

1930

USURY LAW

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LEGALIZING SAN FRANCISCO HARBOR IMPROVEMENT ACT. Senate Constitutional Amendment 28. Adds Section 8 to Article XVI of Constitution. Approves and legalizes San Francisco Harbor Improvement Act of 1929, passed by Legislature, and the issuance and sale of ten million dollars of state bonds and use of proceeds thereof, all as provided in said act which authorized such bonds to provide funds for construction work and improvements in San Francisco Harbor and provided for their payment from dockage, tolls and other like charges and from collections paid into the fourth San Francisco seawall sinking fund.	YES	
	NO	

(For full text of Measure, see page 10, Part II)

Argument in Favor of Senate Constitutional Amendment No. 28

"The San Francisco Harbor Improvement Act of 1929" (Chapter 835, Statutes 1929), was adopted by a unanimous vote of both branches of the Legislature.

This Act provides for the issuance of Bonds in the amount of \$10,000,000.00 to provide funds for the improvement of the Harbor of San Francisco, the interest and redemption fund to be paid from the earnings of the Harbor.

The Harbor of San Francisco is, and always has been, self-supporting.

The improvements on the Waterfront of San Francisco represent an investment of over \$75,000,000.00, all paid out of revenues. These improvements have never cost the people of the State of California one cent in taxes and said improvements constitute in themselves more than adequate security for the repayment of these bonds. The Act expressly provides that the port charges must be made sufficiently large to pay interest upon these bonds and to redeem them, so that every citizen and every tax-payer may be confident that not one cent of tax money will ever be required as a result of the approval of this bond issue.

It, therefore, can truthfully be said that it is only a formality under the provisions of the Constitution which requires a bond issue by any Department of the State, to be ratified and approved by a vote of the people of the State.

The business of the Port of San Francisco has nearly doubled in the last ten years. Many new steamers have been constructed and additional steamers are now under construction by a number of the lines at present operating in and out of San Francisco Harbor and other new lines are preparing to put on vessels. The size of the ships has also greatly increased and it is imperatively necessary that more facilities be provided for taking care of the increased commerce of the Port.

The Harbor of San Francisco is of utmost importance to all, farmers and merchants alike. Foreign commerce must be developed to take care of surplus crops, and to take care of that commerce, ample facilities must be provided. It, therefore, behoves all to cast an affirmative vote on this question.

J. M. INMAN,
State Senator, Seventh District.
ARTHUR H. BREED,
State Senator, Fifteenth District.

USURY LAW. Initiative. Amends Sections 1 and 3 thereof, and adds Sections 6, 7, 8, 9 and 10. Written agreement for interest rate unnecessary. Corporations can not recover treble amount of interest paid. Defines "construction loans" and provides for computing interest thereon. Excepts agreements giving borrower option to pay before maturity. If maturity is accelerated by default, interest paid in advance is not usurious. Corporations can not plead usury. Legislature regulates pawnbrokers and "industrial loan companies."	YES	
	NO	

(For full text of Measure see page 11, Part II)

Argument in Favor of Initiative Proposition No. 10

While the proposed amendment to the Usury Law, number 10 on the ballot, leaves unchanged the rate of interest and the penalties, four important objects are accomplished. (1) Construction loans, and hence building, are encouraged. (2) Corporations are prevented from

pleading the Act to defeat their contractual obligations. (3) Industrial loan companies and pawnbrokers are subjected to regulation by the legislature. (4) The law is clarified, made certain and conforms to decisions of the Supreme Court.

Construction Loans. Construction loans, that is, loans made to provide funds for constructing

a building, are a vital factor in prosperity. Many of the homes and most of the large apartment houses and office buildings of the state have been built by such loans. The lending community has been in doubt about the meaning of the law in regard to construction loans. Section 3 of the amendment, adding section 6 to the Law, removes the doubt and gives these loans a preferred position. This will naturally tend to encourage loans for building. This means more construction, more materials sold, more jobs, and more money in circulation. It will help a return to prosperity. California needs additional building to provide for its rapidly growing population. While California's population has increased in the last decade in a greater percentage than any other state in the Union, construction has lagged. \$152,000,000.00 of building in 1925 was the peak. 1926 and 1927 dropped \$30,000,000.00. The total was brought down to \$102,000,000.00 in 1928. 1929 showed a drop to \$93,000,000.00. The current year, to the month of August, was \$16,000,000.00 behind 1929 for the same period. The amendment recognizes that building loans are the life blood of prosperity. Everyone interested in the growth and prosperity of California should for this reason support the amendment.

Corporations. The Supreme Court in *In re Washer*, 200 Cal. 598, 606, properly characterized the purpose of usury laws "to protect the individual necessitous borrower from the rapacity of the more fortunate lender." And further the court said: "Many states, such as Illinois, Virginia, Wisconsin, New York, Maryland, Delaware, North Carolina, and South Carolina, have met the question by expressly denying to corporations the right to plead usury." Such laws are just. Corporations, formed for profit, should not be able to repudiate their bargains under the shelter of a law meant to protect the needy individual. Accordingly, the amendment has met the situation by denying to corporations the right to assert usury.

Industrial lenders and pawnbrokers. An initiative measure can not be changed by amendment by the legislature. The present Usury Law is an initiative measure and therefore the legislature can do nothing to regulate industrial lenders and pawnbrokers whose businesses require constant attention. The effect of the amendment is to subject industrial lenders and pawnbrokers to regulation by the legislature. They are not otherwise affected by this initiative measure.

Certainty. It is difficult for either lender or borrower to know what the present law means. It was characterized by our Supreme Court in *In re Washer*, 200 Cal. 598, 606, as "a poorly drafted act." In the same case the Supreme Court speaks of the draftsmen as "stabbing at imaginary enemies in the darkness." The uncertainty that exists retards the easy flow of money into the market, which is necessary for the financial well-being of the community. The law has been somewhat clarified by court decisions, and the amendment incorporates these and will do the rest. Portions of section 3, heretofore held unconstitutional by

the Supreme Court, are stricken out. Certain language of section 1, requiring the expression of the true rate in writing, has been eliminated. On construction loans and loans with a discount, to express the true rate requires a difficult computation. It helps no one, because the borrower pays the same amount anyway. Uncertainties regarding pre-payment and acceleration are cleared up by sections 4 and 5 of the amendment. A law which is certain will bring more money into the market and help industrial recovery.

For the foregoing reasons you should vote "YES" on number 10.

LAURENCE W. BEILENSON of Los Angeles, Draftsman of the Act.

RANSOM HENSHAW, Financial Editor of the Los Angeles Evening Express.

GEORGE S. WALKER of San Francisco, formerly State Building and Loan Commissioner.

Argument in Opposition to Initiative Proposition No. 10

The proposed initiative measure to amend the usury law is wholly in the interest of the money lender and against that of the borrower. It was evidently drafted by the money lenders. Its salient objectionable features are as follows:

First: It eliminates the requirement of the present law that when the rate of interest exceeds 7 per cent it shall be clearly expressed in writing. It thus affords an opportunity for various fraudulent practices under the guise of discounts.

Second: Corporations are forbidden to plead, assert or claim usury. The money lender may charge corporations any rate of interest with impunity. All corporations borrow money—the construction company that builds your home; the automobile company from whom you buy your automobile; the clothing manufacturer; the producers and distributors of food and all other commodities. If they pay exorbitant rates of interest they must charge more for what they sell you and the consumer must pay the exaction of the money lender. There is no reason why corporations and their stockholders should be at the mercy of lenders of money. Remember the wrecking of the Julian Corporation by the demands and exactions of high financiers.

Third: It provides an arbitrary date from which the interest on a loan for the construction of a building shall begin, enabling the lender to charge an exorbitant interest rate. This because the builder who borrows money is required to pay interest on the full amount from the beginning, although it is paid out by the lender in installments.

Fourth: If money is borrowed with the option to pay it before maturity, and the borrower exercises such option, he may be required to pay interest for the full time up to the fixed maturity. If one borrows money on a five-year loan contract, though he may elect to pay it

the day after the money is paid to him, he may be required to pay the rate of interest during the entire five years.

Fifth: If the maturity of a loan is accelerated by default, the borrower must pay interest for the full time of the loan. The proposed measure provides that no credit be given for interest taken in advance although unearned.

Sixth: The proposed measure expressly relegates to the legislature the power to fix rates of interest to be charged by pawnbrokers and industrial loan companies. It will permit the legislature to grant pawnbrokers and industrial loan companies a higher rate of interest.

Seventh: There is not a single provision in

this proposed measure for the benefit of the borrower. It wholly favors the money lender.

Eighth: The present usury law, which protects the borrower and is just to the loaner of money, has been declared constitutional and construed definitely and certainly by the Supreme Court. The proposed initiative measure amending it will create uncertainty and litigation, to the advantage of the money lender.

You should vote "NO."

WILLIAM A. ALDERSON,
Los Angeles.

WILLIAM R. GEARY,
Oakland.

FISH AND GAME. Initiative. Amends Constitution, Article IV, Section 25, and adds thereto three sections. Creates Fish and Game Commission of five members appointed by Governor; empowers Commission to establish fish and game districts, determine what animals, birds and fish, are within its jurisdiction, regulate by ordinance approved by Governor, the taking, sale or possession thereof, and issue licenses therefor, fix seasons and limits within maximums prescribed by Legislature, establish refuges, public shooting grounds and fishing waters, conduct investigations of persons, and their books, within its jurisdiction; prescribes penalties; declares provisions effective January 15, 1931.

YES	
NO	

(For full text of Measure, see page 13, Part II)

Argument For Initiative Proposition No. 11

Every species of fish and game except deer, is fast disappearing in California and some species are on the verge of extermination. Under our present inadequate law the Fish and Game Commission has little more than patrol powers.

Unless the present old-fashioned system of wild life control is changed immediately our fish and game will be exterminated within five or ten years and California will have lost one of its most valuable natural resources.

The conservation program introduced by the Fish and Game Commission and conservationists at the last session of the Legislature to restore our fish and game, was defeated by lobbyists representing selfish interests.

Two major conservation bills at the last session sought to protect the disappearing salmon and to restrict the quantity of sardines used for fertilizer. Both failed and instead of restricting the quantity of sardines for fertilizer, the Legislature increased it.

Lobbyists for selfish interests who successfully opposed conservation measures in the Legislature, are now opposing this. They feel their power to dictate fish and game policy slipping and oppose this conservation measure with even more bitterness than they fought constructive conservation measures at Sacramento.

All ordinances contemplated in the initiative are subject to approval by the Governor and to review by Appellate Courts. Taxes will not be increased. Commissioners serve without pay and the Commission is self-supporting through license fees paid by fishermen and hunters.

This measure was carefully drawn by Fred

B. Wood of the State Legislative Counsel Bureau and carries the approval of the California Conservationists, Associated Sportsmen of California and Izaak Walton League.

Other states have granted their Commissions regulatory powers, notably Pennsylvania, outstandingly successful in game restoration. J. W. Nelson, representing the U. S. Forest Service for nine years, has recommended that regulatory powers be given the California Fish and Game Commission. This plan is in operation throughout Canada. J. Gordon Smith, Director of Publicity for British Columbia, says, "Full regulatory powers are given our commissioner and staff. It has proved successful. They have not only checked the depletion of every species of fish and game, but have increased the breeding stock."

Ex-Governor Alfred Smith of New York said, "Year after year the Legislature is flooded with bills fixing by law the size, manner, method and season for the taking of fish and game. It is a deliberate waste of the time of the Legislature. Why not pass a general law conferring authority upon the Conservation Commissioner to fix these matters entirely by regulation."

The proof of this needed change is in present conditions. Fish and game are disappearing rapidly. Action must be taken immediately or it will be too late. This method so successfully followed elsewhere will be equally successful here and if this amendment is adopted our wild life will be not only conserved, but restored to something of its former abundance, and once more California will become a paradise for all wild life.

SANBORN YOUNG,
Chairman Senate Fish and Game Committee.

10 **USURY LAW. Initiative.** Amends Sections 1 and 3 thereof, and adds Sections 6, 7, 8, 9 and 10. Written agreement for interest rate unnecessary. Corporations can not recover treble amount of interest paid. Defines "construction loans" and provides for computing interest thereon. Excepts agreements giving borrower option to pay before maturity. If maturity is accelerated by default, interest paid in advance is not usurious. Corporations can not plead usury. Legislature regulates pawnbrokers and "industrial loan companies."

YES
NO

Sufficient qualified electors of the State of California have presented to the secretary of state a petition and request that the proposed measure hereinafter set forth be submitted to the people of the State of California for their approval or rejection, at the next ensuing general election. The proposed measure is as follows:

(This proposed law expressly amends sections of an existing law, and adds new sections thereto; therefore, EXISTING PROVISIONS proposed to be DELETED are printed in STRIKE-OUT TYPE; and NEW PROVISIONS proposed to be INSERTED or ADDED are printed in BLACK-FACED TYPE.)

PROPOSED LAW.

An act to amend sections 1 and 3 of an act known as the "usury law" and entitled "An act, to be known as the usury law, relating to the rate of interest which may be charged for the loan or forbearance of money, goods or things in actions, or on accounts after demand, or on judgments providing penalties for the violation of the provisions hereof, and repealing sections one thousand nine hundred seventeen, one thousand nine hundred eighteen, one thousand nine hundred nineteen, one thousand nine hundred twenty of the Civil Code and all acts and parts of acts in conflict with this act" approved by the electors at the general election of November 5, 1918, and to add five new sections to said act to be numbered sections 6, 7, 8, 9, and 10, and relating to rates of interest, exempting certain classes of loans and certain classes of business from the provisions of said act, and providing that corporations may not assert or plead usury.

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

Section 1. Section 1 of an act designated as the "usury law" entitled, "An act to be known as the usury law, relating to the rate of interest which may be charged for the loan or forbearance of money, goods or things in action or on accounts after demand, or on judgments, providing penalties for the violation of the provisions hereof, and repealing sections one thousand nine hundred seventeen, one thousand nine hundred eighteen, one thousand nine hundred nineteen, and one thousand nine hundred twenty of the Civil Code and all acts and parts of acts in conflict with this act," is hereby amended to read as follows:

Section 1. The rate of interest upon the loan or forbearance of any money, goods or things in action or on accounts after demand or judgments rendered in any court of this state, shall be seven dollars upon the one hundred dollars for one year and at that rate for a greater or less sum or for a longer or a shorter time; but it shall be competent for parties to contract for the payment and receipt of a rate of interest not exceeding twelve dollars on the one

hundred dollars for one year and not exceeding that rate for a greater or less sum or for a longer or shorter time. ~~in which case such rate exceeding seven dollars on one hundred dollars shall be clearly expressed in writing.~~

Sec. 2. Section 3 of said "usury law" is hereby amended to read as follows:

Sec. 3. Every person, company, or association, ~~or corporation except a corporation,~~ who for any loan or forbearance of money, goods, or things in action shall have paid or delivered any greater sum or value than is allowed to be received under the preceding sections, one and two, may, either in person or his or its personal representative, recover in an action at law against the person, company, association, or corporation who shall have taken or received the same, or his or its personal representative, treble the amount of the money so paid or value delivered in violation of said sections, providing such action shall be brought within one year after such payment or delivery. And any person, company, association, or corporation who shall ask, demand, receive, take, accept or charge more than twelve per centum per annum upon the sum of money actually loaned for the forbearance, use or loan thereof, when the repayment of the money loaned shall be secured by a mortgage, trust deed, bill of sale, assignment, pledge, receipt or other evidence of debt, ~~except corporation bonds, and municipal and other public bonds, upon property, real or personal or by assignment of wages, or ask, demand, receive, take, accept or charge more than an amount equal to five per cent so actually loaned and secured in all sums of one thousand dollars or less, and three per cent on all sums over one thousand dollars in full for all examinations, views, fees, appraisals, commissions, renewals made within one year from date of loan and charges of any kind or description whatsoever, except abstracts or certificates of title charges made under the Torrens land law or otherwise, in the procuring, making and transacting of the business connected with such loans, or who shall ask, demand, receive, take, accept or charge any fee, bonus or commission whatsoever for the use or loan or the procuring of such loan of any sum of money for a shorter period than six months when said loan is not secured by a mortgage or pledge upon real estate or shall violate the provisions of sections one and two of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment not more than six months, or by both such fine and imprisonment, and for each subsequent offense and conviction shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars and by imprisonment not less than six months nor more than one year. The penalties herein provided for the violation of this section and said sections one and two~~

shall apply to and be imposed upon each member of any unincorporated company, association, or of any copartnership, and upon each officer and director of a corporation who shall violate either of said sections.

Sec. 3. A new section is hereby added to said "usury law" to be numbered section 6, and to read as follows:

Sec. 6. A construction loan is hereby defined as a loan in which the instrument evidencing the indebtedness or loan is secured, either wholly or in part, by a mortgage, deed of trust, or lien upon real property upon which an improvement is being or is to be constructed as part of the security for the loan, and in which the agreement between the borrower and lender is that the money be advanced by the lender wholly or partially as the construction of said improvement progresses. For the purpose of computing whether the interest charged or received on any construction loan exceeds the rate of interest permitted to be charged or received by this Act, the full principal amount of the loan shall be deemed to be advanced thirty days before the commencement of construction of said improvement, though advancements on said loan actually be made from time to time as the improvement progresses, but this provision shall not apply to advances made before said thirty day period.

Sec. 4. A new section is hereby added to said "usury law" to be numbered 7, and to read as follows:

Sec. 7. It may be agreed for any consideration that any loan or forbearance of money, goods or things in action may be paid in whole or in part before maturity at the option of the borrower or his successor in interest, and the provisions of this Act shall not apply to any such agreement or to any such consideration, but such consideration shall only be payable or paid if and when the option to pay before maturity is exercised.

Sec. 5. A new section is hereby added to said "usury law" to be numbered section 8, and to read as follows:

Sec. 8. If the maturity of any loan or forbearance of money, goods or things in action, or of the

instrument evidencing said loan or forbearance, is accelerated for default thereon, no credit shall be required to be given for interest taken in advance and unearned, and neither said loan or forbearance nor said instrument evidencing the same shall be deemed to be usurious, if, had said loan or forbearance or said instrument evidencing the same been performed as agreed, the interest rate thereon would not have exceeded a rate of twelve dollars on the one hundred dollars per year for the full period of the loan.

Sec. 6. A new section is hereby added to said "usury law," to be numbered section 9, and to read as follows:

Sec. 9. No provision of this Act limiting the rate of interest to be charged, taken, received or paid for the loan or forbearance of any money, goods or things in action shall apply to the loan or forbearance of money, goods or things in action made to a corporation, nor shall any guaranty, bond, note or other evidence of indebtedness of any corporation be set aside, impaired or adjudged invalid in whole or in part by reason of anything in this Act contained, and hereafter no corporation may plead, assert or claim usury in any action or proceeding.

Sec. 7. A new section is hereby added to said "usury law," to be numbered section 10, and to read as follows:

Sec. 10. The provisions of this Act shall not apply to a loan or forbearance of money, goods or things in action made by a person, corporation, company or association conducting the business of a pawnbroker in the course of such business as a pawnbroker; and pawnbrokers shall be subject to regulation by the legislature of the State of California. The provisions of this Act shall not apply to the business of "industrial loan companies" as defined by the act of the legislature of the State of California, entitled "An act defining industrial loan companies, providing for their incorporation, powers and supervision," as approved May 18, 1917, or as subsequently amended, or as the same may be hereafter amended, and the business of such "industrial loan companies" shall be subject to regulation by the legislature of the State of California.