obligation due, directly or indirectly, to the COVID-19 emergency. If a mortgage servicer denies a forbearance request, the act requires a declaration to include the written notice together with a statement as to whether forbearance was or was not subsequently provided. This measure clarifies that the declaration include that written notice if the mortgage servicer denied the forbearance request during the effective time period.

CBA reviewed this measure advanced by the United Trustees Association which provides various non-controversial amendments and adopted a neutral position.

AB 1193 (Pacheco): Real Property: Property Records: Personal Identifying Information

[Two-Year]

Existing law regulates county recorders and requires recorders to accept for recordation any instrument, paper, or notice that is authorized or required by statute, or court order to be recorded. This measure requires a county recorder or other county official who manages a county's property records to establish a procedure that redacts personal identifying information from property records and only allows access to an unredacted property record in person at the office of the county recorder or other county official who manages the county's property records. Financial institutions subject to the Gramm-Leach-Bliley Act and regulations implementing that act will continue to have access either in-person or remotely.

CBA reviewed the measure and adopted a neutral position.

AB 1448 (Wallis): Cannabis: Enforcement by Local Jurisdictions

[Enacted: Chapter 843]

Earlier versions of this measure authorized a local jurisdiction to make a violation of a local law relating to unlicensed commercial cannabis activities subject to an administrative fine or penalty, including a requirement that the ordinance set forth the administrative procedures that govern the local jurisdiction's imposition, enforcement, collection, and administrative review of those administrative fines or penalties.

The measure authorizes those administrative procedures to provide for a reasonable period of time for a person responsible for a continuing violation to correct or otherwise remedy the violation before the imposition of administrative fines or penalties and establish a procedure to collect these administrative fines or penalties by a special lien upon the parcel of land on which the violation occurred.

CBA opposed the earlier version of this measure as it created a super-priority lien against the real property. We adopted a neutral as amended position after our amendments requesting that the super-priority lien be removed were adopted.

SB 455 (McGuire): State of Emergency: Mortgage Servicers: Disasters

[Enacted: Chapter 873]

Existing law generally regulates mortgage servicers including the transfer of servicing a borrower's debt to a subsequent mortgage servicer. This measure requires a transferor mortgage servicer servicing residential one-to-four real property situated within the geographic limits of a proclaimed state of emergency to deliver to a transferee mortgage servicer any material written records between the borrower and the mortgage servicer relating to the borrower's election to use insurance proceeds to repair or replace property damaged by a disaster for which the state of emergency or local emergency was proclaimed. The measure also prohibits the transferee mortgage servicer from dishonoring a previous written agreement to repair property made prior to the transfer between the transferor mortgage servicer and the borrower and approved by the owner of the promissory note.

CBA reviewed earlier versions of the measure and was opposed based on an overly broad application to all property, real or personal. Earlier versions of the measure also required mortgage servicers to document borrower intentions. CBA helped the author redraft the measure in a manner that mortgage servicers could comply with and adopted a neutral as amended position once those amendments were secured.

SB 696 (Portantino): Notaries Public

[Enacted: Chapter 291]

Existing law authorizes the Secretary of State to appoint and commission notaries public. This measure authorizes a notary public or an applicant for appointment as a notary public to apply for registration with the Secretary to be a notary public authorized to perform online notarizations.

The measure requires an entity to register with the Secretary of State as an online notarization platform or depository before providing an online notarization system or depository to an online notary public. The measure requires the Secretary of State to develop an application for registration and establish rules to implement the measure by January 1, 2025.

The measure authorizes an online notary public to perform notarial acts and online notarizations by means of audio-video communication. This measure establishes requirements applicable to an online notarization platform, including prohibiting an online notarization platform or depository from accessing, using, sharing, selling, disclosing, producing, providing, releasing, transferring, disseminating, or otherwise communicating the contents of an online notarial act.

CBA reviewed this measure and was supportive.

TAXATION

AB 259 (Lee): Wealth Tax: False Claims Act

[Two-Year Bill]

This measure, for taxable years beginning on or after January 1, 2023, and before January 1, 2026, imposes an annual tax at a rate of 1.5 percent of a resident of this state's worldwide net worth in excess of $1 billion, or in excess of $500 million in the case of a married taxpayer filing separately. Additionally, for taxable years beginning on or after January 1, 2025, the measure imposes an annual tax at a rate of one percent of a resident's worldwide net worth in excess of $50 million, or in excess of $25 million in the case of a married taxpayer filing separately. The measure also imposed, for taxable years beginning on or after January 1, 2025, an additional tax at a rate of 0.5 percent of a resident's worldwide net worth in excess of $1billion, or in excess of $500 million in the case of a married taxpayer filing separately. The provisions

of this measure were subject to the False Claims Act, allowing private citizens to sue higher income earners on behalf of the government.

CBA opposed this measure because of the negative impact it will have on bank customers. AB 259 did not receive a hearing and did not advance this year.

AB 346 (Quirk-Silva): Income Tax Credits: Low-Income Housing: California Debt Limit Allocation Committee Rulemaking

[Enacted: Chapter 739]

For low-income housing projects, existing federal law provides two types of tax credits. There is a nine percent and four percent tax credit, and they both refer to the percentage of a project's "qualified basis" a taxpayer may claim from their annual federal tax. The nine percent credits are reserved for projects that are financed without tax-exempt bonds and are allocated for new construction. The four percent credit is generally claimed for rehabilitation and new construction that is federally subsidized and where at least 50 percent of the financing utilizes tax-exempt bonds. The four percent credit is constrained by the volume of tax-exempt bonds available.

Existing law creates the California Debt Limit Allocation Committee (CDLAC) for the purpose of administering the volume limit for the state on private activity bonds through an allocation system. On July 31, 2019, *AB 101 (Budget Committee), [Chapter 159, Statutes of 2019]*, was signed into law, providing an additional $500 million in state low-income housing tax credits which are paired with the four percent tax credit to maximize participation and increase housing production. Unfortunately, the four percent tax credit has become oversubscribed and there is a back-log of developer applications for the credit.

Measure AB 346 allows the California Tax Credit Allocation Committee, in any calendar year in which CDLAC has declared a competition for the award of tax-exempt bond authority for qualified residential rental projects, to reallocate some or all of the $500 million that is made available from four percent credit projects to nine percent projects.

CBA supported this measure because it allows for greater flexibility in the allocation of low-income housing tax credits, which will spur housing production.

ACA 3 (Lee): Wealth Tax: Appropriation Limits

[Two-Year Bill]

The California Constitution authorizes the Legislature to impose a property tax on any type of tangible personal property, shares of capital stock, indebtedness, and any interest that is not exempt from taxation pursuant to the California Constitution. Additionally, the California Constitution authorizes the legislature, by two-thirds vote of the membership of each house, to classify personal property for taxation or for exemption, with limits. The California Constitution limits taxation of certain personal property to no more than 0.4 percent of the value of the property and limits the tax rate on personal property to no more than the tax rate on real property in the same jurisdiction.

This measure proposes that the people of California amend the California Constitution to authorize the Legislature to impose a tax upon all forms of personal property or wealth, whether tangible or intangible. The new tax will be administered and collected by the Franchise Tax Board and the Department of Justice.

Additionally, the measure proposes to amend Article XIII B, Section 1 of the California Constitution to modify the Gann Limit or the State Appropriations Limit, thereby allowing the state to spend more than current law allows.

CBA joined a coalition to oppose this measure because of the negative impact it will have on bank customers. The measure did not receive a hearing this year.

TORT AND CIVIL LIABILITY

SB 365 (Wiener): Civil Procedure: Arbitration

[Enacted: Chapter 710]

Existing law authorizes a party to appeal, among other things, an order dismissing or denying a petition to compel arbitration. Existing law generally stays proceedings in the trial court on the judgment or order appealed from when the appeal is perfected.

The measure provides that, notwithstanding the general rule described above, trial court proceedings will not be automatically stayed during the pendency of an appeal of an order dismissing or denying a petition to compel arbitration.

CBA joined a coalition of business trade associations in opposing this measure, as it discriminates against use of arbitration agreements by allowing trial courts to continue trial proceedings during any appeal regarding the denial of a motion to compel, undermining arbitration and increasing court and party time and resources spent on cases that ultimately are sent to arbitration.

SB 820 (Alvarado-Gil): Cannabis: Enforcement: Seizure of Property

[Two-Year Bill]

The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), is charged with consolidating the licensure and regulation of commercial medicinal and adult-use cannabis activities. MAUCRSA establishes the Department of Cannabis Control within the Business, Consumer Services, and Housing Agency to administer the act, and requires the department to be under the supervision and control of a director. MAUCRSA provides that a person engaging in commercial cannabis activity without a license is subject to civil penalties.

The measure authorizes MAUCRSA or a local jurisdiction to seize personal property in the place or building, or within any yard or enclosure, where commercial cannabis activity is conducted without a license. The measure also authorizes the department or a local jurisdiction to seize a vehicle used for commercial cannabis activity without a license.

CBA opposed this measure as introduced because it requires lienholders to petition the court to claim their collateral and the measure specified that it may take up to 60 days for oral arguments to be heard. During that time, impound fees will accrue which will decrease the remaining value of the vehicle. The measure was later amended to allow a legal owner to petition the Department of Cannabis Control within 10 days to recover a vehicle, rather than having to go through judicial proceedings.

TRUST AND ESTATES

AB 1756 (Committee on Judiciary): Committee on Judiciary: Judiciary Omnibus

[Enacted: Chapter 478]

Existing law establishes procedures for the creation, modification, and termination of a trust, and regulates the administration of trusts by trustees on behalf of beneficiaries. Existing law requires a trustee holding assets subject to a charitable trust to give written notice to the Attorney General at least 20 days before the trustee sells, leases, conveys, exchanges, transfers, or otherwise disposes of all or substantially all of the charitable assets.

This measure is part of a larger omnibus committee measure that is supposed to be non-controversial. Among numerous other non-related provisions, the

measure seeks to move the provisions pertaining to a trustee's obligation to provide notice to the Attorney General as specified above to another code section thereby placing the underlying provisions in a new article.

CBA reviewed the measure and did not find its provisions of concern.

SB 522 (Niello): Uniform Fiduciary Income and Principal Act

[Enacted: Chapter 28]

Existing law, the Uniform Principal and Income Act (UPIA), sets forth the powers and duties of a fiduciary of a trust. These powers and duties are related to the allocation of receipts and disbursements between principal and income, making adjustments between principal and income, and converting a trust to a unitrust.

This measure repeals the UPIA and recasts those provisions as the Uniform Fiduciary Income and Principal Act (UFIPA). In the last few decades, the distinction between income and principal has become less important for two reasons. First, the development of modern portfolio theory allows trustees to invest for the maximum total return, whether the return is in the form of income or growth of principal. Second, modern trusts are often drafted with more flexible terms giving trustees discretion to accumulate income or access principal when advantageous to further the purposes of the trust.

UFIPA recognizes the above-mentioned developments and gives trustees additional flexibility to administer discretionary trusts. CBA reviewed this measure which is a uniform act prepared by the Uniform Law Commission. We were co-sponsors of the measure along with the California Commission on Uniform State Laws and the California Lawyers Association.

SB 801 (Allen): California Uniform Directed Trust Act

[Enacted: Chapter 721]

Existing law establishes procedures for the creation, modification, and termination of a trust and regulates the administration of trusts by trustees on behalf of beneficiaries.

This measure enacts the California Uniform Directed Trust Act to provide a method for regulating trusts where a person who is not a trustee has been given a role in directing the trust. The measure sets forth the duties and responsibilities of the trust director and the duties and responsibilities of the directed trustee, including specifying what powers may be given to a trust director and the information required to be exchanged by the trust director and the directed trustee.

The measure requires a directed trustee to take reasonable action to comply with a trust director's exercise or non-exercise of a power of direction, except that the directed trustee is not required to comply with a trust director's exercise or non-exercise of a power of direction to the extent that, by complying, the trustee would engage in willful misconduct.

This measure is also a uniform law prepared by the Uniform Law Commission. CBA reviewed the measure and adopted a support position.

2023 Annual **Legislative** Summary

State Legislative Looking Forward

State Legislative Looking Forward

After the 1,170 of the total 3,030 measures introduced by the California State Legislature were signed by the Governor become law on January 1, 2024 — unless the measure specifies a different implementation date — the legislature will reconvene on January 3, 2024, for the second year of its two-year Legislative Session. As a general rule, the second year of session has slightly fewer bill introductions, and under typical circumstances we would expect approximately 2,000-2,500 new measures introduced. These measures will move through the legislative deadline process from January through August. This is in addition to the surplus of measures that were introduced in 2023 but failed to meet deadlines to clear both houses, that are eligible to move forward in the second year — also referred to as "two-year bills"; such measures must clear their house of origin by January 31.

One of those measures, SB 278 related to elder financial abuse, is likely to be a continued conversation. With no clear agreement between the sponsor and the opposition on safe harbor language that would allow a bank to avoid liability for assisting in elder financial abuse of a senior when it processes a transaction at their request, the measure was made a two-year bill.

In 2023, California's increasingly progressive Legislature was also increasingly prolific, introducing the most measures that the state has seen in nearly two decades; both the progressive stance and prolific nature are trends that are expected to continue in 2024 and perhaps in years to come. This year was shaped by a wave of new lawmakers — approximately one third of the Legislature was newly elected in November 2022 — as well as leadership changes in both the Assembly and the Senate. The Senate's pro Tempore Mike McGuire is set to term-out in 2026 whereas the Assembly's Robert Rivas has a 2030 term limit, an indication that we may see relatively stable leadership in both houses for the time being.

Likely to shape policy and the success rates of measures in the Capitol is the looming economic downturn. Depending on the degree of the recession, conversations around housing, residential mortgage lending, taxation or credit accessibility may intensify. And, after years of budget surpluses and replenishment of the state's Rainy Day Fund, California now faces budget uncertainties that could severely stymie its efforts and goals. In 2024, lawmakers may be on their heels when it comes to securing funding for programs in their districts or implementing measures that create a significant fiscal impact to the state.

With the help of union-friendly Democrats in the supermajority, organized labor is likely to continue its string of wins. Organized labor will also face a battle with the business community over taxation, mounting a campaign to defeat an initiative called the Taxpayer Protection Act that the California Business Roundtable qualified for the November 2024 ballot. The act introduces several changes that make it more challenging to raise taxes in California, including a requirement for the Legislature to put any new or higher tax before voters for approval and another increasing the margin to pass a

voter-initiated special tax at the local level, to two-thirds from a simple majority. With the impending budgetary constraints, this initiative may be critical in shaping the Legislature's approach.

Concordantly, we are likely to see a slate of robust ballot initiatives presented during the November 2024 gubernatorial election, as both the ballot and the judicial process continue to become more intrinsic to the nature of lawmaking and therefore governmental advocacy. It's worth noting that presidential candidates — both left and right — are likely to have a trickle-down affect to California voter turnout and statewide election results. This is a critical factor because the state will see another large class of freshmen Senate and Assembly lawmakers elected in 2024.

Last year, we anticipated continued interest in the perennial issues of privacy and technology. While the California Privacy Protection Agency Board continues its own efforts to promulgate regulations pursuant to the California Consumer Privacy Act, including an anticipated rulemaking pertaining to automated decision systems, and the California Civil Rights Department (formerly Department of Fair Employment and Housing) contemplates regulations overseeing the use of automated decisions in hiring processes, Senator Scott Wiener has stated his intention to draft the Safety in Artificial Intelligence Act within SB 294. Additionally, on the heels of the Biden-Harris administration's Executive Order on Artificial Intelligence, Governor Newsom has called upon state agencies to study the development, use and risks of generative artificial intelligence within state government. The California privacy landscape will continue to evolve and remain a moving target for companies who need to come into compliance.

In 2023, in-person functions of traditional advocacy were largely revived, although some access continues to be inconsistent. Advocacy efforts will continue in 2024 to be largely conducted in the Capitol Annex Swing Space, located about two blocks from the State Capitol where the legislature continues to hold Floor Sessions as well as some committee meetings. The Swing Space temporarily houses the 1,250 legislative and executive elected officials and staff as well as rooms for committee meetings.

Whatever the policy issue, CBA's advocacy team will work closely with our members to seek input and establish formal positions on priority measures deemed impactful to our industry and our customers. As the voice of the banking industry, CBA's team is dedicated to protecting our members' interests, safeguarding a free and competitive market among financial service providers, ensuring a level playing field with our competitors and promoting financial education that empowers consumers.

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Federal Executive Summary

Federal Executive Summary

With the divided Congress, and slim majorities in both the House of Representatives and the Senate, there wasn't much legislative activity this year. Conflict ruled not only between the political parties but within them. Facing a potential government shutdown in September, House Speaker Kevin McCarthy negotiated the passage of a continuing resolution with the Democrats after attempts to win the support of his own party failed. Shortly thereafter, McCarthy lost his speakership. With all the turmoil, two major legislative issues impacting banks, one positive and the other negative, required the most attention.

In September, the Senate Banking Committee passed the bi-partisan S. 2860, known as the Secure and Fair Enforcement Regulation Banking Act (SAFER Banking Act). The measure is a revised version of the banking industry supported SAFE Banking Act, introduced as H.R. 2891 and S. 1393. The Senate's willingness to consider the SAFER Banking Act in committee represented progress given that the measure had passed numerous times from the House only to stall in the Senate. The measure sits on the Senate Floor awaiting consideration. Negotiations will need to continue as provisions in the measure have raised opposition from Republicans in the House.

The industry opposed Credit Card Competition Act is an attempt by merchants and grocery chains to obtain a subsidy at the expense of smaller competitors and consumers that will raise costs on consumers, reduce access to card benefits, imperil payment system security at a time of growing global risks, and harm community financial institutions and their small business customers. H.R. 3881 and S. 1838 require the Board of Governors of the Federal Reserve System to prescribe regulations relating to network competition in credit card transactions. The authors of the measures have tried unsuccessfully to bury the bill's provisions into larger must-pass omnibus measures.

Congress focused time and energy on the failures of Silicon Valley Bank and Signature Bank. Both the House and Senate conducted a series of oversight hearings where they heard from federal and state banking regulators and executives from the failed banks. Several studies were produced by the federal regulators in response, including reports from the Federal Deposit Insurance Corporation (FDIC), Federal Reserve (Fed), and the Government Accountability Office.

Not surprisingly, we witnessed more activity in the regulatory space with major rulemakings by federal regulators being finalized. On March 30, the Consumer Financial Protection Bureau issued its final rule implementing the Dodd-Frank Act Section 1071 Small Business Lending Reporting requirement. In October, the FDIC, Fed, and the Office of the Comptroller of the Currency adopted the Community Reinvestment Act Modernization rule. Finally, in November, the FDIC issued its final rule implementing a special assessment to recover the loss to the Deposit Insurance Fund associated with the closures of Silicon Valley Bank and Signature Bank.

We traveled to Washington, D.C. four times this year to advocate on behalf of our members on pending legislative and regulatory matters and to strengthen the relationships we have with the California Congressional delegation. A year ago, we had the honor and privilege to meet in-person with Senator Dianne Feinstein. We were deeply saddened to learn of her passing this September. Governor Newsom appointed Laphonza Butler who intends to serve the balance of Feinstein's term but will not run in 2024. In addition to serving on the Senate Committee on Judiciary, Senator Butler has been appointed to the Senate Committee on Banking.

With only a few weeks remaining in 2023, we expect many issues to be carried over into next year. We anticipate continuing the discussion on the SAFER Banking Act and the Credit Card Competition Act. We will confront additional major rulemakings, including two from the Federal Reserve relating to enhanced capital levels, referred to as the Basel III Endgame, and another that seeks to reduce the maximum interchange fee on debit card transactions.

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Federal Legislative Summary

AGRICULTURAL LENDING

H.R. 3139 (Feenstra): Access to Credit for our Rural Economy Act (ACRE) of 2023

[Pending]

This measure excludes from the gross income of certain financial institutions, for income tax purposes, interest received on loans secured by rural or agricultural real estate. Qualified real estate loans are loans secured by rural or agricultural real estate and any loan with respect to single family residence, the proceeds of which are used to purchase or improve such residence, and the principal of which does not exceed $750,000. Rural or agricultural real estate is any real property which is substantially used for the production of one or more agricultural products and any single-family residence that is the principal residence of its occupant and which is located in a rural area.

CBA supports this measure which is intended to level the playing field with the Farm Credit System. The measure has been referred to the House Committee on Ways and Means.

BANK OPERATIONS

H.R. 758 (Barr): Promoting Access to Capital in Underbanked Communities Act of 2023

[Pending]

This measure requires the federal banking agencies to establish a three-year phase-in period for de novo financial institutions to comply with federal capital standards and sets the leverage ratio at eight percent for de novo rural community banks. CBA adopted a support position on this measure since it incentivizes new bank formation. The measure has been referred to the House Committee on Financial Services.

H.R. 1010 (Ferguson) / S. 453 (Scott): Prohibiting IRS Financial Surveillance Act

[Pending]

These CBA-supported measures prohibit the Department of the Treasury from requiring a financial institution to report the transfers into and out of a financial account. This prohibition does not apply to laws or regulations in effect on January 1, 2023. In prior years, there were efforts to require that banks report certain inflows and outflows from deposit accounts as a means to focus audit attention by the Internal Revenue Service under the theory that some taxpayers are misstating their income.

CBA opposed those prior efforts due to customer privacy concerns, the placement of banks in a law enforcement role, and the burden associated with compliance. H.R. 1010 has been referred to the House Committee on Financial Services while S. 453 has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

H.R. 2743 (Barr) / S. 293 (Cramer): Fair Access to Banking Act

[Pending]

These measures place restrictions on certain banks, credit unions, and payment card networks if they refuse to do business with a person who complies with the law. Restrictions include prohibiting the use of electronic funds transfer systems and lending programs, termination of an institution's depository insurance, and specified civil penalties.

Banks and other financial institutions are allowed to deny financial services to a person only if the denial is justified by a documented failure of that person to meet quantitative, impartial, risk-based standards established in advance by the institution. This justification may not be based upon reputational risks to the institution.

These measures establish the right for a person to bring a civil action for a violation of this measure. CBA monitored these measures. H.R. 2743 has been referred to the House Committee on Financial Services and S. 293 has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

H.R. 3881 (Gooden) / S. 1838 (Durbin): Credit Card Competition Act of 2023

[Pending]

These CBA-opposed measures amend the Electronic Fund Transfer Act to require the Board of Governors of the Federal Reserve system to prescribe regulations relating to network competition in credit card transactions. The measure is an attempt by merchants and grocery chains to obtain a subsidy at the expense of smaller competitors and consumers that will raise costs on consumers, reduce access to card benefits, imperil payment system security at a time of growing global risks, and harm community financial institutions and their small business customers.

More specifically, the legislation reduces the number of credit card issuers competing for consumers' business, decimates card rewards programs, and puts the nation's private-sector payments system under the micromanagement of the Federal Reserve Board. The measure does this by using legislation to award private-sector contracts to a small handful of the sponsors' favored payment networks in order to pad the profits of the largest internet and national merchants who are raising prices on American families.

CBA has joined bankers' associations across the country in opposing the measure. H.R. 3881 has been referred to the House Committee on Financial Services while S. 1838 has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

H.R. 1602 (Porter) / S. 817 (Warren): SVB Act

[Pending]

These CBA-opposed measures increase the oversight of certain nonbank financial companies and bank holding companies by repealing Title IV of the Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174). A nonbank financial company is a financial institution without a banking license that may be subject to supervision due to the company's size or risk profile. A bank holding company owns a controlling interest in one or more banks.

Specifically, the measures decrease from $250 billion to $50 billion the asset threshold at which enhanced prudential standards become mandatory, thereby requiring more companies to comply with these standards. These standards include stress testing, leverage limits, liquidity requirements, and resolution plan requirements (i.e., living will requirements). Under current law, the Federal Reserve has the discretion to determine the applicability of these standards to bank holding companies with assets between $100 billion and $250 billion.

The measures also expand stress testing by:

- increasing the number of board-run stress test scenarios from two to three;
- decreasing the asset threshold at which company-run stress tests are required from $250 billion to $10 billion; and
- requiring company-run stress tests to be performed annually or semiannually, depending on the amount of assets held.

These measures also decrease from $50 billion to $10 billion the asset threshold for mandatory risk committees.

Finally, the measures revise the supplemental leverage ratio applied to custodial banks and the asset treatment of certain municipal obligations.

H.R. 1602 has been referred to the House Committee on Financial Services. S. 817 has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

H.R. 2891 (Joyce) / S. 1323 (Merkley): SAFE Banking Act of 2023

[Pending]

These measures provide protections for federally regulated financial institutions that serve state-sanctioned cannabis businesses. Currently, many financial institutions do not provide services to state-sanctioned cannabis businesses due to the federal classification of cannabis as a Schedule I controlled substance.

Under the measures, a federal banking regulator may not penalize a depository institution for providing banking services to a state-sanctioned cannabis business. For example, regulators may not terminate or limit the deposit or share insurance of a depository institution solely because the institution provides financial services to a state-sanctioned cannabis business.

These measures also prohibit a federal banking regulator from requesting or ordering a depository institution to terminate a customer account unless the regulator has determined that the depository institution is engaging in an unsafe or unsound practice or is violating a law or regulation and that determination is not based primarily on reputation risk.

Additionally, proceeds from a transaction involving activities of a state-sanctioned cannabis business are no longer considered proceeds from unlawful activity. Furthermore, a financial institution, insurer, or federal agency may not be held liable or subject to asset forfeiture under federal law for providing a loan, mortgage, or other financial service to a state-sanctioned cannabis business.

CBA, along with banking trade associations across the country, is supporting these efforts to allow banks to do business with legitimate cannabis-related entities. Legislation has passed the House of Representatives with bi-partisan support on numerous occasions but has stalled in the Senate. H.R. 2891 has been referred to the House Subcommittee on Economic Opportunity. S. 1323 has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

H.R. 2798 (Barr): CFPB Transparency and Accountability Reform Act

[Pending]

This legislation changes the current single Consumer Financial Protection Bureau director to a five-person Commission and funds agency through appropriations rather than from Federal Reserve Board. CBA adopted a support position on this measure. H.R. 2798 has been referred to the House Committee on Financial Services, and in addition, to the House Committees on Oversight and Accountability, the House Committee on Judiciary and the House Committee on Small Business.

H.R. 4206 (Sherman): Bank Safety Act of 2023

[Pending]

This measure amends the Financial Stability Act of 2010 to require covered financial institutions to include elements of accumulated other comprehensive income when calculating capital for purposes of meeting capital requirements.

CBA monitored this measure. H.R. 4206 has been referred to the House Committee on Financial Services.

S. 245 (Cruz): Financial Institution Customer Protection Act of 2023

[Pending]

This CBA-monitored measure specifies that a federal banking agency may not request or order a depository institution to terminate a customer account unless the agency has a valid reason for doing so and that reason is not based solely on reputation risk. Valid reasons for terminating an account include threats to national security and involvement in terrorist financing, including state sponsorship of terrorism. A federal banking agency requesting a termination must provide the depository institution with notification and justification.

The measure also sets forth additional requirements for the Department of Justice when seeking subpoenas, summoning witnesses, or compelling document production in the course of conducting a civil investigation in contemplation of a civil proceeding involving certain banking laws.

The measure has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

S. 2860 (Merkley): SAFER Banking Act

[Pending]

This measure provides protections for federally regulated financial institutions that serve state-sanctioned cannabis businesses. Currently, many financial institutions do not provide services to state-sanctioned cannabis businesses due to the federal classification of cannabis as a Schedule I controlled substance.

Under this measure, a federal banking regulator may not penalize a depository institution for providing banking services to a state-sanctioned cannabis business. For example, regulators may not terminate or limit the deposit or share insurance of a depository institution solely because the institution provides financial services to a state-sanctioned cannabis business.

This measure also prohibits a federal banking regulator from requesting or requiring a depository institution to terminate a deposit account unless there is a valid reason, such as the regulator has cause to believe that the depository institution is engaging in an unsafe or unsound practice and reputational risk is not the dispositive factor.

Additionally, proceeds from a transaction conducted by a state-sanctioned cannabis business are no longer considered proceeds from unlawful activity. Furthermore, a financial institution, insurer, or federal agency may not be held liable or subject to asset forfeiture under federal law for providing a loan, mortgage, or other financial service to a state-sanctioned cannabis business.

This measure passed the Senate Banking Committee with bi-partisan support. It represents progress considering that prior legislation passing the House of Representatives has consistently stalled and not be given a hearing in the Senate. Provisions in the measure are still under negotiation.

COMMERCIAL LENDING

H.J. Res. 50 (Williams): Congressional Review Act (CRA) Disapproval Resolution

[Pending]

This measure provides for congressional disapproval of the rule submitted by the Bureau of Consumer Financial Protection relating to "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B) (DFA Sec. 1071) and published on May 31, 2023. The rule requires financial institutions to collect and report to the bureau credit application data for small businesses. On July 31, 2023, the U.S. District Court for the Southern District of Texas ordered the bureau not to implement or enforce the rule until a related pending case on the Bureau's constitutionality is resolved. This measure passed the Senate. While action has not yet been taken in the House of Representatives' Committee on Financial Services, the President has already indicated that he will veto the resolution should it reach his desk.

FLOOD INSURANCE

H.R. 1307 (Luetkemeyer): To repeal the mandatory flood insurance coverage requirement for commercial properties located in flood hazard areas, and for other purposes

[Pending]

This CBA-supported measure repeals the mandatory flood insurance coverage requirement for commercial properties located in flood hazard areas. The measure limits the required purchase of flood insurance in certain circumstances to only residential properties whereas the current requirement applies to all types of property. H.R. 1307 has been referred to the House Committee on Financial Services.

H.R. 1392 (Davidson) / H.R. 5828 (Garbarino) / S. 2391 (Kennedy) / S. 2968 (Kennedy): National Flood Insurance Program Extension Act of 2023

[Pending]

These measures reauthorize the National Flood Insurance Program through December 31, 2024. Both H.R. 1392 and H.R. 5828 has been referred to the House Committee on Financial Services. S. 2391 and S. 2968 has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

PRIVACY

H.R. 1165 (McHenry): Data Privacy Act of 2023

[Pending]

This measure addresses the privacy and security of personal information held by financial institutions. The measure expands the application of current protections, it provides individuals with controls for limiting the collection of their information, and it establishes data privacy standards nationwide.

Currently, financial institutions must protect personal information and provide notice about privacy practices. The measure expands personal information protections that currently apply to customers and consumers. The measure also expands notice requirements to apply to the collection of individual data.

Under the measure, financial institutions must inform individuals for what purpose their data is collected

and how the data will be used and give individuals the opportunity to opt out of data collection. An individual may also end the sharing of their data with third parties, as well as demand the deletion of the data.

The measure also prohibits states from establishing different privacy protections than those at the federal level. Under current law, states are allowed to establish stricter privacy protections. CBA continues to review this measure. While the preemption language is beneficial, we are working to reconcile this measure's provisions with California's privacy laws. The measure has been referred to the House Committee on Financial Services.

SMALL BUSINESS LENDING

H.R. 1810 (Luetkemeyer): Bank Loan Privacy Act
[Pending]

This CBA-supported measure requires the Consumer Financial Protection Bureau to issue a rule prior to deleting or modifying publicly available small business loan data due to privacy concerns. Specifically, the bureau must describe the intended modifications and deletions and explain how such modifications and deletions will advance a privacy interest. The measure has been referred to the House Committee on Financial Services.

2023 Annual **Legislative** Summary

Federal Legislative Looking Forward

Federal Legislative Looking Forward

Next year is an election year. The Presidential race will occupy the political field and will divert attention away from advancing legislation. It's a crowded field seeking to replace Senator Dianne Feinstein, with three incumbent Democrat Congressional Representatives vying for the seat. California will be a battleground state for Democrats who are targeting the state in their effort to take back the House. The Democratic Party will look to unseat incumbent House Republicans who represent districts with tight voter registration. With 222 Republicans and 213 Democrats currently, the Democrats only need to flip five seats nationwide assuming they maintain their current total.

The industry will continue advocating for legislation allowing banks to serve cannabis-related legitimate businesses and we will hope to pick up where negotiations left off on the SAFER Banking Act. Senator Durbin will press for the passage of his Credit Card Competition Act. We will also look to build more momentum on the Access to Credit for our Rural Economy Act, a measure that exempts interest income on certain loans secured by rural or agricultural real property. Undoubtedly, we will see ongoing interest in pursuing a modernized federal privacy law. After California adopted the California Consumer Privacy Act (CCPA), several states have followed with the enactment of their own updated privacy laws. We will see whether adoption of a national standard gains traction. Preemption of state laws, particularly California's CCPA, will be a major element with some wanting the federal law to be a ceiling and others a floor.

We expect increased interest in the use of artificial intelligence (AI) and automated decision systems. President Biden issued a comprehensive executive order in November requiring the development of standards, guidance and best practices. The order seeks "to ensure that America leads the way in seizing the promise and managing the risks of artificial intelligence…" and to establish "standards for AI safety and security, protects Americans' privacy, advances equity and civil rights, stands up for consumers and workers, promotes innovation and competition…"

Major rulemakings will be under consideration. The Federal Reserve's (Fed) deadline for comment on proposed rules relating to enhanced capital levels, referred to as the Basel III Endgame, is January 16, 2024. On a related note, the Fed also launched a data collection effort to gather more information from the banks affected by the capital proposal with the same January 16, 2024, comment deadline. How much time the Fed will need to absorb comments on each of these and take the next rulemaking step is unclear. Also, the comment deadline on the Fed's proposal to reduce the maximum interchange fee on debit card transactions is February 12, 2024.

We will travel back to Washington, D.C. at least four times next year. We hope that you might consider joining us on these important visits.