

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1830

Introduced by Assembly Member Lieu

(Principal coauthors: Assembly Members Nunez and Ruskin)

(Coauthors: Assembly Members Arambula, Bass, Beall, Berg, Brownley, Caballero, Carter, Coto, Davis, De Leon, DeSaulnier, Dymally, Eng, Feuer, Hancock, Hayashi, Huffman, Jones, Karnette, Krekorian, Laird, Leno, Levine, Ma, Mendoza, Mullin, Nava, Price, Salas, Saldana, Solorio, Swanson, Torrico, and Wolk)

January 23, 2008

An act to amend Sections 4970, 4973, 4974, 4975, 4977, 4978, 4978.6, and 4979 of, to amend the heading of Division 1.6 (commencing with Section 4970) of, and to add Sections 4973.2 and 4980 to, the Financial Code, relating to loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1830, as amended, Lieu. High-cost, subprime, and nontraditional loans.

Existing law imposes certain limitations and prohibitions on licensed persons, including real estate brokers, finance lenders, residential mortgage lenders, and financial institutions, with respect to consumer loans and covered loans. Existing law defines a "consumer loan" as a consumer credit transaction secured by residential real property, subject to certain exceptions, and defines a "covered loan" as a consumer loan that meets certain other requirements. Existing law prohibits a covered loan from including a prepayment penalty after the first 36 months from the date of ~~consumation~~ *consummation* of the loan but authorizes a covered loan to include a prepayment penalty before that time period

if specified conditions are satisfied. Existing law prohibits a covered loan from being made unless a specified disclosure is provided to the consumer no later than 3 business days prior to signing of the loan documents. Violations of these limitations and prohibitions by licensed persons are deemed to be violations of the person's licensing law and may be punishable by, among other things, disciplinary action, civil liability, and the imposition of administrative penalties and civil penalties up to \$25,000, as specified. *For certain licensed persons, violations of these limitations and prohibitions may be punished as crimes.*

This bill would redefine a "covered loan" as a "high-cost loan," would establish "subprime loans" and "nontraditional loans," as defined, as new categories of regulated loans, and would make various conforming changes to existing law relative to these loans. The bill would prohibit a high-cost loan from including prepayment penalties and from including at origination a payment schedule with regular periodic payments that, when aggregated, do not fully amortize the principal balance as of the maturity date of the loan. The bill would prohibit a person from making a high-cost loan unless at the time the loan is ~~consummated~~ *consummated* the person *reasonably* believes the consumer will be able to make the scheduled payments, including taxes and insurance, and would *create a rebuttable presumption regarding repayment ability in certain circumstances.* The bill would prohibit a high-cost loan from being originated as a stated income loan, except as specified. The bill would prohibit a *licensed* person who originates ~~a certain high-cost loan~~ *loans* from receiving a yield spread premium or other incentive compensation and would prohibit a person from originating a high-cost loan unless an escrow or impound account is established for a specified period of time. The bill would delete the provisions requiring a disclosure to be provided to a consumer prior to making a covered loan and would instead prohibit a high-cost loan from being made unless a consumer receives a certificate of certain counseling. The bill would establish similar limitations and prohibitions for subprime and nontraditional loans but would require a specified disclosure to be provided to a consumer before those loans could be made. The bill would authorize a licensing agency to levy administrative penalties in an amount up to \$10,000 against a person who violates the provisions regulating high-cost, subprime, and nontraditional loans and would make a person who makes a willful and knowing violation of those provisions of law liable to the consumer in the amount of \$25,000 or the ~~consumers~~

consumer’s actual damages, whichever is greater. The bill would authorize private causes of action by a consumer against a licensed person to recover damages the Attorney General, city attorney, or district attorney to bring an action for specified civil penalties for a violation of the provisions regulating high-cost, subprime, or nontraditional loans. The bill would provide that it is a defense against foreclosure on a property secured by a high-cost, subprime, or nontraditional loan if the loan is in violation of the laws regulating those loans. The bill’s provisions would apply to high-cost, subprime, and nontraditional loans originated on or after January 1, 2009. Because a violation of the bill’s provisions by certain licensed persons may be punished as crimes, this 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.

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

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

- 1 SECTION 1. The heading of Division 1.6 (commencing with
- 2 Section 4970) of the Financial Code is amended to read:
- 3
- 4 DIVISION 1.6. SUBPRIME LENDING REFORM ACT
- 5
- 6 SEC. 2. Section 4970 of the Financial Code is amended to read:
- 7 4970. For purposes of this division:
- 8 (a) “Annual percentage rate” means the annual percentage rate
- 9 for the loan calculated according to the provisions of the federal
- 10 Truth in Lending Act and the regulations adopted thereunder by
- 11 the Federal Reserve Board.
- 12 (b) “High-cost loan” means a consumer loan in which the
- 13 original principal balance of the loan does not exceed the most
- 14 current conforming loan limit for a single-family first mortgage
- 15 loan established by the Federal National Mortgage Association in
- 16 the case of a mortgage or deed of trust, and where one of the
- 17 following conditions are met:

1 (1) For a mortgage or deed of trust, the annual percentage rate
 2 at consummation of the transaction will exceed by more than eight
 3 percentage points for first lien loans, or by more than 10 percentage
 4 points for subordinate lien loans, the yield on Treasury securities
 5 having comparable periods of maturity on the 15th day of the
 6 month immediately preceding the month in which the application
 7 for the extension of credit is received by the creditor.

8 (2) The total points and fees payable by the consumer at or
 9 before closing for a mortgage or deed of trust will exceed 5 percent
 10 of the total loan amount.

11 (c) “Subprime loan” or “subprime mortgage” means a ~~loan~~
 12 ~~secured by a dwelling that is, or will be, the borrower’s principal~~
 13 ~~dwelling and consumer loan~~ in which the annual percentage rate
 14 exceeds the greater of either of the following:

15 ~~(1) If the loan is a closed-end loan, the~~ *The* difference between
 16 the annual percentage rate for the loan and the yield on Treasury
 17 securities having comparable periods of maturity is either equal
 18 to or greater than (A) 3 percentage points if the loan is secured by
 19 a first lien mortgage or deed of trust, or (B) 5 percentage points if
 20 the loan is secured by a subordinate lien mortgage or deed of ~~trust~~.
 21 ~~If the loan is an open-end credit plan, the difference between the~~
 22 ~~annual percentage rate for the loan and the yield on Treasury~~
 23 ~~securities having comparable periods of maturity is equal to or~~
 24 ~~greater than 3 percentage points, regardless of whether the~~
 25 ~~open-end credit plan is secured by a first or subordinate lien~~
 26 ~~mortgage or deed of trust. Without regard to whether the loan is~~
 27 ~~subject to or reportable under the provisions of the federal Home~~
 28 ~~Mortgage Disclosure Act (12 U.S.C. Sec. 2801, et seq.) (HMDA),~~
 29 the difference between the annual percentage rate and the yield on
 30 Treasury securities having comparable periods of maturity shall
 31 be determined using the same procedures and calculation methods
 32 applicable to loans that are subject to the reporting requirements
 33 of the HMDA.

34 (2) The difference between the annual percentage rate for the
 35 loan and the annual yield on conventional mortgages published
 36 by the Board of Governors of the Federal Reserve System, as
 37 published in statistical release H.15 or any publication that may
 38 supersede it, is either equal to or greater than (A) 1.75 percentage
 39 points, if the loan is secured by a first lien mortgage or deed of

1 trust, or (B) 3.75 percentage points, if the loan is secured by a
2 subordinate lien mortgage or deed of trust.

3 (d) “Nontraditional loan” or “nontraditional mortgage” means
4 ~~mortgage products that allow a consumer loan that allows~~
5 borrowers to defer payment of principal and, sometimes, interest,
6 as set forth in the “Interagency Guidance on Nontraditional
7 Mortgage Product Risks” (71 Fed. Reg. 58609 (Oct. 4, 2006)).

8 (e) (1) “Points and fees” shall include the following:

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

13 (B) All compensation paid directly or indirectly to a mortgage
14 broker from any source, including, but not limited to, any payment
15 of a yield spread premium, and including a payment to a mortgage
16 broker that originates a loan in its own name in a table-funded
17 transaction.

18 (C) All items listed in Section 226.4(c)(7) of Title 12 of the
19 Code of Federal Regulations, only if the person originating the
20 ~~covered~~ *high-cost* loan receives direct compensation in connection
21 with the charge.

22 (2) “Points and fees” shall not include any of the following:

23 (A) Taxes, filing fees, recording fees, and other charges and
24 fees paid or to be paid to public officials for determining the
25 existence of or for perfecting, releasing, or satisfying a security
26 interest.

27 (B) Bona fide and reasonable fees paid to a person other than
28 the creditor or an affiliate of the creditor for fees for tax payment
29 services, flood certification, or pest infestation and flood
30 determination, appraisal fees, fees for inspections performed prior
31 to closing, credit report fees, survey fees, attorneys’ fees if the
32 borrower has the right to select the attorney from an approved list
33 or otherwise, notary fees, escrow charges, title insurance premiums,
34 and fire and hazard insurance and flood insurance premiums,
35 provided that the conditions in Section 226.4(d)(2) of Title 12 of
36 the Code of Federal Regulations are met.

37 (f) “Consumer loan” means a consumer credit transaction that
38 is secured by real property located in this state used, or intended
39 to be used or occupied, as the principal dwelling of the consumer
40 that is improved by a one-to-four residential unit. “Consumer loan”

1 does not include a reverse mortgage, an open line of credit as
2 defined in Part 226 of Title 12 of the Code of Federal Regulations
3 (Regulation Z), or a consumer credit transaction that is secured by
4 rental property or second homes. “Consumer loan” does not include
5 a bridge loan. For purposes of this division, a bridge loan is any
6 temporary loan, having a maturity of one year or less, for the
7 purpose of acquisition or construction of a dwelling intended to
8 become the consumer’s principal dwelling.

9 (g) “Original principal balance” means the total initial amount
10 the consumer is obligated to repay on the loan.

11 (h) “Licensing agency” shall mean the Department of Real
12 Estate for licensed real estate brokers, the Department of
13 Corporations for licensed residential mortgage lenders and licensed
14 finance lenders and brokers, and the Department of Financial
15 Institutions for commercial and industrial banks and savings
16 associations and credit unions organized in this state.

17 (i) “Licensed person” means a real estate broker licensed under
18 the Real Estate Law (Part 1 (commencing with Section 10000) of
19 Division 4 of the Business and Professions Code), a finance lender
20 or broker licensed under the California Finance Lenders Law
21 (Division 9 (commencing with Section 22000)), a residential
22 mortgage lender licensed under the California Residential Mortgage
23 Lending Act (Division 20 (commencing with Section 50000)), a
24 commercial or industrial bank organized under the Banking Law
25 (Division 1 (commencing with Section 99)), a savings association
26 organized under the Savings Association Law (Division 2
27 (commencing with Section 5000)), and a credit union organized
28 under the California Credit Union Law (Division 5 (commencing
29 with Section 14000)). Nothing in this division shall be construed
30 to prevent any enforcement by a governmental entity against any
31 person who originates a loan and who is exempt or excluded from
32 licensure by all of the licensing agencies, based on a violation of
33 any provision of this division. Nothing in this division shall be
34 construed to prevent the Department of Real Estate from enforcing
35 this division against a licensed salesperson employed by a licensed
36 real estate broker as if that salesperson were a licensed person
37 under this division. A licensed person includes any person engaged
38 in the practice of consumer lending, as defined in this division, for
39 which a license is required under any other provision of law, but

1 whose license is invalid, suspended or revoked, or where no license
2 has been obtained.

3 (j) “Originate” means to arrange, negotiate, or make a consumer
4 loan.

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

7 (l) “Fully indexed rate” means the index rate prevailing on a
8 residential mortgage loan at the time the loan is ~~made~~ *consummated*
9 plus the margin that will apply after the expiration of any
10 introductory interest rates.

11 SEC. 3. Section 4973 of the Financial Code is amended to read:
12 4973. The following are prohibited acts and limitations for
13 high-cost loans:

14 (a) A high-cost loan shall not include a prepayment fee or
15 penalty.

16 (b) (1) A high-cost loan may not provide at origination for a
17 payment schedule with regular periodic payments that when
18 aggregated do not fully amortize the principal balance as of the
19 maturity date of the loan.

20 (2) For a payment schedule that is adjusted to account for the
21 seasonal or irregular income of the consumer, the total installments
22 in any year shall not exceed the amount of one year’s worth of
23 payments on the loan. This prohibition does not apply to a bridge
24 loan. For purposes of this paragraph, “bridge loan” means a loan
25 with a maturity of less than 18 months that only requires payments
26 of interest until the time when the entire unpaid balance is due and
27 payable.

28 (c) A high-cost loan shall not contain a provision for negative
29 amortization such that the payment schedule for regular monthly
30 payments causes the principal balance to increase.

31 (d) A high-cost loan shall not include terms under which periodic
32 payments required under the loan are consolidated and paid in
33 advance from the loan proceeds.

34 (e) A high-cost loan shall not contain a provision that increases
35 the interest rate as a result of a default. This provision does not
36 apply to interest rate changes in a variable rate loan otherwise
37 consistent with the provisions of the loan documents, provided the
38 change in the interest rate is not triggered by the event of default
39 or the acceleration for the indebtedness.

1 (f) (1) A person who originates high-cost loans shall not make
2 or arrange a high-cost loan unless at the time the loan is
3 consummated, the person reasonably believes the consumer, or
4 consumers, when considered collectively in the case of multiple
5 consumers, will be able to make the scheduled payments, including
6 taxes and insurance at the fully indexed rate, to repay the obligation
7 based upon a consideration of their current and expected income,
8 current obligations, employment status, and other financial
9 resources, other than the consumer's equity in the dwelling that
10 secures repayment of the loan. In the case of a high-cost loan that
11 is structured to increase to a specific designated rate, stated as a
12 number or formula, at a specific predetermined date not exceeding
13 37 months from the date of application, this evaluation shall be
14 based upon the fully indexed rate of the loan calculated at the ~~time~~
15 ~~of application~~ *consummation of the transaction.*

16 ~~The consumer shall be presumed to be able to make the~~
17 ~~scheduled payments to repay the obligation if, at the time the loan~~
18 ~~is consummated, the consumer's total monthly debts, including~~
19 ~~amounts owed under the loan, do not exceed 45 percent of the~~
20 ~~consumer's monthly gross income, as verified by the credit~~
21 ~~application, the consumer's financial statement, a credit report,~~
22 ~~financial information provided to the person originating the loan~~
23 ~~by or on behalf of the consumer, or any other reasonable means.~~

24 *There is a rebuttable presumption that a high-cost mortgage*
25 *was made without regard to repayment ability if, at the time the*
26 *loan is consummated, the consumer's total monthly debts, including*
27 *total monthly housing payments, taxes, property and private*
28 *mortgage insurance, any required homeowner or condominium*
29 *fees, and any subordinate mortgages, including those that will be*
30 *made contemporaneously to the same consumer, exceed 45 percent*
31 *of the consumer's established monthly gross income. To rebut the*
32 *presumption of inability to repay, the licensed person shall, at*
33 *minimum, determine and consider the consumer's residual income*
34 *after payment of current expenses and proposed loan payments.*
35 *However, no presumption of ability 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, do not*
39 *exceed 45 percent of consumer's established monthly gross income.*

1 (2) 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 verified by
4 using tax records, bank statements, payroll receipts, or other
5 reasonable documentation from a third party. A person shall not
6 knowingly or willfully originate a high-cost loan as a stated income
7 loan with the intent, or effect, of evading the provisions of this
8 subdivision. A high-cost loan shall not be originated as a stated
9 income loan based solely on a consumer's statement of income.

10 (g) A person who originates a high-cost loan shall not pay a
11 contractor under a home-improvement contract from the proceeds
12 of a high-cost 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 high-cost 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
23 by the consumer showing that the home-improvement contract
24 was completed to the satisfaction of the consumer.

25 (h) It is unlawful for a person who originates a high-cost 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 high-cost loan that refinances all or any portion of the
29 existing consumer loan or debt.

30 (i) A high-cost 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
34 (1) as a result of the consumer's default, (2) pursuant to a
35 due-on-sale provision, or (3) due to fraud or material
36 misrepresentation by a consumer in connection with the loan or
37 the value of the security for the loan.

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

1 refinancing, debt consolidation or cash out, that does not result in
2 a net tangible 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) A person who originates a high-cost loan shall not receive,~~
6 ~~directly or indirectly, any incentive compensation, including a~~
7 ~~yield spread premium, that is based on, or varies with, the terms~~
8 ~~of any high-cost loan.~~

9 *(k) A licensed person shall not receive, directly or indirectly,*
10 *any incentive compensation, including a yield spread premium,*
11 *for originating a high-cost loan with an interest rate above the*
12 *wholesale par rate for which the consumer qualifies.*

13 *(l) A licensed person shall not originate a high-cost loan unless*
14 *the licensed person requires and collects loan contract requires*
15 *the creation of an escrow account and the collection of the monthly*
16 *escrow of property taxes and hazard insurance calculated in*
17 *accordance with the requirements of Section 2609 of Title 12 of*
18 *the United States Code and regulations promulgated pursuant*
19 *thereto. The provisions of this paragraph do not apply to a high-cost*
20 *loan that is secured by a subordinate lien when the taxes and*
21 *insurance are escrowed through another loan.*

22 *(m) A licensed person shall not originate a high-cost loan unless*
23 *an escrow or impound account is established that remains in*
24 *existence for a minimum period of five years or until the consumer*
25 *has sufficient equity in the dwelling securing the loan that private*
26 *mortgage insurance is not required.*

27 *(n) A licensed person shall not originate a high-cost loan unless*
28 *the consumer provides certification from a housing counselor*
29 *approved by the United States Department of Housing and Urban*
30 *Development that the consumer received counseling on the*
31 *advisability of the loan transaction.*

32 ~~(o) (1) A person who originates a high-cost loan shall not steer,~~
33 ~~counsel, or direct any prospective consumer to accept a loan~~
34 ~~product with a risk grade less favorable than the risk grade that~~
35 ~~the consumer would qualify for based on that person's then current~~
36 ~~underwriting guidelines, prudently applied, considering the~~
37 ~~information available to that person, including the information~~
38 ~~provided by the consumer.~~

39 *(o) (1) In connection with a high-cost loan, a licensed person*
40 *shall not steer, counsel, or direct a consumer to a loan with rates,*

1 *charges, principal amount, or prepayment terms that are more*
2 *costly than that for which the consumer qualifies.*

3 (2) If a broker originates a high-cost loan, the broker shall not
4 steer, counsel, or direct any prospective consumer to accept a loan
5 product at a higher cost than that for which the consumer could
6 qualify based on the loan products offered by the persons with
7 whom the broker regularly does business.

8 (p) A person who originates a high-cost loan shall not avoid, or
9 attempt to avoid, the application of this division by ~~doing the~~
10 ~~following:~~

11 ~~(1) Structuring a loan transaction as an open-end credit plan for~~
12 ~~the purpose of evading the provisions of this division when the~~
13 ~~loan would have been a high-cost loan if the loan had been~~
14 ~~structured as a closed end loan.~~

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

17 *dividing any loan transaction into separate parts or otherwise*
18 *structuring a loan transaction for the purposes of evading the*
19 *provisions of this division or by engaging in any other subterfuge*
20 *with the intent of evading the provisions of this division.*

21 (q) A person who originates a high-cost loan shall not act in
22 any manner, whether specifically prohibited by this section or of
23 a different character, that constitutes fraud.

24 SEC. 4. Section 4973.2 is added to the Financial Code, to read:
25 4973.2. The following are prohibited acts and limitations for
26 subprime and nontraditional loans:

27 (a) A licensed person shall not originate a subprime or
28 nontraditional loan unless at the time the loan is consummated,
29 the licensed person reasonably believes the ~~consumer, or consumers~~
30 *borrower, or borrowers*, when considered collectively in the case
31 of multiple ~~consumers~~ *borrowers*, will be able to make the
32 scheduled loan payments, real estate tax payments, and insurance
33 payments associated with the loan.

34 (b) (1) A licensed person shall base its determination of the
35 ~~consumer's~~ *borrower's* ability to pay on documentation of all
36 sources of income verified by tax returns, payroll receipts, bank
37 records, or the best and most appropriate form of documentation
38 available, and the debt-to-income ratio, the ~~consumer's~~ *borrower's*
39 residual income after payment of current expenses, and the
40 proposed loan payments.

1 (2) A statement provided by the ~~consumer~~ *borrower* of the
 2 income and financial resources of the ~~consumer~~ *borrower*, without
 3 other documentation referred to in this subdivision, is not sufficient
 4 verification for purposes of assessing the ability of the ~~consumer~~
 5 *borrower* to pay.

6 (3) The calculation assumptions used in evaluating the ability
 7 to repay a subprime or nontraditional loan shall include the
 8 following:

9 (A) The monthly payment amounts based on, at a minimum,
 10 the fully indexed rate, assuming a fully amortizing repayment
 11 schedule, as well as amounts for taxes and insurance.

12 (B) Verification of all sources of income, as provided in
 13 paragraph (1).

14 (4) With regard to subprime and nontraditional loans, there is
 15 a rebuttable presumption that a mortgage was made without regard
 16 to repayment ability if, at the time the loan is consummated, the
 17 ~~consumer's borrower's~~ total monthly debts, including total monthly
 18 housing payments, taxes, property and private mortgage insurance,
 19 any required homeowner or condominium fees, and any
 20 subordinate mortgages including those that will be made
 21 contemporaneously to the same ~~consumer~~ *borrower*, exceed ~~45~~
 22 ~~55~~ percent of the ~~consumer's borrower's~~ *monthly gross income*
 23 ~~established~~ *established monthly gross income*. To rebut the
 24 presumption of inability to repay, the licensed person shall, at
 25 minimum, determine and consider the ~~consumer's borrower's~~
 26 residual income after payment of current expenses and proposed
 27 loan payments. However, no presumption of ability to make the
 28 scheduled payments to repay the obligation shall arise solely from
 29 the fact that, at the time the loan is consummated, the ~~consumer's~~
 30 ~~borrower's~~ total monthly debts, including amounts owed under
 31 the loan, do not exceed ~~45~~ ~~55~~ percent of the ~~consumer's borrower's~~
 32 ~~established~~ *monthly gross income*.

33 (c) (1) A subprime loan ~~or nontraditional loan~~ shall not include
 34 a prepayment fee or penalty.

35 (2) ~~A~~ ~~For a~~ consumer loan that is not a subprime ~~or~~
 36 ~~nontraditional~~ loan and that has an adjustable interest rate ~~shall~~
 37 ~~not include~~, *a creditor shall not charge* a prepayment fee or penalty
 38 within six months of the date of the first interest rate adjustment
 39 for the loan.

1 (d) (1) A person originating a subprime or nontraditional loan
2 shall not refinance or arrange for the refinancing of a consumer
3 ~~loan such that the new loan is a subprime or nontraditional loan~~
4 ~~that is made~~ *loan into a new loan* for the purpose of refinancing,
5 debt consolidation or cash out, that does not result in a *reasonable*
6 net tangible benefit to the ~~consumer~~ *borrower*, considering all of
7 the circumstances, including, but not limited to, the terms of both
8 the new and refinanced loans, the cost of the new loan including,
9 fees, interest rates, finance charges, and points, and the ~~consumer's~~
10 *borrower's* individual circumstances.

11 (2) For a period of one year after the consummation of a
12 subprime or nontraditional loan originated by a licensed person to
13 ~~a consumer borrower~~, neither the licensed person who made the
14 loan, nor any licensed person who holds the loan, or an affiliate
15 of either, ~~shall engage in direct marketing or initiate any~~
16 ~~communication with the consumer regarding refinancing.~~ “Direct
17 marketing” and “communication” shall include any communication
18 ~~directed at a specific person without the use of intervening media,~~
19 ~~including, but not limited to, the following methods: telephone,~~
20 ~~electronic mail, United States mail or other form of courier service,~~
21 ~~and in-person communication~~ *shall refinance the existing subprime*
22 *or nontraditional loan unless the new loan is no cost for the*
23 *borrower or borrowers and includes a lower rate.* This paragraph
24 shall not restrict a licensed person from responding to specific
25 ~~consumer borrower~~ inquires regarding refinancing.

26 (e) In connection with a subprime or nontraditional loan, a
27 licensed person shall not steer, counsel, or direct ~~a consumer~~
28 *borrower* to a loan with rates, charges, principal amount, or
29 prepayment terms that are more costly than that for which the
30 ~~consumer borrower~~ qualifies.

31 (f) (1) A licensed person shall not receive, directly or indirectly,
32 any incentive compensation, including a yield spread premium,
33 for originating a subprime or nontraditional loan with an interest
34 rate above the wholesale par rate for which the ~~consumer borrower~~
35 qualifies.

36 (2) Notwithstanding paragraph (1), in a consumer loan other
37 than a subprime or nontraditional loan, a licensed person may
38 receive compensation in the form of an increased rate not to exceed
39 200 basis points above the par rate for which the ~~consumer~~
40 *borrower* qualifies if:

1 (A) The licensed person receives no other compensation,
2 however denominated, directly or indirectly, from the ~~consumer~~
3 *borrower* or from another licensed person.

4 (B) The loan does not include discount points, origination points,
5 or rate reduction points, however denominated, or any payment
6 reduction fee, however denominated, or any other fees or charges
7 except bona fide and reasonable charges itemized in Section
8 226.4(c)(7) of Title 12 of the Code of Federal Regulations,
9 provided they are payable to a third party unaffiliated with the
10 licensed person.

11 (C) The loan does not include a prepayment penalty.

12 (g) A subprime or nontraditional loan shall not contain a
13 provision that increases the interest rate as a result of a default.
14 This provision does not apply to interest rate changes in a variable
15 rate loan otherwise consistent with the provisions of the loan
16 documents, provided the change in the interest rate is not triggered
17 by an event of default or the acceleration of the indebtedness.

18 (h) A subprime or nontraditional loan shall not contain a call
19 provision that permits the lender, in its sole discretion, to accelerate
20 the indebtedness. This prohibition does not apply if repayment of
21 the loan has been accelerated in accordance with the terms of the
22 loan documents (1) as a result of the borrower's default, (2)
23 pursuant to a due-on-sale provision, or (3) due to fraud or material
24 misrepresentation by a ~~consumer~~ *borrower* in connection with the
25 loan or the value of the security for the loan.

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

32 (j) (1) A licensed person shall not originate a subprime or
33 nontraditional loan unless the ~~licensed person requires and collects~~
34 *loan contract requires the creation of an escrow account and the*
35 *collection of the monthly escrow of property taxes and hazard*
36 *insurance calculated in accordance with the requirements of Section*
37 *2609 of Title 12 of the United States Code and regulations*
38 *promulgated pursuant thereto. The provisions of this paragraph*
39 *do not apply to a subprime or nontraditional loan that is secured*

1 by a subordinate lien when the taxes and insurance are escrowed
2 through another loan.

3 (2) An escrow or impound account established pursuant to
4 paragraph (1) shall remain in existence for a minimum period of
5 five years and until the ~~consumer~~ *borrower* has sufficient equity
6 in the dwelling securing the subprime or nontraditional loan so
7 that private mortgage insurance is no longer required, unless the
8 underlying mortgage establishing the account is terminated.

9 (k) (1) A subprime or nontraditional loan shall not be made
10 unless the following disclosure, written in 12-point typeface or
11 larger, has been provided to the ~~consumer~~ *borrower* no later than
12 three business days prior to signing of the loan documents of the
13 transaction:

14 CONSUMER CAUTION NOTICE

15 Because you are receiving this notice, it is likely that this
16 particular loan is a “subprime loan” that has a higher interest
17 rate than other mortgage loans and is intended for people with
18 less than excellent credit, or a “nontraditional loan,” such as
19 a no interest loan or a payment option ARM, that are both
20 subject to specific disclosure requirements and protections
21 under California law (Division 1.6 (commencing with Section
22 4970) of the Financial Code). Federal regulators have noted
23 the risky nature of the features of these loans.

24 You are not required to complete any loan agreement merely
25 because you have received these disclosures or have signed a
26 loan application.

27 If you proceed with this mortgage loan, you should also
28 remember that you may face serious financial risks if you use
29 this loan to pay off credit card debts and other debts in
30 connection with this transaction and then subsequently incur
31 significant new credit card charges or other debts. If you
32 continue to accumulate debt after this loan is closed and then
33 experience financial difficulties, you could lose your home
34 and any equity you have in it if you do not meet your mortgage
35 loan obligations.

36 You should consider consulting a qualified independent credit
37 counselor or other experienced financial adviser regarding the
38 rate, fees, and provisions of this mortgage loan before you
39 proceed. For information on contacting a qualified credit
40 counselor, ask your lender or call the United States Department

1 of Housing and Urban Development’s counseling hotline at
 2 ~~1-800-569-4287 or go to~~
 3 ~~www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm~~ for a list of
 4 ~~_____ or go to _____ for a list of~~ counselors.
 5
 6

7 (2) It shall be a rebuttable presumption that a licensed person
 8 has met its obligation to provide the disclosure required by
 9 paragraph (1) if the ~~consumer~~ borrower provides the licensed
 10 person with a signed acknowledgment of receipt of a copy of that
 11 disclosure.

12 (l) It shall be a violation of this division for any person to
 13 ~~attempt in bad faith to~~ avoid the application of this division by
 14 dividing any loan transaction into separate parts or otherwise
 15 structuring a loan transaction for the purpose of evading the
 16 provisions of this division or by engaging in any other subterfuge
 17 with the intent of evading any provision of this division.

18 (m) A licensed person shall not make or cause to be made,
 19 directly or indirectly, any false, deceptive, or misleading statement,
 20 representation, or omission in connection with a subprime or
 21 nontraditional loan.

22 (n) A licensed person shall not finance, directly or indirectly,
 23 into a subprime or nontraditional loan, or finance to the same
 24 ~~consumer~~ borrower within 30 days of consummation of the loan,
 25 any credit life, credit disability, credit property, or credit
 26 unemployment insurance premiums, or any debt cancellation or
 27 suspension agreement fees, provided that credit insurance
 28 premiums, debt cancellation, or suspension fees calculated and
 29 paid on a monthly basis shall not be considered financed by the
 30 person originating the loan. For purposes of this section, credit
 31 insurance does not include a contract issued by a government
 32 agency or private mortgage insurance company to insure the lender
 33 against loss caused by a mortgagor’s default.

34 (o) A subprime or nontraditional loan shall not contain a
 35 provision for negative amortization such that the payment schedule
 36 for regular monthly payments causes the principal balance to
 37 increase.

38 SEC. 5. Section 4974 of the Financial Code is amended to read:
 39 4974. (a) Any compliance failure that was not willful or
 40 intentional and resulted from a bona fide error, that occurred

1 notwithstanding the maintenance of procedures reasonably adopted
2 to avoid those errors, including, but not limited to, those involving
3 clerical, calculation, computer malfunction and programming, and
4 printing errors shall be corrected no later than 45 days after receipt
5 of the complaint or discovery of the error. A person who originates
6 a high-cost, subprime, or nontraditional loan shall not be
7 administratively, civilly, or criminally liable for a bona fide error
8 corrected pursuant to this section.

9 (b) If a person who originates high-cost, subprime, or
10 nontraditional loans makes a loan where the person knew, or should
11 have known, of and showed reckless disregard for a violation of
12 this division by a broker, the person and broker shall be jointly
13 and severally liable for all damages awarded under this division
14 with respect to the broker's unlawful conduct.

15 This section does not impose or transfer liability for a breach of
16 the broker's fiduciary duty.

17 SEC. 6. Section 4975 of the Financial Code is amended to read:

18 4975. (a) (1) Any licensed person who violates any provision
19 of Section 4973, 4973.2, 4979.6, or 4979.7 shall be deemed to
20 have violated that person's licensing law.

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

24 (b) After a knowing and willful violation resulting in a second
25 or subsequent administrative or civil action, the licensing agency
26 may bring a proceeding to permanently revoke the license of the
27 licensed person or impose any lesser licensed sanction for at least
28 three years.

29 (c) A licensing agency may exercise any and all authority and
30 powers available to it under any other provisions of law, to
31 administer and enforce this division including, but not limited to,
32 investigating and examining the licensed person's books and
33 records, and charging and collecting the reasonable costs for these
34 activities. The licensing agency shall not charge a licensed person
35 twice for the same service. Any civil, criminal, and administrative
36 authority and remedies available to the licensing agency pursuant
37 to its licensing law may be sought and employed in any
38 combination deemed advisable by the licensing agency to enforce
39 the provisions of this division.

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

3 SEC. 7. Section 4977 of the Financial Code is amended to read:

4 4977. (a) A licensing agency may, after appropriate notice and
5 opportunity for hearing, by order levy administrative penalties
6 against a person who violates any provision of this division, and
7 the person shall be liable for administrative penalties of not more
8 than ten thousand dollars (\$10,000) for each violation. Except for
9 licensing agencies exempt from the provisions of the
10 Administrative Procedure Act, any hearing shall be held in
11 accordance with the Administrative Procedure Act (Chapter 5
12 commencing with Section 11500) of Part 1 of Division 3 of Title
13 2 of the Government Code), and the licensing agency shall have
14 all the powers granted under that act.

15 (b) Any person who willfully and knowingly violates any
16 provision of this division shall be liable for a civil penalty of not
17 more than twenty-five thousand dollars (\$25,000) for each violation
18 which shall be assessed and recovered in a civil action brought in
19 the name of the people of the State of California by the licensing
20 agency, *Attorney General*, *city attorney*, or *district attorney* in any
21 court of competent jurisdiction.

22 (c) Nothing in this section requires exhaustion of administrative
23 remedies prior to an injured party bringing a civil action.

24 (d) If the licensing agency, *Attorney General*, *city attorney*, or
25 *district attorney* determines that it is in the public interest, the
26 licensing agency, *Attorney General*, *city attorney*, or *district*
27 *attorney* may include, in any action for penalties authorized by
28 subdivision (b), a claim for relief in addition to the penalties,
29 including a claim for restitution or disgorgement, and the court
30 shall have jurisdiction to award the additional relief.

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

35 (f) In any action brought by the licensing agency, ~~or the Attorney~~
36 ~~General acting at the request and on behalf of the licensing agency,~~
37 *Attorney General*, *city attorney*, or *district attorney* under this
38 division in which a judgment against a person is rendered, the
39 licensing agency ~~or the Attorney General~~, *Attorney General*, *city*
40 *attorney*, or *district attorney* shall be entitled to recover costs

1 which, in the discretion of the court, may include an amount
2 representing reasonable attorney’s fees and investigative expenses
3 for services rendered ~~for deposit in the appropriate fund of that~~
4 ~~licensing agency.~~

5 (g) The amounts collected under subdivisions (a) and (b) shall
6 be deposited in the appropriate fund of the licensing agency to be
7 used by that licensing agency, subject to appropriation by the
8 Legislature, for the purposes of financial literacy education and
9 enforcement in connection with abusive lending practices.

10 SEC. 8. Section 4978 of the Financial Code is amended to read:

11 4978. (a) A person who fails to comply with the provisions
12 of this division is civilly liable to the consumer in an amount equal
13 to any actual damages suffered by the consumer, plus attorneys
14 fees and costs. For a willful and knowing violation of this division,
15 the person shall be liable to the consumer in the amount of
16 twenty-five thousand dollars (\$25,000) or the ~~consumers~~
17 *consumer’s* actual damages, whichever is greater, plus attorneys
18 fees and costs.

19 (b) (1) If a provision in a contract in a high-cost loan violates
20 Section 4973, or a provision in a contract in a subprime or
21 nontraditional loan violates Section 4973.2, or a provision in a
22 contract of any of those loans violates Section 4979.6, or Section
23 4979.7, that provision is unenforceable. A court in which any
24 action is brought by, or on behalf of, an aggrieved consumer for
25 relief may issue an order or injunction to reform the terms of the
26 high-cost, subprime, or nontraditional loan to conform to the
27 provisions of this division.

28 (2) A court may, in addition to any other remedy, award punitive
29 damages to the consumer upon a finding that such damages are
30 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 (d) Without regard to whether a consumer is acting individually,
35 jointly, or on behalf of others similarly situated, any provision in
36 a contract of a high-cost, subprime, or nontraditional loan that
37 allows a party to require the consumer to assert any claim or
38 defense in a forum that is less convenient, more costly, or more
39 dilatory for the resolution of a dispute than a judicial forum
40 established in this state where the consumer may otherwise

1 properly bring a claim or defense or that limits in any way any
2 claim or defense the consumer may have is unconscionable and
3 void.

4 (e) Any provision in a contract of a high-cost, subprime, or
5 nontraditional loan that purports to waive the consumer's right to
6 participate in a class action, or to pursue any claims in a class
7 action or other consolidated or joint action, is unconscionable and
8 void.

9 ~~(f) In addition to any other enforcement provisions provided~~
10 ~~under this division, a consumer may bring a private cause of action~~
11 ~~against any licensed person to recover damages associated with a~~
12 ~~violation of this division.~~

13 SEC. 9. Section 4978.6 of the Financial Code is amended to
14 read:

15 4978.6. A person who originates high-cost, subprime, or
16 nontraditional loans shall inform any employee, who originates
17 those loans on behalf of the person, of the administrative or civil
18 penalties for a violation of this division.

19 SEC. 10. Section 4979 of the Financial Code is amended to
20 read:

21 4979. Upon request, a person who originates a high-cost,
22 subprime, or nontraditional loan shall provide the licensing agency,
23 *Attorney General, city attorney, district attorney*, or the consumer,
24 at no cost, documentation regarding his or her loan that clearly
25 demonstrates whether any loan is a high-cost, subprime, or
26 nontraditional loan. This documentation shall include, but not be
27 limited to, full disclosure of the original principal balance, the
28 annual percentage rate, and the total points and fees, as defined in
29 Section 4970.

30 SEC. 11. Section 4980 is added to the Financial Code, to read:

31 4980. It shall constitute a defense against foreclosure on a
32 property secured by a high-cost, subprime, or nontraditional loan
33 if that loan is in violation of this division.

34 SEC. 12. The provisions of this act shall apply to high-cost,
35 subprime, and nontraditional loans originated on and after January
36 1, 2009.

37 *SEC. 13. The provisions of this act are severable. If any*
38 *provision of this act or its application is held invalid, that invalidity*
39 *shall not affect other provisions or applications that can be given*
40 *effect without the invalid provision or application.*

1 *SEC. 14. No reimbursement is required by this act pursuant*
2 *to Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

O