

AMENDED IN SENATE SEPTEMBER 12, 2001

AMENDED IN SENATE SEPTEMBER 10, 2001

AMENDED IN SENATE JULY 5, 2001

AMENDED IN ASSEMBLY MAY 25, 2001

AMENDED IN ASSEMBLY MARCH 26, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 344**

**Introduced by Assembly Member Migden**  
(Principal coauthor: Senator Machado)  
(Coauthor: Senator Murray)

February 16, 2001

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An act to ~~add Division 1.6 (commencing with Section 4970) to the Financial Code, to amend Sections 4970, 4973, 4974, 4975, 4977, 4978, 4978.6, 4979, and 4979.7 of the Financial Code, as added by Assembly Bill 489 of the 2001-02 Regular Session, relating to lending.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 344, as amended, Migden. Loans secured by real property.

Existing law provides for regulation of banks and savings associations by the Department of Financial Institutions. Existing law provides for regulation of real estate brokers by the Department of Real Estate. Existing law provides for regulation of finance lenders and residential mortgage lenders by the Department of Corporations. Existing law provides that willful violations of provisions governing



savings associations, real estate brokers, and residential mortgage lenders are crimes.

**This bill**

*AB 489 of the 2001–02 Regular Session would impose various requirements on consumer loans secured by specified real property, defined as “covered loans.” The bill would prohibit various acts in making covered loans, including the following: failing to consider the financial ability of a borrower to repay the loan, financing specified types of credit insurance into a transaction relating to a consumer loan, recommending or encouraging a consumer to default on an existing consumer loan in order to solicit or make a covered loan that refinances the consumer loan, and making a covered loan without providing the consumer a specified disclosure. The bill would provide that a violation of its provisions would be subject to a civil penalty. This bill would make various changes to the provisions of AB 489 that apply to a covered loan for which an application is made on or after July 1, 2002.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Division 1.6 (commencing with Section 4970)~~  
2 ~~is~~

3 *SECTION 1. Section 4970 of the Financial Code, as added by*  
4 *Assembly Bill 489 of the 2001–02 Regular Session, is amended to*  
5 *read:*

6 4970. For purposes of this division:

7 (a) “Annual percentage rate” means the annual percentage rate  
8 for the loan calculated according to the provisions of the federal  
9 Truth in Lending Act and the regulations adopted thereunder by  
10 the Federal Reserve Board.

11 (b) (1) “Covered loan” means a consumer loan in which the  
12 original principal balance of the loan does not exceed two hundred  
13 fifty thousand dollars (\$250,000) in the case of a mortgage or deed  
14 of trust, and where one of the following conditions are met:

15 (A) For a mortgage or deed of trust, the annual percentage rate  
16 at consummation of the transaction will exceed by more than eight  
17 percentage points the yield on Treasury securities having  
18 comparable periods of maturity on the 15th day of the month



1 immediately preceding the month in which the application for the  
2 extension of credit is received by the creditor.

3 (B) The total points and fees payable by the consumer at or  
4 before closing for a mortgage or deed of trust will exceed 6 percent  
5 of the total loan amount.

6 (2) The dollar amount specified in paragraph (1) shall be  
7 adjusted every five years in accordance with the California  
8 Consumer Price Index.

9 (c) “Points and fees” shall include the following:

10 (1) All items required to be disclosed as finance charges under  
11 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
12 Regulations, including the Official Staff Commentary, as  
13 amended from time to time, except interest.

14 (2) All compensation and fees paid to mortgage brokers in  
15 connection with the loan transaction.

16 (3) All items listed in Section 226.4(c)(7) of Title 12 of the  
17 Code of Federal Regulations, only if the person originating the  
18 covered loan receives direct compensation in connection with the  
19 charge.

20 (d) “Consumer loan” means a consumer credit transaction that  
21 is secured by real property located in this state used, or intended  
22 to be used or occupied, as the principal dwelling of the consumer  
23 that is improved by a one-to-four residential unit. “Consumer  
24 loan” does not include a reverse mortgage, an open line of credit  
25 as defined in Part 226 of Title 12 of the Code of Federal  
26 Regulations (Regulation Z), or a consumer credit transaction that  
27 is secured by rental property or second homes. “Consumer loan”  
28 does not include a bridge loan ~~with a maturity of less than one year~~  
29 ~~if the purpose of the loan is a bridge loan connected with the~~. *For*  
30 *purposes of this division, a bridge loan is any temporary loan,*  
31 *having a maturity of one year or less, for the purpose of acquisition*  
32 *or construction of a dwelling intended to become the consumer’s*  
33 *principal dwelling.*

34 (e) “Original principal balance” means the total initial amount  
35 the consumer is obligated to repay on the loan.

36 (f) “Licensing agency” shall mean the Department of Real  
37 Estate for licensed real estate brokers, the Department of  
38 Corporations for licensed residential mortgage lenders and  
39 licensed finance lenders and brokers, and the Department of



1 Financial Institutions for commercial and industrial banks and  
2 savings associations and credit unions organized in this state.

3 (g) “Licensed person” means a real estate broker licensed  
4 under the Real Estate Law (Part 1 (commencing with Section  
5 10000) of Division 4 of the Business and Professions Code), a  
6 finance lender or broker licensed under the California Finance  
7 Lenders Law (Division 9 (commencing with Section 22000)), a  
8 residential mortgage lender licensed under the California  
9 Residential Mortgage Lending Act (Division 20 (commencing  
10 with Section 50000)), a commercial or industrial bank organized  
11 under the Banking Law (Division 1 (commencing with Section  
12 99)), a savings association organized under the Savings  
13 Association Law (Division 2 (commencing with Section 5000)),  
14 and a credit union organized under the California Credit Union  
15 Law (Division 5 (commencing with Section 14000)). Nothing in  
16 this division shall be construed to prevent any enforcement by a  
17 governmental entity against any person who originates a loan and  
18 who is exempt or excluded from licensure by all of the licensing  
19 agencies, based on a violation of any provision of this division.  
20 Nothing in this division shall be construed to prevent the  
21 Department of Real Estate from enforcing this division against a  
22 licensed salesperson employed by a licensed real estate broker as  
23 if that salesperson were a licensed person under this division. A  
24 licensed person includes any person engaged in the practice of  
25 consumer lending, as defined in this division, for which a license  
26 is required under any other provision of law, but whose license is  
27 invalid, suspended or revoked, or where no license has been  
28 obtained.

29 (h) “Originate” means to arrange, negotiate, or make a  
30 consumer loan.

31 (i) “Servicer” has the same meaning provided in Section 6  
32 (i)(2) of the Real Estate Settlement Procedures Act of 1974.

33 *SEC. 2. Section 4973 of the Financial Code, as added by*  
34 *Assembly Bill 489 of the 2001–02 Regular Session, is amended to*  
35 *read:*

36 4973. The following are prohibited acts and limitations for  
37 covered loans:

38 (a) (1) A covered loan shall not include a prepayment fee or  
39 penalty after the first 36 months after the date of consummation of  
40 the loan.



1 (2) A covered loan may include a prepayment fee or penalty up  
2 to the first 36 months after the date of consummation of the loan  
3 if:

4 (A) The person who originates the covered loan has also  
5 offered the consumer a choice of another product without a  
6 prepayment fee or penalty.

7 (B) The person who originates the covered loan has disclosed  
8 in writing to the consumer at least three business days prior to loan  
9 consummation the terms of the prepayment fee or penalty to the  
10 consumer for accepting a covered loan with the prepayment  
11 penalty and the rates, points, and fees that would be available to  
12 the consumer for accepting a covered loan without a prepayment  
13 penalty.

14 (C) The person who originates the covered loan has limited the  
15 amount of the prepayment fee or penalty to an amount not to  
16 exceed the payment of six months' advance interest, at the contract  
17 rate of interest then in effect, on the amount prepaid in any  
18 12-month period in excess of 20 percent of the original principal  
19 amount.

20 (D) A covered loan will not impose the prepayment fee or  
21 penalty if the covered loan is accelerated as a result of default.

22 (E) The person who originates the covered loan will not finance  
23 a prepayment penalty through a new loan that is originated by the  
24 same person.

25 (b) (1) A covered loan with a term of 5 years or less may not  
26 provide at origination for a payment schedule with regular  
27 periodic payments that when aggregated do not fully amortize the  
28 principal balance as of the maturity date of the loan.

29 (2) For a payment schedule that is adjusted to account for the  
30 seasonal or irregular income of the consumer, the total installments  
31 in any year shall not exceed the amount of one year's worth of  
32 payments on the loan. This prohibition does not apply to a bridge  
33 loan. For purposes of this paragraph, "bridge loan" means a loan  
34 with a maturity of less than 18 months that only requires payments  
35 of interest until the time when the entire unpaid balance is due and  
36 payable.

37 (c) A covered loan shall not contain a provision for negative  
38 amortization such that the payment schedule for regular monthly  
39 payments causes the principal balance to increase, unless the  
40 covered loan is a first mortgage and the ~~licensed~~ person *who*



1 *originates the loan* discloses to the consumer that the loan contains  
2 a negative amortization provision that may add principal to the  
3 balance of the loan.

4 (d) A covered loan shall not include terms under which  
5 periodic payments required under the loan are consolidated and  
6 paid in advance from the loan proceeds.

7 (e) A covered loan shall not contain a provision that increases  
8 the interest rate as a result of a default. This provision does not  
9 apply to interest rate changes in a variable rate loan otherwise  
10 consistent with the provisions of the loan documents, provided the  
11 change in the interest rate is not triggered by the event of default  
12 or the acceleration for the indebtedness.

13 (f) (1) A person who originates covered loans shall not make  
14 or arrange a covered loan unless at the time the loan is  
15 consummated, the person reasonably believes the consumer, or  
16 consumers, when considered collectively in the case of multiple  
17 consumers, will be able to make the scheduled payments to repay  
18 the obligation based upon a consideration of their current and  
19 expected income, current obligations, employment status, and  
20 other financial resources, other than the consumer's equity in the  
21 dwelling that secures repayment of the loan. In the case of a  
22 covered loan that is structured to increase to a specific designated  
23 rate, stated as a number or formula, at a specific predetermined  
24 date not exceeding 37 months from the date of application, this  
25 evaluation shall be based upon the fully indexed rate of the loan  
26 calculated at the time of application.

27 The consumer shall be presumed to be able to make the  
28 scheduled payments to repay the obligation if, at the time the loan  
29 is consummated, the consumer's total monthly debts, including  
30 amounts owed under the loan, do not exceed 55 percent of the  
31 consumer's monthly gross income, as verified by the credit  
32 application, the consumer's financial statement, a credit report,  
33 financial information provided to the person originating the loan  
34 by or on behalf of the consumer, or any other reasonable means.

35 (2) No presumption of inability to make the scheduled  
36 payments to repay the obligation shall arise solely from the fact  
37 that at the time the loan is consummated, the consumer's total  
38 monthly debts, including amounts owed under the loan, exceed 55  
39 percent of the consumer's monthly gross income.



1 (3) In the case of a stated income loan, the reasonable belief  
2 requirement in paragraph (1) shall apply, however, for stated  
3 income loans that belief may be based on the income stated by the  
4 consumer, and other information in the possession of the person  
5 originating the loan after the solicitation of all information that the  
6 person customarily solicits in connection with loans of this type.  
7 A person shall not knowingly or willfully originate a covered loan  
8 as a stated income loan with the intent, or effect, of evading the  
9 provisions of this subdivision.

10 (g) A person who originates a covered loan shall not pay a  
11 contractor under a home-improvement contract from the proceeds  
12 of a covered loan other than by an instrument payable to the  
13 consumer or jointly to the consumer and the contractor or, at the  
14 election of the consumer, to a third-party escrow agent for the  
15 benefit of the contractor in accordance with terms and conditions  
16 established in a written escrow agreement signed by the consumer,  
17 the person who originates a covered loan, and the contractor prior  
18 to the disbursement of funds. No payments, other than progress  
19 payments for home-improvement work that the consumer certifies  
20 is completed, shall be made to an escrow account or jointly to the  
21 consumer and the contractor unless the person who originates the  
22 loan is presented with a signed and dated completion certificate by  
23 the consumer showing that the home-improvement contract was  
24 completed to the satisfaction of the consumer.

25 (h) It is unlawful for a person who originates a covered loan  
26 to recommend or encourage a consumer to default on an existing  
27 consumer loan or other debt in connection with the solicitation or  
28 making of a covered loan that refinances all or any portion of the  
29 existing consumer loan or debt.

30 (i) A covered loan shall not contain a call provision that permits  
31 the lender, in its sole discretion, to accelerate the indebtedness.  
32 This prohibition does not apply if repayment of the loan has been  
33 accelerated in accordance with the terms of the loan documents (1)  
34 as a result of the consumer's default, (2) pursuant to a due-on-sale  
35 provision, or (3) due to fraud or material misrepresentation by a  
36 consumer in connection with the loan or the value of the security  
37 for the loan. ~~A licensed person~~

38 (j) *A person who originates a covered loan shall not refinance*  
39 *or arrange for the refinancing of a consumer loan such that the new*  
40 *loan is a covered loan that is made for the purpose of refinancing,*



1 debt consolidation or cash out, that does not result in an  
2 identifiable benefit to the consumer, considering the consumer’s  
3 stated purpose for seeking the loan, fees, interest rates, finance  
4 charges, and points.

5 (j)

6 (k) (1) A covered loan shall not be made unless the following  
7 disclosure, written in 12-point font or larger, has been provided to  
8 the consumer no later than three business days prior to signing of  
9 the loan documents of the transaction:

10

11 CONSUMER CAUTION AND HOME OWNERSHIP  
12 COUNSELING NOTICE

13

14 If you obtain this loan, the lender will have a mortgage on your  
15 home. You could lose your home, and any money you have put into  
16 it, if you do not meet your obligations under the loan.

17 Mortgage loan rates and closing costs and fees vary based on  
18 many other factors, including your particular credit and financial  
19 circumstances, your earnings history, the loan-to-value requested,  
20 and the type of property that will secure your loan. Higher rates and  
21 fees may be justified depending on the individual circumstances  
22 of a particular consumer’s application. You should shop around  
23 and compare loan rates and fees.

24 This particular loan may have a higher rate and total points and  
25 fees than other mortgage loans and is, or may be, subject to the  
26 additional disclosure and substantive protections under Division  
27 1.6 (commencing with Section 4970 of the Financial Code. You  
28 should consider consulting a qualified independent credit  
29 counselor or other experienced financial adviser regarding the  
30 rate, fees, and provisions of this mortgage loan before you  
31 proceed. For information on contacting a qualified credit  
32 counselor, ask your lender or call the United States Department of  
33 Housing and Urban Development’s counseling hotline at  
34 1-888-466-3487 or go to [www.hud.gov/fha/sfh/hcc](http://www.hud.gov/fha/sfh/hcc) for a list of  
35 counselors.

36 You are not required to complete any loan agreement merely  
37 because you have received these disclosures or have signed a loan  
38 application.

39 If you proceed with this mortgage loan, you should also  
40 remember that you may face serious financial risks if you use this



1 loan to pay off credit card debts and other debts in connection with  
2 this transaction and then subsequently incur significant new credit  
3 card charges or other debts. If you continue to accumulate debt  
4 after this loan is closed and then experience financial difficulties,  
5 you could lose your home and any equity you have in it if you do  
6 not meet your mortgage loan obligations.

7 Property taxes and homeowner's insurance are your  
8 responsibility. Not all lenders provide escrow services for these  
9 payments. You should ask your lender about these services.

10 Your payments on existing debts contribute to your credit  
11 ratings. You should not accept any advice to ignore your regular  
12 payments to your existing creditors.

13 (2) It shall be a rebuttable presumption that a licensed person  
14 has met its obligation to provide this disclosure if the consumer  
15 provides the licensed person with a signed acknowledgment of  
16 receipt of a copy of the notice set forth in paragraph (1).

17 ~~(m)~~

18 (l) (1) A person who originates a covered loan shall not steer,  
19 counsel, or direct any prospective consumer to accept a loan  
20 product with a risk grade less favorable than the risk grade that the  
21 consumer would qualify for based on that person's then current  
22 underwriting guidelines, prudently applied, considering the  
23 information available to that person, including the information  
24 provided by the consumer.

25 A person shall not be deemed to have violated this section if the  
26 risk grade determination applied to a consumer is reasonably based  
27 on the person's underwriting guidelines if it is an appropriate risk  
28 grade category for which the consumer qualifies with the person.

29 (2) If a broker originates a covered loan, the broker shall not  
30 steer, counsel, or direct any prospective consumer to accept a loan  
31 product at a higher cost than that for which the consumer could  
32 qualify based on the loan products offered by the persons with  
33 whom the broker regularly does business.

34 ~~(n)~~

35 (m) A person who originates a covered loan shall not avoid, or  
36 attempt to avoid, the application of this division by doing the  
37 following:

38 (1) Structuring a loan transaction as an open-end credit plan for  
39 the purpose of evading the provisions of this division when the



1 loan would have been a covered loan if the loan had been  
2 structured as a closed end loan.

3 (2) Dividing any loan transaction into separate parts for the  
4 purpose of evading the provisions of this division.

5 ~~(e)~~

6 (n) A person who originates a covered loan shall not act in any  
7 manner, whether specifically prohibited by this section or of a  
8 different character, that constitutes fraud.

9 *SEC. 3. Section 4974 of the Financial Code, as added by*  
10 *Assembly Bill 489 of the 2001–02 Regular Session, is amended to*  
11 *read:*

12 4974. (a) Any compliance failure that was not willful or  
13 intentional and resulted from a bona fide error, that occurred  
14 notwithstanding the maintenance of procedures reasonably  
15 adopted to avoid those errors, including, but not limited to, those  
16 involving clerical, calculation, computer malfunction and  
17 programming, and printing errors shall be corrected no later than  
18 45 days after receipt of the complaint or discovery of the error. A  
19 person who originates a covered loan shall not be administratively,  
20 civilly, or criminally liable for a bona fide error corrected pursuant  
21 to this section. ~~An error in legal judgment is not a bona fide error~~  
22 ~~under this section.~~

23 (b) If a person who originates covered loans makes a loan  
24 where the person knew of and showed reckless disregard for a  
25 violation of this division by a broker, the person and broker shall  
26 be jointly and severally liable for all damages awarded under this  
27 division with respect to the broker’s unlawful conduct.

28 This section does not impose or transfer liability for a breach of  
29 the broker’s fiduciary duty.

30 *SEC. 4. Section 4975 of the Financial Code, as added by*  
31 *Assembly Bill 489 of the 2001–02 Regular Session, is amended to*  
32 *read:*

33 4975. (a) (1) Any licensed person who violates any  
34 provision of Section 4973, 4979.6, or 4979.7 shall be deemed to  
35 have violated that person’s licensing law.

36 (2) After ~~any action under Section 4978.5 resulting in a~~  
37 ~~conviction~~ *a knowing and willful violation*, the licensing agency  
38 may bring a proceeding to suspend the license of the licensed  
39 person for not less than six months and not more than three years.



1 (b) After ~~any action under Section 4978.5~~ *a knowing and*  
2 *willful violation* resulting in a second or subsequent ~~conviction~~  
3 *administrative or civil action*, the licensing agency may bring a  
4 proceeding to permanently revoke the license of the licensed  
5 person or impose any lesser licensed sanction for at least three  
6 years.

7 (c) A licensing agency may exercise any and all authority and  
8 powers available to it under any other provisions of law, to  
9 administer and enforce this division. ~~A licensing agency may~~  
10 ~~charge and collect~~ *including, but not limited to, investigating and*  
11 *examining the licensed person's books and records, and charging*  
12 *and collecting the reasonable costs for enforcing this division.*  
13 ~~However, nothing in this subdivision shall authorize the~~  
14 ~~imposition or collection of charges or fees that duplicate charges~~  
15 ~~or fees authorized under any other provision of law~~ *these activities.*  
16 *The licensing agency shall not charge a licensed person twice for*  
17 *the same service. Any civil, criminal, and administrative authority*  
18 *and remedies available to the licensing agency pursuant to its*  
19 *licensing law may be sought and employed in any combination*  
20 *deemed advisable by the licensing agency to enforce the provisions*  
21 *of this division.*

22 (d) Nothing in this section shall be construed to impair or  
23 impede a licensing agency's authority under any other provision  
24 of law.

25 *SEC. 5. Section 4977 of the Financial Code, as added by*  
26 *Assembly Bill 489 of the 2001-02 Regular Session, is amended to*  
27 *read:*

28 4977. (a) A licensing agency may, after appropriate notice  
29 and opportunity for hearing, by order levy administrative penalties  
30 against a person who violates any provision of this division, and  
31 the person shall be liable for administrative penalties of not more  
32 than two thousand five hundred dollars (\$2,500) for each  
33 violation. Except for licensing agencies exempt from the  
34 provisions of the Administrative Procedure Act, any hearing shall  
35 be held in accordance with the Administrative Procedure Act  
36 (Chapter 5 (commencing with Section 11500) of Part 1 of Division  
37 3 of Title 2 of the Government Code), and the licensing agency  
38 shall have all the powers granted under that act.

39 (b) Any person who willfully and knowingly violates any  
40 provision of this division shall be liable for a civil penalty of not



1 more than twenty-five thousand dollars (\$25,000) for each  
2 violation which shall be assessed and recovered in a civil action  
3 brought in the name of the people of the State of California by the  
4 licensing agency in any court of competent jurisdiction.

5 ~~(c) A licensing agency may exercise any and all authority and~~  
6 ~~powers available to it under any other provisions of law, to~~  
7 ~~administer and enforce this division, including, but not limited to,~~  
8 ~~investigating and examining the licensed person's books and~~  
9 ~~records, and charging and collecting the reasonable costs for these~~  
10 ~~activities. The licensing agency shall not charge a licensed person~~  
11 ~~twice for the same service. Any civil, criminal, and administrative~~  
12 ~~authority and remedies available to the licensing agency pursuant~~  
13 ~~to its licensing law may be sought and employed in any~~  
14 ~~combination deemed advisable by the licensing agency to enforce~~  
15 ~~the provisions of this division~~ *Nothing in this section requires*  
16 *exhaustion of administrative remedies prior to an injured party*  
17 *bringing a civil action.*

18 (d) If the licensing agency determines that it is in the public  
19 interest, the licensing agency may include, in any action for  
20 penalties authorized by subdivision (b), a claim for relief in  
21 addition to the penalties, including a claim for restitution or  
22 disgorgement, and the court shall have jurisdiction to award the  
23 additional relief.

24 (e) Nothing in this section shall be construed to impair or  
25 impede the Attorney General from representing a licensing agency  
26 in bringing an action to enforce this division at the request and on  
27 behalf of the licensing agency.

28 (f) In any action brought by the licensing agency, or the  
29 Attorney General acting at the request and ~~at the behest~~ *on behalf*  
30 of the licensing agency, under this division in which a judgment  
31 against a person is rendered, the licensing agency or the Attorney  
32 General shall be entitled to recover costs which, in the discretion  
33 of the court, may include an amount representing reasonable  
34 attorney's fees and investigative expenses for services rendered for  
35 deposit in the appropriate fund of that licensing agency.

36 (g) The amounts collected under subdivisions (a) and (b) shall  
37 be deposited in the appropriate fund of the licensing agency to be  
38 used by that licensing agency, subject to appropriation by the  
39 Legislature, for the purposes of education and enforcement in  
40 connection with abusive lending practices.



1 SEC. 6. Section 4978 of the Financial Code, as added by  
2 Assembly Bill 489 of the 2001–02 Regular Session, is amended to  
3 read:

4 4978. (a) A person who fails to comply with the provisions  
5 of this division is civilly liable to the consumer in an amount equal  
6 to any actual damages suffered by the consumer, plus attorneys  
7 fees and costs. For a willful and knowing violation of this division,  
8 the person shall be liable to the consumer in the amount of fifteen  
9 thousand dollars (\$15,000) or the consumers actual damages,  
10 whichever is greater, plus attorneys fees and costs.

11 (b) ~~A provision in a covered loan that violates this division~~  
12 (1) *If a provision in a contract in a covered loan violates*  
13 *subdivision (a), (b), (c), (d), (e), or (i) of Section 4973, Section*  
14 *4979.6, or Section 4979.7, that provision is unenforceable. A court*  
15 *in which any action is brought by, or on behalf of, an aggrieved*  
16 *consumer for relief may issue an order or injunction to reform the*  
17 *terms of the covered loan to conform to the provisions of this*  
18 *division. The*

19 (2) A court may, in addition to any other remedy, award  
20 punitive damages to the consumer upon a finding that such  
21 damages are warranted pursuant to Section 3294 of the Civil Code.

22 (c) *Nothing in this section is intended, nor shall be construed,*  
23 *to abrogate existing common law provisions prohibiting double*  
24 *recovery of damages.*

25 SEC. 7. Section 4978.6 of the Financial Code, as added by  
26 Assembly Bill 489 of the 2001–02 Regular Session, is amended to  
27 read:

28 4978.6. A person who originates covered loans shall inform  
29 any employee, who originates covered loans on behalf of the  
30 person, of the administrative, or civil, ~~and criminal~~ penalties for  
31 a violation of this division.

32 SEC. 8. Section 4979 of the Financial Code, as added by  
33 Assembly Bill 489 of the 2001–02 Regular Session, is amended to  
34 read:

35 4979. Upon request, a person who originates a covered loan  
36 shall provide the licensing agency or the consumer, at no cost,  
37 documentation regarding his or her loan that clearly demonstrates  
38 whether any loan is a covered loan. This documentation shall  
39 include, but not be limited to, full disclosure of the original



1 principal balance, the annual percentage rate, and the total points  
2 and fees, as defined in Section ~~4974~~ 4970.

3 *SEC. 9. Section 4979.7 of the Financial Code, as added by*  
4 *Assembly Bill 489 of the 2001–02 Regular Session, is amended to*  
5 *read:*

6 4979.7. On ~~and~~ or after July 1, 2002, a person who originates  
7 a consumer loan shall not finance, directly or indirectly, into a  
8 consumer loan ~~transaction~~ or finance to the same borrower within  
9 30 days of a consumer loan ~~transaction~~ any credit life, credit  
10 disability, credit property, or credit unemployment insurance  
11 premiums, or any debt cancellation or suspension agreement ~~or~~  
12 ~~contract~~ fees, provided that *credit* insurance premiums, debt  
13 cancellation, or suspension fees calculated and paid on a monthly  
14 basis shall not be considered financed by the person originating the  
15 loan. For purposes of this section, credit insurance does not include  
16 a contract issued by a government agency or private mortgage  
17 insurance company to insure the lender against loss caused by a  
18 mortgagor’s default.

19 *SEC. 10. All of the sections amended by this act shall apply*  
20 *only to a covered loan for which an application is made on or after*  
21 *July 1, 2002.*

22 ~~added to the Financial Code, to read:~~

23  
24 ~~DIVISION 1.6. ———~~

25  
26 ~~CHAPTER 1. — GENERAL PROVISIONS AND DEFINITIONS~~

27  
28 ~~4970. — For purposes of this division:~~

29 ~~(a) “Annual percentage rate” means the annual percentage rate~~  
30 ~~for the loan calculated according to the provisions of the federal~~  
31 ~~Truth in Lending Act and the regulations adopted thereunder by~~  
32 ~~the Federal Reserve Board.~~

33 ~~(b) (1) “Covered loan” means a consumer loan in which the~~  
34 ~~original principal balance of the loan does not exceed two hundred~~  
35 ~~fifty thousand dollars (\$250,000) in the case of a mortgage or deed~~  
36 ~~of trust, and where one of the following conditions are met:~~

37 ~~(A) For a mortgage or deed of trust, the annual percentage rate~~  
38 ~~at consummation of the transaction will exceed by more than eight~~  
39 ~~percentage points the yield on Treasury securities having~~  
40 ~~comparable periods of maturity on the 15th day of the month~~



1 immediately preceding the month in which the application for the  
2 extension of credit is received by the creditor.

3 (B) The total points and fees payable by the consumer at or  
4 before closing for a mortgage or deed of trust will exceed 6 percent  
5 of the total loan amount.

6 (2) The dollar amount specified in paragraph (1) shall be  
7 adjusted every five years in accordance with the California  
8 Consumer Price Index.

9 (c) “Points and fees” shall include the following:

10 (1) All items required to be disclosed as finance charges under  
11 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
12 Regulations, including the Official Staff Commentary, as  
13 amended from time to time, except interest.

14 (2) All compensation and fees paid to mortgage brokers in  
15 connection with the loan transaction.

16 (3) All items listed in Section 226.4(c)(7) of Title 12 of the  
17 Code of Federal Regulations, only if the person originating the  
18 covered loan receives direct compensation in connection with the  
19 charge.

20 (d) “Consumer loan” means a consumer credit transaction that  
21 is secured by real property located in this state used, or intended  
22 to be used or occupied, as the principal dwelling of the consumer  
23 that is improved by a one-to-four residential unit. “Consumer  
24 loan” does not include a reverse mortgage, an open line of credit  
25 as defined in Part 226 of Title 12 of the Code of Federal  
26 Regulations (Regulation Z), or a consumer credit transaction that  
27 is secured by rental property or second homes. “Consumer loan”  
28 does not include a bridge loan. For purposes of this division, a  
29 bridge loan is any temporary loan, having a maturity of one year  
30 or less, for the purpose of acquisition or construction of a dwelling  
31 intended to become the consumer’s principal dwelling.

32 (e) “Original principal balance” means the total initial amount  
33 the consumer is obligated to repay on the loan.

34 (f) “Licensing agency” shall mean the Department of Real  
35 Estate for licensed real estate brokers, the Department of  
36 Corporations for licensed residential mortgage lenders and  
37 licensed finance lenders and brokers, and the Department of  
38 Financial Institutions for commercial and industrial banks and  
39 savings associations and credit unions organized in this state.



1 ~~(g) “Licensed person” means a real estate broker licensed~~  
 2 ~~under the Real Estate Law (Part 1 (commencing with Section~~  
 3 ~~10000) of Division 4 of the Business and Professions Code), a~~  
 4 ~~finance lender or broker licensed under the California Finance~~  
 5 ~~Lenders Law (Division 9 (commencing with Section 22000)), a~~  
 6 ~~residential mortgage lender licensed under the California~~  
 7 ~~Residential Mortgage Lending Act (Division 20 (commencing~~  
 8 ~~with Section 50000)), a commercial or industrial bank organized~~  
 9 ~~under the Banking Law (Division 1 (commencing with Section~~  
 10 ~~99)), a savings association organized under the Savings~~  
 11 ~~Association Law (Division 2 (commencing with Section 5000)),~~  
 12 ~~and a credit union organized under the California Credit Union~~  
 13 ~~Law (Division 5 (commencing with Section 14000)). Nothing in~~  
 14 ~~this division shall be construed to prevent any enforcement by a~~  
 15 ~~governmental entity against any person who originates a loan and~~  
 16 ~~who is exempt or excluded from licensure by all of the licensing~~  
 17 ~~agencies, based on a violation of any provision of this division.~~  
 18 ~~Nothing in this division shall be construed to prevent the~~  
 19 ~~Department of Real Estate from enforcing this division against a~~  
 20 ~~licensed salesperson employed by a licensed real estate broker as~~  
 21 ~~if that salesperson were a licensed person under this division. A~~  
 22 ~~licensed person includes any person engaged in the practice of~~  
 23 ~~consumer lending, as defined in this division, for which a license~~  
 24 ~~is required under any other provision of law, but whose license is~~  
 25 ~~invalid, suspended or revoked, or where no license has been~~  
 26 ~~obtained.~~

27 ~~(h) “Originate” means to arrange, negotiate, or make a~~  
 28 ~~consumer loan.~~

29 ~~(i) “Servicer” has the same meaning provided in Section 6~~  
 30 ~~(i)(2) of the Real Estate Settlement Procedures Act of 1974.~~

31

32 ~~CHAPTER 2. PROHIBITED ACTS~~

33

34 ~~4973. The following are prohibited acts and limitations for~~  
 35 ~~covered loans:~~

36 ~~(a) (1) A covered loan shall not include a prepayment fee or~~  
 37 ~~penalty after the first 36 months after the date of consummation of~~  
 38 ~~the loan.~~



1 ~~(2) A covered loan may include a prepayment fee or penalty up~~  
2 ~~to the first 36 months after the date of consummation of the loan~~  
3 ~~if:~~

4 ~~(A) The person who originates the covered loan has also~~  
5 ~~offered the consumer a choice of another product without a~~  
6 ~~prepayment fee or penalty.~~

7 ~~(B) The person who originates the covered loan has disclosed~~  
8 ~~in writing to the consumer at least three business days prior to loan~~  
9 ~~consummation the terms of the prepayment fee or penalty to the~~  
10 ~~consumer for accepting a covered loan with the prepayment~~  
11 ~~penalty and the rates, points, and fees that would be available to~~  
12 ~~the consumer for accepting a covered loan without a prepayment~~  
13 ~~penalty.~~

14 ~~(C) The person who originates the covered loan has limited the~~  
15 ~~amount of the prepayment fee or penalty to an amount not to~~  
16 ~~exceed the payment of six months' advance interest, at the contract~~  
17 ~~rate of interest then in effect, on the amount prepaid in any~~  
18 ~~12-month period in excess of 20 percent of the original principal~~  
19 ~~amount.~~

20 ~~(D) A covered loan will not impose the prepayment fee or~~  
21 ~~penalty if the covered loan is accelerated as a result of default.~~

22 ~~(E) The person who originates the covered loan will not finance~~  
23 ~~a prepayment penalty through a new loan that is originated by the~~  
24 ~~same person.~~

25 ~~(b) (1) A covered loan with a term of 5 years or less may not~~  
26 ~~provide at origination for a payment schedule with regular~~  
27 ~~periodic payments that when aggregated do not fully amortize the~~  
28 ~~principal balance as of the maturity date of the loan.~~

29 ~~(2) For a payment schedule that is adjusted to account for the~~  
30 ~~seasonal or irregular income of the consumer, the total installments~~  
31 ~~in any year shall not exceed the amount of one year's worth of~~  
32 ~~payments on the loan. This prohibition does not apply to a bridge~~  
33 ~~loan. For purposes of this paragraph, "bridge loan" means a loan~~  
34 ~~with a maturity of less than 18 months that only requires payments~~  
35 ~~of interest until the time when the entire unpaid balance is due and~~  
36 ~~payable.~~

37 ~~(c) A covered loan shall not contain a provision for negative~~  
38 ~~amortization such that the payment schedule for regular monthly~~  
39 ~~payments causes the principal balance to increase, unless the~~  
40 ~~covered loan is a first mortgage and the person who originate the~~



1 ~~loan discloses to the consumer that the loan contains a negative~~  
2 ~~amortization provision that may add principal to the balance of the~~  
3 ~~loan.~~

4 ~~(d) A covered loan shall not include terms under which~~  
5 ~~periodic payments required under the loan are consolidated and~~  
6 ~~paid in advance from the loan proceeds.~~

7 ~~(e) A covered loan shall not contain a provision that increases~~  
8 ~~the interest rate as a result of a default. This provision does not~~  
9 ~~apply to interest rate changes in a variable rate loan otherwise~~  
10 ~~consistent with the provisions of the loan documents, provided the~~  
11 ~~change in the interest rate is not triggered by the event of default~~  
12 ~~or the acceleration for the indebtedness.~~

13 ~~(f) (1) A person who originates covered loans shall not make~~  
14 ~~or arrange a covered loan unless at the time the loan is~~  
15 ~~consummated, the person reasonably believes the consumer, or~~  
16 ~~consumers, when considered collectively in the case of multiple~~  
17 ~~consumers, will be able to make the scheduled payments to repay~~  
18 ~~the obligation based upon a consideration of their current and~~  
19 ~~expected income, current obligations, employment status, and~~  
20 ~~other financial resources, other than the consumer's equity in the~~  
21 ~~dwelling that secures repayment of the loan. In the case of a~~  
22 ~~covered loan that is structured to increase to a specific designated~~  
23 ~~rate, stated as a number or formula, at a specific predetermined~~  
24 ~~date not exceeding 37 months from the date of application, this~~  
25 ~~evaluation shall be based upon the fully indexed rate of the loan~~  
26 ~~calculated at the time of application.~~

27 ~~The consumer shall be presumed to be able to make the~~  
28 ~~scheduled payments to repay the obligation if, at the time the loan~~  
29 ~~is consummated, the consumer's total monthly debts, including~~  
30 ~~amounts owed under the loan, do not exceed 55 percent of the~~  
31 ~~consumer's monthly gross income, as verified by the credit~~  
32 ~~application, the consumer's financial statement, a credit report,~~  
33 ~~financial information provided to the person originating the loan~~  
34 ~~by or on behalf of the consumer, or any other reasonable means.~~

35 ~~(2) No presumption of inability to make the scheduled~~  
36 ~~payments to repay the obligation shall arise solely from the fact~~  
37 ~~that at the time the loan is consummated, the consumer's total~~  
38 ~~monthly debts, including amounts owed under the loan, exceed 55~~  
39 ~~percent of the consumer's monthly gross income.~~



1 ~~(3) In the case of a stated income loan, the reasonable belief~~  
2 ~~requirement in paragraph (1) shall apply, however, for stated~~  
3 ~~income loans that belief may be based on the income stated by the~~  
4 ~~consumer, and other information in the possession of the person~~  
5 ~~originating the loan after the solicitation of all information that the~~  
6 ~~person customarily solicits in connection with loans of this type.~~  
7 ~~A person shall not knowingly or willfully originate a covered loan~~  
8 ~~as a stated income loan with the intent, or effect, of evading the~~  
9 ~~provisions of this subdivision.~~

10 ~~(g) A person who originates a covered loan shall not pay a~~  
11 ~~contractor under a home-improvement contract from the proceeds~~  
12 ~~of a covered loan other than by an instrument payable to the~~  
13 ~~consumer or jointly to the consumer and the contractor or, at the~~  
14 ~~election of the consumer, to a third party escrow agent for the~~  
15 ~~benefit of the contractor in accordance with terms and conditions~~  
16 ~~established in a written escrow agreement signed by the consumer,~~  
17 ~~the person who originates a covered loan, and the contractor prior~~  
18 ~~to the disbursement of funds. No payments, other than progress~~  
19 ~~payments for home-improvement work that the consumer certifies~~  
20 ~~is completed, shall be made to an escrow account or jointly to the~~  
21 ~~consumer and the contractor unless the person who originates the~~  
22 ~~loan is presented with a signed and dated completion certificate by~~  
23 ~~the consumer showing that the home-improvement contract was~~  
24 ~~completed to the satisfaction of the consumer.~~

25 ~~(h) It is unlawful for a person who originates a covered loan~~  
26 ~~to recommend or encourage a consumer to default on an existing~~  
27 ~~consumer loan or other debt in connection with the solicitation or~~  
28 ~~making of a covered loan that refinances all or any portion of the~~  
29 ~~existing consumer loan or debt.~~

30 ~~(i) A covered loan shall not contain a call provision that permits~~  
31 ~~the lender, in its sole discretion, to accelerate the indebtedness.~~  
32 ~~This prohibition does not apply if repayment of the loan has been~~  
33 ~~accelerated in accordance with the terms of the loan documents (1)~~  
34 ~~as a result of the consumer's default, (2) pursuant to a due-on-sale~~  
35 ~~provision, or (3) due to fraud or material misrepresentation by a~~  
36 ~~consumer in connection with the loan or the value of the security~~  
37 ~~for the loan.~~

38 ~~(j) A person who originates a covered loan shall not refinance~~  
39 ~~or arrange for the refinancing of a consumer loan such that the new~~  
40 ~~loan is a covered loan that is made for the purpose of refinancing,~~



1 ~~debt consolidation or cash out, that does not result in an~~  
2 ~~identifiable benefit to the consumer, considering the consumer's~~  
3 ~~stated purpose for seeking the loan, fees, interest rates, finance~~  
4 ~~charges, and points.~~

5 ~~(k) (1) A covered loan shall not be made unless the following~~  
6 ~~disclosure, written in 12-point font or larger, has been provided to~~  
7 ~~the consumer no later than three business days prior to signing of~~  
8 ~~the loan documents of the transaction:~~

9

10 ~~CONSUMER CAUTION AND HOME OWNERSHIP~~  
11 ~~COUNSELING NOTICE~~

12

13 ~~If you obtain this loan, the lender will have a mortgage on your~~  
14 ~~home. You could lose your home, and any money you have put into~~  
15 ~~it, if you do not meet your obligations under the loan.~~

16 ~~Mortgage loan rates and closing costs and fees vary based on~~  
17 ~~many other factors, including your particular credit and financial~~  
18 ~~circumstances, your earnings history, the loan-to-value requested,~~  
19 ~~and the type of property that will secure your loan. Higher rates and~~  
20 ~~fees may be justified depending on the individual circumstances~~  
21 ~~of a particular consumer's application. You should shop around~~  
22 ~~and compare loan rates and fees.~~

23 ~~This particular loan may have a higher rate and total points and~~  
24 ~~fees than other mortgage loans and is, or may be, subject to the~~  
25 ~~additional disclosure and substantive protections under Division~~  
26 ~~1.6 (commencing with Section 4970 of the Financial Code. You~~  
27 ~~should consider consulting a qualified independent credit~~  
28 ~~counselor or other experienced financial adviser regarding the~~  
29 ~~rate, fees, and provisions of this mortgage loan before you~~  
30 ~~proceed. For information on contacting a qualified credit~~  
31 ~~counselor, ask your lender or call the United States Department of~~  
32 ~~Housing and Urban Development's counseling hotline at~~  
33 ~~1-888-466-3487 or go to [www.hud.gov/fha/sfh/hec](http://www.hud.gov/fha/sfh/hec) for a list of~~  
34 ~~counselors.~~

35 ~~You are not required to complete any loan agreement merely~~  
36 ~~because you have received these disclosures or have signed a loan~~  
37 ~~application.~~

38 ~~If you proceed with this mortgage loan, you should also~~  
39 ~~remember that you may face serious financial risks if you use this~~  
40 ~~loan to pay off credit card debts and other debts in connection with~~



1 ~~this transaction and then subsequently incur significant new credit~~  
2 ~~card charges or other debts. If you continue to accumulate debt~~  
3 ~~after this loan is closed and then experience financial difficulties,~~  
4 ~~you could lose your home and any equity you have in it if you do~~  
5 ~~not meet your mortgage loan obligations.~~

6 ~~Property taxes and homeowner's insurance are your~~  
7 ~~responsibility. Not all lenders provide escrow services for these~~  
8 ~~payments. You should ask your lender about these services.~~

9 ~~Your payments on existing debts contribute to your credit~~  
10 ~~ratings. You should not accept any advice to ignore your regular~~  
11 ~~payments to your existing creditors.~~

12 ~~(2) It shall be a rebuttable presumption that a licensed person~~  
13 ~~has met its obligation to provide this disclosure if the consumer~~  
14 ~~provides the licensed person with a signed acknowledgment of~~  
15 ~~receipt of a copy of the notice set forth in paragraph (1).~~

16 ~~(l) (1) A person who originates a covered loan shall not steer,~~  
17 ~~counsel, or direct any prospective consumer to accept a loan~~  
18 ~~product with a risk grade less favorable than the risk grade that the~~  
19 ~~consumer would qualify for based on that person's then current~~  
20 ~~underwriting guidelines, prudently applied, considering the~~  
21 ~~information available to that person, including the information~~  
22 ~~provided by the consumer.~~

23 ~~A person shall not be deemed to have violated this section if the~~  
24 ~~risk grade determination applied to a consumer is reasonably based~~  
25 ~~on the person's underwriting guidelines if it is an appropriate risk~~  
26 ~~grade category for which the consumer qualifies with the person.~~

27 ~~(2) If a broker originates a covered loan, the broker shall not~~  
28 ~~steer, counsel, or direct any prospective consumer to accept a loan~~  
29 ~~product at a higher cost than that for which the consumer could~~  
30 ~~qualify based on the loan products offered by the persons with~~  
31 ~~whom the broker regularly does business.~~

32 ~~(m) A person who originates a covered loan shall not avoid, or~~  
33 ~~attempt to avoid, the application of this division by doing the~~  
34 ~~following:~~

35 ~~(1) Structuring a loan transaction as an open end credit plan for~~  
36 ~~the purpose of evading the provisions of this division when the~~  
37 ~~loan would have been a covered loan if the loan had been~~  
38 ~~structured as a closed end loan.~~

39 ~~(2) Dividing any loan transaction into separate parts for the~~  
40 ~~purpose of evading the provisions of this division.~~



1 ~~(n) A person who originates a covered loan shall not act in any~~  
2 ~~manner, whether specifically prohibited by this section or of a~~  
3 ~~different character, that constitutes fraud.~~

4  
5 CHAPTER 3. — ENFORCEMENT  
6

7 ~~4974. (a) Any compliance failure that was not willful or~~  
8 ~~intentional and resulted from a bona fide error, that occurred~~  
9 ~~notwithstanding the maintenance of procedures reasonably~~  
10 ~~adopted to avoid those errors, including, but not limited to, those~~  
11 ~~involving clerical, calculation, computer malfunction and~~  
12 ~~programming, and printing errors shall be corrected no later than~~  
13 ~~45 days after receipt of the complaint or discovery of the error. A~~  
14 ~~person who originates a covered loan shall not be administratively,~~  
15 ~~civily, or criminally liable for a bona fide error corrected pursuant~~  
16 ~~to this section.~~

17 ~~(b) If a person who originates covered loans makes a loan~~  
18 ~~where the person knew of and showed reckless disregard for a~~  
19 ~~violation of this division by a broker, the person and broker shall~~  
20 ~~be jointly and severally liable for all damages awarded under this~~  
21 ~~division with respect to the broker's unlawful conduct.~~

22 ~~This section does not impose or transfer liability for a breach of~~  
23 ~~the broker's fiduciary duty.~~

24 ~~4975. (a) (1) Any licensed person who violates any~~  
25 ~~provision of Section 4973, 4979.6, or 4979.7 shall be deemed to~~  
26 ~~have violated that person's licensing law.~~

27 ~~(2) After a knowing and willful violation, the licensing agency~~  
28 ~~may bring a proceeding to suspend the license of the licensed~~  
29 ~~person for not less than six months and not more than three years.~~

30 ~~(b) After a knowing and willful violation resulting in a second~~  
31 ~~or subsequent administrative or civil action, the licensing agency~~  
32 ~~may bring a proceeding to permanently revoke the license of the~~  
33 ~~licensed person or impose any lesser licensed sanction for at least~~  
34 ~~three years.~~

35 ~~(c) A licensing agency may exercise any and all authority and~~  
36 ~~powers available to it under any other provisions of law, to~~  
37 ~~administer and enforce this division including, but not limited to,~~  
38 ~~investigating and examining the licensed person's books and~~  
39 ~~records, and charging and collecting the reasonable costs for these~~  
40 ~~activities. The licensing agency shall not charge a licensed person~~



1 ~~twice for the same service. Any civil, criminal, and administrative~~  
2 ~~authority and remedies available to the licensing agency pursuant~~  
3 ~~to its licensing law may be sought and employed in any~~  
4 ~~combination deemed advisable by the licensing agency to enforce~~  
5 ~~the provisions of this division.~~

6 ~~(d) Nothing in this section shall be construed to impair or~~  
7 ~~impede a licensing agency's authority under any other provision~~  
8 ~~of law.~~

9 ~~4977. (a) A licensing agency may, after appropriate notice~~  
10 ~~and opportunity for hearing, by order levy administrative penalties~~  
11 ~~against a person who violates any provision of this division, and~~  
12 ~~the person shall be liable for administrative penalties of not more~~  
13 ~~than two thousand five hundred dollars (\$2,500) for each~~  
14 ~~violation. Except for licensing agencies exempt from the~~  
15 ~~provisions of the Administrative Procedure Act, any hearing shall~~  
16 ~~be held in accordance with the Administrative Procedure Act~~  
17 ~~(Chapter 5 (commencing with Section 11500) of Part 1 of Division~~  
18 ~~3 of Title 2 of the Government Code), and the licensing agency~~  
19 ~~shall have all the powers granted under that act.~~

20 ~~(b) Any person who willfully and knowingly violates any~~  
21 ~~provision of this division shall be liable for a civil penalty of not~~  
22 ~~more than twenty-five thousand dollars (\$25,000) for each~~  
23 ~~violation which shall be assessed and recovered in a civil action~~  
24 ~~brought in the name of the people of the State of California by the~~  
25 ~~licensing agency in any court of competent jurisdiction.~~

26 ~~(c) Nothing in this section shall be construed to preclude an~~  
27 ~~injured party from bringing a civil action for a violation of the~~  
28 ~~division's provisions. Nothing in this section requires exhaustion~~  
29 ~~of administrative remedies prior to an injured party bringing a civil~~  
30 ~~action.~~

31 ~~(d) If the licensing agency determines that it is in the public~~  
32 ~~interest, the licensing agency may include, in any action for~~  
33 ~~penalties authorized by subdivision (b), a claim for relief in~~  
34 ~~addition to the penalties, including a claim for restitution or~~  
35 ~~disgorgement, and the court shall have jurisdiction to award the~~  
36 ~~additional relief.~~

37 ~~(e) Nothing in this section shall be construed to impair or~~  
38 ~~impede the Attorney General from representing a licensing agency~~  
39 ~~in bringing an action to enforce this division at the request and on~~  
40 ~~behalf of the licensing agency.~~



1 ~~(f) In any action brought by the licensing agency, or the~~  
2 ~~Attorney General acting at the request and at the behest of the~~  
3 ~~licensing agency, under this division in which a judgment against~~  
4 ~~a person is rendered, the licensing agency or the Attorney General~~  
5 ~~shall be entitled to recover costs which, in the discretion of the~~  
6 ~~court, may include an amount representing reasonable attorney's~~  
7 ~~fees and investigative expenses for services rendered for deposit~~  
8 ~~in the appropriate fund of that licensing agency.~~

9 ~~(g) The amounts collected under subdivisions (a) and (b) shall~~  
10 ~~be deposited in the appropriate fund of the licensing agency to be~~  
11 ~~used by that licensing agency, subject to appropriation by the~~  
12 ~~Legislature, for the purposes of education and enforcement in~~  
13 ~~connection with abusive lending practices.~~

14 ~~4978.—(a) A person who fails to comply with the provisions~~  
15 ~~of this division is civilly liable to the consumer in an amount equal~~  
16 ~~to any actual damages suffered by the consumer, plus attorneys~~  
17 ~~fees and costs. For a willful and knowing violation of this division,~~  
18 ~~the person shall be liable to the consumer in the amount of fifteen~~  
19 ~~thousand dollars (\$15,000) or the consumers actual damages,~~  
20 ~~whichever is greater, plus attorneys fees and costs.~~

21 ~~(b) (1) If a provision in a contract in a covered loan violates~~  
22 ~~subdivision (a), (b), (c), (d), (e), or (i) of Section 4973, Section~~  
23 ~~4979.6, or Section 4979.7, that provision is unenforceable. A court~~  
24 ~~in which any action is brought by, or on behalf of, an aggrieved~~  
25 ~~consumer for relief may issue an order or injunction to reform the~~  
26 ~~terms of the covered loan to conform to the provisions of this~~  
27 ~~division.~~

28 ~~(2) A court may, in addition to any other remedy, award~~  
29 ~~punitive damages to the consumer upon a finding that such~~  
30 ~~damages are warranted pursuant to Section 3294 of the Civil Code.~~

31 ~~(c) Nothing in this section is intended, nor shall be construed,~~  
32 ~~to abrogate existing common law provisions prohibiting double~~  
33 ~~recovery of damages.~~

34 ~~4978.6.—A person who originates covered loans shall inform~~  
35 ~~any employee, who originates covered loans on behalf of the~~  
36 ~~person, of the administrative or civil penalties for a violation of~~  
37 ~~this division.~~

38 ~~4979.—Upon request, a person who originates a covered loan~~  
39 ~~shall provide the licensing agency or the consumer, at no cost,~~  
40 ~~documentation regarding his or her loan that clearly demonstrates~~



1 ~~whether any loan is a covered loan. This documentation shall~~  
2 ~~include, but not be limited to, full disclosure of the original~~  
3 ~~principal balance, the annual percentage rate, and the total points~~  
4 ~~and fees, as defined in Section 4970.~~

5 ~~4979.5. (a) A person who provides brokerage services to a~~  
6 ~~borrower in a covered loan transaction by soliciting lenders or~~  
7 ~~otherwise negotiating a consumer loan secured by real property, is~~  
8 ~~the fiduciary of the consumer, and any violation of the person's~~  
9 ~~fiduciary duties shall be a violation of this section. A broker who~~  
10 ~~arranges a covered loan owes this fiduciary duty to the consumer~~  
11 ~~regardless of who else the broker may be acting as an agent for in~~  
12 ~~the course of the loan transaction.~~

13 ~~(b) Except for a broker or a person who provides brokerage~~  
14 ~~services, no licensed person or subsequent assignee shall have~~  
15 ~~administrative, civil, or criminal liability for a violation of this~~  
16 ~~section.~~

17 ~~4979.6. A person who originates a covered loan shall not~~  
18 ~~make a covered loan that finances points and fees in excess of one~~  
19 ~~thousand dollars (\$1,000) or 6 percent of the original principal~~  
20 ~~balance, exclusive of points and fees, whichever is greater.~~

21 ~~4979.7. On and after July 1, 2002, a person who originates a~~  
22 ~~consumer loan shall not finance, directly or indirectly, into a~~  
23 ~~consumer loan or finance to the same borrower within 30 days of~~  
24 ~~a consumer loan any credit life, credit disability, credit property,~~  
25 ~~or credit unemployment insurance premiums, or any debt~~  
26 ~~cancellation or suspension agreement fees, provided that credit~~  
27 ~~insurance premiums, debt cancellation, or suspension fees~~  
28 ~~calculated and paid on a monthly basis shall not be considered~~  
29 ~~financed by the person originating the loan. For purposes of this~~  
30 ~~section, credit insurance does not include a contract issued by a~~  
31 ~~government agency or private mortgage insurance company to~~  
32 ~~insure the lender against loss caused by a mortgagor's default.~~

33 ~~4979.8. The provisions of this division shall not impose~~  
34 ~~liability on an assignee that is a holder in due course. The~~  
35 ~~provisions of this division shall not apply to persons chartered by~~  
36 ~~Congress to engage in secondary mortgage market transactions.~~

37 ~~SEC. 3. The provisions of this act shall apply to a consumer~~  
38 ~~loan applied for on or after July 1, 2002.~~

39 ~~SEC. 4. The provisions of this act are severable. If any~~  
40 ~~provision of this act or its application is held invalid, that invalidity~~



1 shall not affect other provisions or applications that can be given  
2 effect without the invalid provision or application.  
3 SEC. 5. ~~No reimbursement is required by this act pursuant to~~  
4 ~~Section 6 of Article XIII B of the California Constitution because~~  
5 ~~the only costs that may be incurred by a local agency or school~~  
6 ~~district will be incurred because this act creates a new crime or~~  
7 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
8 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
9 ~~the Government Code, or changes the definition of a crime within~~  
10 ~~the meaning of Section 6 of Article XIII B of the California~~  
11 ~~Constitution.~~

