

AMENDED IN ASSEMBLY APRIL 22, 2009

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, Eng, 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

1 by approximately 83 percent of all Californians who speak a
2 language other than English in their homes.

3 (b) Any person engaged in a trade or business who in the course
4 of entering into any of the contracts or agreements listed in
5 paragraphs (1) to (7), inclusive, of this subdivision and negotiates
6 ~~any material terms~~ *primarily* in Spanish, Chinese, Tagalog,
7 Vietnamese, or Korean, whether orally or in writing, shall deliver
8 to the other party to the contract or agreement and prior to the
9 execution thereof, either (1) a translation of the contract or
10 agreement in the language in which the contract or agreement was
11 negotiated, which includes a translation of every term and condition
12 in that contract or agreement, or (2) a translation of one or more
13 of the approved disclosures, forms, or both discussed in
14 subdivisions (c) to (e), inclusive, and (m), as applicable to the
15 specific contract or agreement at issue. ~~Each translation shall bear
16 an acknowledgment of receipt to be signed by the contracting
17 consumer prior to consummation of the transaction. Persons subject
18 to this subdivision shall retain a true and correct copy of all signed
19 transactions on file for a period of five years or the length of the
20 contract or agreement, whichever is longer.~~

21 (1) A contract or agreement subject to the provisions of Title 2
22 (commencing with Section 1801) of, and Chapter 2b (commencing
23 with Section 2981) and Chapter 2d (commencing with Section
24 2985.7) of Title 14 of, Part 4 of Division 3.

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

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

32 (4) A loan or extension of credit for use primarily for personal,
33 family or household purposes where the loan or extension of credit
34 is subject to the provisions of Article 7 (commencing with Section
35 10240) of Chapter 3 of Part 1 of Division 4 of the Business and
36 Professions Code, or is made by a supervised financial
37 organization.

38 (5) Notwithstanding paragraph (2), a reverse mortgage as
39 described in Chapter 8 (commencing with Section 1923) of Title
40 4 of Part 4 of Division 3.

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

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

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

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

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

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

1 or Division 20 (commencing with Section 50000) of the Financial
2 Code.

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

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

18 (f) ~~(1)~~ At the time and place where an applicable contract or
19 agreement is executed, a notice in the language that the contract
20 or agreement was negotiated, shall be ~~conspicuously displayed~~
21 *clearly and conspicuously displayed in an unobstructed view*, that
22 states the translation requirements in subdivision (b). If the person
23 does business at more than one location or branch, the requirements
24 of this section shall apply only with respect to the location or
25 branch at which the language in which the contract or agreement
26 was negotiated is used.

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

39 (g) At the time and place where a lease, sublease, or rental
40 contract or agreement described in subdivision (b) is executed,

1 notice in any of the languages specified in subdivision (b), in which
2 the contract or agreement was negotiated, shall be provided to the
3 lessee or tenant *to the effect that the person described in*
4 *subdivision (b) is required to provide a contract or agreement in*
5 *the language in which the contractor agreement was negotiated,*
6 *or a translation of the disclosure required by law in the language*
7 *in which the contract or agreement was negotiated, as the case*
8 *may be.*

9 (h) (1) As used in this section, “contract” or “agreement,” means
10 the document creating the rights and obligations of the parties and
11 includes any subsequent document making substantial changes in
12 the rights and obligations of the parties. “Contract” or “agreement”
13 does not include any subsequent documents authorized or
14 contemplated by the original document such as periodic statements,
15 sales slips or invoices representing purchases made pursuant to a
16 credit card agreement, a retail installment contract or account or
17 other revolving sales or loan account, memoranda of purchases in
18 an add-on sale, or refinancing of a purchase as provided by, or
19 pursuant to, the original document.

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

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

36 (i) (1) This section does not apply to any person engaged in a
37 trade or business who negotiates primarily in a language other than
38 English, as described by subdivision (b), if the party with whom
39 he or she is negotiating is a buyer of goods or services, or receives
40 a loan or extension of credit, or enters an agreement obligating

1 himself or herself as a tenant, lessee, or sublessee, or similarly
2 obligates himself or herself by contract or lease, and the party
3 negotiates the terms of the contract, lease, or other obligation
4 through his or her own interpreter.

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

12 (j) Notwithstanding subdivision (b), a translation may retain the
13 following elements of the executed English-language contract or
14 agreement without translation: names and titles of individuals and
15 other persons, addresses, brand names, trade names, trademarks,
16 registered service marks, full or abbreviated designations of the
17 make and model of goods or services, alphanumeric codes,
18 numerals, dollar amounts expressed in numerals, dates, and
19 individual words or expressions having no generally accepted
20 non-English translation.

21 (k) The terms of the contract or agreement which is executed
22 in the English language shall determine the rights and obligations
23 of the parties. However, the translation of the contract or the
24 disclosures required by subdivisions (c) to (e), inclusive, and (m),
25 in any of the languages specified in subdivision (b) in which the
26 contract or agreement was negotiated shall be admissible in
27 evidence to show that no contract was entered into because of a
28 substantial difference in the material terms and conditions of the
29 contract and the translation.

30 ~~(l) (1) Any person who fails, prior to execution of the contract~~
31 ~~or agreement, to deliver the translation required by subdivision~~
32 ~~(b), is liable to the person aggrieved, in an amount equal to the~~
33 ~~sum of:~~

34 ~~(A) Any actual damage sustained by the person as a result of~~
35 ~~the failure.~~

36 ~~(B) (i) In the case of a loan or extension of credit secured other~~
37 ~~than by real property, or unsecured, for use primarily for personal,~~
38 ~~family, or household purposes, in an amount equal to 50 percent~~
39 ~~of the total amount of payments under the loan or extension of~~
40 ~~credit, except that the liability under this subparagraph shall not~~

1 be less than two hundred dollars (\$200) nor greater than five
2 thousand dollars (\$5,000) per violation; (ii) in the case of a loan
3 or extension of credit secured by real property, in an amount not
4 less than five hundred dollars (\$500) nor greater than ten thousand
5 dollars (\$10,000) per violation; and (iii) in the case of any other
6 contract or agreement, in an amount not less than two hundred
7 dollars (\$200) nor greater than three thousand dollars (\$3,000) per
8 violation.

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

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

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

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

29 (B) In addition to any civil liability, upon a finding that any
30 licensed person has violated subdivision (f) or (g), a court shall
31 impose a penalty in the amount of one thousand dollars (\$1,000)
32 for the first violation, two thousand five hundred dollars (\$2,500)
33 for the second violation, five thousand dollars (\$5,000) for the
34 third violation, and ten thousand dollars (\$10,000) each for each
35 subsequent violation.

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

1 ~~(D)~~

2 ~~(l) (1) “Licensed person” means a real estate broker licensed~~
3 ~~under the Real Estate Law (Part 1 (commencing with Section~~
4 ~~10000) of Division 4 of the Business and Professions Code), a~~
5 ~~finance lender or broker licensed under the California Finance~~
6 ~~Lenders Law (Division 9 (commencing with Section 22000) of~~
7 ~~the Financial Code), a residential mortgage lender licensed under~~
8 ~~the California Residential Mortgage Lending Act (Division 20~~
9 ~~(commencing with Section 50000) of the Financial Code), a~~
10 ~~commercial or industrial bank organized under the Banking Law~~
11 ~~(Division 1 (commencing with Section 99) of the Financial Code),~~
12 ~~a savings association organized under the Savings Association~~
13 ~~Law (Division 2 (commencing with Section 5000) of the Financial~~
14 ~~Code), and a credit union organized under the California Credit~~
15 ~~Union Law (Division 5 (commencing with Section 14000) of the~~
16 ~~Financial Code).~~

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

29 ~~(5)~~

30 ~~(2) (A) A licensing agency may, after appropriate notice and~~
31 ~~opportunity for hearing, by order, levy administrative penalties~~
32 ~~against a person who violates any provision of this section, and~~
33 ~~the person shall be liable for administrative penalties, in the~~
34 ~~amounts described in subparagraphs (A) and (B) of paragraph (4).~~
35 ~~*up to the amounts of two thousand five hundred dollars (\$2,500)*~~
36 ~~*for the first violation, five thousand dollars (\$5,000) for the second*~~
37 ~~*violation, and ten thousand dollars (\$10,000) for each subsequent*~~
38 ~~*violation. Except for licensing agencies exempt from the provisions*~~
39 ~~*of the Administrative Procedure Act, any hearing shall be held in*~~
40 ~~*accordance with the Administrative Procedure Act (Chapter 5*~~

1 (commencing with Section 11500) of Part 1 of Division 3 of Title
2 2 of the Government Code), and the licensing agency shall have
3 all the powers granted under that act. ~~A licensing agency may not~~
4 ~~impose any penalty for a particular violation if a court has already~~
5 ~~imposed a penalty for that violation pursuant to subparagraphs (A)~~
6 ~~and (B) of paragraph (4).~~

7 (B) A licensing agency may exercise any and all authority and
8 powers available to it under any other provisions of law, to
9 administer and enforce this section, including, but not limited to,
10 investigating and examining the licensed person's books and
11 records, and charging and collecting the reasonable costs for these
12 activities. The licensing agency shall not charge a licensed person
13 twice for the same service. Any civil, criminal, and administrative
14 authority and remedies available to the licensing agency pursuant
15 to its licensing law may be sought and employed in any
16 combination deemed advisable by the licensing agency to enforce
17 the provisions of this section.

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

21 ~~(D) After any action under this subdivision resulting in a finding~~
22 ~~of liability or any administrative action pursuant to this paragraph,~~
23 ~~the licensing agency may bring a proceeding to suspend the license~~
24 ~~of the licensed person for not less than six months and not more~~
25 ~~than three years. After any action under this subdivision resulting~~
26 ~~in a second or subsequent finding of liability, or any administrative~~
27 ~~action pursuant to this paragraph on a second or subsequent~~
28 ~~violation of this section, the licensing agency may bring a~~
29 ~~proceeding to permanently revoke the license of the licensed person~~
30 ~~or impose any lesser licensed sanction for at least three years.~~

31 ~~(6) (A) In addition to the civil liability set forth in paragraphs~~
32 ~~(1) and (2), upon a failure, prior to execution of the contract or~~
33 ~~agreement, to deliver a materially complete translation of the~~
34 ~~contract, or of any of the approved alternative disclosures, forms,~~
35 ~~or both required by subdivision (b), the person aggrieved may~~
36 ~~rescind the contract or agreement in the manner provided by this~~
37 ~~section. When the contract for a consumer credit sale or consumer~~
38 ~~lease which has been sold and assigned to a financial institution~~
39 ~~is rescinded pursuant to this section, the consumer shall make~~
40 ~~restitution to and have restitution made by the person with whom~~

1 he or she made the contract, and shall give notice of rescission to
2 the assignee. Notwithstanding that the contract was assigned
3 without recourse, the assignment shall be deemed rescinded and
4 the assignor shall promptly repurchase the contract from the
5 assignee.

6 (B) ~~With respect to mortgage loan contracts covered by this~~
7 ~~section, the aggrieved person's right to rescind shall expire ten~~
8 ~~years after the date of the contract, or, for any adjustable rate~~
9 ~~mortgage contracts, the right to rescind shall expire after ten years,~~
10 ~~or ninety days following the expiration of the fixed rate term,~~
11 ~~whichever is later.~~

12 (D) *Nothing in this section shall be construed to impair or*
13 *impede the Attorney General from bringing an action to enforce*
14 *this division.*

15 (m) The Department of Corporations and the Department of
16 Financial Institutions shall ~~modify the Department of Real Estate's~~
17 ~~Forms 883 and 885 solely to delete information that is inapplicable~~
18 ~~to lender-originated loans or that is otherwise inapplicable. These~~
19 ~~modified forms shall create forms to be made available in each of~~
20 ~~the languages set forth in subdivision (b) for use by a supervised~~
21 ~~financial organization to summarize the terms of a mortgage loan~~
22 ~~pursuant to subdivision (e). In creating the forms, the Department~~
23 ~~of Corporations and the Department of Financial Institutions may~~
24 ~~modify, or use as guidance, the Department of Real Estate's Forms~~
25 ~~883 and 885.~~

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

37 SEC. 2. The requirements applying to supervised financial
38 organizations, as well as all other amendments herein, shall be
39 operative beginning on January 1, 2010, ~~or 60 days following~~

1 ~~issuance of forms by the Department of Corporations and the~~
2 ~~Department of Financial Institutions, whichever is earlier..~~
3 SEC. 3. The provisions of this act are severable. If any
4 provision of this act or its application is held invalid, that invalidity
5 shall not affect other provisions or applications that can be given
6 effect without the invalid provision or application.