

ASSEMBLY BILL

No. 2637

Introduced by Assembly Member Wilk

February 19, 2016

An act to amend Section 31109.1 of the Corporations Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 2637, as introduced, Wilk. Franchise investments: offer and sale of registered franchises: registration exemption.

The Franchise Investment Law generally regulates the offer and sale of franchises and provides for oversight of these transactions by the Commissioner of Business Oversight. The law prohibits, among other things, the offer or sale of a franchise that is not registered with the commissioner, unless exempted from this registration requirement. The law exempts from this registration requirement the offer and sale of a franchise on terms that are different from the terms of a registered offer, if certain conditions are met. Those conditions include, among others, that a prospective franchisee receives information regarding terms the franchisor negotiated during the previous 12 months, as specified, and that the negotiated terms, on the whole, confer additional benefits on the franchisee.

This bill would modify the conditions for an exemption to the registration requirement by removing these 2 conditions and instead imposing the condition that a disclosure document states that California law does not prohibit a franchisor from negotiating, or require a franchisor to negotiate, the standard franchise agreement contained in the disclosure document. The bill would also make technical and conforming changes to this modification, including, among others, the

removal of authority for the commissioner to prescribe by rule or order the format and content for a franchisor to provide information regarding terms the franchisor negotiated during the previous 12 months.

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 31109.1 of the Corporations Code is
2 amended to read:

3 31109.1. (a) There shall be exempted from the provisions of
4 Chapter 2 (commencing with Section 31110) the ~~offer and~~ sale of
5 a franchise registered under Section 31111, 31121, or 31123 on
6 terms different from the terms of the offer registered thereunder
7 if all of the following requirements are met:

8 (1) The initial offer is the offer registered under Section 31111,
9 31121, or 31123.

10 ~~(2) The prospective franchisee receives all of the following in~~
11 ~~a separate written appendix to the franchise disclosure document:~~

12 ~~(A) A summary description of each material negotiated term~~
13 ~~that was negotiated by the franchisor for a California franchise~~
14 ~~during the 12-month period ending in the calendar month~~
15 ~~immediately preceding the month in which the negotiated offer or~~
16 ~~sale is made under this section.~~

17 ~~(B) A statement indicating that copies of the negotiated terms~~
18 ~~are available upon written request.~~

19 ~~(C) The name, telephone number, and address of the~~
20 ~~representative of the franchisor to whom requests for a copy of~~
21 ~~the negotiated terms may be obtained.~~

22 ~~(2) The disclosure document states that California law does not~~
23 ~~prohibit a franchisor from negotiating, or require a franchisor to~~
24 ~~negotiate, the standard franchise agreement contained in the~~
25 ~~disclosure document.~~

26 (3) The franchisor certifies or declares in an appendix to its
27 application for renewal that it has complied with all of the
28 requirements of this section, in the event this exemption is claimed.

29 ~~(4) The negotiated terms, on the whole, confer additional~~
30 ~~benefits on the franchisee.~~

1 ~~(b) The franchisor shall provide a copy of the negotiated terms~~
2 ~~described in subdivision (a) to the prospective franchisee within~~
3 ~~five business days following the request of the franchisee.~~

4 ~~(e)~~

5 (b) The franchisor shall maintain copies of all material
6 negotiated terms for which this exemption is claimed for a period
7 of five years from the effective date of the first agreement
8 containing the relevant negotiated term. Upon the request of the
9 commissioner, the franchisor shall make the copies available to
10 the commissioner for review. ~~For purposes of this section, the~~
11 ~~commissioner may prescribe by rule or order the format and content~~
12 ~~of the summary description of the negotiated terms required by~~
13 ~~subparagraph (A) of paragraph (2) of subdivision (a).~~

14 ~~(d)~~

15 (c) For purposes of this section, “material” means that a
16 reasonable franchisee would view the terms as important in
17 negotiating the franchise.