

AMENDED IN ASSEMBLY APRIL 14, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2921

Introduced by Assembly Member Cox

February 20, 2004

An act to amend ~~Section 31125~~ Sections 31001, 31125, 31300, 31303, 31402, 31403, 31405, and 31410 of, and to add Sections 31109 and, 31109.1, 31212, 31213, 31406, 31407, 31408, and 31411 to, the Corporations Code, and to add Section 22063 to the Financial Code, relating to franchises.

LEGISLATIVE COUNSEL'S DIGEST

AB 2921, as amended, Cox. Franchises.

(1) Existing law, the Franchise Investment Law, provides that it is unlawful for any person to offer or sell any franchise in this state unless the offer has been registered or exempted. Existing law makes it unlawful to solicit the agreement of a franchisee to a proposed material modification of an existing franchise without first delivering the franchisee a written disclosure. Existing law exempts from registration modifications of a franchise agreement with an existing franchisee of a franchisor if certain conditions are satisfied. *Existing law makes a person who offers or sells a franchise in violation of specified provisions of the Franchise Investment Law liable to the franchisee or subfranchisor, who is authorized to sue for damages.* A willful violation of the Franchise Investment Law is a crime *punishable by a specified fine or imprisonment.*

This bill would ~~instead make these provisions applicable to proposed material modifications of an existing franchise, or of existing~~

~~franchises, that are to be offered on a statewide basis. The bill would delete~~ *revise the conditions that are required to be satisfied for the exemption from registration for a franchise agreement with an existing franchisee of a franchisor. The bill would make it unlawful to solicit the agreement of a franchisee for a proposed material modifications of an existing franchise, or of existing franchises, that are not offered on a statewide basis unless certain conditions are satisfied.* The bill would exempt from registration certain offers, ~~and sales, and other transfers~~ of a franchise that meet specified requirements. *The bill would make any person who, with knowledge, directly or indirectly controls and induces a person to violate the provisions of the Franchise Investment Law liable to the same extent as the person controlled or induced. The bill would make it unlawful for a person to perform specified acts with the intent to impede, obstruct, or influence the administration or enforcement of the Franchise Investment Law. The bill would prohibit a purchaser of a franchise, or any successor in interest, from commencing or maintaining an action for damages under certain conditions. The bill would increase the fines authorized for certain violations of the Franchise Investment Law.* The bill would make related changes.

Because a violation of the bill's requirements would be a crime, it would impose a state-mandated local program.

(2) Existing law, the California Finance Lenders Law, provides for regulation by the Department of Corporations of finance lenders engaged in the business of making consumer or commercial loans. Existing law exempts certain persons from the provisions regulating finance lenders.

The bill would exempt certain franchise loans from the California Finance Lenders Law.

(3) 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 31001 of the Corporations Code is*
2 *amended to read:*

3 31001. The Legislature hereby finds and declares that the
4 widespread sale of franchises is a relatively new form of business
5 which has created numerous problems both from an investment
6 and a business point of view in the State of California. Prior to the
7 enactment of this division, the sale of franchises was regulated
8 only to the limited extent to which the Corporate Securities Law
9 of 1968 applied to such transactions. California franchisees have
10 suffered substantial losses where the franchisor or his
11 representative has not provided full and complete information
12 regarding the franchisor-franchisee relationship, the details of the
13 contract between franchisor and franchisee, and the prior business
14 experience of the franchisor.

15 It is the intent of this law to provide each prospective franchisee
16 with the information necessary to make an intelligent decision
17 regarding franchises being offered. Further, it is the intent of this
18 law to prohibit the sale of franchises where such would lead to
19 fraud or a likelihood that the franchisor's promises would not be
20 fulfilled, and to protect the ~~franchisor~~ franchisee by providing a
21 better understanding of the relationship between the franchisor
22 and franchisee with regard to their business relationship.

23 SEC. 2. Section 31109 is added to the Corporations Code, to
24 read:

25 31109. Any offer, ~~sale, or other transfer~~ or sale of a franchise
26 that meets the following requirements shall be exempt from the
27 provisions of Chapter 2 (commencing with Section 31110):

28 (a) ~~The~~ Each and every purchaser is one of the following:

29 ~~(1) A member of the immediate family of, or has a preexisting~~
30 ~~business relationship with, the franchisor or any of its partners,~~
31 ~~officers, directors or controlling persons, or its managers if the~~
32 ~~franchisor is a limited liability company.~~

33 ~~(2) An accredited purchaser, which includes any of the~~
34 ~~following:~~

35 (A)

36 (1) *The franchisor's partners, officers, directors, or its*
37 *managers if the franchisor is a limited liability company.*



1 (2) Any entity with total assets exceeding five million dollars
2 (\$5,000,000) ~~and not~~ according to its most recent audited
3 financial statements and not specifically formed for the specific
4 purpose of acquiring the franchise offered. “An entity” shall mean
5 an organization described in Section 501(c)(3) of the Internal
6 Revenue Code, a corporation, Massachusetts or similar business
7 trust, limited liability company, or partnership.

8 ~~(B)~~

9 (3) Any natural person whose net worth, or joint with his or her
10 spouse or domestic partner, exceeds one million dollars
11 (\$1,000,000), excluding the value of the person’s principal
12 residence and any and all retirement or pension plan accounts or
13 benefits, home furnishings, and automobiles.

14 ~~(C)~~

15 (4) Any natural person whose gross income exceeds three
16 hundred thousand dollars (\$300,000) per year in each of the two
17 most recent years, or whose joint gross income with a spouse or
18 domestic partner exceeds five hundred thousand dollars
19 (\$500,000) per year in each of those years, and who reasonably
20 expects to reach the same income level in the current year.

21 ~~(D) Any entity in which a majority of the total combined voting~~
22 ~~power of all classes of stock or other ownership interests entitled~~
23 ~~to vote are held directly or indirectly by accredited purchasers.~~

24 (5) Any entity, as defined in paragraph (2), in which all of the
25 entity’s equity owners are persons described in paragraphs (3) and
26 (4).

27 ~~The purchaser has~~ All purchasers have knowledge and
28 experience in financial and business matters, either alone or with
29 professional advisers of the purchaser who are unaffiliated with,
30 and not directly or indirectly compensated by, the franchisor or an
31 affiliate or selling agent of the franchisor, ~~that the purchaser~~
32 ~~reasonable could be assumed to have the capacity to protect its own~~
33 ~~interests in connection with the transaction. such that the~~
34 ~~franchisor reasonably believes, based on reasonable inquiry~~
35 ~~immediately before the sale, that each purchaser has the capacity~~
36 ~~to evaluate the merits and risks of, and protect its own interests in,~~
37 ~~the franchise investment.~~

38 (c) The purchaser is purchasing the franchise for the
39 purchaser’s own account, or a trust account if the purchaser is a
40 trustee, and not with a view to, or for a sale in connection with, any



1 resale or distribution of the franchise or any interest in the
2 franchise. The purchase of a subfranchise by a purchaser, with a
3 view to the offering or sale or other transfer of franchises pursuant
4 to the subfranchise, shall be permissible under this subdivision
5 subject to the following:

6 ~~(1) The applicability of this exemption to any offer, sale, or~~
7 ~~other transfer of the subfranchise to the purchaser shall not operate~~
8 ~~to exempt any offer, sale, or other transfer by the purchaser of any~~
9 ~~franchises pursuant to the subfranchise.~~

10 ~~(2) The purchaser shall be deemed to be the franchisor for the~~
11 ~~offers, sales, or transfers of franchises pursuant to the~~
12 ~~subfranchise. franchises pursuant to the terms of the subfranchise,~~
13 ~~shall be permissible under this section and shall not be deemed to~~
14 ~~be with a view to, or in connection with, resale or distribution~~
15 ~~provided, however, that any franchise offered or sold by that~~
16 ~~subfranchisor is registered or exempt from registration.~~

17 *(d) The immediate cash payment required from a purchaser*
18 *that is a natural person, upon the purchase of the franchise, shall*
19 *not exceed 10 percent of the natural person's net worth, exclusive*
20 *of the natural person's personal residence, any and all retirement*
21 *or pension accounts or benefits, home furnishings and*
22 *automobiles.*

23 *(e) The franchisor files with the commissioner a notice of*
24 *exemption and pays the fee prescribed in subdivision (f) of Section*
25 *31500 prior to any offer or sale of a franchise in this state for which*
26 *the exemption is claimed. However, the failure to file the notice, or*
27 *the failure to pay the fee, shall not affect the availability of the*
28 *exemption. A franchisor that fails to file the notice, or fails to pay*
29 *the fee, shall, within 15 days after demand by the commissioner,*
30 *file the notice and pay a fee equal to the fee payable under*
31 *subdivision (b) of Section 31500.*

32 ~~SEC. 2.~~

33 SEC. 3. Section 31109.1 is added to the Corporations Code,
34 to read:

35 31109.1. A franchisor shall file a single notice of exemption
36 under Section 31109, and shall pay a single fee as set forth in
37 subdivision (f) of Section 31500, within 15 business days after the
38 first sale of a franchise under the exemption provided in Section
39 31109. However, the failure to file the notice, or the failure to pay
40 the fee, shall not effect the availability of the exemption. A



1 franchisor that fails to file the notice or pay the fee shall, within 15
2 business days after demand by the commissioner, file the notice
3 and pay a fee equal to the fee payable under subdivision (b) of
4 Section 31500.

5 SEC. 3.—Section 31125 of the Corporations Code is amended
6 to read:

7 31125.—(a) ~~If a proposed material modification of an existing~~
8 ~~franchise, or of existing franchises, is to be offered on a statewide~~
9 ~~basis, an application for registration of a proposed material~~
10 ~~modification shall be filed in the form and contain the information~~
11 ~~the commissioner may by rule prescribe, and shall be accompanied~~
12 ~~by a proposed disclosure form as specified in subdivision (b). Such~~
13 ~~an application may be included with an application pursuant to~~
14 ~~Section 31111 or 31121.~~

15 (b) ~~If a proposed material modification of an existing franchise,~~
16 ~~or of existing franchises, is to be offered on a statewide basis, it~~
17 ~~shall be unlawful to solicit the agreement of a franchisee to the~~
18 ~~proposed material modification without first delivering to the~~
19 ~~franchisee a written disclosure, in a form and containing such~~
20 ~~information as the commissioner may by rule or order require,~~
21 ~~identifying the proposed modification, either five business days~~
22 ~~prior to the execution of any binding agreement by the franchisee~~
23 ~~to the modification or containing a statement that the franchisee~~
24 ~~may, by written notice mailed or delivered to the franchisor or a~~
25 ~~specified agent of the franchisor within not less than five business~~
26 ~~days following the execution of such agreement, rescind the~~
27 ~~agreement to the material modification.~~

28 (c) ~~If a proposed material modification of an existing franchise,~~
29 ~~or of existing franchises, is not to be offered on a statewide basis,~~
30 ~~it shall be unlawful to solicit the agreement of a franchisee to the~~
31 ~~proposed material modification without first delivering to the~~
32 ~~franchisee the complete written proposed modification, either five~~
33 ~~business days prior to the execution of any binding agreement by~~
34 ~~the franchisee to the modification or containing a statement that~~
35 ~~the franchisee may, by written notice mailed or delivered to the~~
36 ~~franchisor or a specified agent of the franchisor within not less than~~
37 ~~five business days following execution of the agreement, rescind~~
38 ~~the agreement to the material modification.~~

39 (d) ~~A proposed material modification of an existing franchise,~~
40 ~~or of existing franchises, may not waive any right of the franchisee~~



1 ~~under the California Franchise Relations Act (Chapter 5.5~~
2 ~~(commencing with Section 20000) of Division 8 of the Business~~
3 ~~and Professions Code), but may include a general release of all~~
4 ~~known and unknown claims by a party to the modification.~~

5 ~~(e) A proposed material modification shall not be deemed to be~~
6 ~~offered on a statewide basis if:~~

7 ~~(1) The proposed material modification is offered to an existing~~
8 ~~franchisee or existing franchisees in connection with the~~
9 ~~resolution of a bona fide dispute between the franchisor and a~~
10 ~~franchisee or franchisees, or the resolution of a franchisee default.~~

11 ~~(2) The proposed material modification is offered to fewer than~~
12 ~~40 percent of the franchisor's California franchises within the~~
13 ~~effected system that are either:~~

14 ~~(A) Operating from a location in California from which sales,~~
15 ~~leases, or other transactions between the franchised business and~~
16 ~~its customers are made.~~

17 ~~(B) Owned by California residents.~~

18 SEC. 4. *Section 31125 of the Corporations Code is amended*
19 *to read:*

20 31125. (a) An application for registration of a material
21 modification of an existing franchise or of existing franchises shall
22 be in such form and contain such information as the commissioner
23 may by rule prescribe, and shall be accompanied by a proposed
24 disclosure form as specified in subdivision (b). Such an
25 application may be included with an application pursuant to
26 Section 31111 or 31121.

27 (b) Except as provided in ~~subdivision (e)~~ *subdivisions (c) and*
28 *(d)*, it is unlawful to solicit the agreement of a franchisee to a
29 proposed material modification of an existing franchise without
30 first delivering to the franchisee a written disclosure, in a form and
31 containing such information as the commissioner may by rule or
32 order require, identifying the proposed modification, either five
33 business days prior to the execution of any binding agreement by
34 the franchisee to such modification or containing a statement that
35 the franchisee may, by written notice mailed or delivered to the
36 franchisor or a specified agent of the franchisor within not less than
37 five business days following the execution of such agreement,
38 rescind such agreement to the material modification.

39 (c) Any modification of a franchise agreement with an existing
40 franchisee of a franchisor shall be exempted from the provisions



1 of Chapter 2 (commencing with Section 31110) of this part, if all
2 of the following ~~occur~~ *are met*:

3 (1) ~~The modification is in connection with the resolution of a~~
4 ~~bona fide dispute between the franchisor and the franchisee or the~~
5 ~~resolution of a franchisee default.~~

6 (2) ~~The franchisee receives the complete written modification,~~
7 ~~together with disclosure of all material facts concerning the~~
8 ~~modification, at least five business days prior to the execution of~~
9 ~~a binding agreement, or providing that the franchisee may, by~~
10 ~~written notice mailed or delivered to the franchisor or a specified~~
11 ~~agent of the franchisor within not less than five business days~~
12 ~~following the execution of the agreement, rescind the agreement to~~
13 ~~the material modification; provided (A) the agreement is not~~
14 ~~executed within 12 months after the date of the franchise~~
15 ~~agreement, and (B) the modification does not waive any right of~~
16 ~~the franchisee under the California Franchise Relations Act~~
17 ~~(Chapter 5.5 (commencing with Section 20000) of Division 8 of~~
18 ~~the Business and Professions Code), but the modification may~~
19 ~~include a general release of all known and unknown claims by a~~
20 ~~party to the modification.~~

21 (3)

22 (2) ~~The modification is not applied on a franchise systemwide~~
23 ~~basis at or about the time the modification becomes a binding~~
24 ~~agreement. *meets one of the following:*~~

25 (A) *The proposed modification is in connection with the*
26 *resolution of a bona fide dispute between the franchisor and the*
27 *franchisee or the resolution of a claimed or actual franchisee or*
28 *franchisor default, and the modification is not applied on a*
29 *franchise systemwide basis at or about the time the modification*
30 *is executed. A modification shall not be deemed to be made on a*
31 *franchise systemwide basis if it is offered on a voluntary basis to*
32 *fewer than 25 percent of the franchisor's California franchises*
33 *within any 12-month period.*

34 (B) *The proposed modification is offered on a voluntary basis*
35 *to fewer than 25 percent of the franchisor's California franchises*
36 *within any 12-month period provided each franchisee is given a*
37 *right to rescind the modification agreement if the modification and*
38 *disclosure are not made in compliance with paragraph (1) of*
39 *subdivision (c). California franchises are those franchises within*
40 *the affected system that are either operating from a location in*



1 California from which sales, leases or other transactions between
2 the franchised business and its customers are made or those
3 franchises that are owned by California residents. A franchisor
4 shall not make modifications in consecutive years for the purpose
5 of evading the 25 percent requirement.

6 (d) Any modification of a franchise agreement with an existing
7 franchise of a franchisee shall be exempted from the provisions of
8 Chapter 2 (commencing with Section 31110) of this part if the
9 modification is offered on a voluntary basis and does not
10 substantially or adversely impact the franchisee's rights, benefits,
11 privileges, duties, obligations, or responsibilities under the
12 franchise agreement.

13 SEC. 5. Section 31212 is added to the Corporations Code, to
14 read:

15 31212. (a) Every person who, with knowledge, directly or
16 indirectly controls and induces any person to violate any provision
17 of this division or any rule or order thereunder shall be deemed to
18 be in violation of that provision, rule, or order to the same extent
19 as the controlled and induced person.

20 (b) Any person that provides substantial assistance to another
21 person knowing that the assistance will aid in the violation of any
22 provision of this division or any rule or order thereunder shall be
23 deemed to be in violation of that provision, rule, or order to the
24 same extent as the person to whom the assistance was provided.

25 (c) It shall be unlawful for any person to knowingly, directly or
26 indirectly, do any act or thing which would be unlawful for that
27 person to do under any provision of this division or any rule or
28 order thereunder through or by any other person.

29 (d) Nothing in this section shall be construed to limit the power
30 of the state to punish any person for any conduct which constitutes
31 a crime under any other statute.

32 SEC. 6. Section 31213 is added to the Corporations Code, to
33 read:

34 31213. It is unlawful for any person to knowingly alter,
35 destroy, mutilate, conceal, cover up, falsify, or make a false entry
36 in any record, document, or tangible object with the intent to
37 impede, obstruct, or influence the administration or enforcement
38 of this division.

39 SEC. 7. Section 31300 of the Corporations Code is amended
40 to read:



1 31300. Any person who offers or sells, a franchise in violation
2 of Section 31101, 31110, 31119, 31200, or 31202, *or in violation*
3 *of any provision of this division that provides an exemption from*
4 *the provisions of Chapter 2 (commencing with Section 31110) of*
5 *this part or any portions of this part*, shall be liable to the
6 franchisee or subfranchisor, who may sue for damages caused
7 thereby, and if such violation is willful, the franchisee may also sue
8 for rescission, unless, in the case of a violation of Section 31200
9 or 31202, the defendant proves that the plaintiff knew the facts
10 concerning the untruth or omission, or that the defendant exercised
11 reasonable care and did not know, or, if he had exercised
12 reasonable care, would not have known, of the untruth or
13 omission.

14 SEC. 8. *Section 31303 of the Corporations Code is amended*
15 *to read:*

16 31303. (a) No action shall be maintained to enforce any
17 liability created under Section 31300 unless brought before the
18 expiration of four years after the act or transaction constituting the
19 violation, the expiration of one year after the discovery by the
20 plaintiff of the fact constituting the violation, or 90 days after
21 delivery to the franchisee of a written notice disclosing any
22 violation of Section 31110 or 31200, which notice shall be
23 approved as to form by the commissioner, whichever shall first
24 expire.

25 (b) *No purchaser of a franchise, or any successor in interest,*
26 *may commence or maintain an action under Section 31300, or*
27 *Section 31302 as it relates to Section 31300, if, before or after the*
28 *suit is commenced, the purchaser, or the successor in interest,*
29 *receives a written rescission offer approved as to form by the*
30 *commissioner that satisfies the following:*

31 (1) *The written rescission offer states the respect in which*
32 *liability under the section may have arisen.*

33 (2) *The written rescission offer offers to repurchase the*
34 *franchise for a cash price that places the purchaser, or the*
35 *successor in interest, back in the same position as before the*
36 *transaction.*

37 (3) *The written rescission offer provides that the offer may be*
38 *accepted by the purchaser, or the successor in interest, at any time*
39 *within a specified period of not less than 30 days after the date of*



1 receipt thereof unless rejected earlier during that period by the
2 purchaser, or the successor in interest.

3 (4) The written rescission offer sets forth the provisions of this
4 subdivision.

5 (5) The written rescission offer contains any other information
6 or conditions as the commissioner may require by rule or order,
7 and the purchaser, or the successor in interest, has failed to accept
8 the offer in writing within the specified period after receipt thereof.

9 SEC. 9. Section 31402 of the Corporations Code is amended
10 to read:

11 31402. If in the opinion of the commissioner the offer of any
12 franchise is subject to registration under this law and it is being, or
13 it has been, offered for sale without the offer first being registered,
14 the commissioner may order the franchisor or offeror of that
15 franchise to desist and refrain from the further offer or sale of that
16 franchise unless and until the offer has been duly registered under
17 this law. If, after such an order has been made, a request for a
18 hearing is filed in writing within one year from the date of service
19 of the order by the person to whom the order was directed, a
20 hearing shall be held in accordance with the provisions of Chapter
21 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
22 2 of the Government Code, and the commissioner shall have all of
23 the powers granted under that chapter. Unless that hearing is
24 commenced within 15 business days after the request is made (or
25 the person affected consents to a later date), the order shall be
26 deemed rescinded.

27 If that person fails to file a written request for a hearing within
28 ~~one year~~ 30 days from the date of service of the order, the order
29 shall be deemed a final order of the commissioner and shall not be
30 subject to review by any court or agency, notwithstanding Section
31 31501.

32 SEC. 10. Section 31403 of the Corporations Code is amended
33 to read:

34 31403. If, in the opinion of the commissioner, the offer of any
35 franchise exempt from registration under this law is being or has
36 been offered for sale without complying with Section 31101 or
37 31201, the commissioner may order the franchisor or offeror of
38 such franchise to desist and refrain from the further offer or sale
39 of such franchise unless and until such offer is made in compliance
40 with this law. If, after such an order has been made, a request for



1 a hearing is filed in writing within one year from the date of service
2 of the order by the person to whom the order was directed, a
3 hearing shall be held in accordance with Chapter 5 (commencing
4 with Section 11500) of Part 1 of Division 3 of Title 2 of the
5 Government Code and the commissioner shall have all of the
6 powers granted under that chapter. Unless that hearing is
7 commenced within 15 business days after the request is made, or
8 the person affected consents to a later date, the order shall be
9 deemed rescinded.

10 If that person fails to file a written request for a hearing within
11 ~~one year~~ 30 days from the date of service of the order, the order
12 shall be deemed a final order of the commissioner and shall not be
13 subject to review by any court or agency, notwithstanding Section
14 31501.

15 *SEC. 11. Section 31405 of the Corporations Code is amended*
16 *to read:*

17 31405. (a) Any person who violates any provision of this law,
18 or who violates any rule or order made under this law, shall be
19 liable for a civil penalty not to exceed ~~two thousand five hundred~~
20 ~~dollars (\$2,500)~~ ten thousand dollars (\$10,000) for each
21 violation, which shall be assessed and recovered in a civil action
22 brought in the name of the people of the State of California by the
23 commissioner in any court of competent jurisdiction.

24 (b) As applied to the penalties for acts in violation of this
25 division, the remedies provided by this section and by other
26 sections of this division are not exclusive, and may be sought and
27 employed in any combination to enforce the provisions of this
28 division.

29 (c) No action shall be maintained to enforce any liability
30 created under subdivision (a) unless brought before the expiration
31 of four years after the act or transaction constituting the violation.

32 *SEC. 12. Section 31406 is added to the Corporations Code, to*
33 *read:*

34 31406. (a) *If, upon inspection or investigation, based upon a*
35 *complaint or otherwise, the department has cause to believe that*
36 *a person is violating any provision of this division or any rule or*
37 *order promulgated pursuant to this division, the department may*
38 *issue a citation to that person in writing describing with*
39 *particularity the basis of the citation. Each citation may contain*
40 *an order to desist and refrain and an assessment of an*



1 *administrative penalty not to exceed two thousand five hundred*
2 *dollars (\$2,500) per violation and shall contain reference to this*
3 *section, including the provisions of subdivision (c). All penalties*
4 *collected under this section shall be deposited in the State*
5 *Corporations Fund.*

6 *(b) The sanctions authorized under this section shall be*
7 *separate from, and in addition to, all other administrative, civil,*
8 *or criminal remedies.*

9 *(c) If within 30 days from the receipt of the citation, the person*
10 *cited fails to notify the department that the person intends to*
11 *request a hearing as described in subdivision (d), the citation shall*
12 *be deemed final.*

13 *(d) Any hearing under this section shall be conducted in*
14 *accordance with Chapter 5 (commencing with Section 11500) of*
15 *Part 1 of Division 3 of Title 2 of the Government Code.*

16 *(e) After the exhaustion of the review procedures provided for*
17 *in this section, the department may apply to the appropriate*
18 *superior court for a judgment in the amount of the administrative*
19 *penalty and order compelling the cited person to comply with the*
20 *order of the department. The application shall include a certified*
21 *copy of the final order of the department and shall constitute a*
22 *sufficient showing to warrant the issuance of the judgment and*
23 *order.*

24 *SEC. 13. Section 31407 is added to the Corporations Code, to*
25 *read:*

26 *31407. (a) If, after examination or investigation, the*
27 *commissioner has reasonable grounds to believe that any person*
28 *is conducting business in violation of any provision of this division*
29 *or related rule or order binding upon it, the commissioner may, by*
30 *written order addressed to such person, direct the discontinuance*
31 *of the violation. The order shall be effective immediately, but shall*
32 *not become final except in accordance with the provisions of*
33 *subdivision (b).*

34 *(b) No order issued pursuant to this section may become final*
35 *except after notice to the affected person of the commissioner's*
36 *intention to make the order final and of the reasons for the finding.*
37 *The commissioner shall also notify such person that upon*
38 *receiving a request the matter shall be set for hearing to commence*
39 *within 15 business days after receipt of the request. Such person*
40 *may consent to have the hearing commence at a later date. If no*



1 hearing is requested within 30 days after the mailing or service of
2 the required notice, and none is ordered by the commissioner, the
3 order may become final without a hearing and such person shall
4 immediately discontinue the practices named in the order. If a
5 hearing is requested or ordered it shall be held in accordance with
6 the provisions of the Administrative Procedure Act (Chapter 5
7 (commencing with Section 11500) of Part 1 of Division 3 of Title
8 2 of the Government Code), and the commissioner shall have all
9 of the powers granted under that act. If, upon the conclusion of the
10 hearing, it appears to the commissioner that such person is
11 violating any provision of this division or any related rule or order
12 binding upon it, the commissioner shall make the order of
13 discontinuance final and such person shall immediately
14 discontinue the practices named in the order.

15 SEC. 14. Section 31408 is added to the Corporations Code, to
16 read:

17 31408. (a) If the commissioner determines it is in the public
18 interest, the commissioner may include in any administrative
19 action brought under this division, including a stop order, a claim
20 for ancillary relief, including, but not limited to, a claim for
21 rescission, restitution or disgorgement or damages on behalf of the
22 persons injured by the act or practice constituting the subject
23 matter of the action, and the administrative law judge shall have
24 jurisdiction to award additional relief. The person affected may be
25 required to attend remedial education, as directed by the
26 commissioner.

27 (b) In an administrative action brought under this part the
28 commissioner is entitled to recover costs, which in the discretion
29 of the administrative law judge may include any amount
30 representing reasonable attorney's fees and investigative expenses
31 for the services rendered, for deposit into the State Corporations
32 Fund for the use of the Department of Corporations.

33 SEC. 15. Section 31410 of the Corporations Code is amended
34 to read:

35 31410. Any person who willfully violates any provision of
36 this law, or who willfully violates any rule or order under this law,
37 shall upon conviction be fined not more than ~~ten thousand dollars~~
38 ~~(\$10,000)~~ one hundred thousand dollars (\$100,000) or
39 imprisoned in the state prison, or in a county jail for not more than
40 one year, or be punished by both such fine and imprisonment; but



1 no person may be imprisoned for the violation of any rule or order
2 if he proves that he had no knowledge of the rule or order.

3 *SEC. 16. Section 31411 of the Corporations Code is amended*
4 *to read:*

5 31411. Any person who willfully employs, directly or
6 indirectly, any device, scheme, or artifice to defraud in connection
7 with the offer or sale of any franchise or willfully engages, directly
8 or indirectly, in any act, practice, or course of business which
9 operates or would operate as a fraud or deceit upon any person in
10 connection with the offer, purchase, or sale of any franchise shall
11 upon conviction be fined not more than ~~ten thousand dollars~~
12 ~~(\$10,000)~~ *one hundred thousand dollars (\$100,000)* or
13 imprisoned in the state prison, or in a county jail for not more than
14 one year, or be punished by both such fine and imprisonment.

15 *SEC. 17. Section 22063 is added to the Financial Code, to*
16 *read:*

17 22063. (a) This division does not apply to a franchise loan
18 made by a franchisor to a franchisee or a subfranchisor or by a
19 subfranchisor to a franchisee.

20 (b) For purposes of this section:

21 (1) "Franchise" means "franchise," as defined in Section
22 31005 of the Corporations Code.

23 (2) "Franchisee" means "franchisee," as defined in Section
24 31006 of the Corporations Code.

25 (3) "Franchisor" means "franchisor," as defined in Section
26 31007 of the Corporations Code.

27 (4) "Area franchise" means "area franchise," as defined in
28 Section 31008 of the Corporations Code.

29 (5) "Subfranchise" means "subfranchise," as defined in
30 Section 31008.5 of the Corporations Code.

31 (6) "Subfranchisor" means "subfranchisor," as defined in
32 Section 31009 of the Corporations Code.

33 (7) "Franchised business" means a business operated pursuant
34 to a franchise or area franchise by a franchisee or pursuant to a
35 franchise, area franchise or subfranchise by a subfranchisor.

36 (8) "Franchise loan" means a commercial loan, as defined in
37 Section 22502, *made* by a franchisor to a current or prospective
38 franchisee or subfranchisor or a commercial loan by a
39 subfranchisor to a current or prospective franchisee ~~related for~~
40 to the acquisition, operation, expansion, contraction, consolidation,



1 merger, recapitalization, reorganization, or termination of a
2 franchised business provided that the following conditions are
3 satisfied:

4 (A) The franchisor or subfranchisor making the franchise loan
5 shall comply with all applicable federal and state franchise
6 disclosure and registration laws, regulations, rules and orders,
7 including, but not limited to, the California Franchise Investment
8 Law (Division 5 (commencing with Section 31000) of Title 4 of
9 the Corporations Code) and the Federal Trade Commission
10 Franchise Rule: Disclosure Requirements and Prohibitions
11 Concerning Franchising and Business Opportunity Ventures
12 (Code of Federal Regulations, Title 16, Chapter 1, Subchapter D,
13 Part 436 (16 CFR 436), as amended) in connection with the offer
14 or sale of any franchise or area franchise, subfranchise to which the
15 franchise loan relates.

16 ~~(13)~~

17 (B) The proceeds of the franchise loan are intended by the
18 borrowing franchisee or subfranchisor for use primarily for other
19 than personal, family, or household purposes.

20 (C) The loan, if secured, is secured solely by the assets of the
21 franchised business, exclusive of any real property, to which the
22 franchise loan relates.

23 (D) The loan is subject to the implied covenant of good faith
24 and fair dealing under Section 1655 of the Civil Code.

25 (E) *The lender shall fully and clearly disclose to the borrower,*
26 *at or before the time the loan is made, the rates of interest, charges,*
27 *and costs of the loan.*

28 (c) For purposes of subparagraph (3) of paragraph (8) of
29 subdivision (b), a lending franchisor or subfranchisor may rely on
30 any written statement of intended purposes by the borrowing
31 franchisee or subfranchisor. The statement may be a separate
32 statement signed by the borrowing franchisee or subfranchisor or
33 may be contained in another document signed by the borrowing
34 franchisee or subfranchisor. The lending franchisor or
35 subfranchisor may not be required to ascertain that the proceeds of
36 a franchise loan are used in accordance with the statement of
37 intended purposes.

38 (d) This section shall apply only to a franchise loan made on or
39 after January 1, 2005.



1 (e) Nothing in this section is intended to abrogate or diminish
2 the application of any other laws that are designed to protect
3 borrowers, including, but not limited to, laws pertaining to
4 licensing, unfair competition, usury and conflicts of interest.

5 ~~SEC. 5.~~

6 *SEC. 18.* The Legislature finds and declares that it is not
7 necessary or appropriate in the public interest or for the protection
8 of borrowers to regulate franchise loans made by franchisors to
9 franchisees or subfranchisors or by subfranchisors to franchisees
10 under the limited circumstances described in Section 4 of this act.

11 ~~SEC. 6.~~

12 *SEC. 19.* No reimbursement is required by this act pursuant
13 to Section 6 of Article XIII B of the California Constitution
14 because the only costs that may be incurred by a local agency or
15 school district will be incurred because this act creates a new crime
16 or infraction, eliminates a crime or infraction, or changes the
17 penalty for a crime or infraction, within the meaning of Section
18 17556 of the Government Code, or changes the definition of a
19 crime within the meaning of Section 6 of Article XIII B of the
20 California Constitution.

21 *SEC. 20.* *Sections 1 to 4, inclusive, and Sections 6 to 18,*
22 *inclusive, of this act shall become operative January 1, 2005.*

