

AMENDED IN SENATE JUNE 9, 2014
AMENDED IN ASSEMBLY APRIL 24, 2014
AMENDED IN ASSEMBLY APRIL 9, 2014
AMENDED IN ASSEMBLY MARCH 26, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2096

Introduced by Assembly Member Muratsuchi

February 20, 2014

An act to amend Sections 25112 and 25503 of the Corporations Code, relating to securities transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2096, as amended, Muratsuchi. Securities transactions: qualification requirements: notification.

Existing law, the Corporate Securities Law of 1968, requires certain securities offered or sold in this state to be qualified through application filed with the Commissioner of Business Oversight, or to be exempt from the qualification requirements. Under existing law, a security issued either by the issuer of a security registered under a designated provision of the federal law or issued by an investment company registered under other specified federal law, and which is not eligible for qualification under existing law, may be qualified by notification by making a specified application, and providing certain documents and additional information.

Existing law imposes liability for specified damages on a person who offers or sells a security if the sale is not qualified, violates a condition

of qualification under the act, or violates an order suspending trading issued by the commissioner.

This bill, in addition, would authorize qualification by notification for any offer or sale of a security, if, among other requirements, the offering meets the requirements for a federal exemption for limited offerings and sales of securities not exceeding \$1,000,000, and the aggregate amount of securities sold to any investor by the issuer does not exceed certain amounts within a 12-month time period, except as specified.

This bill would require a court to award attorney’s fees and costs to a prevailing purchaser in an action brought against a person who makes a sale in violation of the qualification provisions prescribed in the bill, and would authorize the court to award treble or punitive damages.

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 25112 of the Corporations Code is
2 amended to read:

3 25112. (a) (1) Any security issued by a person which is the
4 issuer of any security registered under Section 12 of the Securities
5 Exchange Act of 1934 or ~~issued~~, *issued* by an investment company
6 registered under the Investment Company Act of 1940, and which
7 is not eligible for qualification under Section 25111, may be
8 qualified by notification under this section.

9 (2) Any offer or sale of any security that meets all of the
10 following criteria may be qualified by notification under this
11 section:

12 (A) The aggregate amount of securities sold to all investors by
13 the issuer within any 12-month period is not more than one million
14 dollars (\$1,000,000).

15 (B) The aggregate amount of securities sold to any investor by
16 the issuer, including any amount sold during the 12-month period
17 preceding the date of the transaction, does not exceed five thousand
18 dollars (\$5,000), or a greater amount as the commissioner may
19 provide by rule or order, unless the investor is an accredited
20 investor as defined in Section 230.501 of Title 17 of the Code of
21 Federal Regulations.

1 (C) The offering meets the requirements of the federal
2 exemption for limited offerings and sales of securities not
3 exceeding one million dollars (\$1,000,000) in Section 230.504 of
4 Title 17 of the Code of Federal Regulations.

5 (D) The issuer files with the commissioner, provides to
6 investors, and makes available to potential investors the following:

7 (i) A Small Company Offering Registration disclosure document
8 on Form U-7, as adopted by the North American Securities
9 Administrators Association, prior to the commencement of the
10 offering of securities. *The issuer shall ensure that the cover page*
11 *of Form U-7 includes all of the following statements, in bold*
12 *typeface no smaller than 12-point type:*

13 (I) *The Commissioner of Business Oversight has in no way*
14 *passed upon the merits or qualifications of, or recommended or*
15 *given approval to, any person, security, or transaction associated*
16 *with this offering.*

17 (II) *The company described in this disclosure form is seeking*
18 *to raise a minimum offering of [insert minimum offering amount].*

19 (III) *If the sum of the investment commitments received by the*
20 *company does not equal or exceed the minimum offering amount*
21 *by [insert date] your investment in the company will be returned*
22 *to you.*

23 (ii) For offerings that, together with all other offerings of the
24 issuer within the preceding 12-month period, have, in the aggregate,
25 offering amounts of one hundred thousand dollars (\$100,000) or
26 less, the following:

27 (I) The income tax returns filed by the issuer for the most
28 recently completed year, if any.

29 (II) The financial statements of the issuer certified by the
30 principal executive officer of the issuer to be true and complete in
31 all material respects.

32 (iii) For offerings that, together with all other offerings of the
33 issuer within the preceding 12-month period, have, in the aggregate,
34 offering amounts of more than one hundred thousand dollars
35 (\$100,000), but not more than five hundred thousand dollars
36 (\$500,000), all financial statements reviewed by a public
37 accountant who is independent of the issuer, using professional
38 standards and procedures for the review or standards and
39 procedures established by the commissioner by rule.

1 (iv) For offerings that, together with all other offerings of the
2 issuer within the preceding 12-month period, have, in the aggregate,
3 offering amounts of more than five hundred thousand dollars
4 (\$500,000), audited financial statements.

5 (E) The issuer sets aside in a separate ~~bank~~ *third-party escrow*
6 account all funds raised as part of the offering, to be held *in escrow*
7 until the time that the minimum offering amount is reached. If the
8 minimum offering amount is not reached within one year of the
9 effective date of the offering, the issuer shall return all funds to
10 investors.

11 (F) The issuer, a predecessor of the issuer, an affiliated issuer,
12 a director, executive officer, or other officer participating in the
13 offering, a general partner or managing member of the issuer, a
14 beneficial owner of 20 percent or more of the issuer's outstanding
15 voting equity securities, calculated on the basis of voting power,
16 a promoter connected with the issuer in any capacity at the time
17 of the sale, an investment manager of an issuer that is a pooled
18 investment fund, a person that has been or will be paid, directly
19 or indirectly, remuneration for solicitation of purchasers in
20 connection with the sale of securities, a general partner or managing
21 member of the investment manager or solicitor, or any director,
22 executive officer, or other officer participating in the offering of
23 the investment manager or solicitor or general partner or managing
24 member of the investment manager or solicitor would not be
25 disqualified as a "bad actor" under subdivision (d) of Section
26 230.506 of Title 17 of the Code of Federal Regulations.

27 (G) Any other requirement set forth by rule adopted by the
28 commissioner.

29 (b) An application for qualification under this section shall
30 contain ~~such~~ *all* information and be accompanied by ~~such~~ *all*
31 documents as shall be required by rule of the commissioner, in
32 addition to the information specified in Section 25160 and the
33 consent to service of process required by Section 25165. For this
34 purpose, the commissioner may classify issuers and types of
35 securities.

36 (c) If no stop order or order under subdivision (a) of Section
37 25143 is in effect under this law, qualification of the sale of the
38 securities under this section automatically becomes effective (and
39 the securities may be offered and sold in accordance with the terms
40 of the application as amended) at ~~12 o'clock noon~~ *12 p.m.*

1 California time of the 10th business day after the filing of the
2 application or the last amendment thereto or at ~~such~~ *an* earlier time
3 as the commissioner determines.

4 SEC. 2. Section 25503 of the Corporations Code is amended
5 to read:

6 25503. (a) Any person who violates Section 25110, 25130, or
7 25133, or a condition of qualification under Chapter 2
8 (commencing with Section 25110) of this part, imposed pursuant
9 to Section 25141, or an order suspending trading issued pursuant
10 to Section 25219, shall be liable to any person acquiring from him
11 the security sold in violation of that section, who may sue to
12 recover the consideration he paid for such security with interest
13 thereon at the legal rate, less the amount of any income received
14 therefrom, upon the tender of the security, or for damages, if he
15 no longer owns the security, or if the consideration given for the
16 security is not capable of being returned. Damages, if the plaintiff
17 no longer owns the security, shall be equal to the difference
18 between the plaintiff's purchase price plus interest at the legal rate
19 from the date of purchase and the value of the security at the time
20 it was disposed of by the plaintiff plus the amount of any income
21 received therefrom by the plaintiff.

22 (b) If the consideration given for the security is not capable of
23 being returned, damages shall be equal to the value of that
24 consideration plus interest at the legal rate from the date of
25 purchase, provided the security is tendered; and if the plaintiff no
26 longer owns the security, damages in such case shall be equal to
27 the difference between the value of the consideration given for the
28 security plus interest at the legal rate from the date of purchase
29 and the value of the security at the time it was disposed of by the
30 plaintiff plus the amount of any income received therefrom by the
31 plaintiff. A person who violates Section 25120 or a condition of
32 qualification under Chapter 3 (commencing with Section 25120)
33 of this part imposed pursuant to Section 25141, shall be liable to
34 any person acquiring from him the security sold in violation of
35 that section who may sue to recover the difference between the
36 value of the consideration received by the seller and the value of
37 the security at the time it was received by the buyer, with interest
38 thereon at the legal rate from the date of purchase. A person on
39 whose behalf an offering is made and any underwriter of the
40 offering, whether on a best efforts or a firm commitment basis,

1 shall be jointly and severally liable under this section. However,
2 in no event shall an underwriter be liable, unless the underwriter
3 knowingly received from the issuer for acting as an underwriter
4 some benefit, directly or indirectly, in which all other underwriters
5 similarly situated did not share in proportion to their respective
6 interest in the underwriting, in any suit or suits authorized under
7 this section, for damages in excess of the total price at which the
8 securities underwritten by the underwriter and distributed to the
9 public were offered to the public. A tender specified in this section
10 may be made at any time before entry of judgment. A person shall
11 not be liable under this section for violation of Section 25110,
12 25120, or 25130 if the sale of the security is qualified prior to the
13 payment or receipt of any part of the consideration for the security
14 sold, even though an offer to sell or a contract of sale may have
15 been made or entered into without qualification.

16 (c) The court shall award attorney's fees and costs to a prevailing
17 purchaser in an action brought against any person who violates
18 Section 25110 for failure to comply with paragraph (2) of
19 subdivision (a) of Section 25112, and may award treble or punitive
20 damages.