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AB-539 California Financing Law: consumer loans: charges. (2019-2020)

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Assembly Bill No. 539

CHAPTER 708

An act to amend Sections 22202, 22250, 22251, 22305, 22334, 22452, 22453, 22454, 22456, 22463, and 22464 of, and to add Sections 22304.5 and 22307.5 to, the Financial Code, relating to consumer loans.

[Approved by Governor October 10, 2019. Filed with Secretary of State October 10, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 539, 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 ¹/₂ % 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 ⁵/₆ 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 finance lender, 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 require finance lenders making loans subject to these provisions to, among other requirements, report each borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis and to also offer, at no cost to the borrower, a credit education program or seminar that has been previously reviewed and approved by the commissioner, in accordance with specific requirements. The bill would further 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 at least \$2,500 but less than \$10,000 that provides for a scheduled repayment of principal that is less than 12 months. The bill would also specify that the maximum loan term of 60 months and 15 days does not apply to a loan secured by real property of a bona fide principal amount of at least \$5,000.

The bill would also prohibit a licensee from charging, imposing, or receiving any penalty for the prepayment of a loan under the CFL, except as specified.

(4) The CFL regulates a specific type of consumer loan known as an open-ended loan. The CFL prescribes the amount upon which charges authorized by the CFL may be based, the amount of a minimum monthly payment, the amount of fees, costs, and expenses a licensee may receive, and the amount to be delivered by the licensee at the time the open-ended loan is made. The CFL applies these provisions only to a loan of a bona fide principal amount not exceeding \$5,000, as specified.

This bill would apply those provisions to an open-ended loan in a bona fide principal amount not exceeding \$10,000, as specified. The bill would make conforming and nonsubstantive changes.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the Fair Access to Credit Act.

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

22202. "Charges" do not include any of the following:

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

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

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

(d) Amounts received by a licensee from a seller, from whom the borrower obtains money, goods, labor, or services on credit, in connection with a transaction under an open-end credit program that are paid or deducted from the loan proceeds paid to the seller at the direction of the borrower and that are an obligation of the seller to the licensee for the privilege of allowing the seller to participate in the licensee's open-end credit program. Amounts received by a licensee from a seller pursuant to this subdivision may not exceed 6 percent of the loan proceeds paid to the seller at the direction of the borrower.

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

(f) Moneys paid to, and commissions and benefits received by, a licensee for the sale of goods, services, or insurance, whether or not the sale is in connection with a loan, that the buyer by a separately signed authorization acknowledges is optional, if sale of

the goods, services, or insurance has been authorized pursuant to Section 22154.

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

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

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

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

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

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

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

(c) For the purposes of determining whether the loan amount exceeds a regulatory ceiling, the "bona fide principal amount" shall not be comprised of any charges or any other fees or recompense specified in Sections 22200, 22201, 22202, 22305, 22316, 22317, 22318, 22319, 22320, 22320.5, and 22336, or any amounts paid for insurance of the types specified in Sections 22313 and 22314, or any fees paid to a licensee for the privilege of participating in an open-end credit program. Nothing in this subdivision shall be construed to prevent those specified charges, fees, and recompense that have been earned and remain unpaid in an existing loan from being considered as part of the bona fide principal amount of a new loan to refinance that existing loan, provided the new loan is not made for the purpose of circumventing a regulatory ceiling provision. This subdivision is intended to define the meaning of "bona fide principal amount" as used in this division solely for the purposes of determining whether the loan amount exceeds a regulatory ceiling, and is not intended to affect the meaning of "principal" for any other purpose.

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

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

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

(c) The following rules shall also apply to finance lenders that make loans subject to this section:

(1) The finance lender shall report each borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. For purposes of this section, a consumer reporting agency

that compiles and maintains files on consumers on a nationwide basis is one that meets the definition in Section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)).

(A) A finance lender that is licensed under this division prior to January 1, 2020, and that is not approved as a data furnisher prior to January 1, 2020, by at least one of the consumer reporting agencies to which reporting is required pursuant to this section, shall obtain that approval by July 1, 2020, and, once approved, shall report borrower payment performance to that consumer reporting agency in connection with all loans originated under this section on and after January 1, 2020.

(B) A newly licensed finance lender that is not approved as a data furnisher by at least one of the consumer reporting agencies to which reporting is required pursuant to this section shall have up to one calendar year in which to obtain that approval and, once approved, shall report borrower payment performance to that consumer reporting agency in connection with all loans originated under this section on and after the lender's date of licensure.

(2) Before disbursing loan proceeds to a borrower, the finance lender shall either offer the borrower a credit education program or seminar that has previously been reviewed and approved by the commissioner for use in complying with this section or offer the borrower a credit education program or seminar provided by an independent third party, which has previously been reviewed and approved by the commissioner for use in complying with this section. A credit education program or seminar may be provided in writing, electronically, or orally, but, if provided orally, shall be accompanied by written or electronic materials that a prospective borrower can retain or access following the conclusion of the program or seminar.

(3) To be eligible for approval by the commissioner for use in complying with this section, a credit education program or seminar shall, at a minimum, cover all of the following topics regarding credit scores and credit reports provided by consumer reporting agencies described in paragraph (1):

(A) The value of establishing a credit score.

(B) Ways to establish a credit score.

(C) Ways to improve a credit score.

(D) Factors that impact a credit score.

(E) Ways to check one's credit score.

(F) Ways to obtain a free copy of one's credit report.

(G) Ways to dispute an error in one's credit report.

(4) A credit education program or seminar offered pursuant to this section shall be offered at no cost to the borrower.

(5) A borrower shall not be required to participate in a credit education program or seminar offered by a lender or independent third party.

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

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

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

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

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

22334. (a) Except as provided in subdivision (b), a licensee shall not enter into any contract for a loan that provides for a scheduled repayment of principal over more than the maximum 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

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

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

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

SEC. 9. Section 22452 of the Financial Code is amended to read:

22452. Subject to the written approval of the commissioner of the licensee's plan of business for making open-end loans as not being misleading or deceptive and subject to regulations the commissioner may adopt with respect to open-end loans under Section 22150, a licensee may make open-end loans pursuant to this article and may contract for and receive thereon charges as set forth in Sections 22303, 22304, 22304.5, and 22308. These charges may be calculated on an amount not exceeding the greater of:

(a) The actual daily unpaid balances of the open-end account in the billing cycle for which the charge is made, in which case one-thirtieth of the monthly rate may be charged for each day the unpaid balance is outstanding.

(b) The average daily unpaid balance of the open-end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to any balance unpaid as of the beginning of that day all advances and other debits and deducting all payments and other credits made or received as of that day. The billing cycle shall be monthly. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date.

This section does not apply to any open-end loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more as determined in accordance with Section 22467.

SEC. 10. Section 22453 of the Financial Code is amended to read:

22453. The minimum monthly payment shall be determined by any of the following:

(a) The amount calculated by multiplying the unpaid principal balance, after an advance and including the advance, by a percent agreed upon by the borrower and the licensee, which shall be no less than $2\frac{1}{2}$ percent. The minimum payment shall continue at the amount determined pursuant to this paragraph until a subsequent loan advance is made.

(b) The amount calculated by multiplying the unpaid balance at the end of each billing cycle by a percent agreed upon by the borrower and the licensee, which shall be no less than 5 percent.

(c) Any other bona fide amount agreed upon by the borrower and the licensee which would be sufficient to pay all charges and some principal, originally scheduled to be due by the borrower as of each scheduled due date.

This section does not apply to any open-end loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more as determined in accordance with Section 22467.

SEC. 11. Section 22454 of the Financial Code is amended to read:

22454. On open-end loans, the licensee may contract for and receive the fees, costs, and expenses permitted on other loans, including those permitted by subdivisions (a), (b), (c), and (d) of Section 22313 and subdivision (d) of Section 22314, except that the charge for credit insurance under Section 22314 shall be on a monthly basis and shall be actuarially consistent with the premium rate for the same coverage.

This section does not apply to any open-end loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more as determined in accordance with Section 22467.

SEC. 12. Section 22456 of the Financial Code is amended to read:

22456. Section 22309 shall apply to open-end loans with the following variations:

(a) To comply with Section 22309, in the case of open-end loan advances directly to the borrower, the licensee shall deliver to the borrower, at the time of each loan advance, an amount equal to the face value of the advance.

(b) To comply with Section 22309, in the case of an open-end loan advance in the form of a payment by the licensee to a person from whom a borrower obtained money, goods, labor, or services, the licensee shall deliver to that person the amounts necessary to fulfill the borrower's obligation to that person under the transaction.

This section does not apply to any open-end loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more as determined in accordance with Section 22467.

SEC. 13. Section 22463 of the Financial Code is amended to read:

22463. Nothing in this article limits the authority of the commissioner to disapprove advertising with respect to open-end loans pursuant to Section 22165.

SEC. 14. Section 22464 of the Financial Code is amended to read:

22464. This article does not apply to loans other than open-end loans.

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