

Newly Minted California Law Tautologically Declares Void Noncompete Agreements Unenforceable Regardless Of Where They Were Signed

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Since at least 1941, California has declared, with certain limited exceptions, that every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void". Cal. Bus. & Prof. Code § 16600. This prohibition is found in Chapter 1, Part 2, Division 7 of the California Business & Professions Code.

Earlier this month, Governor Newsom signed [SB 699](#) which adds the following new section 16600.5 to the Business & Professions Code:

- (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.

Subdivision (a) is tautological. After all, a void contract is not legally binding and therefore unenforceable. Subdivisions (b) and (c) are overbroad insofar as they purport to void employment contracts entered into and maintained outside of California. Subdivision (d) is curious insofar as it declares conduct to be a "civil violation" without specifying what that means. The Business & Professions Code does not define or elsewhere refer to "civil violations". Subdivision (e) exemplifies California's pervasive hostility toward employers by imposing a unilateral right to attorney's fees in favor of the employee.

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National Law Review, Volumess XIII, Number 255

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