

**ASSEMBLY BILL**

**No. 2275**

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**Introduced by Assembly Member Dababneh**

February 18, 2016

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An act to amend Section 4973 of the Financial Code, relating to loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 2275, as introduced, Dababneh. Consumer loans.

Existing law imposes various prohibitions and limitations on covered loans, defined as a specified consumer loan, including prohibiting a covered loan from being made unless a certain disclosure has been provided to the consumer prior to signing loan documents. Under existing law, the disclosure is required to include contact information for the United States Department of Housing and Community Development. Existing law provides that any licensed person, defined as, among others, a real estate broker, a finance lender or broker, a residential mortgage lender, or a savings association, who violates that disclosure requirement is deemed to have violated that person's licensing law. A willful violation of the Real Estate Law, the California Finance Lenders Law, the California Residential Mortgage Lending Act, and the Savings Association Law is a crime.

This bill would update the contact information for the United States Department of Housing and Community Development. By changing the content of the information required to be included in that disclosure, the willful violation of which would be a crime under those aforementioned provisions, the bill would 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 4973 of the Financial Code is amended  
2 to read:

3 4973. The following are prohibited acts and limitations for  
4 covered loans:

5 (a) (1) A covered loan shall not include a prepayment fee or  
6 penalty after the first 36 months after the date of consummation  
7 of the loan.

8 (2) A covered loan may include a prepayment fee or penalty up  
9 to the first 36 months after the date of consummation of the loan  
10 if:

11 (A) The person who originates the covered loan has also offered  
12 the consumer a choice of another product without a prepayment  
13 fee or penalty.

14 (B) The person who originates the covered loan has disclosed  
15 in writing to the consumer at least three business days prior to loan  
16 consummation the terms of the prepayment fee or penalty to the  
17 consumer for accepting a covered loan with the prepayment penalty  
18 and the rates, points, and fees that would be available to the  
19 consumer for accepting a covered loan without a prepayment  
20 penalty.

21 (C) The person who originates the covered loan has limited the  
22 amount of the prepayment fee or penalty to an amount not to  
23 exceed the payment of six months' advance interest, at the contract  
24 rate of interest then in effect, on the amount prepaid in any  
25 12-month period in excess of 20 percent of the original principal  
26 amount.

27 (D) A covered loan will not impose the prepayment fee or  
28 penalty if the covered loan is accelerated as a result of default.

1 (E) The person who originates the covered loan will not finance  
2 a prepayment penalty through a new loan that is originated by the  
3 same person.

4 (b) (1) A covered loan with a term of 5 years or less may not  
5 provide at origination for a payment schedule with regular periodic  
6 payments that when aggregated do not fully amortize the principal  
7 balance as of the maturity date of the loan.

8 (2) For a payment schedule that is adjusted to account for the  
9 seasonal or irregular income of the consumer, the total installments  
10 in any year shall not exceed the amount of one year's worth of  
11 payments on the loan. This prohibition does not apply to a bridge  
12 loan. For purposes of this paragraph, "bridge loan" means a loan  
13 with a maturity of less than 18 months that only requires payments  
14 of interest until the time when the entire unpaid balance is due and  
15 payable.

16 (c) A covered loan shall not contain a provision for negative  
17 amortization such that the payment schedule for regular monthly  
18 payments causes the principal balance to increase, unless the  
19 covered loan is a first mortgage and the person who originates the  
20 loan discloses to the consumer that the loan contains a negative  
21 amortization provision that may add principal to the balance of  
22 the loan.

23 (d) A covered loan shall not include terms under which periodic  
24 payments required under the loan are consolidated and paid in  
25 advance from the loan proceeds.

26 (e) A covered loan shall not contain a provision that increases  
27 the interest rate as a result of a default. This provision does not  
28 apply to interest rate changes in a variable rate loan otherwise  
29 consistent with the provisions of the loan documents, provided the  
30 change in the interest rate is not triggered by the event of default  
31 or the acceleration for the indebtedness.

32 (f) (1) A person who originates covered loans shall not make  
33 or arrange a covered loan unless at the time the loan is  
34 consummated, the person reasonably believes the consumer, or  
35 consumers, when considered collectively in the case of multiple  
36 consumers, will be able to make the scheduled payments to repay  
37 the obligation based upon a consideration of their current and  
38 expected income, current obligations, employment status, and  
39 other financial resources, other than the consumer's equity in the  
40 dwelling that secures repayment of the loan. In the case of a

1 covered loan that is structured to increase to a specific designated  
2 rate, stated as a number or formula, at a specific predetermined  
3 date not exceeding 37 months from the date of application, this  
4 evaluation shall be based upon the fully indexed rate of the loan  
5 calculated at the time of application.

6 The consumer shall be presumed to be able to make the  
7 scheduled payments to repay the obligation if, at the time the loan  
8 is consummated, the consumer's total monthly debts, including  
9 amounts owed under the loan, do not exceed 55 percent of the  
10 consumer's monthly gross income, as verified by the credit  
11 application, the consumer's financial statement, a credit report,  
12 financial information provided to the person originating the loan  
13 by or on behalf of the consumer, or any other reasonable means.

14 (2) No presumption of inability to make the scheduled payments  
15 to repay the obligation shall arise solely from the fact that at the  
16 time the loan is consummated, the consumer's total monthly debts,  
17 including amounts owed under the loan, exceed 55 percent of the  
18 consumer's monthly gross income.

19 (3) In the case of a stated income loan, the reasonable belief  
20 requirement in paragraph (1) shall apply, however, for stated  
21 income loans that belief may be based on the income stated by the  
22 consumer, and other information in the possession of the person  
23 originating the loan after the solicitation of all information that the  
24 person customarily solicits in connection with loans of this type.  
25 A person shall not knowingly or willfully originate a covered loan  
26 as a stated income loan with the intent, or effect, of evading the  
27 provisions of this subdivision.

28 (g) A person who originates a covered loan shall not pay a  
29 contractor under a home-improvement contract from the proceeds  
30 of a covered loan other than by an instrument payable to the  
31 consumer or jointly to the consumer and the contractor or, at the  
32 election of the consumer, to a third-party escrow agent for the  
33 benefit of the contractor in accordance with terms and conditions  
34 established in a written escrow agreement signed by the consumer,  
35 the person who originates a covered loan, and the contractor prior  
36 to the disbursement of funds. No payments, other than progress  
37 payments for home-improvement work that the consumer certifies  
38 is completed, shall be made to an escrow account or jointly to the  
39 consumer and the contractor unless the person who originates the  
40 loan is presented with a signed and dated completion certificate

1 by the consumer showing that the home-improvement contract  
2 was completed to the satisfaction of the consumer.

3 (h) It is unlawful for a person who originates a covered loan to  
4 recommend or encourage a consumer to default on an existing  
5 consumer loan or other debt in connection with the solicitation or  
6 making of a covered loan that refinances all or any portion of the  
7 existing consumer loan or debt.

8 (i) A covered loan shall not contain a call provision that permits  
9 the lender, in its sole discretion, to accelerate the indebtedness.  
10 This prohibition does not apply if repayment of the loan has been  
11 accelerated in accordance with the terms of the loan documents  
12 (1) as a result of the consumer's default, (2) pursuant to a  
13 due-on-sale provision, or (3) due to fraud or material  
14 misrepresentation by a consumer in connection with the loan or  
15 the value of the security for the loan.

16 (j) A person who originates a covered loan shall not refinance  
17 or arrange for the refinancing of a consumer loan such that the  
18 new loan is a covered loan that is made for the purpose of  
19 refinancing, debt consolidation or cash out, that does not result in  
20 an identifiable benefit to the consumer, considering the consumer's  
21 stated purpose for seeking the loan, fees, interest rates, finance  
22 charges, and points.

23 (k) (1) A covered loan shall not be made unless the following  
24 disclosure, written in 12-point font or larger, has been provided to  
25 the consumer no later than three business days prior to signing of  
26 the loan documents of the transaction:

27  
28 **CONSUMER CAUTION AND HOME OWNERSHIP**  
29 **COUNSELING NOTICE**  
30

31 If you obtain this loan, the lender will have a mortgage on your  
32 home. You could lose your home, and any money you have put  
33 into it, if you do not meet your obligations under the loan.

34 Mortgage loan rates and closing costs and fees vary based on  
35 many other factors, including your particular credit and financial  
36 circumstances, your earnings history, the loan-to-value requested,  
37 and the type of property that will secure your loan. Higher rates  
38 and fees may be justified depending on the individual  
39 circumstances of a particular consumer's application. You should  
40 shop around and compare loan rates and fees.

1 This particular loan may have a higher rate and total points and  
 2 fees than other mortgage loans and is, or may be, subject to the  
 3 additional disclosure and substantive protections under Division  
 4 1.7 (commencing with Section 4970) of the Financial Code. You  
 5 should consider consulting a qualified independent credit counselor  
 6 or other experienced financial adviser regarding the rate, fees, and  
 7 provisions of this mortgage loan before you proceed. For  
 8 information on contacting a qualified credit counselor, ask your  
 9 lender or call the United States Department of Housing and Urban  
 10 Development’s counseling hotline at ~~1-888-995-HOPE (4673)~~ or  
 11 ~~go to [www.hud.gov/offices/hsg/hcc/fe/](http://www.hud.gov/offices/hsg/hcc/fe/)~~ *1-800-569-4287* or go to  
 12 *www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm* for a list of  
 13 HUD-approved housing counseling agencies.

14 You are not required to complete any loan agreement merely  
 15 because you have received these disclosures or have signed a loan  
 16 application.

17 If you proceed with this mortgage loan, you should also  
 18 remember that you may face serious financial risks if you use this  
 19 loan to pay off credit card debts and other debts in connection with  
 20 this transaction and then subsequently incur significant new credit  
 21 card charges or other debts. If you continue to accumulate debt  
 22 after this loan is closed and then experience financial difficulties,  
 23 you could lose your home and any equity you have in it if you do  
 24 not meet your mortgage loan obligations.

25 Property taxes and homeowner’s insurance are your  
 26 responsibility. Not all lenders provide escrow services for these  
 27 payments. You should ask your lender about these services.

28 Your payments on existing debts contribute to your credit ratings.  
 29 You should not accept any advice to ignore your regular payments  
 30 to your existing creditors.

31 (2) It shall be a rebuttable presumption that a licensed person  
 32 has met its obligation to provide this disclosure if the consumer  
 33 provides the licensed person with a signed acknowledgment of  
 34 receipt of a copy of the notice set forth in paragraph (1).

35 (l) (1) A person who originates a covered loan shall not steer,  
 36 counsel, or direct any prospective consumer to accept a loan  
 37 product with a risk grade less favorable than the risk grade that  
 38 the consumer would qualify for based on that person’s then current  
 39 underwriting guidelines, prudently applied, considering the

1 information available to that person, including the information  
2 provided by the consumer.

3 A person shall not be deemed to have violated this section if the  
4 risk grade determination applied to a consumer is reasonably based  
5 on the person's underwriting guidelines if it is an appropriate risk  
6 grade category for which the consumer qualifies with the person.

7 (2) If a broker originates a covered loan, the broker shall not  
8 steer, counsel, or direct any prospective consumer to accept a loan  
9 product at a higher cost than that for which the consumer could  
10 qualify based on the loan products offered by the persons with  
11 whom the broker regularly does business.

12 (m) A person who originates a covered loan shall not avoid, or  
13 attempt to avoid, the application of this division by doing the  
14 following:

15 (1) Structuring a loan transaction as an open-end credit plan for  
16 the purpose of evading the provisions of this division when the  
17 loan would have been a covered loan if the loan had been structured  
18 as a closed end loan.

19 (2) Dividing any loan transaction into separate parts for the  
20 purpose of evading the provisions of this division.

21 (n) A person who originates a covered loan shall not act in any  
22 manner, whether specifically prohibited by this section or of a  
23 different character, that constitutes fraud.

24 SEC. 2. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.