

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: May 3, 2019

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso   
Chief Legislative Analyst

Council File No. 19-0002-S61  
Assignment No. 19-04-0402

SUBJECT: Resolution (Krekorian - Harris-Dawson - Wesson) to SUPPORT AB 539 (Limón-Grayson).

CLA RECOMMENDATION: Adopt Resolution (Krekorian - Harris-Dawson - Wesson) to include in the City's 2019-2020 State Legislative Program, SUPPORT for AB 539 (Limón-Grayson) which would amend provisions of California Financing Law to restrict the terms by which lenders can offer loan products to consumers.

## SUMMARY

Resolution (Krekorian - Harris-Dawson - Wesson), introduced April 10, 2019, notes that many Californians rely on predatory lenders providing payday loan services in order to afford day-to-day living expenses.

While current California Financing Law does not set a maximum interest rate for loans of \$2,500 or more, AB 539 (Limón-Grayson) would set new interest caps on loans from \$2,500 to \$10,000 at an annual simple interest rate of 36 percent plus the Federal Funds rate, which will restrict those lenders who are currently selling triple-digit annual percentage rates. Currently, the CFL prohibits loans between \$3,000 to \$5,000 from having a term greater than 60 months and 15 days. AB 539 would augment this protection by raising the upper limit of the loan to \$10,000. AB 539 would also prohibit loans from \$2,500 to \$10,000 from having a term less than twelve months and would add a section to California Financing Law providing that no licensee may impose a prepayment penalty for any loan not secured by real property, including short-term payday loans.

According to the Resolution, by making these changes to California Financing Law, AB 539 would take effective measures to protect consumers from predatory lending practices that are often geared toward families in high-poverty areas. The Resolution therefore requests that the City support AB 539.

## BACKGROUND

Many consumers rely on predatory lenders who provide high-cost and/or short-term loans, including payday loans, in order to afford day-to-day living expenses. Large portions of the City do not have local bank branches, creating "banking deserts" that force consumers to turn to payday lenders for banking services. It has been reported that nearly two million Californians use a payday loan services every year, and payday loans totaled \$2.9 billion in 2017.

California Financing Law (CFL) dictates the requirements and restrictions for financial institutions offering lending services to consumers in the State. As it currently stands, the CFL has limited restrictions regarding interest rates applied to loans between \$2,500 and \$10,000 in value, allowing lenders to apply onerous rates on Californians already facing financial hardship. AB 539 (Limón-Grayson) would implement restrictions on these types of loans to protect consumers from predatory practices.

Currently, the CFL allows lenders to apply triple-digit annual percentage rates to loans of \$2,500 or more. AB 539 would set new interest caps on loans from \$2,500 to \$10,000 at an annual simple interest rate of 36 percent plus the Federal Funds rate.

As it stands, the CFL prohibits loans between \$3,000 to \$5,000 from having a term greater than 60 months and 15 days; AB 539 would augment this protection by raising the upper limit of the loan to \$10,000.

Finally, AB 539 would also prohibit loans from \$2,500 to \$10,000 from having a term less than twelve months, and would add a section to the CFL providing that no licensee may impose a prepayment penalty for any loan not secured by real property, including short-term payday loans.

The bill is currently before the State Assembly Committee on Appropriations. Support of AB 539 is consistent with the City's historical efforts to protect consumers and provide sensible banking services with non-predatory practices. With adoption of this Resolution, the City would urge the legislature to pass and the Governor to sign the bill into law.

#### BILL STATUS

04/02/19	Referred to Committee on Appropriations
02/25/19	Referred to Committee on Budget and Finance
02/13/19	Introduced in Assembly



Alex Whitehead  
Analyst

Attachment: 1. Resolution (Krekorian - Harris-Dawson - Wesson)  
2. AB 539 (Limón-Grayson)

# RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, although California's economy appears to be in recovery, many residents find it difficult to afford day to day living expenses; and

WHEREAS, consumers seeking immediate access to cash can easily fall victim to predatory lenders providing high-cost and/or short-term loans, including payday loans; and

WHEREAS, it has been reported that nearly two million Californians use a payday loan every year, and in 2017, payday loans totaled \$2.9 billion; and

WHEREAS, current California Financing Law (CFL) does not set a maximum interest rate on loans of \$2,500 or more, and AB 539 (Limón – Grayson) would set new interest rate caps on loans from \$2,500 to \$10,000 at an annual simple interest rate of 36 percent plus the Federal Funds rate which will restrict those lenders who are currently selling triple-digit annual percentage rates; and

WHEREAS, the CFL prohibits loans between \$3,000 to \$5,000 from having a term greater than 60 months and 15 days, and AB 539 (Limón – Grayson) would further protect consumers by raising the upper limit of the loan to \$10,000;

WHEREAS, AB 539 (Limón – Grayson) would also prohibit loans from \$2,500 to \$10,000 from having a term less than twelve months and would add a section to the CFL providing that no licensee may impose a prepayment penalty for any loan not secured by real property, including short-term payday loans; and

WHEREAS, AB 539 (Limón – Grayson) will take effective measures to protect consumers from predatory lending practices that are often geared towards families in high-poverty areas;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles, hereby includes in its 2019-20 State Legislative Program SUPPORT of AB 539 (Limón – Grayson) which will amend provisions of California Financing Law to restrict the terms by which lenders can offer loan products to consumers.

PRESENTED BY: Paul Krekorian  
PAUL KREKORIAN  
Councilmember, 2<sup>nd</sup> District

SECONDED BY: [Signature]  
[Signature]

7/19/19  
amg

[Signature]

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

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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  $5 \frac{5}{6}$  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 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 ~~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.

O