



Office of the Mayor

CONSENT CALENDAR
May 14, 2019

To: Honorable Mayor and Members of the City Council
 From: Mayor Jesse Arreguín, and Councilmembers Sophie Hahn and Ben Bartlett
 Subject: Support AB 539 – the Fair Access to Credit Act

RECOMMENDATION

Adopt a Resolution in support of AB 539, the Fair Access to Credit Act, authored by Monique Limón. Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Monique Limón.

BACKGROUND

Currently, California is one of 13 states that have no rate cap on loans of more than \$2,500. In recent years, such loans have had skyrocketing APR rates, with 60% of loans between \$2,500 - \$5,000 having over 100% APR. This means, for example, that a seven-year \$5,000 loan at 116% can balloon up to \$40,000. In states that have caps, the cap is 36% APR, which is also the same rate for loans issued to active duty military under the 2006 Military Lending Act.

Exorbitant APR rates often lead to loan defaults. . In fact, in a July 2016 report by the National Consumer Law Center, approximately 20-40% of high-interest rate loans in California go into default compared to 2-9% for lower interest loans. To make matters worse, predatory lending practices are disproportionately targeted towards vulnerable populations. In 2015, the Berkeley City Council voted to restrict new check cashing stores in Berkeley after new stores began opening throughout South Berkeley, a traditionally lower income neighborhood of color. At the same time the Council increased regulations on existing stores all located in the same South Berkeley neighborhood. The California Department of Business Oversight has noted that such businesses are more likely to open up in African American and Latino neighborhoods.

AB 539, the Fair Access to Credit Act, introduced by Assemblymember Monique Limón, would cap the interest rate at 36% for loans between \$2,500 and \$10,000. In addition, the bill will limit the terms of loans to a minimum of 12 months and a maximum of 5 years, which will prevent an overly extended loan that results in substantially increased payments over time. Finally, the bill will prohibit penalties for prepayment.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of AB 539

RESOLUTION NO. ##,###-N.S.

IN SUPPORT OF AB 539 – THE FAIR ACCESS TO CREDIT ACT

WHEREAS, promoting the fiscal health and responsibility of Berkeley residents, especially those who are low-income and working class, is important for their livelihoods and the region's economy; and

WHEREAS, under existing state law, interest rates on loans below \$2,500 are capped at 36%, but not for loans over \$2,500 or greater; and

WHEREAS, 60% of loans between \$2,500 - \$5,000 in California have an interest rate of over 100%; and

WHEREAS, approximately 20-40% of high-cost loans in California go into default compared to 2-9% for lower interest loans; and

WHEREAS, check cashing stores are disproportionately placed in neighborhoods with a high level of African American and Latino residents, and in places where the family poverty rates are higher than that of the state average; and

WHEREAS, the only check cashing stores in Berkeley are located in South Berkeley neighborhoods – which historically are neighborhoods of color and lower income; and

WHEREAS, the Berkeley City Council voted in 2015 to restrict new check cashing stores in Berkeley and increased regulations to existing stores after new stores; and

WHEREAS, AB 539, the Fair Access to Credit Act, introduced by Assemblymember Monique Limón, would cap the interest rate at 36% for loans between \$2,500 and \$10,000; and

WHEREAS, the bill will limit the terms of loans to a minimum of 12 months and a maximum of 5 years, and prohibit penalties for prepayment.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports AB 539 – the Fair Access to Credit Act.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Monique Limón.

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

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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,~~

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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.

SUPPORT AB 539 (Limón-Grayson) - Fair Access to Credit Act of 2019

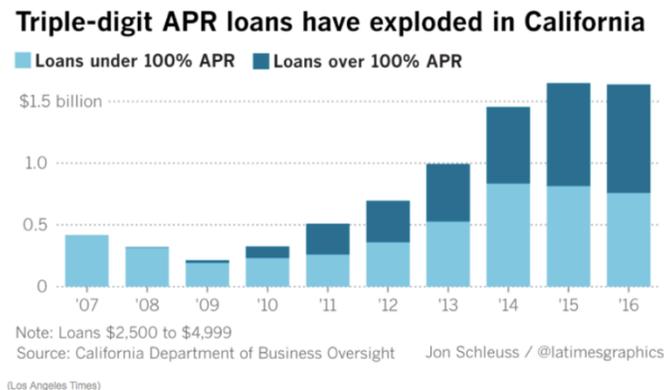
Californians deserve protection from high interest, predatory loans

California law does not limit interest rates on loans of more than \$2,500

In California, loans less than \$2,500 have a rate cap to protect consumers from unconscionable loans. However, loans of more than \$2,500 have no such limits. This puts us well behind 37 states (Colorado, New York, Georgia) that have a cap of 36% APR or less for loans in this range.ⁱ Also, in 2006, Congress capped all loans issued to active duty military at 36%, through the Military Lending Act.

Triple digit interest rates are on the rise

Since 2010, there has been a sharp increase in ultra high-cost installment loans. In 2017, nearly 60% of loans in the range of \$2,500 - \$5,000 had an APR of more than 100%.ⁱⁱ Many of these loans require repayment of 4-8 times the original amount borrowed!



These loans are a debt-trap

The National Consumer Law Center examined high-cost loans in California and found that approximately 20-40% of these loans end up in default. When you take into account borrowers that are struggling to repay and have a 30-day late payment, that number increases to 30%-80% of loans made.ⁱⁱⁱ

Example: \$5,000, 116% Loan Balloons to \$40,000

Here is a complaint submitted to the Consumer Financial Protection Bureau from a California borrow that is illustrative of the issues with these loans:

“In 2014, I took out a \$5,000 personal loan with Cash Call, Inc. The terms of the loan are egregious and predatory. My annual percentage rate is 116%. The cost of my loan, according to my contract is \$35,000 and the total cost, if I make 84 monthly payments (7 years) according to schedule, will be \$40,000. Currently (after 2 years of payments) less than \$3.00 per month is applied toward payment.”



Predatory lenders are aggressively marketing to vulnerable populations

Predatory lenders are aggressively marketing to vulnerable populations through direct mail, phone calls, ads on Black and Latino radio stations, and their expansive number of store fronts, the majority of which are deliberately located in communities of color.^{iv} Predatory lenders are also targeting seniors, veterans, and low-income borrowers.

Borrowers are being steered away from regulated loans into higher dollar loans

Payday lenders are luring borrowers by offering loans of \$1,000 and then steering them into loans of \$2,501, where they can charge 100% APR or more. The following companies have been sued for this practice, Cash Call, now LoanMe, Advance America, California Check Cashing Stores, Check Into Cash, Quick Cash Funding.^v

Access to safe and affordable credit is ruined

Borrowers who end up saddled with these ultra high cost loans very often end up with damaged credit and have trouble accessing lower cost credit in the future. Lenders use aggressive debt collection tactics, including harassing phone calls, car repossession if the loan is secured by car title, and lawsuits where they can pursue wage garnishment or wipe out funds from their bank account. Lenders can also charge off unpaid debt and get a break on their taxes. In addition, borrowers can lose their bank accounts and end up in bankruptcy.

AB 539 stops these predatory tactics, protects consumers and focuses on fair credit

AB 539 caps interest rates at 36% plus the fed fund rate (2.5% today).^{vi} This bill is a compromise between consumer advocates and lenders that are currently offering loans at approximately 36%.

AB 539 limits the terms of loans to a minimum loan term of 12 months and maximum loan of 5 years. This will stop lenders from spreading loans over an extended number of years to hide the true cost.

AB 539 prohibits any prepayment penalties.

ⁱ National Consumer Law Center, "A Larger and Longer Debt Trap? Analysis of States' APR Caps for a \$10,000 Five-Year Installment Loan," October 2018, <https://www.nclc.org/issues/a-larger-and-longer-debt-trap-installment-loan.html>

ⁱⁱ California Department of Business Oversight, "California Department of Business Oversight Annual Report" June 2018, http://www.dbo.ca.gov/Press/press_releases/2018/CFL%20RSDL%20Annual%20Reports%20Release%2006-18-18.asp

ⁱⁱⁱ National Consumer Law Center, "Misaligned Incentives, Why high-rate installment lenders want borrowers who will default," July 2016, <https://www.nclc.org/issues/misaligned-incentives.html>

^{iv} California Department of Business Oversight, "The Demographics of California Payday Lending: A Zip Code Analysis of Storefront Locations," December 2016, http://www.dbo.ca.gov/Press/press_releases/2016/Zip%20Code%20Research%20Brief%20Release%2012-07-16.asp

^v California Department of Business Oversight, "DBO Settlement with Advance America Subsidiary Continues Crackdown on Interest Rate Cap Avoidance," March 2018, http://www.dbo.ca.gov/Press/press_releases/2018/Advance%20America%20Settlement%20Announcement%2003-12-18.asp

^{vi} Federal Funds Rate - 62 Year Historical Chart, <https://www.macrotrends.net/2015/fed-funds-rate-historical-chart>

