

File No. 190362

Committee Item No. \_\_\_\_\_

Board Item No. 33

**COMMITTEE/BOARD OF SUPERVISORS**  
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Board of Supervisors Meeting

Date: \_\_\_\_\_  
Date: April 9, 2019

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Prepared by: Lisa Lew  
Prepared by: \_\_\_\_\_

Date: April 5, 2019  
Date: \_\_\_\_\_

1 [Supporting California State Assembly Bill No. 539 (Limón) - Fair Access to Credit Act]

2  
3 **Resolution supporting California State Assembly Bill No. 539, authored by Assembly**  
4 **Member Monique Limón and coauthored by Assembly Members Timothy Grayson,**  
5 **Cecelia Aguiar-Curry, Ash Kalra, James Ramos, Eloise Gómez Reyes, Mark Stone, and**  
6 **State Senators Maria Elena Durazo, Holly Mitchell, and Bob Wieckowski, to cap interest**  
7 **rates on consumer loans at 36% per annum plus the Federal Funds Rate for loans with**  
8 **a principal amount greater than \$2,500 and lesser than \$10,000.**

9  
10 WHEREAS, Long-term financial health of all residents in the City and County of San  
11 Francisco, particularly low-income and working families, is important to the overall economic  
12 well-being of the region; and

13 WHEREAS, High-cost loan services, which are concentrated in areas with family  
14 poverty rates higher than that of the state average, market their products to economically  
15 disadvantaged communities and people who may need to resolve short-term financial crises;  
16 and

17 WHEREAS, Existing state law provides a 36% interest rate cap on consumer  
18 installment loans below \$2,500, but does not cap interest rates on consumer installment loans  
19 with principal amounts of \$2,500 or greater; and

20 WHEREAS, The California Supreme Court held in August 2018 that current uncapped  
21 interest rates on high-cost loans of \$2,500 or greater are unduly oppressive and  
22 unconscionable; and

23 WHEREAS, State-licensed high-cost lenders originated 352,207 loans with annual  
24 interest rates above 100% annual percentage rate in 2017, representing \$1.1 billion in  
25 principal amount; and

1. WHEREAS, Default rates on high-cost loans exceed 30% statewide and cause harmful  
2 consequences to San Francisco families, including damaged credit scores, car  
3 repossessions, lawsuits, wage garnishments, and even bankruptcy; and

4 WHEREAS, California State Assembly Bill No. 539 places a 36% interest rate cap, tied  
5 to the Federal Funds Rate, for consumer installment loans of \$2,500 to \$10,000; and

6 WHEREAS, California State Assembly Bill No. 539 strikes the right balance between  
7 protecting consumers from predatory lending practices and allowing responsible lenders to  
8 provide access to credit to consumers with challenged credit scores or no credit score due to  
9 lack of previous credit access; now, therefore, be it

10 RESOLVED, That the City and County of San Francisco supports California State  
11 Assembly Bill No. 539 and urges the Assembly and Senate to pass the bill; and, be it

12 FURTHER RESOLVED, That the Board of Supervisors hereby directs the Clerk of the  
13 Board to send a copy of this Resolution to the California State Assembly and the California  
14 State Senate.

AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE—2019—20 REGULAR SESSION

ASSEMBLY BILL

No. 539

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Introduced by Assembly Members Limón and Grayson  
(Coauthors: Assembly Members Aguiar-Curry, Kalra, Ramos, Reyes,  
and Mark Stone)

(Coauthors: Senators Durazo, Mitchell, and Wieckowski)

February 13, 2019

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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 ⅓% 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, *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,  
20    in connection with a transaction under an open-end credit program  
21    that are paid or deducted from the loan proceeds paid to the seller  
22    at the direction of the borrower and that are an obligation of the

1 seller to the licensee for the privilege of allowing the seller to  
2 participate in the licensee's open-end credit program. Amounts  
3 received by a licensee from a seller pursuant to this subdivision  
4 may not exceed 6 percent of the loan proceeds paid to the seller  
5 at the direction of the borrower.

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

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

21 ~~SEC. 2.~~

22 *SEC. 3.* Section 22250 of the Financial Code is amended to  
23 read:

24 22250. (a) The following sections do not apply to any loan of  
25 a bona fide principal amount of ten thousand dollars (\$10,000) or  
26 more, or to a duly licensed finance lender in connection with any  
27 such loan or loans, if the provisions of this section are not used  
28 for the purpose of evading this division: Sections 22154, 22155,  
29 22201, 22202, 22307, 22313, 22314, 22315, 22322, 22323, 22325,  
30 22334, and 22752, and the sections enumerated in subdivision (b).

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

38 ~~SEC. 3.~~

39 *SEC. 4.* Section 22251 of the Financial Code is amended to  
40 read:

1 22251. Any section that refers to this section does not apply  
2 to any loan of the bona fide principal amount specified in the  
3 regulatory ceiling provision of that section or more if that provision  
4 is not used for the purpose of evading this division. In determining  
5 under Section 22250, 22303, 22304, or 22304.5 or any section that  
6 refers to this section whether a loan is a loan of a bona fide  
7 principal amount of the amount specified in that section or more  
8 and whether the regulatory ceiling provision of that section is used  
9 for the purpose of evading this division, the following principles  
10 apply:

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

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

35 (c) For the purposes of determining whether the loan amount  
36 exceeds a regulatory ceiling, the "bona fide principal amount"  
37 shall not be comprised of any charges or any other fees or  
38 recompense specified in Sections 22200, ~~22201~~ (including, but  
39 not limited to, amounts paid for insurance of the types specified  
40 in Sections 22313 and 22314), 22201, 22202, 22305, 22316, 22317,

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

15 ~~SEC. 4. Section 22302 of the Financial Code is amended to~~  
16 ~~read:~~

17 ~~22302. (a) Section 1670.5 of the Civil Code applies to the~~  
18 ~~provisions of a loan contract that is subject to this division.~~

19 ~~(b) A loan found to be unconscionable pursuant to Section~~  
20 ~~1670.5 of the Civil Code shall be deemed to be in violation of this~~  
21 ~~division and subject to the remedies specified in this division.~~

22 ~~(c) Charges authorized by Section 22303, 22304, or 22304.5~~  
23 ~~shall not be deemed to be unconscionable pursuant to Section~~  
24 ~~1670.5 of the Civil Code based on the cost of the charges alone.~~

25 SEC. 5. Section 22304.5 is added to the Financial Code, to  
26 read:

27 22304.5. (a) For any loan of a bona fide principal amount of  
28 at least two thousand five hundred dollars (\$2,500) but less than  
29 ten thousand dollars (\$10,000), as determined in accordance with  
30 Section 22251, a licensee may contract for or receive charges at a  
31 rate not exceeding an annual simple interest rate of 36 percent per  
32 annum plus the Federal Funds Rate. ~~As~~

33 (b) ~~As~~ used in this paragraph, ~~section~~, “Federal Funds Rate”  
34 means the rate published by the Board of Governors of the Federal  
35 Reserve System in its Statistical Release H.15 Selected Interest  
36 Rates and in effect as of the first day of the month immediately  
37 preceding the month during which the loan is consummated. If the  
38 Federal Reserve System ceases publication of the federal funds  
39 rate, the commissioner shall designate a substantially equivalent  
40 index.

1 SEC. 6. Section 22305 of the Financial Code is amended to  
2 read:

3 22305. In addition to the charges authorized by Section 22303,  
4 22304, or 22304.5, a licensee may contract for and receive an  
5 administrative fee, which shall be fully earned immediately upon  
6 making the loan, with respect to a loan of a bona fide principal  
7 amount of not more than two thousand five hundred dollars  
8 (\$2,500) at a rate not in excess of 5 percent of the principal amount  
9 (exclusive of the administrative fee) or fifty dollars (\$50),  
10 whichever is less, and with respect to a loan of a bona fide principal  
11 amount in excess of two thousand five hundred dollars (\$2,500),  
12 at an amount not to exceed seventy-five dollars (\$75). No  
13 administrative fee may be contracted for or received in connection  
14 with the refinancing of a loan unless at least one year has elapsed  
15 since the receipt of a previous administrative fee paid by the  
16 borrower. Only one administrative fee may be contracted for or  
17 received until the loan has been repaid in full. For purposes of this  
18 section, "bona fide principal amount" shall be determined in  
19 accordance with Section 22251.

20 SEC. 7. Section 22307.5 is added to the Financial Code, to  
21 read:

22 22307.5. A licensee shall not charge, impose, or receive any  
23 penalty for the prepayment of a loan. This section does not apply  
24 to loans secured by real property.

25 SEC. 8. Section 22334 of the Financial Code is amended to  
26 read:

27 22334. (a) Except as provided in subdivision (b), a licensee  
28 shall not enter into any contract for a loan that provides for a  
29 scheduled repayment of principal over more than the maximum  
30 terms set forth below opposite the respective size of loans.

| 31 | Principal amount of loan             | Maximum term          |
|----|--------------------------------------|-----------------------|
| 32 | Less than \$500 .....                | 24 months and 15 days |
| 33 | \$500 but less than \$1,500 .....    | 36 months and 15 days |
| 34 | \$1,500 but less than \$3,000 .....  | 48 months and 15 days |
| 35 | \$3,000 but less than \$10,000 ..... | 60 months and 15 days |
| 36 |                                      |                       |

37  
38 (b) The maximum loan term of 60 months and 15 days does not  
39 apply to loans secured by real property of a bona fide principal  
40 amount in excess of five thousand dollars (\$5,000).

1 (c) A licensee shall not enter into any contract for a loan that  
2 provides for a scheduled repayment of principal that is less than  
3 12 months. This subdivision applies to a loan of a bona fide  
4 principal amount in excess of two thousand five hundred dollars  
5 (\$2,500), but less than ten thousand dollars (\$10,000).

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

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



March 14, 2019

Honorable Monique Limón  
Chair, Assembly Banking and Finance Committee  
State Capitol  
Sacramento, CA 95814

**Re: Support AB 539 (Limón) – Fair Access to Credit Act**

Dear Chairperson Limón,

On behalf of the City and County of San Francisco, I am writing in support of Assembly Bill 539, the Fair Access to Credit Act, which will prohibit the practice of charging unaffordable interest rates on consumer loans of \$2,500 - \$10,000.

As San Francisco's Treasurer, I believe that my responsibility to safeguard our city's money extends to the financial wellbeing of our residents. I have worked hard to develop programs and policies that help build financial security for low-income San Franciscans, including strategies to expand access to safe and affordable bank accounts, reduce debt, and save for emergencies and college. Through financial coaching and other initiatives, my Office of Financial Empowerment has seen the devastating impacts that predatory lending can have on our residents. We have worked with local and state leaders to combat harmful consumer loans, such as enacting strong zoning ordinances related to fringe financial services and working with the state legislature on their pilot program for small dollar lending.

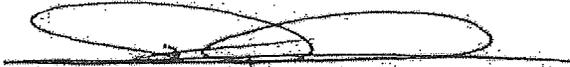
Existing law does not limit the interest rate that lenders can charge on loans of \$2,500 - \$10,000. This lack of an interest rate cap has resulted in a recent explosion of loans with annual interest rates in the range of 100% - 225% and above. According to the California Department of Business Oversight (DBO), the market for triple-digit interest rate loans went from nearly nonexistent ten years ago to having an annual loan volume of \$1.1 billion in 2017. Triple-digit interest rate loans harm Californians and harm our economy as a result. Based on data provided by lenders to the DBO, approximately one-third of these loans end up in default. When a borrower defaults on a loan, the lender can "charge-off" the loan, giving the lender a federal and state income tax write-off. But the debt never goes away for borrowers who default, who face harmful consequences, including damaged credit, car repossessions, law suits, wage garnishment, bank levies, tax intercepts and even bankruptcy.

Many families in San Francisco, and millions more across California are living paycheck to paycheck. While state unemployment is at record lows, the household incomes of working Californians have not kept up with the high cost of living. Some lenders see this despair as an opportunity to trap borrowers into high cost loans, with exorbitant interest rates that far too often lead them into financial ruin. This type of abuse leads to damaged credit, repossession of cars, closure of bank accounts, wage garnishment, and even bankruptcy. These lenders deliberately target Latino and African American borrowers by setting up stores in minority and low-income neighborhoods around California.

As families face financial pressure, California has a responsibility to ensure that available credit products meet the needs of consumers, reflect their ability to repay and do not allow Californians under financial duress to be subjected to predatory practices. Currently, California is failing to meet these responsibilities.

AB 539 will protect borrowers from the predatory practices of triple-digit lenders by enacting a reasonable interest rate cap on installment loans that allow lenders to make a fair return and give borrowers a fair chance to repay the loan. For these reasons, San Francisco supports AB 539. I am grateful for your leadership in authoring this important measure.

Sincerely,



José Cisneros  
Treasurer, City and County of San Francisco

Cc: Senator Scott Wiener  
Assemblymember David Chiu  
Assemblymember Phil Ting

Print Form

# Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2019 APR 26 AM 1:26  
Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [ ] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Topic submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Brown

Subject:

Supporting California State Assembly Bill No. 539 (Limón) - Fair Access to Credit Act

The text is listed:

Resolution supporting California State Assembly Bill No. 539, authored by Assembly Members Monique Limón and coauthored by Assembly Members Timothy Grayson, Cecelia Aguiar-Curry, Ash Kalra, James Ramos, Eloise Gómez Reyes, Mark Stone, and State Senators Maria Elena Durazo, Holly Mitchell, and Bob Wieckowski, to cap interest rates on consumer loans at 36% per annum plus the Federal Funds Rate for loans with a principal amount greater than \$2,500 and lesser than \$10,000.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only