AB 539

Fair Access to Credit Act of 2019

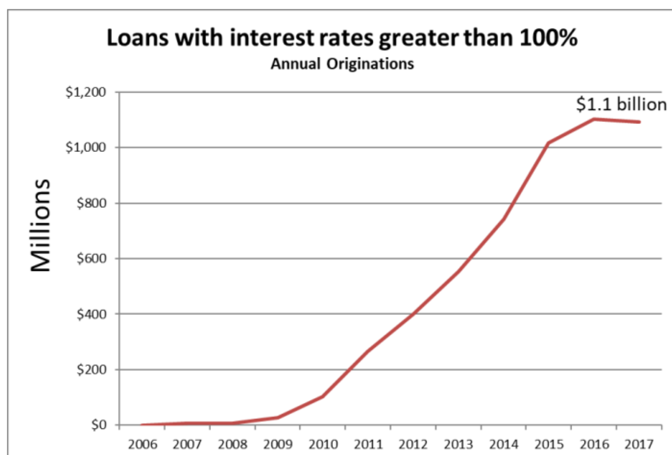
Assemblymember
Monique Limón
37TH DISTRICT

THIS BILL

Assembly Bill 539 seeks to (1) promote affordable and accessible credit for consumers by establishing an annual interest rate cap on personal loans and (2) give responsible lenders confidence in the regulatory stability of California so they can expand and offer safer loan alternatives to consumers.

BACKGROUND

Harmful, high-cost loans have proliferated in California over the past decade. In 2008 high-cost lenders originated 2,037 loans with annual interest rates above 100%. Today, high-cost lenders originate more than 350,000 loans per year with triple-digit interest rates (see chart below). These problematic loans extract more than $1 billion in interest and fees out of financially vulnerable households each year, making this segment of the market more than twice as large as the traditional payday loan space.



High-cost loans lead many families to significant financial harm. According to data from the Department of Business Oversight, approximately one-third of high-cost loans are charged off by lenders. The debt doesn't simply go away however. Instead, these charged-off loans are sold into the secondary market so that collection agencies can continue to try and collect on the outstanding debt. The compounding consequences of high-cost loans can push financially vulnerable households further under water, leaving them worse off than before they took out a loan.

Current law prohibits lenders from charging more than 36% annual interest on loans of less than $2,500, but there are no interest rate caps for loans of $2,500 and above. Therefore, high-cost lenders promote easy approvals and quick availability of loans with annual interest rates ranging from 132% to 224%. For example, one high-cost lender charges 134% for a 42 month, $2,600 loan, resulting in a total repayment of $12,695. Another charges an even higher rate of 185% for a 36 month, $2,501 loan, which totals $13,996 in repayment. For families struggling to cover even basic living household expenses, these wealth-stripping rates ensure that their financial burdens become even more desperate

SUPREME COURT OPINION

In relation to an ongoing class action lawsuit against CashCall, a high-cost lender, the California Supreme Court issued an opinion on "unconscionable" loan terms in August 2018. In that opinion, the Court held that an interest rate term in a loan contract can be "unreasonably and unexpectedly harsh," "unduly oppressive," or "so one-sided as to shock the conscience," making such a loan unenforceable and uncollectable. With this opinion, the Court "empower[s] the [Department of Business Oversight] – and the courts – to take action when the interest rates charged prove unreasonably and unexpectedly harsh," but the Court did not specify an interest rate threshold at which a loan becomes unconscionable.

AB 539

Fair Access to Credit Act of 2019

Assemblymember
Monique Limón
37TH DISTRICT

Without specific direction from the Legislature on allowable interest rates, the executive and judicial branches will make policy and legal decisions on a case-by-case basis. Such regulatory uncertainty negatively impacts the businesses of responsible lenders in the state.

POTENTIAL BALLOT INITIATIVE

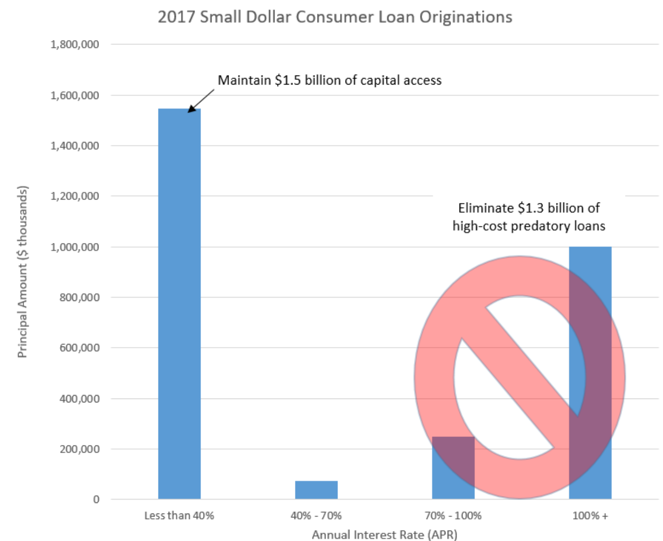
After years of failed attempts by the Legislature to pass reforms, consumer advocates are considering to fund a ballot initiative that would outlaw high-cost loans. Similar efforts in Montana, South Dakota, and Colorado have passed in recent years, with an overwhelming 75% of voters supporting.

Responsible lenders prefer a deliberative legislative approach over a ballot initiative. Lenders have expressed concern that a ballot initiative could be overly restrictive, leading to a loss of credit access even for borrowers that have a demonstrated ability to repay a loan. Lenders have also expressed concern that a ballot initiative could be poorly-worded and could cause unintended consequences.

PURPOSE

The lack of an interest rate cap on consumer loans harms both consumers and responsible lenders. Too often, consumers are trapped in high-cost loans they cannot afford to repay and that destroy their financial well-being. The status quo is not working.

This bill would establish a reasonable interest rate cap that promotes a beneficial alignment of interest between borrowers and lenders in order to expand safe and accessible consumer credit. The proposed interest rate cap ensures that lenders will be incentivized to underwrite loans to borrowers who have a reasonable ability to repay them. High-cost lenders who consistently make loans that borrowers cannot repay will no longer be able to charge usurious interest rates to drive their profitability, even while creating high borrower default rates.



The interest rate cap proposed by this bill is 36% plus the federal funds rate (2.4% as of February 2019). If enacted, California would join the 39 other states that cap interest rates on these loans. This compromise reflects the higher costs for lenders to operate in California and the desire to balance the benefits of access to capital and consumer protections.

SUPPORT

County of Los Angeles (sponsor)
California Financial Services Association
Coalition for Humane Immigrant Rights
Housing and Economic Rights Advocates
Lendmark Financial
OneMain Financial
Oportun
Western Center on Law and Poverty

AB 539

Fair Access to Credit Act of 2019

Assemblymember
Monique Limón
37TH DISTRICT

STAFF CONTACT

Michael Burdick, Principal Consultant
Michael.burdick@asm.ca.gov, (916) 319-3081