

AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE—2019—20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 539**

---

**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

---

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~~ *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.