

**Assembly Bill No. 2969**

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Passed the Assembly    May 13, 2002

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*Chief Clerk of the Assembly*

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Passed the Senate    June 27, 2002

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2002, at \_\_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*



## CHAPTER \_\_\_\_\_

An act to amend Sections 25118 and 25120 of the Corporations Code, relating to corporations.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2969, Florez. Corporations.

Existing law provides exemptions from state usury provisions for loans that meet certain requirements, with specified financial statements as necessary evidence. The financial statements are required to meet specified requirements, including being prepared (1) in accordance with generally accepted accounting principles and, if the entity has consolidated subsidiaries, on a consolidated basis, and (2) in accordance with the rules and requirements of the Securities Exchange Commission.

This bill would instead require the financial statements to meet one of the above requirements, rather than both of those requirements.

Existing law prohibits a person from offering or selling securities in certain manners unless the security is qualified for sale or unless the security or transaction is exempted or not subject to qualification.

This bill would make nonsubstantive changes to these provisions.

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

SECTION 1. Section 25118 of the Corporations Code is amended to read:

25118. (a) An evidence of indebtedness issued by an entity or guaranteed by an entity that is an affiliate (as defined in Section 150) of the borrower that, on the day the evidence of indebtedness issued or guaranty is first issued or entered into, has total assets of at least two million dollars (\$2,000,000) according to its then most recent financial statements, and the purchasers or holders thereof, shall be exempt from the usury provisions of the Constitution. The financial statements referred to in the preceding sentence shall meet both of the following requirements:



(1) Be as of a date not more than 90 days prior to the date the evidence of indebtedness or guaranty is first issued or entered into.

(2) Be prepared in accordance with either of the following:

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

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

(b) Any one or more evidences of indebtedness, and the purchasers or holders thereof, shall be exempt from the usury provisions of the Constitution if either of the following applies:

(1) The evidences of indebtedness aggregate at the time of issuance at least three hundred thousand dollars (\$300,000) in original face amount, or, if the evidences of indebtedness are purchased with original issue discount, they are purchased for an aggregate purchase price at the time of issuance of at least three hundred thousand dollars (\$300,000).

(2) The evidences of indebtedness are issued pursuant to a bona fide written commitment for the lending to the issuer of at least three hundred thousand dollars (\$300,000), or the provision of a line of credit to the issuer in a principal amount of at least three hundred thousand dollars (\$300,000). The exemption provided by this paragraph shall not be affected by a subsequent event of default or other event not in the lender's control that has relieved or may relieve the lender from its commitment.

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

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

(e) This section shall not apply to:



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

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

(f) The exemptions created by this section shall only be available in a transaction which meets either of the following criteria:

(1) The lender and either the issuer of the indebtedness or the guarantor, as the case may be, or any of their respective officers, directors, or controlling persons, or, if any party is a limited liability company, the managers as appointed or elected by the members, have a preexisting personal or business relationship.

(2) The lender and the issuer, or the lender and the guarantor, by reason of their own business and financial experience or that of their professional advisers, could reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

(g) For purposes of this section, “preexisting personal or business relationship” and “capacity to protect their own interests in connection with the transaction” as used in subdivision (f) shall have the same meaning as, and be determined according to the same standards as, specified in paragraph (2) of subdivision (f) of Section 25102 and its implementing regulations provided that, solely with respect to this section, a lender or purchaser who is represented by counsel may designate that person as its professional adviser whether or not that person is compensated by the issuer or guarantor, as long as that person has a bona fide attorney-client relationship with the lender or purchaser.

(h) This section shall not exempt any person from the application of the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code).

SEC. 2. Section 25120 of the Corporations Code is amended to read:

25120. (a) Except as provided in subdivision (b), it is unlawful for any person to offer or sell in this state any security in any of the following manners:



(1) In an issuer transaction in connection with any change in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(2) In any exchange of securities by the issuer with its existing security holders exclusively.

(3) In any exchange in connection with any merger or consolidation or purchase of assets in consideration wholly or in part of the issuance of securities.

(4) In an entity conversion transaction.

(b) Subdivision (a) shall not apply to a security if the security is qualified for sale under this chapter (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to the qualification) or if the security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part.



Approved \_\_\_\_\_, 2002

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*Governor*

