

AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 539

Introduced by Assembly Members ~~Limón and Grayson~~ *Limón, Grayson, and Gonzalez*
(Coauthors: Assembly Members *Aguiar-Curry, Kalra, Ramos, Reyes, Mark Stone, Robert Rivas, Medina, Mullin, and Ting*)
(Coauthors: Senators *Durazo, Mitchell, and Wieckowski*)

February 13, 2019

An act to amend Sections 22202, 22250, 22251, ~~22302~~, 22305, and 22334 of, and to add Sections 22304.5 and 22307.5 to, the Financial Code, relating to consumer loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 539, as amended, Limón. California Financing Law: consumer loans: charges.

(1) The California Financing Law (CFL) provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Business Oversight. The CFL prohibits anyone from engaging in the business of a finance lender or broker without obtaining a license. A willful violation of the CFL is a crime, except as specified. Under existing law, a licensee who lends any sum of money is authorized to contract for and receive charges at a maximum rate that does not exceed specified sums on the unpaid principal balance per month, ranging from 2 ½ % to 1%, based on the consumer loan amount, as specified. This provision, however, does not apply to any loan of a bona fide principal amount of \$2,500 or more, as determined in accordance with a provision governing regulatory ceilings and evasion of the CFL.

The CFL also authorizes a licensee, as an alternative to the above-described rate charges for consumer loan amounts, to instead contract for and receive charges at the greater of a rate not exceeding 1.6% per month on the unpaid principal balance or a rate not exceeding $5 \frac{5}{8}$ % of 1% per month, plus a specified percentage per month, as established by the Federal Reserve Bank of San Francisco, on advances to member banks under federal law, or if there is no single determinable rate, the closest counterpart of this rate. Under existing law, these provisions do not apply to a loan of a bona fide principal amount of \$2,500 or more, as specified. The CFL further authorizes a licensee to contract for and receive an administrative fee of a specified amount that varies with the bona fide principal amount of the loan.

~~This bill~~ *bill, entitled the Fair Access to Credit Act*, would authorize a licensee, with respect to a loan of a bona fide principal amount of \$2,500 or more but less than \$10,000, to contract for or receive charges at a rate not exceeding an annual simple interest rate of 36% plus the Federal Funds Rate. The bill would specify that a licensee may contract for and receive an administrative fee, as described above, in addition to these charges.

(2) Under the CFL, certain principles apply in determining whether a loan is a loan of a bona fide principal amount under specified provisions and whether the regulatory ceiling provision is used for purposes of evading the CFL.

This bill would apply these principles to loans of a bona fide principal amount of \$2,500 or more but less than \$10,000. *The bill would also apply these principles to any fees paid to a licensee for the privilege of participating in an open-end credit program.*

(3) Existing law prohibits licensees subject to the CFL from entering into a contract for a consumer loan that provides for a scheduled repayment of principal over more than the maximum terms set forth in relation to the respective size of the loan. Among other things, this provision prohibits a loan of at least \$3,000 but less than \$5,000 from exceeding a maximum term of 60 months and 15 days.

This bill would increase the maximum principal loan amount under the above schedule to \$10,000. The bill would also prohibit a licensee from entering into a contract for a consumer loan that is in excess of \$2,500 but less than \$10,000 that provides for a scheduled repayment of principal that is less than 12 months.

(4) ~~The CFL specifies that a loan found to be unconscionable pursuant to a specified provision shall be deemed in violation of the CFL and subject to the remedies applicable to the CFL.~~

This bill would specify that certain charges authorized under the CFL shall not be deemed to be unconscionable based on the costs of the charges alone. The bill would also prohibit a licensee from charging, imposing, or receiving any penalty for the prepayment of a loan under the CFL.

By expanding the application of the CFL to cover more loans, the bill would expand the scope of an existing crime, thereby imposing 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. This act shall be known, and may be cited, as the
2 Fair Access to Credit Act.

3 ~~SECTION 1.~~

4 SEC. 2. Section 22202 of the Financial Code is amended to
5 read:

6 22202. “Charges” do not include any of the following:

7 (a) Commissions received as a licensed insurance agent or
8 broker in connection with insurance written as provided in Section
9 22313.

10 (b) Amounts not in excess of the amounts specified in
11 subdivision (c) of Section 3068 of the Civil Code paid to holders
12 of possessory liens, imposed pursuant to Chapter 6.5 (commencing
13 with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil
14 Code, to release motor vehicles that secure loans subject to this
15 division.

16 (c) Court costs, excluding attorney’s fees, incurred in a suit and
17 recovered against a debtor who defaults on the debtor’s loan.

18 (d) Amounts received by a licensee from a seller, from whom
19 the borrower obtains money, goods, labor, or services on credit,

1 in connection with a transaction under an open-end credit program
2 that are paid or deducted from the loan proceeds paid to the seller
3 at the direction of the borrower and that are an obligation of the
4 seller to the licensee for the privilege of allowing the seller to
5 participate in the licensee's open-end credit program. Amounts
6 received by a licensee from a seller pursuant to this subdivision
7 may not exceed 6 percent of the loan proceeds paid to the seller
8 at the direction of the borrower.

9 (e) Actual and necessary fees not exceeding five hundred dollars
10 (\$500) paid in connection with the repossession of a motor vehicle
11 to repossession agencies licensed pursuant to Chapter 11
12 (commencing with Section 7500) of Division 3 of the Business
13 and Professions Code provided that the licensee complies with
14 Sections 22328 and 22329, and actual fees paid to a licensee in
15 conformity with Sections 26751 and 41612 of the Government
16 Code in an amount not exceeding the amount specified in those
17 sections of the Government Code.

18 (f) Moneys paid to, and commissions and benefits received by,
19 a licensee for the sale of goods, services, or insurance, whether or
20 not the sale is in connection with a loan, that the buyer by a
21 separately signed authorization acknowledges is optional, if sale
22 of the goods, services, or insurance has been authorized pursuant
23 to Section 22154.

24 ~~SEC. 2.~~

25 *SEC. 3.* Section 22250 of the Financial Code is amended to
26 read:

27 22250. (a) The following sections do not apply to any loan of
28 a bona fide principal amount of ten thousand dollars (\$10,000) or
29 more, or to a duly licensed finance lender in connection with any
30 such loan or loans, if the provisions of this section are not used
31 for the purpose of evading this division: Sections 22154, 22155,
32 22201, 22202 22307, 22313, 22314, 22315, 22322, 22323, 22325,
33 22334, and 22752, and the sections enumerated in subdivision (b).

34 (b) The following sections do not apply to any loan of a bona
35 fide principal amount of five thousand dollars (\$5,000) or more,
36 or to a duly licensed finance lender in connection with any such
37 loan or loans, if the provisions of this section are not used for the
38 purpose of evading this division: Sections 22300, 22305, and
39 22306, subdivision (a) of Section 22307, and Sections 22309,
40 22320.5, ~~22322~~, 22326, 22327, 22400, and 22751.

1 ~~SEC. 3.~~

2 SEC. 4. Section 22251 of the Financial Code is amended to
3 read:

4 22251. Any section that refers to this section does not apply
5 to any loan of the bona fide principal amount specified in the
6 regulatory ceiling provision of that section or more if that provision
7 is not used for the purpose of evading this division. In determining
8 under Section 22250, 22303, 22304, or 22304.5 or any section that
9 refers to this section whether a loan is a loan of a bona fide
10 principal amount of the amount specified in that section or more
11 and whether the regulatory ceiling provision of that section is used
12 for the purpose of evading this division, the following principles
13 apply:

14 (a) If a borrower applies for a loan in a bona fide principal
15 amount of less than the specified amount and a loan to that
16 borrower of a bona fide principal amount of the specified amount
17 or more ~~if~~ is made by a licensed finance lender, no adequate
18 economic reason for the increase in the size of the loan exists, and
19 by prearrangement or understanding between the borrower and
20 the licensee a substantial payment is to be made upon the loan with
21 the effect of reducing the bona fide principal amount of the loan
22 to less than the specified amount within a short time after the
23 making of the loan other than by reason of a requirement that the
24 loan be paid in substantially equal periodical installments, then
25 the loan shall not be deemed to be a loan of the bona fide principal
26 amount of the specified amount or more and the regulatory ceiling
27 provisions shall be deemed to be used for the purpose of evading
28 this division unless the loan complies with the other provisions of
29 the section that includes the regulatory ceiling provisions.

30 (b) If a loan made by a licensed finance lender is in a bona fide
31 principal amount of the specified amount or more, the fact that the
32 transaction is in the form of a sale of accounts, chattel paper, goods,
33 or instruments or a lease of goods, or in the form of an advance
34 on the purchase price of any of the foregoing, shall not be deemed
35 to affect the loan or the bona fides of the amount thereof or to
36 indicate that the regulatory ceiling provisions are used for the
37 purpose of evading this division.

38 (c) For the purposes of determining whether the loan amount
39 exceeds a regulatory ceiling, the “bona fide principal amount”
40 shall not be comprised of any charges or any other fees or

1 recompense specified in Sections 22200, ~~22201 (including, but~~
2 ~~not limited to, amounts paid for insurance of the types specified~~
3 ~~in Sections 22313 and 22314), 22201, 22202, 22305, 22316, 22317,~~
4 ~~22318, 22319, 22320, 22320.5, and 22336. 22336, or any amounts~~
5 ~~paid for insurance of the types specified in Section 22313 and~~
6 ~~22314, or any fees paid to a licensee for the privilege of~~
7 ~~participating in an open-end credit program.~~ Nothing in this
8 subdivision shall be construed to prevent those specified charges,
9 fees, and recompense that have been earned and remain unpaid in
10 an existing loan from being considered as part of the bona fide
11 principal amount of a new loan to refinance that existing loan,
12 provided the new loan is not made for the purpose of circumventing
13 a regulatory ceiling provision. This subdivision is intended to
14 define the meaning of “bona fide principal amount” as used in this
15 division solely for the purposes of determining whether the loan
16 amount exceeds a regulatory ceiling, and is not intended to affect
17 the meaning of “principal” for any other purpose.

18 ~~SEC. 4. Section 22302 of the Financial Code is amended to~~
19 ~~read:~~

20 ~~22302. (a) Section 1670.5 of the Civil Code applies to the~~
21 ~~provisions of a loan contract that is subject to this division.~~

22 ~~(b) A loan found to be unconscionable pursuant to Section~~
23 ~~1670.5 of the Civil Code shall be deemed to be in violation of this~~
24 ~~division and subject to the remedies specified in this division.~~

25 ~~(c) Charges authorized by Section 22303, 22304, or 22304.5~~
26 ~~shall not be deemed to be unconscionable pursuant to Section~~
27 ~~1670.5 of the Civil Code based on the cost of the charges alone.~~

28 SEC. 5. Section 22304.5 is added to the Financial Code, to
29 read:

30 22304.5. (a) For any loan of a bona fide principal amount of
31 at least two thousand five hundred dollars (\$2,500) but less than
32 ten thousand dollars (\$10,000), as determined in accordance with
33 Section 22251, a licensee may contract for or receive charges at a
34 rate not exceeding an annual simple interest rate of 36 percent per
35 annum plus the Federal Funds Rate. ~~As~~

36 (b) ~~As used in this paragraph, section,~~ “Federal Funds Rate”
37 means the rate published by the Board of Governors of the Federal
38 Reserve System in its Statistical Release H.15 Selected Interest
39 Rates and in effect as of the first day of the month immediately
40 preceding the month during which the loan is consummated. If the

1 Federal Reserve System ceases publication of the federal funds
2 rate, the commissioner shall designate a substantially equivalent
3 index.

4 SEC. 6. Section 22305 of the Financial Code is amended to
5 read:

6 22305. In addition to the charges authorized by Section 22303,
7 22304, or 22304.5, a licensee may contract for and receive an
8 administrative fee, which shall be fully earned immediately upon
9 making the loan, with respect to a loan of a bona fide principal
10 amount of not more than two thousand five hundred dollars
11 (\$2,500) at a rate not in excess of 5 percent of the principal amount
12 (exclusive of the administrative fee) or fifty dollars (\$50),
13 whichever is less, and with respect to a loan of a bona fide principal
14 amount in excess of two thousand five hundred dollars (\$2,500),
15 at an amount not to exceed seventy-five dollars (\$75). No
16 administrative fee may be contracted for or received in connection
17 with the refinancing of a loan unless at least one year has elapsed
18 since the receipt of a previous administrative fee paid by the
19 borrower. Only one administrative fee may be contracted for or
20 received until the loan has been repaid in full. For purposes of this
21 section, "bona fide principal amount" shall be determined in
22 accordance with Section 22251.

23 SEC. 7. Section 22307.5 is added to the Financial Code, to
24 read:

25 22307.5. A licensee shall not charge, impose, or receive any
26 penalty for the prepayment of a loan. This section does not apply
27 to loans secured by real property.

28 SEC. 8. Section 22334 of the Financial Code is amended to
29 read:

30 22334. (a) Except as provided in subdivision (b), a licensee
31 shall not enter into any contract for a loan that provides for a
32 scheduled repayment of principal over more than the maximum
33 terms set forth below opposite the respective size of loans.

Principal amount of loan	Maximum term
Less than \$500	24 months and 15 days
\$500 but less than \$1,500	36 months and 15 days
\$1,500 but less than \$3,000	48 months and 15 days
\$3,000 but less than \$10,000	60 months and 15 days

1 (b) The maximum loan term of 60 months and 15 days does not
2 apply to loans secured by real property of a bona fide principal
3 amount in excess of five thousand dollars (\$5,000).

4 (c) A licensee shall not enter into any contract for a loan that
5 provides for a scheduled repayment of principal that is less than
6 12 months. This subdivision applies to a loan of a bona fide
7 principal amount in excess of two thousand five hundred dollars
8 (\$2,500), but less than ten thousand dollars (\$10,000).

9 (d) This section does not apply to open-end loans, or to a student
10 loan made by an eligible lender under the Higher Education Act
11 of 1965, as amended (20 U.S.C. Sec. 1070 et seq.), or to a student
12 loan made pursuant to the Public Health Service Act, as amended
13 (42 U.S.C. Sec. 294 et seq.).

14 SEC. 9. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

23
24
25 **REVISIONS:**

26 **Heading—Lines 1 and 3.**
27