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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 7. GENERAL BUSINESS REGULATIONS [16000 - 18107] (*Division 7 added by Stats. 1941, Ch. 61.*)

PART 2. PRESERVATION AND REGULATION OF COMPETITION [16600 - 17365] (*Part 2 added by Stats. 1941, Ch. 526.*)

CHAPTER 1. Contracts in Restraint of Trade [16600 - 16607] (*Chapter 1 added by Stats. 1941, Ch. 526.*)

16600. (a) Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.

(b) (1) This section shall be read broadly, in accordance with *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, to void the application of any noncompete agreement in an employment context, or any noncompete clause in an employment contract, no matter how narrowly tailored, that does not satisfy an exception in this chapter.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law.

(c) This section shall not be limited to contracts where the person being restrained from engaging in a lawful profession, trade, or business is a party to the contract.

(Amended by Stats. 2023, Ch. 828, Sec. 1. (AB 1076) Effective January 1, 2024.)

16600.1. (a) It shall be unlawful to include a noncompete clause in an employment contract, or to require an employee to enter a noncompete agreement, that does not satisfy an exception in this chapter.

(b) (1) For current employees, and for former employees who were employed after January 1, 2022, whose contracts include a noncompete clause, or who were required to enter a noncompete agreement, that does not satisfy an exception to this chapter, the employer shall, by February 14, 2024, notify the employee that the noncompete clause or noncompete agreement is void.

(2) Notice made under this subdivision shall be in the form of a written individualized communication to the employee or former employee, and shall be delivered to the last known address and the email address of the employee or former employee.

(c) A violation of this section constitutes an act of unfair competition within the meaning of Chapter 5 (commencing with Section 17200).

(Added by Stats. 2023, Ch. 828, Sec. 2. (AB 1076) Effective January 1, 2024.)

16600.5. (a) Any contract that is void under this chapter is unenforceable regardless of where and when the contract was signed.

(b) An employer or former employer shall not attempt to enforce a contract that is void under this chapter regardless of whether the contract was signed and the employment was maintained outside of California.

(c) An employer shall not enter into a contract with an employee or prospective employee that includes a provision that is void under this chapter.

(d) An employer that enters into a contract that is void under this chapter or attempts to enforce a contract that is void under this chapter commits a civil violation.

(e) (1) An employee, former employee, or prospective employee may bring a private action to enforce this chapter for injunctive relief or the recovery of actual damages, or both.

(2) In addition to the remedies described in paragraph (1), a prevailing employee, former employee, or prospective employee in an action based on a violation of this chapter shall be entitled to recover reasonable attorney's fees and costs.

(Added by Stats. 2023, Ch. 157, Sec. 2. (SB 699) Effective January 1, 2024.)

16601. Any person who sells the goodwill of a business, or any owner of a business entity selling or otherwise disposing of all of his or her ownership interest in the business entity, or any owner of a business entity that sells (a) all or substantially all of its operating assets together with the goodwill of the business entity, (b) all or substantially all of the operating assets of a division or a subsidiary of the business entity together with the goodwill of that division or subsidiary, or (c) all of the ownership interest of any subsidiary, may agree with the buyer to refrain from carrying on a similar business within a specified geographic area in which the business so sold, or that of the business entity, division, or subsidiary has been carried on, so long as the buyer, or any person deriving title to the goodwill or ownership interest from the buyer, carries on a like business therein.

For the purposes of this section, "business entity" means any partnership (including a limited partnership or a limited liability partnership), limited liability company (including a series of a limited liability company formed under the laws of a jurisdiction that recognizes such a series), or corporation.

For the purposes of this section, "owner of a business entity" means any partner, in the case of a business entity that is a partnership (including a limited partnership or a limited liability partnership), or any member, in the case of a business entity that is a limited liability company (including a series of a limited liability company formed under the laws of a jurisdiction that recognizes such a series), or any owner of capital stock, in the case of a business entity that is a corporation.

For the purposes of this section, "ownership interest" means a partnership interest, in the case of a business entity that is a partnership (including a limited partnership or a limited liability partnership), a membership interest, in the case of a business entity that is a limited liability company (including a series of a limited liability company formed under the laws of a jurisdiction that recognizes such a series), or a capital stockholder, in the case of a business entity that is a corporation.

For the purposes of this section, "subsidiary" means any business entity over which the selling business entity has voting control or from which the selling business entity has a right to receive a majority share of distributions upon dissolution or other liquidation of the business entity (or has both voting control and a right to receive these distributions.)

(Amended by Stats. 2006, Ch. 495, Sec. 1. Effective January 1, 2007.)

16602. (a) Any partner may, upon or in anticipation of any of the circumstances described in subdivision (b), agree that he or she will not carry on a similar business within a specified geographic area where the partnership business has been transacted, so long as any other member of the partnership, or any person deriving title to the business or its goodwill from any such other member of the partnership, carries on a like business therein.

(b) Subdivision (a) applies to either of the following circumstances:

(1) A dissolution of the partnership.

(2) Dissociation of the partner from the partnership.

(Amended by Stats. 2002, Ch. 179, Sec. 2. Effective January 1, 2003.)

16602.5. Any member may, upon or in anticipation of a dissolution of, or the termination of his or her interest in, a limited liability company (including a series of a limited liability company formed under the laws of a jurisdiction recognizing such a series), agree that he or she or it will not carry on a similar business within a specified geographic area where the limited liability company business has been transacted, so long as any other member of the limited liability company, or any person deriving title to the business or its goodwill from any such other member of the limited liability company, carries on a like business therein.

(Amended by Stats. 2006, Ch. 495, Sec. 2. Effective January 1, 2007.)

16603. Every person who, as a condition to a sale or consignment of any magazine, book, or other publication requires that the purchaser or consignee purchase or receive for sale any horror comic book, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both.

This section is not intended to prohibit an agreement requiring a person to purchase or accept on consignment a minimum number of copies of a single edition or issue of a magazine or of a particular book or other particular publication.

As used in this section "person" includes a corporation, partnership, or other association.

As used in this section "horror comic book" means any book or booklet in which an account of the commission or attempted commission of the crime of arson, assault with caustic chemicals, assault with a deadly weapon, burglary, kidnapping, mayhem, murder, rape, robbery, theft, or voluntary manslaughter is set forth by means of a series of five or more drawings or photographs in sequence, which are accompanied by either narrative writing or words represented as spoken by a pictured character, whether such narrative words appear in balloons, captions or on or immediately adjacent to the photograph or drawing.

(Amended by Stats. 1983, Ch. 1092, Sec. 49. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

16604. Every person who, as a condition to a sale or consignment of any magazine, book, or other publication, requires that the purchaser or consignee purchase or receive for sale any other magazine, book, or other publication is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both such imprisonment and such fine.

This section is not intended to prohibit an agreement requiring a person to purchase or accept on consignment a minimum number of copies of a single edition or issue of a magazine or of a particular book or other particular publication.

As used in this section, "person" includes a corporation, partnership, or other association.

This section does not apply with respect to any contract relating exclusively to the sale or consignment of any newspaper of general circulation as defined by Section 6000 of the Government Code.

(Amended by Stats. 1983, Ch. 1092, Sec. 50. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

16605. Every person engaged in the business of distribution of books, magazines or publications of any kind to retail dealers shall remove from the possession of a retail dealer, within 10 days after notification by the dealer, any material which he delivered to the dealer which the dealer did not specifically request, if such dealer notifies such person that he does not want the material within 48 hours of receipt of the material.

Any person who refuses to transact business with a dealer because of any action taken by the dealer under this section is guilty of a misdemeanor.

As used in this section "person" includes a corporation, partnership or other association.

(Added by Stats. 1965, Ch. 1723.)

16606. The customer list, including the names, addresses, and identity of customers, of a telephone answering service shall constitute a trade secret and confidential information of, and shall belong to, the owner of the telephone answering service.

(Added by Stats. 1968, Ch. 720.)

16607. (a) Except as provided in subdivision (b), the customer list, including the names, addresses and identity of all employer customers who have listed job orders with an employment agency within a period of 180 days prior to the separation of an employee from the agency and including the names, addresses and identity of all applicant customers of the employment agency, shall constitute a trade secret and confidential information of, and shall belong to, the employment agency.

(b) Notwithstanding the provisions of subdivision (a), no liability shall attach to, and no cause of action shall arise from, the use of a customer list of an employment agency by a former employee who enters into business as an employment agency more than one year immediately following termination of his employment.

(Added by Stats. 1973, Ch. 1116.)