

RESOLUTION 03-02-08

DIGEST

Civil Procedure: Venue Restrictions in Franchise Agreements

Amends Business and Professions Code section 20040.5 to remove arbitration provisions in franchise agreements from prohibition against out of state venue restrictions.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Business and Professions Code section 20040.5 to remove arbitration provisions in franchise agreements from prohibition against out of state venue restrictions. This resolution should be approved in principle because it would clarify that dispute resolution provisions mandating venue outside of California would be void if they do not involve arbitration while making it clear that such provisions are unenforceable in the context of arbitrations.

The current statute invalidates provisions in franchise agreements for franchise businesses operating in California which require that venue for actions under such agreements be restricted to out of state forums. The Ninth Circuit has held, in *Bradley v Harris Research, Inc.* [(2001) 275 F.3d 884], that the federal Arbitration Act (9 U.S.C.A. section 1, et seq.) preempts such prohibitions with respect to arbitrations. This resolution would amend the statute to conform to the limitation imposed by federal law.

This resolution should be approved in principle because it conforms the statute to existing law and thereby eliminates a prospective “trap” for the unwary.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates recommends that legislation be sponsored to amend Business & Professions Code section 20040.5 to read as follows:

- 1 §20040.5
- 2 ~~A~~ Any dispute resolution provision not involving arbitration in a franchise
- 3 agreement restricting venue to a forum outside this state is void with respect to any claim
- 4 arising under or relating to a franchise agreement involving a franchise business operating
- 5 within this state.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS:

Existing Law: Business & Professions Code section 20040.5 provides that any provision franchise agreement involving a California franchisee that restricts venue to an out of state forum is void. However, in *Bradley v. Harris Research, Inc.* (2001) 275 F.3d 884, the Ninth Circuit Court of Appeals held this provision to be unenforceable in the context of arbitrations, as being preempted by the Federal Arbitration Act (9 U. S. C. A. §§1, *et seq.*)

This Resolution: Would clarify that dispute resolution provisions mandating venue outside of California would still be void if they do not involve arbitration.

The Problem: It is obvious the Legislature had a concern that California franchisees would execute franchise agreements with out of state franchisors which would provide for venue in exotic, or at least foreign jurisdictions, such that such franchisees would be deprived of the responsibilities and benefits of California law. Courts have already acknowledged that frequently these agreements are contracts of adhesion. Please see, *e.g.*, *Bolter v. Superior Court* (2001) 87 Cal.App.4th 900. This resolution would alert franchisees to the legal reality that section 20040.5 does not apply to arbitration clauses.

IMPACT STATEMENT:

This proposed resolution does not affect any other law, statute or rule.

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