

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2538

Introduced by Assembly Member Nazarian

February 19, 2016

~~An act to amend Section 554 of the Business and Professions Code, relating to healing arts. An act to amend Sections 16720 and 16727 of the Business and Professions Code, relating to business regulation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2538, as amended, Nazarian. ~~Ophthalmia neonatorum. Business regulation: radius restrictions.~~

(1) Existing law makes every trust, subject to specified exemptions, unlawful, against public policy, and void. A “trust” is defined for these purposes as a combination of capital, skill, or acts by 2 or more persons for certain designated purposes. Under existing law, these purposes include, among others, creating or carrying out restrictions in trade or commerce or preventing competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or any commodity. The act also makes it unlawful for any person to lease or make a sale or contract for the sale of products on the condition, agreement, or understanding that the lessee or purchaser not use or deal in the products or services of a competitor where the effect is to substantially lessen competition or tend to create a monopoly in any line of commerce. A violation of the act is punishable as a crime.

This bill would expand the definition of “trust” by including as one of those purposes, and would also make it unlawful under the act to, include in any outlet center lease for a retail establishment between a lessor and lessee, a radius restriction prohibiting the lessee from

opening or operating the same retail establishment in a separate outlet center located 10 miles or more in distance from the leased retail establishment.

Because the bill would add to the activities prohibited by the act, the violation of which would be punishable as a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires a doctor, midwife, or other person assisting a mother or child at childbirth to report a case of ophthalmia neonatorum in the child to the local health officer, as specified. Existing law requires the local health officer to take specific actions with respect to each reported case.~~

~~This bill would make technical, nonsubstantive changes to those requirements.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~yes.

State-mandated local program: ~~no~~yes.

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

- 1 SECTION 1. Section 16720 of the Business and Professions
- 2 Code is amended to read:
- 3 16720. A trust is a combination of capital, ~~skill~~ skill, or acts
- 4 by two or more persons for any of the following purposes:
- 5 (a) To create or carry out restrictions in trade or commerce.
- 6 (b) To limit or reduce the production, or increase the price of
- 7 merchandise or of any commodity.
- 8 (c) To prevent competition in manufacturing, making,
- 9 transportation, ~~sale~~ sale, or purchase of merchandise, ~~produce~~
- 10 produce, or any commodity.
- 11 (d) To fix at any standard or figure, whereby its price to the
- 12 public or consumer shall be in any manner controlled or
- 13 established, any article or commodity of merchandise, ~~produce~~
- 14 produce, or commerce intended for sale, barter, ~~use~~ use, or
- 15 consumption in this State.

1 (e) To make or enter into or execute or carry out any contracts,
2 ~~obligations~~ *obligations*, or agreements of any kind or description,
3 by which they do all or any or any combination of the following:

4 (1) Bind themselves not to sell, dispose ~~of~~, or transport any
5 article or any commodity or any article of trade, use, merchandise,
6 ~~commerce~~ *commerce*, or consumption below a common standard
7 figure, or fixed value.

8 (2) Agree in any manner to keep the price of ~~such an~~ article,
9 ~~commodity~~ *commodity*, or transportation at a fixed or graduated
10 figure.

11 (3) Establish or settle the price of any article, ~~commodity~~
12 *commodity*, or transportation between them or themselves and
13 others, so as directly or indirectly to preclude a free and unrestricted
14 competition among themselves, or any purchasers or consumers
15 in the sale or transportation of ~~any such an~~ article or commodity.

16 (4) Agree to pool, ~~combine~~ *combine*, or directly or indirectly
17 unite any interests that they may have connected with the sale or
18 transportation of ~~any such an~~ article or commodity, that its price
19 might in any manner be affected.

20 (f) *Include in any outlet center lease for a retail establishment*
21 *between a lessor and lessee a radius restriction prohibiting the*
22 *lessee from opening or operating the same retail establishment in*
23 *a separate outlet center located 10 miles or more in distance from*
24 *the leased retail establishment.*

25 *SEC. 2. Section 16727 of the Business and Professions Code*
26 *is amended to read:*

27 16727. ~~It shall be unlawful for any person to lease~~ *It shall be*
28 *unlawful for any person to do either of the following:*

29 (a) *Lease or make a sale or contract for the sale of goods,*
30 *merchandise, machinery, supplies, or commodities for use within*
31 *the State, or to fix a price charged therefor, or discount from, or*
32 *rebate upon, such the price, on the condition, ~~agreement~~ *agreement,**
33 *or understanding that the lessee or purchaser thereof shall not use*
34 *or deal in the goods, merchandise, machinery, supplies,*
35 *commodities, or services of a competitor or competitors of the*
36 *lessor or seller, where the effect of such the lease, sale, or contract*
37 *for sale or such the condition, ~~agreement~~ *agreement,* or*
38 *understanding may be to substantially lessen competition or tend*
39 *to create a monopoly in any line of trade or commerce in any*
40 *section of the State.*

1 (b) Include in any outlet center lease for a retail establishment
2 between a lessor and lessee a radius restriction prohibiting the
3 lessee from opening or operating the same retail establishment in
4 a separate outlet center located 10 miles or more in distance from
5 the leased retail establishment.

6 SEC. 3. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

15 SECTION 1. Section 554 of the Business and Professions Code
16 is amended to read:

17 554. The local health officer shall do all of the following:

18 (a) Investigate each case filed with him or her pursuant to this
19 article, and all other cases coming to his or her attention.

20 (b) Report all cases of ophthalmia neonatorum coming to his
21 or her knowledge, and the result of all investigations that he or she
22 makes to the department, in the form that the department directs.

23 (c) Conform to the rules and regulations that the department
24 promulgates for the purpose of carrying out this article.