

AMENDED IN SENATE JUNE 6, 2016
AMENDED IN ASSEMBLY MARCH 28, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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 or other agreements contained in the disclosure document. include a specific statement regarding the ability to agree to the franchise agreement and to negotiate changes to the franchise agreement and other agreements.~~ 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 sale of a franchise
5 registered under Section 31111, 31121, or 31123 on terms different
6 from the terms of the offer registered thereunder if all of the
7 following requirements are met:
8 (1) The initial offer is the offer registered under Section 31111,
9 31121, or 31123.
10 ~~(2) The disclosure document states that California law does not~~
11 ~~prohibit a franchisor from negotiating, or require a franchisor to~~
12 ~~negotiate, the standard franchise agreement or other agreements~~
13 ~~contained in the disclosure document.~~
14 (2) *The cover page of the disclosure document specifically states,*
15 *“You and the franchisor may agree to sign the forms of franchise*
16 *agreement and other agreements attached to this disclosure*
17 *document. However, California law does not prohibit you and the*
18 *franchisor from negotiating changes to the franchise agreement*
19 *and other agreements, nor does it require you or the franchisor*
20 *to negotiate any changes.”*
21 (3) The franchisor certifies or declares in an appendix to its
22 application for renewal that it has complied with all of the
23 requirements of this section, in the event this exemption is claimed.
24 (b) The franchisor shall maintain copies of all material
25 negotiated terms for which this exemption is claimed for a period
26 of five years from the effective date of the agreement containing

1 the relevant negotiated term. Upon the request of the commissioner,
2 the franchisor shall make the copies available to the commissioner
3 for review.

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

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