

Assembly Bill No. 3061

CHAPTER 477

An act to amend Sections 403, 25116, 25117, and 31125 of, and to add Sections 31105, 31106, and 31107 to, the Corporations Code, relating to corporations.

[Approved by Governor September 12, 1996. Filed with Secretary of State September 13, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3061, Weggeland. Corporations: securities.

Existing law, the General Corporation Law, provides that when provided in the articles of incorporation, a corporation may issue shares convertible into any class or series under certain conditions.

This bill would provide that, in addition, the articles may provide for the issuance of shares which are convertible if the corporation is a "listed corporation," as defined, both at the time of the original issuance of the convertible shares and at the time of the conversion, as specified.

Existing law, the Corporate Securities Act of 1968, provides that it is unlawful for any person to offer or sell in this state any security in an issuer transaction, as specified, unless the sale is qualified or exempted. Existing law provides that certain evidences of indebtedness and its purchasers are exempt from state usury laws if the evidence of indebtedness is issued in compliance with specific provisions.

This bill would make the usury exemption applicable to an evidence of indebtedness issued in accordance with those provisions regardless of whether subsequent to its issuance the evidence of indebtedness is determined by a court of competent jurisdiction to be a security.

Existing law, the Franchise Investment Law, provides that it is unlawful for any person to offer or sell in this state any franchise unless the offer has been registered or exempted. Existing law exempts from certain provisions of the act, the offer and sale of a franchise if the franchisor meets specified requirements.

This bill would revise those requirements and would also exempt, subject to specified conditions, any offer, sale, or other transfer of a franchise to a nonresident under specified conditions, or to certain experienced franchisees, any offer, but not the sale, by a franchisor of a franchise, while an application for renewal or amendment is pending, as specified, and any modification of a franchise agreement with an existing franchisee of a franchisor, as specified.

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

SECTION 1. Section 403 of the Corporations Code is amended to read:

403. (a) When so provided in the articles, a corporation may issue shares convertible within the time or upon the happening of one or more specified events and upon the terms and conditions that are stated in the articles if any of the following conditions apply:

(1) At the option of the holder or automatically upon either the vote of at least a majority of the outstanding shares of the class or series to be converted or upon the happening of one or more specified events, into shares of any class or series.

(2) If it is a corporation which has a license or franchise from a governmental agency to conduct its business or a member corporation of a national securities exchange registered under the United States Securities Exchange Act of 1934, the license, franchise or membership of which is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it, at the option of the corporation, into shares of any class or series or into any other security of the corporation.

(3) If the corporation is a “listed corporation” as defined in subdivision (d) of Section 301.5, both at the time of the original issuance of the convertible shares and at the time of the conversion, at the option of the corporation into shares of any class or series or into any other security of the corporation, provided that any such securities received upon conversion are listed or qualified for trading on a stock exchange or market system defined in subdivision (d) of Section 301.5.

(b) Unless otherwise provided in the articles, a corporation may issue its debt securities convertible into other debt securities or into shares of the corporation within such time or upon the happening of one or more specified events and upon such terms and conditions as are fixed by the board.

SEC. 2. Section 25116 of the Corporations Code is amended to read:

25116. (a) An evidence of indebtedness issued pursuant to a qualification under this chapter or Chapter 3 (commencing with Section 25120), and the purchasers or holders thereof, shall be exempt from the usury provisions of the Constitution, subject to compliance by the issuer and purchaser with the terms and requirements that may be imposed by the commissioner as a condition of the qualification. This section creates and authorizes a class of transactions and persons pursuant to Section 1 of Article XV of the Constitution.



(b) Any evidence of indebtedness issued in compliance with this section shall be entitled to the benefits of the usury exemption contained in this section regardless of whether subsequent to its issuance the evidence of indebtedness is determined by a court of competent jurisdiction to be a “security.”

SEC. 3. Section 25117 of the Corporations Code is amended to read:

25117. (a) An evidence of indebtedness, and the purchasers or holders thereof, shall be exempt from the usury provisions of Section 1 of Article XV of the California Constitution if (1) the evidence of indebtedness is rated or provisionally rated by Standard & Poor’s Corporation as AAA, AA, A, BBB, or investment grade commercial paper, or by Moody’s Investors Service, Inc. as Aaa, Aa, A, Baa, or investment grade commercial paper, including any such ratings with “+” or “-” designation or other variations that occur within these ratings, or has a rating or a provisional rating by another nationally recognized rating agency or system, which rating and agency or system have been certified by rule or order of the commissioner, or (2) the issuer thereof either (A) has any security listed or approved for listing upon notice of issuance on a national securities exchange or designated or approved for designation upon notice of issuance as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, if the exchange or interdealer quotation system has been certified by the commissioner, pursuant to subdivision (o) of Section 25100, or (B) meets each of the following requirements:

(i) The issuer is a corporation which is subject to Section 13 of the Securities Exchange Act of 1934.

(ii) The issuer had total shareholders’ equity of at least one million dollars (\$1,000,000) at the end of its most recent fiscal year, and had consolidated net income, after all charges, including taxes and extraordinary losses, and excluding extraordinary gains, of at least five hundred thousand dollars (\$500,000) for three of its last four fiscal years, including its most recent fiscal year. The determination of total shareholders’ equity and net income shall be determined in conformity with generally accepted accounting principles applicable to that fiscal year or years, on a consolidated basis, or (3) the evidence of indebtedness is issued by any corporation all of the outstanding shares of which are owned by an issuer which meets the requirements of subparagraph (A) or (B) of paragraph (2).

(b) This section creates and authorizes a class of transactions and persons pursuant to Section 1 of Article XV of the California Constitution.

(c) Any evidence of indebtedness issued in compliance with this section shall be entitled to the benefits of the usury exemption contained in this section regardless of whether subsequent to its



issuance the evidence of indebtedness is determined by a court of competent jurisdiction to be a “security.”

SEC. 4. Section 31105 is added to the Corporations Code, to read:

31105. Any offer, sale, or other transfer of a franchise, or any interest in a franchise, to a resident of another state or any territory or foreign country, shall be exempted from the provisions of Chapter 2 (commencing with Section 31110) of this part, if all locations from which sales, leases or other transactions between the franchised business and its customers are made, or goods or services are distributed, are physically located outside this state.

SEC. 5. Section 31106 is added to the Corporations Code, to read:

31106. There shall be exempted from the provisions of Chapter 2 (commencing with Section 31110) of this part, any offer, sale, or other transfer of a franchise or any interest in a franchise, provided that the offer, sale or transfer meets the requirements in subdivisions (a) and (b):

(a) Any of the following conditions apply:

(1) One or more of the owners of the prospective franchisee owning at least a 50 percent interest in the prospective franchisee meet both of the following:

(A) The owner or owners have had, within the seven years before the date of the sale or other transaction, at least 24 months' experience being responsible for the financial and operational aspects of a business offering products or services substantially similar to those offered by the franchised business.

(B) The owner or owners are not controlled by the franchisor.

(2) One or more of the owners of the prospective franchisee owning at least a 50 percent interest in the prospective franchisee meet both of the following:

(A) The owner or owners are, or have been within 60 days prior to the sale or other transaction, an officer, director, managing agent, or an owner of at least a 25 percent interest in the franchisor for at least 24 months.

(B) The owner or owners are not controlled by the franchisor.

(3) The offer, sale, or other transfer is of an additional franchise to an existing franchisee of the franchisor, or to an entity, one or more of the officers, directors, managing agents or owners of at least a 25 percent interest of which is an existing franchisee of the franchisor; provided that, in either case, for 24 months or more the franchisee, or the qualifying person, has been engaged in a business offering products or services substantially similar to those to be offered by the franchise being sold, or otherwise transferred.

(b) The franchisor files with the commissioner a notice of exemption and pays the fee prescribed in subdivision (f) of Section 31500 no later than 15 calendar days after the sale of a franchise in this state pursuant to this section.

SEC. 6. Section 31107 is added to the Corporations Code, to read:



31107. There shall be exempted from the provisions of Chapter 2 (commencing with Section 31110) of this part, any offer (but not the sale) by a franchisor of a franchise while an application for renewal or amendment is pending if the prospective franchisee receives all of the following:

(a) The offering circular and its exhibits as filed with the commissioner with the application for renewal or amendment.

(b) A written statement from the franchisor that (1) the filing has been made but is not effective, (2) the information in the offering circular and exhibits has not been reviewed by the commissioner, and (3) the franchisor will deliver to the prospective franchisee an effective offering circular and exhibits at least 10 business days prior to execution by the prospective franchisee of a binding agreement or payment of any consideration to the franchisor, or any person affiliated with the franchisor, whichever occurs first, showing all material changes from the offering circular and exhibits received by the prospective franchisee under subdivision (a) of this section.

(c) The offering circular and exhibits in accordance with paragraph (3) of subdivision (b) of this section.

SEC. 7. Section 31125 of the Corporations Code is amended to read:

31125. (a) An application for registration of a material modification of an existing franchise or of existing franchises shall be in such form and contain such information as the commissioner may by rule prescribe, and shall be accompanied by a proposed disclosure form as specified in subdivision (b). Such an application may be included with an application pursuant to Section 31111 or 31121.

(b) Except as provided in subdivision (c), it is unlawful to solicit the agreement of a franchisee to a proposed material modification of an existing franchise without first delivering to the franchisee a written disclosure, in a form and containing such information as the commissioner may by rule or order require, identifying the proposed modification, either five business days prior to the execution of any binding agreement by the franchisee to such modification or containing a statement that the franchisee may, by written notice mailed or delivered to the franchisor or a specified agent of the franchisor within not less than five business days following the execution of such agreement, rescind such agreement to the material modification.

(c) Any modification of a franchise agreement with an existing franchisee of a franchisor shall be exempted from the provisions of Chapter 2 (commencing with Section 31110) of this part, if all of the following occur:

(1) The modification is in connection with the resolution of a bona fide dispute between the franchisor and the franchisee or the resolution of a franchisee default.



(2) The franchisee receives the complete written modification at least five business days prior to the execution of a binding agreement; provided (A) the agreement is not executed within 12 months after the date of the franchise agreement, and (B) the modification does not waive any right of the franchisee under the California Franchise Relations Act (Chapter 5.5 (commencing with Section 20000) of Division 8 of the Business and Professions Code), but the modification may include a general release of all known and unknown claims by a party to the modification.

(3) The modification is not applied on a franchise systemwide basis at or about the time the modification becomes a binding agreement.

SEC. 8. The amendments to Sections 25116 and 25117 of the Corporations Code made by this act are declaratory of and do not change existing law.

