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AB-667 Broker-dealers: exemptions: finders. (2015-2016)

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Assembly Bill No. 667

CHAPTER 743

An act to add Section 25206.1 to the Corporations Code, relating to securities.

[Approved by Governor October 10, 2015. Filed with Secretary of State October 10, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 667, Wagner. Broker-dealers: exemptions: finders.

Under existing law, the Corporate Securities Law of 1968, the Commissioner of Business Oversight regulates the activities of a broker-dealer which is defined as, among other things, any person engaged in the business of effecting securities transactions in California for the account of others or his or her own account, and it specifies those persons or entities excluded from the definition. Existing law requires, among other things, that a broker-dealer apply for and secure a certificate authorizing that person to act in that capacity, unless the person is exempted from this requirement, as prescribed. Existing law prohibits a person acting on behalf of a licensed broker-dealer or an issuer, from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security in this state unless the broker-dealer and agent have complied with certain rules.

This bill would exempt from those provisions an individual who is a finder, as defined, who satisfies specified requirements, including, among other things, filing an initial statement of information with the Commissioner of Business Oversight and paying a filing fee.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25206.1 is added to the Corporations Code, to read:

25206.1. (a) For purposes of this section, a "finder" is a natural person who, for direct or indirect compensation, introduces or refers one or more accredited investors, as that term is defined in Rule 501(a) of Regulation D under the Securities Act of 1933 (17 C.F.R. 230.501(a)), to an issuer or an issuer to one or more accredited investors, solely for the purpose of a potential offer or sale of securities of the issuer in an issuer transaction in this state, and who does not do any of the following:

- (1) Provide services to an issuer for a transaction or a series of related transactions for the offer or sale of securities of the issuer that exceeds a securities purchase price of fifteen million dollars (\$15,000,000) in the aggregate.
- (2) Participate in negotiating any of the terms of the offer or sale of the securities.
- (3) Advise any party to the transaction regarding the value of the securities or the advisability of investing in, purchasing, or selling the securities.

(4) Conduct any due diligence on the part of any party to the transaction.

(5) Sell or offer for sale in connection with the issuer transaction any securities of the issuer that are owned, directly or indirectly, by the finder.

(6) Receive, directly or indirectly, possession or custody of any funds in connection with the issuer transaction.

(7) Knowingly receive compensation in connection with any offer or sale of securities unless the sale is qualified under this division or unless the security or the transaction is exempt or not otherwise subject to qualification.

(8) Make any disclosure to a potential purchaser other than the following:

(A) The name, address, and contact information of the issuer.

(B) The name, type, price, and aggregate amount of any securities being offered in the issuer transaction.

(C) The issuer's industry, location, and years in business.

(b) A finder who satisfies all of the conditions set forth in subdivisions (c) to (f), inclusive, shall be exempt from the provisions of Section 25210.

(c) (1) The finder shall file with the commissioner before engaging in any activities described in subdivision (a), on a form prescribed by the commissioner, an initial statement of information that shall include both of the following:

(A) The name and complete business or residential address of the finder.

(B) The mailing address of the finder, if different from the business or residential address.

(2) A filing fee of three hundred dollars (\$300) shall be submitted to the Department of Business Oversight along with the initial statement of information required by this subdivision.

(d) (1) In addition, the finder shall file with the commissioner within 30 days of the anniversary of the finder's initial statement of information required by subdivision (c), and annually thereafter, on a form prescribed by the commissioner, a renewal statement of information that includes all of the following:

(A) The following affirmative representations by the finder:

(i) The finder has complied and will continue to comply with the conditions of subdivision (a).

(ii) The finder has not performed any acts or satisfied any circumstances prohibited by Section 25212 or by Rule 506(d) of Regulation D under the Securities Act of 1933 (17 C.F.R. 230.506(d)), and the finder has not been sanctioned by the commissioner pursuant to Section 25212.

(iii) The finder has obtained the written agreement described in subdivision (e) with respect to each transaction in which the finder has participated in the prior 12 months.

(B) An indication by the finder as to whether the finder has received transaction-based compensation that is subject to the actual sale of securities by the issuer in any transaction in which the finder has participated in the prior 12 months.

(2) A filing fee in the amount of two hundred seventy-five dollars (\$275) shall accompany each renewal statement of information.

(e) (1) Concurrently with each introduction, the finder shall obtain the informed, written consent of each person introduced or referred by the finder to an issuer, in a written agreement signed by the finder, the issuer, and the person introduced or referred, disclosing the following:

(A) The type and amount of compensation that has been or will be paid to the finder in connection with the introduction or referral and the conditions for payment of that compensation.

(B) That the finder is not providing advice to the issuer or any person introduced or referred by the finder to an issuer as to the value of the securities or as to the advisability of investing in, purchasing, or selling the securities.

(C) Whether the finder is also an owner, directly or indirectly, of the securities being offered or sold.

(D) Any actual and potential conflict of interest in connection with the finder's activities related to the issuer transaction.

(E) That the parties to the agreement shall have the right to pursue any available remedies at law or otherwise for any breach of the agreement.

(2) To satisfy the requirements of this subdivision, the agreement shall also include a representation by the person introduced or referred by the finder to the issuer that the person is an accredited investor, as that term is defined in Rule 501(a) of Regulation D under the Securities Exchange Act of 1933 (17 C.F.R. 230.501(a)), and that the person knowingly consents to the payment of the compensation described therein.

(f) The finder shall maintain and preserve, for a period of five years from the date of filing of the notice prescribed in subdivision (d), a copy of the notice, the written agreement required in subdivision (e), and all other records relating to any offer or sale of securities in connection with which the finder receives compensation, as the commissioner may by rule require. The finder, upon written request of the commissioner, shall furnish to the commissioner any records required to be maintained and preserved under this subdivision.

(g) (1) A natural person who is engaged in the business of effecting transactions in securities and is not otherwise exempt from Section 25210 shall be subject to the requirements of Section 25210, if the individual fails to meet the definition of "finder" set forth in subdivision (a), or does not satisfy all the conditions set forth in subdivisions (c) to (f), inclusive.

(2) In the event a natural person does not meet the definition of "finder" set forth in subdivision (a) or does not satisfy all the conditions set forth in subdivisions (c) to (f), inclusive, any person introduced or referred by that natural person to an issuer, who purchases securities of that issuer in an issuer transaction following that introduction or referral, shall have the right to pursue any applicable remedy afforded under state law, including, without limitation, any applicable remedies pursuant to Section 25501.5.

(h) The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this section, including rules and forms governing applications and reports, and defining any terms, whether or not used in this law, insofar as the definitions are not inconsistent with the provisions of this law. For the purpose of rules and forms, the commissioner may classify securities, persons, and matters within his or her jurisdiction, and may prescribe different requirements for different classes.