

AMENDED IN SENATE APRIL 13, 2000

SENATE BILL

No. 2128

Introduced by Senator Solis

(Principal coauthor: Assembly Member Villaraigosa)

February 25, 2000

An act to add ~~Division 21 (commencing with Section 60000)~~ to the ~~Financial Code Article 4 (commencing with Section 2969.1)~~ to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, relating to residential mortgage loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 2128, as amended, Solis. Residential mortgage loans.

~~The California Finance Lenders Law and the Residential Mortgage Lending Act establish regulatory schemes for licensees making loans to consumers secured by mortgages, deeds of trust, or other enforceable interests in the property of consumers.~~

Existing law sets forth regulatory schemes regarding mortgages on residential real property.

This bill would establish a statutory scheme to provide consumer protection against unscrupulous and predatory practices by lenders in making consumer home loans.

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. Division 21 (commencing with Section~~
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1 SECTION 1. Article 4 (commencing with Section
2 2969.1) is added to Chapter 2 of Title 14 of Part 4 of
3 Division 3 of the Civil Code, to read:

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Article 4. Consumer Protection In Home Mortgages
Act

8 2969.1. (a) "Annual percentage rate" means the
9 annual percentage rate for the loan calculated according
10 to the provisions of the federal Truth In Lending Act (15
11 U.S.C. 1601, et seq.), and the regulations promulgated
12 thereunder by the Federal Reserve Board, as amended
13 from time to time.

14 (b) "Bona fide loan discount points" means loan
15 discount points knowingly paid by the borrower for the
16 purpose of reducing, and which in fact result in a bona
17 fide reduction of, the interest rate or time-price
18 differential applicable to the loan, provided the amount
19 of the interest rate reduction purchased by the discount
20 points is reasonably consistent with established industry
21 norms and practices for secondary mortgage market
22 transactions.

23 (c) "Home loan" means a loan, other than a reverse
24 mortgage transaction, in which all of the following apply:

25 (1) The principal amount of the loan does not exceed
26 the conforming loan size limit for a single-family dwelling
27 as established from time to time by the Federal National
28 Mortgage Association.

29 (2) The borrower is a natural person.

30 (3) The debt is incurred by the borrower primarily for
31 personal, family, or household purposes.

32 (4) The loan is secured by a mortgage or deed of trust
33 on real estate upon which there is located or there is to
34 be located a structure or structures designed principally
35 for occupancy of from one to four families and which is or
36 will be occupied by the borrower as the borrower's
37 principal dwelling.

38 (d) "Lender" means any person, including an
39 individual, a corporation, a partnership, a limited liability
40 company, a joint venture, an association, a joint stock



1 *company, a trust, an unincorporated organization, a*
2 *government, or a political subdivision of a government,*
3 *who is engaged in the business of making consumer loans,*
4 *and who originated more than five home loans within the*
5 *past 12-month period of acted as an intermediary*
6 *between originators and borrowers on more than five*
7 *home loans within the past 12-month period. “Lender”*
8 *does not include an FDIC insured financial institution or*
9 *holding company, subsidiary, or affiliate.*

10 *(e) “Points and fees” means:*

11 *(1) All items required to be disclosed under Sections*
12 *226.4(a) and 226.4(b) of Title 12 of the Code of Federal*
13 *Regulations, as amended from time to time, except*
14 *interest and the time-price differential.*

15 *(2) All charges for items listed under Section*
16 *226.4(c)(7) of Title 12 of the Code of Federal Regulations,*
17 *as amended from time to time, but only if the lender*
18 *receives direct or indirect compensation in connection*
19 *with the charge or the charge is paid to an affiliate of the*
20 *lender; otherwise, the charges are not included within*
21 *the meaning of the phrase “points and fees.”*

22 *(3) All compensation paid directly or indirectly to a*
23 *mortgage broker, including a broker that originates a*
24 *loan in its own name in a table-funded transaction, not*
25 *otherwise included in paragraph (1) or (2).*

26 *(4) “Points and fees” shall not include:*

27 *(A) Taxes, filing fees, recording and other charges and*
28 *fees paid or to be paid to public officials for determining*
29 *the existence of, or for perfecting, releasing, or satisfying,*
30 *a security interest.*

31 *(B) Fees paid to a person other than a lender or an*
32 *affiliate of the lender or to the mortgage broker or an*
33 *affiliate of the mortgage broker for the following: fees for*
34 *flood certification; fees for pest infestation and flood*
35 *determinations; appraisal fees; fees for inspections*
36 *performed prior to closing; credit reports; surveys;*
37 *attorneys’ fees, if the borrower has the right to select the*
38 *attorney from an approved list or otherwise; notary fees;*
39 *escrow charges, so long as not otherwise included under*
40 *paragraph (1); title insurance premiums; and fire*



1 insurance and flood insurance premiums, provided that
2 the conditions in Section 226.4(d)(2) of Title 12 of the
3 Code of Federal Regulations are met.

4 (f) “Restricted home loan” means a home loan in
5 which the terms of the loan meet one or more of the
6 following thresholds:

7 (1) The annual percentage rate of the home loan at
8 consummation exceeds by six or more percentage points
9 the weekly average yield on United States Treasury
10 securities adjusted to a constant maturity of one year, as
11 made available by the Federal Reserve Board as of the
12 week immediately preceding the week in which the
13 interest rate for the loan is established.

14 (2) Potential or scheduled increases in the annual
15 percentage rate of the home loan are not directly tied to
16 future increases in a widely-used federal or private
17 market index that reflects the cost of borrowing money,
18 such as the interest rate yield on the United States
19 Treasury securities, the federal funds rate, or the prime
20 interest rate.

21 (3) The home loan will become a variable rate loan in
22 which the annual percentage rate at the time it becomes
23 a variable rate loan, calculated based on the level of the
24 index upon which the variable rate is based at
25 consummation of the loan, exceeds the threshold
26 established in paragraph (1).

27 (4) The total points and fees on the loan exceed 4
28 percent of the total loan amount. The following discount
29 points shall be excluded from the calculation of the total
30 points and fees.

31 (A) Up to and including two bona fide loan discount
32 points payable by the borrower in connection with the
33 loan transaction, but only if the interest rate from which
34 the loan’s interest rate will be discounted does not exceed
35 by more than one percentage point the required net yield
36 for a 90-day standard mandatory delivery commitment
37 for a reasonably comparable loan from either the Federal
38 National Mortgage Association or the Federal Home
39 Loan Mortgage Corporation, whichever is greater.



1 (B) *Up to and including one bona fide loan discount*
2 *point payable by the borrower in connection with the*
3 *loan transaction, but only if the interest rate from which*
4 *the loan's interest rate will be discounted does not exceed*
5 *by more than two percentage points the required net*
6 *yield for a 90-day standard mandatory delivery*
7 *commitment for a reasonably comparable loan from*
8 *either the Federal National Mortgage Association or the*
9 *Federal Home Loan Mortgage Corporation, whichever is*
10 *greater.*

11 (g) *"Total loan amount" means the same as the term*
12 *"total loan amount," as used in Section 226.32 of Title 12*
13 *of the Code of Federal Regulations, and the same shall be*
14 *calculated in accordance with the Federal Reserve*
15 *Board's Official Staff Commentary thereto.*

16 2969.2. *The following acts or practices are prohibited:*

17 (a) *No lender shall make a home loan if the new loan*
18 *pays off an existing home loan and the new loan does not*
19 *provide a benefit to the borrower. In determining*
20 *whether the borrower received any benefit from the new*
21 *loan, a court shall consider the proceeds a borrower*
22 *received from the new loan and compare the contents of*
23 *the disclosures required pursuant to Section 1638 or*
24 *1639(a) of Title 15 of the United States Code.*

25 (b) *No lender shall make a home loan based on the*
26 *borrower's collateral if, considering the borrower's*
27 *current and expected income, current obligations, and*
28 *employment status, the borrower will be unable to make*
29 *the scheduled payments to repay the obligation. When*
30 *determining a borrower's ability to repay the obligation,*
31 *the current and expected income, the current*
32 *obligations, and the employment status of a borrower*
33 *who does not reside in the residence shall not be*
34 *considered if that residence is security for the loan and is*
35 *the primary residence of one of the borrowers.*

36 (c) *No lender shall finance life, disability, or*
37 *unemployment insurance through a home loan, and any*
38 *such policies shall be conducted as a separate transaction*
39 *from a home loan.*



1 2969.3. No lender shall make a restricted home loan,
2 as defined in Section 2969.1, under which the aggregate
3 amount of the regular periodic payments would not fully
4 amortize the outstanding principal balance.

5 2969.4. (a) No lender may enter into a restricted
6 home loan, as defined in Section 2969.1, with a borrower
7 before the borrower has obtained independent advice
8 and counseling at no cost from one of the following:

9 (1) A housing counseling agency approved by the
10 United States Department of Housing and Urban
11 Development (HUD) in the region where the indicated
12 security property is located.

13 (2) An attorney who has been approved and certified
14 by the State of California for the purposes of providing
15 housing counseling.

16 (b) Lenders shall not refer borrowers to particular
17 attorneys or the lenders' agents, affiliates, or family
18 members for the independent advice and counseling.

19 (c) Lenders shall not be liable for the content of the
20 advice given to the borrower by any of the persons or
21 entities that provide independent advice and counseling
22 pursuant to this section. Nor shall any of these persons or
23 entities be liable to the lender for any advice and
24 counseling provided to the borrower pursuant to this
25 section.

26 (d) Counseling shall be deemed complete upon
27 receipt by the lender from the borrower of a written
28 statement from the person or entity described in
29 subdivision (a) that states that counseling has been
30 completed.

31 2969.5. A lender in a restricted home loan who, when
32 acting in good faith, fails to comply with Section 2969.2,
33 2969.3, or 2969.4, shall not be deemed to have violated the
34 requirements of those sections if the lender establishes
35 either of the following:

36 (a) Within 30 days of the loan closing and prior to the
37 institution of any action under this section, the borrower
38 is notified of the compliance failure, appropriate
39 restitution is made, and whatever adjustments are



1 necessary are made to the loan, at the choice of the
2 borrower, to do either of the following:

3 (1) Make the high-cost home loan satisfy the
4 requirements of Sections 2969.2, 2969.3, and 2969.4.

5 (2) Change the terms of the loan in a manner
6 beneficial to the borrower so that the loan will no longer
7 be considered a restricted home loan.

8 (b) The compliance failure was not intentional and
9 resulted from a bona fide error notwithstanding the
10 maintenance of procedures reasonably adapted to avoid
11 those errors, and within 60 days after the discovery of the
12 compliance failure and prior to the institution of any
13 action under this section or the receipt of written notice
14 of the compliance failure, the borrower is notified of the
15 compliance failure, appropriate restitution is made, and
16 whatever adjustments are necessary are made to the loan,
17 at the choice of the borrower, to do either of the
18 following:

19 (1) Make the restricted home loan satisfy the
20 requirements of Sections 2969.2, 2969.3, and 2969.4.

21 (2) Change the terms of the loan in a manner
22 beneficial to the borrower so that the loan will no longer
23 be considered a restricted home loan.

24 Examples of a bona fide error include clerical,
25 calculation, computer malfunction and programming,
26 and printing errors. An error of legal judgment with
27 respect to a person's obligations under this section is not
28 a bona fide error.

29 2969.6. (a) Any person or entity who violates any
30 provision of this article, shall be liable to the borrower for
31 actual damages suffered by the borrower for damages
32 that proximately result from the violation.

33 (b) Any person or entity who intentionally or as a
34 pattern or practice violates any provision of this section
35 shall be additionally liable to the borrower for three times
36 the fees paid to the lender or the broker.

37 (c) Any person who is a senior citizen or disabled
38 person, as defined in subdivisions (f) and (g),
39 respectively, of Section 1761 of the Civil Code, as part of
40 any action for a violation of this article, may seek and be



1 awarded, in addition to the remedies provided in this
2 section, up to five thousand dollars (\$5,000) as provided
3 in subdivision (b) of Section 1780 of the Civil Code.

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

10 (e) The provisions of Section 338 of the Code of Civil
11 Procedure shall apply to this article.

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**All matter omitted in this version of the
bill appears in the bill as introduced in the
Senate, February 25, 2000 (JR 11)**

