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Business Associations

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Business Associations

Business Associations; State Bar fees

Business and Professions Code §6140 (repealed); §§6140, 6140.5 (new); §6141 (amended).

SB 1498 (Moscone); STATS 1971, Ch 1338

Increases the dues of active and inactive members; reactivates the building fund assessment power for a period of ten years; establishes a Client Security Fund for clients victimized by dishonest attorneys.

Under the provisions of §6140 of the Business and Professions Code, the Board of Governors of the State Bar shall fix the annual membership fee, payable on or before the first of February of each year, as follows:

1) For active members who have been admitted to the practice of law in this state for less than two years preceeding the first day of February of the year for which the fee is payable, at a sum not exceeding forty-five dollars (\$45).

2) For active members who have been admitted to the practice of law in this state for less than five years but more than two years preceeding the first day of February for the year for which the fee is payable, at a sum not exceeding sixty dollars (\$60).

3) For active members who have been admitted to the practice of law in this state for five years or longer, at a sum not exceeding eighty dollars (\$80).

Section 6140 further provides, however, that the board may increase the annual membership fee for the years commencing January 1, 1973, and ending December 31, 1982 by an additional amount not exceeding ten dollars (\$10) in any or all of such years. The additional amount is to be applied only to the cost of land and buildings to be used to conduct the operations of the State Bar.

Section 6140.5 provides that the board may establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused

by the dishonest conduct of active members of the State Bar. Any payments from the fund shall be discretionary and shall be subject to such regulations and conditions as the board shall prescribe. The board may delegate the administration of the fund to the disciplinary board provided for in §6086.5, or to any board or committee created by the Board of Governors. Under the provisions of §6140.5, commencing January 1, 1972, the board may increase the annual membership fees fixed by it pursuant to §6140 by an additional amount per active member not to exceed ten dollars (\$10) in any year, the additional amount to be applied only to the purposes of the Client Security Fund.

Section 6141 of the Business and Professions Code is amended to increase the annual membership fee for inactive members from ten dollars (\$10) to twenty dollars (\$20). The annual membership fee for inactive members is payable on or before the first day of February of each year.

COMMENT

The limits of liability of the Client Security Fund are not established by Chapter 1338, though representatives of the State Bar report that as much as \$25,000 may be reached in any one incident. In a resolution adopted by the State Bar in June, "dishonest conduct" was defined as "wrongful acts committed by a lawyer against a person in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value." (See STATE BAR OF CALIFORNIA REPORTS, July 1971) The State Bar also resolved that payments from the Fund will be made only upon condition that the State Bar will be subrogated to the rights of the client against the lawyer involved.

The position of the State Bar in sponsoring this legislation was that in addition to its disciplinary procedures and the sanctions of criminal proceedings against the lawyer, the Bar should make a voluntary effort to alleviate injury to persons sustaining pecuniary loss as the result of dishonest conduct of its members. It can also be noted that conventional malpractice insurance does not cover the types of intentional misconduct for which the Client Security Fund was designed. [SB 1498 was sponsored by the California State Bar]

See Generally:

- 1) 10 SANTA CLARA LAW. 257 (1969-70).

Business Associations; private detectives

Business and Professions Code §7538 (amended); Penal Code §§646.5, 646.6 (new).

SB 63 (Harmer); STATS 1971, Ch 694

Section 7538 of the Business and Professions Code is amended to add subdivision (k) which prohibits a licensed private investigator, or an officer, director, partner, manager, or employee of a private investigator, from knowingly and directly soliciting employment from an injured person or from any other person to obtain authorization on behalf of the injured person to investigate an accident or act which resulted in injury, death or property damage to such person. Nothing in this subdivision shall prohibit solicitation of employment from the attorney of such injured person. Furthermore, this subdivision shall not apply to any business agent or attorney employed by a labor organization.

Previously, prohibitions of this nature applied only to attorneys and their agents (Business and Professions Code §§6150-6154).

Section 646.5 is added to the Penal Code to make violation of the prohibition against such solicitation a misdemeanor.

Chapter 694 also adds §646.6 to the Penal Code to make it a misdemeanor for any person (not just a private investigator) to knowingly and directly solicit any injured person, or anyone acting on his behalf, "for the sale or use of photographs relating to the accident which resulted in the injury or death of such injured person."

Business Associations; insurance adjusters, private detectives

Business and Professions Code §7540 (amended), §7538.3 (new).
AB 1172 (Powers); STATS 1971, Ch 1445

Section 7538.3 is added to the Business and Professions Code to prohibit the following acts by any person licensed as an insurance adjuster:

- 1) Fail to disclose his financial interest in a contract or agreement executed by him for the adjustment of a claim prior to the execution thereof;
- 2) Use of any misrepresentation to solicit a contract or agreement to adjust a claim;
- 3) Solicit or accept remuneration from, or have a financial interest exceeding three percent in, any salvage, repair or other firm which

obtains business in connection with any claim which he has a contract or agreement to adjust.

Chapter 1445 also amends §7540 which, prior to amendment, provided that a licensee under the Private Investigation and Adjuster Act (§§7500 *et seq.*), was prohibited from using a fictitious business name without the written authorization of the Bureau of Private Investigators and Adjusters. This section is amended to prohibit any licensee not only from using a fictitious name, but also from using any other business name without such written authorization.

Any person who violates any of the above provisions is guilty of a misdemeanor punishable by fine not to exceed five hundred dollars (\$500) or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

Business Associations; patient referrals

Business and Professions Code §650 (amended).

AB 2666 (Wilson); STAS 1971, Ch 1568

Chapter 1568 amends §650 of the Business and Professions Code to make it unlawful for a licensee of the healing arts to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of the relationship between the licensee and the person to whom the referral is made.

However, it shall not be unlawful for any licensee to refer a person to any laboratory, pharmacy, clinic, or health care facility solely because such licensee has a proprietary interest or co-ownership in such laboratory, pharmacy, clinic, or health care facility. However, such referral shall be unlawful if the prosecutor proves that there was no valid medical need for such referral.

Prior to the enactment of this chapter, such rebates and other forms of consideration were unlawful only if they were unearned; the section previously did not mention the referral to a laboratory, etc. in which a referring licensee had a proprietary interest.

COMMENT

Section 652 of the Business and Professions Code, which contains the penalty and enforcement provisions for violation of §650, has not been

amended to conform with the amendment of §650 and retains the following language with reference to "unearned" discounts or consideration: ". . . any violation constitutes a misdemeanor as to any and all persons offering, delivering, receiving, accepting or participating in any such rebate, refund, commission, preference, patronage dividend, unearned discount or consideration, whether or not licensed under this division."

Apparently this is an oversight on the part of the Legislature to the extent that §652 is inconsistent with §650.

Business Associations; fictitious name registration

Business and Professions Code §17913 (amended).

SB 916 (Grunsky); STATS 1971, Ch 623

Section 17913 prescribes information required in a fictitious business name statement. This chapter clarifies the section by providing that only businesses operated at the same address may be listed on any one certificate. Further clarification is made expressing that fictitious name certificates filed pursuant to Civil Code Section 2466 *et seq.* expire on July 1, 1971.

The Legislature expressly states that this chapter does not constitute a change in but is declaratory of existing law (Section 3 of SB 916 CAL. STATS. 1971 c. 623).

See Generally:

- 1) 2 PAC. L.J., REVIEW OF SELECTED 1970 CODE LEGISLATION 340 (1971).

Business Associations; false advertising

Business and Professions Code §17507 (new).

AB 1150 (McAlister); STATS 1971, Ch 682

This chapter makes it unlawful to make an advertising claim or representation pertaining to more than one article of merchandise or type of service, within the same class of merchandise or service, unless any price set forth in such claim is clearly and conspicuously identified with the article or service to which it relates. Disclosure of the relationship between the price and the particular article or service by means of an asterisk or other symbol and corresponding footnote is not clear and conspicuous identification when the article or service is not represented pictorially.

Violation of §17507 would subject a person to both civil liability (§§17535, 17536) and criminal responsibility (§17534).

Business Associations; credit unions

Financial Code §15406 (amended).

SB 1090 (Holmdahl); STATS 1971, Ch 625

Section 15406 of the Financial Code provides that the shares and certificates for funds received of members of any credit union and the accumulation on such shares and certificates are exempt from sale on execution to the amount of \$1,500.

Chapter 625 amends §15406 to provide that the procedure set forth in §690.50 of the Code of Civil Procedure shall be followed in claiming the exemption from execution provided for in §15406 (*supra*).

Section 690.50 of the Code of Civil Procedure sets forth the procedure involved in claiming an exemption.

Business Associations; separation of trust accounts

Financial Code §1563 (amended).

AB 1781 (Knox); STATS 1971, Ch 482

Commingling of trust funds is prohibited by §2236 of the Civil Code. "However, the frequent necessity for quick transfer of shares of stock has given rise to the practice of placing trust shares in the name of a third person (*e.g.*, a trust company officer or employee) as nominee. Though technically this is a failure to earmark and improper, the practice has been sanctioned pursuant to Financial Code §1563." [4 WITKEN, SUMMARY OF CALIFORNIA LAW, *Trusts* §40 (7th ed. 1960)].

Chapter 482 provides for tighter controls of this practice of commingling with respect to those securities held in bearer form by including them in the requirement that the records of the trust company shall at all times show the ownership of any such stock, and be kept separate and apart from its other assets. All securities within the provisions of §1563 may be kept by such trust company by one of the following methods by the enactment of Chapter 482:

(a) In such a manner that all certificates representing the stock or estate, trust or other fiduciary account are held separate from those of all other estates, trusts or accounts; or

(b) In a manner such that, without certification as to ownership attached, certificates representing stock or other securities of the same class of the same issuer and from time to time constituting assets of particular estates, trusts or other fiduciary accounts are held in bulk, including, to the extent feasible, the merging of certificates of small denominations into one or more certificates of large denominations, pro-

vided that a trust company, when operating under the method of safe-keeping security certificates described in this subdivision, shall be subject to such rules and regulations as, in the case of state chartered institutions, the superintendent and, in the case of national bank associations the Comptroller of the Currency, may from time to time issue. Such trust company shall, on demand by any party to an accounting by such trust company as fiduciary or on demand by the attorney for such party, certify in writing the stock or other securities held by such trust company as fiduciary for such party.

See Generally:

- 1) CONTINUING EDUCATION OF THE BAR, *California Will Drafting* §17.67 (1965).

Business Associations; Small Business Assistance Program

Financial Code §§28011, 28012 (amended).
AB 3077 (Wilson); STATS 1971, Ch 517

Division 12 (commencing with §28000) of the Financial Code created the Small Business Assistance Program as a pilot project to promote small business enterprises in low income areas (STATS 1968, Ch 1372). The definition of "low income areas," as provided by §28011 of this code, has been amended by Chapter 517 to include those areas in which a job development corporation may be established pursuant to the California Job Development Corporation Law (Corporation Code §1400 *et seq.*). As amended §28012 of the Financial Code defines "small business" as any business whose gross receipts from all sources in any year cannot reasonably be expected to exceed \$250,000, or will not employ more than 15 persons, or both. "Small business" now specifically includes any business dealing in alcoholic beverages. Previously any business whose prime function was the sale of alcoholic beverages was specifically excluded from this definition.

Business Associations; regulation of profit-sharing and retirement pension plans

Corporations Code §§25100, 28002, 28007, 28103-28105 (amended); 28102 (repealed).
SB 773 (Coombs); STATS 1971, Ch 647

Revises provisions of the Corporate Securities Law of 1968 (Cal. Corp Code §2500 et seq.) as they relate to the definition of a retirement system and the regulation of retirement systems.

Subparagraph (n) of Section 25100 is one of the exceptions to the

provisions of Sections 25110, 25120 and 25130 of the Corporations Code (relating to issuer and nonissuer transactions, recapitalization, and reorganization requirements in the sale of securities). This chapter limits that exception to any beneficial interest in a retirement system as defined in subdivision (a) of section 28002. Prior to enactment of this chapter, that exception included any beneficial interest or other security in such a retirement system.

Section 28002 contains definitions of terms applicable to the Retirement Systems Disclosure Law. Subparagraph (a) of §28002 is amended by this chapter to provide that, for purposes of defining a retirement system, a determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus or similar benefit plan qualifies under §401 of the Internal Revenue Code is conclusive evidence that the plan is a retirement system, until such letter is revoked, regardless of whether such revocation is retroactive in effect. Before this chapter was enacted, subparagraph (a) of §28002 did not refer to the effect of such a letter from the IRS. Subparagraph (f) §28002 as amended defines fiduciary as any person who exercises any power of control, or management with respect to the investment of any moneys or other property of a retirement system or has authority or responsibility to do so. Persons who have the power to appoint or remove fiduciaries but cannot exercise any direction or control over such fiduciaries are not to be considered fiduciaries. This specific exception to who could qualify as a fiduciary was not contained in the definition prior to the enactment of this chapter.

Section 28007, as amended, provides that "no fiduciary shall be relieved from any responsibility, obligation or duty under this law" (The Retirement Systems Disclosure Law), but nothing shall preclude any agreement among fiduciaries allocating specific duties or responsibilities, or bar any agreement of insurance or indemnification affecting fiduciaries but no such agreement shall restrict the obligations of any fiduciary. This is a clarification of the general rule previously found in that section. The amended section further provides "this section shall apply only to retirement systems created after December 31, 1971, but it is not intended to change any law as it may apply to retirement systems created prior to January 1, 1971."

The repeal of §28102 by this chapter removes the requirement that an administrator of a retirement system, which provides insurance benefits, report annually a description of such insurance benefits to each insured participant. Sections 28103 and 28104, which contain require-

ments for certain specified annual reports, are amended by this chapter to reflect the deletion of §28102 and its reporting requirement.

Section 28105 provides that the administrator of a retirement system must annually file a report setting forth all investment transactions conducted during the preceding calendar or fiscal year. Certain retirement systems are exempt from the reporting requirement. These include:

- 1) Retirement systems where contributions are paid to a trustee or cotrustee who is subject to the control of the Superintendent of Banks or the Comptroller of Currency, or where such trustee or cotrustee is a bank and a member of a Federal Reserve bank.
- 2) Retirement systems in which all contributions are paid to an insurer authorized to do business in the state.
- 3) Retirement systems which issue an annual report of investment transactions to all of its participants.
- 4) Retirement systems in which all contributions are paid to a trustee or cotrustee who is doing business in the state and is subject to the supervision of the Savings and Loan Commissioner of the Federal Home Loan Bank Board.
- 5) Retirement systems in which a portion of the contributions are paid to a trustee, cotrustee, or insurer designated in subdivisions (1) and (2) above and the remainder of the contributions are paid to another trustee, cotrustee, or insurer designated in subdivision (1) and (2) above.

Subdivisions (1), (2) and (3), *supra*, were the only exceptions to the reporting requirement prior to the enactment of this chapter.

See Generally:

- 1) CONTINUING EDUCATION OF THE BAR, *California Corporate Securities Law and Rules* §25100 (1968).
- 2) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Corporations* §114A (Supp. 1969).
- 3) 9 SANTA CLARA LAW. 82 (1968).