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University of the Pacific; McGeorge School of Law

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# Commercial Transactions

## Commercial Transactions; industrial loan companies

Financial Code §§ 18206, 18269, 18274 (amended).

SB 2271 (Keene); 1986 STAT. Ch. 296

Sponsor: California Association of Thrift and Loans

Existing law prohibits an industrial loan company<sup>1</sup> from making consumer loans<sup>2</sup> or acquiring consumer obligations<sup>3</sup> unless the loan or obligation is repayable in substantially equal periodic payments during the loan's term.<sup>4</sup> Chapter 296 revises existing law by creating an exception to this equal payment requirement for loans secured by motor vehicles.<sup>5</sup> Chapter 296 limits the number of such loans, however, to either fifty percent of all consumer loans and obligations secured by motor vehicles, or twenty percent of assets, whichever is less.<sup>6</sup>

Under prior law, the principal amount<sup>7</sup> of any loan secured primarily by real property was limited to ten percent of the industrial loan company's unimpaired capital and unavailable surplus.<sup>8</sup> Chapter 296 limits the amount of a loan that can be made by an industrial loan company having outstanding investment certificates<sup>9</sup> by distin-

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1. CAL. FIN. CODE § 18003. An industrial loan company is any corporation that loans money and assigns rights to recover a debt, demand, or damages on a cause of action. *Id.* See generally Waxman, *The Mortgage Banker—Industrial Loan Company: A New Exempt Lender*, 6 PAC. L.J. 1 (1975) (discussing the nature and formation of industrial loan companies).

2. CAL. FIN. CODE § 18005 (definition of consumer loan).

3. *Id.* (definition of consumer obligation).

4. *Id.* § 18206. This section does not apply to loans made to a graduate student at an accredited college or university while the student is actively pursuing a postbaccalaureate degree. *Id.*

5. *Id.*

6. *Id.*

7. CAL. FIN. CODE § 18009 (principal amount is the net amount of money, credit, goods, or things in action received by the debtor or borrower, or disbursed on the borrower's instructions at the time of entering into the transaction).

8. See 1976 Cal. Stat. ch. 964, sec. 2, at 493 (enacting CAL. FIN. CODE § 18269).

9. See generally *id.* §§ 18315-18325 (statutes governing the issuance of investment certificates).

guishing between loans secured by improved and unimproved real property.<sup>10</sup> Under Chapter 296, the principal amount of loans secured primarily by *improved* real property cannot exceed twenty percent of the company's unimpaired capital and unavailable surplus, and loans secured primarily by *unimproved* real property cannot exceed ten percent of the company's unimpaired capital and unavailable surplus.<sup>11</sup>

Under prior law, the principal balances<sup>12</sup> of loans made, or obligations purchased, by an industrial loan company having outstanding investment certificates, which loans or obligations were secured by unimproved property, could not exceed, in the aggregate, ten percent of the company's assets.<sup>13</sup> Under Chapter 296, the principal balances of these loans or obligations cannot exceed five percent of the company's assets.<sup>14</sup> Existing law provides an exception to this limitation on principal balances if the Commissioner of Corporations<sup>15</sup> consents to the taking of collateral to protect an existing jeopardized obligation.<sup>16</sup>

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10. *Id.* § 18269. See CAL. REV. & TAX. CODE § 105. Improved real property is defined in the property taxation provisions to include all buildings, structures, fixtures, and fences erected on the land, and also fruit, nut bearing or ornamental trees and vines, not of natural growth, and not exempt from taxation, except date palms under eight years of age. *Id.*

11. CAL. FIN. CODE § 18269.

12. *Id.* § 18010 (principal balance means the unpaid balance of a loan or other obligation).

13. See 1983 Cal. Stat. ch. 455, sec. 2, at 1784 (amending CAL. FIN. CODE § 18274).

14. CAL. FIN. CODE § 18274.

15. See generally CAL. FIN. CODE §§ 18340-18367 (administration and powers of the Commissioner).

16. *Id.* § 18274.

## Commercial Transactions; investments in South Africa—state trust moneys

Government Code §§ 16640, 16641, 16641.5, 16642, 16642.5, 16642.7, 16643, 16644, 16645, 16646, 16647, 16648, 16649, 16650 (new).

AB 134 (M. Waters); 1986 STAT. Ch. 1254

Sponsor: Assemblywoman Maxine Waters

Support: Maxine Waters; Willie Brown; Governor Deukmejian

With the adoption of Chapter 1254, the legislature recognizes that South Africa is the only political system which constitutionally adopts a political system in which a small minority has the power and authority to separate, discriminate against, and deny fundamental political, social, and economic rights to eighty-three percent of the country's population solely on the basis of race.<sup>1</sup> The system of apartheid in South Africa is contrary to the religious and political assumptions which underlie the United States, and the deteriorating political climate in South Africa will have an adverse effect on South Africa's economic climate and on American corporations doing business in South Africa.<sup>2</sup>

Existing law creates state trust funds<sup>3</sup> which are controlled by the Board of Administration of the Public Employees' Retirement System and the Teachers' Retirement Board.<sup>4</sup> Existing law also allows the State Treasurer (the Treasurer) to invest certain state moneys from the Surplus Money Investment Fund and the State Treasury in authorized securities.<sup>5</sup> The Treasurer may deposit all moneys from the State Treasury in eligible banks<sup>6</sup> and eligible savings and loan associations.<sup>7</sup>

With the adoption of Chapter 1254, the legislature recognizes that the investment of California trust funds and state moneys in businesses and financial institutions with close ties to South Africa is

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1. 1986 Cal. Stat. ch. 1254, sec. 1(a), at \_\_\_\_\_.

2. *Id.* sec. 1(c), (g), at \_\_\_\_\_.

3. CAL. GOV'T CODE §§ 20200-20216.5 (the Public Employees' Retirement Fund); 9354-9354.7 (the Legislators' Retirement Fund); CAL. EDUC. CODE §§ 22300-22312.5 (the Teachers' Retirement Fund).

4. CAL. GOV'T CODE §§ 20201, 20205; CAL. EDUC. CODE § 22222.

5. CAL. GOV'T CODE §§ 16429.1, 16471.

6. *Id.* § 16500 (definition of eligible bank).

7. *Id.* §§ 16502, 16601. *See also id.* § 16600 (definition of eligible savings and loan association).

fiscally imprudent and inconsistent with the moral and political values of the people of California.<sup>8</sup> With the adoption of Chapter 1254, the legislature seeks to terminate any ties or participation in any form of economic activity which assists or supports the potentially unstable economic system of apartheid.<sup>9</sup>

Chapter 1254 limits the investment<sup>10</sup> of state trust moneys by prohibiting additional or new investments, or renewal of existing investments, in business firms<sup>11</sup> having business operations<sup>12</sup> in South Africa<sup>13</sup> or with the government of South Africa.<sup>14</sup> Furthermore, state trust moneys<sup>15</sup> cannot be used to make additional or new investments, or to renew existing investments, in financial institutions<sup>16</sup> which make loans to South African corporations<sup>17</sup> or to the government of South Africa.<sup>18</sup>

Any business firm or financial institution, whose governing body adopts a policy not to renew existing business agreements, renew existing loans, make additional or new business arrangements, or make additional new loans to South Africa or with the government of South Africa is exempt from the state's noninvestment policy.<sup>19</sup> A copy of a resolution to this effect must be submitted to the Treasurer and to the chief administrative officer of each state trust fund, along with a description of the business agreements and arrangements in existence in South Africa or with the government of South Africa.<sup>20</sup> The copy of a resolution must be accompanied by a certification that the adopted policy is being followed.<sup>21</sup> The resolution and any information which is submitted to the Treasurer under the mandates of Chapter 1254 are public documents.<sup>22</sup>

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8. 1986 Cal. Stat. ch. 1254, sec. 1(h), at \_\_\_\_.

9. *Id.*

10. CAL. GOV'T CODE § 16640(a) (definition of investment).

11. *Id.* § 16640(b) (definition of business firm).

12. *Id.* § 16640(d) (definition of business operations).

13. *Id.* § 16640(f) (definition of South Africa).

14. *Id.* § 16641. *See id.* § 16640(g) (definition of government of South Africa).

15. *Id.* § 16640(i) (definition of state trust moneys).

16. *Id.* § 16640(c) (definition of financial institutions).

17. *Id.* § 16640(h) (definition of South African corporation).

18. *Id.* § 16642.

19. *Id.* §§ 16641.5, 16642.5. Exemptions from the State's noninvestment policy also apply to banks or financial institutions which renew existing loans or make additional or new loans to any South African corporation or to the government of South Africa, only to the extent necessary or appropriate to facilitate repayment of loans or other credits committed or provided before January 1, 1987. *Id.* § 16642.7.

20. *Id.* § 16643(a).

21. *Id.* § 16643(b).

22. *Id.* § 16643(c).

Beginning January 1, 1988, and continuing until January 1, 1991, state trust funds must annually reduce by one-third the value of their investments in business firms with business operations in South Africa or business arrangements with the government of South Africa, and in financial institutions which make or increase loans, or otherwise extend credit, to the government of South Africa or any South African corporation.<sup>23</sup> The reduction, however, does not apply to loans which were entered into before the enactment of Chapter 1254.<sup>24</sup> If any state trust fund continues to hold investments in any business firm or financial institution, the agency administering those moneys must file a report<sup>25</sup> with the Governor and the legislature describing (1) the issuer of the stock, bonds, securities, and other evidence of indebtedness; (2) the book value of the investment; (3) the amount, yield, and maturity date of any investment; and (4) the business operations of the firm in South Africa.<sup>26</sup> Members of the governing board<sup>27</sup> of any trust fund, Regents of the University of California,<sup>28</sup> state officers and employees, officers and employees of the University of California, and investment managers under contract with the state or with the University of California must be indemnified by the state from all claims that result from any decision to restrict, reduce, or eliminate investments in business firms with business operations in South Africa, or with financial institutions extending credit to the government of South Africa or South African corporations.<sup>29</sup>

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23. *Id.* § 16644. Effective January 1, 1991, state trust funds must not hold any investment (1) in any business firm with business operations in South Africa or with the government of South Africa, or (2) in any financial institution making or increasing loans or other extensions of credit to the government of South Africa or any South African corporation. *Id.* § 16645. No state moneys may be deposited with financial institutions which make or increase loans or other extensions of credit, or provide funds for the purpose of making or increasing loans or other extensions of credit, to the government of South Africa. *Id.* § 16646.

24. *Id.* § 16647.

25. The report must be filed by January 31 of each year. *Id.* § 16648.

26. *Id.* § 16648. The business arrangements made by the firm in South Africa, or with the government of South Africa, must also be described in the report. *Id.* § 16648(d).

27. *Id.* § 16649 (includes present, future, and former members).

28. *Id.* § 16650 (includes present, future, and former members).

29. *Id.* §§ 16649, 16650.

## Commercial Transactions; open end credit

Financial Code §§ 22452, 24452, 26452 (repealed); §§ 22500, 22501, 22502, 22503, 22504, 22505, 22506, 22507, 22508, 22509, 22510, 22511, 22512, 22513, 22514, 22515, 22516, 22517, 24500, 24501, 24502, 24503, 24504, 24505, 24506, 24507, 24508, 24509, 24510, 24511, 24512, 24513, 24514, 24515, 24516, 24517, 26500 (new); §§ 22053, 22053.1, 24053, 24053.1 (amended).

AB 4020 (Eaves); 1986 STAT. Ch. 702

Sponsor: Beneficial Finance Corporation

Under existing law a borrower and a licensee<sup>1</sup> may devise an open end credit agreement<sup>2</sup> by which the borrower may obtain money, goods,<sup>3</sup> labor, or services, and later pay the licensee according to the agreement.<sup>4</sup> A licensee may provide a borrower with life insurance<sup>5</sup> to assure that in the event of the borrower's death, payments still due on the loan will be made.<sup>6</sup> Chapter 702 allows the licensee to provide additional indemnity for a disabled borrower's indebtedness in the form of credit disability insurance.<sup>7</sup>

Under prior law, a property broker or consumer finance licensee could not take real property as security for an open end loan.<sup>8</sup> Chapter 702 allows such a licensee to take a deed of trust, mortgage, or lien upon real property as security for loans of \$5,000 or more.<sup>9</sup>

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1. A licensee includes a personal property broker or a consumer finance lender. CAL. FIN. CODE §§ 22008, 24008.

2. *Id.* §§ 22452(a), 24452(a), 26452 (definition of open end credit program).

3. *Id.* § 22007 (goods defined according to Uniform Commercial Code); CAL. COM. CODE § 2105(1), (2).

4. *Id.* §§ 22452(a)-(g); 22452(h)(2), (3); 22452(i), (j); 22452(l)-(o); 24452(a)-(g); 24452(h)(2), (3); 24452(i), (j); 24452(l)-(o); 26452 (requirements regarding agreement).

5. *Id.* §§ 22452(h)(1), 24452(h)(1) (borrower must consent, and licensee may only cancel when borrower's payments are delinquent 90 days or more).

6. *Id.* §§ 22452(h)(1), 24452(h)(1).

7. *Id.* §§ 22505, 24505. CAL. INS. CODE § 106 (definition of disability insurance).

8. 1984 Cal. Stat. ch. 890, sec. 12, at 769 (amending CAL. FIN. CODE § 22452(e)); 1984 Cal. Stat. ch. 890, sec. 23, at 774 (amending CAL. FIN. CODE § 24452(e)).

9. CAL. FIN. CODE § 22053.1.