

Senate Bill No. 1609

Passed the Senate August 23, 2006

Secretary of the Senate

Passed the Assembly August 17, 2006

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 a condition of obtaining a reverse mortgage loan. The bill would prohibit a reverse mortgage lender or a broker arranging a reverse mortgage loan from offering an annuity to the borrower or referring the borrower to anyone for the purchase of an annuity prior to the closing of the loan or before the expiration of the borrower's right to rescind. The bill would, among other things, require a lender to refer a prospective borrower to a housing counseling agency for counseling, as specified, prior to accepting a final and complete application for a reverse mortgage or assessing any fees, and would prohibit a lender from accepting a full and complete application for a reverse mortgage loan or assessing any fees without receiving certification, as specified, that the borrower had 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Notwithstanding subdivision (b), for a loan subject to this part and to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the delivery of a translation of the statement to the borrower required by Section 10240 of the Business and Professions Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, is in compliance with subdivision (b).

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

(e) Provision by a supervised financial organization of a translation of the disclosures required by Regulation M or Regulation Z, and, if applicable, Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000)

of the Financial Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, prior to the execution of the contract or agreement, shall also be deemed in compliance with the requirements of subdivision (b) with regard to the original contract or agreement.

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

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

(f) At the time and place where a contract or agreement described in paragraph (1) or (2) of subdivision (b) is executed, a notice in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be conspicuously displayed to the effect that the person described in subdivision (b) is required to provide a contract or agreement in the language in which the contract or agreement was negotiated, or a translation of the disclosures required by law in the language in which the contract or agreement was negotiated, as the case may be. If a person described in subdivision (b) does business at more than one location or branch, the requirements of this section shall apply only with respect to the location or branch at which the language in which the contract or agreement was negotiated is used.

(g) The term “contract” or “agreement,” as used in this section, means the document creating the rights and obligations of the parties and includes any subsequent document making substantial changes in the rights and obligations of the parties. The term “contract” or “agreement” does not include any

subsequent documents authorized or contemplated by the original document such as periodic statements, sales slips or invoices representing purchases made pursuant to a credit card agreement, a retail installment contract or account or other revolving sales or loan account, memoranda of purchases in an add-on sale, or refinancing of a purchase as provided by, or pursuant to, the original document.

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

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

(h) This section does not apply to any person engaged in a trade or business who negotiates primarily in a language other than English, as described by subdivision (b), if the party with whom he or she is negotiating is a buyer of goods or services, or receives a loan or extension of credit, or enters an agreement obligating himself or herself as a tenant, lessee, or sublessee, or similarly obligates himself or herself by contract or lease, and the party negotiates the terms of the contract, lease, or other obligation through his or her own interpreter.

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

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

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

(k) Upon a failure to comply with the provisions of this section, the person aggrieved may rescind the contract or agreement in the manner provided by this chapter. When the contract for a consumer credit sale or consumer lease which has been sold and assigned to a financial institution is rescinded pursuant to this subdivision, the consumer shall make restitution to and have restitution made by the person with whom he or she made the contract, and shall give notice of rescission to the assignee. Notwithstanding that the contract was assigned without recourse, the assignment shall be deemed rescinded and the assignor shall promptly repurchase the contract from the assignee.

SEC. 2. Section 1923.2 of the Civil Code is amended to read:

1923.2. A reverse mortgage loan shall comply with all of the following requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The lender's right to collect reverse mortgage loan proceeds shall be subject to the applicable statute of limitations

for written loan contracts. Notwithstanding any other provision of law, the statute of limitations shall commence on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement.

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

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

(i) A lender shall not require an applicant for a reverse mortgage to purchase an annuity as a condition of obtaining a reverse mortgage loan. A reverse mortgage lender or a broker arranging a reverse mortgage loan shall not:

(1) Offer an annuity to the borrower prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.

(2) Refer the borrower to anyone for the purchase of an annuity prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.

(j) Prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees, a lender shall refer the prospective borrower to a housing counseling agency approved by the United States Department of Housing and Urban Development for counseling. The counseling shall meet the standards and requirements established by the United States Department of Housing and Urban Development for reverse mortgage counseling. The lender shall provide the borrower with a list of at least five housing counseling agencies approved by the United States Department of Housing and Urban Development, including at least two agencies that can provide counseling by telephone.

(k) A lender shall not accept a final and complete application for a reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant’s

authorized representative that the applicant has received counseling from an agency as described in subdivision (j). The certification shall be signed by the borrower and the agency counselor, and shall include the date of the counseling and the name, address, and telephone number of both the counselor and the borrower. Electronic facsimile copy of the housing counseling certification satisfies the requirements of this subdivision. The lender shall maintain the certification in an accurate, reproducible, and accessible format for the term of the reverse mortgage.

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

SEC. 3. Section 1923.5 of the Civil Code is amended to read:

1923.5. No reverse mortgage loan application shall be taken by a lender unless the loan applicant has received from the lender the following plain language statement in conspicuous 16-point type or larger, advising the prospective borrower about counseling prior to obtaining the reverse mortgage loan:

**IMPORTANT NOTICE
TO REVERSE MORTGAGE LOAN APPLICANT**

A REVERSE MORTGAGE IS A COMPLEX FINANCIAL TRANSACTION THAT PROVIDES A MEANS OF USING THE EQUITY YOU HAVE BUILT UP IN YOUR HOME, OR THE VALUE OF YOUR HOME, AS A SOURCE OF ADDITIONAL INCOME. IF YOU DECIDE TO OBTAIN A REVERSE MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE. IT IS THEREFORE IMPORTANT TO UNDERSTAND THE TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT. BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE REQUIRED TO CONSULT WITH AN INDEPENDENT LOAN COUNSELOR. A LIST OF APPROVED COUNSELORS WILL BE PROVIDED TO YOU BY THE LENDER.

YOU MAY ALSO WANT TO DISCUSS YOUR DECISION WITH FAMILY MEMBERS OR OTHERS ON WHOM YOU RELY FOR FINANCIAL ADVICE.

Approved _____, 2006

Governor