

ASSEMBLY BILL

No. 1446

Introduced by Assembly Member Dababneh

February 27, 2015

An act to amend Sections 22251 and 22712 of the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1446, as introduced, Dababneh. Consumer loans: bona fide principal amount.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Business Oversight and makes a wilful violation of its provisions a crime.

Under these provisions, a licensee is generally prohibited from taking a deed of trust, mortgage, or lien upon real property as security for a consumer loan unless the loan is for a bona fide principal amount of \$5,000 or more.

Existing law provides that this provision, among others that contain a regulatory ceiling provision, only applies to a loan for a bona fide principal amount, as specified, if the amount and purpose of that loan is not used to evade regulation under the California Finance Lenders Law. Existing law requires specified principles to be used to determine that amount and purpose, including, a presumption that a loan was made for the purpose of evading regulation if a borrower applies for a loan of less than the regulated amount but is given a loan of more than that amount by a licensed finance lender, no adequate economic reason exists for the increase in the size of the loan, and by prearrangement or

understanding between the borrower and the licensee a substantial payment is to be made shortly after the loan is made, as specified.

This bill would additionally require that presumption to apply to a request of a borrower for a loan in a bona fide principal amount. The bill would define “substantial payment” as any payment more than twice the amount of the periodic installment payment. The bill would also require that a licensee obtain from the borrower, and maintain in the licensee’s books and records, the actual dollar amount the borrower requests to borrow from the licensee at the time the borrow first inquires about, applies for, or requests a new loan. Because a willful violation of these requirements would be a crime, the bill would impose a state-mandated local program.

Existing law authorizes the Commissioner of Business Oversight to make general rules and regulations, specific rulings, demands, and findings for enforcement relating to the California Finance Lenders Law. Existing law, if the commissioner has cause to believe that a licensee or any other person is violating the California Finance Lenders Law, authorizes the commissioner to issue an order to the licensee or person to desist and refrain from further violations, as provided.

This bill would additionally authorize, under the same circumstances, the commissioner to issue that order for a violation of any regulation or any other order adopted pursuant to the California Finance Lenders Law.

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. Section 22251 of the Financial Code is amended
- 2 to read:
- 3 22251. Any section that refers to this section does not apply
- 4 to any loan of the bona fide principal amount specified in the
- 5 regulatory ceiling provision of that section or more if that provision
- 6 is not used for the purpose of evading this division. In determining
- 7 under Section 22250, 22303, ~~or 22304~~ 22304, or any section that

1 refers to this section whether a loan is a loan of a bona fide
2 principal amount of the amount specified in that section or more
3 and whether the regulatory ceiling provision of that section is used
4 for the purpose of evading this division, the following principles
5 shall apply:

6 (a) (1) If a borrower applies ~~for~~ for, or requests, a loan in a
7 bona fide principal amount of less than the specified amount and
8 a loan to that borrower of a bona fide principal amount of the
9 specified amount or more if made by a licensed finance lender, no
10 adequate economic reason for the increase in the size of the loan
11 exists, and by prearrangement or understanding between the
12 borrower and the licensee a substantial payment is to be made
13 upon the loan with the effect of reducing the bona fide principal
14 amount of the loan to less than the specified amount within a short
15 time after the making of the loan other than by reason of a
16 requirement that the loan be paid in substantially equal periodical
17 installments, then the loan shall not be deemed to be a loan of the
18 bona fide principal amount of the specified amount or more and
19 the regulatory ceiling provisions shall be deemed to be used for
20 the purpose of evading this division unless the loan complies with
21 the other provisions of the section that includes the regulatory
22 ceiling provisions.

23 (2) *For purposes of this subdivision, a licensed finance lender*
24 *shall, at the time a borrower first inquires about, applies for, or*
25 *requests a new loan, obtain from the borrower, and maintain in*
26 *the licensed finance lender's books and records, the actual dollar*
27 *amount the borrower requests to borrow from the finance lender.*

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

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

1 in Sections 22313 and 22314), 22202, 22305, 22316, 22317, 22318,
2 22319, 22320, 22320.5, ~~and 22336~~. 22336, or a substantial
3 payment made upon the loan as described in subdivision (a).
4 Nothing in this subdivision shall be construed to prevent those
5 specified charges, fees, and recompense that have been earned and
6 remain unpaid in an existing loan from being considered as part
7 of the bona fide principal amount of a new loan to refinance that
8 existing loan, provided the new loan is not made for the purpose
9 of circumventing a regulatory ceiling provision. This subdivision
10 is intended to define the meaning of “bona fide principal amount”
11 as used in this division solely for the purposes of determining
12 whether the loan amount exceeds a regulatory ceiling, and is not
13 intended to affect the meaning of “principal” for any other purpose.

14 (d) For purposes of this section, “substantial payment” is
15 defined as any payment more than twice the amount of the periodic
16 installment payment.

17 SEC. 2. Section 22712 of the Financial Code is amended to
18 read:

19 22712. (a) Whenever, in the opinion of the commissioner, any
20 person is engaged in the business as a broker or finance lender, or
21 a mortgage loan originator, as defined in ~~this division~~, Section
22 22013, without a license from the commissioner, or any licensee
23 ~~is violating~~ violates any provision of this division, any provision
24 of an order, or any regulation adopted pursuant to this division,
25 the commissioner may order that person or licensee to desist and
26 to refrain from engaging in the business or further ~~violating this~~
27 ~~division~~. continuing that violation. If, within 30 days after the
28 order is served, a written request for a hearing is filed and no
29 hearing is held within 30 days thereafter, the order is rescinded.
30 For purposes of this section, “licensee” includes a mortgage loan
31 originator.

32 (b) Notwithstanding subdivision (a), if, after an investigation,
33 the commissioner has reasonable grounds to believe that a person
34 is conducting business in an unsafe or injurious manner, the
35 commissioner shall, by written order addressed to that person,
36 direct the discontinuance of the unsafe or injurious practices. The
37 order shall be effective immediately, but shall not become final
38 except in accordance with the provisions of Section 22717.

39 SEC. 3. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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