AMENDED IN SENATE MAY 1, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL No. 1208

Introduced by Senator Leno

February 22, 2012

An act to amend Sections 1502.1 ~~and~~, *2204, 2205, 2206, and* 2117.1 of the Corporations Code, relating to publicly traded corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1208, as amended, Leno. Publicly traded corporations: retiree compensation: disclosure.

~~Existing~~

(1) Existing law provides for the formation and regulation of corporations. Existing law requires that domestic and foreign publicly traded corporations file annually with the Secretary of State *an information statement. Existing law also requires those corporations to file* a *compensation* statement disclosing the compensation, as specified, paid to each of the members of the corporation's board of directors and its 5 most highly compensated executive officers who are not members of the board, and the chief executive officer, if he or she is not among those executive officers. Existing law requires the Secretary of State to make ~~that~~ information~~, together with other information~~ required to be included in ~~that~~ *the information* statement~~,~~ *and the compensation statement* publicly available, as specified.

This bill would, instead, require that a publicly traded corporation include in ~~that report~~ *the compensation statement described above the* total compensation, as defined, paid to each member of the board of directors, the principal executive officer, principal financial officer, and each of the 3 most highly compensated executive officers other than the principal executive officer or principal financial officer.

This bill would also require a publicly traded corporation to include in ~~that~~ *the compensation* statement filed with the Secretary of State total compensation information with respect to each of the corporation's 5 most highly compensated retirees, and the names of those retirees.

(2) Existing law provides that if a publicly traded corporation fails to file the annual information statement as required, the Secretary of State shall provide a notice of that delinquency to the corporation, as specified, and that if the corporation fails to file the delinquent statement within 60 days following that notice, the Secretary of State shall certify the corporation's name to the Franchise Tax Board. Existing law requires the Franchise Tax Board to then impose upon the corporation a $250 fee, to be collected as specified. Existing law also provides that a corporation that fails to file an information statement and has not filed an information statement during the preceding 24 months, and was certified for penalty as described for the same filing period, is subject to suspension rather than the $250 penalty, and the Secretary of State shall provide a notice to the corporation informing the corporation that its corporate powers, rights, and privileges will be suspended after 60 days if the corporation fails to file an information statement as required and as specified.

This bill would impose the sanctions described above for a corporation that fails to timely file its annual information statement to a corporation that fails to timely file its compensation statement.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 1502.1 of the Corporations Code is amended to read:

1502.1. (a) In addition to the statement required pursuant to Section 1502, every publicly traded corporation shall file annually, within 150 days after the end of its fiscal year, a statement, on a form prescribed by the Secretary of State, that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the corporation's annual financial statements.

(2) A description of other services, if any, performed for the corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The total compensation for the most recent fiscal year of the corporation paid to (A) each member of the board of directors, (B) the principal executive officer, (C) the principal financial officer, and (D) each of the three most highly compensated executive officers, other than the principal executive officer and principal financial officer, of the corporation who are not members of the board of directors.

(5) A description of any loan, including the amount and terms of the loan, made to any member of the board of directors by the corporation during the corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly situated borrower.

(6) The total compensation for the most recent fiscal year of the publicly traded corporation paid to each of the five persons retired from the corporation who received from the corporation the highest amounts of total compensation that the corporation paid to retirees, and the name of each of those retirees.

(7) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the corporation, its executive officers, or members of the board of directors of the corporation during the 10 years preceding the date of the statement.

(8) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the 10 years preceding the date of the statement, if the conviction has not been overturned or expunged.

(9) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities *and* Exchange Commission

(Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

(b) For purposes of this section, the following definitions apply:

(1) "Publicly traded corporation" means a corporation, as defined in Section 162, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the OTC Bulletin Board, or on the electronic service operated by ~~Pink~~ OTC Markets *Group* Inc.

(2) "Executive officer" means the principal executive officer, principal financial officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) (A) "Total compensation" as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation, including the number of any shares issued, options for shares granted, and similar equity-based compensation, and all perquisite and other personal benefits, granted or awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, in each case, within the meaning of those terms pursuant to Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(B) "Total compensation" as used in paragraph (6) of subdivision (a) has the same meaning given in subparagraph (A), except that the compensation is granted, awarded, or paid to the person after the person's retirement from the corporation for services rendered in all capacities to the corporation and to its subsidiaries prior to his or her retirement.

(4) "Loan" as used in paragraph (5) of subdivision (a) excludes an advance for expenses permitted under subdivision (d) of Section 315, the corporation's payment of life insurance premiums permitted under subdivision (e) of Section 315, and an advance of expenses permitted under Section 317.

(c) This statement shall be available and open to the public for inspection. The Secretary of State shall provide access to all information contained in this statement by means of an online database.

(d) A corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

SEC. 2. Section 2204 of the Corporations Code is amended to read:

2204. (a) Upon the failure of a corporation to file the statement required by Section 1502 *or Section 1502.1*, the Secretary of State shall provide a notice of that delinquency to the corporation. The notice shall also contain information concerning the application of this section, advise the corporation of the penalty imposed by Section 19141 of the Revenue and Taxation Code for failure to timely file the required statement after notice of the delinquency has been provided by the Secretary of State, and shall advise the corporation of its right to request relief from the Secretary of State because of reasonable cause or unusual circumstances that justify the failure to file. If, within 60 days of providing notice of the delinquency, a statement pursuant to Section 1502 has not been filed by the corporation, the Secretary of State shall certify the name of the corporation to the Franchise Tax Board.

(b) Upon certification pursuant to subdivision (a), the Franchise Tax Board shall assess against the corporation the penalty provided in Section 19141 of the Revenue and Taxation Code.

(c) The penalty herein provided shall not apply to a corporation that on or prior to the date of certification pursuant to subdivision (a) has dissolved or has been merged into another corporation.

(d) The penalty herein provided shall not apply and the Secretary of State need not provide a notice of the delinquency to a corporation if the corporate powers, rights, and privileges have been suspended by the Franchise Tax Board pursuant to Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code on or prior to, and remain suspended on, the last day of the filing period pursuant to Section 1502 *or Section 1502.1*. The Secretary of State need not provide notice of the filing requirement pursuant to Section 1502 *or Section 1502.1* to a corporation if the corporate powers, rights, and privileges have been so suspended by the

Franchise Tax Board on or prior to, and remain suspended on, the day the Secretary of State prepares the notice for sending.

(e) If, after certification pursuant to subdivision (a), the Secretary of State finds (1) the required statement was filed before the expiration of the 60-day period after providing notice of the delinquency, or (2) the failure to provide notice of delinquency was due to an error of the Secretary of State, the Secretary of State shall promptly decertify the name of the corporation to the Franchise Tax Board. The Franchise Tax Board shall then promptly abate any penalty assessed against the corporation pursuant to Section 19141 of the Revenue and Taxation Code.

(f) If the Secretary of State determines that the failure of a corporation to file the statement required by Section 1502 *or Section 1502.1* is excusable because of reasonable cause or unusual circumstances that justify the failure, the Secretary of State may waive the penalty imposed by this section and by Section 19141 of the Revenue and Taxation Code, in which case the Secretary of State shall not certify the name of the corporation to the Franchise Tax Board, or if already certified, the Secretary of State shall promptly decertify the name of the corporation.

SEC. 3. Section 2205 of the Corporations Code is amended to read:

2205. (a) A corporation that (1) fails to file a statement pursuant to Section 1502 *or Section 1502.1* for an applicable filing period, (2) has not filed a statement pursuant to Section 1502 *or Section 1502.1* during the preceding 24 months, and (3) was certified for penalty pursuant to Section 2204 for the same filing period, is subject to suspension pursuant to this section rather than to penalty pursuant to Section 2204.

(b) When subdivision (a) is applicable, the Secretary of State shall provide a notice to the corporation informing the corporation that its corporate powers, rights, and privileges will be suspended after 60 days if it fails to file a statement pursuant to Section 1502 *or Section 1502.1*.

(c) After the expiration of the 60-day period without any statement filed pursuant to Section 1502 *or Section 1502.1*, the Secretary of State shall notify the Franchise Tax Board of the suspension and provide a notice of the suspension to the corporation, and thereupon, the corporate powers, rights, and privileges of the corporation are suspended, except for the purpose of filing an application for exempt status or amending the articles of incorporation as necessary either to perfect that application or to set forth a new name.

(d) A statement pursuant to Section 1502 *or Section 1502.1* may be filed notwithstanding suspension of the corporate powers, rights, and privileges pursuant to this section or Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code. Upon the filing of a statement pursuant to Section 1502 *or Section 1502.1* by a corporation that has suffered suspension pursuant to this section, the Secretary of State shall certify that fact to the Franchise Tax Board and the corporation may thereupon be relieved from suspension unless the corporation is held in suspension by the Franchise Tax Board by reason of Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code.

SEC. 4. Section 2206 of the Corporations Code is amended to read:

2206. (a) Sections 2204 and 2205 apply to foreign corporations with respect to the statements required to be filed by Section 2117 *and Section 2117.1*. For this purpose, the suspension of the corporate powers, rights, and privileges of a domestic corporation shall mean the forfeiture of the exercise of the corporate powers, rights, and privileges of a foreign corporation in this state.

(b) A foreign nonprofit corporation which has suffered the forfeiture of the exercise of the corporate powers, rights, and privileges in this state may nevertheless file an application for exempt status as specified in Section 23301 of the Revenue and Taxation Code.

(c) The forfeiture of the exercise of the corporate powers, rights, and privileges of a foreign corporation in this state as used in subdivision (a) does not prohibit the transaction of business in this state by a foreign corporation if the business transacted subsequent to the forfeiture would not, considered as an entirety, require the foreign corporation to obtain a certificate of qualification pursuant to Sections 191 and 2105.

~~SEC. 2.~~

SEC. 5. Section 2117.1 of the Corporations Code is amended to read:

2117.1. (a) In addition to the statement required pursuant to Section 2117, every publicly traded foreign corporation shall file annually, within 150 days after the end of its fiscal year, on a form prescribed by the Secretary of State, a statement that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the publicly traded foreign corporation's annual financial statements.

(2) A description of other services, if any, performed for the publicly traded foreign corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the foreign corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The total compensation for the most recent fiscal year of the publicly traded foreign corporation paid to (A) each member of the board of directors, (B) the principal executive officer, (C) the principal financial officer, and (D) each of the three most highly compensated executive officers, other than the principal executive officer or principal financial officer, of the foreign corporation who are not members of the board of directors.

(5) A description of any loan, including the amount and terms of the ~~loans~~ *loan*, made to any member of the board of directors by the publicly traded foreign corporation during the foreign corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly situated borrower.

(6) The total compensation for the most recent fiscal year of the publicly traded foreign corporation paid to each of the five persons retired from the corporation who received from the corporation the highest amounts of total compensation that the corporation paid to retirees, and the name of each of those retirees.

(7) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the foreign corporation, its executive officers, or members of the board of directors of the foreign corporation during the 10 years preceding the date of the statement.

(8) A statement indicating whether any member of the board of directors or executive officer of the publicly traded foreign corporation was convicted of fraud during the 10 years preceding

the date of the statement, which conviction has not been overturned or expunged.

(9) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities *and* Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

(b) For purposes of this section, the following definitions apply:

(1) "Publicly traded foreign corporation" means a foreign corporation, as defined in Section 171, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the OTC Bulletin Board, or on the electronic service operated by ~~Pink~~ OTC Markets *Group* Inc.

(2) "Executive officer" means the principal executive officer, principal financial officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) (A) "Total compensation" as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation, including the number of any shares issued, options for shares granted, and similar equity-based compensation, and all perquisites and other personal benefits granted or awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, in each case, within the meaning of those terms pursuant to Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(B) "Total compensation" as used in paragraph (6) of subdivision (a) has the same meaning given in subparagraph (A), except that the compensation is granted, awarded, or paid to the person after the person's retirement from the corporation for services rendered in all capacities to the corporation and to its subsidiaries prior to his or her retirement.

(4) "Loan" as used in paragraph (5) of subdivision (a) excludes an advance for expenses, the foreign corporation's payment of life insurance premiums, and an advance of litigation expenses, in each instance as permitted according to the applicable law of the state or place of incorporation or organization of the foreign corporation.

(c) This statement shall be available and open to the public for inspection. The Secretary of State shall provide access to all information contained in this statement by means of an online database.

(d) A foreign corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

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