

AMENDED IN SENATE JUNE 5, 2014
AMENDED IN ASSEMBLY APRIL 23, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1730

Introduced by Assembly Member Wagner

February 14, 2014

An act to amend Section 2944.7 of, and to add Sections 2944.8 and 2944.10 to, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1730, as amended, Wagner. Mortgage loan modification.

Existing law, applicable to residential mortgages, prohibits a person who negotiates, arranges, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation from, among other things, demanding or receiving any compensation until every service that the person contracted to perform or represented that he or she would perform is accomplished. Existing law makes a violation of these provisions by a natural person a misdemeanor punishable by a specified fine or imprisonment, or both.

This bill would authorize a violation of these provisions to be punished as a felony with imprisonment, as specified. By changing the definition of a crime, the bill would impose a state-mandated local program.

This bill would also require the assessment of civil penalties for a violation of these provisions and would authorize designated state and local government officials to commence civil actions to recover those penalties.

This bill would, in addition to the civil penalties described above, authorize further civil penalties for unlawful mortgage modifications

perpetrated against a senior citizen or disabled person, as defined, and provide criteria for the assessment of these additional penalties. The bill would authorize a court to order the offender to pay restitution to the senior citizen or disabled person, as specified.

This bill would impose a 4-year statute of limitations for actions brought pursuant to these provisions.

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 2944.7 of the Civil Code is amended to
2 read:

3 2944.7. (a) Notwithstanding any other law, it shall be unlawful
4 for any person who negotiates, attempts to negotiate, arranges,
5 attempts to arrange, or otherwise offers to perform a mortgage
6 loan modification or other form of mortgage loan forbearance for
7 a fee or other compensation paid by the borrower, to do any of the
8 following:

9 (1) Claim, demand, charge, collect, or receive any compensation
10 until after the person has fully performed each and every service
11 the person contracted to perform or represented that he or she
12 would perform.

13 (2) Take any wage assignment, any lien of any type on real or
14 personal property, or other security to secure the payment of
15 compensation.

16 (3) Take any power of attorney from the borrower for any
17 purpose.

18 (b) A violation of this section by a natural person is punishable
19 by a fine not exceeding ten thousand dollars (\$10,000), by
20 imprisonment in the county jail for a term not to exceed one year,
21 or imprisonment pursuant to subdivision (h) of Section 1170 of
22 the Penal Code, or by both that fine and imprisonment, or if by a
23 business entity, the violation is punishable by a fine not exceeding

1 fifty thousand dollars (\$50,000). These penalties are cumulative
2 to any other remedies or penalties provided by law.

3 (c) In addition to the penalties and remedies provided by Chapter
4 5 (commencing with Section 17200) of Part 2 of Division 7 of the
5 Business and Professions Code, a person who violates this section
6 shall be liable for a civil penalty not to exceed twenty thousand
7 dollars (\$20,000) for each violation, which shall be assessed and
8 recovered in a civil action brought in the name of the people of
9 the State of California by the Attorney General, by any district
10 attorney, by any county counsel authorized by agreement with the
11 district attorney in actions involving a violation of a county
12 ordinance, by any city attorney of a city having a population in
13 excess of 750,000, by any city attorney of any city and county, or,
14 with the consent of the district attorney, by a city prosecutor in
15 any city having a full-time city prosecutor, in any court of
16 competent jurisdiction pursuant to Chapter 5 (commencing with
17 Section 17200) of Part 2 of Division 7 of the Business and
18 Professions Code.

19 ~~(d) If the action is brought by the city attorney of the City and
20 County of San Francisco, the entire amount of the penalty collected
21 shall be paid to the treasurer of the city and county in which the
22 judgment was entered for the exclusive use by the city attorney
23 for the enforcement of consumer protection laws.~~

24 (e)

25 (d) Nothing in this section precludes a person, or an agent acting
26 on that person's behalf, who offers loan modification or other loan
27 forbearance services for a loan owned or serviced by that person,
28 from doing any of the following:

29 (1) Collecting principal, interest, or other charges under the
30 terms of a loan, before the loan is modified, including charges to
31 establish a new payment schedule for a nondelinquent loan, after
32 the borrower reduces the unpaid principal balance of that loan for
33 the express purpose of lowering the monthly payment due under
34 the terms of the loan.

35 (2) Collecting principal, interest, or other charges under the
36 terms of a loan, after the loan is modified.

37 (3) Accepting payment from a federal agency in connection
38 with the federal Making Home Affordable Plan or other federal
39 plan intended to help borrowers refinance or modify their loans
40 or otherwise avoid foreclosures.

1 ~~(f)~~
 2 (e) This section shall apply only to mortgages and deeds of trust
 3 secured by residential real property containing four or fewer
 4 dwelling units.

5 SEC. 2. Section 2944.8 is added to the Civil Code, to read:

6 2944.8. (a) In addition to any liability for a civil penalty
 7 pursuant to Section 2944.7, if a person violates Section 2944.7
 8 with respect to a victim who is a senior citizen or a disabled person,
 9 the violator may be liable for a civil penalty not to exceed two
 10 thousand five hundred dollars (\$2,500) for each violation, which
 11 may be assessed and recovered in a civil action.

12 (b) As used in this section, the following terms have the
 13 following meanings:

14 (1) “Disabled person” means a person who has a physical or
 15 mental disability, as defined in Sections 12926 and 12926.1 of the
 16 Government Code.

17 (2) “Senior citizen” means a person who is 65 years of age or
 18 older.

19 (c) In determining whether to impose a civil penalty pursuant
 20 to subdivision (a) and the amount thereof, the court shall consider,
 21 in addition to any other appropriate factors, the extent to which
 22 one or more of the following factors are present:

23 (1) Whether the defendant knew or should have known that his
 24 or her conduct was directed to one or more senior citizens or
 25 disabled persons.

26 (2) Whether the defendant’s conduct caused one or more senior
 27 citizens or disabled persons to suffer any of the following: loss or
 28 encumbrance of a primary residence, principal employment, or
 29 source of income, substantial loss of property set aside for
 30 retirement, or for personal or family care and maintenance, or
 31 substantial loss of payments received under a pension or retirement
 32 plan or a government benefits program, or assets essential to the
 33 health or welfare of the senior citizen or disabled person.

34 (3) Whether one or more senior citizens or disabled persons are
 35 substantially more vulnerable than other members of the public to
 36 the defendant’s conduct because of age, poor health or infirmity,
 37 impaired understanding, restricted mobility, or disability, and
 38 actually suffered substantial physical, emotional, or economic
 39 damage resulting from the defendant’s conduct.

1 (d) A court of competent jurisdiction hearing an action pursuant
2 to this section may make orders and judgments as necessary to
3 restore to a senior citizen or disabled person money or property,
4 real or personal, that may have been acquired by means of a
5 violation of Section 2944.7.

6 SEC. 3. Section 2944.10 is added to the Civil Code, to read:

7 2944.10. Any action to enforce any cause of action pursuant
8 to Section 2944.7 or 2944.8 shall be commenced within four years
9 after the cause of action accrued. No cause of action barred under
10 existing law on the effective date of this section shall be revived
11 by its enactment.

12 SEC. 4. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

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