

AMENDED IN SENATE MAY 18, 2000

AMENDED IN SENATE APRIL 13, 2000

**SENATE BILL**

**No. 2128**

**Introduced by Senator Solis**

(Principal coauthor: Assembly Member Villaraigosa)

February 25, 2000

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~~An act to add 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. An act relating to residential mortgage loans, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

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

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 the Predatory Lending Task Force to establish a definition of or criteria for, and to evaluate information related to,~~ predatory practices by lenders in making consumer home loans. *The bill would require the task force to report to the Legislature on or before May 1, 2001, with recommendations related to combating predatory lending in the state.*

*The bill would appropriate an unspecified sum to the Business, Transportation and Housing Agency for allocation to the task force.*

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: ~~no~~—yes. Fiscal committee: ~~no~~—yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Article 4 (commencing with Section~~  
2 *SECTION 1. The Legislature finds and declares all of*  
3 *the following:*  
4 *(a) Nationally, the level of subprime lending has*  
5 *skyrocketed in recent years. According to the Housing*  
6 *and Urban Development Agency, the subprime loan*  
7 *volume has grown from twenty billion dollars*  
8 *(\$20,000,000,000) in 1993 to more than one hundred fifty*  
9 *billion dollars (\$150,000,000,000) in 1998.*  
10 *(b) The number of subprime purchase and refinance*  
11 *loans has increased almost ten fold since 1993 to one*  
12 *million loans in 1998. During the same period, all other*  
13 *refinance and purchase loans have only risen 12 percent.*  
14 *(c) All homeowners and prospective homeowners*  
15 *should have fair access to the best-priced credit for which*  
16 *they can qualify.*  
17 *(d) Predatory lending practices cause harm to*  
18 *California residents and California communities by*  
19 *stripping homeowners of the equity they have built in*  
20 *their homes.*  
21 *(e) It is the intent of the Legislature to provide*  
22 *consumer protection against unscrupulous and predatory*  
23 *lending practices.*  
24 *SEC. 2. (a) There is hereby established the*  
25 *Predatory Lending Task Force, which shall be staffed and*  
26 *coordinated by the Business, Transportation and Housing*  
27 *Agency.*  
28 *(b) The task force shall be composed of 10 voting*  
29 *members and two nonvoting members who shall be*  
30 *appointed, as follows:*  
31 *(1) Four members appointed by the Governor.*  
32 *(2) Three members appointed by the Senate*  
33 *Committee on Rules.*



1 (3) Three members appointed by the Speaker of the  
2 Assembly.

3 (4) Two nonvoting *ex officio* members who shall be  
4 Members of the Legislature, one appointed by the  
5 Speaker of the Assembly and one appointed by the Senate  
6 Committee on Rules.

7 (c) In making the appointments specified in  
8 subdivision (b), the task force shall be comprised of  
9 mortgage brokers, mortgage lenders, consumer  
10 protection advocates, borrowers affected by predatory  
11 lending, real estate professionals, and other  
12 knowledgeable experts.

13 (d) The main responsibility of the task force shall be to  
14 report to the Legislature regarding the predatory lending  
15 practices in this state and to establish recommendations  
16 to combat predatory lending in the state.

17 (e) The task force shall do all of the following:

18 (1) Establish a definition or criteria for those home  
19 purchase or refinance lending practices which are  
20 considered predatory lending practices.

21 (2) Evaluate current available information related to  
22 predatory lending inside and outside of the state.

23 (3) Assess the range of lending practices in the state,  
24 including those that are or may be considered predatory,  
25 the impact of these practices, and the frequency of these  
26 practices with regard to areas of different income and  
27 race.

28 (4) Assess the growth or decline in rates of foreclosure  
29 and the distribution of foreclosures in areas of different  
30 income and race in the state.

31 (5) Assess the adequacy of current law in preventing  
32 predatory lending practices.

33 (f) The task force shall conduct three public hearings  
34 in the state so that communities which have been  
35 impacted by predatory lending will have the opportunity  
36 to testify.

37 (g) The task force shall report to the Legislature on or  
38 before May 1, 2001, with recommendations related to  
39 combating predatory lending in the state.



1 SEC. 3. The sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) is  
2 hereby appropriated from the General Fund to the  
3 Business, Transportation and Housing Agency for  
4 allocation for the Predatory Lending Task Force.

5 SEC. 4. This act is an urgency statute necessary for  
6 the immediate preservation of the public peace, health,  
7 or safety within the meaning of Article IV of the  
8 Constitution and shall go into immediate effect. The facts  
9 constituting the necessity are:

10 In order that consumer protection against predatory  
11 lending take effect at the earliest possible time, it is  
12 necessary that this act take effect immediately.

13 ~~2969.1) is added to Chapter 2 of Title 14 of Part 4 of~~  
14 ~~Division 3 of the Civil Code, to read:~~

15  
16 Article 4. ~~Consumer Protection In Home Mortgages~~  
17 Act  
18

19 ~~2969.1. (a) “Annual percentage rate” means the~~  
20 ~~annual percentage rate for the loan calculated according~~  
21 ~~to the provisions of the federal Truth In Lending Act (15~~  
22 ~~U.S.C. 1601, et seq.), and the regulations promulgated~~  
23 ~~thereunder by the Federal Reserve Board, as amended~~  
24 ~~from time to time.~~

25 ~~(b) “Bona fide loan discount points” means loan~~  
26 ~~discount points knowingly paid by the borrower for the~~  
27 ~~purpose of reducing, and which in fact result in a bona~~  
28 ~~fide reduction of, the interest rate or time-price~~  
29 ~~differential applicable to the loan, provided the amount~~  
30 ~~of the interest rate reduction purchased by the discount~~  
31 ~~points is reasonably consistent with established industry~~  
32 ~~norms and practices for secondary mortgage market~~  
33 ~~transactions.~~

34 ~~(c) “Home loan” means a loan, other than a reverse~~  
35 ~~mortgage transaction, in which all of the following apply:~~

36 ~~(1) The principal amount of the loan does not exceed~~  
37 ~~the conforming loan size limit for a single-family dwelling~~  
38 ~~as established from time to time by the Federal National~~  
39 ~~Mortgage Association.~~

40 ~~(2) The borrower is a natural person.~~



1 ~~(3) The debt is incurred by the borrower primarily for~~  
2 ~~personal, family, or household purposes.~~

3 ~~(4) The loan is secured by a mortgage or deed of trust~~  
4 ~~on real estate upon which there is located or there is to~~  
5 ~~be located a structure or structures designed principally~~  
6 ~~for occupancy of from one to four families and which is or~~  
7 ~~will be occupied by the borrower as the borrower's~~  
8 ~~principal dwelling.~~

9 ~~(d) "Lender" means any person, including an~~  
10 ~~individual, a corporation, a partnership, a limited liability~~  
11 ~~company, a joint venture, an association, a joint stock~~  
12 ~~company, a trust, an unincorporated organization, a~~  
13 ~~government, or a political subdivision of a government,~~  
14 ~~who is engaged in the business of making consumer loans,~~  
15 ~~and who originated more than five home loans within the~~  
16 ~~past 12-month period of acted as an intermediary~~  
17 ~~between originators and borrowers on more than five~~  
18 ~~home loans within the past 12-moth period. "Lender"~~  
19 ~~does not include an FDIC insured financial institution or~~  
20 ~~holding company, subsidiary, or affiliate.~~

21 ~~(e) "Points and fees" means:~~

22 ~~(1) All items required to be disclosed under Sections~~  
23 ~~226.4(a) and 226.4(b) of Title 12 of the Code of Federal~~  
24 ~~Regulations, as amended from time to time, except~~  
25 ~~interest and the time-price differential.~~

26 ~~(2) All charges for items listed under Section~~  
27 ~~226.4(e)(7) of Title 12 of the Code of Federal Regulations,~~  
28 ~~as amended from time to time, but only if the lender~~  
29 ~~receives direct or indirect compensation in connection~~  
30 ~~with the charge or the charge is paid to an affiliate of the~~  
31 ~~lender; otherwise, the charges are not included within~~  
32 ~~the meaning of the phrase "points and fees."~~

33 ~~(3) All compensation paid directly or indirectly to a~~  
34 ~~mortgage broker, including a broker that originates a~~  
35 ~~loan in its own name in a table-funded transaction, not~~  
36 ~~otherwise included in paragraph (1) or (2).~~

37 ~~(4) "Points and fees" shall not include:~~

38 ~~(A) Taxes, filing fees, recording and other charges and~~  
39 ~~fees paid or to be paid to public officials for determining~~



1 ~~the existence of, or for perfecting, releasing, or satisfying,~~  
2 ~~a security interest.~~

3 ~~(B) Fees paid to a person other than a lender or an~~  
4 ~~affiliate of the lender or to the mortgage broker or an~~  
5 ~~affiliate of the mortgage broker for the following: fees for~~  
6 ~~flood certification; fees for pest infestation and flood~~  
7 ~~determinations; appraisal fees; fees for inspections~~  
8 ~~performed prior to closing; credit reports; surveys;~~  
9 ~~attorneys' fees, if the borrower has the right to select the~~  
10 ~~attorney from an approved list or otherwise; notary fees;~~  
11 ~~escrow charges, so long as not otherwise included under~~  
12 ~~paragraph (1); title insurance premiums; and fire~~  
13 ~~insurance and flood insurance premiums, provided that~~  
14 ~~the conditions in Section 226.4(d)(2) of Title 12 of the~~  
15 ~~Code of Federal Regulations are met.~~

16 ~~(f) "Restricted home loan" means a home loan in~~  
17 ~~which the terms of the loan meet one or more of the~~  
18 ~~following thresholds:~~

19 ~~(1) The annual percentage rate of the home loan at~~  
20 ~~consummation exceeds by six or more percentage points~~  
21 ~~the weekly average yield on United States Treasury~~  
22 ~~securities adjusted to a constant maturity of one year, as~~  
23 ~~made available by the Federal Reserve Board as of the~~  
24 ~~week immediately preceding the week in which the~~  
25 ~~interest rate for the loan is established.~~

26 ~~(2) Potential or scheduled increases in the annual~~  
27 ~~percentage rate of the home loan are not directly tied to~~  
28 ~~future increases in a widely-used federal or private~~  
29 ~~market index that reflects the cost of borrowing money,~~  
30 ~~such as the interest rated yield on the United States~~  
31 ~~Treasury securities, the federal funds rate, or the prime~~  
32 ~~interest rate.~~

33 ~~(3) The home loan will become a variable rate loan in~~  
34 ~~which the annual percentage rate at the time it becomes~~  
35 ~~a variable rate loan, calculated based on the level of the~~  
36 ~~index upon which the variable rate is based at~~  
37 ~~consummation of the loan, exceeds the threshold~~  
38 ~~established in paragraph (1).~~

39 ~~(4) The total points and fees on the loan exceed 4~~  
40 ~~percent of the total loan amount. The following discount~~



1 ~~points shall be excluded from the calculation of the total~~  
2 ~~points and fees.~~

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

12 ~~(B) Up to and including one bona fide loan discount~~  
13 ~~point payable by the borrower in connection with the~~  
14 ~~loan transaction, but only if the interest rate from which~~  
15 ~~the loan's interest rate will be discounted does not exceed~~  
16 ~~by more than two percentage points the required net~~  
17 ~~yield for a 90-day standard mandatory delivery~~  
18 ~~commitment for a reasonably comparable loan from~~  
19 ~~either the Federal National Mortgage Association or the~~  
20 ~~Federal Home Loan Mortgage Corporation, whichever is~~  
21 ~~greater.~~

22 ~~(g) "Total loan amount" means the same as the term~~  
23 ~~"total loan amount," as used in Section 226.32 of Title 12~~  
24 ~~of the Code of Federal Regulations, and the same shall be~~  
25 ~~calculated in accordance with the Federal Reserve~~  
26 ~~Board's Official Staff Commentary thereto.~~

27 ~~2969.2. The following acts or practices are prohibited:~~

28 ~~(a) No lender shall make a home loan if the new loan~~  
29 ~~pays off an existing home loan and the new loan does not~~  
30 ~~provide a benefit to the borrower. In determining~~  
31 ~~whether the borrower received any benefit from the new~~  
32 ~~loan, a court shall consider the proceeds a borrower~~  
33 ~~received from the new loan and compare the contents of~~  
34 ~~the disclosures required pursuant to Section 1638 or~~  
35 ~~1639(a) of Title 15 of the United States Code.~~

36 ~~(b) No lender shall make a home loan based on the~~  
37 ~~borrower's collateral if, considering the borrower's~~  
38 ~~current and expected income, current obligations, and~~  
39 ~~employment status, the borrower will be unable to make~~  
40 ~~the scheduled payments to repay the obligation. When~~



1 ~~determining a borrower's ability to repay the obligation,~~  
2 ~~the current and expected income, the current~~  
3 ~~obligations, and the employment status of a borrower~~  
4 ~~who does not reside in the residence shall not be~~  
5 ~~considered if that residence is security for the loan and is~~  
6 ~~the primary residence of one of the borrowers.~~

7 ~~(e) No lender shall finance life, disability, or~~  
8 ~~unemployment insurance through a home loan, and any~~  
9 ~~such policies shall be conducted as a separate transaction~~  
10 ~~from a home loan.~~

11 ~~2969.3. No lender shall make a restricted home loan,~~  
12 ~~as defined in Section 2969.1, under which the aggregate~~  
13 ~~amount of the regular periodic payments would not fully~~  
14 ~~amortize the outstanding principal balance.~~

15 ~~2969.4. (a) No lender may enter into a restricted~~  
16 ~~home loan, as defined in Section 2969.1, with a borrower~~  
17 ~~before the borrower has obtained independent advice~~  
18 ~~and counseling at no cost from one of the following:~~

19 ~~(1) A housing counseling agency approved by the~~  
20 ~~United States Department of Housing and Urban~~  
21 ~~Development (HUD) in the region where the indicated~~  
22 ~~security property is located.~~

23 ~~(2) An attorney who has been approved and certified~~  
24 ~~by the State of California for the purposes of providing~~  
25 ~~housing counseling.~~

26 ~~(b) Lenders shall not refer borrowers to particular~~  
27 ~~attorneys or the lenders' agents, affiliates, or family~~  
28 ~~members for the independent advice and counseling.~~

29 ~~(c) Lenders shall not be liable for the content of the~~  
30 ~~advice given to the borrower by any of the persons or~~  
31 ~~entities that provide independent advice and counseling~~  
32 ~~pursuant to this section. Nor shall any of these persons or~~  
33 ~~entities be liable to the lender for any advice and~~  
34 ~~counseling provided to the borrower pursuant to this~~  
35 ~~section.~~

36 ~~(d) Counseling shall be deemed complete upon~~  
37 ~~receipt by the lender from the borrower of a written~~  
38 ~~statement from the person or entity described in~~  
39 ~~subdivision (a) that states that counseling has been~~  
40 ~~completed.~~



1 ~~2969.5. A lender in a restricted home loan who, when~~  
2 ~~acting in good faith, fails to comply with Section 2969.2,~~  
3 ~~2969.3, or 2969.4, shall not be deemed to have violated the~~  
4 ~~requirements of those sections if the lender establishes~~  
5 ~~either of the following:~~

6 ~~(a) Within 30 days of the loan closing and prior to the~~  
7 ~~institution of any action under this section, the borrower~~  
8 ~~is notified of the compliance failure, appropriate~~  
9 ~~restitution is made, and whatever adjustments are~~  
10 ~~necessary are made to the loan, at the choice of the~~  
11 ~~borrower, to do either of the following:~~

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

14 ~~(2) Change the terms of the loan in a manner~~  
15 ~~beneficial to the borrower so that the loan will no longer~~  
16 ~~be considered a restricted home loan.~~

17 ~~(b) The compliance failure was not intentional and~~  
18 ~~resulted from a bona fide error notwithstanding the~~  
19 ~~maintenance of procedures reasonably adapted to avoid~~  
20 ~~those errors, and within 60 days after the discovery of the~~  
21 ~~compliance failure and prior to the institution of any~~  
22 ~~action under this section or the receipt of written notice~~  
23 ~~of the compliance failure, the borrower is notified of the~~  
24 ~~compliance failure, appropriate restitution is made, and~~  
25 ~~whatever adjustments are necessary are made to the loan,~~  
26 ~~at the choice of the borrower, to do either of the~~  
27 ~~following:~~

28 ~~(1) Make the restricted home loan satisfy the~~  
29 ~~requirements of Sections 2969.2, 2969.3, and 2969.4.~~

30 ~~(2) Change the terms of the loan in a manner~~  
31 ~~beneficial to the borrower so that the loan will no longer~~  
32 ~~be considered a restricted home loan.~~

33 ~~Examples of a bona fide error include clerical,~~  
34 ~~calculation, computer malfunction and programming,~~  
35 ~~and printing errors. An error of legal judgment with~~  
36 ~~respect to a person's obligations under this section is not~~  
37 ~~a bona fide error.~~

38 ~~2969.6. (a) Any person or entity who violates any~~  
39 ~~provision of this article, shall be liable to the borrower for~~



1 ~~actual damages suffered by the borrower for damages~~  
2 ~~that proximately result from the violation.~~

3 ~~(b) Any person or entity who intentionally or as a~~  
4 ~~pattern or practice violates any provision of this section~~  
5 ~~shall be additionally liable to the borrower for three times~~  
6 ~~the fees paid to the lender or the broker.~~

7 ~~(c) Any person who is a senior citizen or disabled~~  
8 ~~person, as defined in subdivisions (f) and (g),~~  
9 ~~respectively, of Section 1761 of the Civil Code, as part of~~  
10 ~~any action for a violation of this article, may seek and be~~  
11 ~~awarded, in addition to the remedies provided in this~~  
12 ~~section, up to five thousand dollars (\$5,000) as provided~~  
13 ~~in subdivision (b) of Section 1780 of the Civil Code.~~

14 ~~(d) The court shall award court costs and attorneys'~~  
15 ~~fees to a prevailing plaintiff in an action brought pursuant~~  
16 ~~to this article. Reasonable attorney's fees may be awarded~~  
17 ~~to a prevailing defendant upon a finding by the court that~~  
18 ~~the plaintiff's prosecution of the action was not in good~~  
19 ~~faith.~~

20 ~~(e) The provisions of Section 338 of the Code of Civil~~  
21 ~~Procedure shall apply to this article.~~

