

AMENDED IN SENATE APRIL 26, 2006

AMENDED IN SENATE MARCH 28, 2006

SENATE BILL

No. 1609

Introduced by Senator Simitian
(Principal coauthor: Assembly Member Wolk)

February 24, 2006

An act to amend Sections 1632, 1923.2, and 1923.5 of the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1609, as amended, Simitian. Reverse mortgages: annuities.

Existing state and federal law regulate the activities of financial institutions. Existing state law defines and regulates reverse mortgage loans and provides a disclosure notice that a lender must provide an applicant, which informs the applicant that a reverse mortgage is a complex financial arrangement and advises the applicant of the wisdom of seeking financial counseling before entering the agreement.

This bill would prohibit a lender from requiring the purchase of an annuity as ~~part a condition of obtaining a reverse mortgage transaction. The bill would prohibit a lender from offering an annuity to a borrower prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the agreement loan.~~ *loan.* *The bill would prohibit any person from selling an annuity to a reverse mortgage borrower on or before 30 days after the closing of the borrower's reverse mortgage loan.* The bill would, among other things, require a lender to refer a prospective borrower to a housing counseling agency for counseling on the advisability and appropriateness of the loan prior to accepting an application for a

reverse mortgage, and would prohibit a lender from ~~making~~ *accepting an application for* a reverse mortgage loan without receiving certification, as specified, that the borrower had ~~receiving~~ *received* this counseling. The bill would make changes to the disclosure notice provided to an applicant for a reverse *mortgage* and would require a lender to provide a specified list of independent loan counselors.

Existing law requires any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean in the course of entering into specified contracts to deliver to the other party, prior to the execution of a contract or agreement, a translation of it in the language in which it was negotiated.

This bill would include contracts for reverse mortgages within these provisions. The bill would require a lender to ensure compliance with these provisions in the case of brokered loans.

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

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

1 SECTION 1. Section 1632 of the Civil Code is amended to
2 read:

3 1632. (a) The Legislature hereby finds and declares all of the
4 following:

5 (1) This section was enacted in 1976 to increase consumer
6 information and protections for the state's sizeable and growing
7 Spanish-speaking population.

8 (2) Since 1976, the state's population has become increasingly
9 diverse and the number of Californians who speak languages
10 other than English as their primary language at home has
11 increased dramatically.

12 (3) According to data from the United States Census of 2000,
13 of the more than 12 million Californians who speak a language
14 other than English in the home, approximately 4.3 million speak
15 an Asian dialect or another language other than Spanish. The top
16 five languages other than English most widely spoken by
17 Californians in their homes are Spanish, Chinese, Tagalog,
18 Vietnamese, and Korean. Together, these languages are spoken
19 by approximately 83 percent of all Californians who speak a
20 language other than English in their homes.

1 (b) Any person engaged in a trade or business who negotiates
2 primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,
3 orally or in writing, in the course of entering into any of the
4 following, shall deliver to the other party to the contract or
5 agreement and prior to the execution thereof, a translation of the
6 contract or agreement in the language in which the contract or
7 agreement was negotiated, which includes a translation of every
8 term and condition in that contract or agreement:

9 (1) A contract or agreement subject to the provisions of Title 2
10 (commencing with Section 1801) of, and Chapter 2b
11 (commencing with Section 2981) and Chapter 2d (commencing
12 with Section 2985.7) of Title 14 of, Part 4 of Division 3.

13 (2) A loan or extension of credit secured other than by real
14 property, or unsecured, for use primarily for personal, family or
15 household purposes.

16 (3) A lease, sublease, rental contract or agreement, or other
17 term of tenancy contract or agreement, for a period of longer than
18 one month, covering a dwelling, an apartment, or mobilehome, or
19 other dwelling unit normally occupied as a residence.

20 (4) Notwithstanding paragraph (2), a loan or extension of
21 credit for use primarily for personal, family or household
22 purposes where the loan or extension of credit is subject to the
23 provisions of Article 7 (commencing with Section 10240) of
24 Chapter 3 of Part 1 of Division 4 of the Business and Professions
25 Code, or Division 7 (commencing with Section 18000), or
26 Division 9 (commencing with Section 22000) of the Financial
27 Code.

28 (5) Notwithstanding paragraph (2), a reverse mortgage as
29 described in Chapter 8 (commencing with Section 1923) of Title
30 4 of Part 4 of Division 3.

31 (6) A contract or agreement, containing a statement of fees or
32 charges, entered into for the purpose of obtaining legal services,
33 when the person who is engaged in business is currently licensed
34 to practice law pursuant to Chapter 4 (commencing with Section
35 6000) of Division 3 of the Business and Professions Code.

36 (c) Notwithstanding subdivision (b), for a loan subject to this
37 part and to Article 7 (commencing with Section 10240) of
38 Chapter 3 of Part 1 of Division 4 of the Business and Professions
39 Code, the delivery of a translation of the statement to the
40 borrower required by Section 10240 of the Business and

1 Professions Code in any of the languages specified in subdivision
2 (b) in which the contract or agreement was negotiated, is in
3 compliance with subdivision (b).

4 (d) At the time and place where a lease, sublease, or rental
5 contract or agreement described in subdivision (b) is executed,
6 notice in any of the languages specified in subdivision (b) in
7 which the contract or agreement was negotiated shall be provided
8 to the lessee or tenant.

9 (e) Provision by a supervised financial organization of a
10 translation of the disclosures required by Regulation M or
11 Regulation Z, and, if applicable, Division 7 (commencing with
12 Section 18000) or Division 9 (commencing with Section 22000)
13 of the Financial Code in any of the languages specified in
14 subdivision (b) in which the contract or agreement was
15 negotiated, prior to the execution of the contract or agreement,
16 shall also be deemed in compliance with the requirements of
17 subdivision (b) with regard to the original contract or agreement.

18 (1) “Regulation M” and “Regulation Z” mean any rule,
19 regulation, or interpretation promulgated by the Board of
20 Governors of the Federal Reserve System and any interpretation
21 or approval issued by an official or employee duly authorized by
22 the board to issue interpretations or approvals dealing with,
23 respectively, consumer leasing or consumer lending, pursuant to
24 the Federal Truth in Lending Act, as amended (15 U.S.C. Sec.
25 1601 et seq.).

26 (2) As used in this section, “supervised financial organization”
27 means a bank, savings association as defined in Section 5102 of
28 the Financial Code, credit union, or holding company, affiliate,
29 or subsidiary thereof, or any person subject to Article 7
30 (commencing with Section 10240) of Chapter 3 of Part 1 of
31 Division 4 of the Business and Professions Code, or Division 7
32 (commencing with Section 18000) or Division 9 (commencing
33 with Section 22000) of the Financial Code.

34 (f) At the time and place where a contract or agreement
35 described in paragraph (1) or (2) of subdivision (b) is executed, a
36 notice in any of the languages specified in subdivision (b) in
37 which the contract or agreement was negotiated shall be
38 conspicuously displayed to the effect that the person described in
39 subdivision (b) is required to provide a contract or agreement in
40 the language in which the contract or agreement was negotiated,

1 or a translation of the disclosures required by law in the language
2 in which the contract or agreement was negotiated, as the case
3 may be. If a person described in subdivision (b) does business at
4 more than one location or branch, the requirements of this section
5 shall apply only with respect to the location or branch at which
6 the language in which the contract or agreement was negotiated
7 is used.

8 (g) The term “contract” or “agreement,” as used in this
9 section, means the document creating the rights and obligations
10 of the parties and includes any subsequent document making
11 substantial changes in the rights and obligations of the parties.
12 The term “contract” or “agreement” does not include any
13 subsequent documents authorized or contemplated by the original
14 document such as periodic statements, sales slips or invoices
15 representing purchases made pursuant to a credit card agreement,
16 a retail installment contract or account or other revolving sales or
17 loan account, memoranda of purchases in an add-on sale, or
18 refinancing of a purchase as provided by, or pursuant to, the
19 original document.

20 The term “contract” or “agreement” does not include a home
21 improvement contract as defined in Sections 7151.2 and 7159 of
22 the Business and Professions Code, nor does it include plans,
23 specifications, description of work to be done and materials to be
24 used, or collateral security taken or to be taken for the retail
25 buyer’s obligation contained in a contract for the installation of
26 goods by a contractor licensed pursuant to Chapter 9
27 (commencing with Section 7000) of Division 3 of the Business
28 and Professions Code, if the home improvement contract or
29 installation contract is otherwise a part of a contract described in
30 subdivision (b).

31 Matters ordinarily incorporated by reference in contracts or
32 agreements as described in paragraph (3) of subdivision (b),
33 including, but not limited to, rules and regulations governing a
34 tenancy and inventories of furnishings to be provided by the
35 person described in subdivision (b), are not included in the term
36 “contract” or “agreement.”

37 (h) This section does not apply to any person engaged in a
38 trade or business who negotiates primarily in a language other
39 than English, as described by subdivision (b), if the party with
40 whom he or she is negotiating is a buyer of goods or services, or

1 receives a loan or extension of credit, or enters an agreement
2 obligating himself or herself as a tenant, lessee, or sublessee, or
3 similarly obligates himself or herself by contract or lease, and the
4 party negotiates the terms of the contract, lease, or other
5 obligation through his or her own interpreter.

6 As used in this subdivision, “his or her own interpreter” means
7 a person, not a minor, able to speak fluently and read with full
8 understanding both the English language and any of the
9 languages specified in subdivision (b) in which the contract or
10 agreement was negotiated, and who is not employed by, or
11 whose service is made available through, the person engaged in
12 the trade or business.

13 (i) Notwithstanding subdivision (b), a translation may retain
14 the following elements of the executed English-language contract
15 or agreement without translation: names and titles of individuals
16 and other persons, addresses, brand names, trade names,
17 trademarks, registered service marks, full or abbreviated
18 designations of the make and model of goods or services,
19 alphanumeric codes, numerals, dollar amounts expressed in
20 numerals, dates, and individual words or expressions having no
21 generally accepted non-English translation. It is permissible, but
22 not required, that this translation be signed.

23 (j) The terms of the contract or agreement which is executed in
24 the English language shall determine the rights and obligations of
25 the parties. However, the translation of the contract or the
26 disclosures required by subdivision (e) in any of the languages
27 specified in subdivision (b) in which the contract or agreement
28 was negotiated shall be admissible in evidence only to show that
29 no contract was entered into because of a substantial difference
30 in the material terms and conditions of the contract and the
31 translation.

32 (k) Upon a failure to comply with the provisions of this
33 section, the person aggrieved may rescind the contract or
34 agreement in the manner provided by this chapter. When the
35 contract for a consumer credit sale or consumer lease which has
36 been sold and assigned to a financial institution is rescinded
37 pursuant to this subdivision, the consumer shall make restitution
38 to and have restitution made by the person with whom he or she
39 made the contract, and shall give notice of rescission to the
40 assignee. Notwithstanding that the contract was assigned without

1 recourse, the assignment shall be deemed rescinded and the
2 assignor shall promptly repurchase the contract from the
3 assignee.

4 SEC. 2. Section 1923.2 of the Civil Code is amended to read:
5 1923.2. A reverse mortgage loan shall comply with all of the
6 following requirements:

7 (a) Prepayment, in whole or in part, shall be permitted without
8 penalty at any time during the term of the reverse mortgage loan.
9 For the purposes of this section, penalty does not include any
10 fees, payments, or other charges that would have otherwise been
11 due upon the reverse mortgage being due and payable.

12 (b) A reverse mortgage loan may provide for a fixed or
13 adjustable interest rate or combination thereof, including
14 compound interest, and may also provide for interest that is
15 contingent on the value of the property upon execution of the
16 loan or at maturity, or on changes in value between closing and
17 maturity.

18 (c) A reverse mortgage may include costs and fees that are
19 charged by the lender, or the lender's designee, originator, or
20 servicer, including costs and fees charged upon execution of the
21 loan, on a periodic basis, or upon maturity.

22 (d) If a reverse mortgage loan provides for periodic advances
23 to a borrower, these advances shall not be reduced in amount or
24 number based on any adjustment in the interest rate.

25 (e) A lender who fails to make loan advances as required in
26 the loan documents, and fails to cure an actual default after
27 notice as specified in the loan documents, shall forfeit to the
28 borrower treble the amount wrongfully withheld plus interest at
29 the legal rate.

30 (f) The reverse mortgage loan may become due and payable
31 upon the occurrence of any one of the following events:

32 (1) The home securing the loan is sold or title to the home is
33 otherwise transferred.

34 (2) All borrowers cease occupying the home as a principal
35 residence, except as provided in subdivision (h).

36 (3) Any fixed maturity date agreed to by the lender and the
37 borrower occurs.

38 (4) An event occurs which is specified in the loan documents
39 and which jeopardizes the lender's security.

1 (g) Repayment of the reverse mortgage loan shall be subject to
2 the following additional conditions:

3 (1) Temporary absences from the home not exceeding 60
4 consecutive days shall not cause the mortgage to become due and
5 payable.

6 (2) Extended absences from the home exceeding 60
7 consecutive days, but less than one year, shall not cause the
8 mortgage to become due and payable if the borrower has taken
9 prior action which secures and protects the home in a manner
10 satisfactory to the lender, as specified in the loan documents.

11 (3) The lender's right to collect reverse mortgage loan
12 proceeds shall be subject to the applicable statute of limitations
13 for written loan contracts. Notwithstanding any other provision
14 of law, the statute of limitations shall commence on the date that
15 the reverse mortgage loan becomes due and payable as provided
16 in the loan agreement.

17 (4) The lender shall prominently disclose in the loan
18 agreement any interest rate or other fees to be charged during the
19 period that commences on the date that the reverse mortgage loan
20 becomes due and payable, and that ends when repayment in full
21 is made.

22 (h) The first page of any deed of trust securing a reverse
23 mortgage loan shall contain the following statement in 10-point
24 boldface type: "This deed of trust secures a reverse mortgage
25 loan."

26 ~~(i) A reverse mortgage shall not require the purchase of an
27 annuity to the borrower executing a reverse mortgage. A lender
28 shall not offer an annuity prior to the closing of the reverse
29 mortgage or before the expiration of the right of the borrower to
30 rescind the reverse mortgage agreement.~~

31 *(i) A lender shall not require an applicant for a reverse
32 mortgage to purchase an annuity as a condition of obtaining a
33 reverse mortgage loan. A person shall not sell an annuity to a
34 reverse mortgage borrower on or before 30 days after the
35 closing of the borrower's reverse mortgage loan, and an annuity
36 sold to a reverse mortgage borrower during this period is void
37 and unenforceable.*

38 (j) Prior to accepting an application for a reverse mortgage
39 loan, a lender shall refer the prospective borrower to a housing
40 counseling agency approved by the United States Department of

1 Housing and Urban Development for counseling on the
 2 advisability of the particular loan at issue and the appropriateness
 3 of that loan for the borrower. The lender shall provide the
 4 borrower with a ~~complete list~~ *list of at least five* housing
 5 counseling agencies *or counselors* approved by the United States
 6 Department of Housing and Urban Development.

7 (k) A lender shall not ~~make a reverse mortgage loan without~~
 8 ~~first receiving certification that the prospective borrower received~~
 9 ~~the counseling from an approved housing counseling agency~~
 10 ~~required by subdivision (j) prior to entering into the reverse~~
 11 ~~mortgage~~ *accept an application for a reverse mortgage loan from*
 12 *a prospective applicant without first receiving a certification*
 13 *from the applicant or the applicant's authorized representative*
 14 *that the applicant has received counseling from an agency or*
 15 *counselor as described in subdivision (j).* The ~~certificate~~
 16 ~~certification~~ shall be signed by the borrower and the counselor,
 17 and shall include the date of the counseling and the name,
 18 address, and telephone number of both the housing counseling
 19 agency and the borrower. The ~~certificate shall be kept on file by~~
 20 ~~the lender for the term of the reverse~~ *lender shall maintain the*
 21 *certification for the term of the reverse mortgage.*

22 (l) A lender shall not make a reverse mortgage loan without
 23 first complying with, or in the case of brokered loans ensuring
 24 compliance with, the requirements of Section 1632.

25 SEC. 3. Section 1923.5 of the Civil Code is amended to read:
 26 1923.5. No reverse mortgage loan application shall be taken
 27 by a lender unless the loan applicant has received from the lender
 28 the following plain language statement in conspicuous 16-point
 29 type or larger, advising the prospective borrower about
 30 counseling prior to obtaining the reverse mortgage loan:

31
 32 **IMPORTANT NOTICE**
 33 **TO REVERSE MORTGAGE LOAN APPLICANT**
 34

35 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL
 36 TRANSACTION THAT PROVIDES A MEANS OF USING
 37 THE EQUITY YOU HAVE BUILT UP IN YOUR HOME, OR
 38 THE VALUE OF YOUR HOME, AS A SOURCE OF
 39 ADDITIONAL INCOME. IF YOU DECIDE TO OBTAIN A
 40 REVERSE MORTGAGE LOAN, YOU WILL SIGN BINDING

1 LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT
2 LEGAL AND FINANCIAL IMPLICATIONS FOR YOU AND
3 YOUR ESTATE. IT IS THEREFORE IMPORTANT TO
4 UNDERSTAND THE TERMS OF THE REVERSE
5 MORTGAGE AND ITS EFFECT. BEFORE ENTERING INTO
6 THIS TRANSACTION, YOU ARE REQUIRED TO CONSULT
7 WITH AN INDEPENDENT LOAN COUNSELOR. A LIST OF
8 APPROVED COUNSELORS WILL BE PROVIDED TO YOU
9 BY THE LENDER.
10 YOU MAY ALSO WANT TO DISCUSS YOUR DECISION
11 WITH FAMILY MEMBERS OR OTHERS ON WHOM YOU
12 RELY FOR FINANCIAL ADVICE.

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