

ASSEMBLY BILL

No. 2359

Introduced by Assembly Member Jones

February 21, 2008

An act to amend Section 4970 of the Financial Code, relating to covered loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 2359, as introduced, Jones. Covered 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, as defined. Existing law defines a covered loan as a consumer loan that does not exceed the federal conforming loan limit, as specified, and either the interest rate exceeds a specified percentage rate or the total points and fees payable by the consumer will exceed 6% of the total loan amount. 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, criminal action, disciplinary action, civil liability, and the imposition of administrative and civil penalties up to \$25,000, as specified.

This bill would provide that a covered loan includes those specified loans where the total points and fees payable by the consumer will exceed 5% of the total loan amount. Because violations of the limitations and prohibitions relative to covered loans may be punished as crimes under certain licensed persons' licensing laws, redefining the term "covered loan" would expand the scope of these crimes and thereby 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: yes.

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

1 SECTION 1. Section 4970 of the Financial Code is amended
2 to read:

3 4970. For purposes of this division:

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

8 (b) “Covered loan” means a consumer loan in which the original
9 principal balance of the loan does not exceed the most current
10 conforming loan limit for a single-family first mortgage loan
11 established by the Federal National Mortgage Association in the
12 case of a mortgage or deed of trust, and where one of the following
13 conditions are met:

14 (1) For a mortgage or deed of trust, the annual percentage rate
15 at consummation of the transaction will exceed by more than eight
16 percentage points the yield on Treasury securities having
17 comparable periods of maturity on the 15th day of the month
18 immediately preceding the month in which the application for the
19 extension of credit is received by the creditor.

20 (2) The total points and fees payable by the consumer at or
21 before closing for a mortgage or deed of trust will exceed ~~6~~ 5
22 percent of the total loan amount.

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

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

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

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

4 (d) “Consumer loan” means a consumer credit transaction that
5 is secured by real property located in this state used, or intended
6 to be used or occupied, as the principal dwelling of the consumer
7 that is improved by a one-to-four residential unit. “Consumer loan”
8 does not include a reverse mortgage, an open line of credit as
9 defined in Part 226 of Title 12 of the Code of Federal Regulations
10 (Regulation Z), or a consumer credit transaction that is secured by
11 rental property or second homes. “Consumer loan” does not include
12 a bridge loan. For purposes of this division, a bridge loan is any
13 temporary loan, having a maturity of one year or less, for the
14 purpose of acquisition or construction of a dwelling intended to
15 become the consumer’s principal dwelling.

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

18 (f) “Licensing agency” shall mean the Department of Real Estate
19 for licensed real estate brokers, the Department of Corporations
20 for licensed residential mortgage lenders and licensed finance
21 lenders and brokers, and the Department of Financial Institutions
22 for commercial and industrial banks and savings associations and
23 credit unions organized in this state.

24 (g) “Licensed person” means a real estate broker licensed under
25 the Real Estate Law (Part 1 (commencing with Section 10000) of
26 Division 4 of the Business and Professions Code), a finance lender
27 or broker licensed under the California Finance Lenders Law
28 (Division 9 (commencing with Section 22000)), a residential
29 mortgage lender licensed under the California Residential Mortgage
30 Lending Act (Division 20 (commencing with Section 50000)), a
31 commercial or industrial bank organized under the Banking Law
32 (Division 1 (commencing with Section 99)), a savings association
33 organized under the Savings Association Law (Division 2
34 (commencing with Section 5000)), and a credit union organized
35 under the California Credit Union Law (Division 5 (commencing
36 with Section 14000)). Nothing in this division shall be construed
37 to prevent any enforcement by a governmental entity against any
38 person who originates a loan and who is exempt or excluded from
39 licensure by all of the licensing agencies, based on a violation of
40 any provision of this division. Nothing in this division shall be

1 construed to prevent the Department of Real Estate from enforcing
2 this division against a licensed salesperson employed by a licensed
3 real estate broker as if that salesperson were a licensed person
4 under this division. A licensed person includes any person engaged
5 in the practice of consumer lending, as defined in this division, for
6 which a license is required under any other provision of law, but
7 whose license is invalid, suspended or revoked, or where no license
8 has been obtained.

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

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

13 SEC. 2. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.