

AMENDED IN SENATE MARCH 18, 1999

**SENATE BILL**

**No. 187**

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**Introduced by Senator Hughes**

January 14, 1999

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~~An act to amend Section 1804.1 of, and to add Article 1.7 (commencing with Section 2946.1) to Chapter 2 of Title 14 of Part 4 of Division 3 of, the Civil Code, relating to contracts. An act to amend Section 7159.2 of the Business and Professions Code, and to amend Section 1804.1 of the Civil Code, relating to home improvement contracts.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 187, as amended, Hughes. Home improvement contracts.

Existing provisions of the Unruh Act prohibit a retail installment contract from containing specified provisions.

This bill would prohibit a provision in a retail installment contract for a home improvement, as defined, under which the seller takes a security interest, other than a mechanics' lien, in the buyer's principal residence where the buyer is 65 years of age or older. A violation of the prohibition would be a misdemeanor, thereby imposing a state-mandated local program.

Existing law ~~imposes restrictions on mortgages on real property.~~

~~This bill would prohibit~~ *prohibits a home improvement goods or services contract of \$5,000 or less from providing for a security interest in real property, except for a mechanic's lien or other interest that arises by operation of law, and*

*provides that any lien in violation of that prohibition is void and unenforceable. Existing law also prohibits a person or entity making a loan secured by a mortgage on real property from paying a contractor the proceeds of a loan that provides funding for a home improvement, as defined goods or services pursuant to a home improvement goods or services contract of more than \$5,000, except by specified methods. The*

*This bill would provide that a violation of these provisions would make the person or entity liable for actual damages, that an intentional violation would make the person or entity liable for 3 times the contract price for the home improvement, and that the person or entity would be liable to a senior citizen or disabled person, as defined, for an additional award up to \$5,000.*

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 7159.2 of the Business and*  
 2 *Professions Code is amended to read:*

3 7159.2. (a) No home improvement goods or services  
 4 contract of a value of five thousand dollars (\$5,000) or less  
 5 shall provide for a security interest in real property,  
 6 except for a mechanic’s lien or other interest in property  
 7 that arises by operation of law. Any lien in violation of this  
 8 subdivision is void and unenforceable.

9 (b) When the proceeds of a loan secured by a  
 10 mortgage on real property are used to fund goods or  
 11 services pursuant to a home improvement goods or  
 12 services contract of more than five thousand dollars  
 13 (\$5,000), the person or entity making the loan shall only  
 14 pay a contractor under the home improvement goods or



1 services contract from the proceeds of the loan by either  
2 of the following methods:

3 (1) By an instrument payable to the borrower or  
4 jointly to the borrower and the contractor.

5 (2) At the election of the borrower, through a  
6 third-party escrow agent pursuant to the terms of a  
7 written agreement signed by the borrower, the person or  
8 entity making the loan, and the contractor prior to the  
9 disbursement.

10 *(c) Any person or entity who violates any provision of*  
11 *this section shall be liable for actual damages suffered by*  
12 *the borrower for damages that proximately result from*  
13 *the violation.*

14 *(d) Any person or entity who intentionally or as a*  
15 *pattern or practice violates any provision of this section*  
16 *shall be additionally liable for three times the contract*  
17 *price for the home improvement.*

18 *(e) Any person who is a senior citizen or disabled*  
19 *person, as defined in subdivisions (f) and (g) of Section*  
20 *1761 of the Civil Code, as part of any action for a violation*  
21 *of this section, may seek and be awarded, in addition to*  
22 *the remedies provided in this section, up to five thousand*  
23 *dollars (\$5,000) as provided in subdivision (b) of Section*  
24 *1780 of the Civil Code.*

25 *(f) The court shall award court costs and attorney's*  
26 *fees to a prevailing plaintiff in an action brought pursuant*  
27 *to this section. Reasonable attorney's fees may be*  
28 *awarded to a prevailing defendant upon a finding by the*  
29 *court that the plaintiff's prosecution of the action was not*  
30 *in good faith.*

31 *SEC. 2. Section 1804.1 of the Civil Code is amended*  
32 *to read:*

33 1804.1. No contract or obligation shall contain any  
34 provision by which:

35 (a) The buyer agrees not to assert against a seller a  
36 claim or defense arising out of the sale or agrees not to  
37 assert against an assignee such a claim or defense other  
38 than as provided in Section 1804.2.

39 (b) In the absence of the buyer's default in the  
40 performance of any of his or her obligations, the holder



1 may accelerate the maturity of any part or all of the  
2 amount owing thereunder.

3 (c) A power of attorney is given to confess judgment  
4 in this state, or an assignment of wages is given; provided,  
5 that nothing herein contained shall prohibit the giving of  
6 an assignment of wages contained in a separate  
7 instrument, executed pursuant to Section 300 of the  
8 Labor Code.

9 (d) The seller or holder of the contract or other person  
10 acting on his or her behalf is given authority to enter upon  
11 the buyer's premises unlawfully or to commit any breach  
12 of the peace in the repossession of goods.

13 (e) The buyer waives any right of action against the  
14 seller or holder of the contract or other person acting on  
15 his or her behalf, for any illegal act committed in the  
16 collection of payments under the contract or in the  
17 repossession of goods.

18 (f) The buyer executes a power of attorney appointing  
19 the seller or holder of the contract, or other person acting  
20 on his or her behalf, as the buyer's agent in collection of  
21 payments under the contract or in the repossession of  
22 goods.

23 (g) The buyer relieves the seller from liability for any  
24 legal remedies which the buyer may have against the  
25 seller under the contract or any separate instrument  
26 executed in connection therewith.

27 (h) The buyer agrees to the payment of any charge by  
28 reason of the exercise of his or her right to rescind or void  
29 the contract.

30 (i) The seller or holder of the contract is given the  
31 right to commence an action on a contract under the  
32 provisions of this chapter in a county other than the  
33 county in which the contract was in fact signed by the  
34 buyer, the county in which the buyer resides at the  
35 commencement of the action, the county in which the  
36 buyer resided at the time that the contract was entered  
37 into, or in the county in which the goods purchased  
38 pursuant to the contract have been so affixed to real  
39 property as to become a part of such real property.



1 (j) The seller takes a security interest, other than a  
 2 mechanics' lien, in the buyer's real property which is the  
 3 buyer's primary residence where the buyer is a person  
 4 who is 65 years of age or older and the contract is for a  
 5 home improvement, as defined in Section 7151.2 of the  
 6 Business and Professions Code.

7 ~~SEC. 2. Article 1.7 (commencing with Section 2946.1)~~  
 8 ~~is added to Chapter 2 of Title 14 of Part 4 of Division 3 of~~  
 9 ~~the Civil Code, to read:~~

10  
 11 ~~Article 1.7. Mortgages to Pay for Home~~  
 12 ~~Improvements~~  
 13

14 ~~2946.1. This article shall apply to any loan secured by~~  
 15 ~~a mortgage on real property when the proceeds of the~~  
 16 ~~loan provide funding for a home improvement, as~~  
 17 ~~defined in Section 7151.2 of the Business and Professions~~  
 18 ~~Code, on the real property.~~

19 ~~2946.2. A person or entity making a loan described in~~  
 20 ~~Section 2946.1 shall not pay a contractor under a home~~  
 21 ~~improvement contract from the proceeds of the loan~~  
 22 ~~described in Section 2946.1, other than by the following~~  
 23 ~~methods:~~

24 ~~(a) By an instrument payable to the borrower or~~  
 25 ~~jointly to the borrower and the contractor.~~

26 ~~(b) At the election of the borrower, through a~~  
 27 ~~third-party escrow agent in accordance with the terms~~  
 28 ~~established in a written agreement signed by the~~  
 29 ~~borrower, the person or entity making the loan, and the~~  
 30 ~~contractor prior to the disbursement.~~

31 ~~2946.3. (a) Any person or entity who violates any~~  
 32 ~~provision of this article shall be liable for actual damages~~  
 33 ~~suffered by the borrower for damages that proximately~~  
 34 ~~result from the violation.~~

35 ~~(b) Any person or entity who intentionally or as a~~  
 36 ~~pattern or practice violates any provision of this article~~  
 37 ~~shall be additionally liable for three times the contract~~  
 38 ~~price for the home improvement.~~

39 ~~(c) Any person who is a senior citizen or disabled~~  
 40 ~~person, as defined in subdivisions (f) and (g) of Section~~



1 ~~1761, as part of any action for a violation of this article,~~  
2 ~~may seek and be awarded, in addition to the remedies~~  
3 ~~provided in this article, up to five thousand dollars~~  
4 ~~(\$5,000) as provided in subdivision (b) of Section 1780.~~

5 ~~(d) The court shall award court costs and attorney's~~  
6 ~~fees to a prevailing plaintiff in an action brought pursuant~~  
7 ~~to this article. Reasonable attorney's fees may be awarded~~  
8 ~~to a prevailing defendant upon a finding by the court that~~  
9 ~~the plaintiff's prosecution of the action was not in good~~  
10 ~~faith.~~

11 SEC. 3. No reimbursement is required by this act  
12 pursuant to Section 6 of Article XIII B of the California  
13 Constitution because the only costs that may be incurred  
14 by a local agency or school district will be incurred  
15 because this act creates a new crime or infraction,  
16 eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section  
18 17556 of the Government Code, or changes the definition  
19 of a crime within the meaning of Section 6 of Article  
20 XIII B of the California Constitution.

21 ~~Notwithstanding Section 17580 of the Government~~  
22 ~~Code, unless otherwise specified, the provisions of this act~~  
23 ~~shall become operative on the same date that the act~~  
24 ~~takes effect pursuant to the California Constitution.~~

