

AMENDED IN ASSEMBLY MARCH 26, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 628**

---

---

**Introduced by Assembly Member Price**

February 21, 2007

---

---

An act to add Section 10248.7 to the Business and Professions Code, and to amend Section ~~4973~~ 50204 of the Financial Code, relating to lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 628, as amended, Price. ~~Covered loans.~~ Residential mortgage loans: gifts.

Existing law, the California Residential Mortgage Lending Act, provides for the licensure and regulation of persons engaging in the business of making residential mortgage loans and servicing those loans and provides that a willful violation of the act is a crime. Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and provides that a willful violation of the law is a crime. Existing law requires a real estate broker who negotiates a loan secured by residential real property to comply with certain requirements.

This bill would prohibit that real estate broker or a residential mortgage lender or servicer from making a gift, as defined, to a borrower or a potential borrower.

Because a willful violation of the bill's provisions would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law imposes various prohibitions and limitations on certain loans, defined as covered loans, including prohibiting a prepayment penalty after the first 36 months after the date of the consummation of the loan.~~

~~This bill would make various technical, nonsubstantive changes to those provisions:~~

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

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

1     SECTION 1. Section 10248.7 is added to the Business and  
 2     Professions Code, to read:

3     10248.7. A real estate broker acting within the meaning of  
 4     subdivision (d) of Section 10131 shall not make a gift to a borrower  
 5     or a potential borrower. For purposes of this section, a “gift”  
 6     includes, but is not limited to, money, a rebate, a trip, a gift card,  
 7     or a gift certificate.

8     SEC. 2. Section 50204 of the Financial Code is amended to  
 9     read:

10    50204. A licensee may not do any of the following:

11    (a) Disburse the mortgage loan proceeds in a form other than  
 12    direct deposit to the borrower’s or borrower’s designee’s account,  
 13    wire, bank or certified check, ACH funds transfer, or attorney’s  
 14    check drawn on a trust account. An entity may apply to the  
 15    commissioner for a waiver of the requirements of this subdivision  
 16    by demonstrating, in a letter application, that it has adopted or will  
 17    adopt another method of disbursement of loan proceeds that will  
 18    satisfy the purposes of this subdivision.

19    (b) Fail to disburse funds in accordance with a commitment to  
 20    make a mortgage loan that is accepted by the applicant.

21    (c) Accept fees at closing that are not disclosed to the borrower  
 22    on the federal HUD-1 Settlement Statement.

23    (d) Commit an act in violation of Section 2941 of the Civil  
 24    Code.

25    (e) Obtain or induce an agreement or other instrument in which  
 26    blanks are left to be filled in after execution.

1 (f) Intentionally delay closing of a mortgage loan for the sole  
2 purpose of increasing interest, costs, fees, or charges payable by  
3 the borrower.

4 (g) Engage in fraudulent home mortgage underwriting practices.

5 (h) Make payment of any kind, whether directly or indirectly,  
6 to an in-house or fee appraiser of a government or private money  
7 lending agency, with which an application for a home mortgage  
8 has been filed, for the purpose of influencing the independent  
9 judgment of the appraiser with respect to the value of real estate  
10 that is to be covered by the home mortgage.

11 (i) Engage in any acts in violation of Section 17200 or 17500  
12 of the Business and Professions Code.

13 (j) Knowingly misrepresent, circumvent, or conceal, through  
14 subterfuge or device, any material aspect or information regarding  
15 a transaction to which it is a party.

16 (k) Do an act, whether of the same or a different character than  
17 specified in this section, that constitutes fraud or dishonest dealings.

18 (l) Sell more than eight loans in a calendar year made under the  
19 authority of this license to a person who is not an institutional  
20 investor.

21 (m) Commit an act in violation of Section 1695.13 of the Civil  
22 Code.

23 (n) Make or service a loan that is not a residential mortgage  
24 loan under the authority of the license.

25 (o) Commit an act in violation of Section 2948.5 of the Civil  
26 Code. Evidence of compliance with Section 2948.5 of the Civil  
27 Code may be evidenced by (1) a certification executed by the  
28 licensee, at no cost to the borrower, pursuant to Section 2015.5 of  
29 the Code of Civil Procedure, or (2) other evidence in the loan file  
30 acceptable to the commissioner.

31 (p) *Make a gift to a borrower or a potential borrower. For*  
32 *purposes of this subdivision, a “gift” includes, but is not limited*  
33 *to, money, a rebate, a trip, a gift card, or a gift certificate.*

34 *SEC. 3. No reimbursement is required by this act pursuant to*  
35 *Section 6 of Article XIII B of the California Constitution because*  
36 *the only costs that may be incurred by a local agency or school*  
37 *district will be incurred because this act creates a new crime or*  
38 *infraction, eliminates a crime or infraction, or changes the penalty*  
39 *for a crime or infraction, within the meaning of Section 17556 of*  
40 *the Government Code, or changes the definition of a crime within*

1 *the meaning of Section 6 of Article XIII B of the California*  
2 *Constitution.*

3 SECTION 1. ~~Section 4973 of the Financial Code is amended~~  
4 ~~to read:~~

5 4973. ~~The following are prohibited acts and limitations for~~  
6 ~~covered loans:~~

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

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

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

16 ~~(B) The person who originates the covered loan has disclosed~~  
17 ~~in writing to the consumer at least three business days prior to loan~~  
18 ~~consummation the terms of the prepayment fee or penalty to the~~  
19 ~~consumer for accepting a covered loan with the prepayment penalty~~  
20 ~~and the rates, points, and fees that would be available to the~~  
21 ~~consumer for accepting a covered loan without a prepayment~~  
22 ~~penalty.~~

23 ~~(C) The person who originates the covered loan has limited the~~  
24 ~~amount of the prepayment fee or penalty to an amount not to~~  
25 ~~exceed the payment of six months' advance interest, at the contract~~  
26 ~~rate of interest then in effect, on the amount prepaid in a 12-month~~  
27 ~~period in excess of 20 percent of the original principal amount.~~

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

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

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

37 ~~(2) For a payment schedule that is adjusted to account for the~~  
38 ~~seasonal or irregular income of the consumer, the total installments~~  
39 ~~in a year shall not exceed the amount of one year's worth of~~  
40 ~~payments on the loan. This prohibition does not apply to a bridge~~

1 loan. For purposes of this paragraph, “bridge loan” means a loan  
2 with a maturity of less than 18 months that only requires payments  
3 of interest until the time when the entire unpaid balance is due and  
4 payable.

5 ~~(e) A covered loan shall not contain a provision for negative  
6 amortization such that the payment schedule for regular monthly  
7 payments causes the principal balance to increase, unless the  
8 covered loan is a first mortgage and the person who originates the  
9 loan discloses to the consumer that the loan contains a negative  
10 amortization provision that may add principal to the balance of  
11 the loan.~~

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

15 ~~(e) A covered loan shall not contain a provision that increases  
16 the interest rate as a result of a default. This provision does not  
17 apply to interest rate changes in a variable rate loan otherwise  
18 consistent with the provisions of the loan documents, provided the  
19 change in the interest rate is not triggered by the event of default  
20 or the acceleration for the indebtedness.~~

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

35 ~~The consumer shall be presumed to be able to make the  
36 scheduled payments to repay the obligation if, at the time the loan  
37 is consummated, the consumer’s total monthly debts, including  
38 amounts owed under the loan, do not exceed 55 percent of the  
39 consumer’s monthly gross income, as verified by the credit  
40 application, the consumer’s financial statement, a credit report,~~

1 financial information provided to the person originating the loan  
2 by or on behalf of the consumer, or any other reasonable means.

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

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

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

32 (h) It is unlawful for a person who originates a covered loan to  
33 recommend or encourage a consumer to default on an existing  
34 consumer loan or other debt in connection with the solicitation or  
35 making of a covered loan that refinances all or any portion of the  
36 existing consumer loan or debt.

37 (i) A covered loan shall not contain a call provision that permits  
38 the lender, in its sole discretion, to accelerate the indebtedness.  
39 This prohibition does not apply if repayment of the loan has been  
40 accelerated in accordance with the terms of the loan documents

1 ~~(1) as a result of the consumer's default, (2) pursuant to a~~  
2 ~~due-on-sale provision, or (3) due to fraud or material~~  
3 ~~misrepresentation by a consumer in connection with the loan or~~  
4 ~~the value of the security for the loan.~~

5 ~~(j) A person who originates a covered loan shall not refinance~~  
6 ~~or arrange for the refinancing of a consumer loan such that the~~  
7 ~~new loan is a covered loan that is made for the purpose of~~  
8 ~~refinancing, debt consolidation or cash out, that does not result in~~  
9 ~~an identifiable benefit to the consumer, considering the consumer's~~  
10 ~~stated purpose for seeking the loan, fees, interest rates, finance~~  
11 ~~charges, and points.~~

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

16  
17 **CONSUMER CAUTION AND HOME OWNERSHIP**  
18 **COUNSELING NOTICE**  
19

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

23 ~~Mortgage loan rates and closing costs and fees vary based on~~  
24 ~~many other factors, including your particular credit and financial~~  
25 ~~circumstances, your earnings history, the loan-to-value requested,~~  
26 ~~and the type of property that will secure your loan. Higher rates~~  
27 ~~and fees may be justified depending on the individual~~  
28 ~~circumstances of a particular consumer's application. You should~~  
29 ~~shop around and compare loan rates and fees.~~

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

1 You are not required to complete any loan agreement merely  
2 because you have received these disclosures or have signed a loan  
3 application.

4 If you proceed with this mortgage loan, you should also  
5 remember that you may face serious financial risks if you use this  
6 loan to pay off credit card debts and other debts in connection with  
7 this transaction and then subsequently incur significant new credit  
8 card charges or other debts. If you continue to accumulate debt  
9 after this loan is closed and then experience financial difficulties,  
10 you could lose your home and any equity you have in it if you do  
11 not meet your mortgage loan obligations.

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

15 Your payments on existing debts contribute to your credit ratings.  
16 You should not accept any advice to ignore your regular payments  
17 to your existing creditors.

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

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

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

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

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

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

5     ~~(2) Dividing a loan transaction into separate parts for the purpose~~  
6     ~~of evading the provisions of this division.~~

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

O