

AMENDED IN SENATE AUGUST 19, 2016
AMENDED IN ASSEMBLY MARCH 10, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1782

Introduced by Assembly Member Maienschein

February 4, 2016

An act to ~~amend Section 31013~~ *amend, repeal, and add Sections 31013 and 31117* of, and to add ~~Section 31020 to,~~ *and repeal Sections 31020 and 31115.5* of, the Corporations Code, relating to franchises.

LEGISLATIVE COUNSEL'S DIGEST

AB 1782, as amended, Maienschein. Franchises: offer to sell: trade show.

The Franchise Investment Law generally requires a franchisor to register with the Department of Business Oversight before an offer or sale of a franchise in this state and provides that a willful violation of this law is a crime. Existing law provides, among other things, that an offer or sale of a franchise is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or, if the franchisee is domiciled in this state, the franchised business is or will be operated in this state. Existing law provides that an offer to sell is not made in this state merely because a radio or television program originating outside this state is received in this state.

This bill would ~~provide that~~ *provide, until January 1, 2020, that* an offer to sell is not made in this state merely because a prospective franchisor, or a franchisor who is not then offering a franchise for sale in California and has not registered an offering under the Franchise Investment Law, secures a space at a franchise trade show from which

it offers information about its products, services, or system to the general public under specified ~~circumstances~~: *circumstances, including, among others, the payment of a fee.* The bill would also define a franchise trade show for purposes of the Franchise Investment Law.

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 31013 of the Corporations Code is
2 amended to read:

3 31013. (a) An offer or sale of a franchise is made in this state
4 when an offer to sell is made in this state, or an offer to buy is
5 accepted in this state, or, if the franchisee is domiciled in this state,
6 the franchised business is or will be operated in this state.

7 (b) An offer to sell is made in this state when the offer either
8 originates from this state or is directed by the offeror to this state
9 and received at the place to which it is directed. An offer to sell is
10 accepted in this state when acceptance is communicated to the
11 offeror in this state; and acceptance is communicated to the offeror
12 in this state when the offeree directs it to the offeror in this state
13 reasonably believing the offeror to be in this state and it is received
14 at the place to which it is directed.

15 (c) An offer to sell is not made in this state merely because (1)
16 the publisher circulates or there is circulated on his behalf in this
17 state any bona fide newspaper or other publication of general,
18 regular, and paid circulation which has had more than two-thirds
19 of its circulation outside this state during the past 12 months, or
20 (2) a radio or television program originating outside this state is
21 received in this state.

22 (d) An offer to sell is not made in this state merely because a
23 franchisor, or a franchisor who is not then offering a franchise for
24 sale in California and has not registered an offering under the
25 provisions of Chapter 2 (commencing with Section 31110), secures
26 a space at a franchise trade show from which it offers information
27 about its products, services, or system to the general public if the
28 franchisor or prospective franchisor does all of the following:

29 (1) Notifies the commissioner, in a form established by the
30 commissioner, of its intent to attend and display its concept at the
31 franchise trade show at least ~~14~~ 30 days before the show

1 ~~accompanied by~~ and provides the commissioner with all of the
2 following:

3 (A) A document, in a form ~~approved~~ established by the
4 commissioner, that includes, at a minimum, all of the following:

5 (i) The franchise concept brand name and a ~~brief~~ description of
6 the potential franchise offering.

7 (ii) The ~~legal name of the franchisor or prospective franchisor,~~
8 ~~and name, and, if applicable, the name under which the franchisor~~
9 ~~or prospective franchisor does or intends to do business, the~~
10 ~~address where it is domiciled. domiciled, and the state or country,~~
11 ~~if outside the United States, where it is organized.~~

12 (iii) The names of the ~~directors, trustees, general partners,~~
13 ~~principal officers officers, and other executives who will have~~
14 ~~management responsibility~~ of the franchisor or prospective
15 franchisor.

16 (iv) The address where the franchisor or prospective franchisor
17 may be served legal process.

18 (v) *Disclosure of any actions listed in Section 31115.5, against*
19 *the directors, trustees, general partners, principal officers, or other*
20 *executives who will have management responsibility of the*
21 *franchisor or prospective franchisor.*

22 (vi) *Disclosure of any actions listed in Section 31115.5, against*
23 *employees or representatives who will be attending the franchise*
24 *trade show on behalf of the franchisor or prospective franchisor.*

25 (vii) *The proposed written or electronic information that the*
26 *franchisor or prospective franchisor intends to distribute or use*
27 *at the trade show.*

28 (B) If the franchisor or prospective franchisor already possesses
29 a current franchise disclosure document not yet registered in
30 California, a copy of the franchise disclosure document.

31 (2) Conspicuously posts in public view within its franchise trade
32 show booth a notice, in a form established by the commissioner,
33 that states, at a minimum, all of the following:

34 (A) The franchisor or prospective franchisor is not offering a
35 franchise for sale in California.

36 (B) The franchisor or prospective franchisor is not legally able
37 to offer a franchise for sale in California.

38 (C) If anyone associated with the franchisor or prospective
39 franchisor offers a franchise for sale or solicits an offer to purchase

1 a franchise in California, that action should be reported to the
 2 commissioner.

3 (D) The contact information of the commissioner.

4 (e) The form described in paragraph (1) of subdivision (d) shall
 5 be in the form and content prescribed by the commissioner, but,
 6 at a minimum, shall state that it is unlawful for any person to offer
 7 or sell a franchise in California unless the offer of the franchise
 8 has been registered with the commissioner or is otherwise exempt.

9 (f) *A franchisor or prospective franchisor requesting an*
 10 *exemption from a requirement to register pursuant to subdivisions*
 11 *(d) and (e) shall pay a fee of two hundred twenty-five dollars (\$225)*
 12 *to the commissioner for each day the franchisor or prospective*
 13 *franchisor exhibits at the trade show.*

14 (g) *This section shall remain in effect only until January 1, 2022,*
 15 *and as of that date is repealed.*

16 SEC. 2. ~~Section 31020 is added to the Corporations Code, to~~
 17 ~~read:~~

18 ~~31020. “Franchise trade show” means an event in this state,~~
 19 ~~displaying multiple franchise brands and open to multiple~~
 20 ~~franchisors, that is advertised to, and invites, the general public to~~
 21 ~~that event where franchisors who satisfy the reasonable criteria of~~
 22 ~~the franchise trade show’s organizer may secure a space from~~
 23 ~~where they can inform the members of the general public in~~
 24 ~~attendance about their existing and prospective products, services,~~
 25 ~~or systems.~~

26 SEC. 2. *Section 31013 is added to the Corporations Code, to*
 27 *read:*

28 31013. (a) *An offer or sale of a franchise is made in this state*
 29 *when an offer to sell is made in this state, or an offer to buy is*
 30 *accepted in this state, or, if the franchisee is domiciled in this state,*
 31 *the franchised business is or will be operated in this state.*

32 (b) *An offer to sell is made in this state when the offer either*
 33 *originates from this state or is directed by the offeror to this state*
 34 *and received at the place to which it is directed. An offer to sell is*
 35 *accepted in this state when acceptance is communicated to the*
 36 *offeror in this state, and acceptance is communicated to the offeror*
 37 *in this state when the offeree directs it to the offeror in this state*
 38 *reasonably believing the offeror to be in this state and it is received*
 39 *at the place to which it is directed.*

1 (c) An offer to sell is not made in this state merely because (1)
2 the publisher circulates or there is circulated on his behalf in this
3 state any bona fide newspaper or other publication of general,
4 regular, and paid circulation which has had more than two-thirds
5 of its circulation outside this state during the past 12 months, or
6 (2) a radio or television program originating outside this state is
7 received in this state.

8 (d) This section shall become effective on January 1, 2022.

9 SEC. 3. Section 31020 is added to the Corporations Code, to
10 read:

11 31020. (a) “Franchise trade show” means an event in this
12 state, displaying multiple franchise brands and open to multiple
13 franchisors, that is advertised to, and invites, the general public
14 to that event where franchisors who satisfy the reasonable criteria
15 of the franchise trade show’s organizer may secure a space from
16 where they can inform the members of the general public in
17 attendance about their existing and prospective products, services,
18 or systems.

19 (b) This section shall remain in effect only until January 1, 2022,
20 and as of that date is repealed.

21 SEC. 4. Section 31115.5 is added to the Corporations Code,
22 to read:

23 31115.5. (a) The commissioner may summarily issue a stop
24 order denying the effectiveness of an applicant’s exemption
25 application pursuant to subdivisions (d), (e) and (f) of Section
26 31013, if the commissioner finds any of the following:

27 (1) The proposed business model is not lawful in California.

28 (2) A director, trustee, general partner, principal officer, or
29 other executive who will have management responsibility of a
30 franchisor or prospective franchisor, or an employee or
31 representative who will be attending the franchise trade show on
32 behalf of the franchisor or prospective franchisor, has been any
33 of the following:

34 (A) Convicted of or pleaded nolo contendere to any felony.

35 (B) Held liable in a civil action by final judgment of a court for
36 fraud, embezzlement, or misappropriation of property.

37 (C) Previously violated any franchise law of any state.

38 (3) The business would constitute a misrepresentation to, or
39 deceit or fraud of, investors.

1 (4) *The franchisor or prospective franchisor fails to meet the*
2 *requirements of subdivision (d) to (e), inclusive, of Section 31013.*

3 (b) *This section shall remain in effect only until January 1, 2022,*
4 *and as of that date is repealed.*

5 SEC. 5. *Section 31117 of the Corporations Code is amended*
6 *to read:*

7 31117. (a) *Upon the entry of a stop order under Section 31115*
8 *or 31115.5, the commissioner shall promptly notify the applicant*
9 *that it has been entered and of the reasons therefor and that upon*
10 *receipt of written request the matter will be set down for hearing*
11 *to commence within 15 business days after such receipt unless the*
12 *applicant consents to a later date. If no hearing is requested within*
13 *30 days after receipt of the notice and none is ordered by the*
14 *commissioner, the order will remain in effect until it is modified*
15 *or vacated by the commissioner. If a hearing is requested or*
16 *ordered, the commissioner, after notice and hearing in accordance*
17 *with the provisions of Chapter 5 (commencing with Section 11500)*
18 *of Part 1 of Division 3 of Title 2 of the Government Code, in*
19 *connection with which the commissioner shall have all of the*
20 *powers granted thereunder, may modify or vacate the order or*
21 *extend it until its final determination.*

22 (b) *This section shall remain in effect only until January 1, 2022,*
23 *and as of that date is repealed.*

24 SEC. 6. *Section 31117 is added to the Corporations Code, to*
25 *read:*

26 31117. (a) *Upon the entry of a stop order under Section 31115,*
27 *the commissioner shall promptly notify the applicant that it has*
28 *been entered and of the reasons therefor and that upon receipt of*
29 *written request the matter will be set down for hearing to*
30 *commence within 15 business days after such receipt unless the*
31 *applicant consents to a later date. If no hearing is requested within*
32 *30 days after receipt of the notice and none is ordered by the*
33 *commissioner, the order will remain in effect until it is modified*
34 *or vacated by the commissioner. If a hearing is requested or*
35 *ordered, the commissioner, after notice and hearing in accordance*
36 *with the provisions of Chapter 5 (commencing with Section 11500)*
37 *of Part 1 of Division 3 of Title 2 of the Government Code, in*
38 *connection with which the commissioner shall have all of the*
39 *powers granted thereunder, may modify or vacate the order or*
40 *extend it until its final determination.*

- 1 **(b)** *This section shall become effective on January 1, 2022.*

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