

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1208

Introduced by Senator Leno

February 22, 2012

An act ~~relating~~ to amend Sections 1502.1 and 2117.1 of the Corporations Code, relating to publicly traded corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1208, as amended, Leno. Publicly traded corporations: retiree compensation: disclosure.

Existing law provides for the formation and regulation of corporations. Existing law requires that domestic and foreign publicly traded corporations file annually with the Secretary of State a ~~report~~ *statement* disclosing the compensation, as specified, paid to each of the members of the corporation's board of directors and its 5 most highly compensated executive officers who are not members of the board, and the chief executive officer, if he or she is not among those executive officers. *Existing law requires the Secretary of State to make that information, together with other information required to be included in that statement, publicly available, as specified.*

This bill would, instead, require that a publicly traded corporation include in that report total compensation, as defined, paid to each member of the board of directors, the principal executive officer, principal financial officer, and each of the 3 most highly compensated executive officers other than the principal executive officer or principal financial officer.

This bill would also require a publicly traded corporation to include in that statement filed with the Secretary of State total compensation

information with respect to each of the corporation's 5 most highly compensated retirees, and the names of those retirees.

~~This bill would state the intention of the Legislature to enact legislation that would require those corporations to also report to the secretary all forms of compensation, including pensions and benefits from other types of employee benefit plans, to the 5 most highly compensated retired executive officers of the corporation.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

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

1 SECTION 1. Section 1502.1 of the Corporations Code is
2 amended to read:

3 1502.1. (a) In addition to the statement required pursuant to
4 Section 1502, every publicly traded corporation shall file annually,
5 within 150 days after the end of its fiscal year, a statement, on a
6 form prescribed by the Secretary of State, that includes all of the
7 following information:

8 (1) The name of the independent auditor that prepared the most
9 recent auditor's report on the corporation's annual financial
10 statements.

11 (2) A description of other services, if any, performed for the
12 corporation during its two most recent fiscal years and the period
13 between the end of its most recent fiscal year and the date of the
14 statement by the foregoing independent auditor, by its parent
15 corporation, or by a subsidiary or corporate affiliate of the
16 independent auditor or its parent corporation.

17 (3) The name of the independent auditor employed by the
18 corporation on the date of the statement, if different from the
19 independent auditor listed pursuant to paragraph (1).

20 (4) The *total* compensation for the most recent fiscal year of
21 the corporation paid to (A) each member of the board of directors
22 ~~and paid to~~, (B) *the principal executive officer*, (C) *the principal*
23 *financial officer*, and (D) each of the ~~five~~ *three* most highly
24 compensated executive officers, *other than the principal executive*
25 *officer and principal financial officer*, of the corporation who are
26 not members of the board of directors, ~~including the number of~~
27 ~~any shares issued, options for shares granted, and similar~~
28 ~~equity-based compensation granted to each of those persons. If~~

1 ~~the chief executive officer is not among the five most highly~~
2 ~~compensated executive officers of the corporation, the~~
3 ~~compensation paid to the chief executive officer shall also be~~
4 ~~included.~~

5 (5) A description of any loan, including the amount and terms
6 of the loan, made to any member of the board of directors by the
7 corporation during the corporation's two most recent fiscal years
8 at an interest rate lower than the interest rate available from
9 unaffiliated commercial lenders generally to a similarly-situated
10 borrower.

11 (6) *The total compensation for the most recent fiscal year of the*
12 *publicly traded corporation paid to each of the five persons retired*
13 *from the corporation who received from the corporation the highest*
14 *amounts of total compensation that the corporation paid to retirees,*
15 *and the name of each of those retirees.*

16 (6)

17 (7) A statement indicating whether an order for relief has been
18 entered in a bankruptcy case with respect to the corporation, its
19 executive officers, or members of the board of directors of the
20 corporation during the 10 years preceding the date of the statement.

21 (7)

22 (8) A statement indicating whether any member of the board of
23 directors or executive officer of the corporation was convicted of
24 fraud during the 10 years preceding the date of the statement, if
25 the conviction has not been overturned or expunged.

26 (8)

27 (9) A description of any material pending legal proceedings,
28 other than ordinary routine litigation incidental to the business, to
29 which the corporation or any of its subsidiaries is a party or of
30 which any of their property is the subject, as specified by Item 103
31 of Regulation S-K of the Securities Exchange Commission (Section
32 229.103 of Title 12 of the Code of Federal Regulations). A
33 description of any material legal proceeding during which the
34 corporation was found legally liable by entry of a final judgment
35 or final order that was not overturned on appeal during the five
36 years preceding the date of the statement.

37 (b) For purposes of this section, the following definitions apply:

38 (1) "Publicly traded corporation" means a corporation, as
39 defined in Section 162, that is an issuer as defined in Section 3 of
40 the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec.

1 78c), and has at least one class of securities listed or admitted for
2 trading on a national securities exchange, on the OTC Bulletin
3 Board, or on the electronic service operated by Pink OTC Markets
4 Inc.

5 (2) “Executive officer” means the ~~chief~~ *principal* executive
6 officer, *principal financial officer*, president, any vice president
7 in charge of a principal business unit, division, or function, any
8 other officer of the corporation who performs a policymaking
9 function, or any other person who performs similar policymaking
10 functions for the corporation.

11 (3) ~~“Compensation”~~—(A) “*Total compensation*” as used in
12 paragraph (4) of subdivision (a) means all plan and nonplan
13 compensation awarded to, earned by, *including the number of any*
14 *shares issued, options for shares granted, and similar equity-based*
15 *compensation, and all perquisite and other personal benefits,*
16 *granted or awarded to, earned by, or paid to the person for all*
17 *services rendered in all capacities to the corporation and to its*
18 *subsidiaries, as the compensation is specified by in each case,*
19 *within the meaning of those terms pursuant to Item 402 of*
20 *Regulation S-K of the Securities and Exchange Commission*
21 *(Section 229.402 of Title 17 of the Code of Federal Regulations).*

22 (B) “*Total compensation*” as used in paragraph (6) of
23 subdivision (a) has the same meaning given in subparagraph (A),
24 except that the compensation is granted, awarded, or paid to the
25 person after the person’s retirement from the corporation for
26 services rendered in all capacities to the corporation and to its
27 subsidiaries prior to his or her retirement.

28 (4) “Loan” as used in paragraph (5) of subdivision (a) excludes
29 an advance for expenses permitted under subdivision (d) of Section
30 315, the corporation’s payment of life insurance premiums
31 permitted under subdivision (e) of Section 315, and an advance of
32 expenses permitted under Section 317.

33 (c) This statement shall be available and open to the public for
34 inspection. The Secretary of State shall provide access to all
35 information contained in this statement by means of an online
36 database.

37 (d) A corporation shall certify that the information it provides
38 pursuant to this section is true and correct. No claim may be made
39 against the state for inaccurate information contained in statements
40 filed under this section with the Secretary of State.

1 *SEC. 2. Section 2117.1 of the Corporations Code is amended*
2 *to read:*

3 2117.1. (a) In addition to the statement required pursuant to
4 Section 2117, every publicly traded foreign corporation shall file
5 annually, within 150 days after the end of its fiscal year, on a form
6 prescribed by the Secretary of State, a statement that includes all
7 of the following information:

8 (1) The name of the independent auditor that prepared the most
9 recent auditor's report on the publicly traded foreign corporation's
10 annual financial statements.

11 (2) A description of other services, if any, performed for the
12 publicly traded foreign corporation during its two most recent
13 fiscal years and the period between the end of its most recent fiscal
14 year and the date of the statement by the foregoing independent
15 auditor, by its parent corporation, or by a subsidiary or corporate
16 affiliate of the independent auditor or its parent corporation.

17 (3) The name of the independent auditor employed by the
18 foreign corporation on the date of the statement, if different from
19 the independent auditor listed pursuant to paragraph (1).

20 (4) The *total* compensation for the most recent fiscal year of
21 the publicly traded foreign corporation paid to (A) each member
22 of the board of directors, (B) *the principal executive officer*, (C)
23 *the principal financial officer*, and ~~paid to~~ (D) each of the ~~five~~
24 ~~three~~ most highly compensated executive officers, *other than the*
25 *principal executive officer or principal financial officer*, of the
26 foreign corporation who are not members of the board of directors;
27 ~~including the number of any shares issued, options for shares~~
28 ~~granted, and similar equity-based compensation granted to each~~
29 ~~of those persons. If the chief executive officer is not among the~~
30 ~~five most highly compensated executive officers of the corporation,~~
31 ~~the compensation paid to the chief executive officer shall also be~~
32 ~~included.~~

33 (5) A description of any loan, including the amount and terms
34 of the loans, made to any member of the board of directors by the
35 publicly traded foreign corporation during the foreign corporation's
36 two most recent fiscal years at an interest rate lower than the
37 interest rate available from unaffiliated commercial lenders
38 generally to a similarly situated borrower.

39 (6) *The total compensation for the most recent fiscal year of the*
40 *publicly traded foreign corporation paid to each of the five persons*

1 *retired from the corporation who received from the corporation*
2 *the highest amounts of total compensation that the corporation*
3 *paid to retirees, and the name of each of those retirees.*

4 ~~(6)~~

5 (7) A statement indicating whether an order for relief has been
6 entered in a bankruptcy case with respect to the foreign corporation,
7 its executive officers, or members of the board of directors of the
8 foreign corporation during the 10 years preceding the date of the
9 statement.

10 ~~(7)~~

11 (8) A statement indicating whether any member of the board of
12 directors or executive officer of the publicly traded foreign
13 corporation was convicted of fraud during the 10 years preceding
14 the date of the statement, which conviction has not been overturned
15 or expunged.

16 ~~(8)~~

17 (9) A description of any material pending legal proceedings,
18 other than ordinary routine litigation incidental to the business, to
19 which the corporation or any of its subsidiaries is a party or of
20 which any of their property is the subject, as specified by Item 103
21 of Regulation S-K of the Securities Exchange Commission (Section
22 229.103 of Title 12 of the Code of Federal Regulations). A
23 description of any material legal proceeding during which the
24 corporation was found legally liable by entry of a final judgment
25 or final order that was not overturned on appeal during the five
26 years preceding the date of the statement.

27 (b) For purposes of this section, the following definitions apply:

28 (1) “Publicly traded foreign corporation” means a foreign
29 corporation, as defined in Section 171, that is an issuer as defined
30 in Section 3 of the Securities Exchange Act of 1934, as amended
31 (15 U.S.C. Sec. 78c), and has at least one class of securities listed
32 or admitted for trading on a national securities exchange, on the
33 OTC Bulletin Board, or on the electronic service operated by Pink
34 OTC Markets Inc.

35 (2) “Executive officer” means the ~~chief~~ *principal* executive
36 officer, *principal financial officer*, president, any vice president
37 in charge of a principal business unit, division, or function, any
38 other officer of the corporation who performs a policymaking
39 function, or any other person who performs similar policymaking
40 functions for the corporation.

1 (3) ~~“Compensation”~~—(A) *“Total compensation”* as used in
2 paragraph (4) of subdivision (a) means all plan and nonplan
3 compensation, *including the number of any shares issued, options*
4 *for shares granted, and similar equity-based compensation, and*
5 *all perquisites and other personal benefits granted or awarded to,*
6 *earned by, or paid to the person for all services rendered in all*
7 *capacities to the corporation and to its subsidiaries,*—~~as the~~
8 ~~compensation is specified by~~ *in each case, within the meaning of*
9 *those terms pursuant to Item 402 of Regulation S-K of the*
10 *Securities and Exchange Commission (Section 229.402 of Title*
11 *17 of the Code of Federal Regulations).*

12 (B) *“Total compensation”* as used in paragraph (6) of
13 subdivision (a) has the same meaning given in subparagraph (A),
14 *except that the compensation is granted, awarded, or paid to the*
15 *person after the person’s retirement from the corporation for*
16 *services rendered in all capacities to the corporation and to its*
17 *subsidiaries prior to his or her retirement.*

18 (4) *“Loan”* as used in paragraph (5) of subdivision (a) excludes
19 an advance for expenses, the foreign corporation’s payment of life
20 insurance premiums, and an advance of litigation expenses, in each
21 instance as permitted according to the applicable law of the state
22 or place of incorporation or organization of the foreign corporation.

23 (c) This statement shall be available and open to the public for
24 inspection. The Secretary of State shall provide access to all
25 information contained in this statement by means of an online
26 database.

27 (d) A foreign corporation shall certify that the information it
28 provides pursuant to this section is true and correct. No claim may
29 be made against the state for inaccurate information contained in
30 statements filed under this section with the Secretary of State.

31 ~~SECTION 1. It is the intent of the Legislature to enact~~
32 ~~legislation that would require publicly traded corporations to report~~
33 ~~to the Secretary of State all forms of compensation, including~~
34 ~~pensions and benefits from other types of employee benefit plans,~~
35 ~~to the five most highly compensated retired executive officers of~~
36 ~~the corporation.~~