

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 667

Introduced by Assembly Member Wagner

February 24, 2015

An act to ~~amend Section 25004 of~~ *add Section 25206.1* to the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

AB 667, as amended, Wagner. Broker-dealers: *exemptions*: finders.

Under existing law, the Corporate Securities Law of 1968, the Commissioner of Business Oversight regulates the activities of a broker-dealer which is defined as, among other things, any person engaged in the business of effecting securities transactions in California for the account of others or his or her own account, and it specifies those persons or entities excluded from the definition. *Existing law requires, among other things, that a broker-dealer apply for and secure a certificate authorizing that person to act in that capacity, unless the person is exempted from this requirement, as prescribed. Existing law prohibits a person acting on behalf of a licensed broker-dealer or an issuer, from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security in this state unless the broker-dealer and agent have complied with certain rules.*

This bill would exempt from those provisions an individual who is a finder, as defined, who satisfies specified requirements, including, among other things, filing an initial statement of information with the Commissioner of Business Oversight and paying a filing fee.

~~This bill would add to the persons excluded from the definition of a broker-dealer an individual who is a finder, as defined, who satisfied~~

~~specified requirements, including, among other things, filing an initial statement of information with the Department of Business Oversight and paying a filing fee.~~

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 25206.1 is added to the Corporations*
2 *Code, to read:*

3 *25206.1. (a) For purposes of this section, a “finder” is a*
4 *natural person who, for direct or indirect compensation, introduces*
5 *or refers one or more accredited investors, as that term is defined*
6 *in Rule 501(a) of Regulation D under the Securities Act of 1933*
7 *(17 C.F.R. 230.501(a)), to an issuer or an issuer to one or more*
8 *accredited investors, solely for the purpose of a potential offer or*
9 *sale of securities of the issuer in an issuer transaction in this state,*
10 *and who does not do any of the following:*

11 *(1) Provide services to an issuer for a transaction or a series*
12 *of related transactions for the offer or sale of securities of the*
13 *issuer that exceeds a securities purchase price of fifteen million*
14 *dollars (\$15,000,000) in the aggregate.*

15 *(2) Participate in negotiating any of the terms of the offer or*
16 *sale of the securities.*

17 *(3) Advise any party to the transaction regarding the value of*
18 *the securities or the advisability of investing in, purchasing, or*
19 *selling the securities.*

20 *(4) Conduct any due diligence on the part of any party to the*
21 *transaction.*

22 *(5) Sell or offer for sale in connection with the issuer transaction*
23 *any securities of the issuer that are owned, directly or indirectly,*
24 *by the finder.*

25 *(6) Receive, directly or indirectly, possession or custody of any*
26 *funds in connection with the issuer transaction.*

27 *(7) Knowingly receive compensation in connection with any*
28 *offer or sale of securities unless the sale is qualified under this*
29 *division or unless the security or the transaction is exempt or not*
30 *otherwise subject to qualification.*

31 *(8) Make any disclosure to a potential purchaser other than the*
32 *following:*

1 (A) *The name, address, and contact information of the issuer.*

2 (B) *The name, type, price, and aggregate amount of any*
3 *securities being offered in the issuer transaction.*

4 (C) *The issuer's industry, location, and years in business.*

5 (b) *A finder who satisfies all of the conditions set forth in*
6 *subdivisions (c) to (f), inclusive, shall be exempt from the*
7 *provisions of Section 25210.*

8 (c) (1) *The finder shall file with the commissioner before*
9 *engaging in any activities described in subdivision (a), on a form*
10 *prescribed by the commissioner, an initial statement of information*
11 *that shall include both of the following:*

12 (A) *The name and complete business or residential address of*
13 *the finder.*

14 (B) *The mailing address of the finder, if different from the*
15 *business or residential address.*

16 (2) *A filing fee of three hundred dollars (\$300) shall be*
17 *submitted to the Department of Business Oversight along with the*
18 *initial statement of information required by this subdivision.*

19 (d) (1) *In addition, the finder shall file with the commissioner*
20 *within 30 days of the anniversary of the finder's initial statement*
21 *of information required by subdivision (c), and annually thereafter,*
22 *on a form prescribed by the commissioner, a renewal statement*
23 *of information that includes all of the following:*

24 (A) *The following affirmative representations by the finder:*

25 (i) *The finder has complied and will continue to comply with*
26 *the conditions of subdivision (a).*

27 (ii) *The finder has not performed any acts or satisfied any*
28 *circumstances prohibited by Section 25212 or by Rule 506(d) of*
29 *Regulation D under the Securities Act of 1933 (17 C.F.R.*
30 *230.506(d)), and the finder has not been sanctioned by the*
31 *commissioner pursuant to Section 25212.*

32 (iii) *The finder has obtained the written agreement described*
33 *in subdivision (e) with respect to each transaction in which the*
34 *finder has participated in the prior 12 months.*

35 (B) *An indication by the finder as to whether the finder has*
36 *received transaction-based compensation that is subject to the*
37 *actual sale of securities by the issuer in any transaction in which*
38 *the finder has participated in the prior 12 months.*

39 (2) *A filing fee in the amount of two hundred seventy-five dollars*
40 *(\$275) shall accompany each renewal statement of information.*

1 (e) (1) Concurrently with each introduction, the finder shall
2 obtain the informed, written consent of each person introduced or
3 referred by the finder to an issuer, in a written agreement signed
4 by the finder, the issuer, and the person introduced or referred,
5 disclosing the following:

6 (A) The type and amount of compensation that has been or will
7 be paid to the finder in connection with the introduction or referral
8 and the conditions for payment of that compensation.

9 (B) That the finder is not providing advice to the issuer or any
10 person introduced or referred by the finder to an issuer as to the
11 value of the securities or as to the advisability of investing in,
12 purchasing, or selling the securities.

13 (C) Whether the finder is also an owner, directly or indirectly,
14 of the securities being offered or sold.

15 (D) Any actual and potential conflict of interest in connection
16 with the finder's activities related to the issuer transaction.

17 (E) That the parties to the agreement shall have the right to
18 pursue any available remedies at law or otherwise for any breach
19 of the agreement.

20 (2) To satisfy the requirements of this subdivision, the agreement
21 shall also include a representation by the person introduced or
22 referred by the finder to the issuer that the person is an accredited
23 investor, as that term is defined in Rule 501(a) of Regulation D
24 under the Securities Exchange Act of 1933 (17 C.F.R. 230.501(a)),
25 and that the person knowingly consents to the payment of the
26 compensation described therein.

27 (f) The finder shall maintain and preserve, for a period of five
28 years from the date of filing of the notice prescribed in subdivision
29 (d), a copy of the notice, the written agreement required in
30 subdivision (e), and all other records relating to any offer or sale
31 of securities in connection with which the finder receives
32 compensation, as the commissioner may by rule require. The finder,
33 upon written request of the commissioner, shall furnish to the
34 commissioner any records required to be maintained and preserved
35 under this subdivision.

36 (g) (1) A natural person who is engaged in the business of
37 effecting transactions in securities and is not otherwise exempt
38 from Section 25210 shall be subject to the requirements of Section
39 25210, if the individual fails to meet the definition of "finder" set

1 *forth in subdivision (a), or does not satisfy all the conditions set*
2 *forth in subdivisions (c) to (f), inclusive.*

3 *(2) In the event a natural person does not meet the definition*
4 *of “finder” set forth in subdivision (a) or does not satisfy all the*
5 *conditions set forth in subdivisions (c) to (f), inclusive, any person*
6 *introduced or referred by that natural person to an issuer, who*
7 *purchases securities of that issuer in an issuer transaction*
8 *following that introduction or referral, shall have the right to*
9 *pursue any applicable remedy afforded under state law, including,*
10 *without limitation, any applicable remedies pursuant to Section*
11 *25501.5.*

12 ~~SECTION 1.—Section 25004 of the Corporations Code is~~
13 ~~amended to read:~~

14 ~~25004. (a) “Broker-dealer” means any person engaged in the~~
15 ~~business of effecting transactions in securities in this state for the~~
16 ~~account of others or for his or her own account. “Broker-dealer”~~
17 ~~also includes a person engaged in the regular business of issuing~~
18 ~~or guaranteeing options with regard to securities not of his or her~~
19 ~~own issue. “Broker-dealer” does not include any of the following:~~

20 ~~(1) Any other issuer.~~

21 ~~(2) An agent, when an employee of a broker-dealer or issuer.~~

22 ~~(3) A bank, trust company, or savings and loan association.~~

23 ~~(4) Any person insofar as he or she buys or sells securities for~~
24 ~~his or her own account, either individually or in some fiduciary~~
25 ~~capacity, but not as part of a regular business.~~

26 ~~(5) A person who has no place of business in this state if he or~~
27 ~~she effects transactions in this state exclusively with (A) the issuers~~
28 ~~of the securities involved in the transactions or (B) other~~
29 ~~broker-dealers.~~

30 ~~(6) A broker licensed by the Real Estate Commissioner of this~~
31 ~~state when engaged in transactions in securities exempted by~~
32 ~~subdivision (f) or (p) of Section 25100 or in securities the issuance~~
33 ~~of which is subject to authorization by the Real Estate~~
34 ~~Commissioner of this state or in transactions exempted by~~
35 ~~subdivision (e) of Section 25102.~~

36 ~~(7) An exchange certified by the Commissioner pursuant to this~~
37 ~~section when it is issuing or guaranteeing options. The~~
38 ~~commissioner may by order certify an exchange under this section~~
39 ~~upon any conditions as he or she by rule or order deems~~
40 ~~appropriate, and upon notice and opportunity to be heard he or she~~

1 may suspend or revoke that certification, if he or she finds the
2 certification, suspension, or revocation to be in the public interest
3 and necessary and appropriate for the protection of investors.

4 (8) (A) Any finder who satisfies all of the conditions set forth
5 in subparagraphs (B) to (E), inclusive. For purposes of this section,
6 a “finder” is a natural person who, for direct or indirect
7 compensation, introduces or refers one or more accredited
8 investors, as that term is defined in Rule 501(a) of Regulation D
9 under the Securities Act of 1933 (17 C.F.R. 230.501(a)), to an
10 issuer or an issuer to one or more accredited investors, solely for
11 the purpose of a potential offer or sale of securities of the issuer
12 in an issuer transaction in this state, and who does not do any of
13 the following:

14 (i) Provide services to an issuer for a transaction or a series of
15 related transactions for the offer or sale of securities of the issuer
16 that exceeds a securities purchase price of twenty-five million
17 dollars (\$25,000,000) in the aggregate.

18 (ii) Participate in negotiating any of the terms of the offer or
19 sale of the securities.

20 (iii) Advise any party to the transaction regarding the value of
21 the securities or the advisability of investing in, purchasing, or
22 selling the securities.

23 (iv) Conduct any due diligence on the part of any party to the
24 transaction.

25 (v) Sell or offer for sale in connection with the issuer transaction
26 any securities of the issuer that are owned, directly or indirectly,
27 by the finder.

28 (vi) Receive, directly or indirectly, possession or custody of any
29 funds in connection with the issuer transaction.

30 (vii) Knowingly receive compensation in connection with any
31 offer or sale of securities unless the sale is qualified under this
32 division or unless the security or the transaction is exempt or not
33 otherwise subject to qualification.

34 (viii) Make any disclosure to a potential purchaser other than
35 the following:

36 (I) The name, address, and contact information of the issuer.

37 (II) The name, type, price, and aggregate amount of any
38 securities being offered in the issuer transaction.

39 (III) The issuer’s industry, location, and years in business.

1 ~~(B) (i) The finder shall file with the Department of Business~~
2 ~~Oversight before engaging in any activities described in~~
3 ~~subparagraph (A), on a form prescribed by the commissioner, an~~
4 ~~initial statement of information that shall include both of the~~
5 ~~following:~~
6 ~~(I) The name and complete business or residential address of~~
7 ~~the finder.~~
8 ~~(II) The mailing address of the finder, if different from the~~
9 ~~business or residential address.~~
10 ~~(ii) A filing fee of not more than three hundred dollars (\$300)~~
11 ~~may be required to be submitted, as determined by the~~
12 ~~commissioner by rule, to the Department of Business Oversight~~
13 ~~along with the initial statement of information required by this~~
14 ~~subparagraph.~~
15 ~~(C) (i) For each issuer transaction, the finder shall file with the~~
16 ~~Department of Business Oversight, on a form prescribed by the~~
17 ~~commissioner, a notice that shall include all of the following:~~
18 ~~(I) The following affirmative representations by the finder:~~
19 ~~(ia) The finder has complied and will continue to comply with~~
20 ~~the provisions of subparagraph (A):~~
21 ~~(ib) The finder has not performed any acts or satisfied any~~
22 ~~circumstances prohibited by Section 25212, nor been sanctioned~~
23 ~~by the commissioner pursuant to Section 25212.~~
24 ~~(ic) The finder has obtained the written agreement described in~~
25 ~~subparagraph (D):~~
26 ~~(II) An indication by the finder as to whether the finder is~~
27 ~~receiving transaction-based compensation that is subject to the~~
28 ~~actual sale of securities by the issuer in the transaction.~~
29 ~~(ii) A separate notice shall be filed for each new issuer~~
30 ~~transaction, no later than 20 business days following the first sale~~
31 ~~of securities. The commissioner may by rule require the finder to~~
32 ~~pay a filing fee in connection with the notice required in this~~
33 ~~subparagraph of up to fifty dollars (\$50).~~
34 ~~(D) (i) Concurrently with each introduction, the finder shall~~
35 ~~obtain the informed, written consent of each person introduced or~~
36 ~~referred by the finder to an issuer, in a written agreement signed~~
37 ~~by the finder, the issuer, and the person introduced or referred,~~
38 ~~disclosing the following:~~

1 (I) ~~The type and amount of compensation that has been or will~~
2 ~~be paid to the finder in connection with the introduction or referral~~
3 ~~and the conditions for payment of that compensation.~~

4 (II) ~~That the finder is not providing advice to the issuer or any~~
5 ~~person introduced or referred by the finder to an issuer as to the~~
6 ~~value of the securities or as to the advisability of investing in,~~
7 ~~purchasing, or selling the securities.~~

8 (III) ~~Whether the finder is also an owner, directly or indirectly,~~
9 ~~of the securities being offered or sold.~~

10 (IV) ~~Any actual and potential conflict of interest in connection~~
11 ~~with the finder's activities related to the issuer transaction.~~

12 (V) ~~That the parties to the agreement shall have the right to~~
13 ~~pursue any available remedies at law or otherwise for any breach~~
14 ~~of the agreement.~~

15 (ii) ~~To satisfy the requirements of this subparagraph, the~~
16 ~~agreement shall also include a representation by the person~~
17 ~~introduced or referred by the finder to the issuer that the person is~~
18 ~~an accredited investor, as that term is defined in Rule 501(a) of~~
19 ~~Regulation D under the Securities Exchange Act of 1933 (17 C.F.R.~~
20 ~~230.501(a)), and that the person knowingly consents to the payment~~
21 ~~of the compensation described therein.~~

22 (E) ~~The finder shall maintain and preserve, for a period of five~~
23 ~~years from the date of filing of the notice prescribed in~~
24 ~~subparagraph (C), a copy of the notice, the written agreement~~
25 ~~required in subparagraph (D), and all other records relating to any~~
26 ~~offer or sale of securities in connection with which the finder~~
27 ~~receives compensation, as the commissioner may by rule require.~~
28 ~~The finder, upon written request of the commissioner, shall furnish~~
29 ~~to the commissioner any records required to be maintained and~~
30 ~~preserved under this subparagraph.~~

31 (F) (i) ~~A natural person who does not meet the definition of~~
32 ~~“finder” set forth in subparagraph (A) and does not satisfy all the~~
33 ~~conditions set forth in subparagraphs (B) to (E), inclusive, may be~~
34 ~~determined to be a broker-dealer by the commissioner.~~

35 (ii) ~~In the event a natural person does not meet the definition of~~
36 ~~“finder” set forth in subparagraph (A) and does not satisfy all the~~
37 ~~conditions set forth in subparagraphs (B) to (E), inclusive, any~~
38 ~~person introduced or referred by that natural person to an issuer,~~
39 ~~who purchases securities of that issuer in an issuer transaction~~
40 ~~following that introduction or referral, shall have the right to pursue~~

1 any applicable remedy afforded under state law, including, without
2 limitation, any applicable remedies pursuant to Section 25501.5.

3 (b) For purposes of this section, an agent is an employee of a
4 broker-dealer under paragraph (2) of subdivision (a) when the
5 agent is employed by or associated with the broker-dealer under
6 all of the following conditions:

7 (1) The agent is subject to the supervision and control of the
8 broker-dealer.

9 (2) The agent performs under the name, authority, and marketing
10 policies of the broker-dealer.

11 (3) The agent discloses to investors the identity of the
12 broker-dealer.

13 (4) The agent is reported pursuant to subdivision (c) of Section
14 25210 and the rules adopted thereunder.

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