

AMENDED IN SENATE MAY 3, 1999

SENATE BILL

No. 579

Introduced by Senator Dunn

February 23, 1999

An act to amend ~~Section 22330~~ *Sections 22203, 22251, 22305, 22330, and 22551* of the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 579, as amended, Dunn. Finance lenders.

The California Finance Lenders Law provides for licensing and regulation by the Commissioner of Corporations of persons engaged in the business of making consumer or commercial loans. Under these provisions, a ~~licensee~~ *licensed lender* generally may not take a deed of trust, mortgage, or lien upon real property as security for a *consumer* loan if the principal amount of the loan is less than \$5,000.

This bill would provide that a ~~licensee~~ *licensed lender* may not take a deed of trust, mortgage, or lien upon real property as security for a *consumer* loan *except* if the *loan is for a* bona fide principal amount of ~~the loan is less than~~ \$5,000 *or more*. *This bill would define "bona fide principal amount" for the purpose of determining whether a consumer or commercial loan amount exceeds a regulatory ceiling, as specified.*

This bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 22330 of the Financial Code is~~
2 *SECTION 1. Section 22203 of the Financial Code is*
3 *amended to read:*

4 22203. “Consumer loan” means a loan, whether
5 secured by either real or personal property, or both, or
6 unsecured, the proceeds of which are intended by the
7 borrower for use primarily for personal, family, or
8 household purposes. For purposes of determining
9 whether a loan is a consumer loan, the lender may rely on
10 any written statement of intended purposes signed by the
11 borrower. The statement may be a separate statement
12 signed by the borrower, or may be contained in a loan
13 application or other document signed by the borrower.
14 The lender shall not be required to ascertain that the
15 proceeds of the loan are used in accordance with the
16 statement of intended purposes. Nothing in this section
17 shall authorize the taking of real property as security—
18 ~~if the principal of the loan amount is less than five thousand~~
19 ~~dollars (\$5,000), except as specified in Section 22330.~~

20 *SEC. 2. Section 22251 of the Financial Code is*
21 *amended to read:*

22 22251. Any section that refers to this section does not
23 apply to any loan of the bona fide principal amount
24 specified in the regulatory ceiling provision of that
25 section or more if that provision is not used for the
26 purpose of evading this division. In determining under
27 Section 22250, 22303, or 22304 or any section that refers to
28 this section whether a loan is a loan of a bona fide principal
29 amount of the amount specified in that section or more
30 and whether the regulatory ceiling provision of that
31 section is used for the purpose of evading this division, the
32 following principles apply:

33 (a) If a borrower applies for a loan in a *bona fide*
34 principal amount of less than the specified amount and a
35 loan to that borrower of a *bona fide* principal amount of
36 the specified amount or more if made by a licensed
37 finance lender, no adequate economic reason for the
38 increase in the size of the loan exists, and by



1 prearrangement or understanding between the
2 borrower and the licensee a substantial payment is to be
3 made upon the loan with the effect of reducing the *bona*
4 *fide* principal amount of the loan to less than the specified
5 amount within a short time after the making of the loan
6 other than by reason of a requirement that the loan be
7 paid in substantially equal periodical installments, then
8 the loan shall not be deemed to be a loan of the *bona fide*
9 principal amount of the specified amount or more and the
10 regulatory ceiling provisions shall be deemed to be used
11 for the purpose of evading this division unless the loan
12 complies with the other provisions of the section that
13 includes the regulatory ceiling provisions.

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

23 (c) *For the purposes of determining whether the loan*
24 *amount exceeds a regulatory ceiling, the “bona fide*
25 *principal amount” shall not be comprised of any charges*
26 *or any other fees or recompense specified in Sections*
27 *22200, 22201, 22202, 22305, 22316, 22317, 22318, 22319,*
28 *22320, 22320.5, and 22336. This section is intended to*
29 *clarify the meaning of “bona fide principal amount” as*
30 *used in this division solely for the purpose of determining*
31 *whether the loan amount exceeds a regulatory ceiling,*
32 *and is not intended to affect the meaning of “principal”*
33 *for any other purpose.*

34 *SEC. 3. Section 22305 of the Financial Code is*
35 *amended to read:*

36 22305. In addition to the charges authorized by
37 Section 22303 or 22304, a licensee may contract for and
38 receive an administrative fee, which shall be fully earned
39 immediately upon making the loan, with respect to a loan
40 of a *bona fide* principal amount of not more than two



1 thousand five hundred dollars (\$2,500) at a rate not in
2 excess of 5 percent of the *bona fide* principal amount or
3 fifty dollars (\$50), whichever is less, and with respect to
4 a loan of a *bona fide* principal amount in excess of two
5 thousand five hundred dollars (\$2,500), at an amount not
6 to exceed seventy-five dollars (\$75). No administrative
7 fee may be contracted for or received in connection with
8 the refinancing of a loan unless at least one year has
9 elapsed since the receipt of a previous administrative fee
10 paid by the borrower. Only one administrative fee may
11 be contracted for or received until the loan has been
12 repaid in full. *For purposes of this section, "bona fide*
13 *principal amount" shall be determined in accordance*
14 *with Section 22251.*

15 *SEC. 4. Section 22330 of the Financial Code is*
16 *amended to read:*

17 22330. No licensee shall take a deed of trust,
18 mortgage, or lien upon real property as security for any
19 ~~loan of a principal amount of less than five thousand~~
20 ~~dollars (\$5,000)~~ made under this division, except any lien
21 as is created by law upon the recording of an abstract of
22 judgment. *This section shall not apply to any loan of a*
23 *bona fide principal amount of five thousand dollars*
24 *(\$5,000) or more as determined in accordance with*
25 *Section 22251.*

26 *SEC. 5. Section 22551 of the Financial Code is*
27 *amended to read:*

28 22551. In determining whether a loan is a loan of a
29 bona fide principal amount of the specified amount or
30 more, the following principles shall apply:

31 (a) If a borrower applies for a loan in a *bona fide*
32 principal amount of less than the specified amount and a
33 loan to that borrower of a *bona fide* principal amount of
34 the specified amount or more is made by a licensed
35 finance lender, no adequate economic reason for the
36 increase in the size of the loan exists, and by
37 prearrangement or understanding between the
38 borrower and the licensee a substantial payment is to be
39 made upon the loan with the effect of reducing the *bona*
40 *fide* principal amount of the loan to less than the specified



1 amount within a short time after the making of the loan
2 other than by reason of a requirement that the loan be
3 paid in substantially equal periodical installments, then
4 the loan shall not be deemed to be a loan of the bona fide
5 principal amount of the specified amount or more.

6 (b) A subsequent advance of money of less than *a bona*
7 *fide principal amount* of the specified amount pursuant
8 to a revolving or open-end loan agreement or similar
9 agreement between a borrower and a licensed finance
10 lender which gives the borrower the right to draw upon
11 all or any part of the line of credit, or a loan agreement
12 providing for the making of advances to the borrower
13 from time to time up to an aggregate maximum amount
14 which gives the borrower the right to draw all or any part
15 of the total amount, shall be deemed to be a loan of a *bona*
16 *fide principal amount* of the specified amount or more if
17 the line of credit or the aggregate maximum amount is *a*
18 *bona fide principal amount* of the specified amount or
19 more and the initial advance was *a bona fide principal*
20 *amount* of the specified amount or more even though the
21 actual unpaid balance after the advance or at any other
22 time is less than *a bona fide principal amount* of the
23 specified amount.

24 (c) If a loan made by a licensed finance lender has a
25 *bona fide principal amount* of the specified amount or
26 more, the fact that the transaction is in the form of a sale
27 of accounts, chattel paper, goods, or instruments, or a
28 lease of goods, or in the form of an advance on the
29 purchase price of any of the foregoing, shall not be
30 deemed to affect the bona fides of the amount thereof.

31 (d) For the purposes of this section, “the specified
32 amount” means five thousand dollars (\$5,000).

33 (e) *For the purposes of determining whether the loan*
34 *amount exceeds a regulatory ceiling, the “bona fide*
35 *principal amount” shall not be comprised of any charges*
36 *or any other fees or recompense specified in Sections*
37 *22500, 22501, and 22601. This section is intended to define*
38 *the meaning of “bona fide principal amount” as used in*
39 *this division solely for the purposes of determining*
40 *whether the loan amount exceeds a regulatory ceiling,*



1 *and is not intended to affect the meaning of “principal”*
2 *for any other purpose.*

3 amended to read:

4 ~~22330. No licensee shall take a deed of trust,~~
5 ~~mortgage, or lien upon real property as security for any~~
6 ~~loan of a bona fide principal amount of less than five~~
7 ~~thousand dollars (\$5,000) made under this division,~~
8 ~~except any lien as is created by law upon the recording of~~
9 ~~an abstract of judgment.~~

