

AMENDED IN ASSEMBLY MARCH 17, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 244**

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**Introduced by Assembly Member Ackerman**

February 1, 1999

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An act to add Section 25118 to the Corporations Code, relating to usury.

LEGISLATIVE COUNSEL'S DIGEST

AB 244, as amended, Ackerman. Corporations: evidences of indebtedness.

The California Constitution prohibits usury, which is the loan or forbearance of any money, goods, or things at a rate of interest in excess of specified ceilings, but exempts certain transactions and lenders from these provisions, and allows the Legislature to exempt additional classes of persons by statute. Existing statutory law, the Corporate Securities Act of 1968, provides that certain evidences of indebtedness, and their purchasers, are exempt from state usury laws if the evidence of indebtedness is issued in compliance with specific provisions. Existing statutory law also provides that the usury exemption is applicable to an evidence of indebtedness issued in accordance with these provisions regardless of whether subsequent to its issuance the evidence of indebtedness is determined by a court of competent jurisdiction to be a security.

This bill would provide that an evidence of indebtedness issued *by an entity* or guaranteed by an entity *that is an*

*affiliate, as defined, of the borrower* that has assets of at least \$2,000,000 according to its most recent financial statements, as specified, and the purchasers or holders thereof, shall be exempt from the usury provisions of the California Constitution. This bill would also exempt any one or more evidences of indebtedness aggregating at least ~~\$250,000~~ \$300,000, as specified, from the usury provisions of the California Constitution. This bill would state that these exemptions apply regardless of whether the evidence of indebtedness or guaranty is determined by a court of competent jurisdiction not to be a “security,” but would clarify that these exemptions do not extend to evidences of indebtedness issued or guaranteed by an individual, a revocable trust, or a partnership with general partners, as specified.

*This bill would state legislative intent that the standards contained in these provisions are approved with respect to commercial loans only and do not reflect any judgment by the Legislature regarding loans for personal, family, or household purposes.*

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 25118 is added to the  
 2 Corporations Code, to read:  
 3 25118. (a) An evidence of indebtedness issued by an  
 4 entity or guaranteed by an entity *that is an affiliate (as*  
 5 *defined in Section 150) of the borrower* that, on the day  
 6 the evidence of indebtedness issued or guaranty is first  
 7 issued or entered into, has total assets of at least two  
 8 million dollars (\$2,000,000) according to its then most  
 9 recent financial statements, and the purchasers or  
 10 holders thereof, shall be exempt from the usury  
 11 provisions of the Constitution. The financial statements  
 12 referred to in the preceding sentence shall be:  
 13 (1) As of a date not more than 90 days prior to the date  
 14 the evidence of indebtedness or guaranty is first issued or  
 15 entered into.



1 (2) Prepared:

2 (A) In accordance with generally accepted  
3 accounting principles and, if the entity has consolidated  
4 subsidiaries, on a consolidated basis.

5 (B) In accordance with the rules and requirements of  
6 the Securities and Exchange Commission, whether or not  
7 required by law to be prepared in accordance with those  
8 rules and requirements.

9 (b) Any one or more evidences of indebtedness, (1)  
10 aggregating at least ~~two hundred fifty thousand dollars~~  
11 ~~(\$250,000)~~ *three hundred thousand dollars (\$300,000)* in  
12 original face amount (or, if purchased with original issue  
13 discount, aggregating at least ~~two hundred fifty thousand~~  
14 ~~dollars (\$250,000)~~ *three hundred thousand dollars*  
15 *(\$300,000)* in purchase price at the time of issuance), and  
16 (2) unless initially funded in an aggregate principal  
17 amount equal to at least ~~two hundred fifty thousand~~  
18 ~~dollars (\$250,000)~~ *three hundred thousand dollars*  
19 *(\$300,000)*, issued pursuant to a bona fide written  
20 commitment for the lending to the issuer of at least ~~two~~  
21 ~~hundred fifty thousand dollars (\$250,000)~~ *three hundred*  
22 *thousand dollars (\$300,000)* (including a commitment for  
23 the provision of credit to the issuer, on a revolving basis,  
24 in a maximum principal amount equal to at least ~~two~~  
25 ~~hundred fifty thousand dollars (\$250,000)~~ *three hundred*  
26 *thousand dollars (\$300,000)*), whether or not a  
27 subsequent event or default or other event not within the  
28 lender's control has relieved or may relieve the lender  
29 from its commitment, and the purchasers or holders  
30 thereof, shall be exempt from the usury provisions of the  
31 California Constitution.

32 (c) Any evidence of indebtedness described in  
33 subdivisions (a) or (b), and the purchasers or holders  
34 thereof, shall be entitled to the benefits of the usury  
35 exemption contained in this section regardless of  
36 whether, at any time after the evidence of indebtedness  
37 or guaranty upon which the exemption is based is first  
38 issued or entered into, the evidence of indebtedness or  
39 guaranty is determined by a court of competent  
40 jurisdiction not to be a "security."



1 (d) This section creates and authorizes a class of  
2 transactions and persons pursuant to Section 1 of Article  
3 XV of the California Constitution.

4 (e) This section shall not apply to:

5 (1) Any evidence of indebtedness issued or  
6 guaranteed (if the guaranty is part of the consideration  
7 for the indebtedness) by an individual, a revocable trust  
8 having one or more individuals as trustors, or a  
9 partnership in which, at the time of issuance, one or more  
10 individuals are general partners.

11 (2) Any transaction subject to the limitation on  
12 permissible rates of interest set forth in clause (1) of the  
13 first sentence of Section 1 of Article XV of the California  
14 Constitution.

15 *SEC. 2. It is the intent of the Legislature that the*  
16 *standards contained in Section 1 of this act are approved*  
17 *with respect to commercial loans only. They do not*  
18 *reflect any judgment by the Legislature regarding loans*  
19 *for personal, family, or household purposes. No inference*  
20 *should be drawn from those standards as to the*  
21 *appropriate treatment of any loans other than loans for*  
22 *commercial purposes that qualify for the exemption*  
23 *provided therein.*

