

AMENDED IN SENATE JANUARY 22, 2014

AMENDED IN SENATE JANUARY 6, 2014

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 245

**Introduced by Senator Correa
(~~Principal coauthor: Senator Calderon~~)**

February 12, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

SB 245, as amended, Correa. Contracts.

Existing law states findings and declarations of the Legislature relating to consumer information and protections afforded to the state's diverse population in which the number of Californians who speak languages other than English as their primary language at home has increased.

This bill would revise information contained in those findings and declarations relating to the languages most widely spoken in households with limited English proficiency and the percentage of Californians who speak a language other than English in their homes, based upon more recent census data.

Vote: majority. Appropriation: no. Fiscal committee: no.
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 is amended to
2 read:

1 1632. (a) The Legislature hereby finds and declares all of the
2 following:

3 (1) This section was enacted in 1976 to increase consumer
4 information and protections for the state's sizeable and growing
5 Spanish-speaking population.

6 (2) Since 1976, the state's population has become increasingly
7 diverse and the number of Californians who speak languages other
8 than English as their primary language at home has increased
9 dramatically.

10 (3) According to data from the American Community Survey,
11 which has replaced the decennial census for detailed socioeconomic
12 information about United States residents, ~~the top five languages~~
13 ~~other than English, that are most widely spoken in households with~~
14 ~~limited English proficiency, are Spanish, Chinese, Filipino/Tagalog,~~
15 ~~Vietnamese, and Korean, approximately 15.2 million Californians~~
16 ~~speak a language other than English at home, based on data from~~
17 ~~combined years 2009 through 2011. Limited English proficiency~~
18 ~~includes survey participants who~~ *This compares to approximately*
19 *19.6 million people who speak only English at home. Among the*
20 *Californians who speak a language other than English at home,*
21 *approximately 8.4 million speak English very well, and another 3*
22 *million speak English well. The remaining 3.8 million Californians*
23 *surveyed do not speak English well or do not speak English at all.*
24 ~~Among the 3.8 million households in California with limited~~
25 ~~English proficiency, approximately 3.5 million people speak either~~
26 ~~this group, the five languages other than English that are most~~
27 ~~widely spoken at home are Spanish, Chinese, Filipino/Tagalog,~~
28 ~~Vietnamese, or Korean at home. This compares to approximately~~
29 ~~19.6 million people, Vietnamese, and Korean. These five languages~~
30 ~~are spoken at home by approximately 3.5 million of the 3.8 million~~
31 ~~Californians with limited or no English proficiency, who speak~~
32 ~~only a language other than English at home.~~

33 (b) Any person engaged in a trade or business who negotiates
34 primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,
35 orally or in writing, in the course of entering into any of the
36 following, shall deliver to the other party to the contract or
37 agreement and prior to the execution thereof, a translation of the
38 contract or agreement in the language in which the contract or
39 agreement was negotiated, that includes a translation of every term
40 and condition in that contract or agreement:

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

5 (2) A loan or extension of credit secured other than by real
6 property, or unsecured, for use primarily for personal, ~~family~~
7 *family*, or household purposes.

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

12 (4) Notwithstanding paragraph (2), a loan or extension of credit
13 for use primarily for personal, ~~family~~ *family*, or household purposes
14 in which the loan or extension of credit is subject to the provisions
15 of Article 7 (commencing with Section 10240) of Chapter 3 of
16 Part 1 of Division 4 of the Business and Professions Code, or
17 Division 7 (commencing with Section 18000), or Division 9
18 (commencing with Section 22000) of the Financial Code.

19 (5) Notwithstanding paragraph (2), a reverse mortgage as
20 described in Chapter 8 (commencing with Section 1923) of Title
21 4 of Part 4 of Division 3.

22 (6) A contract or agreement, containing a statement of fees or
23 charges, entered into for the purpose of obtaining legal services,
24 when the person who is engaged in business is currently licensed
25 to practice law pursuant to Chapter 4 (commencing with Section
26 6000) of Division 3 of the Business and Professions Code.

27 (7) A foreclosure consulting contract subject to Article 1.5
28 (commencing with Section 2945) of Chapter 2 of Title 14 of Part
29 4 of Division 3.

30 (c) Notwithstanding subdivision (b), for a loan subject to this
31 part and to Article 7 (commencing with Section 10240) of Chapter
32 3 of Part 1 of Division 4 of the Business and Professions Code,
33 the delivery of a translation of the statement to the borrower
34 required by Section 10240 of the Business and Professions Code
35 in any of the languages specified in subdivision (b) in which the
36 contract or agreement was negotiated, is in compliance with
37 subdivision (b).

38 (d) At the time and place where a lease, sublease, or rental
39 contract or agreement described in subdivision (b) is executed,
40 notice in any of the languages specified in subdivision (b) in which

1 the contract or agreement was negotiated shall be provided to the
2 lessee or tenant.

3 (e) Provision by a supervised financial organization of a
4 translation of the disclosures required by Regulation M or
5 Regulation Z, and, if applicable, Division 7 (commencing with
6 Section 18000) or Division 9 (commencing with Section 22000)
7 of the Financial Code in any of the languages specified in
8 subdivision (b) in which the contract or agreement was negotiated,
9 prior to the execution of the contract or agreement, shall also be
10 deemed in compliance with the requirements of subdivision (b)
11 with regard to the original contract or agreement.

12 (1) “Regulation M” and “Regulation Z” mean any rule,
13 regulation, or interpretation promulgated by the Board of
14 Governors of the Federal Reserve System and any interpretation
15 or approval issued by an official or employee duly authorized by
16 the board to issue interpretations or approvals dealing with,
17 respectively, consumer leasing or consumer lending, pursuant to
18 the Federal Truth in Lending Act, as amended (15 U.S.C. Sec.
19 1601 et seq.).

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

28 (f) At the time and place where a contract or agreement
29 described in paragraph (1) or (2) of subdivision (b) is executed, a
30 notice in any of the languages specified in subdivision (b) in which
31 the contract or agreement was negotiated shall be conspicuously
32 displayed to the effect that the person described in subdivision (b)
33 is required to provide a contract or agreement in the language in
34 which the contract or agreement was negotiated, or a translation
35 of the disclosures required by law in the language in which the
36 contract or agreement was negotiated, as the case may be. If a
37 person described in subdivision (b) does business at more than one
38 location or branch, the requirements of this section shall apply
39 only with respect to the location or branch at which the language
40 in which the contract or agreement was negotiated is used.

1 (g) The term “contract” or “agreement,” as used in this section,
2 means the document creating the rights and obligations of the
3 parties and includes any subsequent document making substantial
4 changes in the rights and obligations of the parties. The term
5 “contract” or “agreement” does not include any subsequent
6 documents authorized or contemplated by the original document
7 such as periodic statements, sales slips or invoices representing
8 purchases made pursuant to a credit card agreement, a retail
9 installment contract or account or other revolving sales or loan
10 account, memoranda of purchases in an add-on sale, or refinancing
11 of a purchase as provided by, or pursuant to, the original document.

12 The term “contract” or “agreement” does not include a home
13 improvement contract as defined in Sections 7151.2 and 7159 of
14 the Business and Professions Code, nor does it include plans,
15 specifications, description of work to be done and materials to be
16 used, or collateral security taken or to be taken for the retail buyer’s
17 obligation contained in a contract for the installation of goods by
18 a contractor licensed pursuant to Chapter 9 (commencing with
19 Section 7000) of Division 3 of the Business and Professions Code,
20 if the home improvement contract or installation contract is
21 otherwise a part of a contract described in subdivision (b).

22 Matters ordinarily incorporated by reference in contracts or
23 agreements as described in paragraph (3) of subdivision (b),
24 including, but not limited to, rules and regulations governing a
25 tenancy and inventories of furnishings to be provided by the person
26 described in subdivision (b), are not included in the term “contract”
27 or “agreement.”

28 (h) This section does not apply to any person engaged in a trade
29 or business who negotiates primarily in a language other than
30 English, as described by subdivision (b), if the party with whom
31 he or she is negotiating is a buyer of goods or services, or receives
32 a loan or extension of credit, or enters an agreement obligating
33 himself or herself as a tenant, lessee, or sublessee, or similarly
34 obligates himself or herself by contract or lease, and the party
35 negotiates the terms of the contract, lease, or other obligation
36 through his or her own interpreter.

37 As used in this subdivision, “his or her own interpreter” means
38 a person, not a minor, able to speak fluently and read with full
39 understanding both the English language and any of the languages
40 specified in subdivision (b) in which the contract or agreement

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

4 (i) 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. It is permissible, but not required, that
13 this translation be signed.

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

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