

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

AB 3254 (Limón)
Version: May 5, 2020
Hearing Date: August 18, 2020
Fiscal: No
Urgency: No
AWM

SUBJECT

Contracts: translations

DIGEST

This bill extends the existing requirement that, for certain consumer contracts negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean, a version of the contract translated into the negotiating language must be provided to the consumer, so that a translated version must also be provided to any nonparty signatories to the contract.

EXECUTIVE SUMMARY

Under existing law, when certain consumer contracts are negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean, the business or tradesperson conducting the negotiation must provide a version of the contract, translated into the language in which negotiations were conducted, to the consumer prior to signing. There is currently no requirement that nonparty signatories – such as guarantors or cosigners – be provided with a translated copy of the contract.

This bill would expand existing law so that, whenever a business or tradesperson is required to provide a translated version of a consumer contract to the consumer-party, all nonparty signatories must also receive a translated version. This will provide a layer of protection to nonparty signatories who may be agreeing to significant liabilities in the event of a party default.

This bill is sponsored by the California Low-Income Consumer Coalition and supported by a number of legal aid and community legal services organizations. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires that any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into specified contracts, deliver to the other party to the contract or agreement, prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated that includes a translation of every term and condition in that contract or agreement.¹ The specified contracts are:
 - a) A contract or agreement for a credit sale subject to the Unruh Act (Title 2 of the Civil Code);
 - b) A vehicle sale subject to the Automobile Sales Act (Chapter 2b of Title 14 of the Civil Code);
 - c) A vehicle lease subject to the Vehicle Leasing Act (Chapter 2d of Title 14 of the Civil Code);
 - d) A loan or extension of credit secured other than by real property, or unsecured, for use primarily for personal, family, or household purposes, including a loan or extension of credit subject to Article 7 of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the Industrial Loan Law (Division 7 of the Financial Code), or the California Financing Law (Division 9 of the Financial Code);²
 - e) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, apartment, mobile home, or other dwelling unit normally occupied as a residence;
 - f) A reverse mortgage as described in Chapter 8 of Title 4 of Division 3 of the Civil Code;
 - g) A contract or agreement, containing a statement of fees or charges, entered into for the purpose of obtaining legal services, when the person who is engaged in business is currently licensed to practice law under the State Bar Act (Chapter 4 of Division 3 of the Business and Professions Code);
 - h) A foreclosure consulting contract subject to Article 1.5 of Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code. (Civ. Code, § 1632(b)(1)-(7).)

¹ Certain elements of the contract need not be translated, such as proper names, brand names, trademarks, and alphanumeric codes. (Civ. Code, § 1632(i).)

² For loans subject to Article 7 of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the delivery of a translation of the statement to the borrower required by Business & Professions Code section 10240 satisfies the translation requirement. (Civ. Code, § 1632(c).) Provision of a translated version of the disclosures required by Regulation M or Regulation Z under the Truth in Lending Act (16 U.S.C. § 1601 et seq.) or, where applicable, the Industrial Loan Law satisfies the translation requirement. (Civ. Code, § 1632(e).)

- 2) Requires that, at the time and place where a lease, sublease, or rental contract agreement is executed, notice in any of the specified languages be provided to the lessee or tenant. (Civ. Code, § 1632(d).)
- 3) Requires that a notice in the language that the contract or agreement was negotiated, stating that the person engaged in the trade or business is required to provide a contract or agreement in which the contract or agreement was negotiated, be conspicuously displayed at the time and place where the contract or agreement is executed. (Civ. Code, § 1632(f).)
- 4) Exempts from the translation requirements contracts where the party being negotiated with is a buyer of goods or services, or receives a loan or extension of credit, or enters an agreement obligating himself or herself as tenant, lessee, or sublessee, or similarly obligates themselves by contract or lease, and that party negotiates the terms of the contract, lease, or other obligation through their own interpreter (the “interpreter exemption”). For purposes of the interpreter exemption, the interpreter must be a person who is not a minor, is able to speak fluently and read with a full understanding of both the English language and the languages in which the contract or agreement was negotiated, and is not employed by, or whose services are not made available through, the person engaged in the trade or business. (Civ. Code, § 1632.)
- 5) Provides that the English-language executed contract shall determine the rights and obligations of the parties, but that the translation of the contract or disclosures shall be admissible in evidence to show that no contract was entered into because of a substantial difference in the material terms and conditions between the English-language contract and the translation. (Civ. Code, § 1632(j).)
- 6) Permits, where the person engaged in the trade or business failed to comply with the translation requirements, the aggrieved party to rescind the contract. If a contract for a consumer credit sale or consumer lease has been sold and assigned to a financial institution and is rescinded for failure to comply with the translation requirements, the person engaged in the trade or business must make restitution, rescind the contract, and notify the financial institution of the rescission, and the assignment shall be deemed rescinded. (Civ. Code, § 1632(k).)
- 7) Does not require that the person engaged in the trade or business provide translated versions of the contract or agreement to co-signers or other non-parties to the contract who are nevertheless signing the contract.

This bill:

- 1) Expands the translation requirement so that a person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,

orally or in writing, in the course of entering into the applicable contracts, must provide a translated contract or agreement to any person signing the contract, not just the parties to the contract.

2) Makes other technical and conforming changes.

COMMENTS

1. Author's comment

According to the author:

AB 3254 will help close a loophole in current law by protecting non-English speaking co-signers. Currently, when a contract is negotiated in one of the five most commonly spoken languages in California other than English, a physical contract must be provided in that language. This provision does not apply to monolingual cosigners. AB 3254 would ensure co-signers have the same protections. Without these protections co-signers are extremely susceptible to fraud because they may not understand the terms of the contract and are taking on all the risk in a loan without receiving any of the benefit.

This bill is especially important in light of the unprecedented rise in unemployment throughout the state and country, it is foreseeable that many people will turn to personal loans and credit cards, which may require a co-signer, to address their rising debt and pay for basic needs.

2. This bill is a commonsense extension of an existing requirement for businesses negotiating in California's five most common non-English languages

Under California law, if certain consumer contracts are negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean – the five most common non-English languages spoken in California – the business or tradesperson negotiating the contract must give the other party a copy of the contract translated into that language for the consumer to review before signing.³ This obligation is relieved if the consumer provides their own interpreter.⁴ A consumer who does not receive the mandated translation has a right to rescind the contract.⁵ These provisions have been in place since 1976 for contracts negotiated in Spanish, and were expanded to include the other four languages in 2003.⁶

This translation requirement governs a vast range of consumer contracts, including auto sales and leases, apartment leases and rental agreements, most home mortgages and

³ Civ. Code, § 1632(b).

⁴ *Id.*, § 1632(h).

⁵ *Id.*, § 1632(k).

⁶ *See* AB 309 (Ch. 330, § 1, Stats. 2003).

reverse mortgages, agreements for legal services, and virtually all loans and extensions of credit meant primarily for personal, family, or household purposes. Unfortunately, there is currently no concomitant obligation to provide a translated contract to nonparty signors to the contract, namely cosigners and guarantors. These nonparty signors can end up liable for the full balance of a contract if the primary party defaults, but without a version of the contract in the language in which the contract was negotiated, they might not understand the full scope of their obligations.

This bill straightforwardly extends the existing statute to require that, where a consumer contract is negotiated in one of the five languages mentioned above, the business or tradesperson negotiating the contract must also provide a translated copy of the contract to all nonparty signors. This measure would not impose any additional translation costs to the businesses or tradespeople required to provide the translated contracts, because they are already required to provide such translated contracts to the party to the contract – the bill simply requires providing additional copies of the already-translated contracts.

This bill is narrow in scope in that it does not require the provision of a translated contract where (1) the contract was negotiated in English, but the nonparty signer speaks primarily one of the five covered languages, or (2) the party signor negotiated the contract through an interpreter. In discussions with Committee staff, the author and the sponsor determined that these issues will be better served in future legislation, particularly in light of the compressed timeline of this year’s legislative schedule. While such added measures may provide additional protections for nonparty signors, the bill in its current form is an important and reasonable step forward.

SUPPORT

California Low-Income Consumer Coalition (sponsor)
Bet Tzedek
Centro Legal de la Raza
Community Legal Services in East Palo Alto
East Bay Community Law Center
Elder Law & Advocacy
Justice & Diversity Center of the Bar Association of San Francisco
Legal Aid of Marin
Legal Society of San Bernardino
Public Counsel
Public Law Center
Riverside Legal Aid

OPPOSITION

None known

RELATED LEGISLATION

Pending legislation:

SB 960 (Hertzberg, 2020) clarifies that contracts or agreements to secure or finance a bail bond or immigration bond for the release of a detained individual are contracts covered by various statutes governing contract requirements, including the contract requirement. SB 960 was referred to this Committee but not heard.

Prior legislation:

SB 318 (Hertzberg, 2019) would have added several provisions relating to the for-profit bail system, including clarifying that loans or extension of credit subject to the translation requirement include contracts or agreements to secure or finance a bail bond or immigration bond for the release of a detained individual. SB 318 failed passage in the Assembly Insurance Committee.

AB 2708 (Reyes, 2018) would have specified that, if a minor negotiates an applicable transaction for a consumer who speaks one of the specified languages, the seller is required to provide a translation to the consumer in the consumer's spoken language before the transaction is executed. AB 2708 was held in the Assembly Appropriations Committee.

SB 245 (Correa, Ch. 117, Stats. 2014) updated the demographic data underlying the findings relating to the number of Californians who speak a language other than English in the home and the number of those Californians who have little or no English proficiency.

PRIOR VOTES:

Assembly Floor (Ayes 75, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
