

AMENDED IN SENATE AUGUST 4, 2014

AMENDED IN SENATE JUNE 9, 2014

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

Introduced by Assembly Member Muratsuchi

February 20, 2014

An act to amend Sections ~~25112~~ 25102 and 25503 of the Corporations Code, relating to securities transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2096, as amended, Muratsuchi. Securities transactions: ~~qualification requirements: notification.~~ *qualification: exemption: small company.*

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 exempts from qualification, offers and sales of securities in specified transactions.

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,~~ bill would authorize exempt from 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.~~ period.

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 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

1 securities is qualified under this law unless the sale of securities
2 is exempt from the qualification by this section, Section 25100,
3 or 25105.

4 (b) Any offer (but not a sale) of a security for which a
5 registration statement has been filed under the Securities Act of
6 1933 but has not yet become effective, or for which an offering
7 statement under Regulation A has been filed but has not yet been
8 qualified, if no stop order or refusal order is in effect and no public
9 proceeding or examination looking ~~towards~~ *toward* an order is
10 pending under Section 8 of the act and no order under Section
11 25140 or subdivision (a) of Section 25143 is in effect under this
12 law.

13 (c) Any offer (but not a sale) and the execution and delivery of
14 any agreement for the sale of securities pursuant to the offer as
15 may be permitted by the commissioner upon application. Any
16 negotiating permit under this subdivision shall be conditioned to
17 the effect that none of the securities may be issued and none of
18 the consideration therefor may be received or accepted until the
19 sale of the securities is qualified under this law.

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

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

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

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

32 (2) All purchasers either have a preexisting personal or business
33 relationship with the offeror or any of its partners, officers,
34 directors or controlling persons, or managers (as appointed or
35 elected by the members) if the offeror is a limited liability
36 company, or by reason of their business or financial experience or
37 the business or financial experience of their professional advisers
38 who are unaffiliated with and who are not compensated by the
39 issuer or any affiliate or selling agent of the issuer, directly or

1 indirectly, could be reasonably assumed to have the capacity to
 2 protect their own interests in connection with the transaction.

3 (3) Each purchaser represents that the purchaser is purchasing
 4 for the purchaser’s own account (or a trust account if the purchaser
 5 is a trustee) and not with a view to or for sale in connection with
 6 any distribution of the security.

7 (4) The offer and sale of the security is not accomplished by
 8 the publication of any advertisement. The number of purchasers
 9 referred to above is exclusive of any described in subdivision (i),
 10 any officer, director, or affiliate of the issuer, or manager (as
 11 appointed or elected by the members) if the issuer is a limited
 12 liability company, and any other purchaser who the commissioner
 13 designates by rule. For purposes of this section, a husband and
 14 wife (together with any custodian or trustee acting for the account
 15 of their minor children) are counted as one person and a
 16 partnership, corporation, or other organization that was not
 17 specifically formed for the purpose of purchasing the security
 18 offered in reliance upon this exemption, is counted as one person.
 19 The commissioner shall by rule require the issuer to file a notice
 20 of transactions under this subdivision.

21 The failure to file the notice or the failure to file the notice within
 22 the time specified by the rule of the commissioner shall not affect
 23 the availability of the exemption. Any issuer that fails to file the
 24 notice as provided by rule of the commissioner shall, within 15
 25 business days after discovery of the failure to file the notice or
 26 after demand by the commissioner, whichever occurs first, file the
 27 notice and pay to the commissioner a fee equal to the fee payable
 28 had the transaction been qualified under Section 25110. Neither
 29 the filing of the notice nor the failure by the commissioner to
 30 comment thereon precludes the commissioner from taking any
 31 action that the commissioner deems necessary or appropriate under
 32 this division with respect to the offer and sale of the securities.

33 (g) Any offer or sale of conditional sale agreements, equipment
 34 trust certificates, or certificates of interest or participation therein
 35 or partial assignments thereof, covering the purchase of railroad
 36 rolling stock or equipment or the purchase of motor vehicles,
 37 aircraft, or parts thereof, in a transaction not involving any public
 38 offering.

39 (h) Any offer or sale of voting common stock by a corporation
 40 incorporated in any state if, immediately after the proposed sale

1 and issuance, there will be only one class of stock of the
2 corporation outstanding that is owned beneficially by no more than
3 35 persons, provided all of the following requirements have been
4 met:

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

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

10 (A) Only assets (which may include cash) of an existing business
11 enterprise transferred to the issuer upon its initial organization, of
12 which all of the persons who are to receive the stock to be issued
13 pursuant to this exemption were owners during, and the enterprise
14 was operated for, a period of not less than one year immediately
15 preceding the proposed issuance, and the ownership of the
16 enterprise immediately prior to the proposed issuance was in the
17 same proportions as the shares of stock are to be issued.

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

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

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

27 (3) No promotional consideration has been given, paid, or
28 incurred in connection with the issuance. Promotional consideration
29 means any consideration paid directly or indirectly to a person
30 who, acting alone or in conjunction with one or more other persons,
31 takes the initiative in founding and organizing the business or
32 enterprise of an issuer for services rendered in connection with the
33 founding or organizing.

34 (4) A notice in a form prescribed by rule of the commissioner,
35 signed by an active member of the State Bar of California, is filed
36 with or mailed for filing to the commissioner not later than 10
37 business days after receipt of consideration for the securities by
38 the issuer. That notice shall contain an opinion of the member of
39 the State Bar of California that the exemption provided by this
40 subdivision is available for the offer and sale of the securities. The

1 failure to file the notice as required by this subdivision and the
2 rules of the commissioner shall not affect the availability of this
3 exemption. An issuer who fails to file the notice within the time
4 specified by this subdivision shall, within 15 business days after
5 discovery of the failure to file the notice or after demand by the
6 commissioner, whichever occurs first, file the notice and pay to
7 the commissioner a fee equal to the fee payable had the transaction
8 been qualified under Section 25110. The notice, except when filed
9 on behalf of a California corporation, shall be accompanied by an
10 irrevocable consent, in the form that the commissioner by rule
11 prescribes, appointing the commissioner or his or her successor in
12 office to be the issuer's attorney to receive service of any lawful
13 process in any noncriminal suit, action, or proceeding against it
14 or its successor that arises under this law or any rule or order
15 hereunder after the consent has been filed, with the same force and
16 validity as if served personally on the issuer. An issuer on whose
17 behalf a consent has been filed in connection with a previous
18 qualification or exemption from qualification under this law (or
19 application for a permit under any prior law if the application or
20 notice under this law states that the consent is still effective) need
21 not file another. Service may be made by leaving a copy of the
22 process in the office of the commissioner, but it is not effective
23 unless (A) the plaintiff, who may be the commissioner in a suit,
24 action, or proceeding instituted by him or her, forthwith sends
25 notice of the service and a copy of the process by registered or
26 certified mail to the defendant or respondent at its last address on
27 file with the commissioner, and (B) the plaintiff's affidavit of
28 compliance with this section is filed in the case on or before the
29 return day of the process, if any, or within the further time as the
30 court allows.

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

35 For the purposes of this subdivision, all securities held by a
36 husband and wife, whether or not jointly, shall be considered to
37 be owned by one person, and all securities held by a corporation
38 that has issued stock pursuant to this exemption shall be considered
39 to be held by the shareholders to whom it has issued the stock.

1 All stock issued by a corporation pursuant to this subdivision as
2 it existed prior to the effective date of the amendments to this
3 section made during the 1996 portion of the 1995–96 Regular
4 Session that required the issuer to have stamped or printed
5 prominently on the face of the stock certificate a legend in a form
6 prescribed by rule of the commissioner restricting transfer of the
7 stock in a manner provided for by that rule shall not be subject to
8 the transfer restriction legend requirement and, by operation of
9 law, the corporation is authorized to remove that transfer restriction
10 legend from the certificates of those shares of stock issued by the
11 corporation pursuant to this subdivision as it existed prior to the
12 effective date of the amendments to this section made during the
13 1996 portion of the 1995–96 Regular Session.

14 (i) Any offer or sale (1) to a bank, savings and loan association,
15 trust company, insurance company, investment company registered
16 under the Investment Company Act of 1940, pension or
17 profit-sharing trust (other than a pension or profit-sharing trust of
18 the issuer, a self-employed individual retirement plan, or individual
19 retirement account), or other institutional investor or governmental
20 agency or instrumentality that the commissioner may designate
21 by rule, whether the purchaser is acting for itself or as trustee, or
22 (2) to any corporation with outstanding securities registered under
23 Section 12 of the Securities Exchange Act of 1934 or any wholly
24 owned subsidiary of the corporation that after the offer and sale
25 will own directly or indirectly 100 percent of the outstanding
26 capital stock of the issuer, provided the purchaser represents that
27 it is purchasing for its own account (or for the trust account) for
28 investment and not with a view to or for sale in connection with
29 any distribution of the security.

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

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

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

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

39 (C) Have been found by the commissioner upon written
40 application to be substantially engaged in the business of drilling

1 for, producing, or refining oil or gas so as not to require the
2 protection provided by this law (which finding shall be effective
3 until rescinded).

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

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

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

18 (m) Any offer or sale of a stock to a pension, profit-sharing,
19 stock bonus, or employee stock ownership plan, provided that (1)
20 the plan meets the requirements for qualification under Section
21 401 of the Internal Revenue Code, and (2) the employees are not
22 required or permitted individually to make any contributions to
23 the plan. The exemption provided by this subdivision shall not be
24 affected by whether the stock is contributed to the plan, purchased
25 from the issuer with contributions by the issuer or an affiliate of
26 the issuer, or purchased from the issuer with funds borrowed from
27 the issuer, an affiliate of the issuer, or any other lender.

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

31 (1) The issuer is (A) a California corporation or foreign
32 corporation that, at the time of the filing of the notice required
33 under this subdivision, is subject to Section 2115, or (B) any other
34 form of business entity, including without limitation a partnership
35 or trust organized under the laws of this state. The exemption
36 provided by this subdivision is not available to a “blind pool”
37 issuer, as that term is defined by the commissioner, or to an
38 investment company subject to the Investment Company Act of
39 1940.

1 (2) Sales of securities are made only to qualified purchasers or
2 other persons the issuer reasonably believes, after reasonable
3 inquiry, to be qualified purchasers. A corporation, partnership, or
4 other organization specifically formed for the purpose of acquiring
5 the securities offered by the issuer in reliance upon this exemption
6 may be a qualified purchaser if each of the equity owners of the
7 corporation, partnership, or other organization is a qualified
8 purchaser. Qualified purchasers include the following:

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

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

13 (C) A pension or profit-sharing trust of the issuer, a
14 self-employed individual retirement plan, or an individual
15 retirement account, if the investment decisions made on behalf of
16 the trust, plan, or account are made solely by persons who are
17 qualified purchasers.

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

23 (E) With respect to the offer and sale of one class of voting
24 common stock of an issuer or of preferred stock of an issuer
25 entitling the holder thereof to at least the same voting rights as the
26 issuer's one class of voting common stock, provided that the issuer
27 has only one-class voting common stock outstanding upon
28 consummation of the offer and sale, a natural person who, either
29 individually or jointly with the person's spouse, (i) has a minimum
30 net worth of two hundred fifty thousand dollars—~~(\$250,000)~~
31 *(\$250,000)*, and had, during the immediately preceding tax year,
32 gross income in excess of one hundred thousand dollars (\$100,000)
33 and reasonably expects gross income in excess of one hundred
34 thousand dollars (\$100,000) during the current tax year or (ii) has
35 a minimum net worth of five hundred thousand dollars (\$500,000).
36 "Net worth" shall be determined exclusive of home, home
37 furnishings, and automobiles. Other assets included in the
38 computation of net worth may be valued at fair market value.

39 Each natural person specified above, by reason of his or her
40 business or financial experience, or the business or financial

1 experience of his or her professional adviser, who is unaffiliated
2 with and who is not compensated, directly or indirectly, by the
3 issuer or any affiliate or selling agent of the issuer, can be
4 reasonably assumed to have the capacity to protect his or her
5 interests in connection with the transaction. The amount of the
6 investment of each natural person shall not exceed 10 percent of
7 the net worth, as determined by this subparagraph, of that natural
8 person.

9 (F) Any other purchaser designated as qualified by rule of the
10 commissioner.

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

15 (4) Each natural person purchaser, including a corporation,
16 partnership, or other organization specifically formed by natural
17 persons for the purpose of acquiring the securities offered by the
18 issuer, receives, at least five business days before securities are
19 sold to, or a commitment to purchase is accepted from, the
20 purchaser, a written offering disclosure statement that shall meet
21 the disclosure requirements of Regulation D (17 C.F.R. 230.501
22 et seq.), and any other information as may be prescribed by rule
23 of the commissioner, provided that the issuer shall not be obligated
24 pursuant to this paragraph to provide this disclosure statement to
25 a natural person qualified under Section 260.102.13 of Title 10 of
26 the California Code of Regulations. The offer or sale of securities
27 pursuant to a disclosure statement required by this paragraph that
28 is in violation of Section 25401, or that fails to meet the disclosure
29 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall
30 not render unavailable to the issuer the claim of an exemption from
31 Section 25110 afforded by this subdivision. This paragraph does
32 not impose, directly or indirectly, any additional disclosure
33 obligation with respect to any other exemption from qualification
34 available under any other provision of this section.

35 (5) (A) A general announcement of proposed offering may be
36 published by written document only, provided that the general
37 announcement of proposed offering sets forth the following
38 required information:

- 39 (i) The name of the issuer of the securities.
40 (ii) The full title of the security to be issued.

1 (iii) The anticipated suitability standards for prospective
2 purchasers.

3 (iv) A statement that (I) no money or other consideration is
4 being solicited or will be accepted, (II) an indication of interest
5 made by a prospective purchaser involves no obligation or
6 commitment of any kind, and, if the issuer is required by paragraph
7 (4) to deliver a disclosure statement to prospective purchasers,
8 (III) no sales will be made or commitment to purchase accepted
9 until five business days after delivery of a disclosure statement
10 and subscription information to the prospective purchaser in
11 accordance with the requirements of this subdivision.

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

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

17 (B) The general announcement of proposed offering referred
18 to in subparagraph (A) may also set forth the following
19 information:

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

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

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

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

27 (D) Dissemination of the general announcement of proposed
28 offering to persons who are not qualified purchasers, without more,
29 shall not disqualify the issuer from claiming the exemption under
30 this subdivision.

31 (6) No telephone solicitation shall be permitted until the issuer
32 has determined that the prospective purchaser to be solicited is a
33 qualified purchaser.

34 (7) The issuer files a notice of transaction under this subdivision
35 both (A) concurrent with the publication of a general announcement
36 of proposed offering or at the time of the initial offer of the
37 securities, whichever occurs first, accompanied by a filing fee, and
38 (B) within 10 business days following the close or abandonment
39 of the offering, but in no case more than 210 days from the date
40 of filing the first notice. The first notice of transaction under

1 subparagraph (A) shall contain an undertaking, in a form acceptable
2 to the commissioner, to deliver any disclosure statement required
3 by paragraph (4) to be delivered to prospective purchasers, and
4 any supplement thereto, to the commissioner within 10 days of
5 the commissioner's request for the information. The exemption
6 from qualification afforded by this subdivision is unavailable if
7 an issuer fails to file the first notice required under subparagraph
8 (A) or to pay the filing fee. The commissioner has the authority
9 to assess an administrative penalty of up to one thousand dollars
10 (\$1,000) against an issuer that fails to deliver the disclosure
11 statement required to be delivered to the commissioner upon the
12 commissioner's request within the time period set forth above.
13 Neither the filing of the disclosure statement nor the failure by the
14 commissioner to comment thereon precludes the commissioner
15 from taking any action deemed necessary or appropriate under this
16 division with respect to the offer and sale of the securities.

17 (o) An offer or sale of any security issued by a corporation or
18 limited liability company pursuant to a purchase plan or agreement,
19 or issued pursuant to an option plan or agreement, where the
20 security at the time of issuance or grant is exempt from registration
21 under the Securities Act of 1933, as amended, pursuant to Rule
22 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions
23 of which are hereby incorporated by reference into this section,
24 provided that (1) the terms of any purchase plan or agreement shall
25 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of
26 Title 10 of the California Code of Regulations, (2) the terms of
27 any option plan or agreement shall comply with Sections
28 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the
29 California Code of Regulations, and (3) the issuer files a notice of
30 transaction in accordance with rules adopted by the commissioner
31 no later than 30 days after the initial issuance of any security under
32 that plan, accompanied by a filing fee as prescribed by subdivision
33 (y) of Section 25608. The failure to file the notice of transaction
34 within the time specified in this subdivision shall not affect the
35 availability of this exemption. An issuer that fails to file the notice
36 shall, within 15 business days after discovery of the failure to file
37 the notice or after demand by the commissioner, whichever occurs
38 first, file the notice and pay the commissioner a fee equal to the
39 maximum aggregate fee payable had the transaction been qualified
40 under Section 25110.

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

6 (p) An offer or sale of nonredeemable securities to accredited
7 investors (Section 28031) by a person licensed under the Capital
8 Access Company Law (Division 3 (commencing with Section
9 28000) of Title 4), provided that all purchasers either (1) have a
10 preexisting personal or business relationship with the offeror or
11 any of its partners, officers, directors, controlling persons, or
12 managers (as appointed or elected by the members), or (2) by
13 reason of their business or financial experience or the business or
14 financial experience of their professional advisers who are
15 unaffiliated with and who are not compensated by the issuer or
16 any affiliate or selling agent of the issuer, directly or indirectly,
17 could be reasonably assumed to have the capacity to protect their
18 own interests in connection with the transaction. All nonredeemable
19 securities shall be evidenced by certificates that shall have stamped
20 or printed prominently on their face a legend in a form to be
21 prescribed by rule or order of the commissioner restricting transfer
22 of the securities in the manner as the rule or order provides. The
23 exemption under this subdivision shall not be available for any
24 offering that is exempt or asserted to be exempt pursuant to Section
25 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11))
26 or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is
27 conducted by means of any form of general solicitation or general
28 advertising.

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

32 (1) Sales of securities described in this subdivision are made
33 only to qualified purchasers or other persons the issuer reasonably
34 believes, after reasonable inquiry, to be qualified purchasers. A
35 corporation, partnership, or other organization specifically formed
36 for the purpose of acquiring the securities offered by the issuer in
37 reliance upon this exemption may be a qualified purchaser only if
38 each of the equity owners of the corporation, partnership, or other
39 organization is a qualified purchaser. Qualified purchasers include
40 the following:

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

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

5 (C) A pension or profit-sharing trust of the issuer, a
6 self-employed individual retirement plan, or an individual
7 retirement account, if the investment decisions made on behalf of
8 the trust, plan, or account are made solely by persons who are
9 qualified purchasers.

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

15 (E) A natural person who, either individually or jointly with the
16 person's spouse, (i) has a minimum net worth of one hundred fifty
17 thousand dollars (\$150,000) and had, during the immediately
18 preceding tax year, gross income in excess of one hundred thousand
19 dollars (\$100,000) and reasonably expects gross income in excess
20 of one hundred thousand dollars (\$100,000) during the current tax
21 year or (ii) has a minimum net worth of two hundred fifty thousand
22 dollars (\$250,000). "Net worth" shall be determined exclusive of
23 home, home furnishings, and automobiles. Other assets included
24 in the computation of net worth may be valued at fair market value.

25 Each natural person specified above, by reason of his or her
26 business or financial experience, or the business or financial
27 experience of his or her professional adviser, who is unaffiliated
28 with and who is not compensated, directly or indirectly, by the
29 issuer or any affiliate or selling agent of the issuer, can be
30 reasonably assumed to have the capacity to protect his or her
31 interests in connection with the transaction.

32 The amount of the investment of each natural person shall not
33 exceed 10 percent of the net worth, as determined by this
34 subdivision, of that natural person.

35 (F) Any other purchaser designated as qualified by rule of the
36 commissioner.

37 (2) Each purchaser represents that the purchaser is purchasing
38 for the purchaser's own account (or trust account, if the purchaser
39 is a trustee) and not with a view to or for sale in connection with
40 a distribution of the security.

1 (3) Each natural person purchaser, including a corporation,
2 partnership, or other organization specifically formed by natural
3 persons for the purpose of acquiring the securities offered by the
4 issuer, receives, at least five business days before securities
5 described in this subdivision are sold to, or a commitment to
6 purchase is accepted from, the purchaser, the following information
7 in writing:

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

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

12 (C) A description of the issuer's type of business organization
13 and the state in which the issuer is organized or incorporated.

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

15 (E) If the issuer retains ownership or becomes the beneficiary
16 of the insurance policy, an audit report of an independent certified
17 public accountant together with a balance sheet and related
18 statements of income, retained earnings, and cashflows that reflect
19 the issuer's financial position, the results of the issuer's operations,
20 and the issuer's cashflows as of a date within 15 months before
21 the date of the initial issuance of the securities described in this
22 subdivision. The financial statements listed in this subparagraph
23 shall be prepared in conformity with generally accepted accounting
24 principles. If the date of the audit report is more than 120 days
25 before the date of the initial issuance of the securities described
26 in this subdivision, the issuer shall provide unaudited interim
27 financial statements.

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

30 (G) A description of any order, judgment, or decree that is final
31 as to the issuing entity of any state, federal, or foreign country
32 governmental agency or administrator, or of any state, federal, or
33 foreign country court of competent jurisdiction (i) revoking,
34 suspending, denying, or censuring for cause any license, permit,
35 or other authority of the issuer or of any director, officer, partner,
36 member, trustee, or person owning or controlling, directly or
37 indirectly, 10 percent or more of the outstanding interest or equity
38 securities of the issuer, to engage in the securities, commodities,
39 franchise, insurance, real estate, or lending business or in the offer
40 or sale of securities, commodities, franchises, insurance, real estate,

1 or ~~loans~~; *loans*; (ii) permanently restraining, enjoining, barring,
2 suspending, or censuring any such person from engaging in or
3 continuing any conduct, practice, or employment in connection
4 with the offer or sale of securities, commodities, franchises,
5 insurance, real estate, or ~~loans~~; *loans*; (iii) convicting any such
6 person of, or pleading nolo contendere by any such person to, any
7 felony or misdemeanor involving a security, commodity, franchise,
8 insurance, real estate, or loan, or any aspect of the securities,
9 commodities, franchise, insurance, real estate, or lending business,
10 or involving dishonesty, fraud, deceit, embezzlement, fraudulent
11 conversion, or misappropriation of ~~property~~; *property*; or (iv)
12 holding any such person liable in a civil action involving breach
13 of a fiduciary duty, fraud, deceit, embezzlement, fraudulent
14 conversion, or misappropriation of property. This subparagraph
15 does not apply to any order, judgment, or decree that has been
16 vacated, overturned, or is more than 10 years old.

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

19 (I) The name, address, and telephone number of the issuing
20 insurance company, and the name, address, and telephone number
21 of the state or foreign country regulator of the insurance company.

22 (J) The total face value of the insurance policy and the
23 percentage of the insurance policy the purchaser will own.

24 (K) The insurance policy number, issue date, and type.

25 (L) If a group insurance policy, the name, address, and telephone
26 number of the group, and, if applicable, the material terms and
27 conditions of converting the policy to an individual policy,
28 including the amount of increased premiums.

29 (M) If a term insurance policy, the term and the name, address,
30 and telephone number of the person who will be responsible for
31 renewing the policy if necessary.

32 (N) That the insurance policy is beyond the state statute for
33 contestability and the reason therefor.

34 (O) The insurance policy premiums and terms of premium
35 payments.

36 (P) The amount of the purchaser's moneys that will be set aside
37 to pay premiums.

38 (Q) The name, address, and telephone number of the person
39 who will be the insurance policy owner and the person who will
40 be responsible for paying premiums.

1 (R) The date on which the purchaser will be required to pay
2 premiums and the amount of the premium, if known.

3 (S) A statement to the effect that any projected rate of return to
4 the purchaser from the purchase of a viatical or life settlement
5 contract or a fractionalized or pooled interest therein is based on
6 an estimated life expectancy for the person insured under the life
7 insurance policy; that the return on the purchase may vary
8 substantially from the expected rate of return based upon the actual
9 life expectancy of the insured that may be less than, equal to, or
10 may greatly exceed the estimated life expectancy; and that the rate
11 of return would be higher if the actual life expectancy were less
12 than, and lower if the actual life expectancy were greater ~~than~~ *than*,
13 the estimated life expectancy of the insured at the time the viatical
14 or life settlement contract was closed.

15 (T) A statement that the purchaser should consult with his or
16 her tax adviser regarding the tax consequences of the purchase of
17 the viatical or life settlement contract or fractionalized or pooled
18 interest therein and, if the purchaser is using retirement funds or
19 accounts for that purchase, whether or not any adverse tax
20 consequences might result from the use of those funds for the
21 purchase of that investment.

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

24 *(r) (1) (A) An offer or sale of a security by an issuer using any*
25 *form of general solicitation or general advertising, as specified*
26 *in Rule 502(c) of Regulation D under the Securities Act of 1933*
27 *(17 C.F.R. 230.502(c)), except as provided in subparagraph (B).*

28 *(B) An offer of a security made by means of an unsolicited*
29 *telephone call to a person's residence or cellular telephone.*

30 *(2) In order for the exemption under this subdivision to apply,*
31 *all of the following shall be satisfied:*

32 *(A) The aggregate amount of securities sold to all investors by*
33 *the issuer within any 12-month period is not more than one million*
34 *dollars (\$1,000,000).*

35 *(B) The aggregate amount of securities sold to any investor in*
36 *reliance on this subdivision, including any amount sold during the*
37 *12-month period preceding the date of the transaction, does not*
38 *exceed the lesser of five thousand dollars (\$5,000) or 10 percent*
39 *of the net worth of that natural person, or any amount as the*
40 *commissioner may provide by rule or order. "Net worth" shall be*

1 *determined exclusive of home, home furnishings, and automobiles.*
2 *Other assets included in the computation of net worth may be*
3 *valued at fair market value.*

4 *(C) The issuer has taken reasonable steps to ensure that each*
5 *investor who is a natural person who is not an accredited investor;*
6 *as defined in Section 230.501 of Title 17 of the Code of Federal*
7 *Regulations, either alone or with the investor's purchaser*
8 *representative or representatives, has sufficient knowledge and*
9 *experience in financial and business matters that the investor is*
10 *capable of evaluating the merits and risks of the prospective*
11 *investment.*

12 *(D) The offering meets the requirements of the federal exemption*
13 *for limited offerings and sales of securities not exceeding one*
14 *million dollars (\$1,000,000) in Section 230.504 of Title 17 of the*
15 *Code of Federal Regulations.*

16 *(E) The issuer provides to investors, and makes available to*
17 *potential investors the following:*

18 *(i) A Small Company Offering Registration disclosure document*
19 *on Form U-7, as adopted by the North American Securities*
20 *Administrators Association, prior to the commencement of the*
21 *offering of securities. The issuer shall ensure that the cover page*
22 *of Form U-7 includes all of the following statements, in bold*
23 *typeface no smaller than 12-point type:*

24 *(I) The Commissioner of Business Oversight has in no way*
25 *passed upon the merits or qualifications of, or recommended or*
26 *given approval to, any person, security, or transaction associated*
27 *with this offering.*

28 *(II) The company described in this disclosure form is seeking*
29 *to raise a minimum offering of [insert minimum offering amount].*

30 *(III) If the sum of the investment commitments received by the*
31 *company does not equal or exceed the minimum offering amount*
32 *by [insert date] your investment in the company will be returned*
33 *to you.*

34 *(ii) For offerings that, together with all other offerings of the*
35 *issuer within the preceding 12-month period, have, in the*
36 *aggregate, offering amounts of one hundred thousand dollars*
37 *(\$100,000) or less, the following:*

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

1 (ii) *The financial statements of the issuer certified by the*
2 *principal executive officer of the issuer to be true and complete in*
3 *all material respects.*

4 (iii) *For offerings that, together with all other offerings of the*
5 *issuer within the preceding 12-month period, have, in the*
6 *aggregate, offering amounts of more than one hundred thousand*
7 *dollars (\$100,000), but not more than five hundred thousand*
8 *dollars (\$500,000), all financial statements reviewed by a public*
9 *accountant who is independent of the issuer, using professional*
10 *standards and procedures for the review or standards and*
11 *procedures established by the commissioner by rule.*

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

16 (F) *The issuer sets aside in a separate bank third-party escrow*
17 *account all funds raised as part of the offering, to be held in escrow*
18 *until the time that the minimum offering amount is reached. If the*
19 *minimum offering amount is not reached within one year of the*
20 *effective date of the offering, the issuer shall return all funds to*
21 *investors.*

22 (G) *Securities issued in reliance on this subdivision may not be*
23 *transferred by the purchaser of those securities during the 1-year*
24 *period beginning on the date of purchase, unless the securities are*
25 *transferred (i) to the issuer of the securities; (ii) to an accredited*
26 *investor; (iii) as part of an offering qualified with the commissioner*
27 *or registered with the United States Securities and Exchange*
28 *Commission; or (iv) to a member of the family of the purchaser*
29 *or the equivalent, or in connection with the death or divorce of*
30 *the purchaser or other similar circumstance, in the discretion of*
31 *the commissioner. Securities issued in reliance on this subdivision*
32 *shall be subject to any other limitations as the commissioner shall,*
33 *by rule, establish.*

34 (H) *The issuer, a predecessor of the issuer, an affiliated issuer,*
35 *a director, executive officer, or other officer participating in the*
36 *offering, a general partner or managing member of the issuer, a*
37 *beneficial owner of 20 percent or more of the issuer's outstanding*
38 *voting equity securities, calculated on the basis of voting power,*
39 *a promoter connected with the issuer in any capacity at the time*
40 *of the sale, an investment manager of an issuer that is a pooled*

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

10 (I) Any other requirement set forth by rule that is adopted by
 11 the commissioner.

12 ~~SECTION 1. Section 25112 of the Corporations Code is~~
 13 ~~amended to read:~~

14 ~~25112. (a) (1) Any security issued by a person which is the~~
 15 ~~issuer of any security registered under Section 12 of the Securities~~
 16 ~~Exchange Act of 1934 or issued by an investment company~~
 17 ~~registered under the Investment Company Act of 1940, and which~~
 18 ~~is not eligible for qualification under Section 25111, may be~~
 19 ~~qualified by notification under this section.~~

20 ~~(2) Any offer or sale of any security that meets all of the~~
 21 ~~following criteria may be qualified by notification under this~~
 22 ~~section:~~

23 ~~(A) The aggregate amount of securities sold to all investors by~~
 24 ~~the issuer within any 12-month period is not more than one million~~
 25 ~~dollars (\$1,000,000).~~

26 ~~(B) The aggregate amount of securities sold to any investor by~~
 27 ~~the issuer, including any amount sold during the 12-month period~~
 28 ~~preceding the date of the transaction, does not exceed five thousand~~
 29 ~~dollars (\$5,000), or a greater amount as the commissioner may~~
 30 ~~provide by rule or order, unless the investor is an accredited~~
 31 ~~investor as defined in Section 230.501 of Title 17 of the Code of~~
 32 ~~Federal Regulations.~~

33 ~~(C) The offering meets the requirements of the federal~~
 34 ~~exemption for limited offerings and sales of securities not~~
 35 ~~exceeding one million dollars (\$1,000,000) in Section 230.504 of~~
 36 ~~Title 17 of the Code of Federal Regulations.~~

37 ~~(D) The issuer files with the commissioner, provides to~~
 38 ~~investors, and makes available to potential investors the following:~~

39 ~~(i) A Small Company Offering Registration disclosure document~~
 40 ~~on Form U-7, as adopted by the North American Securities~~

1 Administrators Association, prior to the commencement of the
2 offering of securities. The issuer shall ensure that the cover page
3 of Form U-7 includes all of the following statements, in bold
4 typeface no smaller than 12-point type:

5 (I) ~~The Commissioner of Business Oversight has in no way~~
6 ~~passed upon the merits or qualifications of, or recommended or~~
7 ~~given approval to, any person, security, or transaction associated~~
8 ~~with this offering.~~

9 (II) ~~The company described in this disclosure form is seeking~~
10 ~~to raise a minimum offering of [insert minimum offering amount].~~

11 (III) ~~If the sum of the investment commitments received by the~~
12 ~~company does not equal or exceed the minimum offering amount~~
13 ~~by [insert date] your investment in the company will be returned~~
14 ~~to you.~~

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

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

21 (II) ~~The financial statements of the issuer certified by the~~
22 ~~principal executive officer of the issuer to be true and complete in~~
23 ~~all material respects.~~

24 (iii) ~~For offerings that, together with all other offerings of the~~
25 ~~issuer within the preceding 12-month period, have, in the aggregate,~~
26 ~~offering amounts of more than one hundred thousand dollars~~
27 ~~(\$100,000), but not more than five hundred thousand dollars~~
28 ~~(\$500,000), all financial statements reviewed by a public~~
29 ~~accountant who is independent of the issuer, using professional~~
30 ~~standards and procedures for the review or standards and~~
31 ~~procedures established by the commissioner by rule.~~

32 (iv) ~~For offerings that, together with all other offerings of the~~
33 ~~issuer within the preceding 12-month period, have, in the aggregate,~~
34 ~~offering amounts of more than five hundred thousand dollars~~
35 ~~(\$500,000), audited financial statements.~~

36 (E) ~~The issuer sets aside in a separate third-party escrow account~~
37 ~~all funds raised as part of the offering, to be held in escrow until~~
38 ~~the time that the minimum offering amount is reached. If the~~
39 ~~minimum offering amount is not reached within one year of the~~

1 ~~effective date of the offering, the issuer shall return all funds to~~
2 ~~investors.~~

3 ~~(F) The issuer, a predecessor of the issuer, an affiliated issuer,~~
4 ~~a director, executive officer, or other officer participating in the~~
5 ~~offering, a general partner or managing member of the issuer, a~~
6 ~~beneficial owner of 20 percent or more of the issuer's outstanding~~
7 ~~voting equity securities, calculated on the basis of voting power,~~
8 ~~a promoter connected with the issuer in any capacity at the time~~
9 ~~of the sale, an investment manager of an issuer that is a pooled~~
10 ~~investment fund, a person that has been or will be paid, directly~~
11 ~~or indirectly, remuneration for solicitation of purchasers in~~
12 ~~connection with the sale of securities, a general partner or managing~~
13 ~~member of the investment manager or solicitor, or any director,~~
14 ~~executive officer, or other officer participating in the offering of~~
15 ~~the investment manager or solicitor or general partner or managing~~
16 ~~member of the investment manager or solicitor would not be~~
17 ~~disqualified as a "bad actor" under subdivision (d) of Section~~
18 ~~230.506 of Title 17 of the Code of Federal Regulations.~~

19 ~~(G) Any other requirement set forth by rule adopted by the~~
20 ~~commissioner.~~

21 ~~(b) An application for qualification under this section shall~~
22 ~~contain all information and be accompanied by all documents as~~
23 ~~shall be required by rule of the commissioner, in addition to the~~
24 ~~information specified in Section 25160 and the consent to service~~
25 ~~of process required by Section 25165. For this purpose, the~~
26 ~~commissioner may classify issuers and types of securities.~~

27 ~~(c) If no stop order or order under subdivision (a) of Section~~
28 ~~25143 is in effect under this law, qualification of the sale of the~~
29 ~~securities under this section automatically becomes effective (and~~
30 ~~the securities may be offered and sold in accordance with the terms~~
31 ~~of the application as amended) at 12 p.m. California time of the~~
32 ~~10th business day after the filing of the application or the last~~
33 ~~amendment thereto or at an earlier time as the commissioner~~
34 ~~determines.~~

35 SEC. 2. Section 25503 of the Corporations Code is amended
36 to read:

37 25503. (a) Any person who violates Section 25110, 25130, or
38 25133, or a condition of qualification under Chapter 2
39 (commencing with Section 25110) of this part, imposed pursuant
40 to Section 25141, or an order suspending trading issued pursuant

1 to Section 25219, shall be liable to any person acquiring from him
2 the security sold in violation of that section, who may sue to
3 recover the consideration he paid for such security with interest
4 thereon at the legal rate, less the amount of any income received
5 therefrom, upon the tender of the security, or for damages, if he
6 no longer owns the security, or if the consideration given for the
7 security is not capable of being returned. Damages, if the plaintiff
8 no longer owns the security, shall be equal to the difference
9 between the plaintiff's purchase price plus interest at the legal rate
10 from the date of purchase and the value of the security at the time
11 it was disposed of by the plaintiff plus the amount of any income
12 received therefrom by the plaintiff.

13 (b) If the consideration given for the security is not capable of
14 being returned, damages shall be equal to the value of that
15 consideration plus interest at the legal rate from the date of
16 purchase, provided the security is tendered; and if the plaintiff no
17 longer owns the security, damages in such case shall be equal to
18 the difference between the value of the consideration given for the
19 security plus interest at the legal rate from the date of purchase
20 and the value of the security at the time it was disposed of by the
21 plaintiff plus the amount of any income received therefrom by the
22 plaintiff. A person who violates Section 25120 or a condition of
23 qualification under Chapter 3 (commencing with Section 25120)
24 of this part imposed pursuant to Section 25141, shall be liable to
25 any person acquiring from him the security sold in violation of
26 that section who may sue to recover the difference between the
27 value of the consideration received by the seller and the value of
28 the security at the time it was received by the buyer, with interest
29 thereon at the legal rate from the date of purchase. A person on
30 whose behalf an offering is made and any underwriter of the
31 offering, whether on a best efforts or a firm commitment basis,
32 shall be jointly and severally liable under this section. However,
33 in no event shall an underwriter be liable, unless the underwriter
34 knowingly received from the issuer for acting as an underwriter
35 some benefit, directly or indirectly, in which all other underwriters
36 similarly situated did not share in proportion to their respective
37 interest in the underwriting, in any suit or suits authorized under
38 this section, for damages in excess of the total price at which the
39 securities underwritten by the underwriter and distributed to the
40 public were offered to the public. A tender specified in this section

1 may be made at any time before entry of judgment. A person shall
2 not be liable under this section for violation of Section 25110,
3 25120, or 25130 if the sale of the security is qualified prior to the
4 payment or receipt of any part of the consideration for the security
5 sold, even though an offer to sell or a contract of sale may have
6 been made or entered into without qualification.

7 (c) The court shall award attorney’s fees and costs to a prevailing
8 purchaser in an action brought against any person who violates
9 Section 25110 for failure to comply with ~~paragraph (2) of~~
10 ~~subdivision (a) of Section 25112; subdivision (r) of Section 25102~~
11 and may award treble or punitive damages.