

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1160

Introduced by Assembly Member Fong

(Principal coauthor: Senator Cedillo)

**(Coauthors: Assembly Members Coto, Fuentes, Furutani, Lieu,
and Torres)**

(Coauthor: Senator Yee)

February 27, 2009

An act to amend Section 1632 of the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, as amended, Fong. Contracts: translation.

Existing law requires a person in a trade or business who negotiates specified contracts or agreements primarily in the languages of Spanish, Chinese, Tagalog, Vietnamese, or Korean to deliver to the other party, prior to execution of the contract or agreement, a translation of the contract or agreement in the applicable foreign language, except as specified. Under existing law, failure to comply with these provisions entitles the aggrieved party to rescind the contract or agreement. Under existing law, these provisions apply to specified loans or extensions of credit subject to the Industrial Loan Law and the California Finance Lenders Law.

This bill would expand the scope of those provisions to instead require any person in a trade or business who, in the course of entering into any of the specified contracts or agreements, negotiates any material term in those languages, to deliver a translation, as described above, or a translation of one or more of the approved disclosures or forms, as specified. The bill would also make specified translation requirements

applicable to loans or extensions of credit secured by real property and leases, subleases, and rental contracts or agreements, as specified. The bill would authorize civil penalties against any person who fails to deliver the translation, to be imposed by a court in an action commenced within 3 years of the transaction. The bill would provide for administrative penalties against specified licensed persons for violations of these provisions. The bill would require the Department of Corporations and the Department of Financial Institutions to create new forms for these purposes based on specified forms of the Department of Real Estate. The bill would exempt federally chartered banks and credit unions from these provisions.

These provisions would be operative on January 1, 2010, or 60 days following the issuance of forms by both the Department of Corporations and the Department of Financial Institutions, whichever is later.

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

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

1 SECTION 1. Section 1632 of the Civil Code, as amended by
2 Section 1 of Chapter 278 of the Statutes of 2008, is amended to
3 read:
4 1632. (a) The Legislature hereby finds and declares all of the
5 following:
6 (1) This section was enacted in 1976 to increase consumer
7 information and protections for the state's sizeable and growing
8 Spanish-speaking population.
9 (2) Since 1976, the state's population has become increasingly
10 diverse and the number of Californians who speak languages other
11 than English as their primary language at home has increased
12 dramatically.
13 (3) According to data from the United States Census of 2000,
14 of the more than 12 million Californians who speak a language
15 other than English in the home, approximately 4.3 million speak
16 an Asian dialect or another language other than Spanish. The top
17 five languages other than English most widely spoken by
18 Californians in their homes are Spanish, Chinese, Tagalog,
19 Vietnamese, and Korean. Together, these languages are spoken
20 by approximately 83 percent of all Californians who speak a
21 language other than English in their homes.

(b) Any person engaged in a trade or business who in the course of entering into any of the contracts or agreements listed in paragraphs (1) to (7), inclusive, of this subdivision and negotiates any material terms in Spanish, Chinese, Tagalog, Vietnamese, or Korean, whether orally or in writing, shall deliver to the other party to the contract or agreement and prior to the execution thereof, either (1) 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, or (2) a translation of one or more of the approved disclosures, forms, or both discussed in subdivisions (c) to (e), inclusive, and (m), as applicable to the specific contract or agreement at issue. Each translation shall bear an acknowledgment of receipt to be signed by the contracting consumer prior to consummation of the transaction. Persons subject to this subdivision shall retain a true and correct copy of all signed transactions on file for a period of five years or the length of the contract or agreement, whichever is longer.

(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) 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 is made by a supervised financial organization.

(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,

1 when the person who is engaged in business is currently licensed
2 to practice law pursuant to Chapter 4 (commencing with Section
3 6000) of Division 3 of the Business and Professions Code.

4 (7) This section shall not apply to federally chartered banks or
5 credit unions.

6 (c) For a loan subject to this part and to Article 7 (commencing
7 with Section 10240) of Chapter 3 of Part 1 of Division 4 of the
8 Business and Professions Code, the delivery of a translation of the
9 statements, disclosures, or both to the borrower required by Section
10 10240 or 10241 of the Business and Professions Code in any of
11 the languages specified in subdivision (b) in which the contract or
12 agreement was negotiated, is in compliance with subdivision (b).

13 (d) For a loan or extension of credit secured other than by real
14 property, or unsecured for use primarily for personal, family, or
15 household purposes, delivery by a supervised financial organization
16 of a translation of the disclosures required by Regulation M or
17 Regulation Z, and, if applicable, Division 7 (commencing with
18 Section 18000) or Division 9 (commencing with Section 22000)
19 of the Financial Code in any of the languages specified in
20 subdivision (b) in which the contract or agreement was negotiated,
21 prior to the execution of the contract or agreement, is in compliance
22 with subdivision (b).

23 (1) “Regulation M” and “Regulation Z” mean any rule,
24 regulation, or interpretation promulgated by the Board of
25 Governors of the Federal Reserve System and any interpretation
26 or approval issued by an official or employee duly authorized by
27 the board to issue interpretations or approvals dealing with,
28 respectively, consumer leasing or consumer lending, pursuant to
29 the Federal Truth in Lending Act, as amended (15 U.S.C. Sec.
30 1601 et seq.).

31 (2) As used in this section, “supervised financial organization”
32 means a bank, savings association as defined in Section 5102 of
33 the Financial Code, credit union, or holding company, affiliate, or
34 subsidiary thereof, or any person subject to Article 7 (commencing
35 with Section 10240) of Chapter 3 of Part 1 of Division 4 of the
36 Business and Professions Code, or Division 7 (commencing with
37 Section 18000) or Division 9 (commencing with Section 22000),
38 or Division 20 (commencing with Section 50000) of the Financial
39 Code.

(e) For a loan or extension of credit secured by real property made by a supervised financial organization, as described in paragraph (4) of subdivision (b), delivery of the form disclosures described in subdivision (m) is in compliance with subdivision (b). Delivery of such disclosures is required whether or not the transaction is also subject to the requirements of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, and subdivision (c) of this section.

The supervised financial organization shall provide the forms to the borrower no later than seven calendar days before closing, and, if any of the loan terms summarized change after provision of the translation but prior to consummation of the loan, the supervised financial organization shall provide an updated version of the forms before closing.

(f) (1) At the time and place where an applicable contract or agreement is executed, a notice in the language that the contract or agreement was negotiated, shall be conspicuously displayed, that states the translation requirements in subdivision (b). If the person 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.

(2) For any loan or extension of credit secured by real property covered by this section, every English contract or agreement shall include the following statement in no smaller than 10-point font and contained in a demarcated rectangle, at the top of the first page of the contract or agreement, translated into Spanish, Chinese, Tagalog, Vietnamese, and Korean: "If you negotiated any important term of this contract in [language], you are entitled by law to have the contract, or a summary of important terms, translated into [language]." This paragraph applies to all contracts specified in this section, regardless of whether any term was negotiated in one of these five languages, and regardless of whether the business person conducts business in any one of these five languages.

(g) 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.

(h) (1) As used in this section, “contract” or “agreement,” 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. “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.

(2) “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).

(3) 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.”

(i) (1) 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.

(2) 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

1 agreement was negotiated, and who is not employed by, and whose
2 services are not made available through, the person engaged in the
3 trade or business.

4 (j) Notwithstanding subdivision (b), a translation may retain the
5 following elements of the executed English-language contract or
6 agreement without translation: names and titles of individuals and
7 other persons, addresses, brand names, trade names, trademarks,
8 registered service marks, full or abbreviated designations of the
9 make and model of goods or services, alphanumeric codes,
10 numerals, dollar amounts expressed in numerals, dates, and
11 individual words or expressions having no generally accepted
12 non-English translation.

13 (k) The terms of the contract or agreement which is executed
14 in the English language shall determine the rights and obligations
15 of the parties. However, the translation of the contract or the
16 disclosures required by subdivisions (c) to (e), inclusive, and (m),
17 in any of the languages specified in subdivision (b) in which the
18 contract or agreement was negotiated shall be admissible in
19 evidence to show that no contract was entered into because of a
20 substantial difference in the material terms and conditions of the
21 contract and the translation.

22 (l) (1) Any person who fails, prior to execution of the contract
23 or agreement, to deliver the translation required by subdivision
24 (b), is liable to the person aggrieved, in an amount equal to the
25 sum of:

26 (A) Any actual damage sustained by the person as a result of
27 the failure.

28 (B) (i) In the case of a loan or extension of credit secured other
29 than by real property, or unsecured, for use primarily for personal,
30 family, or household purposes, in an amount equal to 50 percent
31 of the total amount of payments under the loan or extension of
32 credit, except that the liability under this subparagraph shall not
33 be less than two hundred dollars (\$200) nor greater than five
34 thousand dollars (\$5,000) per violation; (ii) in the case of a loan
35 or extension of credit secured by real property, in an amount not
36 less than five hundred dollars (\$500) nor greater than ten thousand
37 dollars (\$10,000) per violation; and (iii) in the case of any other
38 contract or agreement, in an amount not less than two hundred
39 dollars (\$200) nor greater than three thousand dollars (\$3,000) per
40 violation.

1 (C) In the case of any successful action to enforce the foregoing
2 liability or in any action in which a person is determined to have
3 a right of rescission under paragraph (6) of this subdivision, the
4 costs of the action, together with a reasonable attorney's fee as
5 determined by the court.

6 (2) Any person who fails to comply with the notice requirements
7 of either subdivision (f) or (g) is liable to the contracting consumer
8 in an amount equal to five hundred dollars (\$500) per violation,
9 plus the costs of the action, together with a reasonable attorney's
10 fee as determined by the court.

11 (3) Any action brought under paragraphs (1) and (2) shall be
12 commenced not more than four years from the date of the
13 transaction.

14 (4) (A) In addition to any civil liability, upon a finding that any
15 licensed person has violated subdivision (b), a court shall impose
16 a penalty in the amount of two thousand five hundred dollars
17 (\$2,500) for the first violation, five thousand dollars (\$5,000) for
18 the second violation, ten thousand dollars (\$10,000) for the third
19 violation, and twenty-five thousand dollars (\$25,000) ~~each~~ for
20 each subsequent violation.

21 (B) In addition to any civil liability, upon a finding that any
22 licensed person has violated subdivision (f) or (g), a court shall
23 impose a penalty in the amount of one thousand dollars (\$1,000)
24 for the first violation, two thousand five hundred dollars (\$2,500)
25 for the second violation, five thousand dollars (\$5,000) for the
26 third violation, and ten thousand dollars (\$10,000) each for each
27 subsequent violation.

28 (C) The amounts collected under subparagraph (A) or (B) of
29 paragraph (4) shall be deposited in the appropriate fund of the
30 licensing agency to be used by that licensing agency, subject to
31 appropriation by the Legislature, for the purposes of education and
32 enforcement in connection with this section.

33 (D) "Licensed person" means a real estate broker licensed under
34 the Real Estate Law (Part 1 (commencing with Section 10000) of
35 Division 4 of the Business and Professions Code), a finance lender
36 or broker licensed under the California Finance Lenders Law
37 (Division 9 (commencing with Section 22000) of the Financial
38 Code), a residential mortgage lender licensed under the California
39 Residential Mortgage Lending Act (Division 20 (commencing
40 with Section 50000) of the Financial Code), a commercial or

1 industrial bank organized under the Banking Law (Division 1
2 (commencing with Section 99) of the Financial Code), a savings
3 association organized under the Savings Association Law (Division
4 2 (commencing with Section 5000) of the Financial Code), and a
5 credit union organized under the California Credit Union Law
6 (Division 5 (commencing with Section 14000) of the Financial
7 Code).

8 Nothing in this section shall be construed to prevent any
9 enforcement by a governmental entity against any person who
10 originates a loan and who is exempt or excluded from licensure
11 by all of the licensing agencies, based on a violation of any
12 provision of this section. Nothing in this section shall be construed
13 to prevent the Department of Real Estate from enforcing this
14 section against a licensed salesperson employed by a licensed real
15 estate broker as if that salesperson were a licensed person under
16 this section. A licensed person includes any person engaged in any
17 practice governed by the aforementioned laws for which a license
18 is required, but whose license is invalid, suspended, or revoked,
19 or where no license has been obtained.

20 (5) (A) A licensing agency may, after appropriate notice and
21 opportunity for hearing, by order, levy administrative penalties
22 against a person who violates any provision of this section, and
23 the person shall be liable for administrative penalties, in the
24 amounts described in subparagraphs (A) and (B) of paragraph (4).
25 Except for licensing agencies exempt from the provisions of the
26 Administrative Procedure Act, any hearing shall be held in
27 accordance with the Administrative Procedure Act (Chapter 5
28 (commencing with Section 11500) of Part 1 of Division 3 of Title
29 2 of the Government Code), and the licensing agency shall have
30 all the powers granted under that act. A licensing agency may not
31 impose any penalty for a particular violation if a court has already
32 imposed a penalty for that violation pursuant to subparagraphs (A)
33 and (B) of paragraph (4).

34 (B) A licensing agency may exercise any and all authority and
35 powers available to it under any other provisions of law, to
36 administer and enforce this section, including, but not limited to,
37 investigating and examining the licensed person's books and
38 records, and charging and collecting the reasonable costs for these
39 activities. The licensing agency shall not charge a licensed person
40 twice for the same service. Any civil, criminal, and administrative

1 authority and remedies available to the licensing agency pursuant
2 to its licensing law may be sought and employed in any
3 combination deemed advisable by the licensing agency to enforce
4 the provisions of this section.

5 (C) Any licensed person who violates any provision of this
6 section shall be deemed to have violated that person's licensing
7 law.

8 (D) After any action under this subdivision resulting in a finding
9 of liability or any administrative action pursuant to this paragraph,
10 the licensing agency may bring a proceeding to suspend the license
11 of the licensed person for not less than six months and not more
12 than three years. After any action under this subdivision resulting
13 in a second or subsequent finding of liability, or any administrative
14 action pursuant to this paragraph on a second or subsequent
15 violation of this section, the licensing agency may bring a
16 proceeding to permanently revoke the license of the licensed person
17 or impose any lesser licensed sanction for at least three years.

18 (6) (A) In addition to the civil liability set forth in paragraphs
19 (1) and (2), *upon a failure*, prior to execution of the contract or
20 agreement, to deliver a materially complete translation of the
21 contract, or of any of the approved alternative disclosures, forms,
22 or both required by subdivision (b), the person aggrieved may
23 rescind the contract or agreement in the manner provided by this
24 section. When the contract for a consumer credit sale or consumer
25 lease which has been sold and assigned to a financial institution
26 is rescinded pursuant to this section, the consumer shall make
27 restitution to and have restitution made by the person with whom
28 he or she made the contract, and shall give notice of rescission to
29 the assignee. Notwithstanding that the contract was assigned
30 without recourse, the assignment shall be deemed rescinded and
31 the assignor shall promptly repurchase the contract from the
32 assignee.

33 (B) With respect to mortgage loan contracts covered by this
34 section, the aggrieved person's right to rescind shall expire ten
35 years after the date of the contract, or, for any adjustable rate
36 mortgage contracts, the right to rescind shall expire after ten years,
37 or ninety days following the expiration of the fixed rate term,
38 whichever is later.

39 (m) The Department of Corporations and the Department of
40 Financial Institutions shall modify the Department of Real Estate's

1 Forms 883 and 885 solely to delete information that is inapplicable
2 to lender-originated loans or that is otherwise inapplicable. These
3 modified forms shall be made available in each of the languages
4 set forth in subdivision (b) for use by a supervised financial
5 organization to summarize the terms of a mortgage loan pursuant
6 to subdivision (e).

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

18 SEC. 2. The requirements applying to supervised financial
19 organizations, as well as all other amendments herein, shall be
20 operative beginning on January 1, 2010, or 60 days following
21 issuance of forms by the Department of Corporations and the
22 Department of Financial Institutions, whichever is earlier.

23 SEC. 3. The provisions of this act are severable. If any
24 provision of this act or its application is held invalid, that invalidity
25 shall not affect other provisions or applications that can be given
26 effect without the invalid provision or application.