

OCT 16 2017

Jorge Navarrete Clerk

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Deputy

No. S241434

IN THE SUPREME COURT  
FOR THE STATE OF CALIFORNIA

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**EDUARDO DE LA TORRE *et al.*,**

*Plaintiffs, Appellants, and Cross-Appellees,*

vs.

**CASHCALL, INC.,**

*Defendant, Appellee, and Cross-Appellant.*

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**DEFENDANT'S MOTION FOR JUDICIAL NOTICE**

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On a Certified Question from the United States Court of Appeals for the  
Ninth Circuit, Case No. 14-17571  
[Cal. Rules of Court, rule 8.548]

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CASHCALL, INC.

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CASHCALL, INC.

## **MOTION FOR JUDICIAL NOTICE**

Pursuant to California Rules of Court, rule 8.252(a), and California Evidence Code section 451, subdivision (a); section 452, subdivisions (b), (c), (d), and (h); and section 459, CashCall, Inc. moves this Court for an order taking judicial notice of the attached materials:

Exhibit 1: Declaration of Maria A. Sanders of Legislative Intent Service authenticating compilation of legislative file of Senate Bill No. 447 (Reg. Sess. 1985-1986).

Exhibit 2: Sen. Bill No. 447 (1985-1986 Reg. Sess.), as introduced Feb. 19, 1985.

Exhibit 3: Sen. Com. on Banking and Commerce Analysis of Sen. Bill No. 447 (1985-1986 Reg. Sess.) as amended April 24, 1985.

Exhibit 4: Department of Corporations Enrolled Bill Report of Sen. Bill No. 447 (1995-1996 Reg. Sess.) August 29, 1985.

Exhibit 5: Hon. Rose Ann Vuich to Hon. George Deukmejian, Aug. 29, 1985.

Exhibit 6: Memorandum from Shirley R. Chilton, State and Consumer Services Agency to Governor's Office dated September 3, 1985.

Exhibit 7: Declaration of Maria A. Sanders of Legislative Intent Service authenticating compilation of legislative file for Assem. Bill No. 2885 (1993-1994 Reg. Sess.).

Exhibit 8: Assembly Daily Journal (1993-1994 Reg. Sess.) Aug. 29, 1994.

CashCall also moves this Court pursuant to Evidence Code section 451, subdivision (a); section 452, subdivisions (c), (h); and section 459, and California Rules of Court, rule 8.252(a), to take judicial notice of the Ruling on Demurrer in Los Angeles County Superior Court Case No.

BC367894, *Meeks et al. v. CashCall, Inc.*, dated May 6, 2008. This appears in the record at 9-SER-1942-1957, Exhibit B to the Declaration of Brad W. Seiling in Support of CashCall, Inc.'s Opposition to Plaintiffs' Motion for Class Certification. (See also 9-SER-1936 ¶ 2.<sup>1</sup>)

CashCall further moves this Court pursuant to Evidence Code section 451, subdivision (a); section 452, subdivisions (c), (h); and section 459, and California Rules of Court, rule 8.252(a), to take judicial notice of the following reports issued by the California Department of Business Oversight (Department). These materials were Exhibits A through O to Defendant CashCall, Inc.'s Request for Judicial Notice in Support of Motion for Summary Judgment on Unconscionability Claim (3-SER-512-798.)

Exhibit A: The Department's 2004 Annual Report, Operation of Finance Companies Licensed under the California Finance Lenders Law. (3-SER-516-530.)

Exhibit B: The Department's 2005 Annual Report, Operation of Finance Companies Licensed under the California Finance Lenders Law. (3-SER-531-545.)

Exhibit C: The Department's 2006 Annual Report, Operation of Finance Companies Licensed under the California Finance Lenders Law. (3-SER-546-560.)

Exhibit D: The Department's 2007 Annual Report, Operation of Finance Companies Licensed under the California Finance Lenders Law. (3-SER-561-575.)

Exhibit E: The Department's 2008 Annual Report, Operation of

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<sup>1</sup> "SER" refers to the Supplemental Excerpts of Record.

Finance Companies Licensed under the California Finance Lenders Law.  
(3-SER-576-586, 3-SER-589-598.)

Exhibit F: The Department's 2009 Annual Report, Operation of Finance Companies Licensed under the California Finance Lenders Law.  
(3-SER-599-622.)

Exhibit G: The Department's 2010 Annual Report, Operation of Finance Companies Licensed under the California Finance Lenders Law.  
(3-SER-623-645.)

Exhibit H: The Department's 2011 Annual Report, Operation of Finance Companies Licensed under the California Finance Lenders Law.  
(3-SER-646-669.)

Exhibit I: The Department's 2005 Annual Report, Operation of Deferred Deposit Originators Licensed under the California Deferred Deposit Transaction Law. (3-SER-670-673.)

Exhibit J: The Department's 2006 Annual Report, Operation of Deferred Deposit Originators Licensed under the California Deferred Deposit Transaction Law. (3-SER-674-678.)

Exhibit K: The Department's 2007 Annual Report, Operation of Deferred Deposit Originators Licensed under the California Deferred Deposit Transaction Law. (3-SER-679-699.)

Exhibit L: The Department's 2008 Annual Report, Operation of Deferred Deposit Originators Licensed under the California Deferred Deposit Transaction Law. (3-SER-700-728.)

Exhibit M: The Department's 2009 Annual Report, Operation of Deferred Deposit Originators Licensed under the California Deferred Deposit Transaction Law. (3-SER-729-751.)

Exhibit N: The Department's 2010 Annual Report, Operation of

Deferred Deposit Originators Licensed under the California Deferred Deposit Transaction Law. (3-SER-752-774.)

Exhibit O: The Department's 2011 Annual Report, Operation of Deferred Deposit Originators Licensed under the California Deferred Deposit Transaction Law. (3-SER-775-798.)

#### **MEMORANDUM OF POINTS AND AUTHORITIES**

CashCall requests that the Court take judicial notice of the attached materials and materials appearing in the record, as described in the Notice, pursuant to Evidence Code section 451, subdivision (a); section 452, subdivisions (b), (c), (d), (h); and section 459, and California Rules of Court, rule 8.252(a).

All of the materials of which judicial notice is requested are pertinent to arguments in CashCall's Answer Brief on the Merits regarding the interpretation of Financial Code sections 22302 and 22303.

#### Legislative History Materials:

Exhibits 1 through 6 are excerpts from the legislative file of Senate Bill No. 447, including an authenticating declaration. In the district court, CashCall requested judicial notice of certain excerpts of the Senate Bill 447 legislative history, including the declaration (Exhibit 1) and the letter (Exhibit 5). (3-SER-515 ¶ 16; 3-SER-587-588; 3-SER-799-805; 4-SER-924 ¶ 18; 5-SER-1253-1259.) The district court granted judicial notice of the legislative history excerpts. (See *De La Torre v. CashCall, Inc.* (N.D. Cal. 2014) 56 F.Supp.3d 1073, 1092.) Exhibits 2 through 4 and 6 were not previously presented to the district court.<sup>2</sup>

Exhibits 7 and 8 are excerpts from the legislative file of Assembly

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<sup>2</sup> One page of Exhibit 4 was included as an exhibit to a declaration. (5-SER-1259.)

Bill No. 2885 (1993-1994 Reg. Sess.), including an authenticating declaration. These materials were not presented to the district court.

Judicial notice of these legislative history materials is appropriate. Evidence Code section 451, subdivision (a) requires a court to take judicial notice of “[t]he . . . public statutory law of this state . . .” Evidence Code section 452, subdivision (b) allows a court to take judicial notice of “[r]egulations and legislative enactments issued by or under the authority of . . . any public entity in the United States.” Evidence Code section 452, subdivision (c) allows a court to take judicial notice of “[o]fficial acts of the legislative . . . departments of . . . any state of the United States.” Evidence Code Section 452, subdivision (h) allows a court to take judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

Legislative histories of California statutes, including compilations by Legislative Intent Service, are commonly the subjects of judicial notice by California courts. (See *People v. Sanchez* (2001) 24 Cal. 4th 983, 992, fn. 4; *Grubb & Ellis Co. v. Bello* (1993) 19 Cal.App.4th 231, 240-241; *Estate of Thomas* (2004) 124 Cal. App. 4th 711, 723, fn. 3.) More specifically, the Assembly Journal is a proper subject of judicial notice. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 32.) Statements in letters written by the author of legislation can be relevant to ascertaining legislative intent. (*California Teachers Ass'n v. San Diego Comm. College Dist.* (1981) 28 Cal.3d 692, 710-711 (en banc).) Courts often consider legislative committee analyses as relevant to legislative intent. (See, e.g., *Apple Inc. v. Superior Court* (2013) 56 Cal.4th 128, 148.) And this Court has “‘routinely found enrolled

bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent.” (In re Conservatorship of Whitley (2010) 50 Cal.4th 1206, 1218, fn. 3 [citations omitted].)

Court records: Exhibit B to the Declaration of Brad W. Seiling in Support of CashCall, Inc.’s Opposition to Plaintiffs’ Motion for Class Certification (9-SER-1942-1957; 9-SER-1936 ¶ 2) is a Ruling on Demurrer in Los Angeles County Superior Court Case No. BC367894, *Meeks et al. v. CashCall, Inc.*, dated May 6, 2008, in a similar case that presented similar issues. The district court granted judicial notice of the Ruling. (*De La Torre v. CashCall, Inc.*, *supra*, 56 F.Supp.3d at p. 1087.) Judicial notice is appropriate under Evidence Code section 452, subdivision (d) as a “[r]ecord[] of [] any court of this state . . . .” In addition, Evidence Code section 451, subdivision (a) requires a court to take judicial notice of “[t]he decisional . . . law of this state . . . .” Evidence Code section 452, subdivision (c) allows a court to take judicial notice of “[o]fficial acts of the . . . judicial departments of . . . any state of the United States.” Evidence Code Section 452, subdivision (h) allows a court to take judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

Administrative Materials:

Exhibits A through O to Defendant CashCall, Inc.’s Request for Judicial Notice in Support of Motion for Summary Judgment on Unconscionability Claim (3-SER-512-798) are annual reports of the Department of Business Oversight. The district court granted CashCall’s request for judicial notice of the reports. (*De La Torre v. CashCall, Inc.*,



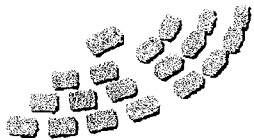
*supra*, 56 F.Supp.3d at p. 1092.) Judicial notice of these documents is appropriate pursuant to Evidence Code section 452, subdivision (c) (allowing judicial notice of “[o]fficial acts of the . . . executive . . . departments of the United States and of any state of the United States”). In addition, Evidence Code section 451, subdivision (a) requires a court to take judicial notice of “[t]he decisional . . . law of this state . . . .” Evidence Code Section 452, subdivision (h) allows a court to take judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

CashCall respectfully requests that the Court grant this motion and take judicial notice of the attached materials.

Dated: October 12, 2017      MANATT, PHELPS & PHILLIPS, LLP

By: s/ Brad W. Seiling  
BRAD W. SEILING  
*Attorneys for Defendant, Appellee and  
Cross-Appellant CASHCALL, INC.*

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# LEGISLATIVE INTENT SERVICE, INC.

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(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

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## DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain documents relevant to the enactment of Senate Bill 447 of 1985. The documents listed below were obtained through Legislative Intent Service, Inc.'s online quick purchase service of previously-compiled legislative histories. Senate Bill 447 was approved by the Legislature and was enacted as Chapter 552 of the Statutes of 1985.

The following list identifies all documents purchased on January 1, 2012, through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories, on Senate Bill 447 of 1985. All documents listed in this Declaration are true and correct copies of the originals gathered by Legislative Intent Service, Inc.

### SENATE BILL 447 OF 1985:

1. All versions of Senate Bill 447 (Vuich - 1985);
2. Procedural history of Senate Bill 447 from the 1985-86 *Senate Final History*;
3. Analysis of Senate Bill 447 prepared for the Senate Committee on Banking and Commerce;
4. Third Reading analysis of Senate Bill 447 prepared by the Office of Senate Floor Analyses;
5. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 447;
6. Analysis of Senate Bill 447 prepared for the Assembly Committee on Finance and Insurance;
7. Material from the legislative bill file of the Assembly

8. Committee on Finance and Insurance on Senate Bill 447;  
Material from the legislative bill file of the Assembly  
Republican Caucus on Senate Bill 447;
9. Unfinished business analyses of Senate Bill 447 prepared by  
the Office of Senate Floor Analyses;
10. Post-enrollment documents regarding Senate Bill 447.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd of October, 2013 at Woodland, California.



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MARIA A. SANDERS

Introduced by Senator Vuich

February 19, 1985

An act to amend Sections 22053, 22053.1, 22054, 224450.1, 22455, 22470, 22482, 24053, 24053.1, 24054, 244450.1, 24470, 24482, and 26007.5 of, to amend and renumber Section 26054.1 of, and to repeal Sections 22054.1 and 2405 of, the Financial Code, relating to loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 447, as introduced, Vuich. Loans: amounts subject to regulation.

(1) Existing law provides that specified provisions of the Personal Property Brokers Law do not apply to, among others, any loan of a bona fide principal amount of \$5,000 or more, and that those provisions plus others do not apply among others, any commercial loan of a bona fide principal amount of \$5,000 or more, if the exemptions are not used to evade that law.

This bill would reduce the bona fide principal amount of these exempted loans from \$5,000 to \$2,500. Conforming changes would be made as well.

(2) Existing law requires personal property brokers and consumer finance lenders to file an annual report with specified information separately stated with respect to loans less than \$5,000 and loans of \$5,000 or more and any other business. Existing law also restricts what interest may be charged, contracted for, or received by a personal property broker or consumer finance lender with respect to a noncommercial loan of \$5,000 or more.

This bill would reduce the amount of the loans referred to in these annual reports and interest provisions from \$5,000 to \$2,500.

(3) Existing law provides that, except with respect to loans

contracts payable in substantially equal and consecutive monthly installments of principal and charges combined, no charges on loans made under the Personal Property Brokers Law shall be paid, deducted, or received in advance, or compounded.

This bill would exempt from the prohibition against the advance payment, deduction, receipt, or compounding of charges on loans specified administrative fees.

(4) Existing law prohibits a personal property broker or consumer finance lender from entering into any contract for a loan of a specified amount, other than an open-end loan, that provides for a scheduled repayment of principal over more than a specified maximum term. A loan principal of less than \$1,500 has a maximum term of repayment of 24 months and 15 days; a loan of \$1,500 but less than \$2,500 has a maximum term of 36 months and 15 days; a loan of \$2,500 but less than \$4,000 has a maximum term of 48 months and 15 days; a loan of \$4,000 but less than \$6,000 has a maximum term of 60 months and 15 days; and a loan of \$6,000 but less than \$10,000 has a maximum term of 84 months and 15 days.

This bill would delete from these provisions regulating the term of loan repayment any reference to loans of \$2,500 but less than \$10,000 and the corresponding maximum terms of repayment.

(5) Existing law provides for the rebate by personal property brokers and consumer finance lenders of precomputed charges on specified loans of \$5,000 or more which have been prepaid in full or where the maturity of the loan has been accelerated, as specified.

This bill would reduce the amount of the loan to which such a rebate of precomputed charges is applicable from \$5,000 to \$2,500.

(6) Existing law provides that various provisions of the Consumer Finance Lenders Law, not including the one specifying maximum terms of repayment for loans, are not applicable to any loan of a bona fide principal amount of \$5,000, if the exemption is not used for the purpose of evading that law.

This bill would provide instead that various provisions of the Consumer Finance Lenders Law, including the one

which specifies maximum terms of repayment for loans, are not applicable to any loan of a bona fide principal amount of \$2,500 or more. Conforming changes would be made as well.

(7) Existing law which regulates commercial finance lenders who make commercial loans defines a commercial loan to include, among other loans, a loan of a principal amount of \$5,000 or more, the proceeds of which are intended by the borrower for use primarily for other than personal, family, or household purposes.

This bill would revise the definition of commercial loan so as to refer to, instead, a loan of a principal amount of \$2,500 or more, the proceeds of which are intended by the borrower for use primarily for other than personal, family, or household purposes. Conforming changes would be made as well.

(8) Existing law provides that a willful violation of the Personal Property Brokers Law, Consumer Finance Lenders Law, or the Commercial Finance Lenders Law is a misdemeanor.

This bill would impose a state-mandated local program by expanding the scope of existing crimes.

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 22053 of the Financial Code is  
2 amended to read:

3 22053. The following sections do not apply to any loan  
4 of a bona fide principal amount of ten thousand dollars  
5 (\$10,000) or more, or to any commercial loan of a bona  
6 fide principal amount of ~~five thousand dollars~~ ~~(\$5,000)~~  
7 *two thousand five hundred dollars* (\$2,500) or more, or to

8 any commercial loan made to a person engaged in the  
9 business of selling goods for the purpose of financing the

1 purchase of goods for resale, or to a duly licensed personal  
 2 property broker in connection with any such loan or  
 3 loans, if the provisions of this section are not used for the  
 4 purpose of evading this division: Sections 22404 and  
 5 22405, subdivisions (h), (l), (n), and (o) of Section 22452,  
 6 Sections 22454, 22456, 22457, 22458, 22458.1, 22458.2,  
 7 22458.3, 22458.4, 22458.5, 22461, 22467, 22468, 22469, 22470,  
 8 22472, 22473, 22474, and 22652, and the sections  
 9 enumerated in Section 22053.1.

10 SEC. 2. Section 22053.1 of the Financial Code is  
 11 amended to read:

12 22053.1. The following sections do not apply to any  
 13 loan of a bona fide principal amount of five thousand  
 14 dollars ~~(\$5,000)~~ two thousand five hundred dollars  
 15 (\$2,500) or more, or to a duly licensed personal property  
 16 broker in connection with any such loan or loans, if the  
 17 provisions of this section are not used for the purpose of  
 18 evading this division: Sections 22004, 22005, 22450, 22451,  
 19 and 22451.1, subdivisions (b), (c), (d), (e), (f), (j), (k),  
 20 and (m) of Section 22452, Section 22453, subdivision (a)  
 21 of Section 22454, and Sections 22455, 22459, 22460, 22462,  
 22 22463, 22464, 22470, 22480, and 22651.

23 SEC. 3. Section 22054 of the Financial Code is  
 24 amended to read:

25 22054. In determining under Section 22053 or 22053.1  
 26 whether a loan is a loan of a bona fide principal amount  
 27 of ten thousand dollars ~~(\$10,000)~~ the specified amount or  
 28 more and whether the provisions of ~~that~~ the applicable  
 29 section are used for the purpose of evading this division,  
 30 the following principles apply:

31 (a) If a borrower applies for a loan in a principal  
 32 amount of less than ten thousand dollars ~~(\$10,000)~~ the  
 33 specified amount and a loan to that borrower of a  
 34 principal amount of ten thousand dollars ~~(\$10,000)~~ the  
 35 specified amount or more is made by a licensed personal  
 36 property broker, no adequate economic reason for the  
 37 increase in the size of the loan exists, and by  
 38 prearrangement or understanding between the  
 39 borrower and the licensee a substantial payment is to be  
 40 made upon the loan with the effect of reducing the

1 principal amount of the loan to less than ten thousand  
 2 dollars ~~(\$10,000)~~ the specified amount within a short time  
 3 after the making of the loan other than by reason of a  
 4 requirement that the loan be paid in substantially equal  
 5 periodical installments, then the loan shall not be  
 6 deemed to be a loan of the bona fide principal amount of  
 7 ten thousand dollars ~~(\$10,000)~~ the specified amount or  
 8 more and the provisions of Section ~~22053~~ the applicable  
 9 section shall be deemed to be used for the purpose of  
 10 evading this division unless the loan complies with the  
 11 provisions of this division relating to loans of less than ten  
 12 thousand dollars ~~(\$10,000)~~ the specified amount.

13 (b) ~~An individual.~~ A subsequent advance of money of  
 14 less than ten thousand dollars ~~(\$10,000)~~ the specified  
 15 amount pursuant to a revolving or open end loan  
 16 agreement or similar agreement between a borrower  
 17 and a licensed personal property broker which gives the  
 18 borrower the right to draw upon all or any part of the line  
 19 of credit, or a loan agreement providing for the making  
 20 of advances to the borrower from time to time up to an  
 21 aggregate maximum amount which gives the borrower  
 22 the right to draw all or any part of the total amount, shall  
 23 be deemed to be a loan of a principal amount of ten  
 24 thousand dollars ~~(\$10,000)~~ the specified amount or more  
 25 if the line of credit or the aggregate maximum amount  
 26 is ten thousand dollars ~~(\$10,000)~~ the specified amount or  
 27 more and the initial advance was ten thousand dollars  
 28 ~~(\$10,000)~~ the specified amount or more even though the  
 29 actual unpaid balance after the advance or at any other  
 30 time is less than ten thousand dollars ~~(\$10,000)~~ the  
 31 specified amount.

32 (c) If a loan made by a licensed personal property  
 33 broker is in a principal amount of ten thousand dollar  
 34 ~~(\$10,000)~~ the specified amount or more, the fact that the  
 35 transaction is in the form of a sale of accounts, chatte  
 36 paper, contract rights, goods, or instruments or a lease o  
 37 goods, or in the form of an advance on the purchase price  
 38 of any of the foregoing, shall not be deemed to affect the  
 39 loan or the bona fides of the amount thereof or to indicat  
 40 that the provisions of Section ~~22053~~ the applicable section

1 are used for the purpose of evading this division.

2 (d) For the purposes of this section, "the specified  
3 amount" means ten thousand dollars (\$10,000) with  
4 respect to noncommercial loans and two thousand five  
5 hundred dollars (\$2,500) with respect to commercial  
6 loans when Section 22053 is the applicable section, and  
7 two thousand five hundred dollars (\$2,500) when Section  
8 22053.1 is the applicable section.

9 SEC. 4. Section 22054.1 of the Financial Code is  
10 repealed.

11 22054.1. In determining under Section 22052 or  
12 22053.1 whether a loan is a loan of a bona fide principal  
13 amount of five thousand dollars (\$5,000) or more and  
14 whether the provisions of either section are used for the  
15 purpose of evading this division, the following principles  
16 apply.

17 (a) If a borrower applies for a loan in a principal  
18 amount of less than five thousand dollars (\$5,000), and a  
19 loan to that borrower of a principal amount of five  
20 thousand dollars (\$5,000) or more is made by a licensed  
21 personal property broker, no adequate economic reason  
22 for the increase in the size of the loan exists, and by  
23 prearrangement or understanding between the  
24 borrower and the licensee a substantial payment is to be  
25 made upon the loan with the effect of reducing the  
26 principal amount of the loan to less than five thousand  
27 dollars (\$5,000) within a short time after the making of  
28 the loan other than by reason of the requirement that the  
29 loan be paid in substantially equal periodic installments;  
30 then the loan shall not be deemed to be a commercial  
31 loan or a noncommercial loan of a bona fide principal  
32 amount of five thousand dollars (\$5,000) or more and the  
33 provisions of Section 22053 or 22053.1, respectively, shall  
34 be deemed to be used for the purpose of evading this  
35 division unless the loan complies with the provisions of  
36 this division relating to commercial or noncommercial  
37 loans of less than five thousand dollars (\$5,000).

38 (b) A subsequent advance of money of less than five  
39 thousand dollars (\$5,000) pursuant to a revolving or open  
40 end loan agreement or similar agreement between a

1 borrower and a licensee which gives the borrower the  
2 right to draw upon all or any part of the line of credit, or  
3 a loan agreement providing for the making of advances  
4 to the borrower from time to time up to an aggregate  
5 maximum amount which gives the borrower the right to  
6 draw all or any part of the total amount, shall be deemed  
7 to be a commercial or noncommercial loan of a bona fide  
8 principal amount of five thousand dollars (\$5,000) or  
9 more if the line of credit or the aggregate maximum  
10 amount is five thousand dollars (\$5,000) or more and the  
11 initial advance was five thousand dollars (\$5,000) or more  
12 even though the actual unpaid balance after the advance  
13 or at any other time is less than five thousand dollars  
14 (\$5,000).

15 (c) If a loan made by a licensee is in a principal amount  
16 of five thousand dollars (\$5,000) or more, the fact that the  
17 transaction is in the form of a sale of accounts, chattel  
18 paper, contract rights, goods or instruments or a lease of  
19 goods or in the form of an advance on the purchase price  
20 of any of the foregoing shall not be deemed to affect the  
21 loan or the bona fides of the amount thereof or to  
22 indicate that the provisions of Section 22053 or 22053.1 are  
23 used for the purpose of evading this division.

24 SEC. 5. Section 22409 of the Financial Code is  
25 amended to read:

26 22409. The commissioner shall require that  
27 information pertaining to loans be stated separately in  
28 the annual report as follows:

29 (a) For loans of a principal amount of less than five  
30 thousand dollars (\$5,000) two thousand five hundred  
31 dollars (\$2,500).

32 (b) For loans of five thousand dollars (\$5,000) or  
33 thousand five hundred dollars (\$2,500) or more and an  
34 other business.

35 (c) The commissioner may permit information  
36 pertaining to expenses in the annual report to be  
37 reported in totals by categories without separation as to  
38 types of loans, and may make such other rules from time  
39 to time as may be necessary to obtain adequate  
40 information pertaining to the licensee.

1 The report shall be made under oath and in the form  
 2 prescribed by the commissioner.  
 3 SEC. 6. Section 22450.1 of the Financial Code is  
 4 amended to read:

5 22450.1. (a) No licensee shall directly or indirectly  
 6 charge, contract for, or receive any interest or charge of  
 7 any nature with respect to a noncommercial loan of ~~five~~  
 8 ~~thousand~~ dollars (~~\$5,000~~) *two thousand five hundred*  
 9 *dollars (\$2,500)* or more unless the loan is made.

10 (b) Notwithstanding subdivision (a), whenever a  
 11 noncommercial loan of ~~five thousand dollars (\$5,000)~~ *two*  
 12 *thousand five hundred dollars (\$2,500)* or more is not  
 13 consummated because of the borrower's failure to  
 14 disclose outstanding liens or other information essential  
 15 to making the loan or solely because of the borrower's  
 16 failure to complete the loan in accordance with the loan  
 17 application, a licensee may charge, contract for, and  
 18 receive an amount equal to the actual expenses incurred  
 19 by the licensee in connection with the preparation for the  
 20 loan.

21 (c) The provisions of this section shall not apply to a  
 22 commercial loan as defined in Section 22011.

23 SEC. 7. Section 22455 of the Financial Code is  
 24 amended to read:

25 22455. Except as provided in Section 22451.3 and in  
 26 Article 3 (commencing with Section 22480) no charges on  
 27 loans made pursuant to this division shall be paid,  
 28 deducted, or received in advance, or compounded. The  
 29 licensee shall deliver to or at the direction of the  
 30 borrower at the time of making the loan an amount equal  
 31 to the face value of the loan and the note evidencing the  
 32 loan.

33 SEC. 8. Section 22470 of the Financial Code is  
 34 amended to read:

35 22470. No licensee shall enter into any contract for a  
 36 loan that provides for a scheduled repayment of principal  
 37 over more than the maximum terms set forth below  
 38 opposite the respective size of loans.

Principal amount of loan	Maximum term
Less than \$1,500.....	24 months and 15 days
\$1,500 but less than \$2,500 ..	36 months and 15 days
<del>\$2,500 but less than \$4,000 =</del>	<del>48 months and 15 days</del>
<del>\$4,000 but less than \$6,000 =</del>	<del>60 months and 15 days</del>
<del>\$6,000 but less than \$10,000</del>	<del>84 months and 15 days</del>

9 This section shall not apply to open end loans.  
 10 SEC. 9. Section 22482 of the Financial Code is  
 11 amended to read:

12 22482. When charges on a noncommercial loan of an  
 13 original bona fide principal amount of ~~five thousand~~  
 14 ~~dollars (\$5,000)~~ *two thousand five hundred dollar*  
 15 *(\$2,500)* or more have been precomputed in a manner  
 16 similar to that provided in Section 22480, and the loan is  
 17 prepaid in full by cash, a new loan, refinancing or  
 18 otherwise, or the maturity of the loan contract is  
 19 accelerated for any reason, the borrower shall receive a  
 20 rebate or credit of that portion of the precomputed  
 21 charge which is the difference between the total  
 22 precomputed charge and the charges at the contract rate  
 23 computed in accordance with the provisions of Section  
 24 22454 or 22454.1, or on the basis of 12 equal months of 30  
 25 days each, on the assumption that all payments were  
 26 received by the licensee on their respective due dates.  
 27 This section does not apply to charges paid by the  
 28 borrower to the lender or others, such as charge  
 29 computed as a percentage of the loan, which are full  
 30 earned upon making the loan, or to charges agreed to be  
 31 paid by the borrower upon prepayment of a loan secured  
 32 by a lien upon real property. This section does not apply  
 33 to a commercial loan as defined in Section 22011.

34 SEC. 10. Section 24053 of the Financial Code  
 35 amended to read:

36 24053. The following sections do not apply to any loan  
 37 of a bona fide principal amount of ten thousand dollar  
 38 (\$10,000) or more, or to a duly licensed consumer financ  
 39 lender in connection with any such loan or loans, if th  
 40 provisions of this section are not used for the purpose (



1 evading this division: Sections 24404 and 24405, paragraph  
 2 (1) of subdivision (h) of Section 24452, Sections 24454,  
 3 24458, 24458.1, 24458.2, ~~24470~~, and 24652, and the sections  
 4 enumerated in Section 24053.1.

5 SEC. 11. Section 24053.1 of the Financial Code is  
 6 amended to read:

7 24053.1. The following sections do not apply to any  
 8 loan of a bona fide principal amount of ~~five thousand~~  
 9 ~~dollars~~ (~~\$5,000~~) *two thousand five hundred dollars*  
 10 (*\$2,500*) or more, or to a duly licensed consumer finance  
 11 lender in connection with any such loan or loans, if the  
 12 provisions of this section are not used for the purpose of  
 13 evading this division: Sections 24004, 24005, 24450, 24451,  
 14 and 24451.1, subdivisions (b), (c), (d), (e), (f), (j), (k),  
 15 and (m) of Section 24452, Section 24453, subdivision (a)  
 16 of Section 24454, and Sections 24455, 24459, 24460, 24462,  
 17 24463, 24464, ~~24470~~, 24480, and 24651.

18 SEC. 12. Section 24054 of the Financial Code is  
 19 amended to read:

20 24054. In determining under Section 24053 or 24053.1  
 21 whether a loan is a loan of a bona fide principal amount  
 22 of ~~ten thousand dollars~~ (~~\$10,000~~) *the specified amount* or  
 23 more and whether the provisions of ~~that~~ *the applicable*  
 24 section are used for the purpose of evading this division,  
 25 the following principles apply:

26 (a) If a borrower applies for a loan in a principal  
 27 amount of less than ~~ten thousand dollars~~ (~~\$10,000~~) *the*  
 28 *specified amount* and a loan to that borrower of a  
 29 principal amount of ~~ten thousand dollars~~ (~~\$10,000~~) *the*  
 30 *specified amount* or more is made by a licensed consumer  
 31 finance lender, no adequate economic reason for the  
 32 increase in the size of the loan exists, and by  
 33 prearrangement or understanding between the  
 34 borrower and the licensee a substantial payment is to be  
 35 made upon the loan with the effect of reducing the  
 36 principal amount of the loan to less than ~~ten thousand~~  
 37 ~~dollars~~ (~~\$10,000~~) *the specified amount* within a short time  
 38 after the making of the loan other than by reason of a  
 39 requirement that the loan be paid in substantially equal  
 40 periodical installments, then the loan shall not be

1 deemed to be a loan of the bona fide principal amount of  
 2 ~~ten thousand dollars~~ (~~\$10,000~~) *the specified amount* or  
 3 more and the provisions of Section ~~24053~~ *the applicable*  
 4 section shall be deemed to be used for the purpose of  
 5 evading this division unless the loan complies with the  
 6 provisions of this division relating to loans of less than ~~ten~~  
 7 ~~thousand dollars~~ (~~10,000~~) *the specified amount*.

8 (b) A subsequent advance of money of less than ~~ten~~  
 9 ~~thousand dollars~~ (~~\$10,000~~) *the specified amount* pursuant  
 10 to a revolving or open end loan agreement or similar  
 11 agreement between a borrower and a licensed consumer  
 12 finance lender which gives the borrower the right to  
 13 draw upon all or any part of the line of credit, or a loan  
 14 agreement providing for the making of advances to the  
 15 borrower from time to time up to an aggregate maximum  
 16 amount which gives the borrower the right to draw upon  
 17 all or any part of the total amount, shall be deemed to be  
 18 a loan of a principal amount of ~~ten thousand dollar~~  
 19 (~~\$10,000~~) *the specified amount* or more if the line o  
 20 credit or the aggregate maximum amount is ~~ten thousand~~  
 21 ~~dollars~~ (~~\$10,000~~) *the specified amount* or more and the  
 22 initial advance was ~~ten thousand dollars~~ (~~\$10,000~~) *th*  
 23 *specified amount* or more even though the actual unpai  
 24 balance after the advance or at any other time is less tha  
 25 ~~ten thousand dollars~~ (~~\$10,000~~) *the specified amount*.

26 (c) If a loan made by a licensed consumer financ  
 27 lender is in a principal amount of ~~ten thousand dollar~~  
 28 (~~\$10,000~~) *the specified amount* or more, the fact that th  
 29 transaction is in the form of a sale of accounts, chatte  
 30 paper, contract rights, goods, or instruments, or a leas  
 31 of goods, or in the form of an advance on the purchas  
 32 price of any of the foregoing, shall not be deemed t  
 33 affect the loan or the bona fides of the amount thereof o  
 34 to indicate that the provisions of Section ~~24053~~ *th*  
 35 *applicable* section are used for the purpose of evadin  
 36 this division.

37 (d) For the purposes of this section, "the specific  
 38 amount" means *ten thousand dollars (\$10,000) whe*  
 39 *Section 24053 is the applicable section, and two thousan*  
 40 *five hundred dollars (\$2,500) when Section 24053.1 is th*

1 applicable section.

2 SEC. 13. Section 24054.1 of the Financial Code is  
3 repealed.

4 24053.1. In determining under Section 24052.1  
5 whether a loan is a bona fide principal amount  
6 of five thousand dollars (\$5,000) or more and whether the  
7 provisions of that section are used for the purpose of  
8 evading this division, the following principles apply:

9 (a) If a borrower applies for a loan in a principal  
10 amount of less than five thousand dollars (\$5,000) and a  
11 loan to that borrower of a principal amount of five  
12 thousand dollars (\$5,000) or more is made by a licensed  
13 consumer finance lender, no adequate economic reason  
14 for the increase in the size of the loan exists, and by  
15 prearrangement or understanding between the  
16 borrower and the licensee a substantial payment is to be  
17 made upon the loan with the effect of reducing the  
18 principal amount of the loan to less than five thousand  
19 dollars (\$5,000) within a short time after the making of  
20 the loan other than by reason of a requirement that the  
21 loan be paid in substantially equal periodical installments;  
22 then the loan shall not be deemed to be a loan of a bona  
23 fide principal amount of five thousand dollars (\$5,000) or  
24 more and the provisions of Section 24052.1 shall be  
25 deemed to be used for the purpose of evading this  
26 division unless the loan complies with the provisions of  
27 this division relating to loans of less than five thousand  
28 dollars (\$5,000).

29 (b) A subsequent advance of money of less than five  
30 thousand dollars (\$5,000) pursuant to a revolving or open  
31 end loan agreement or similar agreement between a  
32 borrower and a licensed consumer finance lender which  
33 gives the borrower the right to draw upon all or any part  
34 of the line of credit, or a loan agreement providing for the  
35 making of advances to the borrower from time to time up  
36 to an aggregate maximum amount which gives the  
37 borrower the right to draw upon all or any part of the  
38 total amount, shall be deemed to be a loan of a principal  
39 amount of five thousand dollars (\$5,000) or more if the  
40 line of credit or the aggregate maximum amount is five

1 thousand dollars (\$5,000) or more and the initial advance  
2 was five thousand dollars (\$5,000) or more even though  
3 the actual unpaid balance after the advance or at an  
4 other time is less than five thousand dollars (\$5,000).

5 (c) If a loan made by a licensed consumer finance  
6 lender is in a principal amount of five thousand dollars  
7 (\$5,000) or more, the fact that the transaction is in the  
8 form of a sale of accounts, chattel paper, contract right  
9 goods or instruments or a lease of goods or in the form of  
10 an advance on the purchase price of any of the foregoing  
11 shall not be deemed to affect the loan or the bona fide  
12 of the amount thereof or to indicate that the provision  
13 of Section 24052.1 are used for the purpose of evading the  
14 division.

15 SEC. 14. Section 24409 of the Financial Code  
16 amended to read:

17 24409. The commissioner shall require the  
18 information pertaining to loans be stated separately in  
19 the annual reports as follows:

20 (a) For loans of a principal amount of less than five  
21 thousand dollars (\$5,000) two thousand five hundred  
22 dollars (\$2,500).

23 (b) For loans of five thousand dollars (\$5,000) to  
24 thousand five hundred dollars (\$2,500) or more and an  
25 other business.

26 (c) The commissioner may permit information  
27 pertaining to expenses in the annual report to be  
28 reported in totals by categories without separation as to  
29 types of loans, and may make such other rules from time  
30 to time as may be necessary to obtain adequate  
31 information pertaining to the licensee.

32 The report shall be made under oath and in the form  
33 prescribed by the commissioner.

34 SEC. 15. Section 24450.1 of the Financial Code  
35 amended to read:

36 24450.1. (a) No licensee shall directly or indirectly  
37 charge, contract for, or receive any interest or charge of  
38 any nature with respect to a loan of five thousand dollars  
39 (\$5,000) two thousand five hundred dollars (\$2,500) or  
40 more unless the loan is made.

1 (b) Notwithstanding subdivision (a), when a loan of  
 2 ~~five thousand dollars (\$5,000)~~ two thousand five hundred  
 3 dollars (\$2,500) or more is not consummated because of  
 4 the borrower's failure to disclose outstanding liens or  
 5 other information essential to making the loan or solely  
 6 because of the borrower's failure to complete the loan in  
 7 accordance with the loan application, a licensee may  
 8 charge, contract for, and receive an amount equal to the  
 9 actual expenses incurred by the licensee in connection  
 10 with the preparation for the loan.

11 SEC. 16. Section 24470 of the Financial Code is  
 12 amended to read:

13 24470. No licensee shall enter into any contract for a  
 14 loan that provides for a scheduled repayment of principal  
 15 over more than the maximum terms set forth below  
 16 opposite the respective size of loans.

17 Principal amount of loan	Maximum term
18 Less than \$1,500.....	24 months and 15 days
19 \$1,500 but less than \$2,500 ..	36 months and 15 days
20 <del>\$2,500 but less than \$4,000</del> ..	<del>48 months and 15 days</del>
21 <del>\$4,000 but less than \$6,000</del> ..	<del>60 months and 15 days</del>
22 <del>\$6,000 but less than \$10,000</del>	<del>84 months and 15 days</del>

23 This section shall not apply to open end loans.

24 SEC. 17. Section 24482 of the Financial Code is  
 25 amended to read:

26 24482. When charges on a loan of an original bona fide  
 27 principal amount of ~~five thousand dollars (\$5,000)~~ two  
 28 thousand five hundred dollars (\$2,500) or more have  
 29 been precomputed in a manner similar to that provided  
 30 in Section 24480, and the loan is prepaid in full by cash,  
 31 a new loan, refinancing or otherwise, or the maturity of  
 32 the loan contract is accelerated for any reason, the  
 33 borrower shall receive a rebate or credit of that portion  
 34 of the precomputed charge which is the difference  
 35 between the total precomputed charge and the charges  
 36 at the contract rate computed in accordance with the  
 37 provisions of Section 24454 or 24454.1, or on the basis of  
 38 12 equal months of 30 days each, on the assumption that

1 all payments were received by the licensee on their  
 2 respective due dates. This section does not apply to  
 3 charges paid by the borrower to the lender or others,  
 4 such as charges computed as a percentage of the loan,  
 5 which are fully earned upon making the loan, or to  
 6 charges agreed to be paid by the borrower upon  
 7 prepayment of a loan secured by a lien upon real  
 8 property.

9 SEC. 18. Section 26007.5 of the Financial Code is  
 10 amended to read:

11 26007.5. "Commercial loan" means a loan of a  
 12 principal amount of ~~five thousand dollars (\$5,000)~~ two  
 13 thousand five hundred dollars (\$2,500) or more, or any  
 14 loan under an open end credit program, whether secured  
 15 by real or personal property, or unsecured, the proceeds  
 16 of which are intended by the borrower for use primarily  
 17 for other than personal, family, or household purposes.

18 For purposes of determining whether a loan is a  
 19 commercial loan, the lender may rely on any written  
 20 statement of intended purposes signed by the borrower.  
 21 The statement may be a separate statement signed by the  
 22 borrower or may be contained in a loan application or  
 23 other document signed by the borrower. The lender shall  
 24 not be required to ascertain that the proceeds of the loan  
 25 are used in accordance with the statement of intended  
 26 purposes.

27 SEC. 19. Section 26054.1 of the Financial Code is  
 28 amended and renumbered to read:

29 ~~26054.1~~

30 26054. In determining whether a loan is a loan of a bona  
 31 fide principal amount of ~~five thousand dollars (\$5,000)~~  
 32 the specified amount or more, the following principles  
 33 shall apply:

- 34 (a) If a borrower applies for a loan in a principal
- 35 amount of less than ~~five thousand dollars (\$5,000)~~ the
- 36 specified amount and a loan to that borrower of a
- 37 principal amount of ~~five thousand dollars (\$5,000)~~ the
- 38 specified amount or more is made by a licensed
- 39 commercial finance lender, no adequate economic
- 40 reason for the increase in the size of the loan exists, and

1 by 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  
 4 principal amount of the loan to less than ~~five thousand~~  
 5 ~~dollars~~ ~~(\$5,000)~~ *the specified amount* within a short time  
 6 after the making of the loan other than by reason of a  
 7 requirement that the loan be paid in substantially equal  
 8 periodical installments, then the loan shall not be  
 9 deemed to be a loan of the bona fide principal amount of  
 10 ~~five thousand dollars~~ ~~(\$5,000)~~ *the specified amount* or  
 11 more.

12 (b) A subsequent advance of money of less than ~~five~~  
 13 ~~thousand dollars~~ ~~(\$5,000)~~ *the specified amount* pursuant  
 14 to a revolving or open end loan agreement or similar  
 15 agreement between a borrower and a licensed  
 16 commercial finance lender which gives the borrower the  
 17 right to draw upon all or any part of the line of credit, or  
 18 a loan agreement providing for the making of advances  
 19 to the borrower from time to time up to an aggregate  
 20 maximum amount which gives the borrower the right to  
 21 draw all or any part of the total amount, shall be deemed  
 22 to be a loan of a principal amount of ~~five thousand dollars~~  
 23 ~~(\$5,000)~~ *the specified amount* or more if the line of credit  
 24 or the aggregate maximum amount is ~~five thousand~~  
 25 ~~dollars~~ ~~(\$5,000)~~ *the specified amount* or more and the  
 26 initial advance was ~~five thousand dollars~~ ~~(\$5,000)~~ *the*  
 27 *specified amount* or more even though the actual unpaid  
 28 balance after the advance or at any other time is less than  
 29 ~~five thousand dollars~~ ~~(\$5,000)~~ *the specified amount*.

30 (c) If a loan made by a licensed commercial finance  
 31 lender is in a principal amount of ~~five thousand dollars~~  
 32 ~~(\$5,000)~~ *the specified amount* or more, the fact that the  
 33 transaction is in the form of a sale of accounts, chattel  
 34 paper, contract rights, goods, or instruments, or a lease of  
 35 goods, or in the form of an advance on the purchase price  
 36 of any of the foregoing, shall not be deemed to affect the  
 37 bona fides of the amount thereof.

38 (d) For the purposes of this section, "the specified  
 39 amount" means two thousand five hundred dollars  
 40 (\$2,500).

1 SEC. 20. No reimbursement is required by this act  
 2 pursuant to Section 6 of Article XIII B of the California  
 3 Constitution because the only costs which may be  
 4 incurred by a local agency or school district will be  
 5 incurred because this act creates a new crime or  
 6 infraction, changes the definition of a crime or infraction,  
 7 changes the penalty for a crime or infraction, or  
 8 eliminates a crime or infraction.

O

SENATE COMMITTEE ON BANKING AND COMMERCE  
Rose Ann Vuich, Chair

ANALYSIS OF:	SB 447 (Vuich) as it will be amended about April 24, 1985	S B
HEARING DATE:	April 24, 1985	4 4
FISCAL COMMITTEE:	Yes	7

CONSUMER FINANCE LENDERS AND  
PERSONAL PROPERTY BROKERS:  
LOANS EXEMPT FROM INTEREST RATE PROVISIONS

BACKGROUND: Since January 1, 1984, if a personal property broker (PPB), or a consumer finance lender (CFL) makes a loan in excess of \$5,000, various sections of the PPB law and the CFL law do not apply to the loan. With respect to interest rates, PPBs and CFLs can charge whatever interest rate they want on consumer or commercial loans in excess of \$5,000.\*

The sponsor of this bill, the California Financial Services Association, believes that the \$5,000 figure (for the interest rate ceiling exemption) is too high and it should be significantly lowered because flexible rates would foster competition within the industry. In addition, the sponsor feels that PPBs and CFLs should be on a level playing field with banks, savings and loans, and credit unions.

\*NOTE: Banks, savings and loans, and credit unions are not restricted on the interest rates they charge for consumer or commercial loans.

SB 447 (Vuich)  
April 24, 1985

Page 2

ANALYSIS: This bill would make loans of \$2,500 or more made by personal property brokers and consumer finance lenders exempt from the interest rate ceilings of the Financial Code.

SB 447 would also lengthen the maximum number of months a small loan (in excess of \$2,500) could be repaid. At present, a \$2,500 loan has a maximum 4 year term for repayment. Under this bill there would be no maximum term.

COMMENTS: (1) The sponsor and the Department of Corporations (DOC) have been having a friendly debate as to the timeliness of this bill. The Department is concerned about high loan fees for people who are vulnerable and financially unsophisticated. The industry contends that a lower threshold (\$2,500 v. \$5,000) will benefit consumers, and since January 1, 1984, when SB 225 (Vuich) lowered the threshold from \$10,000 to \$5,000, "rate competition ensued and rates differed from lender to lender" - this was not generally the case prior to 1984.

(2) The Department will be neutral if the noninterest rate provisions (consumers protection) --which currently apply to loans up to \$5,000--continue to apply to loans up to \$5,000. Hence, the interest rate provision can be deregulated, but various consumer protection sections would have to be in the bill.

(3) Amendments to meet the DOC position were recently sent to Legislative Counsel. When the bill is in print in its amended form, SB 447 will reflect a compromise reached by the industry and the DOC.

SB 447 (Vuich)  
April 24, 1985

Page 3

SUMMARY OF COMMUNICATIONS RECEIVED: The California  
Financial Services Association is the sponsor.  
Beneficial Management Corporation of America  
supports the bill.

The Department of Corporations will be neutral when  
the bill is amended. See above comments.

**ENROLLED BILL REPORT**

DEPARTMENT <b>CORPORATIONS</b>	AUTHOR <b>Vuich</b>	BILL NUMBER <b>SB 447</b>
SUBJECT Lowering from \$5,000 to \$2,500 the regulated loan amount under the consumer finance lenders laws		

**SUMMARY**

Would amend the Personal Property Brokers Law, Consumer Finance Lenders Law, and Commercial Finance Lenders Law to lower the regulated loan amount from \$5,000 to \$2,500; repeal the maximum term for regulated loans over \$2,500; and reduce and define "commercial loan" to be a loan to be made for commercial purpose over \$2,500.

**SPONSOR**

Senate Bill 447 is sponsored by the California Financial Services Association.

**IMPACT ASSESSMENT**

Essentially, Senate Bill 447 removes the interest rate ceiling on loans made by licensed lenders under the Personal Property Brokers Law, Consumer Finance Lenders Law, and Commercial Finance Lenders Law on loans over \$2,500. Presently, the interest rate ceiling applies to loans below \$5,000. The effect of lowering the interest rate ceiling is to eliminate rate regulation as a form of regulation of loans made under these laws. Both the Department of Corporations and the California Financial Services Association agree that the rate limitation should apply to loans under \$2,500 in order to address concerns arising from necessitous borrowers. The Department of Corporations will monitor the interest rates on loans above \$2,500 to determine whether these rates are "competitive" through the mechanism of the annual report required to be filed by licensed lenders. There will be no cost to the Department of Corporations.

**ARGUMENTS PRO & CON**

The major argument in favor of Senate Bill 447 is that rate regulation provides very little consumer protection and may even work against consumers since lenders tend to lend money at the maximum allowable rate irrespective of the credit worthiness of the borrower. Senate Bill 447 removes only the rate regulation provision of the laws regulating lenders while preserving the consumer protection provisions of all laws. The effect of this bill is that interest rates for consumer finance loans above \$2,500 will be set by the market place. Statistics furnished to the Department of Corporations by the California Financial Services Association indicate that, on the whole, interest rates are competitive for loans over \$5,000; especially for the larger consumer finance companies which make over 90% of the loans.

**RECOMMENDATION**

**SIGN**

Date Franklin Tom, Commissioner	Date 8/29/85	Agency <i>[Signature]</i>	Date 8/29/85
------------------------------------	-----------------	------------------------------	-----------------

PE-2



The only major argument against the bill is that deregulation has gone too far and an element of consumer protection will be eliminated by lowering the interest rate ceiling from \$5,000 to \$2,500. As set forth above, it is questionable whether rate regulation provides consumer protection at all. Moreover, the other consumer protection elements of the consumer finance lending laws remain intact as well as a new provision added by this bill which would provide that if a loan made under these laws is found to be unconscionable pursuant to Section 1670.5 of the Civil Code, it shall be deemed to be a violation of the consumer finance lender laws and thereby subject to the remedies of these laws.

#### RECOMMENDATION

Insofar as the Department of Corporations is concerned, a recommendation of SIGN is made because this bill will remove rate regulation from loans between \$2,500 and \$5,000 while preserving the consumer protection elements of the consumer finance lending laws and thereby allow a more competitive interest rate structure based on a borrower's credit worthiness.

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# California State Senate



ROSE ANN VUICH  
STATE SENATOR  
FIFTEENTH SENATORIAL DISTRICT  
FRESNO AND TULARE COUNTIES

COMMITTEES  
CHAIR, BANKING AND  
COMMERCE  
AGRICULTURE AND WATER  
TRANSPORTATION  
LOCAL GOVERNMENT  
JOINT COMMITTEES:  
VICE CHAIR, RULES  
FAIRS AND ALLOCATIONS  
THE ARTS  
CHAIR, SOLID AND HAZARDOUS  
WASTE  
RURAL ISSUES  
RURAL CAUCUS  
FOREST LAND ISSUES

August 29, 1985

Honorable George Deukmejian  
Governor, State of California  
State Capitol, First Floor  
Sacramento, CA 95814

Dear Governor Deukmejian: *"Duke."*

Senate Bill No. 447, which I introduced, has passed both houses of the Legislature and now awaits your action.

In 1983 I authored SB 225 which lowered the ceiling on regulation of personal property broker and consumer finance lender rates from \$10,000 to \$5,000. SB 447 further lowers that ceiling to \$2,500.

As anticipated when SB 225 was enacted, rates above \$5,000 are now set competitively in the market place and are generally below the former statutory rate ceilings. SB 447 is expected to lead similarly to lower rates for loans in the \$2,500 to \$5,000 bracket.

Only rate regulation is affected by SB 447. Other regulatory provisions in the Personal Property Broker and Consumer Finance Lender Laws are not changed.

The unconscionability provision in the Civil Code is incorporated by reference in both laws to provide a remedy for excessive charges.

The Senate passed SB 447 by a 37-0 vote, and it was passed by the Assembly on the consent calendar. I urge your approval.

Sincerely,

A handwritten signature in cursive script that reads "Rose Ann Vuich".

ROSE ANN VUICH

V/t

LIS - 10

PE-1

(800) 666-1917

LEGISLATIVE INTENT SERVICE

# Memorandum

To: Governor's Office

Date: September 3, 1985

From: Office of the Secretary


(916) 323-9493

ATSS 473-9493

Subject: SB 447 (Vuich) Enrolled Bill Analysis

Agency is deferring to BT&H, however, offers the following comments:  
Limiting interest or cost of credit charges has the effect of benefiting the "haves" (those who can afford to pay) at the expense of the "have nots". The result will be less credit available to higher risk applicants if charges cannot be made to cover the additional risk. In essence, this "protection of a lower rate" subsidizes interest for those who could pay.

Please reference SB 563 (Carpenter) which was signed into law July 15, 1985. This bill is of similar subject.

  
Shirley R. Chilton  
Agency Secretary

SRC:dj

Attachment: EBR

LEGISLATIVE INTENT SERVICE (916) 360-1917

PE-1



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### DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain documents relevant to the enactment of Assembly Bill 2885 of 1994. The documents listed below were obtained through Legislative Intent Service, Inc.'s online quick purchase service of previously-compiled legislative histories. Assembly Bill 2885 was approved by the Legislature and was enacted as Chapter 1115 of the Statutes of 1994.

The following list identifies all documents purchased on January 4, 2012, through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories, on Assembly Bill 2885 of 1994. All documents listed in this Declaration are true and correct copies of the originals gathered by Legislative Intent Service, Inc.

#### **ASSEMBLY BILL 2885 OF 1994:**

1. All versions of Assembly Bill 2885 (Caldera-1994)
2. Procedural history of Assembly Bill 2885 from the 1993-94 *Assembly Final History*;
3. Analysis of Assembly Bill 2885 prepared for the Assembly Committee on Banking and Finance;
4. Material from the legislative bill file of the Assembly Committee on Banking and Finance on Assembly Bill 2885;
5. Analysis of Assembly Bill 2885 prepared for the Assembly Committee on Ways and Means;
6. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 2885;
7. Analysis of Assembly Bill 2885 prepared for the Senate

8. Committee on Banking, Commerce, and International Trade; Material from the legislative bill file of the Senate Committee on Banking, Commerce, and International Trade on Assembly Bill 2885;
9. Material from the legislative bill file of the Senate Committee on Appropriations on Assembly Bill 2885;
10. Third Reading analysis and Special Consent analysis of Assembly Bill 2885 prepared by the Office of Senate Floor Analyses;
11. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 2885;
12. Post-enrollment documents regarding Assembly Bill 2885;
13. Press Release #3165 issued by the Office of the Governor on September 30, 1994 to announce that Assembly Bill 2885 had been signed;
14. Letter of Intent regarding Assembly Bill 2885 from the *Assembly Daily Journal*, August 29, 1994.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21st day of October, 2013 at Woodland, California.



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MARIA A. SANDERS

Aug. 29, 1994

ASSEMBLY JOURNAL

8903

CALIFORNIA LEGISLATURE  
1993-94 REGULAR SESSION

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# ASSEMBLY DAILY JOURNAL

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Monday, August 29, 1994

TWO HUNDRED FORTY-SECOND SESSION DAY  
SIX HUNDRED THIRTY-FIRST CALENDAR DAY

AT SACRAMENTO, CALIFORNIA



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NOTE: Official record of roll call votes; all amendments considered by the Assembly on this day are on file with the Chief Clerk of the Assembly and available on request. A list of all measures amended and on which amendments were offered is shown on the final page of this day's Assembly Journal.

(Please Direct Any Inquiries and Report Any Omissions or Errors to Minute Clerk: Phone 445-6021)

LEGISLATIVE INTENT SERVICE (800) 666-1917



Aug. 29, 1994

ASSEMBLY JOURNAL

9015

**Further Consideration of Senate Bill No. 530 by Unanimous Consent**

Assembly Member Burton was granted unanimous consent to take up Senate Bill No. 530, without reference to file, for purpose of amendment.

**SENATE BILL NO. 530 (Presley)**—An act to amend Section 2933 of, and to add Section 2933.1 to, the Penal Code, relating to sentencing credits.

Bill read third time.

**Motion to Amend**

Assembly Member Burton moved the adoption of amendments.

Amendments read and adopted; bill ordered reprinted, and to be re-referred to the Committee on Ways and Means.

**REPORTS OF STANDING COMMITTEES**

**Committee on Local Government**

Date of Hearing: August 29, 1994

Mr. Speaker: Your Committee on Local Government reports:

Senate Bill No. 348

With the recommendation: Do pass.

COTCH, Chairman

Above bill ordered to second reading.

**CONSIDERATION OF SENATE BILL NO. 348 BY UNANIMOUS CONSENT**

Assembly Member Cannella was granted unanimous consent to take up Senate Bill No. 348, without reference to file, for purpose of amendment.

**SENATE BILL NO. 348 (Maddy)**—An act to amend Section 30054 of the Government Code, and to add Section 97.037 to the Revenue and Taxation Code, relating to local government finance, and declaring the urgency thereof, to take effect immediately.

Bill read third time.

**Motion to Amend**

Assembly Member Cannella moved the adoption of amendments.

Amendments read and adopted; bill ordered reprinted, and to be returned to the second reading file.

**BILLS REMOVED FROM SPECIAL CONSENT CALENDAR**

The following bill was removed from the Special Consent Calendar, and placed on unfinished business file, pursuant to Joint Rule 22.2:

Assembly Bill No. 3657, on request of Assembly Member Caldera.

**REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL**

Assembly Member Caldera was granted unanimous consent that the following statement of legislative intent be printed in the Journal:

August 24, 1994

*E. Dotson Wilson  
Clerk of the Assembly  
State Capitol  
Sacramento, California*

Re: Legislative Intent—Assembly Bill No. 2885

Dear Mr. Wilson: I am writing to request this letter be printed in the Assembly Journal.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



The intent of the Legislature in enacting AB 2885 ("the Law") is to preserve all existing precedents regarding the constitutionality of laws consolidated by this legislation.

The Legislature believes that, to achieve more efficient administration, it is appropriate to create a single licensing structure for lenders extending consumer and commercial loans. However, the Legislature specifically intends to regulate various classes of lenders under this consolidation of existing laws.

The Law is both reasonable and appropriate for the classes of consumer and commercial loans in that:

1. Certain sections do not apply to commercial loans and consumer loans, either entirely or over a certain dollar amount, to the extent deemed necessary by the Legislature. In creating the classes of loans exempt from usury laws, the Legislature does not believe that all lenders must be regulated in the same manner.

2. The Legislature believes that it is appropriate and reasonable to exempt certain loans in the regulated class of commercial and consumer loans from any rate limitations. It is the intent of the Legislature to let the rates charged generally be set by free market competition, subject to rate limitations deemed necessary by the Legislature. The Legislature believes that the Law creates a reasonable balance between regulation and free-market activity, and provides necessary consumer protections.

3. The Legislature intends that the Commissioner of Corporations should have the authority under the Law to regulate consumer and commercial loans in different ways, as deemed appropriate.

It is the intention of the Legislature to preserve existing usury exemptions for (a) personal property brokers formerly regulated by the "Personal Property Brokers Law," Fin. Code Div. 9, Secs. 22000 et seq.; (b) lenders formerly regulated by the "Consumer Finance Lenders Law," Fin. Code Div. 10, Secs. 24000 et seq.; and (c) lenders formerly regulated by the "Commercial Finance Lenders Law," Fin. Code Div. 11, Secs. 26000 et seq. No finding that any provision of the Law is invalid with respect to a particular lender or class of lenders shall affect the enforceability of the Law with respect to any of the foregoing classifications of lenders, which shall in all events continue to be exempted from usury restrictions by the Law.

Sincerely,

LOUIS CALDERA, Assembly Member  
Forty-sixth District

**MOTION TO RECONSIDER SENATE BILL NO. 1128  
ON NEXT LEGISLATIVE DAY**

Assembly Member Klehs moved to reconsider on the next legislative day the vote whereby Senate Bill No. 1128 was this day refused passage.

Senate Bill No. 1128 ordered to the unfinished business file.





**PROOF OF SERVICE**

I, Brigitte Scoggins, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is Manatt, Phelps & Phillips, LLP, 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On **October 13, 2017**, I served the within: **DEFENDANT'S MOTION FOR JUDICIAL NOTICE** on the interested parties in this action addressed as follows:

Arthur D. Levy  
Housing and Economic Rights Advocates  
1814 Franklin Street, Suite 1040  
Oakland, CA 94612

*Attorneys for Plaintiffs and Appellants*  
EDUARDO DE LA TORRE AND LORI  
SAYSOURIVONG

Monique Olivier  
Duckworth Peters Lebowitz Olivier, LLP  
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San Francisco, CA 94104

James C. Sturdevant  
Sturdevant Law Firm  
354 Pine Street, 4th Floor  
San Francisco, CA 94104

Jessica Lee Riggin  
Rukin Hyland Doria & Tindall LLP  
100 Pine Street, Suite 2150  
San Francisco, CA 94111

Steven Marcus Tindall  
Gibbs Law Group LLP  
505 14th Street, Suite 1110  
Oakland, CA 94612

Beth Ellen Terrell  
Terrell Marshall Law Group PLLC  
936 North 34th Street, Suite 300  
Seattle, WA 98103

Damon M. Connolly  
Law Office of Damon M. Connolly  
1000 Fourth Street, Suite 600  
San Rafael, CA 94901

Clerk, U.S. Court of Appeals for the Ninth  
Circuit  
95 Seventh Street  
San Francisco, CA 94103

*Via Electronic Filing*

Clerk, U.S. District Court for the Northern  
District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102

*Via Electronic Filing*

**BY MAIL:** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **October 13, 2017**, at Los Angeles, California.

  
BRIGETTE SCOGGINS