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Interest Rate - Judgments

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Official Title and Summary Prepared by the Attorney General

INTEREST RATE—JUDGMENTS—LEGISLATIVE CONSTITUTIONAL AMENDMENT. Amends Constitution, article XV, section 1, to provide that Legislature shall set interest rate on state court judgments at not more than 10% per annum. Rate may be variable and based upon rates charged by federal agencies or economic indicators, or both. In absence of such rate setting by Legislature, judgment rate shall be 7% per annum. Financial impact: Depends on legislative action. Interest costs and revenues on judgments would increase if Legislature raised rate.

FINAL VOTE CAST BY LEGISLATURE ON SCA 18 (PROPOSITION 9)

Assembly—Ayes, 55
Noes, 16

Senate—Ayes, 29
Noes, 0

Analysis by Legislative Analyst

Background:

California's Constitution now provides that the annual interest rate on any monetary judgment imposed by a court shall be 7 percent. A judgment is an obligation to pay.

Proposal:

This constitutional amendment would allow the Legislature to establish the interest rate on court judgments at not exceeding 10 percent per year. This rate could be variable and could be based on interest rates charged by federal agencies or on economic indicators, or both.

If this amendment is approved by the voters but the Legislature does not act to change the interest rate on court judgments, the rate will remain at 7 percent per year.

Fiscal Effect:

The fiscal effect of this amendment on state and local government would depend upon action by the Legislature. The interest on judgments would be increased if legislation was enacted raising the rate. Because the state and local governments both pay and receive interest on judgments, an increase in the interest rate would affect both their revenues and their costs.

Study the Issues Carefully

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment No. 18 (Statutes of 1977, Resolution Chapter 86) expressly amends an existing section of the Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XV

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 judgment rendered in any court of the State~~, shall be 7 per cent per annum but it shall be competent for the parties to any loan or forbearance of any money, goods or things in action to contract in writing for a rate of interest not exceeding 10 per cent per annum.

No person, association, copartnership or corporation shall by charging any fee, bonus, commission, discount or other compensation receive from a borrower more than 10 per cent per annum upon any loan or forbearance of any money, goods or things in action.

However, none of the above restrictions shall apply to any building and loan association as defined in and which is operated under that certain act known as the "Building and Loan Association Act," approved May 5, 1931, as amended, or to any corporation incorporated in the manner prescribed in and operating under that certain act entitled "An act defining industrial loan companies, providing for their incorporation, powers and supervision," approved May 18, 1917, as amended, or any corporation incorporated in the manner prescribed in and operating under that certain act entitled "An act defining credit unions, providing for their incorporation, powers, management and supervision," approved March 31, 1927, as amended or any duly licensed pawnbroker or personal property broker, or any bank as defined in and operating under that certain act known as the "Bank Act," approved

March 1, 1909, as amended, or any bank created and operating under and pursuant to any laws of this State or of the United States of America or any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code in loaning or advancing money in connection with any activity mentioned in said title or any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, live stock, poultry and bee products on a cooperative nonprofit basis in loaning or advancing money to the members thereof or in connection with any such business or any corporation securing money or credit from any Federal intermediate credit bank, organized and existing pursuant to the provisions of an act of Congress entitled "Agricultural Credits Act of 1923," as amended in loaning or advancing credit so secured, nor shall any such charge of any said exempted classes of persons be considered in any action or for any purpose as increasing or affecting or as connected with the rate of interest hereinbefore fixed. The Legislature may from time to time prescribe the maximum rate per annum of, or provide for the supervision, or the filing of a schedule of, or in any manner fix, regulate or limit, the fees, bonus, commissions, discounts or other compensation which all or any of the said exempted classes of persons may charge or receive from a borrower in connection with any loan or forbearance of any money, goods or things in action.

The rate of interest upon a judgment rendered in any court of this state shall be set by the Legislature at not more than 10 percent per annum. Such rate may be variable and based upon interest rates charged by federal agencies or economic indicators, or both.

In the absence of the setting of such rate by the Legislature, the rate of interest on any judgment rendered in any court of the state shall be 7 percent per annum.

The provisions of this section shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith.

Argument in Favor of Proposition 9

This proposition would make the interest rate on judgments rendered in California courts more flexible and fair.

The California Constitution currently provides for an interest rate of seven percent (7%) on judgments awarded by the courts of this state. This interest rate is not to be confused with the interest rates charged on purchases of homes or goods, or on loans of money. It is the constitutionally fixed rate of interest on the amount owing from persons or businesses, such as insurance companies, when a court of law has determined that money should be paid to another.

In times when the money market is high, as we have experienced during the past few years, the seven percent rate is too low. A judgment debtor can withhold payment, through appeals and other legal maneuvers, and earn 9 or 10 percent interest on the withheld money, thereby profiting by two or three percent before finally being forced to pay the amount owed. Similarly, in times when the money market is low, a judgment debtor, who in good faith and for sound reasons temporarily withholds payment, is unfairly punished by having to pay seven percent interest when

the rates at that time are actually lower than seven percent.

Proposition 9 resolves this dilemma by permitting the Legislature to set the interest rate on judgments in line with current economic conditions and with reference to reliable economic indicators.

Also, under this proposition, the interest rate on judgments will never be permitted to exceed ten percent, and should the Legislature fail to set a rate for judgments, it will remain at seven percent. Proposition 9 thus creates needed flexibility in the administration of justice, and will provide fairer treatment for all those who use our court system.

OMER L. RAINS
State Senator, 18th District
Chairman, Senate Majority Caucus

KENNETH L. MADDY
Member of the Assembly, 30th District
Chairman, Assembly Committee on
Criminal Justice

FRANK C. DAMRELL, JR.
Chairman, State Consumer
Advisory Council

No rebuttal to argument in favor of Proposition 9 was submitted

Apply for Your Absentee Ballot Early

Argument Against Proposition 9

Voters in California should recall that an effort to institute higher interest rates has been proposed, *and rejected*, at least five times since 1970.

In 1934 the California Constitution was changed giving Californians greater protection against usury. The same tight economy that prompted these safeguards then exists today. These safeguards are for your protection and shouldn't be removed. A "yes" vote on this proposition would require the Legislature to set an interest rate up to 10% per annum. Californians voted in 1974 to build a dam against the flood of high interest rates. What is so wrong with a 7% interest rate? We have existed up to now without raising the rate.

The same conditions which caused these safeguards

against a rampart market exist today: the economy is placing heavy burdens on borrowers and heavy interest rates are being disguised as charges. If the Legislature is given the power to raise the interest rates above the present 7% in judgments in courts you can bet that in future elections the proposal will be before you to raise the rate somewhere else.

California has voted against relaxing usury laws many times before. The voters should again reject this weakening of the usury laws and demand stronger laws against usury. Vote No on Proposition 9.

JOHN J. MILLER

*Member of the Assembly, 13th District
Chairman, Assembly Committee on Judiciary*

Rebuttal to Argument Against Proposition 9

The argument against Proposition 9 is an obvious attempt to mislead the voters of California. First of all, this measure has *NEVER* been placed before California voters, and any inference to the contrary is absolutely false.

In addition, Proposition 9 does *not* increase interest rates as we know them in our everyday lives. This measure has *nothing whatever* to do with interest charged on loans, or for the purchase of homes, automobiles, appliances or other goods.

Proposition 9 simply gives needed flexibility to adjust interest rates on *legal judgments*. For example, suppose you are injured in an accident caused by another driver. To recover expenses for medical treatments, lost wages, and car repairs, you proceed to bring a successful lawsuit. Under existing law, the other driver's insurance company will pay you only 7% interest on the judgment for any period of time it goes unpaid. The insurance company, however, profits by earning 9% or 10% in today's money market *on your money* until it is finally paid to you. This isn't fair.

Therefore, for reasons of fairness, the interest rate on judgments should be adjusted periodically as economic conditions change, so that wealthy interests cannot "play games" with your money. Your vote for Proposition 9 will guarantee that fairness.

This measure received overwhelming bipartisan support in the State Legislature. Indeed, the vote in the State Senate was unanimous. Don't be confused by the emotional and erroneous statements found in the opposition argument. Vote "yes" on Proposition 9.

OMER L. RAINS

*State Senator, 18th District
Chairman, Senate Majority Caucus*

KENNETH L. MADDY

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