

AMENDED IN SENATE JULY 6, 2012
AMENDED IN ASSEMBLY APRIL 11, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2081

**Introduced by Assembly Member Allen
(Principal coauthor: Assembly Member V. Manuel Pérez)**

February 23, 2012

An act to amend Section 25102 of the Corporations Code, relating to securities transactions, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2081, as amended, Allen. Securities transactions: qualification requirements: exemptions.

Existing law, the Corporate Securities Law of 1968, requires certain securities offered or sold in this state to be qualified through application filed with the Commissioner of Corporations, or to be exempt from the qualification requirements. Existing law exempts offers and sales of securities in specified transactions including, but not limited to, offers made to no more than 35 persons, excluding accredited investors, as defined by reference to Regulation D promulgated under the federal Securities Act of 1933, as amended, to include specified minimum net worth and income requirements for prospective investors.

This bill would exempt from qualification offerings or sales of securities using a general solicitation or general advertising, provided the transaction meets specified requirements, including a requirement that the sales are made to accredited investors.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 25102 of the Corporations Code is
2 amended to read:

3 25102. The following transactions are exempted from the
4 provisions of Section 25110:

5 (a) Any offer (but not a sale) not involving any public offering
6 and the execution and delivery of any agreement for the sale of
7 securities pursuant to the offer if (1) the agreement contains
8 substantially the following provision: “The sale of the securities
9 that are the subject of this agreement has not been qualified with
10 the Commissioner of Corporations of the State of California and
11 the issuance of the securities or the payment or receipt of any part
12 of the consideration therefor prior to the qualification is unlawful,
13 unless the sale of securities is exempt from the qualification by
14 Section 25100, 25102, or 25105 of the California Corporations
15 Code. The rights of all parties to this agreement are expressly
16 conditioned upon the qualification being obtained, unless the sale
17 is so exempt”; and (2) no part of the purchase price is paid or
18 received and none of the securities are issued until the sale of the
19 securities is qualified under this law unless the sale of securities
20 is exempt from the qualification by this section, Section 25100,
21 or 25105.

22 (b) Any offer (but not a sale) of a security for which a
23 registration statement has been filed under the Securities Act of
24 1933 but has not yet become effective, or for which an offering
25 statement under Regulation A has been filed but has not yet been
26 qualified, if no stop order or refusal order is in effect and no public
27 proceeding or examination looking toward an order is pending
28 under Section 8 of the act and no order under Section 25140 or
29 subdivision (a) of Section 25143 is in effect under this law.

30 (c) Any offer (but not a sale) and the execution and delivery of
31 any agreement for the sale of securities pursuant to the offer as
32 may be permitted by the commissioner upon application. Any
33 negotiating permit under this subdivision shall be conditioned to

1 the effect that none of the securities may be issued and none of
2 the consideration therefor may be received or accepted until the
3 sale of the securities is qualified under this law.

4 (d) Any transaction or agreement between the issuer and an
5 underwriter or among underwriters if the sale of the securities is
6 qualified, or exempt from qualification, at the time of distribution
7 thereof in this state, if any.

8 (e) Any offer or sale of any evidence of indebtedness, whether
9 secured or unsecured, and any guarantee thereof, in a transaction
10 not involving any public offering.

11 (f) Any offer or sale of any security in a transaction (other than
12 an offer or sale to a pension or profit-sharing trust of the issuer)
13 that meets each of the following criteria:

14 (1) Sales of the security are not made to more than 35 persons,
15 including persons not in this state.

16 (2) All purchasers either have a preexisting personal or business
17 relationship with the offeror or any of its partners, officers,
18 directors, or controlling persons, or managers (as appointed or
19 elected by the members) if the offeror is a limited liability
20 company, or by reason of their business or financial experience or
21 the business or financial experience of their professional advisers
22 who are unaffiliated with and who are not compensated by the
23 issuer or any affiliate or selling agent of the issuer, directly or
24 indirectly, could be reasonably assumed to have the capacity to
25 protect their own interests in connection with the transaction.

26 (3) Each purchaser represents that the purchaser is purchasing
27 for the purchaser's own account (or a trust account if the purchaser
28 is a trustee) and not with a view to or for sale in connection with
29 any distribution of the security.

30 (4) The offer and sale of the security is not accomplished by
31 the publication of any advertisement. The number of purchasers
32 referred to above is exclusive of any described in subdivision (i),
33 any officer, director, or affiliate of the issuer, or manager (as
34 appointed or elected by the members) if the issuer is a limited
35 liability company, and any other purchaser who the commissioner
36 designates by rule. For purposes of this section, a husband and
37 wife (together with any custodian or trustee acting for the account
38 of their minor children) are counted as one person and a
39 partnership, corporation, or other organization that was not
40 specifically formed for the purpose of purchasing the security

1 offered in reliance upon this exemption, is counted as one person.
2 The commissioner may by rule require the issuer to file a notice
3 of transactions under this subdivision.

4 The failure to file the notice or the failure to file the notice within
5 the time specified by the rule of the commissioner shall not affect
6 the availability of this exemption. An issuer who fails to file the
7 notice as provided by rule of the commissioner shall, within 15
8 business days after discovery of the failure to file the notice or
9 after demand by the commissioner, whichever occurs first, file the
10 notice and pay to the commissioner a fee equal to the fee payable
11 had the transaction been qualified under Section 25110.

12 (g) Any offer or sale of conditional sale agreements, equipment
13 trust certificates, or certificates of interest or participation therein
14 or partial assignments thereof, covering the purchase of railroad
15 rolling stock or equipment or the purchase of motor vehicles,
16 aircraft, or parts thereof, in a transaction not involving any public
17 offering.

18 (h) Any offer or sale of voting common stock by a corporation
19 incorporated in any state if, immediately after the proposed sale
20 and issuance, there will be only one class of stock of the
21 corporation outstanding that is owned beneficially by no more than
22 35 persons, provided all of the following requirements have been
23 met:

24 (1) The offer and sale of the stock is not accompanied by the
25 publication of any advertisement, and no selling expenses have
26 been given, paid, or incurred in connection therewith.

27 (2) The consideration to be received by the issuer for the stock
28 to be issued consists of any of the following:

29 (A) Only assets (which may include cash) of an existing business
30 enterprise transferred to the issuer upon its initial organization, of
31 which all of the persons who are to receive the stock to be issued
32 pursuant to this exemption were owners during, and the enterprise
33 was operated for, a period of not less than one year immediately
34 preceding the proposed issuance, and the ownership of the
35 enterprise immediately prior to the proposed issuance was in the
36 same proportions as the shares of stock are to be issued.

37 (B) Only cash or cancellation of indebtedness for money
38 borrowed, or both, upon the initial organization of the issuer,
39 provided all of the stock is issued for the same price per share.

1 (C) Only cash, provided the sale is approved in writing by each
2 of the existing shareholders and the purchaser or purchasers are
3 existing shareholders.

4 (D) In a case where after the proposed issuance there will be
5 only one owner of the stock of the issuer, only any legal
6 consideration.

7 (3) No promotional consideration has been given, paid, or
8 incurred in connection with the issuance. Promotional consideration
9 means any consideration paid directly or indirectly to a person
10 who, acting alone or in conjunction with one or more other persons,
11 takes the initiative in founding and organizing the business or
12 enterprise of an issuer for services rendered in connection with the
13 founding or organizing.

14 (4) A notice in a form prescribed by rule of the commissioner,
15 signed by an active member of the State Bar of California, is filed
16 with or mailed for filing to the commissioner not later than 10
17 business days after receipt of consideration for the securities by
18 the issuer. That notice shall contain an opinion of the member of
19 the State Bar of California that the exemption provided by this
20 subdivision is available for the offer and sale of the securities. The
21 failure to file the notice as required by this subdivision and the
22 rules of the commissioner shall not affect the availability of this
23 exemption. An issuer who fails to file the notice within the time
24 specified by this subdivision shall, within 15 business days after
25 discovery of the failure to file the notice or after demand by the
26 commissioner, whichever occurs first, file the notice and pay to
27 the commissioner a fee equal to the fee payable had the transaction
28 been qualified under Section 25110. The notice, except when filed
29 on behalf of a California corporation, shall be accompanied by an
30 irrevocable consent, in the form that the commissioner by rule
31 prescribes, appointing the commissioner or his or her successor in
32 office to be the issuer's attorney to receive service of any lawful
33 process in any noncriminal suit, action, or proceeding against it
34 or its successor that arises under this law or any rule or order
35 hereunder after the consent has been filed, with the same force and
36 validity as if served personally on the issuer. An issuer on whose
37 behalf a consent has been filed in connection with a previous
38 qualification or exemption from qualification under this law (or
39 application for a permit under any prior law if the application or
40 notice under this law states that the consent is still effective) need

1 not file another. Service may be made by leaving a copy of the
2 process in the office of the commissioner, but it is not effective
3 unless (A) the plaintiff, who may be the commissioner in a suit,
4 action, or proceeding instituted by him or her, forthwith sends
5 notice of the service and a copy of the process by registered or
6 certified mail to the defendant or respondent at its last address on
7 file with the commissioner, and (B) the plaintiff's affidavit of
8 compliance with this section is filed in the case on or before the
9 return day of the process, if any, or within the further time as the
10 court allows.

11 (5) Each purchaser represents that the purchaser is purchasing
12 for the purchaser's own account, or a trust account if the purchaser
13 is a trustee, and not with a view to or for sale in connection with
14 any distribution of the stock.

15 For the purposes of this subdivision, all securities held by a
16 husband and wife, whether or not jointly, shall be considered to
17 be owned by one person, and all securities held by a corporation
18 that has issued stock pursuant to this exemption shall be considered
19 to be held by the shareholders to whom it has issued the stock.

20 All stock issued by a corporation pursuant to this subdivision as
21 it existed prior to the effective date of the amendments to this
22 section made during the 1996 portion of the 1995–96 Regular
23 Session that required the issuer to have stamped or printed
24 prominently on the face of the stock certificate a legend in a form
25 prescribed by rule of the commissioner restricting transfer of the
26 stock in a manner provided for by that rule shall not be subject to
27 the transfer restriction legend requirement and, by operation of
28 law, the corporation is authorized to remove that transfer restriction
29 legend from the certificates of those shares of stock issued by the
30 corporation pursuant to this subdivision as it existed prior to the
31 effective date of the amendments to this section made during the
32 1996 portion of the 1995–96 Regular Session.

33 (i) Any offer or sale (1) to a bank, savings and loan association,
34 trust company, insurance company, investment company registered
35 under the Investment Company Act of 1940, pension or
36 profit-sharing trust (other than a pension or profit-sharing trust of
37 the issuer, a self-employed individual retirement plan, or individual
38 retirement account), or other institutional investor or governmental
39 agency or instrumentality that the commissioner may designate
40 by rule, whether the purchaser is acting for itself or as trustee, or

1 (2) to any corporation with outstanding securities registered under
2 Section 12 of the Securities Exchange Act of 1934 or any wholly
3 owned subsidiary of the corporation that after the offer and sale
4 will own directly or indirectly 100 percent of the outstanding
5 capital stock of the issuer, provided the purchaser represents that
6 it is purchasing for its own account (or for the trust account) for
7 investment and not with a view to or for sale in connection with
8 any distribution of the security.

9 (j) Any offer or sale of any certificate of interest or participation
10 in an oil or gas title or lease (including subsurface gas storage and
11 payments out of production) if either of the following apply:

12 (1) All of the purchasers meet one of the following requirements:

13 (A) Are and have been during the preceding two years engaged
14 primarily in the business of drilling for, producing, or refining oil
15 or gas (or whose corporate predecessor, in the case of a corporation,
16 has been so engaged).

17 (B) Are persons described in paragraph (1) of subdivision (i).

18 (C) Have been found by the commissioner upon written
19 application to be substantially engaged in the business of drilling
20 for, producing, or refining oil or gas so as not to require the
21 protection provided by this law (which finding shall be effective
22 until rescinded).

23 (2) The security is concurrently hypothecated to a bank in the
24 ordinary course of business to secure a loan made by the bank,
25 provided that each purchaser represents that it is purchasing for
26 its own account for investment and not with a view to or for sale
27 in connection with any distribution of the security.

28 (k) Any offer or sale of any security under, or pursuant to, a
29 plan of reorganization under Chapter 11 of the federal bankruptcy
30 law that has been confirmed or is subject to confirmation by the
31 decree or order of a court of competent jurisdiction.

32 (l) Any offer or sale of an option, warrant, put, call, or straddle,
33 and any guarantee of any of these securities, by a person who is
34 not the issuer of the security subject to the right, if the transaction,
35 had it involved an offer or sale of the security subject to the right
36 by the person, would not have violated Section 25110 or 25130.

37 (m) Any offer or sale of a stock to a pension, profit-sharing,
38 stock bonus, or employee stock ownership plan, provided that (1)
39 the plan meets the requirements for qualification under Section
40 401 of the Internal Revenue Code, and (2) the employees are not

1 required or permitted individually to make any contributions to
2 the plan. The exemption provided by this subdivision shall not be
3 affected by whether the stock is contributed to the plan, purchased
4 from the issuer with contributions by the issuer or an affiliate of
5 the issuer, or purchased from the issuer with funds borrowed from
6 the issuer, an affiliate of the issuer, or any other lender.

7 (n) Any offer or sale of any security in a transaction, other than
8 an offer or sale of a security in a rollup transaction, that meets all
9 of the following criteria:

10 (1) The issuer is (A) a California corporation or foreign
11 corporation that, at the time of the filing of the notice required
12 under this subdivision, is subject to Section 2115, or (B) any other
13 form of business entity, including without limitation a partnership
14 or trust organized under the laws of this state. The exemption
15 provided by this subdivision is not available to a “blind pool”
16 issuer, as that term is defined by the commissioner, or to an
17 investment company subject to the Investment Company Act of
18 1940.

19 (2) Sales of securities are made only to qualified purchasers or
20 other persons the issuer reasonably believes, after reasonable
21 inquiry, to be qualified purchasers. A corporation, partnership, or
22 other organization specifically formed for the purpose of acquiring
23 the securities offered by the issuer in reliance upon this exemption
24 may be a qualified purchaser if each of the equity owners of the
25 corporation, partnership, or other organization is a qualified
26 purchaser. Qualified purchasers include the following:

27 (A) A person designated in Section 260.102.13 of Title 10 of
28 the California Code of Regulations.

29 (B) A person designated in subdivision (i) or any rule of the
30 commissioner adopted thereunder.

31 (C) A pension or profit-sharing trust of the issuer, a
32 self-employed individual retirement plan, or an individual
33 retirement account, if the investment decisions made on behalf of
34 the trust, plan, or account are made solely by persons who are
35 qualified purchasers.

36 (D) An organization described in Section 501(c)(3) of the
37 Internal Revenue Code, corporation, Massachusetts or similar
38 business trust, or partnership, each with total assets in excess of
39 five million dollars (\$5,000,000) according to its most recent
40 audited financial statements.

1 (E) With respect to the offer and sale of one class of voting
2 common stock of an issuer or of preferred stock of an issuer
3 entitling the holder thereof to at least the same voting rights as the
4 issuer's one class of voting common stock, provided that the issuer
5 has only one-class voting common stock outstanding upon
6 consummation of the offer and sale, a natural person who, either
7 individually or jointly with the person's spouse, (i) has a minimum
8 net worth of two hundred fifty thousand dollars (\$250,000), and
9 had, during the immediately preceding tax year, gross income in
10 excess of one hundred thousand dollars (\$100,000) and reasonably
11 expects gross income in excess of one hundred thousand dollars
12 (\$100,000) during the current tax year or (ii) has a minimum net
13 worth of five hundred thousand dollars (\$500,000). "Net worth"
14 shall be determined exclusive of home, home furnishings, and
15 automobiles. Other assets included in the computation of net worth
16 may be valued at fair market value.

17 Each natural person specified above, by reason of his or her
18 business or financial experience, or the business or financial
19 experience of his or her professional adviser, who is unaffiliated
20 with and who is not compensated, directly or indirectly, by the
21 issuer or any affiliate or selling agent of the issuer, can be
22 reasonably assumed to have the capacity to protect his or her
23 interests in connection with the transaction. The amount of the
24 investment of each natural person shall not exceed 10 percent of
25 the net worth, as determined by this subparagraph, of that natural
26 person.

27 (F) Any other purchaser designated as qualified by rule of the
28 commissioner.

29 (3) Each purchaser represents that the purchaser is purchasing
30 for the purchaser's own account (or trust account, if the purchaser
31 is a trustee) and not with a view to or for sale in connection with
32 a distribution of the security.

33 (4) Each natural person purchaser, including a corporation,
34 partnership, or other organization specifically formed by natural
35 persons for the purpose of acquiring the securities offered by the
36 issuer, receives, at least five business days before securities are
37 sold to, or a commitment to purchase is accepted from, the
38 purchaser, a written offering disclosure statement that shall meet
39 the disclosure requirements of Regulation D (17 C.F.R. 230.501
40 et seq.), and any other information as may be prescribed by rule

1 of the commissioner, provided that the issuer shall not be obligated
2 pursuant to this paragraph to provide this disclosure statement to
3 a natural person qualified under Section 260.102.13 of Title 10 of
4 the California Code of Regulations. The offer or sale of securities
5 pursuant to a disclosure statement required by this paragraph that
6 is in violation of Section 25401, or that fails to meet the disclosure
7 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall
8 not render unavailable to the issuer the claim of an exemption from
9 Section 25110 afforded by this subdivision. This paragraph does
10 not impose, directly or indirectly, any additional disclosure
11 obligation with respect to any other exemption from qualification
12 available under any other provision of this section.

13 (5) (A) A general announcement of proposed offering may be
14 published by written document only, provided that the general
15 announcement of proposed offering sets forth the following
16 required information:

17 (i) The name of the issuer of the securities.

18 (ii) The full title of the security to be issued.

19 (iii) The anticipated suitability standards for prospective
20 purchasers.

21 (iv) A statement that (I) no money or other consideration is
22 being solicited or will be accepted, (II) an indication of interest
23 made by a prospective purchaser involves no obligation or
24 commitment of any kind, and, if the issuer is required by paragraph
25 (4) to deliver a disclosure statement to prospective purchasers,
26 (III) no sales will be made or commitment to purchase accepted
27 until five business days after delivery of a disclosure statement
28 and subscription information to the prospective purchaser in
29 accordance with the requirements of this subdivision.

30 (v) Any other information required by rule of the commissioner.

31 (vi) The following legend: "For more complete information
32 about (Name of Issuer) and (Full Title of Security), send for
33 additional information from (Name and Address) by sending this
34 coupon or calling (Telephone Number)."

35 (B) The general announcement of proposed offering referred
36 to in subparagraph (A) may also set forth the following
37 information:

38 (i) A brief description of the business of the issuer.

39 (ii) The geographic location of the issuer and its business.

1 (iii) The price of the security to be issued, or, if the price is not
2 known, the method of its determination or the probable price range
3 as specified by the issuer, and the aggregate offering price.

4 (C) The general announcement of proposed offering shall
5 contain only the information that is set forth in this paragraph.

6 (D) Dissemination of the general announcement of proposed
7 offering to persons who are not qualified purchasers, without more,
8 shall not disqualify the issuer from claiming the exemption under
9 this subdivision.

10 (6) No telephone solicitation shall be permitted until the issuer
11 has determined that the prospective purchaser to be solicited is a
12 qualified purchaser.

13 (7) The issuer files a notice of transaction under this subdivision
14 both (A) concurrent with the publication of a general announcement
15 of proposed offering or at the time of the initial offer of the
16 securities, whichever occurs first, accompanied by a filing fee, and
17 (B) within 10 business days following the close or abandonment
18 of the offering, but in no case more than 210 days from the date
19 of filing the first notice. The first notice of transaction under
20 subparagraph (A) shall contain an undertaking, in a form acceptable
21 to the commissioner, to deliver any disclosure statement required
22 by paragraph (4) to be delivered to prospective purchasers, and
23 any supplement thereto, to the commissioner within 10 days of
24 the commissioner's request for the information. The exemption
25 from qualification afforded by this subdivision is unavailable if
26 an issuer fails to file the first notice required under subparagraph
27 (A) or to pay the filing fee. The commissioner has the authority
28 to assess an administrative penalty of up to one thousand dollars
29 (\$1,000) against an issuer that fails to deliver the disclosure
30 statement required to be delivered to the commissioner upon the
31 commissioner's request within the time period set forth above.
32 Neither the filing of the disclosure statement nor the failure by the
33 commissioner to comment thereon precludes the commissioner
34 from taking any action deemed necessary or appropriate under this
35 division with respect to the offer and sale of the securities.

36 (o) An offer or sale of any security issued by a corporation or
37 limited liability company pursuant to a purchase plan or agreement,
38 or issued pursuant to an option plan or agreement, where the
39 security at the time of issuance or grant is exempt from registration
40 under the Securities Act of 1933, as amended, pursuant to Rule

1 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions
2 of which are hereby incorporated by reference into this section,
3 provided that (1) the terms of any purchase plan or agreement shall
4 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of
5 Title 10 of the California Code of Regulations, (2) the terms of
6 any option plan or agreement shall comply with Sections
7 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the
8 California Code of Regulations, and (3) the issuer files a notice of
9 transaction in accordance with rules adopted by the commissioner
10 no later than 30 days after the initial issuance of any security under
11 that plan, accompanied by a filing fee as prescribed by subdivision
12 (y) of Section 25608. The failure to file the notice of transaction
13 within the time specified in this subdivision shall not affect the
14 availability of this exemption. An issuer that fails to file the notice
15 shall, within 15 business days after discovery of the failure to file
16 the notice or after demand by the commissioner, whichever occurs
17 first, file the notice and pay the commissioner a fee equal to the
18 maximum aggregate fee payable had the transaction been qualified
19 under Section 25110.

20 Offers and sales exempt pursuant to this subdivision shall be
21 deemed to be part of a single, discrete offering and are not subject
22 to integration with any other offering or sale, whether qualified
23 under Chapter 2 (commencing with Section 25110), or otherwise
24 exempt, or not subject to qualification.

25 (p) An offer or sale of nonredeemable securities to accredited
26 investors (Section 28031) by a person licensed under the Capital
27 Access Company Law (Division 3 (commencing with Section
28 28000) of Title 4), provided that all purchasers either (1) have a
29 preexisting personal or business relationship with the offeror or
30 any of its partners, officers, directors, controlling persons, or
31 managers (as appointed or elected by the members), or (2) by
32 reason of their business or financial experience or the business or
33 financial experience of their professional advisers who are
34 unaffiliated with and who are not compensated by the issuer or
35 any affiliate or selling agent of the issuer, directly or indirectly,
36 could be reasonably assumed to have the capacity to protect their
37 own interests in connection with the transaction. All nonredeemable
38 securities shall be evidenced by certificates that shall have stamped
39 or printed prominently on their face a legend in a form to be
40 prescribed by rule or order of the commissioner restricting transfer

1 of the securities in the manner as the rule or order provides. The
2 exemption under this subdivision shall not be available for any
3 offering that is exempt or asserted to be exempt pursuant to Section
4 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11))
5 or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is
6 conducted by means of any form of general solicitation or general
7 advertising.

8 (q) Any offer or sale of any viatical or life settlement contract
9 or fractionalized or pooled interest therein in a transaction that
10 meets all of the following criteria:

11 (1) Sales of securities described in this subdivision are made
12 only to qualified purchasers or other persons the issuer reasonably
13 believes, after reasonable inquiry, to be qualified purchasers. A
14 corporation, partnership, or other organization specifically formed
15 for the purpose of acquiring the securities offered by the issuer in
16 reliance upon this exemption may be a qualified purchaser only if
17 each of the equity owners of the corporation, partnership, or other
18 organization is a qualified purchaser. Qualified purchasers include
19 the following:

20 (A) A person designated in Section 260.102.13 of Title 10 of
21 the California Code of Regulations.

22 (B) A person designated in subdivision (i) or any rule of the
23 commissioner adopted thereunder.

24 (C) A pension or profit-sharing trust of the issuer, a
25 self-employed individual retirement plan, or an individual
26 retirement account, if the investment decisions made on behalf of
27 the trust, plan, or account are made solely by persons who are
28 qualified purchasers.

29 (D) An organization described in Section 501(c)(3) of the
30 Internal Revenue Code, corporation, Massachusetts or similar
31 business trust, or partnership, each with total assets in excess of
32 five million dollars (\$5,000,000) according to its most recent
33 audited financial statements.

34 (E) A natural person who, either individually or jointly with the
35 person's spouse, (i) has a minimum net worth of one hundred fifty
36 thousand dollars (\$150,000) and had, during the immediately
37 preceding tax year, gross income in excess of one hundred thousand
38 dollars (\$100,000) and reasonably expects gross income in excess
39 of one hundred thousand dollars (\$100,000) during the current tax
40 year or (ii) has a minimum net worth of two hundred fifty thousand

1 dollars (\$250,000). “Net worth” shall be determined exclusive of
2 home, home furnishings, and automobiles. Other assets included
3 in the computation of net worth may be valued at fair market value.

4 Each natural person specified above, by reason of his or her
5 business or financial experience, or the business or financial
6 experience of his or her professional adviser, who is unaffiliated
7 with and who is not compensated, directly or indirectly, by the
8 issuer or any affiliate or selling agent of the issuer, can be
9 reasonably assumed to have the capacity to protect his or her
10 interests in connection with the transaction.

11 The amount of the investment of each natural person shall not
12 exceed 10 percent of the net worth, as determined by this
13 subdivision, of that natural person.

14 (F) Any other purchaser designated as qualified by rule of the
15 commissioner.

16 (2) Each purchaser represents that the purchaser is purchasing
17 for the purchaser’s own account (or trust account, if the purchaser
18 is a trustee) and not with a view to or for sale in connection with
19 a distribution of the security.

20 (3) Each natural person purchaser, including a corporation,
21 partnership, or other organization specifically formed by natural
22 persons for the purpose of acquiring the securities offered by the
23 issuer, receives, at least five business days before securities
24 described in this subdivision are sold to, or a commitment to
25 purchase is accepted from, the purchaser, the following information
26 in writing:

27 (A) The name, principal business and mailing address, and
28 telephone number of the issuer.

29 (B) The suitability standards for prospective purchasers as set
30 forth in paragraph (1) of this subdivision.

31 (C) A description of the issuer’s type of business organization
32 and the state in which the issuer is organized or incorporated.

33 (D) A brief description of the business of the issuer.

34 (E) If the issuer retains ownership or becomes the beneficiary
35 of the insurance policy, an audit report of an independent certified
36 public accountant together with a balance sheet and related
37 statements of income, retained earnings, and cashflows that reflect
38 the issuer’s financial position, the results of the issuer’s operations,
39 and the issuer’s cashflows as of a date within 15 months before
40 the date of the initial issuance of the securities described in this

1 subdivision. The financial statements listed in this subparagraph
2 shall be prepared in conformity with generally accepted accounting
3 principles. If the date of the audit report is more than 120 days
4 before the date of the initial issuance of the securities described
5 in this subdivision, the issuer shall provide unaudited interim
6 financial statements.

7 (F) The names of all directors, officers, partners, members, or
8 trustees of the issuer.

9 (G) A description of any order, judgment, or decree that is final
10 as to the issuing entity of any state, federal, or foreign country
11 governmental agency or administrator, or of any state, federal, or
12 foreign country court of competent jurisdiction (i) revoking,
13 suspending, denying, or censuring for cause any license, permit,
14 or other authority of the issuer or of any director, officer, partner,
15 member, trustee, or person owning or controlling, directly or
16 indirectly, 10 percent or more of the outstanding interest or equity
17 securities of the issuer, to engage in the securities, commodities,
18 franchise, insurance, real estate, or lending business or in the offer
19 or sale of securities, commodities, franchises, insurance, real estate,
20 or loans; (ii) permanently restraining, enjoining, barring,
21 suspending, or censuring any such person from engaging in or
22 continuing any conduct, practice, or employment in connection
23 with the offer or sale of securities, commodities, franchises,
24 insurance, real estate, or loans; (iii) convicting any such person
25 of, or pleading nolo contendere by any such person to, any felony
26 or misdemeanor involving a security, commodity, franchise,
27 insurance, real estate, or loan, or any aspect of the securities,
28 commodities, franchise, insurance, real estate, or lending business,
29 or involving dishonesty, fraud, deceit, embezzlement, fraudulent
30 conversion, or misappropriation of property; or (iv) holding any
31 such person liable in a civil action involving breach of a fiduciary
32 duty, fraud, deceit, embezzlement, fraudulent conversion, or
33 misappropriation of property. This subparagraph does not apply
34 to any order, judgment, or decree that has been vacated, overturned,
35 or is more than 10 years old.

36 (H) Notice of the purchaser's right to rescind or cancel the
37 investment and receive a refund pursuant to Section 25508.5.

38 (I) The name, address, and telephone number of the issuing
39 insurance company, and the name, address, and telephone number
40 of the state or foreign country regulator of the insurance company.

- 1 (J) The total face value of the insurance policy and the
2 percentage of the insurance policy the purchaser will own.
- 3 (K) The insurance policy number, issue date, and type.
- 4 (L) If a group insurance policy, the name, address, and telephone
5 number of the group, and, if applicable, the material terms and
6 conditions of converting the policy to an individual policy,
7 including the amount of increased premiums.
- 8 (M) If a term insurance policy, the term and the name, address,
9 and telephone number of the person who will be responsible for
10 renewing the policy if necessary.
- 11 (N) That the insurance policy is beyond the state statute for
12 contestability and the reason therefor.
- 13 (O) The insurance policy premiums and terms of premium
14 payments.
- 15 (P) The amount of the purchaser's moneys that will be set aside
16 to pay premiums.
- 17 (Q) The name, address, and telephone number of the person
18 who will be the insurance policy owner and the person who will
19 be responsible for paying premiums.
- 20 (R) The date on which the purchaser will be required to pay
21 premiums and the amount of the premium, if known.
- 22 (S) A statement to the effect that any projected rate of return to
23 the purchaser from the purchase of a viatical or life settlement
24 contract or a fractionalized or pooled interest therein is based on
25 an estimated life expectancy for the person insured under the life
26 insurance policy; that the return on the purchase may vary
27 substantially from the expected rate of return based upon the actual
28 life expectancy of the insured that may be less than, equal to, or
29 may greatly exceed the estimated life expectancy; and that the rate
30 of return would be higher if the actual life expectancy were less
31 than, and lower if the actual life expectancy were greater than, the
32 estimated life expectancy of the insured at the time the viatical or
33 life settlement contract was closed.
- 34 (T) A statement that the purchaser should consult with his or
35 her tax adviser regarding the tax consequences of the purchase of
36 the viatical or life settlement contract or fractionalized or pooled
37 interest therein and, if the purchaser is using retirement funds or
38 accounts for that purchase, whether or not any adverse tax
39 consequences might result from the use of those funds for the
40 purchase of that investment.

1 (U) Any other information as may be prescribed by rule of the
2 commissioner.

3 (r) (1) (A) Any offer ~~or sale~~ of a security by an issuer using
4 any form of general solicitation or general advertising as specified
5 in Rule 502(c) of Regulation D under the Securities Act of 1933
6 (17 C.F.R. 230.502(c)), ~~except—unsolicited as provided in~~
7 ~~subparagraph (B).~~

8 (B) Any offer of a security made by means of an unsolicited
9 telephone ~~calls call~~ to a person’s residence or cellular telephone,
10 unless the issuer and the caller ~~reasonably believe, after reasonable~~
11 ~~inquiry take reasonable steps~~, prior to the unsolicited telephone
12 call, ~~to verify~~ that the person is an accredited investor, as defined
13 in Rule 501 of Regulation D promulgated under the Securities Act
14 of 1933, as amended (17 C.F.R. 230.501), and the transaction
15 meets all the requirements of this subdivision.

16 (2) *Prior to selling any security to a person solicited pursuant*
17 *to this subdivision, an issuer shall obtain from that person a*
18 *completed offeree questionnaire in a form adopted by the*
19 *commissioner.*

20 (2)

21 (3) Sales of securities shall be made only to a person who is, or
22 *with respect to* whom the issuer ~~reasonably believes, after~~
23 ~~reasonable inquiry, to be~~ *has taken reasonable steps to verify is*,
24 an accredited investor immediately prior to the sale.

25 (3)

26 (4) The issuer ~~reasonably believes, after reasonable inquiry, has~~
27 *taken reasonable steps to verify* that, immediately prior to the sale,
28 the offering is suitable for the person, based on the person’s
29 financial status, objectives, investment experience, time horizon,
30 risk tolerance, and any other information the issuer deems relevant
31 to determine whether the offering is suitable to the person. The
32 issuer shall maintain, for a period of four years, documentation
33 sufficient to establish the basis for its determination of suitability.

34 (4)

35 (5) If the person is a natural person, the amount of consideration
36 paid by the purchaser does not exceed 10 percent of his or her net
37 worth, or joint net worth with the purchaser’s spouse, immediately
38 prior to the investment, and each investor’s investment in the
39 offering, together with all previous offerings under this subdivision
40 made during the previous 12 months, does not exceed 10 percent

1 of his or her net worth. “Net worth” shall be determined as
2 specified in Rule 501(a) of Regulation D promulgated by the
3 Securities and Exchange Commission under the Securities Act of
4 1933, as amended (17 C.F.R. 230.501(a)).

5 ~~(5)~~

6 (6) The issuer can reasonably assume that the person has the
7 capacity to protect his or her interests in connection with the
8 offering due to his or her business or financial experience, or the
9 business or financial experience of his or her professional adviser,
10 who is unaffiliated with and not compensated, directly or indirectly,
11 by the issuer or any affiliate or selling agent of the issuer.

12 ~~(6)~~

13 (7) The issuer believes in good faith that the offer and sale are
14 exempt from registration under Section 5 of the Securities Act of
15 1933 (15 U.S.C. Sec. 77e) pursuant to Section 3(a)(11) of the act
16 (15 U.S.C. Sec. 77c(a)(11)), or the rules and regulations adopted
17 by the Securities and Exchange Commission under Section 3(b)
18 or Section 4(2) of the act (15 U.S.C. Sec. 77d(2)).

19 ~~(7)~~

20 (8) The issuer specifies in all advertisements, communications,
21 sales literature, or other information that is publicly disseminated
22 in connection with the offering, including by means of electronic
23 transmission or broadcast media, that the securities will be sold to
24 accredited investors only. For purposes of this subdivision,
25 “publicly disseminated” means communicated to 100 or more
26 persons or otherwise communicated, used, or circulated in a public
27 manner.

28 ~~(8)~~

29 (9) The issuer places a legend on the cover page of each
30 disclosure document proposed to be used in connection with the
31 offering or on the cover page of the subscription agreement
32 advising that the securities described in the disclosure document
33 or subscription agreement will be sold to accredited investors only.

34 ~~(9)~~

35 (10) Dissemination of information regarding the proposed
36 offering to a person who is not an accredited investor shall not
37 disqualify the offering from the exemption under this subdivision.

38 ~~(10)~~

39 (11) The issuer shall file with the commissioner a notice
40 pursuant to Section 25102.1 and pay the fee specified in

1 subdivision (c) of Section 25608.1 within 15 days after the first
2 sale of the securities in this state.

3 ~~(11)~~

4 (12) A person who purchases securities in an offering that fails
5 to meet all of the terms and conditions of this subdivision may
6 bring an action under Sections 25503, 25504, and 25504.1 for
7 recession of the purchase. In addition to the other remedies
8 provided in those sections, the court shall award attorney's fees
9 and costs to a prevailing purchaser in any such action.

10 ~~(12)~~

11 (13) The exemption is not available for an offering by an issuer
12 who is (A) an investment company as defined in Section 3(a)(1)
13 of the Investment Company Act of 1940 (15 U.S.C. Sec. 80a et
14 seq.), or (B) a development stage company as referred to in Rule
15 504(a)(3) under the Securities Act of 1933.

16 ~~(13)~~

17 (14) The exemption under this subdivision is not available to
18 an issuer if any of the following apply to the issuer or its
19 predecessors, affiliates, directors, officers, general partners,
20 beneficial owners of 10 percent or more of any classification of
21 its equity securities, promoters presently connected with the issuer
22 in any capacity, or any underwriter of the securities to be offered,
23 or any of the underwriter's partners, directors, or officers:

24 (A) Within the five years immediately prior to the first offer of
25 the security, the person has filed a registration statement that is
26 the subject of a currently effective stop order entered by any state
27 securities administrator or the Securities and Exchange
28 Commission.

29 (B) Within the five years immediately prior to the first offer of
30 the security, the person has been convicted of any criminal offense
31 involving fraud, deceit, or any offense concerning the offer,
32 purchase, or sale of any security.

33 (C) The person is currently subject to a state or federal
34 administrative enforcement order or judgment entered within the
35 five years immediately prior to the first offer of the security finding
36 fraud or deceit in connection with the purchase or sale of any
37 security.

38 (D) The person is currently subject to any order, judgment, or
39 decree of any court of competent jurisdiction, entered within the
40 five years immediately prior to the first offer of the security,

1 temporarily, preliminarily, or permanently restraining or enjoining
2 the person from engaging in or continuing to engage in any conduct
3 or practice involving fraud or deceit in connection with the
4 purchase or sale of any security, except if any of the following
5 apply:

6 (i) The person is licensed or registered to conduct
7 securities-related business in the state in which the order, judgment,
8 or decree described in subparagraph (A), (B), (C), or (D) was
9 entered against the person.

10 (ii) Before the first offer of securities is made in reliance upon
11 the exemption under this subdivision, the state securities
12 administrator, the court, or the regulatory authority that entered
13 the order, judgment, or decree removes, reverses, or vacates the
14 order, judgment, or decree.

15 (iii) The issuer, exercising reasonable care and based on a factual
16 inquiry, establishes that it could not have known of the existence
17 of circumstances described in subparagraph (A), (B), (C), or (D).

18 *SEC. 2. This act is an urgency statute necessary for the*
19 *immediate preservation of the public peace, health, or safety within*
20 *the meaning of Article IV of the Constitution and shall go into*
21 *immediate effect. The facts constituting the necessity are:*

22 *The Chair of the Securities and Exchange Commission*
23 *announced on June 28, 2012, that the commission will fail to meet*
24 *the July 4, 2012, deadline for rulemaking to implement the federal*
25 *Jumpstart Our Business Startups Act (JOBS Act, Public Law*
26 *112-106). The JOBS Act seeks, in somewhat similar fashion to this*
27 *act, to increase access to capital for small businesses. Because*
28 *the delay in rulemaking by the commission leaves small businesses*
29 *without a viable new method of accessing investment funding*
30 *needed at the present time for startup and growth stages, which*
31 *is a problem addressed by this act, it is necessary that this act take*
32 *effect immediately.*