

Assembly Bill No. 1782

Passed the Assembly August 29, 2016

Chief Clerk of the Assembly

Passed the Senate August 23, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1782, 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, 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, including, among others, the payment of a fee. The bill would also define a franchise trade show for purposes of the Franchise Investment Law.

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

SECTION 1. Section 31013 of the Corporations Code is amended to read:

31013. (a) 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.

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

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

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

(1) Notifies the commissioner, in a form established by the commissioner, of its intent to attend and display its concept at the franchise trade show at least 30 days before the show and provides the commissioner with all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

(C) If anyone associated with the franchisor or prospective franchisor offers a franchise for sale or solicits an offer to purchase a franchise in California, that action should be reported to the commissioner.

(D) The contact information of the commissioner.

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

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

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

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

31013. (a) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31117. (a) Upon the entry of a stop order under Section 31115, the commissioner shall promptly notify the applicant that it has been entered and of the reasons therefor and that upon receipt of written request the matter will be set down for hearing to

commence within 15 business days after such receipt unless the applicant consents to a later date. If no hearing is requested within 30 days after receipt of the notice and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice and hearing in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, in connection with which the commissioner shall have all of the powers granted thereunder, may modify or vacate the order or extend it until its final determination.

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

Approved _____, 2016

Governor