2024

CALIFORNIA BANKERS ASSOCIATION

Annual Legislative Summary

FOREWORD

The Governor vetoed Senate Bill 278 (Dodd), a measure requiring California financial institutions to establish an emergency contact for senior accountholders over the age of 65. If enacted, banks were required to outreach to an emergency financial contact when there is a reasonable suspicion that an accountholder is being defrauded. Additionally, banks were required to hold, for three days, any transaction in excess of $5,000 if there's a suspicion of fraud. The measure passed out of the Assembly Committee on Judiciary with onerous liability provisions that allowed banks to be sued for damages, including damages up to three times the amount of actual damages. CBA opposed the measure but ultimately secured amendments to significantly reduce the liability imposed on financial institutions, but continued to express concerns about the unintended consequences of mandating transactions holds.

Artificial intelligence emerged as a highly discussed topic among legislators this year. AB 2930 (Bauer-Kahan) proposed to regulate the use of "automated decision tools" (ADTs) to prevent "algorithmic discrimination." This included requirements for developers and deployers that make and use these tools to make consequential decisions to perform impact assessments on ADTs. The measures established the right of individuals to know when an ADT is being used, the right to opt out of its use, and an explanation of how it is used. This CBA opposed measure failed to advance this year but is likely to return during the 2025 legislative session.

Two debt collection measures were enacted this year. Senate Bill 1286 (Min) extends the Rosenthal Fair Debt Collection Practices Act to small businesses. Senator Limón, Chair of the Senate Banking and Financial Institutions Committee, authored SB 1061 (Limón), a measure that voids medical debts that are reported to credit reporting agencies. This measure was enacted without CBA opposed provisions that included credit card debt within the scope of the bill.

CBA negotiated amendments with the State Bar of California on Assembly Bill AB 3279 (Committee on Judiciary) related to client trust accounts. This proposal amends the existing report banks provide on IOLTA accounts to include specified information on client trust accounts.

CBA successfully sponsored two measures this year. SB 1127 (Niello), related to trust termination, increases the $50,000 threshold, granting a trustee the power to terminate a trust if the fair market value of its principal does not exceed $100,000 in value. The measure successfully passed the Senate and Assembly unanimously and without opposition and was signed by the Governor. AB 2618 (Chen), which amends the government code to eliminate the sunset date on a local agency's ability to invest 50 percent of its surplus funds using reciprocal deposits, was also signed into law.

The California CalAccounts Blue Ribbon Commission released a feasibility study pursuant to AB 1177 (Santiago), which was passed by the legislature in 2019. RAND Corporation, contracted to perform the study of the unbanked and the feasibility of establishing a fee-free bank account product backed by the State of California, gathered data from 418 banking institutions, of which 153 are commercial banks (5,629 branches) and 265 are credit unions (1,567 branches). Ultimately, RAND concluded that CalAccount could have a positive effect on Californians if it's implemented correctly.

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CBA-SPONSORED

AB 2618 (Chen): Surplus Funds: Investment

[Enacted: Chapter 239]

Existing law authorizes a local agency that has the authority under law to invest funds, at its discretion, to invest a portion of its surplus funds in deposits at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of deposits, subject to certain conditions. Existing law, until January 1, 2026, prohibits deposits placed pursuant to that provision from exceeding 50 percent of the agency's funds that may be so invested and, on and after January 1, 2026, reduces that deposit limit to 30 percent of the agency's funds that may be so invested.

This measure extends the date of the reduction to the 30 percent deposit limit to January 1, 2031. Additionally, the measure requires the California Debt and Investment Advisory Commission, on or before January 1, 2030, to submit a prescribed report to the appropriate policy committees of the Legislature on the deposit of surplus funds pursuant to existing law by local agencies.

CBA sponsored this measure to preserve the ability of local agencies to invest 50 percent of their surplus funds using reciprocal deposits which would have been reduced to 30 percent in 2026.

SB 1127 (Niello): Trust Termination

[Enacted: Chapter 76]

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 authorizes a trustee to terminate a trust if the principal of a trust does not exceed $50,000 in value.

This measure instead grants a trustee the power to terminate a trust if the fair market value of its principal does not exceed $100,000 in value.

By increasing the amount where the trustee may terminate a trust without a court order from $50,000 to $100,000, it helps preserve the principal balance of the trust, thereby avoiding additional fees and expenses associated with the trust administration and costs associated with a court termination. CBA co-sponsored this measure with the California Lawyers Association, Trusts and Estates Section Executive Committee (TEXCOM).

BANK OPERATIONS

AB 1757 (Kalra): Accessibility: Internet Websites

[Dead]

The Unruh Civil Rights Act (Unruh Act) requires persons within the jurisdiction of the state to be free and equal and, regardless of the person's sex, race, color, religion, ancestry, national origin,

disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status to be entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments, and makes a violation of the federal Americans with Disabilities Act of 1990 (ADA) a violation of the act.

While there is no current website accessibility standard, the courts have traditionally looked to adherence and compliance with the Web Content Accessibility Guidelines (WCAG) promulgated by the World Wide Web Consortium (W3C) when determining the outcome of accessibly lawsuits. There have been three versions of WCAG published by the W3C with a third version currently in development.

The lack of a website accessibility standard in state or federal statute has led to a proliferation of litigation and AB 1757 was introduced to provide a roadmap that businesses could follow to avoid lawsuits. In an effort to decrease litigation, the measure created a convoluted and onerous safe harbor that ultimately drew opposition from the business community.

The measure imposed statutory damages and civil liability for claims against an entity relating to specific accessibility barriers on their websites, unless the operator of the website self-identifies a website accessibility barrier and documents the barrier on the entity's Digital Accessibility Report before a civil action is filed. The entity would have immunity from liability for 90 days to allow for the correction of an access barrier. While self-identification of an access barrier would provide a brief period of immunity under California law, the self-identification of a barrier invites lawsuits from other states.

Additionally, in order to be granted temporary protection under AB 1757, businesses were required to undertake a list of reforms and ongoing efforts, including mandated automated and manual testing of their website to regularly monitor for accessibility barriers.

CBA joined a business coalition to oppose this measure which failed to advance this year.

AB 2067 (Dixon): Financial Institutions: Service of Process
[Enacted: Chapter 222]

Existing law, the Enforcement of Judgments Law, governs the enforcement of money judgments and judgments for possession of personal property in civil actions. Existing law requires a writ, notice, order, or other paper relating to the enforcement of a judgment to be served on the judgment creditor or, if applicable, the judgment creditor's attorney. Under existing law, a financial institution is permitted, and if it has more than nine branches or offices within the state, is required to designate one or more central locations for service of legal process within the state. Service of legal process at a central location of a financial institution is effective against all deposit accounts and all property held for safekeeping, as collateral for an obligation owed to the financial institution, or in a safe-deposit box if the deposit accounts or properties are held by the financial institution at any branch or office covered by central process and located within the state.

This measure permits a financial institution to designate a third-party agent as a central location for service of legal process. If the financial institution designates a third-party agent as a central location, the measure requires the financial institution to designate another central location. The measure

prohibits each central location from being located in the same county as another designated central location.

This measure may require additional compliance for covered financial institutions.

SB 278 (Dodd): Elder Financial Abuse
[Vetoed]

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 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 litigation efforts by plaintiff attorneys alleging violations of the statute. Specifically, plaintiffs' attorneys have alleged violations of 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 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.

As introduced, SB 278, sponsored by the Consumer Attorneys of California, made 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.

Following extensive negotiations with the sponsors and author, the measure was amended to require financial institutions to establish an emergency contact program, whereby senior accountholders could designate a third party to receive an alert about a suspicious transaction flagged by the accountholders bank. When a bank believes a transaction is suspicious, it is required to attempt to contact the emergency financial contact, and for certain transactions over $5,000, the bank is required to hold the transaction for three days. The measure only applied to transactions where there is a direct interaction between bank personnel and a senior accountholder over the age of 65. Banks had until January 1, 2026, to comply with the new law.

CLIMATE-RELATED REPORTING

AB 2331 (Gabriel): Voluntary Carbon Market Disclosures
[Dead]

This measure proposed to amend last year's AB 1305 (Gabriel), [Chapter 365, Statutes of 2023], by the same author to update disclosure requirements of voluntary carbon offsets and to codify the author's intent to apply the disclosure requirements beginning July 1, 2025. Prior to introducing AB 2331, the author submitted an intent letter to the journal on January 3, 2024, to express their intent that the first annual disclosure be posted January 1, 2025.

Along with the Securities Industry and Financial Markets Association, CBA advocated for and secured amendments that would provide clarity and certainty for financial institutions that serve as intermediaries of transactions of voluntary carbon offsets, found in Section 44475 (b)-(c) and 44475.1 (b).

In the final hours of the 2023/2024 Legislative Session, the author could not reach agreement with the administration nor the state agency, the California Air Resources Board. As such, the author did not bring AB 2331 up for vote on the Assembly Floor, one step away from reaching the Governor for signature/veto consideration. The measure failed and the current law of last year's AB 1305 stands unchanged.

SB 219 (Wiener and Stern): Greenhouse Gases: Climate Corporate Accountability: Climate-Related Financial Risk
[Enacted: Chapter 766]

This measure amends last year's SB 253 (Wiener), [Chapter 382, Statutes of 2023], to delay from January 1, 2025, to July 1, 2025, the requirement that the California Air Resources Board adopt implementation regulations. Notably, the measure specifies that the greenhouse gas emissions reports required by SB 253 may be consolidated at the parent company level – this amendment language was transposed from language that CBA successfully advocated for and secured in last year's SB 261 (Stern), [Chapter 383, Statutes of 2023], a measure that also mandates climate-related disclosures. Finally, SB 219 allows the Air Resources Board to specify a schedule vis-à-vis drafting of its implementation regulations for annual reporting of scope 3 greenhouse gas emissions for the prior fiscal year, which was previously statutorily required to be no later than 180 days after reporting of scope 1 and scope 2 emissions according to SB 253.

This measure was introduced by Senators Wiener and Stern in response to the Governor's signing messages stating concerns about feasibility of timelines, cost and accuracy of data and instructing the legislature to work on subsequent legislation to address the stated concerns of last year's SB 253 and SB 261, which were both signed into law.

SB 1036 (Limón): Voluntary Carbon Offsets: Business Regulation
[Dead]

This measure was a verbatim reintroduction of the author's measure from the year prior,

SB 390 (Limon, 2023), which was vetoed. The governor cited concerns about "civil liability for even unintentional mistakes about offset quality, this bill could inadvertently capture well-intentioned sellers and verifiers of voluntary offsets, and risks creating significant turmoil in the market for carbon offsets, potentially even beyond California."

This measure adds certain claims about voluntary carbon offsets to California's existing False Advertising Law, making illegal the issuance or sale of such an offset by a person who knows or should know that the project underlying the offset is unlikely to deliver carbon benefits that are quantifiable, real, additional, durable, and that account for leakage related to offsets that are known or should be known to not be quantifiable, real, and additional.

Along with a coalition of business industry trade associations, CBA opposed SB 1036 on the basis of broad civil liability and because the measure proposed redundant disclosure requirements that failed to comport with existing efforts. Due to opposition, the author elected to hold the measure and it did not advance beyond its house of introduction.

CONSUMER DEBT

AB 2837 (Bauer-Kahan): Civil Actions: Enforcement of Money Judgments
[Enacted: Chapter 514]

This measure places a number of new timelines and specific parameters on bank levies, wage garnishments, and claims of exemption. For example, AB 2837 requires a judgment creditor to take additional steps to verify a judgment debtor's address and provide notice of enforcement to a judgment debtor, by requiring a court to order the return of exempt property that has been levied upon, and limiting the time period during which an earnings withholding order may be enforced and the frequency with which such an order may be sought.

With a coalition of original lenders, debt collectors and debt buyers, CBA opposed AB 2837 and sought amendments that would remove our opposition by addressing our concerns related to the burden of proof of good cause in backdating of exemptions, allowing legal pleadings to be used to verify a debtor's address in the instance where they have signed up for a cease and desist list, and eliminate the requirement for a judgment creditor to file with the court. Because the author was unwilling to address our concerns, our coalition remained opposed to the measure, which was signed.

This measure may require additional compliance obligations for covered financial institutions.

SB 1061 (Limón): Consumer Debt: Medical Debt
[Enacted: Chapter 520]

This measure prohibits reporting of medical debt to consumer credit reporting agencies, those agencies from including it in their reports, and others from relying on medical debt appearing on a credit report when making an underwriting decision. The measure defines medical debt to include debt issued under an open-end or closed-end plan offered specifically for the payment of medical services, products, or devices or the credit card allows for deferred interest purchases of a medical service, product, or device.

CBA opposed the inclusion of credit card debt in this definition because compliance with the measure's provisions requires covered entities to determine the medical necessity of specific purchases.

CBA removed opposition from SB 1061 when its definition of medical debt was amended to exclude credit card debt, limiting application of the measure to those debts owed directly to a medical provider or medical facility in Section 1785.3 (j).

SB 1286 (Min): Rosenthal Fair Debt Collection Practices Act: Covered Debt: Commercial Debts
[Enacted: Chapter 522]

This measure proposes to add commercial debts of up to $500,000 that are entered into, renewed, sold or assigned on or after July 1, 2025, to the Rosenthal Fair Debt Collection Practices Act. While CBA was successful in securing some helpful amendments – such as the forward-looking application in Section 1788.1 (d), clarifying that the threshold is based on the total cumulative amount at time of origination in 1788.2 (n), and clarifying that the prohibition on communicating with a debtor's employer in Section 1788.12 applies only to consumer debts – the proponents failed to address three key concerns.

CBA advocated that the threshold in 1788.2 (n) should be lowered from $500,000 to $100,000; that issues around floor plan lending should be clearly addressed; and that a collector should be able to file a judicial proceeding in the county in which collateral that secures a commercial debt is located. Because proponents ultimately did not address those concerns, CBA remained opposed to the measure.

This measure may require additional compliance obligations for covered financial institutions.

LABOR AND EMPLOYMENT

SB 92 (Umberg): Labor Code Private Attorneys General Act of 2004
[Enacted: Chapter 45]

Existing law, the Labor Code Private Attorneys General Act of 2004 (PAGA), authorizes an aggrieved employee to bring a civil action, on behalf of that employee and other current or former employees, to enforce a violation of any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees pursuant to certain notice and cure provisions.

This measure authorizes, an employer that employed fewer than 100 employees in total during the period covered by the required notice to, within 33 days of receipt of the notice to submit to the agency a confidential proposal to cure one or more of the alleged violations and, upon completing the cure, provide a sworn notification to the employee and agency that the cure is completed.

By expanding the scope of the crime of perjury, this measure imposes a state-mandated local program.

The measure requires the agency to verify whether the cure is complete within 20 days of receiving the employer's notification. This measure also authorizes an employer who employed at least 100 employees in total during the period covered by the required notice to, upon being served with a summons and complaint asserting a claim under PAGA, file a request and participate in an early evaluation conference in the proceedings of the claim and a request for a stay of court proceedings before, or simultaneous with, that defendant's responsive pleading or other initial appearances in the action that includes the claim.

This measure applies its provisions to a civil action brought on or after June 19, 2024.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This measure declares that it is to take effect immediately as an urgency statute. CBA supported and reviewed this measure with guidance from CBA's Human Resources Committee. The reforms mark impactful changes to how wage-and-hour lawsuits will be litigated going forward. The changes apply to PAGA cases filed on or after June 19, 2024. The PAGA reform measure offers a new opportunity for employers to reduce their penalties if hit with a PAGA lawsuit, by demonstrating they took reasonable steps to comply with wage and hour laws. For these reasons CBA supported the measures SB 92 and AB 2288 (Kalra).

SB 399 (Wahab): Employer Communications: Intimidation
[Enacted: Chapter 670]

The Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975, provides that it is the policy of the state to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing to negotiate the terms and conditions of their employment, and to be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives, self-organization, or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

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.

Measure SB 399 prohibits 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 and requires an employee who refuses to attend a meeting as described to continue to be paid. The measure imposes a civil penalty of $500 on an employer who violates these provisions.

CBA joined a diverse business coalition in opposing SB 399 dealing with prohibiting the discussion or communications regarding political matters by an employer to employees. CBA joined this coalition to oppose this measure primarily for the overly broad provisions and narrow exemptions being so unworkable that it would put employers in the impossible position of determining whether any speech is deemed "political."

Finance Institutions are such a heavily regulated industry it would put into question if discussing pending regulations could be regarded as political matters. For these reasons CBA opposed the measure.

This measure was one of the last labor bills still alive at the end of session, so it made a bill that really did not have a lot of traction in the beginning of the year to gain momentum and become the labor industries top priority to push across the finish line.

Measure SB 399 was signed by Gov. Newsom and goes into effect January 1, 2025.

This measure may require additional compliance obligations for covered financial institutions.

SB 1116 (Portantino): Unemployment Insurance: Trade Disputes: Eligibility for Benefits
[Dead]

Existing law provides for the payment of unemployment compensation benefits and extended benefits to eligible individuals who meet specified requirements. Under existing law, unemployment benefits are paid from the Unemployment Fund, which is continuously appropriated for these purposes.

Existing law makes an employee ineligible for benefits if the employee left work because of a trade dispute and specifies that the employee remains ineligible for the duration of the trade dispute. Existing case law holds that employees who left work due to a lockout by the employer, even if it was in anticipation of a trade dispute, are eligible for benefits.

This measure restored eligibility after the first two weeks for an employee who left work because of a trade dispute. The measure codified specified case law that holds that employees who left work due to a lockout by the employer, even if it was in anticipation of a trade dispute, are eligible for benefits. The measure specified that the measure's provisions did not diminish eligibility for benefits of individuals deprived of work due to an employer lockout or similar action. Because this measure expanded the categories of people eligible to receive benefits from a continuously appropriated fund, it would make an appropriation.

CBA joined a coalition of business trade associations to oppose the measure. CBA took an oppose position because the measure would require employers to subsidize striking workers, even if those workers or labor strikes had nothing to do with the employer. By forcing employers to pay UI payments to striking workers, SB 1116 would also raise taxes on employers across CA, overturning more than 70 years of precedent and put California's UI program at risk violating federal law. This measure was a repeat of SB 799 (Portantino, 2023) which was vetoed by the Governor because of the debt it would add to California's UI Fund, which is even a more pressing

concern given the state's long term estimated budget concerns. The measure was referred to committee but failed to obtain the votes to move forward.

AB 2288 (Kalra): Labor Code Private Attorneys General Act of 2004
[Enacted: Chapter 44]

Existing law, the Labor Code Private Attorneys General Act of 2004 (PAGA), authorizes an aggrieved employee to bring a civil action, on behalf of that employee and other current or former employees, to enforce a violation of any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees pursuant to certain notice and cure provisions.

This measure instead authorizes an aggrieved employee to bring a civil action as described above on behalf of the employee and other current or former employees against whom a violation of the same provision was committed.

With respect to a violation by a person of a provision that does not provide for a civil penalty, PAGA makes that person liable for a civil penalty of $500 if, at the time of the alleged violation, the person does not employ one or more employees. If, at the time of the alleged violation, the person employed one or more employees, PAGA makes that person liable for a civil penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation. PAGA requires 75 percent of civil penalties recovered by aggrieved employees to be distributed to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under the Labor Code, and requires 25 percent of civil penalties recovered by aggrieved employees to be distributed to the aggrieved employees.

This measure instead, if, at the time of the alleged violation, the person employed one or more employees, makes that person liable for a civil penalty of $100 for each aggrieved employee per pay period, except if certain mitigating factors apply, including that the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods, in which case the measure makes the civil penalty $25 or $50. The measure, subject to an exception, also reduces the civil penalties prescribed by PAGA by 15 percent or 30 percent, if a person accused of a violation has taken all reasonable steps to comply with the provisions alleged to have been violated in the required notice provided by the aggrieved employee.

CBA supported AB 2288 as it reforms PAGA to create more fairness in the process for small businesses and importantly, incentivize them to understand and comply with labor laws that impact their workforce. AB 2288 along with SB 92 (Umberg) curtail PAGA lawsuit abuse while offering better outcomes for employees who have been wronged.

This measure is to take effect immediately as an urgency statute. CBA supported and reviewed this measure with guidance from CBA's Human Resources Committee.

PRIVACY

AB 1949 (Wicks): California Consumer Privacy Act of 2020: Collection of Personal Information of a Consumer Less Than 18 Years of Age

[Vetoed]

This measure amends the California Consumer Privacy Act to prohibit a business from collecting the personal information of a consumer under 18 years of age, unless the consumer or the consumer's parent or guardian (if under 13) affirmatively authorizes the collection.

CBA expressed unintended consequences associated with circumstances where a minor is a beneficiary of a trust, payable on death account, or similar financial-related product and advocated for clarifying language to address this industry-specific concern. CBA successfully came to agreement with the author and sponsor, the office of the California Attorney General, on that language – however, the author made the decision to move the measure forward in the final days of the Legislative Session without incorporating any changes from stakeholders.

As a result, CBA was successful in working with the author to submit a letter of legislative intent to the journal regarding AB 1949 and that the intent is not to interfere with such transactions. Ultimately, this measure was vetoed.

AB 2013 (Irwin): Generative Artificial Intelligence: Training Data Transparency

[Enacted: Chapter 817]

This measure requires a developer, on or before January 1, 2026, and before each time thereafter that a GenAI system or service, or a substantial modification to such a system or service, is made publicly available to Californians for use, regardless of whether the terms of that use include compensation, to post on the developer's website documentation regarding the data used by the developer to train the GenAI system or service, including a high-level summary of the datasets used in the development of the GenAI system or service.

CBA worked with a coalition of business industry trade associations to oppose the measure and to secure amendments that narrowed the scope of the measure to the original developers of GenAI systems, allowing CBA to remove opposition.

AB 3204 (Bauer-Kahan): Data Digesters Registration Act

[Dead]

This measure proposed a data digest registry, somewhat similar to California's existing data broker registry, wherein data digesters would register with the California Privacy Protection Agency and provide specified data disclosures, including each category of personal information that the data digester used to train artificial intelligence (AI), each category of sensitive personal information used for the same purpose, and whether the data digester has trained AI using the personal data of minors. The measure defined a data digester as a "covered entity that designs, codes, or produces an AI system or service, or that substantially modifies an existing AI system or service, by training the system or service on the personal data of 1,000 or more individuals or households."

CBA worked with a coalition of business industry trade associations to oppose AB 3204, which was held on the Suspense File of the first house.

SB 1047 (Wiener): Safe and Secure Innovation for Frontier Artificial Intelligence Models Act
[Vetoed]

The measure proposed to require developers of certain artificial intelligence models, as well as those providing the computing power to train such models, to comply with various requirements and to adhere to specified safeguards and policies. The measure established a state entity to oversee the development of these models and called for the consortium to develop a framework for a public cloud computing cluster.

While CBA did not take a formal position on SB 1047, we did monitor the measure closely as it moved through the process, during which time the measure received significant nationwide attention.

Congresswoman Nancy Pelosi wrote in opposition to the measure, stating, "The view of many of us in Congress is that SB 1047 is well-intentioned but ill informed … While we want California to lead in AI in a way that protects consumers, data, intellectual property and more, SB 1047 is more harmful than helpful in that pursuit." Elon Musk surprisingly expressed support of the measure as the measure was moving through the legislative process.

Ultimately, this measure was vetoed though the Governor did express a willingness to consider a risk-based approach for further legislative efforts.

RESIDENTIAL LENDING

AB 2424 (Schiavo): Mortgages: Foreclosure
[Enacted: Chapter 311]

Existing law imposes various requirements to be satisfied before exercising a power of sale under a mortgage or deed of trust, including recording a notice of default, providing a mortgagor or trustor a copy of the recorded notice of default, providing notice of the time and place scheduled for the public auction sale of the real property and other notices related to the sale, determining the fees and expenses that may be paid from the sale, determining who may conduct the sale and act in the sale as an auctioneer for the trustee, determining the time and place where the auction sale may occur, and specifying how bids may be made and accepted at the auction sale.

This measure requires a notice be provided to a borrower specifying that they may designate a third party such asa family member, HUD-certified housing counselor, or attorney who may record a request to receive copies of any notice of default and notice of sale. Once a copy of these documents are received the third party may intervene to assist the borrower in avoiding foreclosure.

If a scheduled date of sale has been postponed pursuant to that provision and the trustee receives, at least five business days before the scheduled date of sale, from the mortgagor or trustor a copy of a purchase agreement for the sale of the property, the measure requires the trustee to postpone the

scheduled date of sale to a date that is at least 45 days after the date on which the purchase agreement was received by the trustee.

This measure requires the mortgagee, beneficiary, or authorized agent to provide to the trustee the fair market value of the property at least 10 days prior to the initially scheduled date of sale and prohibits the trustee from selling the property at the initial trustee's sale for less than 67 percent of the amount of that fair market value of the property. If the property remains unsold after the initial trustee's sale, the measure requires the trustee to postpone the sale for at least seven days and authorizes the property to be sold thereafter to the highest bidder.

CBA removed opposition based on the adoption of committee amendments which removed contingency bid language that CBA found to be most problematic. CBA remained neutral on this measure when the coalition established the fair market value at the initial trustee sale at 67 percent rather than 75 percent.

AB 2996 (Alvarez): California FAIR Plan Association
[Dead]

The California FAIR Plan Association is a joint reinsurance association in which all insurers licensed to write basic property insurance participate in administering a program for the equitable apportionment of basic property insurance for persons who are unable to obtain that coverage through normal channels. Existing law requires the association's plan of operation and any amendment to the plan to be approved by the Insurance Commissioner. Existing law establishes the California Infrastructure and Economic Development Bank and authorizes it to issue bonds to provide funds for the payment of costs of a project for a participating party or upon request by a state entity.

This measure authorized the Association to request the California Infrastructure and Economic Development Bank to issue bonds and authorizes the bank to issue those bonds to finance the costs of claims, to increase liquidity and claims-paying capacity of the Association, and to refund bonds previously issued for that purpose. The measure specified that the Association is a participating party and that financing all or any portion of the costs of claims or to increase liquidity and the claims-paying capacity of the Association is a project for bond purposes. The measure authorized the bank to loan the proceeds of issued bonds to the Association and authorized the Association to enter into a loan agreement with the bank and to enter into a line of credit agreement with an institutional lender or broker-dealer.

This measure required the Association, with the approval of the commissioner, to assess all members to pay all loan payments and the costs and expenses relating to a loan agreement with the bank, as well as to assess all members to repay a line of credit and its related costs and expenses.

CBA supported the measure; however, the measure was moved to the inactive file at the request of the author.

AB 3100 (Low): Assumption of Mortgage Loans: Dissolution of Marriage
[Enacted: Chapter 431]

Existing law defines and regulates mortgages, including recording notices of default and applications for loan modification. The California Consumer Financial Protection Law requires the Department of Financial Protection and Innovation to regulate the offering and provision of consumer financial products or services under California consumer financial laws and to exercise nonexclusive oversight and enforcement authority under California consumer financial laws.

This measure requires a conventional home mortgage loan originated on or after January 1, 2027, and secured by owner-occupied residential real property containing four or fewer dwelling units with multiple borrowers to include provisions to allow for any of the existing borrowers to purchase the property interest of another borrower on the loan by assuming the seller's portion of the mortgage under specified circumstances if the assuming borrower qualifies for the underlying loan, as determined by the lender.

The measure aims to address the financial challenges that divorcing homeowners face by enabling them to assume loans independently, without the need for refinancing. In addition, it mandates that loan documents clearly disclose the loan assumption process. This aims to alleviate financial strain and ensure smoother transitions to homeownership post-divorce.

CBA removed opposition to the measure after confirming from the Federal Housing Finance Agency that Government Sponsored Enterprises may purchase loans on properties subject to the measure's provisions, in full compliance with their selling guide requirements. This clarification is crucial for stakeholders, including the California banking industry to ensure feasibility and proper implantation of these legislative changes. Upon final approval, CBA requested the author's office to submit a letter to the Assembly Journal to clarify the intent behind AB 3100.

This measure may require additional compliance obligations for covered financial institutions.

AB 3108 (Jones-Sawyer): Business: Mortgage Fraud
[Enacted: Chapter 517]

Existing law makes it a criminal offense to commit mortgage fraud. This includes filing or causing to be filed with the county recorder in connection with a mortgage loan transaction any document that the person knows to contain a deliberate misstatement, misrepresentation, or omission, and with the intent to defraud.

This measure prohibits the filing of any document with the recorder of any county that the person knows to contain a material misstatement, misrepresentation, or omission.

This measure also provides that a mortgage broker or person who originates a loan commits mortgage fraud if, with the intent to defraud, the person takes specified actions relating to instructing or deliberately causing a borrower to sign documents reflecting certain loan terms with knowledge that the borrower intends to use the loan proceeds for other uses.

Existing law generally regulates the provision of covered loans, including by prohibiting a person who originates a covered loan from avoiding, or attempting to avoid, the application of that law by structuring a loan transaction as an open-end credit plan for the purpose of evading that law if the loan would have been a covered loan if the loan had been structured as a closed-end loan.

Existing law defines "covered loan" to mean a consumer loan in which the original principal balance of the loan does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association in the case of a mortgage or deed of trust. Existing law also prohibits a person who originates a covered loan from acting in a manner that constitutes fraud.

CBA reviewed this measure and adopted a neutral position once the retroactive language was removed. CBA joined a coalition of mortgage lenders submitting a letter of concern to the Senate Committee on Judiciary that existing penal code 532(f) already captures the activity the proponents claim is the problem this measure intends to resolve.

This measure may require additional compliance obligations for covered financial institutions.

TAXATION

SB 167 (Committee on Budget and Fiscal Review): Taxation

[Enacted: Chapter 34]

This budget trailer bill eliminates the ability of lenders to deduct bad debt from California income taxes. Enacted on June 13, 2024, the measure suspends the sales and use tax bad debt deduction beginning January 1, 2025, and amends the definition of "retailer" for purposes of the deduction to include affiliates through December 31, 2024. The measure further reinstates the deduction on January 1, 2028, for retailers only but does not reinstate the deduction for lenders.

Additionally, the measure disallows the state net operating loss deduction for any taxable year beginning on or after January 1, 2024, and before January 1, 2027, and extends the carryover period for up to three years for any net operating loss for which a deduction is denied pursuant to the changes made by this measure. The measure specifies that the suspension of the net operating loss does not apply to a taxpayer with a net business income or adjusted gross income of less than $1 million.

CBA joined a business coalition to oppose this measure because of the disallowance of the bad debt deduction for lenders.

TRUST AND ESTATES

AB 3279 (Committee on Judiciary): State Bar of California

[Enacted: Chapter 227]

AB 3279 requires that on or after March 1, 2026, and annually on or before March 1 thereafter, a bank must electronically provide via secure file transport protocol or another format mutually acceptable to the financial institution and the State Bar, information for every client trust account (CTA) known to the financial institution associated with an attorney's State Bar license number.

This obligation to provide information is only for those CTAs associated with an attorney's State Bar license number.

In order to effectuate this new requirement, On or before January 1, 2026, the State Bar must create a standard form for use by an attorney licensed to practice in California wherein the attorney must submit the attorney's license number and the name and account number of all applicable associated CTAs to the financial institution.

On or before March 1, 2026, and annually on or before March 1 thereafter, a bank must electronically provide via secure file transport protocol or another format mutually acceptable to the financial institution and the State Bar, the following for every client trust account known to the financial institution associated with an attorney's State Bar license number:

1. The name of the bank in which the CTA is held;
2. The name of the attorney or law firm associated with the CTA;
3. The account number of the CTA;
4. The attorney's State Bar license number associated with the CTA; and
5. The CTA balance as of December 31 of the previous year. If December 31 is a holiday, the account balance as of the preceding business day may be reported.

This measure may require additional compliance obligations for covered financial institutions.

CALIFORNIA BANKERS ASSOCIATION

2024 Regulatory Compliance Bulletin

AB 3279 (Committee on Judiciary)

On September 12, 2024, Governor Gavin Newsom signed into law AB 3279, one of the more significant bills enacted during this legislative session having a direct impact on financial institutions' operations, including banks, relating to a client trust account ("CTA") maintained with a bank by a licensed member of the California State Bar. Due to recently publicized malfeasance by a Bar member, resulting in the alleged misapplication of client funds, one core purpose of this bill is to enable the State Bar to track and confirm a CTA's account balance activities as regularly and independently reported by a licensed member to the Bar. Detailed below are some of the key features of this bill.

Summary

The Collection of an Attorney's State Bar License Number

Historically, while a bank has maintained CTAs for members of the State Bar, the bank has had no affirmative statutory obligation to collect and retain the member's State Bar license number. A new California Business and Professions Code section 6091.3(a) is added under AB 3279 requiring the bank to collect and retain an attorney's State Bar license number, effective January 1, 2026, only when the license "number is made available to the financial institution by the attorney associated with the client trust account in the format described" in section 6091.3(c), detailed below. Accordingly, the bank is at liberty to open a CTA for the attorney even if the attorney fails or declines to provide a license number; under the bill, the number merely must be tendered in a certain format by the attorney to the bank at the time the CTA is established. The bank does not act as an enforcement arm of the State Bar relating to a CTA. Of course, a bank independently could as a regular step in its due diligence or "know your customer" process in establishing a CTA require a license number from an attorney associated therewith as a matter of policy.

Requirement to Provide Information

Under new Business and Professions Code section 6091.3(b), on or after March 1, 2026, and annually on or before March 1 thereafter, a bank must "electronically provide via secure file transport protocol or another format mutually acceptable to the financial institution and the State Bar, the following for every client trust account actually known to the financial institution associated with an attorney's State Bar license number:"

(1) The name of the bank in which the CTA is held;

(2) The name of the attorney or law firm associated with the CTA;

(3) The account number of the CTA;

(4) The attorney's State Bar license number associated with the CTA; and

(5) The CTA balance as of December 31 of the previous year. If December 31 is a holiday, the account balance as of the preceding business day may be reported.

Note this obligation under section 6091.3(b) to provide information is only for those CTAs associated with an attorney's State Bar license number.

Standard Form to Submit a License Number

Under new Business and Professions Code section 6091.3(c), on or before January 1, 2026, the State Bar must create a standard form for use by an attorney licensed to practice in California wherein the attorney must submit the attorney's license number and the name and account number of all applicable associated CTAs to the financial institution pursuant to new California Business and Professions Code section 6091.3(d), detailed below.

Attorney's Obligation to Furnish License Number

Under new Business and Professions Code section 6091.3(d), on or before July 1, 2026, the State Bar must require a California licensed attorney to furnish the attorney's license number to the financial institution where the attorney maintains a CTA. If the CTA is maintained by a law firm, the firm must designate a member of the firm to provide the number. The attorney must submit the completed form to the central location designated by the financial institution for service of legal process pursuant to Code of Civil Procedure section 684.115, if any. If the bank has not yet designated a central location under section 684.115, AB 3279 is an additional incentive to do so promptly. Under new Business and Professions Code section 6091.3(e), a financial institution receiving the form under section 6091.3(d) must incorporate into its books and records the attorney's license number for known CTAs where the number was not previously collected.

IOLTA

Under new Business and Professions Code section 6091.3(f), the new obligations under AB 3279 are not intended to replace or supplant the obligations of a bank relating to IOLTAs in Business and Professions Code sections 6211 and 6212. This subsection is viewed necessary because the obligations to maintain and to report IOLTAs and to remit paid interest relating to IOLTAs continue regardless of the attorney maintaining the IOLTA with or without a license number.

Protection Against a Private Right of Action

Under new Business and Professions Code section 6091.3(g), statutory protection is afforded a bank and its officers, directors, and employees with regard to the discharge or the alleged failure to discharge these new obligations under AB 3279.

Conclusion

The new statutory obligations attaching to a bank under AB 3279 require the bank to adopt new policies and procedures from opening a new CTA for a California licensed attorney to annually reporting information regarding all CTAs for which the data is available as set forth in section 6091.3(b). A new field for capturing an attorney's license number must be made available to new account bankers gathering information at account opening where a CTA is involved. New file transport protocols must be developed or enhanced to enable the information filing obligation relating to CTAs. While March 1, 2026, may appear distant, it could rapidly come upon us.

Prepared by Ted Kitada