

AMENDED IN ASSEMBLY APRIL 24, 2014

AMENDED IN ASSEMBLY APRIL 9, 2014

AMENDED IN ASSEMBLY MARCH 26, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2096**

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**Introduced by Assembly Member Muratsuchi**

February 20, 2014

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An act to amend Sections 25112 and 25503 of the Corporations Code, relating to securities transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2096, as amended, Muratsuchi. Securities transactions: qualification requirements: notification.

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 Business Oversight, or to be exempt from the qualification requirements. Under existing law, a security issued either by the issuer of a security registered under a designated provision of the federal law or issued by an investment company registered under other specified federal law, and which is not eligible for qualification under existing law, may be qualified by notification by making a specified application, and providing certain documents and additional information.

Existing law imposes liability for specified damages on a person who offers or sells a security if the sale is not qualified, violates a condition of qualification under the act, or violates an order suspending trading issued by the commissioner.

This bill, in addition, would authorize qualification by notification for any offer or sale of a security, if, among other requirements, the offering meets the requirements for a federal exemption for limited offerings and sales of securities not exceeding \$1,000,000, and the aggregate amount of securities sold to any investor by the issuer does not exceed certain amounts within a 12-month time period, except as specified.

This bill would require a court to award attorney’s fees and costs to a prevailing purchaser in an action brought against a person who makes a sale in violation of the qualification provisions prescribed in the bill, and would authorize the court to award treble or punitive damages.

Vote: majority. 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 25112 of the Corporations Code is  
 2 amended to read:  
 3 25112. (a) (1) Any security issued by a person which is the  
 4 issuer of any security registered under Section 12 of the Securities  
 5 Exchange Act of 1934 or issued, by an investment company  
 6 registered under the Investment Company Act of 1940, and which  
 7 is not eligible for qualification under Section 25111, may be  
 8 qualified by notification under this section.  
 9 (2) Any offer or sale of any security that meets all of the  
 10 following criteria may be qualified by notification under this  
 11 section:  
 12 (A) The aggregate amount of securities sold to all investors by  
 13 the issuer within any 12-month period is not more than one million  
 14 dollars (\$1,000,000).  
 15 (B) The aggregate amount of securities sold to any investor by  
 16 the issuer, including any amount sold during the 12-month period  
 17 preceding the date of the transaction, does not exceed five thousand  
 18 dollars (\$5,000), or a greater amount as the commissioner may  
 19 provide by rule or order, unless the investor is an accredited  
 20 investor as defined in Section 230.501 of Title 17 of the Code of  
 21 Federal Regulations.  
 22 (C) The offering meets the requirements of the federal  
 23 exemption for limited offerings and sales of securities not

1 exceeding one million dollars (\$1,000,000) in Section 230.504 of  
2 Title 17 of the Code of Federal Regulations.

3 (D) The issuer files with the ~~administrator~~, *commissioner*,  
4 provides to investors, and makes available to potential investors  
5 the following:

6 (i) A Small Company Offering Registration disclosure document  
7 on Form U-7, as adopted by the North American Securities  
8 Administrators Association, prior to the commencement of the  
9 offering of securities.

10 (ii) For offerings that, together with all other offerings of the  
11 issuer within the preceding 12-month period, have, in the aggregate,  
12 offering amounts of one hundred thousand dollars (\$100,000) or  
13 less, the following:

14 (I) The income tax returns filed by the issuer for the most  
15 recently completed year, if any.

16 (II) The financial statements of the issuer certified by the  
17 principal executive officer of the issuer to be true and complete in  
18 all material respects.

19 (iii) For offerings that, together with all other offerings of the  
20 issuer within the preceding 12-month period, have, in the aggregate,  
21 offering amounts of more than one hundred thousand dollars  
22 (\$100,000), but not more than five hundred thousand dollars  
23 (\$500,000), all financial statements reviewed by a public  
24 accountant who is independent of the issuer, using professional  
25 standards and procedures for the review or standards and  
26 procedures established by the commissioner by rule.

27 (iv) For offerings that, together with all other offerings of the  
28 issuer within the preceding 12-month period, have, in the aggregate,  
29 offering amounts of more than five hundred thousand dollars  
30 (\$500,000), audited financial statements.

31 (E) The issuer sets aside in a separate bank account all funds  
32 raised as part of the offering to be held until the time that the  
33 minimum offering amount is reached. If the minimum offering  
34 amount is not reached within one year of the effective date of the  
35 offering, the issuer shall return all funds to investors.

36 (F) The issuer, a predecessor of the issuer, an affiliated issuer,  
37 a director, executive officer, or other officer participating in the  
38 offering, a general partner or managing member of the issuer, a  
39 beneficial owner of 20 percent or more of the issuer's outstanding  
40 voting equity securities, calculated on the basis of voting power,

1 a promoter connected with the issuer in any capacity at the time  
2 of the sale, an investment manager of an issuer that is a pooled  
3 investment fund, a person that has been or will be paid, directly  
4 or indirectly, remuneration for solicitation of purchasers in  
5 connection with the sale of securities, a general partner or managing  
6 member of the investment manager or solicitor, or any director,  
7 executive officer, or other officer participating in the offering of  
8 the investment manager or solicitor or general partner or managing  
9 member of the investment manager or solicitor would not be  
10 disqualified as a “bad actor” under subdivision (d) of Section  
11 230.506 of Title 17 of the Code of Federal Regulations.

12 (G) Any other requirement set forth by rule adopted by the  
13 commissioner.

14 (b) An application for qualification under this section shall  
15 contain such information and be accompanied by such documents  
16 as shall be required by rule of the commissioner, in addition to the  
17 information specified in Section 25160 and the consent to service  
18 of process required by Section 25165. For this purpose, the  
19 commissioner may classify issuers and types of securities.

20 (c) If no stop order or order under subdivision (a) of Section  
21 25143 is in effect under this law, qualification of the sale of the  
22 securities under this section automatically becomes effective (and  
23 the securities may be offered and sold in accordance with the terms  
24 of the application as amended) at 12 o'clock noon California time  
25 of the 10th business day after the filing of the application or the  
26 last amendment thereto or at such earlier time as the commissioner  
27 determines.

28 SEC. 2. Section 25503 of the Corporations Code is amended  
29 to read:

30 25503. (a) Any person who violates Section 25110, 25130 or  
31 25133, or a condition of qualification under Chapter 2  
32 (commencing with Section 25110) of this part, imposed pursuant  
33 to Section 25141, or an order suspending trading issued pursuant  
34 to Section 25219, shall be liable to any person acquiring from him  
35 the security sold in violation of that section, who may sue to  
36 recover the consideration he paid for such security with interest  
37 thereon at the legal rate, less the amount of any income received  
38 therefrom, upon the tender of the security, or for damages, if he  
39 no longer owns the security, or if the consideration given for the  
40 security is not capable of being returned. Damages, if the plaintiff

1 no longer owns the security, shall be equal to the difference  
2 between the plaintiff's purchase price plus interest at the legal rate  
3 from the date of purchase and the value of the security at the time  
4 it was disposed of by the plaintiff plus the amount of any income  
5 received therefrom by the plaintiff.

6 (b) If the consideration given for the security is not capable of  
7 being returned, damages shall be equal to the value of that  
8 consideration plus interest at the legal rate from the date of  
9 purchase, provided the security is tendered; and if the plaintiff no  
10 longer owns the security, damages in such case shall be equal to  
11 the difference between the value of the consideration given for the  
12 security plus interest at the legal rate from the date of purchase  
13 and the value of the security at the time it was disposed of by the  
14 plaintiff plus the amount of any income received therefrom by the  
15 plaintiff. A person who violates Section 25120 or a condition of  
16 qualification under Chapter 3 (commencing with Section 25120)  
17 of this part imposed pursuant to Section 25141, shall be liable to  
18 any person acquiring from him the security sold in violation of  
19 that section who may sue to recover the difference between the  
20 value of the consideration received by the seller and the value of  
21 the security at the time it was received by the buyer, with interest  
22 thereon at the legal rate from the date of purchase. A person on  
23 whose behalf an offering is made and any underwriter of the  
24 offering, whether on a best efforts or a firm commitment basis,  
25 shall be jointly and severally liable under this section. However,  
26 in no event shall an underwriter be liable, unless the underwriter  
27 knowingly received from the issuer for acting as an underwriter  
28 some benefit, directly or indirectly, in which all other underwriters  
29 similarly situated did not share in proportion to their respective  
30 interest in the underwriting, in any suit or suits authorized under  
31 this section, for damages in excess of the total price at which the  
32 securities underwritten by the underwriter and distributed to the  
33 public were offered to the public. A tender specified in this section  
34 may be made at any time before entry of judgment. A person shall  
35 not be liable under this section for violation of Section 25110,  
36 25120 or 25130 if the sale of the security is qualified prior to the  
37 payment or receipt of any part of the consideration for the security  
38 sold, even though an offer to sell or a contract of sale may have  
39 been made or entered into without qualification.

1 (c) The court shall award attorney's fees and costs to a prevailing  
2 purchaser in an action brought against any person who violates  
3 Section 25110 for failure to comply with paragraph (2) of  
4 subdivision (a) of Section 25112, and may award treble or punitive  
5 damages.

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