

## Senate Bill No. 579

### CHAPTER 347

An act to amend Sections 22203, 22251, 22305, 22330, 22467, and 22551 of the Financial Code, relating to finance lenders.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 579, 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 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 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 \$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.

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

SECTION 1. Section 22203 of the Financial Code is amended to read:

22203. "Consumer loan" means a loan, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for personal, family, or household purposes. For purposes of determining whether a loan is a consumer loan, the lender may rely on any written statement of intended purposes signed by the borrower. The statement may be a separate statement signed by the borrower, or may be contained in a loan application or other document signed by the borrower. The lender shall not be required to ascertain that the proceeds of the loan are used in accordance with the statement of intended purposes. Nothing in this section shall authorize the taking of real property as security, except as specified in Section 22330.

SEC. 2. 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, or 22304 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 if 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 (including, but not limited to, amounts paid for insurance of the types specified in Sections 22313 and 22314), 22202, 22305, 22316, 22317, 22318, 22319, 22320, 22320.5, and 22336. 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. 3. Section 22305 of the Financial Code is amended to read:



22305. In addition to the charges authorized by Section 22303 or 22304, 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. 4. Section 22330 of the Financial Code is amended to read:

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

SEC. 5. Section 22467 of the Financial Code is amended to read:

22467. (a) Any section that refers to this section or that is subject to Section 22251 does not apply to any open-end loan of the bona fide principal amount specified in the regulatory ceiling provision of that section or more, or to a duly licensed finance lender in connection with any such loan if that provision is not used for the purpose of evading this division.

(b) In determining whether an open-end loan is an open-end loan of a bona fide principal amount specified in any section in this division or more and whether the regulatory ceiling provision of that section is used for the purpose of evading this division, the open-end loan shall be deemed to be for that amount or more if both the following criteria are met:

(1) The line of credit is equal to or more than the bona fide principal amount of the specified amount.

(2) The initial advance was equal to or more than the bona fide principal amount of the specified amount.

(c) A subsequent advance of money of less than the specified amount pursuant to the open-end loan agreement between a borrower and a licensed finance lender shall be deemed to be a loan of a bona fide principal amount of the specified amount if the criteria of paragraphs (1) and (2) of subdivision (b) have been met, even though the actual unpaid balance after the advance or at any other



time is less than the bona fide principal amount of the specified amount.

(d) Notwithstanding subdivisions (b) and (c), the amount of the line of credit of an unsecured open-end loan shall be the criterion to determine whether an unsecured open-end loan is of a bona fide principal amount or more specified in any section in this division.

(e) For the purposes of determining whether the loan amount exceeds a regulatory ceiling, the provisions of subdivision (c) of Section 22251 shall apply to open-end loans.

SEC. 6. Section 22551 of the Financial Code is amended to read:

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

(b) A subsequent advance of money of less than a bona fide principal amount of the specified amount pursuant to a revolving or open-end loan agreement or similar agreement between a borrower and a licensed finance lender which gives the borrower the right to draw upon all or any part of the line of credit, or a loan agreement providing for the making of advances to the borrower from time to time up to an aggregate maximum amount which gives the borrower the right to draw all or any part of the total amount, shall be deemed to be a loan of a bona fide principal amount of the specified amount or more if the line of credit or the aggregate maximum amount is a bona fide principal amount of the specified amount or more and the initial advance was a bona fide principal amount of the specified amount or more even though the actual unpaid balance after the advance or at any other time is less than a bona fide principal amount of the specified amount.

(c) If a loan made by a licensed finance lender has 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 bona fides of the amount thereof.



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

(e) 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 22500, 22501, and 22601. 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.

