Case No. S249895

IN THE SUPREME COURT OF CALIFORNIA

ABBOTT LABORATORIES; ABBVIE INC.; TEVA PHARMACEUTICALS USA, INC.; BARR PHARMACEUTICALS, INC.; DURAMED PHARMACEUTICALS, INC.; AND DURAMED PHARMACEUTICAL SALES CORP.,

Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE,

Respondent,

PEOPLE OF THE STATE OF CALIFORNIA EX REL. ORANGE COUNTY DISTRICT ATTORNEY TONY RACKAUCKAS,

Real Party in Interest.

After a Decision by the Court of Appeal for the Fourth District, Division One
Case No. D072577
Issuing a Writ of Mandate to Vacate an
Order of the Superior Court of Orange County
Superior Court Case No. 30-2016-00879117-CU-BT-CXC
Hon. Kim Dunning

APPENDIX OF EXHIBITS 1-29 TO REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' ANSWERING BRIEF ON THE MERITS; DECL. OF MICHAEL SHIPLEY

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Blanca F. Young (SBN 217533)

Attorneys for Petitioners AbbVie Inc. and Abbott Laboratories

APPENDIX OF EXHIBITS

Exhibit	**Document Title**	**Pages**
G	Senate Rules Committee Floor Analysis	1707 - 1709
H	Senate Republican Office of Policy Analysis	1710
I	Enrolled Bill Report - Finance	1711
J	Enrolled Bill Report - Labor & Workforce Development	1712 - 1715
K	Enrolled Bill Report - Planning & Research	1716 - 1719
L	Enrolled Bill Report - Education	1720 - 1723
M	Enrolled Bill Report - Air Resources Board	1724 - 1727
N	Legislative Counsel's Report to Governor	1728
O	Chaptered Bill Text (Excerpted)	1729 - 1735
P	Legislative Counsel's Report on Legislation Necessary to Maintain the Codes (Excerpted)	1736 - 1740
27.	**Stats. 2012, ch. 32, S.B. 1006**	**1741 - 1914**
A	Complete Bill History	1741
B	Bill Text as Introduced	1742
C	Senate Rules Committee Floor Analysis - Third Reading	1743
D	Amended Bill Text	1744 - 1839
E	Senate Rules Committee Floor Analysis	1840 - 1844
F	Chaptered Bill Text	1845 - 1914
28.	**Stats. 2012, ch. 448, A.B. 2370**	**1915 - 2054**

Exhibit	**Document Title**	**Pages**
A	Complete Bill History	1915 - 1916
B	Assembly Judiciary Committee - Republican Analysis	1917 - 1920
C	Report on Laura's Law	1921 - 1938
D	Compilation of Correspondence re Laura's Law from Legislative File	1939 - 1966
E	Bill Text as Introduced	1967 - 1969
F	Amended Bill Text	1970 - 1975
G	Assembly Judiciary Committee Bill Information Request	1976 - 1980
H	Assembly Judiciary Committee Analysis	1981 - 1983
I	Assembly Judiciary Committee Bill Information Request	1984 - 1988
J	Unsigned Drafting Instructions from Legislative File	1989
K	Bill Fact Sheets from Sponsor	1990 - 1992
L	Senate Health Committee Bill Information Request	1993 - 1996
M	Senate Health Committee Bill Information Request	1997 - 1998
N	Amended Bill Text (Excerpted)	1999 - 2004
O	Senate Health Committee Analysis	2005 - 2006
P	Senate Health Committee Bill Information Request	2007 - 2008

CALIFORNIA LEGISLATURE

AT SACRAMENTO

FIFTIETH SESSION

1933

ASSEMBLY FINAL HISTORY

SYNOPSIS OF ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT AND JOINT RESOLUTIONS

FIFTIETH SESSION

First Half—Began Monday, January 2, and adjourned Saturday, January 28.

Second Half (After Constitutional Recess)—Began Tuesday, February 28, and recessed May 12.

Reconvened (After Recess) July 17, 1933.

Adjourned Sine Die July 26, 1933.

Legislative Days	88 days
Calendar Days	206 days
Period of Constitutional Recess	30 days
Period of Recess	65 days
Full Duration of Session	111 days

Bills passed by Legislature prior to May 12, 1933, unless otherwise specified in bill, become effective August 21, 1933.

Bills passed by Legislature subsequent to May 12, 1933, unless otherwise specified in bill, become effective October 25, 1933.

WALTER J. LITTLE
Speaker

F. C. CLOWDSLEY
Speaker pro tempore

COMPILED BY

ARTHUR A. OHNIMUS
Chief Clerk

FRED J. DESCH
Assistant Chief Clerk

MEMBERS OF ASSEMBLY, ADDRESSES, CALIFORNIA LEGISLATURE—SECOND PART, FIFTIETH SESSION, 1933

Name	Occupation	Party	Dist.	Seat	Home address	County	Local address	Phone
*Alter, Hobart R.	Citrus Grower	R.	72	33	126 Rosewood Court, Ontario	San Bernardino	Thayer Apts.	Main 640
Anglim, Clifford C.	Attorney	D.-R.	10	25	321 30th St., Richmond	Contra Costa	Hotel Sacramento	Main 900
Badham, Willard E.	Merchant	R.	63	76	1183 W. 30th St., Los Angeles	Los Angeles	Hotel Berry	Main 5600
*Bliss, George R.	Rancher	R.	39	4	Carpinteria	Santa Barbara	Capital Apts.	Capital 2235
†*Bowers, George B.	Writer	R.	78	14	3435 Texas St., San Diego	San Diego	Hotel Senator	Main 8000
*Boyle, James J.	Druggist	D.	66	74	1918 W. 73rd St., Los Angeles	Los Angeles	El Cortes Apts.	Main 7273
Brook, A. E.	Building and Loan	R.	73	34	223 W. Olive Ave., Redlands	San Bernardino	Hotel Sacramento	Main 900
Burns, Michael J.	Garage Owner	R.	1	51	1644 Summer St., Eureka	Humboldt	718 21st St.	
*Callahan, Bert V.	Attorney	D.	56	63	2031 N. Alexandria, Los Angeles	Los Angeles	Elks Club	Capital 2100
Cassidy, James M.	Salesman	D.	13	67	1520 89th Ave., Oakland	Alameda	Hotel Lenhart	Capital 3000
*Chatters, Ford A.	Publisher	R.-D.	38	69	420 N. Mirage Ave., Lindsay	Tulare	Hotel Sacramento	Main 900
*Clowdsley, F. C.	Attorney	D.-R.	11	19	346 W. Acacia St., Stockton	San Joaquin	Hotel Berry	Main 5600
*Cobb, Lawrence	Attorney	R.	58	9	Citizen's National Bank Bldg., Los Angeles	Los Angeles	Elks Club	Capital 2100
*Cottrell, C. C.	Attorney	R.-D.	31	30	256 S. 17th St., San Jose	Santa Clara	Hotel Senator	Main 8000
*Craig, Edward	Mechanical Engineer	R.	75	77	111 W. Imperial Highway, Brea	Orange	Elks Club	Capital 5600
*Crist, Frank Lee	Attorney	R.	30	29	346 Portola Ave., Palo Alto	Santa Clara	Hotel Senator	Main 8000
*Cronin, Melvyn I.	Attorney	R.-D.	25	2	1251 11th Ave., San Francisco	San Francisco	Hotel Berry	Main 5600
*Crowley, Ernest C.	Attorney	D.-R.	5	71	Suisun	Solano	1219 21st St.	Main 2071
*Dempster, Charles W.	Attorney	R.	61	70	1660 West Blvd., Los Angeles	Los Angeles	Hotel Golden Eagle	Main 1089
*Evans, Herbert J.	Orange Grower	R.	49	18	234 N. Canyon Blvd., Monrovia	Los Angeles	Hotel Lenhart	Capital 3000
*Feigenbaum, B. J.	Attorney	R.-D.	27	24	3828 Jackson St., San Francisco	San Francisco	Hotel Senator	Main 8000
*Field, C. Don	Contractor	R.	43	58	1556 N. Ridgeway Dr., Glendale	Los Angeles	2200 T St.	Main 7959J
Fisher, Charles W.	Attorney	R.	18	43	189 Florence Ave., Oakland	Alameda	Hotel Lenhart	Capital 3000
Frazier, J. E.	Auto Dealer and Farmer	R.-D.	4	73	Gridley	Butte	Hotel Senator	Main 8000
Gilmore, Joseph P.	Florist	R.-D.	21	3	442 Excelsior Ave., San Francisco	San Francisco	Hotel Berry	Main 5600
Greene, Sam M.	Banker	R.	46	10	402 E. Hillcrest Blvd., Inglewood	Los Angeles	Elks Club	Capital 2100
Grubbs, Charles W.	Manufacturer	D.	52	13	6529 Compton Ave., Los Angeles	Los Angeles	Hotel Sacramento	Main 900
Hallner, Herbert S.	Insurance	D.	65	11	147 W. 52d Pl., Los Angeles	Los Angeles	Hotel Sacramento	Main 900
Hatch, Ira S.	Attorney	R.	70	38	238 Junipero Ave., Long Beach	Los Angeles	Hotel Berry	Main 5600
Hoffman, William W.	Attorney	R.-D.	15	53	5333 El Camille Ave., Oakland	Alameda	Hotel Sacramento	Main 900
Hornblower, William B.	Attorney	R.-D.	23	47	1530 Guerrero St., San Francisco	San Francisco	Hotel Sacramento	Main 900
*Hunt, Charles A.	Locomotive Fireman	D.	45	80	2647½ N. Griffin Ave., Los Angeles	Los Angeles	Hotel Sacramento	Main 900
Jones, William Moseley	Attorney	D.	51	65	113 N. 21st St., Montebello	Los Angeles	Casa Real Apts.	
Kallam, Clifford R.	Realtor	D.	34	45	441 E. Lake Ave., Watsonville	Santa Cruz	Elks Club	Capital 2100
*King, Cecil R.	Business Man	D.	67	64	1754 E. Florence Ave., Los Angeles	Los Angeles	La Hermosa Apts.	Capital 4642W
Knowland, William F.	Publisher	R.	14	44	800 Grand St., Alameda	Alameda	Lewis Apts.	Capital 1919
Latham, E. V.	Realtor	R.	53	55	504 N. 2d St., Alhambra	Los Angeles	Hotel Lenhart	Capital 3000
Levey, Edgar C.	Attorney	R.-D.	28	1	2940 Lake St., San Francisco	San Francisco	Elks Club	Capital 2100
*Little, Walter J.	Attorney	R.	60	70	1020 San Vicente Blvd., Santa Monica	Los Angeles	1108 43d St.	Capital 7406
Lyon, Charles W.	Attorney	R.	59	17	1052 Redondo Blvd., Los Angeles	Los Angeles	Lewis Apts.	Capital 1919
Maloney, Thomas A.	Insurance	R.-D.	20	48	340 Connecticut St., San Francisco	San Francisco	Elks Club	Capital 2100
Martin, Frank G.	Journalist	R.	48	40	745 Sacramento St., Altadena	Los Angeles	Hotel Sacramento	Main 900
Mayo, Jesse M.	Publisher	R.	6	50	Angels Camp	Calaveras	Elks Club	Capital 2100
McBride, James J.	Rancher	D.	40	57	1047 Poli St., Ventura	Ventura	Elks Club	Capital 2100
McCarthy, John D.	Attorney	D.	64	62	170½ Loma Dr., Los Angeles	Los Angeles	Auslender Apts.	Capital 1915
McMurray, Patrick J.	Merchant	D.	24	23	1852 Church St., San Francisco	San Francisco	Hotel Berry	Main 5600
Meehan, Henry P.	Life Insurance	D.	17	68	1440 Alice St., Oakland	Alameda	Hotel Travelers	Main 7300

MEMBERS OF ASSEMBLY, WITH COMMITTEES OF WHICH EACH IS A MEMBER

ALTER—Elections (Chairman), Agriculture, Motor Vehicles, Prisons and Reformatories, Public Health and Quarantine, Revenue and Taxation, Ways and Means.

ANGLIM—Civil Service, Constitutional Amendments, County Government, Judiciary, Live Stock and Dairies, Mileage, Oil Industries.

✓ BADHAM—Oil Industries (Chairman), Banking, Civil Service, Federal Relations, Motor Vehicles, Revenue and Taxation, Ways and Means.

BLISS—Teachers Colleges (Chairman), Commerce and Navigation, Engrossment and Enrollment, Labor and Capital, Roads and Highways, Universities, Ways and Means.

BOWERS—Civil Service (Chairman), Commerce and Navigation, County Government, Fish and Game, Soldiers and Sailors Affairs, Teachers Colleges, Ways and Means.

BOYLE—Hospitals and Asylums, Introduction of Bills, Labor and Capital, Medical and Dental Laws, Mines and Mining, Public Health and Quarantine, Ways and Means.

BROCK—County Government (Chairman), Building and Loan Associations, Engrossment and Enrollment, Governmental Efficiency and Economy, Municipal Corporations, Oil Industries, Ways and Means.

BURNS—Drainage, Swamp and Overflowed Lands, Elections, Fish and Game, Live Stock and Dairies, Prisons and Reformatories, Roads and Highways, Teachers Colleges.

CALLAHAN—County Government, Crime Problems, Drainage, Swamp and Overflowed Lands, Education, Elections, Governmental Efficiency and Economy, Public Health and Quarantine.

CASSIDY—Agriculture, Drainage, Swamp and Overflowed Lands, Exhibitions and Fairs, Fish and Game, Irrigation, Municipal Corporations, Public Charities and Corrections.

CHATTERS—Direct Legislation (Chairman), Agriculture, Constitutional Amendments, Drainage, Swamp and Overflowed Lands, Irrigation, Live Stock and Dairies, Unemployment.

CLOWDSLEY—Contested Elections (Chairman), Agriculture, Constitutional Amendments, Education, Judiciary, Rules, Soldiers and Sailors Affairs.

COBB—Ways and Means (Chairman), Crime Problems, Education, Medical and Dental Laws, Revenue and Taxation, Rules, Universities.

COTTRELL—Aviation and Aircraft, Crime Problems, Elections, Motor Vehicles, Prisons and Reformatories, Roads and Highways, Ways and Means.

CRAIG—Attaches (Chairman), Constitutional Amendments, Insurance, Irrigation, Public Utilities, Roads and Highways, Ways and Means.

CRIST—Insurance (Chairman), Banking, Building and Loan Associations, Contested Elections, Direct Legislation, Irrigation, Judiciary.

CRONIN—Medical and Dental Laws (Chairman), Attaches, Corporations, Direct Legislation, Insurance, Judiciary, Public Morals.

CROWLEY—Mileage (Chairman), Civil Service, Elections, Fish and Game, Insurance Judiciary, Roads and Highways.

DEMPSTER—Labor and Capital (Chairman), Engrossment and Enrollment, Exhibitions and Fairs, Hospitals and Asylums, Judiciary, Public Utilities, Soldiers and Sailors Affairs.

EVANS—Conservation (Chairman), Federal Relations, Hospitals and Asylums, Insurance, Manufactures, Public Utilities, Revenue and Taxation.

2382—Hunt, April 19. To Com. on Ins.

An act to amend section 623 of the Political Code, relating to the filing of bonds by insurance companies, and reciting the conditions of such bonds.

April 19—Read first time. To Com. on Rev. & Ptg. From committee. To printer.
April 21—From printer. To committee.
July 26—From committee without recommendation.

2383—Badham, April 21. To Com. on Jud.

An act to amend section 3369 of the Civil Code, relating to specific and preventive relief.

April 21—Read first time. To Com. on Rev. & Ptg. From committee. To printer.
April 22—From printer. To committee.
May 4—From committee with recommendation: Do pass.
May 5—Read second time. To engrossment. Reported correctly engrossed.
May 6—Read third time, passed, title approved. To Senate.
May 8—In Senate. Read first time. To Com. on Jud.
May 9—From committee with recommendation: Do pass. Read second time.
May 12—Read third time, passed, title approved. To Assembly.
May 12—In Assembly. To enrollment.
June 7—Reported correctly enrolled. To Governor at 11 a.m.
June 15—Approved by Governor. Chapter 953.

2384—Badham, April 21. To Com. on Jud.

An act to amend section 654a of the Penal Code prohibiting false advertising and the misleading use of comparative prices.

April 21—Read first time. To Com. on Rev. & Ptg. From committee. To printer.
April 22—From printer. To committee.
April 25—From committee with recommendation: Do pass.
April 26—Read second time. To engrossment. Reported correctly engrossed.
April 27—Read third time, passed, title approved. To Senate.
April 28—In Senate. Read first time. To Com. on Jud.
May 9—From committee with recommendation: Do pass. Read second time.
May 12—Read third time, passed, title approved. To Assembly.
May 12—In Assembly. To enrollment.
June 7—Reported correctly enrolled. To Governor at 11 a.m.
June 15—Approved by Governor. Chapter 952.

2385—West, April 24. To Com. on Co. Gov.

An act to amend sections 2322x7, 4236a, 4236b, 4236c, 4236d, 4236e, 4236f, 4236g, 4236h, 4236i, 4236j, 4236l, 4236n, 4236o, 4236p and 4236q of the Political Code, and to add thereto sections 4236r and 4236s, relating to the compensation of county officers in counties of the seventh class.

April 24—Read first time. To Com. on Rev. & Ptg. From committee. To printer.
April 25—From printer. To committee.
April 27—From committee with recommendation: Do pass.
April 28—Read second time. To engrossment.
April 29—Reported correctly engrossed.
May 1—Passed on calendar.
May 2—Read third time, passed, title approved. To Senate.
May 3—In Senate. Read first time. To Com. on Co. Gov.
May 4—From committee with recommendation: Do pass as amended. Read second time. Amended. To printer. From printer.
May 9—Read third time. Amended. To printer. From printer.
May 10—Notice of reconsideration given to withdraw amendments adopted May 9. Reconsideration granted. Amendments withdrawn.
May 12—Read third time, passed, title approved. To Assembly.
May 12—In Assembly. Senate amendments concurred in. To enrollment.
May 24—Reported correctly enrolled. To Governor at 2 p.m.
June 5—Approved by Governor. Chapter 676.

2386—Stream, April 24. To Com. on W. & M.

An act making an appropriation for the control and conservation of flood waters in San Diego County.

April 24—Read first time. To Com. on Rev. & Ptg. From committee. To printer.
April 25—From printer. To committee.
July 26—From committee without recommendation.

ASSEMBLY BILL No. 2383

INTRODUCED BY MR. BADHAM,

April 21, 1933.

REFERRED TO COMMITTEE ON JUDICIARY.

An act to amend section 3369 of the Civil Code, relating to specific and preventive relief.

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

SECTION 1. Section 3369 of the Civil Code is hereby amended to read as follows:

3369. *1.* Neither specific nor preventive relief can be granted to enforce a *penalty or forfeiture in any case, nor to enforce a* penal law, except in a case of nuisance *or unfair competition*; ~~nor to enforce a penalty or forfeiture in any case~~.

2. Any person performing or proposing to perform an act of unfair competition within this State may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include unfair or fraudulent business practice and unfair, untrue or misleading advertising and any act denounced by Penal Code sections 654a, 654b or 654c.

4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this State in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

O

STATUTES OF CALIFORNIA

FIFTIETH SESSION OF THE LEGISLATURE,

1933.

Began on Monday, January second, and adjourned on Wednesday, July twenty-sixth, nineteen hundred thirty-three.

CHAPTER 896.

An act to add a new section to the Code of Civil Procedure to be numbered 117ha, relating to small claims court.

[Approved by the Governor June 12, 1933. In effect August 21, 1933.]

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

New section.

SECTION 1. A new section is hereby added to the Code of Civil Procedure to be numbered 117ha, and to read as follows:

Process.

117ha. No attachment or garnishment shall issue from the small claims court, but execution may issue in the manner prescribed in Title IX of part 2 of the Code of Civil Procedure of the State of California and upon the payment of the fees allowed by law for such services; provided, that in any city or city and county wherein a municipal court shall have been established, the marshal of the municipal court is charged with the performance of the duties imposed upon the sheriff and constable.

CHAPTER 897.

An act to add a new section to the Political Code to be numbered 597a, relating to the Division of Insurance in the Department of Investment.

[Approved by the Governor June 12, 1933. In effect August 21, 1933.]

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

New section.

SECTION 1. A new section is hereby added to the Political Code to be numbered 597a and to read as follows:

Disposition of fees collected.

597a. All examination expense moneys and appraisal fees collected by the Insurance Commissioner under the provisions of sections 597 and 618 of the Political Code shall be paid into the State treasury in trust, and the procedure for the withdrawal thereof shall be that provided for the disbursement of trust funds by section 453a of the Political Code.

CHAPTER 898.

Stats. 1917, p. 673, amended.

An act to amend sections 2, 4, 5, 6, 7, 10, 16, 22, 23 and 26 of an act entitled "An act providing for the regulation and supervision of companies, brokers, agents, and sales of securities as the same are therein defined, and to prevent fraud in the sale of securities; providing for the enforcement of said act and penalties for the violation thereof; and creating a State Corporation Department and the office of Commissioner of Corporations," approved May 18,

1917, as amended, relating to the Division of Corporations, the regulation and supervision of companies, brokers, agents, investment counsel and sale of securities, and the prevention of fraud in the sale of securities.

[Approved by the Governor June 12, 1933. In effect August 21, 1933.]

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

SECTION 1. Section 2 of the act cited in the title hereof is hereby amended to read as follows: Stats. 1931, p. 937.

Sec. 2. (a) Words used in this act in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; and the neuter, the masculine and feminine; the singular number includes the plural, and the plural the singular; "writing" includes "printing" and "typewriting"; "oath" includes "affirmation"; the word "county" includes "city and county"; and "territory" includes "district." When used in this act, the following terms shall, unless the context otherwise indicates, have the following respective meanings: Definitions.

1. The word "division" means the "Division of Corporations" created by this act. Division.

2. The word "commissioner" means the "Commissioner of Corporations." Commissioner.

3. The word "company" includes all domestic and foreign private corporations, associations, syndicates, joint stock companies, and partnerships of every kind, trustees as hereinafter defined, and also individuals as hereinafter defined. Company.

4. The word "trust" includes all voluntary trusts, as the same are defined in the Civil Code, expressly created by or declared in an instrument in writing the purpose of which is to carry on any business or to secure the payment or repayment of money, but shall not be deemed to include a trust created or declared under or by virtue of a will or a judicial writ, order, decree, or judgment. Trust.

5. The word "trustee" includes only persons or companies executing trusts as hereinbefore defined. Trustee.

6. The word "individual" in so far as it is included in the definition of a "company," includes only persons selling, offering for sale, negotiating for the sale of or taking subscriptions for any security of their own issue. Individual.

7. The word "security" shall include any stock, bond, note, treasury stock, debenture, evidence of indebtedness, certificate of interest or participation, certificate of interest in a profit-sharing agreement, certificate of interest in an oil, gas or mining title or lease, collateral trust certificate, any transferable share, investment contract, or beneficial interest in title to property, profits or earnings, excepting therefrom any certificate, receipt or other instrument issued to the owner or holder of any stock, bond, debenture, evidence of indebtedness, or other instrument, in exchange for such stock, bond, debenture, evidence of indebtedness, or other instrument, deposited Security.

by such owner or holder with a depositary under an agreement providing for the protection or enforcement of the rights and interests of the depositing owners or holders, or for the collection of and/or enforcement of the lien securing such stock, bond, debenture, evidence of indebtedness, or other instrument, or for the joint action and/or the protection otherwise of such owners or holders.

Sale. 8. "Sale" or "sell" shall include every disposition, or attempt to dispose, of a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. "Sale" or "sell" shall also include a contract of sale, an exchange, an attempt to sell, an option of sale, a solicitation of a sale, subscription or an offer to sell, directly or by an agent, or a circular letter, advertisement or otherwise; provided, that a privilege pertaining to a security giving the holder the privilege to convert such security into another security of the same company shall not be deemed a sale of such other security within the meaning of this definition; and provided further, that the issue or transfer of a right pertaining to a security and entitling the holder of such right to subscribe to another security of the same company shall not be deemed a sale of such security within the meaning of this definition; but the sale of such other security upon the exercise of such right shall be subject to the provisions of this act.

Agent. 9. The word "agent" means and includes every person or company employed or appointed by a company or broker or any other person who shall, within this State, either as an employee or otherwise, for a compensation, sell, offer for sale, negotiate for the sale of or take subscriptions for any security.

Broker. 10. The word "broker" includes every person or company, other than an agent, who shall, in this State, engage either wholly or in part in the business of selling, offering for sale, negotiating for the sale of, or otherwise dealing in any security issued by others, (including all securities of the classes listed in paragraphs 1, 2, 3, 4, 5, 6, 7 and 9 of subdivision (b) of this section) or of underwriting any issue of such securities, or of purchasing such securities with the purpose of reselling them, or of offering them for sale to the public. Provided, however, the word broker shall not include the following, or any agent or agency of any of the following: the United States of America or any Territory or insular possession thereof, or the District of Columbia, or any State, Territory, county, or municipality, or taxing district therein.

Mortgage. 11. The word "mortgage" shall be deemed to include a deed of trust to secure a debt, and the word "mortgagee" shall be deemed to include a trustee and/or beneficiary under a deed of trust.

12. The words "investment counsel" as used in this act shall include every person or company other than a broker, who in this State, for compensation, engages in the business of advising others either directly or through publications or writings as to the value of securities or as to the advisability of investing in or purchasing of securities, and every person other than a broker or certified public accountant who issues or promulgates analyses or issues reports concerning securities; provided, however, that said term shall not be construed to include any licensed, practicing attorney who renders or performs any of said services in connection with the practice of law. Investment counsel.

(b) Except as hereinafter otherwise expressly provided, the provisions of this act shall not apply to any of the following classes of securities: Securities exempted from act.

1. Any security issued or guaranteed by the United States of America, or any Territory or insular possession thereof, or by the District of Columbia, or by any State, Territory, county or municipality or taxing district therein.

2. Any security issued or guaranteed by any foreign government with which the United States of America is at the time of the sale or offer of sale thereof maintaining diplomatic relations, or by any State, province, or political subdivision thereof having the power of taxation or assessment, which security is recognized at the time it is offered or sold in this State as a valid obligation by such foreign government or by such State, province or political subdivision thereof issuing the same.

3. Any security issued by and representing an interest in or a direct obligation of a national bank, or issued by any Federal land bank or joint land bank, or a national farm loan association, under the provisions of the Federal Farm Loan Act of July 17, 1916, or any amendment thereof or thereto, or by any company created and acting as an instrumentality of the government of the United States of America pursuant to authority granted by the Congress of the United States of America, or by any company organized and existing under and by virtue of any act of Congress.

4. Any security issued by and representing an interest in or a direct obligation of a State bank, trust company or savings institution incorporated under the laws of this State.

5. Any security the issuance of which has been authorized by the Railroad Commission of this State or by the Interstate Commerce Commission.

6. Any security (including shares, stock and investment certificates as defined in the "Building and Loan Association Act") issued by a company organized for the purpose of conducting a building and loan association within this State subject to the supervision of the Building and Loan Commissioner.

7. Any security issued by a company organized for the purpose of transacting an insurance business subject to the jurisdiction of the Insurance Commissioner.

8. Any security (except notes, bonds, debentures, or other evidences of indebtedness) issued by a company organized under the laws of this State exclusively for educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit and no part of the earnings of which inures to the benefit of any private stockholder or individual.

9. Any security which has been certified as a legal investment for savings banks and trust companies under the laws of this State.

10. Bills of exchange, trade acceptances, promissory notes and other commercial paper issued, given or acquired in a bona fide way in the ordinary course of legitimate business, trade or commerce.

11. Promissory notes, whether secured or unsecured, where the notes are not offered to the public, or are not sold to an underwriter for the purpose of resale. Provided, however, that brokers shall be subject to the provisions of this act with respect to all transactions involving the foregoing classes of securities enumerated in this subdivision (b), excepting those securities hereinabove specified in paragraphs 8, 10 and 11 of this subdivision (b).

Sales of securities exempted.

(c) Except as herein expressly provided, the provisions of this act shall not apply to the sale of any security in any of the following transactions:

1. At any judicial, executor's, administrator's, or guardian's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy.

2. By or for the account of a pledgee or mortgagee selling or offering for sale or delivery in the ordinary course of business, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

3. The sale of securities when made by or on behalf of a vendor not the issuer or underwriter thereof who, being a bona fide owner of such securities, disposes of his own property for his own account, and such sale is not made, directly or indirectly, for the benefit of the issuer or an underwriter of such security, or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this act.

Stats. 1931, p. 937.

SEC. 2. Section 4 of said act is hereby amended to read as follows:

Examination of and action on application.

Sec. 4. Upon the filing of such application, it shall be the duty of the commissioner to examine it and the other papers and documents filed therewith, and he may, if he deems it advisable, make or have made a detailed examination, audit, and investigation of the applicant and its affairs. If he finds that the proposed plan of business of the applicant is not unfair, unjust, or inequitable, that it intends to fairly and honestly transact its business, and that the securities that it proposes to issue and the methods to be used by it in issuing or disposing of them are not such as, in his opinion, will work a fraud upon the purchaser thereof, the commissioner

shall issue to the applicant a permit authorizing it to issue and dispose of securities, as therein provided, in this State, in such amounts and for such considerations and upon such terms and conditions as the commissioner may in said permit provide. Otherwise, he shall deny the application and refuse such permit and notify the applicant in writing of his decision. Every permit shall recite in bold type that the issuance thereof is permissive only and does not constitute a recommendation or indorsement of the securities permitted to be issued. The commissioner may impose conditions requiring the deposit in escrow of securities, the impoundment of the proceeds from the sale thereof, limiting the expense in connection with the sale thereof and such other conditions as he may deem reasonable and necessary or advisable to insure the disposition of the proceeds of such securities in the manner and for the purposes provided in such permit. The commissioner may act as escrow holder for securities required to be deposited in escrow by his order. He may, from time to time, amend, alter or revoke any permit issued by him, or temporarily suspend the rights of the applicant under such permit.

Issuance of permit.

Conditions in permit.

Control over permits.

SEC. 3. Section 5 of said act is hereby amended to read as follows:

Stats. 1931, p. 937.

Sec. 5. The commissioner, whenever in his opinion the further sale of any securities by any company would be unfair, unjust or inequitable to the purchasers thereof, may order such company to desist and to refrain from the further sale of its securities. If, after such an order is made, a request for a hearing is filed in writing and no hearing is held within sixty days thereafter, such order shall be deemed to have been rescinded.

Stop order to company.

He shall have the power to establish such rules and regulations as may be reasonable or necessary to carry out the purposes and provisions of this act.

Regulations.

Every company, subject to the provisions of this act, conducting or carrying on in this State the business of accumulating savings of its shareholders, stockholders, members or investors and of loaning and/or investing such accumulations in the manner similar to building and loan associations as defined in the "Building and Loan Association Act" shall be supervised and regulated by the Commissioner of Corporations in the same manner as is provided in the "Building and Loan Association Act" or any amendments or supplements thereto providing for the supervision and regulation of companies, under the jurisdiction of the Building and Loan Commissioner of this State, doing a similar business.

Building and loan associations.

Stats. 1931, p. 483.

SEC. 4. Section 7 of said act is hereby amended to read as follows:

Stats. 1931, p. 937.

Sec. 7. The commissioner shall examine such application, and shall make such further investigation of the applicant and its affairs as he shall deem advisable. If, from such examination, the commissioner shall be satisfied:

Conditions precedent to issue of certificate.

(a) That the applicant and its officers or members, if any, are of good business reputation;

(b) That the applicant has sufficient financial responsibility to carry out the obligations incident to its operations as such broker;

(c) That the sale of the securities proposed to be sold by it or the manner or method of said sale would not be unfair, unjust or inequitable to the purchasers thereof;

(d) That neither it nor its officers or members have violated any of the provisions of this act or of chapter 226 of the Statutes of 1923; and

Discretion of commissioner.

(e) That neither it nor its officers or members have engaged or are about to engage in any fraudulent transaction, he shall issue such certificate. Otherwise, he shall refuse the same and deny the application and notify the applicant of his decision; provided, however, that if the only ground for such denial falls under subdivision (d) or (e) of this section the commissioner may, in his discretion, waive such ground for denial and issue a certificate to the applicant if satisfied that in the particular case the application of either subdivision is purely technical and does not substantially affect applicant's honesty and integrity, and that the inability of applicant to meet either of these requirements will in no way interfere with a proper performance by the applicant of his duties as a broker or agent, as the case may be. All certificates issued hereunder shall be subject to the condition that applicant shall cease and desist from the sale of any security or securities when ordered so to do by the commissioner if he finds, after a hearing upon such notice as he, in his discretion, shall deem reasonable, that the sale thereof or the manner or method of sale is or would be unfair, unjust or inequitable to purchasers thereof. The commissioner must suspend or revoke any broker's or agent's certificate, if, after hearing upon notice, he shall find the existence of any of the grounds, hereinabove enumerated, for the denial of an application for a broker's or agent's license; provided, however, that such suspension or revocation shall be discretionary with the commissioner if the only ground for such revocation falls under subdivision (d) or (e) of this section and he is satisfied that in the particular case the application of either subdivision is purely technical and does not substantially affect applicant's honesty and integrity, and that the inability of applicant to meet either of these requirements will in no way interfere with a proper performance by the applicant of his duties as a broker or agent, as the case may be.

Suspension and revocation.

Stats. 1931, p. 937.

SEC. 5. Section 10 of said act is hereby amended to read as follows:

Regulation of advertisements, etc.

Sec. 10. No person, partnership, association or corporation, other than a broker holding a broker's certificate, then in effect, shall issue, circulate, or publish any advertisement, pamphlet, prospectus, or circular, either written or printed or oral, by mail, telegraph, radio or otherwise, concerning any security offered, issued or sold by any company, that such

person, partnership, association, or corporation desires or proposes to sell, until the company proposing to issue such security shall have first secured from the commissioner a permit authorizing it to issue or sell such security; nor shall any company, broker, or agent, or any other person, issue, circulate, or publish any advertisement, pamphlet, prospectus, or circular concerning any security or securities sold or offered for sale by it, unless the name of the company together with the name of the president, a vice president or secretary of such company, or the broker, agent, or person issuing, circulating, or publishing the same shall appear thereon, and a true copy thereof shall have been first filed in the office of the commissioner at least one day prior thereto; provided, however, that the filing of a copy of such advertisement, pamphlet, prospectus or circular, as herein provided, shall not be required in any case in which the commissioner shall have authorized or consented to the issuance, circulation or publication thereof; nor shall any company, broker or agent, or any other person, issue, circulate, or publish any such advertisement, pamphlet, prospectus, or circular after notice in writing given to it by the commissioner that, in his opinion, the same contains any statement that is false or misleading or otherwise likely to deceive a reader thereof.

SEC. 5b. Section 6 of the said act is hereby amended to read as follows: Stats. 1931, p. 937.

Sec. 6. No person or company shall act as an agent or broker until such person or company shall have first applied for and secured from the commissioner a certificate, then in effect, authorizing such person or company so to do. Every such certificate shall expire on the thirty-first day of December next after its issuance, unless sooner suspended or revoked. To secure such certificate, the applicant shall make and file in the office of the commissioner an application therefor in writing, verified by or in behalf of the applicant. In such application, the applicant shall set forth, in addition to such other information as may be required by the commissioner: Certificate of agent or broker. Application.

1. The name and address of the applicant, and if it be a corporation, association, or joint stock company, the name and address of each of its managing officers and agents, and, if it be a partnership, the name and address of each of the partners;

2. A succinct statement of facts showing that the applicant, and its managing officers and agents, if it be a corporation, or members, if it be a partnership, have a good business reputation;

3. If the applicant is a broker, the general plan and character of the business of the applicant.

At the time of filing an application for a broker's certificate, the applicant shall file and thereafter maintain with the Commissioner of Corporations a good and sufficient bond in the aggregate penal sum of five thousand dollars, payable to the people of the State of California, for the use and benefit Broker's bond.

of interested persons, executed by said applicant and by sufficient surety or sureties, and to be approved by the Commissioner of Corporations. The total aggregate liability on said bond shall be limited to the payment of five thousand dollars. Said bond shall be conditioned upon the strict compliance with the provisions of this act, and the honest and faithful application of all funds received and the faithful and honest performance of all obligations and undertakings in the purchase or sale of securities, by said broker, his agents and employees.

Term of bond.

Said bond shall remain in force and effect until the surety is released from liability by said commissioner, or until said bond is canceled by the surety. The surety may cancel said bond and be relieved of further liability thereunder by delivering thirty days' written notice to the commissioner. Such cancellation shall not affect any liability incurred or accrued thereunder prior to the termination of said thirty-day period.

Action on bond.

Any person who sustains an injury covered by such bond, may in addition to any other remedy that he may have, bring an action in his own name upon said bond for the recovery of any damages sustained by him; provided, however, that no such action may be brought after the expiration of two years from and after the time when the act or default complained of may

New bond.

have occurred. Upon such action being commenced the Commissioner of Corporations may in his discretion, require the filing of a new bond, and immediately upon the recovery in any action on such bond, such broker shall file a new bond, and upon failure to file the same within ten days in either case such failure shall constitute sufficient grounds for the suspension or revocation of such broker's certificate.

Where applicant is foreign corporation or association.

For filing such application, the applicant shall pay a fee as hereinafter provided. If the applicant is a corporation or association organized under the laws of any other State, Territory, or government, it shall file with its application a copy of its articles of incorporation or association, together with a certificate executed by the proper officer of such State, Territory, or government not more than thirty days before the filing of such application, showing that such applicant is authorized to transact business in such State, Territory, or government, and also in such form as the commissioner may prescribe, its written instrument, irrevocably appointing the commissioner and his successor in office its true and lawful attorney upon whom all process in any action or proceeding against it, arising out of or founded upon the fraud of such applicant in the sale of securities within this State, or in any action upon any bond provided by this section, may be served, with the same effect as if said corporation or association were organized or created under the laws of this State and had been lawfully served with process therein.

Stats. 1931, p. 937.

SEC. 5c. Section 16 of said act is hereby amended to read as follows:

Void securities.

Sec. 16. Every security issued by any company, without a permit of the commissioner authorizing the same then in

effect, shall be void, and every security issued by a company with the authorization of the commissioner but which has been sold or issued in nonconformity with the provisions, if any, contained in the permit authorizing the issuance or sale of such security shall be void.

SEC. 5d. Section 22 of said act is hereby amended to read as follows: Stats. 1931, p. 937.

Sec. 22. The commissioner shall employ such assistants, clerks and deputies as he may need to discharge in proper manner the duties imposed upon him by law, including stenographic reporters to take and transcribe the testimony in any formal hearing or investigation before the commissioner or authorized by him. The Attorney General shall render to the commissioner opinions upon all questions of law, relating to the construction or interpretation of this act or any other act under his jurisdiction or arising in the administration thereof, that may be submitted to him by the commissioner, and shall act as the attorney for the commissioner in all actions and proceedings brought by or against him under or pursuant to any of the provisions of this act or any other act under his jurisdiction. Neither the commissioner nor any of his assistants, clerks or deputies shall be interested in any company which shall have applied for or secured a permit to sell securities, or in any broker, or agent as a director, stockholder, officer, member, agent, or employee. Such assistants, clerks and deputies shall perform such duties as the commissioner shall assign to them. He shall, with the approval of the Department of Finance, fix the compensation of such assistants, clerks and deputies. Each assistant and deputy shall, within fifteen days after his appointment, take and subscribe to the constitutional oath of office, and file the same in the office of the Secretary of State.

Assistants, clerks and deputies.

Attorney General to render opinions.

SEC. 6. Section 23 of said act is hereby amended to read as follows: Stats. 1931, p. 937.

Sec. 23. The commissioner shall at all times have the power to administer oaths and to make an examination or investigation of the business and the books, records, accounts and other papers pertaining thereto, of any company, broker, investment counsel or agent theretofore permitted or authorized by him to sell securities, or to act as an investment counsel, or to make dividends, to create debts, to divide, withdraw, or pay to the stockholders or any of them, any part of its capital stock, or to increase or reduce its capital stock; or of any company, broker, agent or investment counsel, or any other person who the commissioner has reason to believe has violated or is about to violate any of the provisions of this act. In making any such examination or investigation the commissioner may, for a reasonable time, not exceeding thirty days, take possession of the books, records, accounts and other papers pertaining to the business of any company, broker, agent or investment counsel and place a keeper in exclusive charge and custody of the same in the office or place where the same are

Power of commissioner regarding investigations.

Taking possession of books, etc.

usually kept. During such possession and custody it shall be unlawful for any person to remove or attempt to remove any of the said books, records, accounts and other papers, or any part thereof, except in compliance with a court order or written consent of the commissioner; provided, however, that the officers, employees, partners, directors and stockholders shall have the right to inspect and examine the same and that employees shall be permitted to make entries therein reflecting current operations or transactions. Such power shall not be terminated by the suspension or revocation of any permit, order or certificate theretofore issued by him.

Testimony and other evidence.

In any examination, audit or investigation made or hearing conducted by him, he shall have the power to take the testimony of any witness and to issue subpenas, requiring the attendance upon such examination, audit, investigation or hearing in any part of the State of witnesses, and the production of books, documents, and other things under their control, and in any such case to take or cause to be taken the deposition of any witness residing within or without this State, the commissioner may pay out of the appropriation for the support of his office to any witness subpenaed by him the necessary and reasonable traveling expenses of such witness from his place of residence to the place of hearing or investigation and return and a per diem of two dollars for each day that such witness is in attendance at or en route to and from such place of hearing or investigation in obedience to such subpena.

All the provisions of Chapter II of Title III of Part IV of the Code of Civil Procedure, relating to the means of production of evidence out of court, shall be applicable to any examination, investigation, or hearing under this act.

Refusal to testify.

No person shall be excused from testifying or from producing any book, document, or other thing under his control upon any such examination, audit, investigation, or hearing upon the ground that his testimony, or the book, document or other thing required of him, may tend to incriminate him, or may have a tendency to subject him to punishment for a felony, or to a penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which he shall have been so compelled to testify under oath; provided, that no person so testifying shall be exempt from prosecution or punishment for perjury if committed by him in his testimony.

Investigation by deputy.

The authority to make or conduct any such examination, audit, investigation or hearing, including the authority to administer oaths, and to subpena witnesses and take their testimony, may be delegated by the commissioner to any deputy or investigator appointed by him for that purpose. Such appointment shall be made by an instrument in writing, signed by the commissioner under his official seal, and upon such examination, audit, investigation or hear-

ing, the same shall be produced by such deputy or investigator at any time upon demand therefor.

SEC. 7. Section 26 of said act is hereby amended to read as follows: Stats. 1931, p. 937.

Sec. 26. The commissioner shall charge and collect the following fees: Fees.

1. For filing an original or supplemental application for a permit to issue securities, ten dollars, plus—

One-twentieth of one per cent of the amount of any excess of the aggregate value of the securities sought to be issued over twenty thousand dollars and not exceeding fifty thousand dollars;

One twenty-fifth of one per cent of such amount in excess of fifty thousand dollars and not exceeding one hundred thousand dollars;

One-fiftieth of one per cent of such amount in excess of one hundred thousand dollars and not exceeding five hundred thousand dollars; and

One one-hundredth of one per cent of such amount in excess of five hundred thousand dollars.

For the purpose of determining the above fees:

(a) The value of such securities shall be deemed to be their par or face value unless the consideration for such securities is in excess of such par or face value, in which case the value will be deemed to be the amount of the consideration so received.

(b) Where the securities proposed to be issued have no nominal or par value, the value of such securities shall be deemed to be the price at which the company proposes to sell or issue the same, or the value, as alleged in the application. or the actual value, as determined by the commissioner, of the consideration (if other than money) to be received in exchange therefor; provided, however, until a new value shall have been established, that each share of no par value stock proposed to be issued shall be deemed to have a value equal to the value which has been established by previous sales for money or other property of other shares of the same class.

(c) Interim or voting trust certificates shall be deemed to have a value equal to the aggregate value of the securities to be represented by said interim or voting trust certificates.

(d) Rights, warrants or other certificates evidencing stockholders' rights to purchase additional securities shall be deemed to have a value equal to the difference between the selling price of the securities represented by such rights, warrants or other certificates and the market value of the securities so represented at the date of filing of application.

(e) Where an application is made to issue securities containing a provision entitling the holder or holders thereof to convert or exchange the same for a different class of securities, the value of the securities to be so issued shall be deemed to be an amount equal to twice the amount of the consideration

Fees.

to be received for the securities containing the conversion or exchange provision.

2. For acting as escrow holder for securities as herein provided, ten dollars for each twelve month period, payable in advance.

3. For filing any application for a broker's or an investment counsel's certificate, twenty-five dollars.

Provided, however, that if after a certificate shall have been issued to any broker operating as a partnership there shall be a change of interest affecting less than twenty-five per cent (25%) of the whole interest therein, no new application need be made, but there shall be filed with the commissioner, accompanied by payment of a fee of ten dollars ($10), written notice of such change, stating the names and addresses of the partners and their respective interests, and any other information which may be required by the commissioner, together with evidence satisfactory to the commissioner that the bond theretofore filed by such broker is and will be maintained in good standing notwithstanding such change. The commissioner may in his discretion require a new application, in which event the procedure and fee shall be the same as upon an original application for a broker's certificate. If the commissioner shall approve such change without a new application, the certificate theretofore issued and in force and any agents' licenses theretofore issued to agents of such partnership and then in force, shall continue in full force and effect.

4. For filing any application for an agent's certificate, five dollars.

5. For any examination, audit, or investigation, the actual amount of the salary or other compensation paid to the person or persons making the examination, audit or investigation plus the actual amount of expenses, reasonably incurred in the performance of such work.

6. For copies of papers and records not required to be certified or otherwise authenticated by the commissioner, ten cents for each folio.

7. For certified copies of official documents, orders and other papers filed in his office; for making and mailing copies of process served upon him under the provisions of section 24 of this act, and for transcript on appeal, fifteen cents for each folio and one dollar for each certificate under seal affixed thereto.

8. For certificate of service and mailing of process served upon the commissioner under the provisions of section 24 of this act, two dollars.

9. For filing any application for an amendment to an existing permit to issue securities, or for a permit to negotiate for the sale of securities or requesting the written consent of the commissioner to a proposed instrument amending, supplementing or abrogating any portion of any mortgage, deed of trust, indenture or other instrument under which bonds,

debentures or other evidences of indebtedness are issued or secured, ten dollars.

No fees shall be charged or collected for copies of papers, records, or official documents furnished to public officers for use in their official capacity or for the reports of the commissioner in the ordinary course of distribution; but the commissioner may fix a reasonable charge for the publications issued under his authority.

All fees charged and collected under this section shall be paid at least once each week, accompanied by a detailed statement thereof, into the treasury of the state to the credit of a fund to be known as the "corporation commission fund," which fund is hereby created. Disposition of fees.

CHAPTER 899.

An act to provide for the organization, operation, financing, government and dissolution of placer mining districts.

[Approved by the Governor June 12, 1933. In effect August 21, 1933.]

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

SECTION 1. This act shall be known as the Placer Mining District Act. Short title.

SEC. 2. Districts formed in the manner provided by this act for the purpose of affording facilities for conducting placer mining without injury to property not owned by or included in the district. Purpose.

SEC. 3. Proceedings for the formation of a placer mining district shall be commenced by petition addressed to and filed with the board of supervisors of the county in which is located the largest proportion in value of the lands within the proposed district as shown by the last equalized county assessment roll. Such petition shall be signed by twenty-five per cent of the owners of parcels of land subject to assessment for district purposes. Petition.

SEC. 4. The petition may be filed in sections, each of which must comply with all the requirements for petitions, except that a single section need not contain the total number of signatures required for the petition. Filed in sections.

SEC. 5. Signatures to the petition may be withdrawn at any time before the publication of the petition, by filing with the clerk of the board of supervisors with whom the petition is filed a declaration signed by the petitioner stating that it is the intention of the petitioner to withdraw his signature from the petition. Withdrawal of signatures.

SEC. 6. The petition must:

(a) State the proposed name of the district; Contents.

(b) Set forth the boundaries of the district or describe the lands situated therein;

LEGISLATIVE DIGEST

1933

DIGEST OF BILLS AND CONSTITUTIONAL AMENDMENTS INTRODUCED PRIOR TO THE CONSTITUTIONAL RECESS AS OF JANUARY 28, 1933

CALIFORNIA LEGISLATURE

FIFTIETH SESSION

JOSEPH A. BEEK
Secretary of the Senate

ARTHUR H. OHNIMUS
Chief Clerk of the Assembly

Compiled by
FRED B. WOOD
Legislative Counsel

CALIFORNIA STATE PRINTING OFFICE
HARRY HAMMOND, STATE PRINTER
SACRAMENTO, 1933

A.B. 764. BADHAM (by request). New act, re providing relief for property owners paying special assessments for construction of certain public improvements.

Skeleton bill.

A.B. 765. BADHAM (by request). New act, re assumption by counties of certain local improvement bonds where four-fifths of board of county supervisors determines that local improvement has become countywide in importance.

Skeleton bill.

A.B. 766. BADHAM (by request). New act, re allocation of funds from funds in hands of State Highway Commission for payment of bonds outstanding on certain public improvements.

Skeleton bill.

A.B. 767. BADHAM. Adds Sec. 1½, Act 8782, Fair Trade Act, re unfair competition.

Purports to prohibit selling at less than a price stipulated in any contract entered into pursuant to section 1 of said act re discrimination in sale price between different localities.

A.B. 768. BADHAM. Adds Sec. 1b, Act 8781, re unfair competition.

Prohibits inducing breach of contract of competitor "for purposes of hampering, injuring or embarrassing the competitor in the conduct of his business." Penalty not exceeding $5,000 or one year imprisonment.

A.B. 769. BADHAM. Adds Sec. 1c, Act 8781, re unfair trade practices.

Prohibits rebates, or special privileges to purchasers of a manufacturer or merchant "where such payment or allowance tends to destroy competition." Penalty for violation not exceeding $5,000 or not exceeding one year imprisonment, or both.

A.B. 770. BADHAM. Adds Sec. 1a, Act 8781, re unfair competition.

Prohibits sales by one engaged in business in this State of any article at less than cost or gifts thereof "for purpose of injuring competitors or destroying competition." Penalty of fine not exceeding $5,000, imprisonment not exceeding one year, or both.

A.B. 771. FIELD. Amends Sec. 16, Act 1755, concerning cosmetology, re exemptions under the act.

Adds to exemptions re provisions of act "the recommendation, administration or sale of cosmetics by any person not claiming himself or herself to be a cosmetician."

A.B. 772. FIELD. Amends Act 1755, concerning cosmetology.

Skeleton bill.

A.B. 773. FIELD. Amends Act 1755, concerning cosmetology.

Skeleton bill.

A.B. 774. FIELD. Amends Act 1755, concerning cosmetology.

Skeleton bill.

A.B. 775. RAWLS and WOOLWINE. Amends title, Secs. 3 to 20, inclusive, adds Secs. 1a, 3a, 3b, 3c, Act 4463, Los Angeles County Flood Control Act, generally revising act.

In general substitutes board of directors for Los Angeles board of supervisors in the district, transfers thereto all incident rights, powers and duties of the supervisors.

Divides district into five described divisions; provides for election of a director from each division, staggered four-year terms, maximum salary $200 per month on $10 per diem basis. Substitutes five district directors for Los Angeles board of

ASSEMBLY BILL No. 767

INTRODUCED BY MR. BADHAM,

January 23, 1933.

REFERRED TO COMMITTEE ON JUDICIARY.

An act to add a new section to the "Fair Trade Act" to be numbered 1½, relating to unfair competition.

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

SECTION 1. A new section is hereby added to the "Fair Trade Act" to be numbered 1½ and to read as follows:

Sec. 1½. Advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provision of section 1 of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person aggrieved.

O

AMENDED IN ASSEMBLY MARCH 27, 1933.

ASSEMBLY BILL No. 767

INTRODUCED BY MR. BADHAM,

January 23, 1933.

REFERRED TO COMMITTEE ON JUDICIARY.

An act to add a new section to the "Fair Trade Act" to be numbered 1½, relating to unfair competition.

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

SECTION 1. A new section is hereby added to the "Fair Trade Act" to be numbered 1½ and to read as follows:

Sec. 1½. *Wilfully and knowingly* advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provision of section 1 of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person aggrieved.

O

AMENDED IN ASSEMBLY MARCH 31, 1933.

AMENDED IN ASSEMBLY MARCH 27, 1933.

ASSEMBLY BILL No. 767

INTRODUCED BY MR. BADHAM,

January 23, 1933.

REFERRED TO COMMITTEE ON JUDICIARY.

An act to add a new section to the "Fair Trade Act" to be numbered 1½, relating to unfair competition.

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

SECTION 1. A new section is hereby added to the "Fair Trade Act" to be numbered 1½ and to read as follows:

Sec. 1½. Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provision of section 1 of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person ~~aggrieved.~~ *damaged thereby.*

O

ASSEMBLY BILL No. 768

INTRODUCED BY MR. BADHAM,

January 23, 1933.

REFERRED TO COMMITTEE ON JUDICIARY.

An act to add section 1b to an act entitled "An act relating to unfair competition and discrimination, making certain unfair and discriminatory practices unlawful, defining the duties of the Attorney General in regard thereto, declaring certain contracts illegal and forbidding recovery thereon, providing for actions to enjoin unfair competition and discrimination and to recover damages therefor, making the violation of the provisions of this act a misdemeanor and providing penalties," approved June 10, 1913, as amended, relating to unfair competition.

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

SECTION 1. Section 1b is hereby added to the act cited in the title hereof, to read as follows:

Sec. 1b. Any person, persons, company, partnership, association, or corporation engaged in the production or distribution of any article of commerce in this State who induces or attempts to induce the breach of an existing contract between a competitor and his customer by any false or deceptive means, or interferes with or obstructs the performance of any contractual duty or service by any such means, for the purpose of hampering, injuring, or embarrassing a competitor in the conduct of his business shall be deemed guilty of unfair competition, which is hereby made a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars ($5,000), or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

O

ASSEMBLY BILL No. 769

INTRODUCED BY MR. BADHAM,

January 23, 1933.

REFERRED TO COMMITTEE ON JUDICIARY.

An act to add section 1c to an act entitled "An act relating to unfair competition and discrimination, making certain unfair and discriminatory practices unlawful, defining the duties of the Attorney General in regard thereto, declaring certain contracts illegal and forbidding recovery thereon, providing for actions to enjoin unfair competition and discrimination and to recover damages therefor, making the violation of the provisions of this act a misdemeanor and providing penalties," approved June 10, 1913, as amended, relating to unfair trade practice.

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

SECTION 1. Section 1c is hereby added to the act cited in the title hereof, to read as follows:

Sec. 1c. The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers under like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is an unfair trade practice and any person, persons, firm, partnership, corporation, or association resorting to such trade practice shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding five thousand dollars ($5,000), or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

O

AMENDED IN ASSEMBLY MARCH 27, 1933.

ASSEMBLY BILL No. 769

INTRODUCED BY MR. BADHAM,

January 23, 1933.

REFERRED TO COMMITTEE ON JUDICIARY.

An act to add section 1c to an act entitled "An act relating to unfair competition and discrimination, making certain unfair and discriminatory practices unlawful, defining the duties of the Attorney General in regard thereto, declaring certain contracts illegal and forbidding recovery thereon, providing for actions to enjoin unfair competition and discrimination and to recover damages therefor, making the violation of the provisions of this act a misdemeanor and providing penalties," approved June 10, 1913, as amended, relating to unfair trade practice.

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

SECTION 1. Section 1c is hereby added to the act cited in the title hereof, to read as follows:

Sec. 1c. The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers ~~under~~ *purchasing upon* like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is an unfair trade practice and any person, persons, firm, partnership, corporation, or association resorting to such trade practice shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by ~~a fine not exceeding five thousand dollars ($5,000), or by~~ *a fine not exceeding five hundred dollars ($500), or by* imprisonment not exceeding ~~one year~~ *six months*, or by both said punishments, in the discretion of the court.

O

ASSEMBLY BILL No. 770

INTRODUCED BY MR. BADHAM,

January 23, 1933.

REFERRED TO COMMITTEE ON JUDICIARY.

An act to add section 1a to an act entitled "An act relating to unfair competition and discrimination, making certain unfair and discriminatory practices unlawful, defining the duties of the Attorney General in regard thereto, declaring certain contracts illegal and forbidding recovery thereon, providing for actions to enjoin unfair competition and discrimination and to recover damages therefor, making the violation of the provisions of this act a misdemeanor and providing penalties," approved June 10, 1913, as amended, relating to unfair competition.

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

SECTION 1. Section 1a is hereby added to the act cited in the title hereof, to read as follows:

Sec. 1a. Every person, partnership, firm, corporation, joint stock company, or other association engaged in business within this State, who shall sell any article or product at less than cost, or give away any article or product, for the purpose of injuring competitors and destroying competition, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars ($5,000), or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. The term "cost" as applied to production is hereby defined as including the cost of raw materials, labor and all necessary overhead expenses plus a reasonable profit on the capital invested; and as applied to distribution "cost" shall mean the cost of the article or product and the cost of doing business plus a reasonable profit on the capital invested.

O

AMENDED IN ASSEMBLY MARCH 27, 1933.

ASSEMBLY BILL No. 770

INTRODUCED BY MR. BADHAM,

January 23, 1933.

REFERRED TO COMMITTEE ON JUDICIARY.

An act to add section 1a to an act entitled "An act relating to unfair competition and discrimination, making certain unfair and discriminatory practices unlawful, defining the duties of the Attorney General in regard thereto, declaring certain contracts illegal and forbidding recovery thereon, providing for actions to enjoin unfair competition and discrimination and to recover damages therefor, making the violation of the provisions of this act a misdemeanor and providing penalties," approved June 10, 1913, as amended, relating to unfair competition.

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

SECTION 1. Section 1a is hereby added to the act cited in the title hereof, to read as follows:

Sec. 1a. Every person, partnership, firm, corporation, joint stock company, or other association engaged in business within this State, who shall sell any article or product at less than ~~cost,~~ *the cost thereof to such vendor,* or give away any article or product, for the purpose of injuring competitors and destroying competition, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be ~~punished by a fine not exceeding five thousand dollars ($5,000), or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. The term "cost"~~ *punished by a fine not exceeding five hundred dollars ($500), or by imprisonment not exceeding six months, or by both said fine and imprisonment. The term "cost"* as applied to production is hereby defined as including the cost ~~of raw materials, labor and all necessary overhead expenses plus a reasonable profit on the capital invested, and as applied to distribution "cost" shall~~

~~mean the cost of the article or product and the cost of doing business plus a reasonable profit on the capital invested.~~ *of raw materials, labor and all necessary overhead expenses of the producer; and as applied to distribution "cost" shall mean the cost of the article or product to the distributor and vendor plus the cost of doing business by said distributor and vendor.*

The provisions of this section shall not apply to any sale made:

(1) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity, that is, as in the case of the sale of seasonal goods, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation;

(2) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(3) By any officer acting under the orders of any court.

O

Statutes of California

1933

CONSTITUTION OF 1879
AS AMENDED

MEASURES SUBMITTED TO VOTE OF ELECTORS
1932, 1933

GENERAL LAWS, AMENDMENTS TO CODES, RESOLUTIONS AND CONSTITUTIONAL AMENDMENTS

PASSED AT THE

REGULAR SESSION OF THE FIFTIETH LEGISLATURE
1933

CALIFORNIA STATE PRINTING OFFICE
HARRY HAMMOND, STATE PRINTER
SACRAMENTO, 1933

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CHAPTER 260.

An act to add a new section to the "Fair Trade Act" to be numbered 1½, relating to unfair competition. Stats. 1931, p. 583, amended.

[Approved by the Governor May 8, 1933. In effect August 21, 1933.]

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

SECTION 1. A new section is hereby added to the "Fair Trade Act" to be numbered 1½ and to read as follows: New section.

Sec. 1½. Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provision of section 1 of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby. Sales below contract price.

CHAPTER 261.

An act to add section 1c to an act entitled "An act relating to unfair competition and discrimination, making certain unfair and discriminatory practices unlawful, defining the duties of the Attorney General in regard thereto, declaring certain contracts illegal and forbidding recovery thereon, providing for actions to enjoin unfair competition and discrimination and to recover damages therefor, making the violation of the provisions of this act a misdemeanor and providing penalties," approved June 10, 1913, as amended, relating to unfair trade practice. Stats. 1913, p. 508, amended.

[Approved by the Governor May 8, 1933. In effect August 21, 1933.]

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

SECTION 1. Section 1c is hereby added to the act cited in the title hereof, to read as follows: New section.

Sec. 1c. The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is an unfair trade practice and any person, persons, firm, partnership, corporation, or association resorting to such trade practice shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding five hundred dollars ($500), or by imprisonment not exceeding six months, or by both said punishments, in the discretion of the court. Unlawful to allow secret rebates, etc. Penalties.

legal owner or claimant, on demand, a duplicate warrant for the full amount of the original warrant, and the county treasurer is hereby authorized and directed to pay the duplicate, in lieu of the original warrant; provided that, when such legal owner or claimant is a city, county, city and county, school district or other political subdivision of the State, no bond shall be required.

The auditor and the treasurer shall each make the proper entries on their books, showing such warrants to have been lost or destroyed and the issuance of duplicate warrants in lieu thereof.

Exception.

Whenever any warrant legally drawn in favor of the State of California shall have been lost or destroyed, the State shall not be required to file such bond of indemnity as hereinbefore provided. Upon the filing of an affidavit as hereinbefore provided, the county auditor is hereby authorized to issue and deliver to the State of California, on demand, a duplicate warrant for the full amount of the original warrant and the county treasurer is hereby authorized and directed to pay the duplicate in lieu of the original warrant.

CHAPTER 504.

Stats. 1913, p. 508, amended.

An act to add section 1a to an act entitled "An act relating to unfair competition and discrimination, making certain unfair and discriminatory practices unlawful, defining the duties of the Attorney General in regard thereto, declaring certain contracts illegal and forbidding recovery thereon, providing for actions to enjoin unfair competition and discrimination and to recover damages therefor, making the violation of the provisions of this act a misdemeanor and providing penalties," approved June 10, 1913, as amended, relating to unfair competition.

[Approved by the Governor May 24, 1933. In effect August 21, 1933.]

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

New section.

SECTION 1. Section 1a is hereby added to the act cited in the title hereof, to read as follows:

Sale of goods at less than cost prohibited.

Sec. 1a. Every person, partnership, firm, corporation, joint stock company, or other association engaged in business within this State, who shall sell any article or product at less than the cost thereof to such vendor, or give away any article or product, for the purpose of injuring competitors and destroying competition, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars ($500), or by imprisonment not exceeding six months, or by both said fine and imprisonment. The term "cost" as applied to production is hereby defined

as including the cost of raw materials, labor and all necessary overhead expenses of the producer; and as applied to distribution "cost" shall mean the cost of the article or product to the distributor and vendor plus the cost of doing business by said distributor and vendor.

The provisions of this section shall not apply to any sale made: Exceptions.

(1) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity, that is, as in the case of the sale of seasonal goods, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation;

(2) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(3) By any officer acting under the orders of any court.

CHAPTER 505.

An act providing for the deposit of county and city publications in the State Library and the University of California.

[Approved by the Governor May 24, 1933. In effect August 21, 1933.]

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

SECTION 1. Of each printed book, pamphlet, report, bulletin, or other publication issued at the expense of a municipal corporation or of a county, or of a city and county, the city or county clerk, as the case may be, shall send one copy to the State Library at Sacramento, one copy to the bureau of public administration of the University of California, at Berkeley, and one copy to the library of the University of California at Los Angeles, for preservation and reference use in said institutions. For this purpose, it is hereby made the duty of the legislative body or of any office, officer, or employee of a municipal corporation or of a county, or of a city and county, to furnish the clerk three copies of each such publication issued by said body, office, or person. City and county publications.

CHAPTER 506.

An act to regulate land surveying and to define the duties of and to license land surveyors, to provide for the revocation of such licenses and the restoration thereof, to make certain acts misdemeanors and to provide penalties therefor, Stats. 1907, p. 310, repealed.

CHAPTER 951.

Stats. 1913, p. 84, amended.

An act to amend section 2 of an act entitled "An act providing for the regulation of water companies, defining their powers and duties, defining the powers and duties of the Railroad Commission with reference thereto, and defining the conditions under which such water companies become subject to the Public Utilities Act and the Railroad Commission of the State of California," approved April 25, 1913, as amended.

[Approved by the Governor June 15, 1933. In effect August 21, 1933.]

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

Stats. 1913, p. 84.

SECTION 1. Section 2 of an act entitled "An act providing for the regulation of water companies, defining their powers and duties, defining the powers and duties of the Railroad Commission with reference thereto, and defining the conditions under which such water companies become subject to the Public Utilities Act and the Railroad Commission of the State of California," approved April 25, 1913, as amended, is hereby amended to read as follows:

Water company not a public utility.

Sec. 2. Whenever any private corporation or association is organized for the purpose solely of delivering water to its stockholders or members at cost, and delivers water to no one except its stockholders or members at cost, such private corporation or association is not a public utility, and is not subject to the jurisdiction, control or regulation of the Railroad Commission of the State of California.

No person, firm or private corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, selling or delivering water exclusively to a water conservation district organized under the laws of the State of California or leasing or otherwise permitting the use of ditches or other water transmission facilities exclusively by such district shall be held to be a public utility within the meaning of this act. No portion of the works, property or water rights of any such parties shall be deemed dedicated to a public use by reason of selling or delivering water to a water conservation district.

CHAPTER 952.

An act to amend section 654a of the Penal Code prohibiting false advertising and the misleading use of comparative prices.

[Approved by the Governor June 15, 1933. In effect August 21, 1933.]

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

Stats. 1915, p. 1252.

SECTION 1. Section 654a of the Penal Code is hereby amended to read as follows:

654a. Any person, firm, corporation or association, or any employee thereof, who, with intent to sell, furnish, perform, or in any way dispose of real or personal property, choses in action, merchandise, service, professional or otherwise, or anything of any nature whatsoever offered by such person, firm, corporation or association, or any employee thereof, directly or indirectly, to the public for sale or distribution, or to induce the public, in any manner, to enter into any obligation relating thereto, or to acquire title thereto or any interest therein, shall make, publish, disseminate, circulate, or cause to be made, published, disseminated or circulated, or, in any manner, place, or cause to be placed, before the public in the State of California, in any newspaper, magazine, book, pamphlet, circular, letter, notice, handbill, poster or other publication, or on any billboard, sign, card, label, or other advertising medium, or by means of any electric sign, window sign, showcase or window display, or by any other advertising device, or by public outcry or proclamation, or in any other manner or means whatever, an advertisement of any sort regarding such real or personal property, choses in action, merchandise, service, or anything so offered to the public, which advertisement shall contain any statement, representation or assertion concerning such real or personal property, choses in action, merchandise, service or anything so offered to the public, or concerning any circumstance or matter of fact connected in any way, directly or indirectly, with the proposed sale, performance or disposition thereof, which statement, representation or assertion is false or untrue, in any respect, or which is deceptive or misleading, and which is known, or which by the exercise of reasonable care should be known, to be false or untrue, deceptive or misleading, by the person, firm, corporation or association making, publishing, disseminating, circulating or placing before the public said advertisement, shall be guilty of a misdemeanor. False advertising prohibited.

For the purpose of this section the worth or value of any thing advertised shall be taken to be the prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time of publication of such advertisement in the locality wherein the advertisement is published. Value defined.

No price shall be advertised as a former price of any advertised thing unless said former price was the prevailing market price as above defined within three months next immediately preceding the publication of said advertisement or unless the date when said former price prevailed shall be clearly, exactly and conspicuously stated in said advertisement. Former price defined.

Provided, however, that this act shall not apply to any publisher of a newspaper, magazine, or other publication, who publishes said advertisement in good faith, without knowledge of its false, deceptive, or misleading character. Exemptions.

THE

STATUTES AT LARGE

OF THE

UNITED STATES OF AMERICA

FROM

MARCH, 1913, TO MARCH, 1915,

CONCURRENT RESOLUTIONS OF THE TWO HOUSES OF CONGRESS,

AND

RECENT TREATIES, CONVENTIONS, AND EXECUTIVE PROCLAMATIONS

EDITED, PRINTED, AND PUBLISHED BY AUTHORITY OF CONGRESS
UNDER THE DIRECTION OF THE SECRETARY OF STATE

VOL. XXXVIII

IN TWO PARTS

PART 1—Public Acts and Resolutions
PART 2—Private Acts and Resolutions, Concurrent Resolutions, Treaties, and Proclamations

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PART 1

WASHINGTON
1915

thoroughfares, whether public or private, and any ground intended for or used as a highway other than the public streets or avenues; and any dwelling house now fronting an alley less than thirty feet wide and not extending straight to the streets and provided with sewer, water main, and light, as aforesaid, which has depreciated or been damaged more than one-half its original value, shall not be repaired or reconstructed as a dwelling or for use as such, and no permit shall be issued for the alteration, repair, or reconstruction of such a building, when the plans indicate any provision for dwelling purposes: *Provided*, That rooms for grooms or stablemen to be employed in the building to be erected, repaired, or reconstructed may be allowed over stables, when the means of exit and safeguards against fire are sufficient, in the opinion of the inspector of buildings, subject to the approval of the Commissioners of the District of Columbia; and no building now or hereafter erected fronting on an alley or on any parcel of ground fronting on an alley less than thirty feet wide and not otherwise in accordance with this Act shall be altered or converted to the uses of a dwelling. Any such alley house depreciated or damaged more than one-half of its original value shall be condemned as provided by law for the removal of dangerous or unsafe buildings and parts thereof, and for other purposes. No dwelling house hereafter erected or placed along any alley and fronting or facing thereon shall in any case be located less than twenty feet back clear of the center line of such alley, so as to give at least a thirty-foot roadway and five feet on each side of such roadway clear for a walk or footway, and any stable or other building hereafter placed, located, altered, or erected on or along such an alley upon which a dwelling faces or fronts shall be set back clear of the walk or footway the same as the dwelling or dwellings, but the fact that dwellings are located in such alleys shall not affect the location of stables or other buildings otherwise.

Repairs, etc., forbidden.

Proviso.
Rooms in stables.

New dwellings, etc., forbidden.

Width of roadway required hereafter.

The use or occupation of any building or other structure erected or placed on or along any such alley as a dwelling or residence or place of abode by any person or persons is hereby declared injurious to life, to public health, morals, safety, and welfare of said District; and such use or occupation of any such building or other structure on, from, and after the first day of July, nineteen hundred and eighteen, shall be unlawful.

Use of proscribed buildings unlawful after July 1, 1916.

SEC. 2. That any person or persons, whether as principal, agent, or employee, violating any of the provisions of this Act or any amendment thereof for the violation of which no other penalty is prescribed, shall, on conviction thereof in the police court, be punished by a fine of not less than $10 nor more than $100 for each such violation, and a like fine for each day during which such violation has continued or may continue, to be recovered as other fines and penalties are recovered.

Penalty for violations.

SEC. 3. That the Act of Congress approved July twenty-second, eighteen hundred and ninety-two, entitled "An Act regulating the construction of buildings along alleyways in the District of Columbia," and all laws or parts of laws inconsistent with the provisions hereof, are hereby repealed.

Approved, September 25, 1914.

Former laws repealed.
Vol. 27, p. 255, repealed.
Vol. 33, p. 782.

CHAP. 311.—An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

September 26, 1914.
[H. R. 15613.]
[Public, No. 203.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be com-

Federal Trade Commission.
Created; composition and appointment.

posed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

Tenure of office, etc.

Restriction.

Removal; vacancies.

Seal.

The commission shall have an official seal, which shall be judicially noticed.

Salaries.

SEC. 2. That each commissioner shall receive a salary of $10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of $5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

Secretary.

Attorneys, experts, etc.

Application of civil service laws.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

Payment of expenses.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Rent.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Auditing accounts.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Bureau of Corporations abolished. Vol. 32, p. 827.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

Authority vested in commission.

Transfer of employees, records, appropriations, etc. *Post*, p. 840.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Principal office at Washington.

Inquiries elsewhere.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

Meaning of terms used.

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Commerce."

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Corporation."

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act.

"Documentary evidence."

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto.

"Acts to regulate commerce." Vol. 24, p. 379; Vol. 34, p. 584; Vol. 36, p. 544; Vol. 37, p. 566.

"Antitrust acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen.

"Antitrust Acts." Vol. 26, p. 209.

Vol. 28, p. 570.

Vol. 37, p. 667.

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.

Unfair methods of competition unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Prevention by Commission.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall

Service of charges.

Appearance of accused.

Other parties may intervene.

Preservation of testimony.

Issue of order to desist.

be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

Modification, etc.

Enforcement.
Application to circuit court of appeals.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Jurisdiction, etc.

Findings conclusive of facts.

Additional evidence.

Modification, etc., by Commission.

Decree final.
Review by Supreme Court.
Vol. 36, p. 1157.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

Applications to set aside orders.

Procedure, etc.

Exclusive jurisdiction of circuit court of appeals.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Precedence, etc.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every

way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts. Antitrust liabilities not affected.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same. Service of process. Personal delivery. At place of business. By registered mail. Proof of return.

SEC. 6. That the commission shall also have power— Additional powers.

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships. Investigating business operations, etc., of corporations.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, repectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission. Requiring detailed reports, etc., from corporations.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission. Investigating compliance with antitrust decrees. Transmittal of findings, etc.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation. Investigations for President or Congress.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law. Recommend business adjustments to comply with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith To make public information obtained. Report to Congress.

91006°—VOL 38—PT 1——46

Publishing reports, etc.

recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

Classifying corporations.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

Investigating conditions abroad affecting foreign trade.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Formulation of decrees in antitrust suits.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

Proceedings to determine.

Action of court.

Departments and offices to cooperate.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

Details.

Power to secure testimony.

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpœna the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpœnas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Issue of subpœnas, etc.

Attendance of witnesses.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

District courts to enforce compliance.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Punishment for contempt.

Writs of mandamus to compel compliance with Act.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

Testimony by deposition.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any

stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Compulsory appearance, etc.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Fees, etc., of witnesses.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpœna of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpœna issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

No person excused from testifying, etc.

Personal immunity.

Proviso. Perjury excepted.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpœna or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Punishment for disobeying subpœna, etc.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

Punishment for false entries, destroying records, refusing inspection, etc.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It

Penalty for not filing reports.

Recovery, etc.

shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Punishment for unauthorized divulging of information.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Antitrust, and interstate commerce, laws not interfered with.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

September 29, 1914.
[S. 4274.]
[Public, No. 204.]

CHAP. 312.—An Act To authorize and require an extension of the street railway lines of the Washington Railway and Electric Company, and for other purposes.

District of Columbia. Washington Railway and Electric Company to extend line on Portland Street.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Washington Railway and Electric Company, of the District of Columbia be, and it is hereby, authorized and required to construct an electric railway, beginning where its present tracks on Nichols Avenue intersect Portland Street southeast, thence along Portland Street in a westerly direction to Fourth Street southwest: *Provided*, That said railway shall be constructed and operated by overhead electric system and may cross the tracks of the Baltimore and Ohio Railroad on grade, on condition only that before any of the cars of the said Washington Railway and Electric Company shall cross such tracks said last-named company shall, at its own expense, install at such crossing an automatic safety device of such style and pattern as will make travel over said crossing safe, and which before being operated shall be inspected and approved by the Commissioners of the District of Columbia.

Proviso.
Overhead trolley.
Grade crossing condition.

Portland Street.
Condemning land for opening.
Vol. 34, p. 151.

SEC. 2. That the Commissioners of the District of Columbia be, and they are hereby, authorized and directed to institute in the Supreme Court of the District of Columbia, within thirty days after the passage of this Act, in accordance with the provisions of subchapter one of chapter fifteen of the Code of Laws for the District of Columbia, a proceeding in rem to condemn the land that may be necessary for the opening of Portland Street as laid down on the permanent system of highways of the District of Columbia contained in an Act of Congress approved March second, eighteen hundred and ninety-three, entitled "An Act to provide a permanent system of highways in the part of the District of Columbia lying outside of cities," as amended by an Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, and other Acts amendatory thereof: *Provided*, That the entire amount found to be due and awarded by the jury in said proceedings as damages for and in respect of the land to be condemned for said extension, plus the cost and expenses of said proceedings, shall be assessed by the jury as benefits; and that there is hereby appropriated out of the revenues of the District of Columbia an amount sufficient to pay the necessary costs and expenses of the said condemnation proceedings taken pursuant hereto and for the payment of the amount awarded as damages,

Vol. 27, p. 532.

Vol. 30, p. 519.

Proviso.
Damages assessed as benefits.

Appropriation for expenses.

Payment of awards.

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1949

ASSEMBLY FINAL HISTORY

SYNOPSIS OF
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT AND JOINT RESOLUTIONS AND HOUSE RESOLUTIONS

1949 REGULAR SESSION

DURATION OF SESSION

FIRST HALF—BEGAN MONDAY, JANUARY 3, AND ADJOURNED SATURDAY, JANUARY 29, 1949

SECOND HALF (AFTER CONSTITUTIONAL RECESS)—BEGAN MONDAY, MARCH 7, AND ADJOURNED SINE DIE SATURDAY, JULY 2, 1949

Legislative Days (Days Assembly Was in Session)	106 days
Length of Session Excluding Constitutional Recess	145 days
Calendar Days (January 3 to July 2, 1949)	181 days
Period of Constitutional Recess	36 days
Calendar Days, Exclusive of 36 Days of Constitutional Recess	145 days

Last Day for Signing Bills by Governor, August 6, 1949

Last Day for Filing Referendum, September 30, 1949

All Bills Approved by the Governor, Unless Otherwise Specifically Provided for in the Bill, Become Effective October 1, 1949

SAM L. COLLINS
Speaker of the Assembly

THOMAS A. MALONEY
Speaker Pro Tempore of the Assembly

ARTHUR A. OHNIMUS
Chief Clerk

ETHEL E. BROCKELBANK
History Clerk

428—Smith, Stanley, Erwin, Rosenthal, Grant, Grunsky, Hahn, Huyck, Lipscomb, Stewart, and Tomlinson, Jan. 13. To Com. on Jud.

An act to add Section 834 to the Corporations Code, relating to derivative actions by shareholders.

Jan. 13—Read first time. To print.
Jan. 17—From printer. To committee.
Mar. 15—From committee: Amend, and re-refer to Com. on Jud.
Mar. 16—Read second time, amended, to printer.
Mar. 17—From printer. To engrossment. Reported correctly engrossed. Re-referred to Com. on Jud.
April 19—From committee: Do pass.
April 27—Read third time, passed, title approved. To Senate.
April 27—In Senate. Read first time. To Com. on Jud.
May 10—From committee: Do pass.
May 11—Read second time.
May 19—Read third time, passed, title approved. To Assembly.
May 20—In Assembly. To enrollment.
May 24—Reported correctly enrolled. To Governor at 2 p.m.
June 3—Approved by Governor. Chapter 499.

429—Connolly, Jan. 13. To Com. on Jud.

An act to add Section 3370 to the Civil Code, relating to injunctive relief in connection with an act of unfair competition as defined in the Unfair Practices Act.

Jan. 13—Read first time. To print.
Jan. 17—From printer. To committee.
Mar. 29—From committee: Do pass.
Mar. 30—Read second time. To engrossment. Reported correctly engrossed.
April 4—Read third time, passed, title approved. To Senate.
April 4—In Senate. Read first time. To Com. on Jud.
April 26—From committee: Do pass.
April 27—Read second time.
May 11—Read third time, passage refused. Notice of motion to reconsider given by Senator Ward.
May 12—Made special order for Tuesday, May 17, 1949, at 2.30 p.m.
May 17—Reconsideration granted. Read third time, amended, and to printer. From printer.
May 31—Read third time, passed, title approved. To Assembly.
May 31—In Assembly. Concurrence in Senate amendments pending.
June 1—Senate amendments concurred in. To enrollment.
June 4—Reported correctly enrolled. To Governor at 11 a.m.
June 16—Approved by Governor. Chapter 652.

430—Connolly, Jan. 13. To Com. on Jud.

An act to add Section 17087 to the Business and Professions Code, relating to power of Attorney General and district attorneys, or any of them, to file injunction actions in enforcement of the Unfair Practices Act.

Jan. 13—Read first time. To print.
Jan. 17—From printer. To committee.
Mar. 29—From committee: Do pass.
Mar. 30—Read second time. To engrossment. Reported correctly engrossed.
April 1—Read third time, amended, to printer.
April 4—From printer. To re-engrossment. Reported correctly re-engrossed. Read third time, passed, title approved. To Senate.
April 4—In Senate. Read first time. To Com. on Jud.
April 26—From committee: Do pass.
April 27—Read second time. Re-referred to Com. on Fin.
July 2—From Senate committee without further action.

CALIFORNIA LEGISLATURE—1949 REGULAR SESSION

ASSEMBLY BILL No. 429

Introduced by Mr. Connolly

January 13, 1949

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 3370 to the Civil Code, relating to injunctive relief in connection with an act of unfair competition as defined in the Unfair Practices Act.

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

SECTION 1. Section 3370 is hereby added to the Civil Code, to read as follows:

3370. The words "unfair competition" as used in Section 3369 above shall also mean and include any act denounced by the "Unfair Practices Act," Chapter 4, Part 2, Division 7 of the Business and Professions Code.

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LEGISLATIVE DIGEST
AND TABLE OF SECTIONS AFFECTED

BILLS AND CONSTITUTIONAL AMENDMENTS INTRODUCED

CALIFORNIA LEGISLATURE
1949 REGULAR SESSION
FROM JANUARY 3 TO JANUARY 29, 1949

Compiled by
FRED B. WOOD
Legislative Counsel

JOSEPH A. BEEK
Secretary of the Senate

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

A.B. 428—SMITH AND OTHERS. (Jud.) Adds Sec. 834, Corp. C., re shareholders' derivative actions.

See digest, S. B. 709, apparently identical.

A.B. 429—CONNOLLY. (Jud.) Adds Sec. 3370, Civ. C., re unfair competition.

Defines "unfair competition" which may be enjoined under Sec. 3369, Civ. C., to include any act denounced by "Unfair Practices Act," Ch. 4, Pt. 2, Div. 7, B. & P. C.

A.B. 430—CONNOLLY. (Jud.) Adds Sec. 17087, B. & P. C., re enforcement of unfair trade practices.

Provides that Attorney General and any district attorney may institute and maintain actions to enjoin any person from performing any act prohibited by Chap. 4, Pt. 2, Div. 7, B. & P. C., re unfair trade practices.

Requires district attorney to act whenever complaint supported by prima facie evidence is made to him.

A.B. 431—BROWN, WEBER, AND STANLEY. (Jud.) Amends Act 151a, the State Aeronautics Commission Act, re liability of aircraft owners.

Exempts airman flying aircraft from liability for injuries or death to guests unless it results from intoxication or wilful misconduct of airman, or person legally liable for maintenance, use or operation of aircraft.

To take effect immediately, urgency measure.

A.B. 432—BROWN, STANLEY, AND WEBER. (Jud.) New act, re labor and material liens on aircraft.

Establishes mechanics and materialman's lien on aircraft for amount of compensation due.

Limits liens for work or services requested by third person to $100 unless written consent of owner is secured prior to performing work.

Authorizes assignment of liens but requires written notice thereof to legal owner.

Revives lien lost by loss of possession through trick or fraud upon repossession.

Authorizes sale to satisfy lien if payment is not made within 10 days after due date. Prescribes procedure for notice and sale. Permits redemption by owner within 20 days after sale.

Makes obtaining possession of aircraft subject to such lien through trick or fraud a misdemeanor.

A.B. 433—BROWN, STANLEY, AND WEBER. (Jud.) Adds Sec. 625b, Pen. C., re injury to aircraft.

Makes wilful or malicious injury, tampering with, or removal of parts, of aircraft a misdemeanor.

A.B. 434—BROWN, STANLEY, AND WEBER. (Jud.) Amends Sec. 499b, adds Sec. 499d, Pen. C., re taking of aircraft.

Increases penalty for unauthorized taking of aircraft from maximum of $200 fine and 3 months imprisonment to $5,000 and from 1 to 5 years imprisonment. Makes provisions applicable to accessory or accomplice.

Negatives any presumption of consent of owner because of consent on any prior occasion.

A.B. 435—BROWN, STANLEY, AND WEBER. (Jud.) Amends Act 151a, the State Aeronautics Commission Act, re State Aeronautics Commission.

Authorizes commission to insure its members as well as its employees against injury or death from aircraft accidents incurred in performance of duties.

A.B. 436—BROWN AND OTHERS. (Jud.) Adds Sec. 683.5, Civ. C., re survivorship interest in joint tenancy property.

Provides person convicted of murder of his joint tenant shall not be entitled to survivorship interest.

A.B. 437—CALDECOTT AND BROWN. (Jud.) Amends Section 330a, Pen. C., re possession, etc., of slot and card machines and similar devices.

Provides it is a misdemeanor to possess, etc., any such machine or device which may be used for gambling rather than one which is used for gambling.

AMENDED IN SENATE MAY 17, 1949

CALIFORNIA LEGISLATURE—1949 REGULAR SESSION

ASSEMBLY BILL No. 429

Introduced by Mr. Connolly

January 13, 1949

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 3370 to the Civil Code, relating to injunctive relief in connection with an act of unfair competition as defined in the Unfair Practices Act.

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

SECTION 1. Section 3370 is hereby added to the Civil Code, to read as follows:

3370. The words "unfair competition" as used in Section 3369 above shall also mean and include any act denounced by the "Unfair Practices Act," Chapter 4, Part 2, Division 7 of the Business and Professions Code *except that no action may be prosecuted by any district attorney in this State for a violation of the said "Unfair Practices Act" except as provided in Article 6 thereof.*

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Summary Digest

of

Statutes Enacted

and

Proposed Constitutional Amendments Submitted to the Electors

California Legislature

1949 Regular Session

Joseph A. Beek
Secretary of the Senate

Arthur A. Ohnimus
Chief Clerk of the Assembly

Compiled by
Fred B. Wood
Legislative Counsel

A.B. 424 (Ch. 410). McCARTHY, RUMFORD, AND BECK. Amends Sec. 4702, Lab. C., re death benefits under workmen's compensation laws.

Requires payment of death benefits in addition to disability benefits in all cases instead of in those where death occurs more than 12 months after injury. Amendment applies only to cases where injury occurs after its effective date.

A.B. 425 (Ch. 20). SHERWIN. Amends Sec. 781, Veh. C., re disposition and transfer of moneys from Motor Vehicle Fund.

Requires transfer within 60 days after March 31, June 30, and September 30 of each year of all money in Motor Vehicle Fund at those dates (except for so much as Controller retains for needed appropriations from that fund) to Highway Users Tax Fund, as well as transfer of balance as of December 31 during following February.

Provides that upon transfer of any amount to latter fund, an equal amount may, on order of Controller, be transferred from that fund to State Highway Fund.

In effect immediately.

A.B. 427 (Ch. 545). SMITH AND OTHERS. Adds Sec. 641.1, W. & I. C., re powers and duties of probation officers.

Authorizes probation officer to receive money, give receipt, immediately deposit it in county treasury, and direct disbursement thereof in same manner that county trust money is disbursed in certain specified instances.

Also authorizes him to receive money payable to county when ordered to do so by court of competent jurisdiction and requires money to be immediately deposited in county treasury.

A.B. 428 (Ch. 499). SMITH AND OTHERS. Adds Sec. 834, Corp. C., re shareholders' derivative actions.

Specifies necessary allegations of complaint including: that plaintiff was shareholder, etc., at time acts complained of occurred or successor by operation of law; statement of efforts to secure desired action; notice in writing of each cause of action to corporation or directors; and, reasons for not attempting to or failure to, obtain relief.

Authorizes court to require security for costs on motion and hearing where it appears unlikely action will benefit corporation or when moving party, other than corporation, did not participate in act complained of. After granting motion court may increase or decrease amount of security and shall dismiss action against moving party unless security is posted.

Finding re motion is not determination on merits.

A.B. 429 (Ch. 652). CONNOLLY. Adds Sec. 3370, Civ. C., re injunctive relief in connection with an act of unfair competition as defined in Unfair Practices Act.

Expands definition of "unfair competition" to include any act denounced by Unfair Practices Act, but provides no action may be prosecuted by any district attorney for violation of said act except to prosecute violator for misdemeanor.

A.B. 431 (Ch. 653). BROWN, WEBER, AND STANLEY. Amends Act 151a, re liability of aircraft operators.

Provides that aircraft operator or persons otherwise legally liable for his conduct are not liable in action for civil damages for injury to, or death of, a non-paying passenger in aircraft, occurring during operation of aircraft by such operator, unless injury or death is proximately caused by intoxication or wilful misconduct of the operator.

In effect immediately.

A.B. 432 (Ch. 654). BROWN, STANLEY, AND WEBER. New act re labor, service, and material lien on aircraft.

Creates a possessory lien and provides amount thereof exceeding $250 is invalid if services were not performed at request of legal owner

FRED B. WOOD
LEGISLATIVE COUNSEL
CLARENCE H. LANGSTAFF
CHIEF DEPUTY

LAWRENCE G. ALLYN
HARRIETT R. BUHLER
BARBARA G. COCHRANE
BERNARD CZESLA
JOSEPH L. KNOWLES
ANGUS C. MORRISON
GEORGE H. MURPHY
JOSEPH W. PAULUCCI
W. E. PRINGLE
VIRGINIA STEPHENS
J. D. STRAUSS
DEPUTIES

STATE OF CALIFORNIA

Office of Legislative Counsel

227 STATE CAPITOL, SACRAMENTO 14
925 MARKET STREET, SAN FRANCISCO 3
108 STATE BUILDING, LOS ANGELES 12

June 6, 1949

REPORT ON ASSEMBLY BILL NO. 429. CONNOLLY.

SUBJECT: Adds Section 3370 to the Civil Code, relating to injunctive relief in connection with an act of unfair competition as defined in the Unfair Practices Act.

FORM: Approved. TITLE: Approved.

CONSTITUTIONALITY: Approved.

ANALYSIS: Provides that the words "unfair competition" as used in Section 3369 of the Civil Code (which authorizes specific or preventative relief to enforce a penalty or forfeiture in the case of nuisance or unfair competition) shall also mean and include any act denounced by the Unfair Practices Act (Ch. 4, Pt. 2, Div. 7, of the Business and Professions Code), except that no action may be prosecuted by any district attorney for a violation of said act except as provided in Article 6 thereof (which pertains to prosecution of a violator for a misdemeanor).

COMMENT: As far as the right of persons and trade associations to enjoin violations of the Unfair Practices Act is concerned, the addition of Section 3370 to the Civil Code which is made by this bill merely provides a cross-reference and creates no new right since Section 17070 of the Business and Professions Code already authorizes such actions.

There is, however, some doubt under the present law as to whether district attorneys may institute such actions. This bill would make it clear that they cannot.

Fred B. Wood
Legislative Counsel

By Ray H. Whitaker
Ray H. Whitaker
Deputy

RHW:ml

J. F. COAKLEY
DISTRICT ATTORNEY

OFFICE OF
DISTRICT ATTORNEY
OF
ALAMEDA COUNTY
OAKLAND 7, CALIFORNIA

RICHARD H. CHAMBERLAIN
CHIEF ASSISTANT

IN YOUR REPLY KINDLY
REFER TO FILE NO._____

June 6, 1949

Mr. Beach Vasey
Legislative Secretary
Governor's Office
State Capitol
Sacramento 14, California

In re: A. B. 429

Dear Mr. Vasey:

This bill in its original form, together with a companion measure, A. B. 430, was vigorously opposed by the District Attorneys' Association during its entire course through the Legislature. As a result of our strenuous opposition, A. B. 430 came to an end in committee, and A. B. 429 was amended to the point where it no longer affects district attorneys.

By amending Civil Code Section 3369, this bill proposed to give the power and probably the duty to each district attorney to enforce the price fixing provisions of the Unfair Practices Act by civil injunction proceedings. It would have imposed upon the counties of this state the entire burden of long and costly litigation now being conducted by the private interests affected. The history of this type of legislation has demonstrated that it is ineffective, but by giving the various district attorneys the power to compel alleged violators of the Act to comply with injunctive orders, it places in their hands an extreme measure of power backed by the resources of the state, which the small merchant and businessman would find impossible successfully to resist.

Under the law as it now stands, criminal penalties are provided for and the normal methods of enforcement exercised traditionally by law enforcement agencies are open and available to all who may be aggrieved. Extending this power by giving civil remedies provided by the Act to the district attorneys, we believe to be at most unsound and unwise. We were successful in making this view prevail in the Senate.

As a result, the bill as it now stands confers this additional authority only upon the office of the Attorney General. While we are not convinced of the wisdom of the law,

enforcement by a single state agency of any kind of price fixing legislation is far more desirable than piece-meal enforcement among the fifty-eight counties. Furthermore, it is our understanding that the Attorney General is now conducting a substantial volume of injunction cases, although his authority so to do is not clear. Since he has made no objection to so proceeding, and since the most undesirable features of this legislation have now been removed, we no longer oppose enactment of this legislation.

I greatly appreciate your courtesy, and should it suit the convenience of the Governor, I should like to discuss this matter further with him at the time he takes this bill under consideration.

Very truly yours,

Arthur H. Sherry
Assistant District Attorney

AHS:em

216 W. MAIN STREET

TELEPHONE 1600

BIANCO
FINE FOODS

RECEIVED
GOVERNOR'S OF

1949 JUN 7 PM 29

Meats - Fish - Groceries - Vegetables - Liquors
Imported Delicacies
VISALIA, CALIFORNIA

June 6th 1949

Honorable Earl Warren Governer of California,
State Capital,
Sacramento, California.

Dear Governer Warren:

We would appreciate it very much if you will affix your signature to the "Unfair Practices Bill # AB 429. This means so much to we little fellows.

Thank you

Sincerely,

L. Bianco (owner)

LB GB

J. W. Brown, President-Manager
A. M. Domengine, Vice-President
H. L. Smith, Secretary-Treasurer
Howard Hanson, Asst. Secy-Treas.
T. A. Brown, Assistant Manager

International Implements
Electrical Wiring and Motors
Electrical Appliances

CLEVENGER MERCANTILE CO.

Hardware, Butane Equipment, Plumbing

PIPE, PIPE FITTINGS, SHEET METAL WORK, WELL CASING, PAINTS, OILS, GLASS, ETC. — GROCERIES AND FEED

TELEPHONE 1F21
CARUTHERS, CALIFORNIA

Dec 6-16-49

249954

6 /8 / 49

Governor Earl Warren,

Sacremento,Calif.

Dear Governor;

Assembly bill #429 (unfair practice act) we understand is before you for your consideration;

We belive that this is a good bill,for it will help the small merchants,as well as safe-guard the consumer in the end,as what is lost on one transaction,must be gained another way.

Thanking you for your careful consideration,we beg to remain,

Yours very truly,

Clevenger Mercantile Co.

Jas W Brown,Mgr.

HOME TOWN MARKETS

COMPLETE FOOD STORES

Stockton's Leading Independent Food Retailers

OFFICE
840 N. CALIFORNIA ST.
STOCKTON, CALIF.

GEORGE CAPURRO
MANAGING OWNER

June 8, 1949

Governor Earl Warren
Sacramento, Calif.

Honorable Sir:

Your approval of Assembly Bill 429 will be greatly appreciated by all engaged in the food business.

The advertising and selling of groceries by cut-throat merchants below cost does not benefit the public for any investigation will show that this loss is made up on other articles.

The practice of selling below cost on taxable items hurts the State of California for less taxes is collected thereon.

Many legimate merchants are being forced out of business by the practice.

Before the war when the Unfair Practices Bill was enforced it was found beneficial to all.

You will have the undying gratitude of all smaller merchants, and I am sure most of the bigger ones, by approving Assembly Bill 429.

Sincerely yours,

Geo Capurro

CALIFORNIA RETAIL GROCERS AND MERCHANTS ASSOCIATION, LTD., DOING BUSINESS AS:

CALIFORNIA GROCERS ASSOCIATION

OFFICE OF STATE SECRETARY
TELEPHONE SUTTER 1-1914
525 MARKET ST., SAN FRANCISCO, 5

June 8, 1949

Governor Earl Warren
State Capitol
Sacramento, California

Dear Earl:

A. B. 429 is a bill in which this Association is particularly interested, even in the form in which it was finally passed by the Legislature.

The necessity for this legislation is to declare by statute that Section 3369 Civil Code does include acts denounced by the Unfair Practices Act.

The case of International Association vs. Landowitz 20 Cal. (2) 418 contained language at page 422 as follows:

> "(1b) Civil Code, section 3369, contains no broader a definition of the term 'unfair practices' than existed at common law and in itself furnishes no basis for an injunction against the violation of the penal ordinance involved in this case."

Notwithstanding the quoted language, in practice it was believed that the Unfair Practices Act by its terms provided for injunctive relief, and that 3369 Civil Code and that Act taken together did furnish grounds for actions by District Attorneys for the enforcement of the Unfair Practices Act by injunction. Actions were filed and carried to appeals subsequent to the Landowitz case, as evidences by People vs. Payless Drug Store 25 Cal. (2) 108.

However, in 1948 defendants "selling below cost" of the Unfair Practices Act became familiar with the argument afforded by the Landowitz case. Superior Courts generally accepted the argument, and District Attorneys refused to lend aid by actions in the name of the People of the State of California in enforcement of the Act, actions theretofore generally handled by such District Attorneys.

Accordingly, A. B. 429 was suggested to remove all legal question as to the propriety of such actions for injunctive relief brought by District Attorneys.

Some District Attorneys objected to the alleged burden and cost of the work incidental to such injunction actions, and therefore the duty was taken from them by amendment of A. B. 429 at their suggestion, leaving their only duty the criminal prosecution resulting from a complaint filed. A. B. 429 in its final form, however, does leave the Attorney General in a position to file an injunction action in support of the Unfair Practices Act, if he deems it advisable. The filing of such action is discretionary with that office.

The Unfair Practices Act and its purposes is important to business, particularly small business. It prohibits the practice of selling below cost with intention to destroy competition. It has been helpful over the years and is a law and remedy we would not care to lose, particularly the remedy and assistance afforded through help of a public enforcement officer.

Even though not all that was desired, we respectfully ask that we be granted the assistance which may come from the bill as passed and which does give such assistance as the office of the Attorney General may see fit to grant through injunction action.

We ask your favorable consideration in connection with A. B. 429.

Respectfully,

CALIFORNIA GROCERS ASSOCIATION

W. D. Hadeler

W. D. Hadeler, Secretary

wdh:vmm

95597 10-48 9M (1) SPO

STATE OF CALIFORNIA

Inter-Departmental Communication

Place: Sacramento 14

File No.

Date: June 8, 1949

To: Honorable Earl Warren
Governor of California
State Capitol
Sacramento

From: Department of Justice
Office of The Attorney General
LEE B. STANTON, Deputy Attorney General

Subject: A. B. 429

Adds section 3370 to the Civil Code to authorize the Attorney General to institute civil actions for injunction under the Unfair Practices Act (Business and Professions Code secs. 17000 - 17101).

The acts of selling articles below cost, giving them away, or allowing rebates, for the purpose of injuring competitors and destroying competition, are included among the acts of "unfair competition" mentioned in Civil Code section 3369, which may be enjoined by the Attorney General.

No legal objection.

Lee B. Stanton

LBS es

LEO H. SHAPIRO
ATTORNEY AT LAW
68 POST STREET
SAN FRANCISCO

EXBROOK 2451
EXBROOK 2-2451

June 9, 1949

Hon. Earl Warren
Governor of the State of California
State Capitol
Sacramento, California

Re: Assembly Bill 429

My dear Governor:

On behalf of the Retail Tobacco Dealers Association which I represent, I enclose herewith a statement of our reasons supporting our request to you that you approve Assembly Bill 429.

May I personally thank you at this time for your favorable consideration of this Bill.

With kindest personal regards, I remain,

Sincerely yours,

Leo H. Shapiro

LHS:GS
Enc.

Section 3369 provides generally that neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case nor to enforce a penal statute except in a case of nuisance or unfair competition (underscoring mine) and further provides that any person performing or proposing to perform an act of unfair competition within this State may be enjoined in any court of competent jurisdiction.[1] As used in the Section, unfair competition shall mean and include unfair or fraudulent business practice and unfair, untrue or misleading advertising and any act denounced by Penal Code Section 654a, 654b or 654c. Actions for injunction under the Section may be prosecuted by the Attorney General or any District Attorney in this State in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members of the general public. Some question has arisen as to whether or not "unfair competition" as defined in said Section 3369 of the Civil Code includes unfair competition as defined by the Unfair Practices Act set forth in the Business and Professions Code as paragraph 17000 to and including 17101 of said Code. It has been urged and successfully so before some of our Superior Courts that 3369 contains no broader definition of the term "unfair competition" than existed at common law and in itself furnishes no basis for an injunction against the violation of the acts as set forth in the Unfair Practices Act.

A number of cases filed under the provisions of said Unfair Practices Act in the name of the people of the State of California reached the Supreme Court, but the point herein involved was not raised. Such cases were entitled People v. Payless

Drug Store, 25 Cal. (2d) 108; People v. Black Food Store, 16 Cal. (2d) 59; People v. Green Frog Food Emporium, 16 Cal. (2d) 59.

In order to clarify the meaning of the words "unfair competition" as used in Section 3369 of the Civil Code, the legislature passed Assembly Bill 429 by adding a new section to the Civil Code to be numbered 3370 and to read as follows:

> "The words 'unfair competition' as used in Section 3369 above shall also mean and include any act denounced by the Unfair Practices Act, Chapter 4, Part 2, Division 7, of the Business and Professions Code, except that no action may be prosecuted by any District Attorney in this State for a violation of said Unfair Practices Act except as provided in Article 6 thereof".

Under the proposed bill as adopted by the legislature, the Attorney General would have authority to file an action for injunction to prohibit or stop the violations of the Unfair Practices Act. On behalf of the Retail Tobacco Dealers Association, the membership of which comprises small businessmen, we urge you to approve Assembly Bill 429. These little businessmen require the assistance of the State in eliminating unfair competition to the end that the equality of the opportunity for little people shall be maintained.

In enacting the Unfair Practices Act the legislature set forth the purpose of the Act in paragraph 17001 wherein it is stated as follows:

> "The legislature declares that the purpose of this Chapter is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented."

This Act has been held constitutional in a great number of cases by our State Supreme Court and reference is

hereby made to the case of Wholesale Tobacco Dealers v. National Candy and Tobacco Company, reported in 11 Cal.(2d) 634. Your particular attention is called to p. 643, which reads as follows:

> "It has now become firmly established that the police power of the State extends not only to the preservation of the public health, safety and morals, but also extends to the preservation and promotion of public welfare. In recent years the State in promoting and advancing the general welfare of its citizens has frequently and properly used this power to promote the general prosperity of the State by the regulation of economic conditions. This apparent extension of the police power is in fact no extension at all. The police power has not extended . . . .".

The decision also quotes at page 645 from the case of Chicago B and Q Railway v. Illinois, 200 U.S. 561, in which case the Supreme Court of the United States at page 592 says:

> "We hold that the police power of a State embraces regulations defined to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety."

See also the cases of People v. Black Food Store, 16 Cal. (2d) 59; People v. Payless Drug Store, 25 Cal.(2d) 108.

Some thirty states in the United States have enacted Unfair Sales Acts or Unfair Practices Acts. These States being as follows:

Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming. A great number of these States provide for enforce-

ment of their Unfair Practices and Sales Act by and through their Attorney General.

We believe that the small merchant should not be eliminated from business by methods of unfair competition and particularly that course of conduct which is prohibited by our Unfair Practices Act. We believe that the State should play its part in the preservation of the little businessman by taking action in those cases in which the proper evidence is submitted as its officials may deem requisite. We further believe that Main Street must be preserved and that it should not be eliminated by the utilization by large interests of loss leaders and predatory price cutting. It is a well known fact that many small independent business dealers have been destroyed by destructive price cutting done for and with the intent of driving out competitors and if such conduct continues it would not be long before the business of distributing commodities would be in the hands of very few. Predatory practices with no rules of fair play have heretofore created labor and economic disturbances. Chaotic competition is one of the roads to communism and we as Americans cannot go back to chaotic competition. The small businessman must have the opportunity to survive and we absolutely need him in our economic sphere of things. We must assist and support small business so that it will maintain jobs and purchasing power. Today we are facing a deflationary period, the depth of which no one can prophesy. Should chaotic conditions ensue therefrom insofar as competition is concerned with no restraining power thereof, it is safe to prophesy that many thousands of little businessmen will be eliminated from the field of competition thus destroying

equality of opportunity and further destroying the possibility of new, venturesome, small business, which in the past has so genuinely contributed to the economic welfare of our people.

In conclusion, we urge your serious favorable consideration and trust that you will approve Assembly Bill 429.

Yours very truly.

Leo H. Shapiro
Attorney for Retail
Tobacco Dealers
Association of California

June 14-1949

Rec'd 6-16-49

Mr Beach Vasey
Legislatior Secretary
Sacramento Calif

Dear Mr Vasey:-

In answer to your letter of recent date I beg to advise that the California Pharmaceutical association is very much interested in the enactment into law AB 479 and respectfully urge His Excellency, The Governor to sign the bill.

Respectfully
California Pharmaceutical Association
By O.V. McCracken
Executive Secretary

1. SUBJECT MATTER
2. AUTHOR
3. VOTE
4. LEGAL REPORTS
   (a) LEGISLATIVE COUNSEL
   (b) ATTORNEY GENERAL
5. SPONSORSHIP
6. DEPARTMENTAL REPORTS
   (a) IN SUPPORT
   (b) IN OPPOSITION
7. OTHER REPORTS
   (a) IN SUPPORT
   (b) IN OPPOSITION
8. COMMENTS

LEGISLATIVE MEMORANDUM

GOVERNOR'S OFFICE

ASSEMBLY **BILL NO.** 429

To: GOVERNOR WARREN **Date:** June 14, 1949

From: BEACH VASEY

1. SUBJECT MATTER:

Adds Section 3370 to the Civil Code, relating to injunctive relief in connection with the Unfair Practices Act. Provides that the term "unfair competiton", as used in Section 3369 of the Civil Code, shall also mean and include any act prohibited by the Unfair Practices Act found in the Business and Professions Code, except that no action may be prosecuted by any district attorney for a violation of said act, except as provided in Article 6 thereof, which article pertains to prosecution of a violator for a misdemeanor. Section 3369 of the Civil Code permits injunctive actions by the attorney general or the district attorney to enjoin any acts constituting unfair competition.

2. AUTHOR: Connolly

3. VOTE: Assembly - 61 Ayes, 8 Noes; Senate - 23 Ayes, 3 Noes (Dr.bish, Sutton, Tenney); Assembly unanimously concurred in Senate amendment.

4. LEGAL REPORTS:

(A) LEGISLATIVE COUNSEL: Form, title, and constitutionality approved. States that there is some doubt under the present law as to whether district attorneys may institute such action. This bill would make it clear that they cannot.

(B) ATTORNEY GENERAL: No legal objection. States that the effect of the bill is to authorize the Attorney General to institute civil actions for injunctions under the Unfair Practices Act. The acts of selling articles below cost, giving them away, or allowing rebates for the purpose of injuring competitors and destroying competition are included among the acts of unfair competition which may be enjoined by the Attorney General ~~by action~~ under of this bill.

5. SPONSORSHIP:

6. DEPARTMENTAL REPORTS: None.

7. OTHER REPORTS:

(A) IN SUPPORT: California Grocers Association, by W. D. Hadeler, Secretary, states that the Association is particularly interested in this bill, even in the form in which it was finally passed. Points out that in the case of International Association vs. Landowitz it was held that Section 3369 of the Civil Code contains no broader definition of the term "unfair practices" than existed at common law, and in itself furnishes no basis for an injunction against a violation of an ordinance or statute. Because of this fact, AB 429 was suggested, to remove all question as to the propriety of actions for injunctive relief being brought by the district attorneys. There was opposition from the district attorneys because of the burden and cost of work incidental to such injunction actions, and for that reason AB 429 was amended, leaving only the duty of criminal prosecution on district attorneys, but permitting the Attorney General to file such action. The Unfair Practices Act is important to business, and particularly small business. Favorable consideration of AB 429 is asked.

In addition to this, letters and wires have been received from 126 individuals and stores, urging approval of this bill.

(B) NEUTRAL: Arthur Sherry reports that in its original form, this bill and AB 430 were vigorously opposed by the District Attorneys' Association. It has been amended to the point where it no longer affects district attorneys. As it now stands, the bill confers additional authority only on the office of the Attorney General. While the district attorneys are not convinced of the wisdom of the law, nor of the wisdom of enforcement by a single State agency of any kind of price-fixing legislation, it is far more desirable than piecemeal enforcement among the 58 counties. The Attorney General is now conducting a substantial volume of injunction cases, although his authority to do so is not clear. Since he has made no objection to the proceeding, and since the most undesirable features of the legislation have been removed, the District Attorneys' Association no longer opposes enactment of the legislation. Should it suit the convenience of the Governor, Mr. Sherry would like to discuss this matter further with him at the time he takes the bill under consideration.

8. COMMENT: My reaction to this bill is very much the same as Mr. Sherry's. I do not look with favor on this type of legislation. However, there is no longer any opposition to the measure, as it affects only the Attorney General, and he has not seen fit to object. As pointed out by Mr. Sherry, he is prosecuting many actions of this kind at the present time. Under these circumstances, and because of the support which the measure has received, it is my recommendation that it be approved by the Governor.

BV

BV:cj

June 16, 1949

Honorable Arthur H. Connolly, Jr.
Member of the Assembly
State Capitol
Sacramento, California

Dear Assemblyman Connolly:

It is a pleasure to tell you that Governor Warren signed Assembly Bill 429 on June 16, 1949.

Sincerely,

Beach Vasey
Legislative Secretary

BV:a

LAW OFFICES
ST. CLAIR & CONNOLLY
MILLS TOWER
SAN FRANCISCO

SACRAMENTO ADDRESS
STATE CAPITOL
ZONE 14

1949 REGULAR SESSION

ARTHUR H. CONNOLLY, JR.
MEMBER OF ASSEMBLY, TWENTY-FIRST DISTRICT

VICE CHAIRMAN
COMMITTEE ON PUBLIC HEALTH

COMMITTEES
JUDICIARY
PUBLIC HEALTH
REVENUE AND TAXATION
WAYS AND MEANS

June 16, 1949

Honorable Earl Warren
Governor of California
State Capitol
Sacramento, California

Dear Governor Warren: Re: A.B. 429

I am taking the liberty of addressing you at this time to earnestly request your favorable consideration of A.B. 429.

I feel sincerely that the provisions of this bill would serve a good purpose in discouraging widespread violations of the Unfair Practices Act and will therefore be of real service to the consuming public.

Prior to a recent Supreme Court decision, it had always been assumed that both the Attorney General and the several District Attorneys had full authority to institute injunction actions for the violation of the Unfair Practices Act. But the decision in question cast a doubt upon this authority. Consequently, this bill was introduced to clarify the situation so that the small retailers could continue to avail themselves of the good services of these law-enforcement officers.

During the consideration of the bill, the District Attorneys expressed opposition to being included in its provisions, and the bill was therefore amended to remove their authority from the bill. It is my understanding that the Attorney General has no objection to being included, and I would therefore submit that the bill as now amended should be adopted for the benefit of all concerned.

In the event that I may be of any further service to you in explaining the import of this bill, and the reasons for its enactment, I wish to assure you that I will be available on your call.

Thanking you for your consideration, I remain

Yours very truly,

ARTHUR H. CONNOLLY, JR.

AHC:am

ROY F. WYATT

244386

S. S. WYATT

Wyatt's General Store

GENERAL MERCHANDISE

Pumps and Appliances

ESPARTO, CALIFORNIA

June 17, 1949

The Honorable Earl Warren
Governor of California
State Capitol
Sacramento, Calif.

Dear Sir:

The following bills under consideration for your approval:

A.B.1713--THE WINE PRICING BILL. We consider this a discriminatory bill and contrary to the best interests of both the consumer and the retailer. signed 6-7-49

A.B.429---THE UNFAIR PRACTICES ACT. We urge your signature to this bill which we consider desirable in that it will contribute to honest and fair dealings in business. signed 6-16-49

Yours very truly,

WYATT'S GENERAL STORE

S.S.Wyatt

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1963

ASSEMBLY FINAL HISTORY

SYNOPSIS OF

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT AND JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

1963 REGULAR SESSION

DURATION OF SESSION

Convened Monday, January 7, 1963

Adjourned Sine Die Friday, June 21, 1963

Legislative Days (Days Assembly Was in Session)..... 109 Days

Calendar Days (Exclusive of Saturdays and Sundays)..... 120 Days

Calendar Days (Including Saturdays and Sundays)..... 166 Days

Last Day for Signing Bills by Governor, July 26, 1963

Last Day for Filing Referendum, September 19, 1963

All Bills Approved by the Governor, Unless Otherwise Specifically Provided For in the Bill, Become Effective September 20, 1963 (Constitution, Article IV, Section 1)

HON. JESSE M. UNRUH
Speaker

HON. CARLOS BEE
Speaker pro Tempore

HON. JEROME WALDIE
Majority Floor Leader

HON. CHARLES J. CONRAD
Minority Floor Leader

Compiled Under the Direction of
ARTHUR A. OHNIMUS
Chief Clerk

ETHEL E. BROCKELBANK
History Clerk

1a—L-3484

2929—Soto, April 26. To Com. on G. E. & E.

An act to amend Section 3369 of the Civil Code, relating to specific and preventive relief.

April 26—Read first time. Held at desk.
April 29—Referred to Com. on G. E. & E. To printer.
April 30—From printer. To committee.
June 6—From committee: Do pass. To Consent Calendar.
June 7—Read second time. To engrossment. Reported correctly engrossed. To Consent Calendar.
June 10—Read third time, passed, title approved. To Senate.
June 10—In Senate. Read first time. To Com. on Jud.
June 18—From committee: Do pass. Read second time. To third reading.
June 19—Read third time, passed, title approved. To Assembly.
June 20—In Assembly. To enrollment.
June 28—Reported correctly enrolled. To Governor at 1 p.m.
July 13—Approved by Governor. Chapter 1606.

2930—Soto, April 26. To Com. on Crim. Pro.

An act to amend Section 599 of the Penal Code, relating to mistreatment of poultry and rabbits.

April 26—Read first time. Held at desk.
April 29—Referred to Com. on Crim. Pro. To printer.
April 30—From printer. To committee.
May 27—From committee chairman, with author's amendments: Amend, and re-refer to Com. on Crim. Pro. Read second time, amended, to printer.
May 28—From printer. To engrossment. Reported correctly engrossed. Re-referred to Com. on Crim. Pro.
June 6—From committee: Amend, and do pass as amended.
June 7—Read second time, amended, to printer. Ordered returned to second reading file.
June 9—From printer. To re-engrossment. Reported correctly re-engrossed. Read second time. To third reading.
June 10—Read third time, passed, title approved. To Senate.
June 11—In Senate. Read first time. To Com. on Jud.
June 18—From committee: Do pass. Read second time. To third reading.
June 19—Read third time, passed, title approved. To Assembly.
June 20—In Assembly. To enrollment.
June 28—Reported correctly enrolled. To Governor at 1 p.m.
July 26—Pocket vetoed by Governor.

2931—Knox, April 26. To Com. on G. O.

An act to add Section 1370 to the Government Code, relating to oaths of office.

April 26—Read first time. Held at desk.
April 29—Referred to Com. on G. O. To printer.
April 30—From printer. To committee.
June 7—From committee: Do pass.
June 9—Read second time. To engrossment. Reported correctly engrossed. To third reading.
June 11—Bill tabled in Assembly.

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 2929

Introduced by Mr. Soto

April 26, 1963

REFERRED TO COMMITTEE ON GOVERNMENTAL EFFICIENCY AND ECONOMY

An act to amend Section 3369 of the Civil Code, relating to specific and preventive relief.

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

SECTION 1. Section 3369 of the Civil Code is amended to read:

3369. 1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or proposing to perform an act of unfair competition within this State may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include *unlawful,* unfair or fraudulent business practice and unfair, untrue or misleading advertising and any act denounced by ~~Penal Code sections 654a, 654b or 654c~~ *Business and Professions Code Sections 17500 to 17535, inclusive .*

4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this State in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

LEGISLATIVE COUNSEL'S DIGEST

A.B. 2929, as introduced, Soto (G.E. & E.). Specific and preventive relief.

Amends Sec. 3369, Civ.C.

Defines, for purposes of granting specific or preventive relief, the term "unfair competition" to mean unlawful, as well as unfair or fraudulent business practice and unfair, untrue or misleading advertising.

Corrects obsolete cross-reference.

State of California

Department of Justice

Memorandum

To : Honorable Phillip L. Soto
Assemblyman, 50th District
State Capitol
Sacramento 14, California

Date : June 14, 1963

File No.:

From : Office of the Attorney General

Subject: AB 2929

Assembly Bill 2929 corrects Section 3369.3 of the Civil Code to strike out the referral to Penal Code Sections 654 (a(, (b) and (c). Penal Code section 654(a) was originally enacted in 1905; Penal Code section 654(b) was originally enacted in 1915 and Penal Code section 654(c) was originally enacted in 1921. These three sections were repealed in 1941. As originally enacted they related to false advertising, false advertisements concerning real estate and the advertising of second-hand, rejected, defective, or blemished merchandise. Reported cases pertaining to statutory prohibitions against false advertising prior to 1941 related to the foregoing sections, such as: Hoover Co. v. Groger (1936), 55 P.2d 529, 12 Cal.App.2d 417; People v. Superior Court, 8 Cal.2d 56, (1936); People v. Wahl (1940) 39 Cal.App.2d Supp. 771, 100 P.2d 552.

In 1941 Chapter 1 was added to Division 7, Part 3 of the Business and Professions Code for the purpose of revising and consolidating the law relating to false advertising. The provisions of this Chapter were derived from the Penal Code Section cited in section 3369 of the Civil Code. Section 3369.3 defines unfair competition which includes unfair, untrue or misleading advertising. In addition refers to the acts denounced in the Penal Code sections referred to and now repealed. As stated above these provisions now appear in sections 17500-17535 of the Business and Professions Code.

In addition to this change, the word "unlawful" is inserted in the definition to clarify the statutory definition of "unfair competition" to concur with judicial trends.

The case of City of Stockton v. Frisbie and Latta, 93 Cal.App 277, enunciated the principle that an unlawful act (here a violation of the zoning ordinance)

RE: AB 2929

is a proper subject of injunction. Although the courts have consistently held that the Attorney General has the authority to enjoin unlawful acts (Pearce v. Superior Court, 1 Cal.2d 759; People v. Stratton, 25 Cal. 242; People v. Cold Run Ditch and Min. Co., 66 Cal. 138; People v. Centr-O-Mart, 34 Cal.2d 702) it is clear that the legislature intended the control of unfair competition by the procedure set forth in section 3369. It is not altogether clear that an individual acting in his own interest can find the relief ostensibly afforded him by the provisions of the section unless he shows the act of unfair competition to be fraudulent. In the case of City of Stockton v. Frisbie and Latta, cited above, a funeral home had located in a residential area contrary to the provisions of the zoning ordinance, an unlawful act, but hardly a fraudulent act. It cannot be denied that a business practice which is unlawful provides a material and unfair advantage against law abiding competitors. Inasmuch as the Legislature has seen fit to extent remedies to all persons who wish to correct acts of unfair competition, such acts should be clearly defined in the statute so that individuals as well as the Attorney General can be assured of prompt and effective remedy against unlawful acts which may not fall within the definition of fraudulent practices.

CHARLES A. JAMES
Assistant Attorney General

CAJ:fr

STANLEY MOSK
ATTORNEY GENERAL

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL
Department of Justice
LIBRARY AND COURTS BUILDING, SACRAMENTO 14

June 25, 1963

The Honorable Edmund G. Brown
The Governor
State Capitol
Sacramento 14.

Attention: Paul D. Ward, Legislative Secretary.

Dear Governor Brown:

A.B. 2929 (Soto)

A.B. 2929 makes certain technical changes in Section 3369 of the Civil Code, by deleting references to obsolete Penal Code sections and substituting references to the Business and Professions Code sections which are applicable. In addition, the measure inserts the word "unlawful" in the definition of unfair competition.

This bill was introduced at the request of the Attorney General. It received no opposition in the legislature, and we request that you also give it your favorable consideration.

We have examined the bill and find no substantial legal objection thereto.

Yours very truly,

STANLEY MOSK
Attorney General

HOWARD H. JEWAL
Assistant Attorney General

HHJ:sc

ANGUS C. MORRISON
LEGISLATIVE COUNSEL
GEORGE H. MURPHY
CHIEF DEPUTY
BERNARD CZESLA
J. GOULD
PRINCIPAL DEPUTIES
EDWARD F. NOWAK
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LOS ANGELES OFFICE

STATE OF CALIFORNIA

Office of Legislative Counsel

3021 STATE CAPITOL, SACRAMENTO 14
110 STATE BUILDING, LOS ANGELES 12

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OWEN K. KUNS
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EDWARD K. PURCELL
ALAN W. STRONG
TAKETSUGU TAKEI
RAY H. WHITAKER
DEPUTIES

July 1, 1963

REPORT ON ASSEMBLY BILL NO. 2929. SOTO.

SUMMARY: Amends Sec. 3369, Civ. C., relating to specific and preventive relief.

Adds to the definition of the term "unfair competition" for purposes of granting specific or preventive relief, "unlawful" as well as unfair or fraudulent business practice and unfair, untrue or misleading advertising.

Corrects obsolete cross-reference.

FORM: Approved. TITLE: Approved.

CONSTITUTIONALITY: Approved.

A. C. Morrison
Legislative Counsel

By Jerry L. Baum
Jerry L. Baum
Deputy Legislative Counsel

JLB:AS

THE STATE BAR OF CALIFORNIA

HAZEN L. MATTHEWS
Legislative Representative

601 MCALLISTER STREET
SAN FRANCISCO 2
WALNUT 2-1440

July 8, 1963

The Honorable Edmund G. Brown
Governor of California
State Capitol
Sacramento 14, California

Re: Assembly Bill 2929 (Soto)

Dear Governor Brown:

This is in response to your request for our comments on the effect of Assembly Bill 2929 and for our opinion on its desirability. The bill amends section 3369 of the Civil Code, relating to specific and preventive relief. It defines, for the purposes of granting specific or preventive relief, the term "unfair competition" to mean unlawful, as well as unfair or fraudulent business practive, and unfair, untrue, or misleading advertising.

Assembly Bill 2929 was the subject of a preliminary examination by members of the staff of the State Bar. It was, however, not assigned to any committee for study for the reason that it deals with matters of substantive rather than procedural law. The State Bar took no position on the bill.

Respectfully yours,

Hazen L. Matthews
Legislative Representative

HLM mm

DISTRICT OFFICE
[illegible]
LA PUENTE, CALIFORNIA
TELEPHONE 336-4512

SACRAMENTO ADDRESS
STATE CAPITOL
ROOM 5126

COMMITTEES
MANUFACTURING, OIL AND MINING INDUSTRY
MUNICIPAL AND COUNTY GOVERNMENT
PUBLIC HEALTH
TRANSPORTATION AND COMMERCE

Assembly
California Legislature

PHILIP L. SOTO
ASSEMBLYMAN, FIFTIETH DISTRICT
VICE CHAIRMAN
COMMITTEE ON PUBLIC HEALTH

July 10, 1963

Hon. Edmund G. Brown
Governor of California
State Capitol
Sacramento, California

Att. Mr. Leo Bromwich

My dear Governor:

Re: AB 2929

Assembly Bill 2929 is before you for your approval.

Please find enclosed a memorandum from Mr. Charles A. James, Assistant Attorney General, the party who requested the introduction of this bill, which is self-explanatory.

Your signature to this bill is respectfully requested.

Very sincerely yours,

PHILIP L. SOTO

PLS:rc
enc. 1

BILL MEMORANDUM

Date: July 10, 1963

To : GOVERNOR BROWN

From: Paul D. Ward

Assembly BILL No. 2929 By Soto

VOTE: Senate Unanimous

Assembly Unanimous

Adds to the definition of the term "unfair competition" for the purposes of granting specific or preventive relief, "unlawful" as well as unfair or fraudulent business practice and unfair, untrue or misleading advertising.

The Legislative Counsel and Attorney General have no constitutional or substantial legal objection to approval.

The State Bar of California takes no position on this bill.

Recommendation: Approve. (Bromwich)

CALIFORNIA LEGISLATURE

1963 Regular Session

SUMMARY DIGEST

of

STATUTES ENACTED

and

Proposed Constitutional Amendments
Submitted to the Electors
Including
Table of Sections Affected

1963 First Extraordinary Session

DIGEST OF LEGISLATION PASSED

J. A. BEEK
Secretary of the Senate

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

Compiled by
A. C. MORRISON
Legislative Counsel

A.B. 2012 (Ch. 1604). HENSON. Amends Sec. 40517, Veh.C., re justice court appearances.

Provides that person who has promised to appear concerning vehicle violation may, upon filing prescribed affidavit, demand transfer of his case from justice court other than at the county seat, rather than from court of magistrate who is other than municipal court judge at county seat, to court of municipal court judge or other magistrate having jurisdiction at county seat.

Provides if trial date has been set, the affidavit accompanying the demand for transfer must be filed at least 10 days prior to trial date.

A.B. 2013 (Ch. 1605). HENSON. Amends Sec. 496, Pen.C., re purchasing or receiving stolen property.

Deletes from section punishing knowing purchase or receipt of stolen property provision stating that any person who buys or receives any property which has been stolen or which has been obtained in any manner constituting theft or extortion, from any person under the age of 18 years shall be rebuttably presumed to have bought or received such property knowing it to have been so stolen or obtained, unless such property is sold by such minor at fixed place of business carried on by minor or his employer.

A.B. 2017 (Ch. 1847). CROWN. New act, to authorize settlement in case of United States v. Anchor Oil Corporation, and prescribes terms and conditions of such settlement.

A.B. 2018 (Ch. 1999). MULFORD. Amends Sec. 17952, H. & S.C., re State housing laws.

Permits city or county to request hearing before State Housing Appeals Board to show cause for nonenforcement; and requires a decision adverse to city or county if such hearing is requested, before Department of Industrial Relations is authorized to enforce State Housing Law and rules and regulations promulgated thereunder within city or county.

A.B. 2022 (Ch. 1108). JOHNSON. Adds Ch. 4, Div. 6, Elec.C., re endorsement of candidates.

Prohibits state and county central committees and state conventions from supporting or endorsing candidates for party nominations at direct primary election.

Requires that printed or duplicated matter, and paid advertisements on radio and television, alleging that candidate for nomination for partisan office in the primary has been endorsed by political party, political party organization, or organization bearing party name, be accompanied by statement that endorsement is by unofficial political group. Exempts news items, comments, and articles from requirement.

Prescribes penalties for violations, and authorizes issuance of injunction.

A.B. 2023 (Ch. 1312). JOHNSON. Amends Sec. 1162, Ed.C., re school district governing board vacancies.

Permits person appointed to fill vacancy on school district governing board to serve for rest of unexpired term, instead of having position filled at next school board election.

A.B. 2029 (Ch. 1606). SOTO. Amends Sec. 3369, Civ.C., re specific and preventive relief.

Adds to definition of term "unfair competition" for purposes of granting specific or preventive relief, "unlawful" as well as unfair or fraudulent business practice and unfair, untrue or misleading advertising.

Corrects obsolete cross-reference.

A.B. 2032 (Ch. 1668). WAITE. Amends Sec. 23113, Veh.C., re highways.

Requires person who drops or throws any destructive or injurious material upon any street or highway, rather than only upon any highway, to immediately remove it or cause it to be removed. Provides that if such person fails to remove such material, the governmental agency responsible for maintenance of the street or highway may remove it and collect, by civil action if necessary, the actual cost of removal operation in addition to any other damages authorized by law from person responsible for depositing destructive or injurious material upon street or highway.

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1972 REGULAR SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT AND JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

Assembly Convened January 3, 1972

Recessed March 23, 1972	Reconvened April 3, 1972
Recessed June 1, 1972	Reconvened June 7, 1972
Recessed July 7, 1972	Reconvened July 17, 1972
Recessed August 4, 1972	Reconvened November 8, 1972
Recessed November 22, 1972	Reconvened November 27, 1972
Constitutional Recess	
December 1, 1972	Reconvened January 1, 1973

Adjourned Sine Die January 5, 1973

Legislative Days 139

Calendar Days 369

Last Day for Filing Referendum, March 6, 1973

All Bills Chaptered, Unless Otherwise Spcifically Provided for in the Bill, Become Effective March 7, 1973

HON. BOB MORETTI
Speaker

HON. CARLOS BEE
Speaker pro Tempore

HON. JACK R. FENTON
Majority Floor Leader

HON. BOB MONAGAN
Minority Floor Leader

Compiled Under the Direction of

JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

A.B. No. 1937—Warren.

An act to amend Section 3369 of, and to add Section 3370.1 to, the Civil Code, relating to the specific or preventive relief.

Mar. 15—Read first time.
Mar. 22—Referred to Com. on JUD.
April 11—To committee.
May 25—From committee chairman, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended.
May 30—Re-referred to Com. on JUD.
June 8—From committee: Do pass, and re-refer to Com. on W. & M. with recommendation: To Consent Calendar. Re-referred to Com. on W. & M.
June 13—From committee: Do pass.
June 14—Read second time. To third reading.
June 19—Read third time, passed, and to Senate.
June 19—In Senate. Read first time.
June 21—Referred to Com. on JUD.
July 18—From committee: Do pass, and re-refer to Com. on FIN. Re-referred to Com. on FIN.
July 27—From committee: Amend, and do pass as amended. Read second time, amended, and to third reading.
Aug. 2—Read third time, passed, and to Assembly.
Aug. 3—In Assembly. Senate amendments concurred in. To enrollment.
Aug. 15—Enrolled and to the Governor at 11 a.m.
Aug. 18—Signed by the Governor.
Aug. 18—Recorded by Secretary of State—Chapter 1084.

A.B. No. 1938—Cory (Senator Carrell, coauthor).

An act to amend Sections 21022, 21291, and 21294 of, and to add Sections 20493.1 and 21300.5 to, the Government Code, relating to retirement.

Mar. 15—Read first time.
Mar. 22—Referred to Com. on RET.
April 11—To committee.
May 8—From committee chairman, with author's amendments: Amend, and re-refer to Com. on RET. Read second time and amended.
May 11—Re-referred to Com. on RET.
June 1—From committee: Amend, and do pass as amended, and re-refer to Com. on W. & M.
June 7—Read second time and amended.
June 8—Re-referred to Com. on W. & M.
June 16—From committee: Amend, and do pass as amended.
June 19—Read second time and amended. Ordered returned to second reading file.
June 20—Read second time. To third reading.
July 3—Read third time, passed, and to Senate.
July 3—In Senate. Read first time.
July 5—Referred to Com. on G.O.
July 10—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on G.O.
July 28—From committee: Amend, and do pass as amended, and re-refer to Com. on FIN. Read second time, amended, and re-referred to Com. on FIN.
Nov. 17—From committee: Amend, and do pass as amended. Read second time, amended, and to third reading.
Nov. 27—Read third time, passed, and to Assembly.
Nov. 28—In Assembly. Concurrence in Senate amendments pending.
Nov. 30—Senate amendments concurred in. To enrollment.
Dec. 7—Enrolled and to the Governor at 11 a.m.
Dec. 27—Vetoed by Governor.
Jan. 2—Veto sustained.

ASSEMBLY BILL No. 1937

Introduced by Assemblyman Warren

March 15, 1972

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 1780 of, to amend and renumber Section 1770 of, and to add Sections 1770, 1780.5, and 1780.6 to, the Civil Code, relating to the Consumer Legal Remedies Act.

LEGISLATIVE COUNSEL'S DIGEST

AB 1937, as introduced, Warren (Jud.). Consumer Legal Remedies Act.

Makes additional specified acts unlawful under the Consumer Legal Remedies Act.

Permits the Attorney General or any district attorney in the name of the people of the state upon their own complaint or upon the complaint of specified others to seek injunctive relief against persons violating the provisions of the Consumer Legal Remedies Act. Provides for civil penalty not to exceed $2500 for each violation under the act, and specifies distribution of the penalty collected.

Vote—Majority; Appropriation—No; Fiscal Committee—Yes.

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

SECTION 1. Section 1780 of the Civil Code is amended to read:

1780. (a) Any consumer who suffers any damage as a result of the use or employment by any person of a

method, act, or practice declared to be unlawful by Section 1770 *or 1770.5* may bring an action against such person to recover or obtain any of the following:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than three hundred dollars ($300).

(2) An order enjoining such methods, acts, or practices.

(3) Punitive damages.

(4) Any other relief which the court deems proper.

(b) Such action may be commenced in the county in which the person against whom it is brought resides, has his principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

If within any such county there is a municipal or justice court, having jurisdiction of the subject matter, established in the city and county or judicial district in which the person against whom the action is brought resides, has his principal place of business, or is doing business, or in which the transaction or any substantial portion thereof occurred, then such court is the proper court for the trial of such action. Otherwise, any municipal or justice court in such county having jurisdiction of the subject matter is the proper court for the trial thereof.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county or judicial district described in this section as a proper place for the trial of the action. If a plaintiff fails to file the affidavit required by this section, the court shall, upon its own motion or upon motion of any party, dismiss any such action without prejudice.

SEC. 2. Section 1770 of the Civil Code is amended and renumbered to read:

~~1770~~ *1770.5*. ~~The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to~~

~~result or which results in the sale or lease of goods or services to any consumer are unlawful~~ *The prohibitions of Section 1770 include, but are not limited to, the following*:

(a) Passing off goods or services as those of another.

(b) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(c) Misrepresenting the affiliation, connection, or association with, or certification by, another.

(d) Using deceptive representations or designations of geographic origin in connection with goods or services.

(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have.

(f) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.

(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(h) Disparaging the goods, services, or business of another by false or misleading representation of fact.

(i) Advertising goods or services with intent not to sell them as advertised.

(j) Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(k) Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

(*l*) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.

(m) Representing that a part, replacement, or repair service is needed when it is not.

(n) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

(o) Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(p) Misrepresenting the authority of a salesman, representative, or agent to negotiate the final terms of a transaction with a consumer.

SEC. 3. Section 1770 is added to the Civil Code, to read:

1770. Unfair, fraudulent or deceptive business or trade practices, and unfair, untrue or misleading advertising practices, and unfair methods of competition are unlawful.

SEC. 4. Section 1780.5 is added to the Civil Code, to read:

1780.5. Any person who violates or proposes to violate this title may be enjoined by any court of competent jurisdiction.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this state in the name of the people of the state upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members, or the general public. Neither the Attorney General nor any district attorney who brings an action need comply with Section 1782. Neither the Attorney General nor any district attorney need plead or prove irreparable injury for purposes of obtaining any injunction or stay order.

SEC. 4. Section 1780.6 is added to the Civil Code, to read:

1780.6. Any person who violates any provision of this title shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney in any court of competent jurisdiction. If brought by the Attorney General, one-half of the penalty

collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund.

O

EVELLE J. YOUNGER
ATTORNEY GENERAL

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL
Department of Justice
ROOM 500, WELLS FARGO BANK BUILDING
FIFTH STREET AND CAPITOL MALL, SACRAMENTO 95814

March 13, 1972

Mr. Herb Nobriga
Chief Ccunsel, Assembly Judiciary Committee
Room 2126 State Capitol
Sacramento, California 95814

Dear Herb:

Re: Attorney General's 1972 consumer program

Enclosed are draft copies of the principal pieces of legislation which this office will be supporting this year in the consumer protection field. Needless to say, your comments and suggestions would be appreciated.

In brief outline, our proposals are as follows:

1. Deceptive Practices. At present the Attorney General and district attorneys may bring actions for injunction and civil penalties for unfair, untrue, or misleading advertising pursuant to Business and Professions Code sections 17500 et seq. We propose to extend this cause of action to those acts of unfair competition presently covered by Civil Code sections 3369-3370 and specifically enumerated in Civil Code section 1770, at the same time amending the Consumer Legal Remedies Act to ensure that the practices prohibited in section 1770 are not exclusive.

2. Travel promotions. We are asking for legislation to fill several gaps in the present regulation of travel promoters:

a. Present Utilities Code section 4920 requires that 90 percent of all sums received by a travel promoter for air or sea transportation be held in trust or an adequate bond be provided. We would require that the sums which must be held in trust or otherwise provided should include other services having to do with the promotion as well.

b. Some instances have arisen in which travel promoters have failed to comply with section 4920, but the discovery has been made too late to do anything. We would provide an

additional requirement that a travel promoter must, prior to offering or advertising his transportation, file with the Department of Consumer Affairs, specified information having to do with the proposed program.

3. Charitable solicitations. Presently many individuals are selling door to door, by telephone or by mail, goods or services on the pretext of charitable purposes. Often there is no real charity, and the company is a profit-making organization. We would require those organizations which do not have charitable tax exempt status under federal and state law (e.g., Girl Scouts, United Crusade, etc.) to provide the prospective purchaser with a card stating facts including the identity of the soliciting organization and the individual solicitor, the name of each organization or fund for which money is collected, the percentage of amount collected that will go to the organization or fund or be used for charitable purposes, the non-tax exempt status of the organization or fund if such is the case, and the percentage of the total purchase price which may be deducted as a charitable contribution if any.

4. Product warranties. (A.B. 659) (Beverly). A number of companies offering consumer warranties on products specifically provide that the warranties do not extend to subsequent transferees, even within the warranty period. It would appear that if a company guarantees its product against various defects it should be immaterial as to who is in possession of the product at the time the defect appears. This has been a fairly constant source of complaint to our office. Accordingly, we would propose that the Song-Beverly Act be amended to provide that all warranties shall extend to transferees as well as original purchasers.

5. Injunctive relief for violations of Business and Professions Code sections 17500 et seq. (false advertising). At present only the Attorney General and district attorneys may bring actions for injunctive penalties pursuant to the above provisions. It is proposed that this authority be extended to county counsels and district attorneys. This would permit extension of the protections presently available under this law and take some burden off the hard-pressed offices which presently must bring these actions. In addition, the civil penalty provisions of this section have been an incentive in the establishment of consumer fraud units in district attorneys' offices. It may be anticipated that this incentive would also extend to city attorneys and counties in which district attorneys place their priorities elsewhere. Thus, it could result in substantial extension of consumer legal protections.

March 13, 1972

6. Pilot study of auto mechanics. An advisory task force on auto safety emissions control has concluded that the greatest single problem facing us in this field will be the failure of competent mechanics to perform proper maintenance work on increasingly complex safety and emissions control systems. It is proposed that an appropriation be made from the Motor Vehicle license fund to the Department of Consumer Affairs to award a contract for a program to develop methods of training and retraining mechanics to properly perform work for safe and low emission automobiles. The program is to specifically include methods of training, results that can be accomplished by training, and methods for certification or licensing of mechanics to perform such work.

7. Puzzle contests. An increasing source of concern to us has been the puzzle contest in which individuals are given relatively easy puzzles and then offered a chance to compete in extremely difficult "tie-breaker" contests for first prize. A fee ranging from $5 to $15 is often charged for participation in the "tie-breaker" contest.

Puzzles of this kind would not be covered by A.B. 360, which is the only vehicle in this field of which we are aware. It is proposed that legislation require that the "skill" contest for which consideration is required be compelled to disclose in each contest solicitation the total number of prizes that will be awarded in each category and phase of the contest, their exact nature, their approximate value, all terms and conditions with which participants will be asked to comply, the approximate value of any gift or other item furnished without charge or below retail value, and the numerical odds of winning each such prize.

We would appreciate your comments on these matters. Naturally, if we can be of any help in this or any other matter, please let us know.

Very truly yours,

EVELLE J. YOUNGER
Attorney General

JAN STEVENS
Deputy Attorney General

JS:er
Enc.
cc: R. O'Brien

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

Section 1. Section 1769 is added to the Civil Code to read:

§ 1769. Unlawful, unfair, fraudulent or deceptive business or trade practices and unfair, untrue or misleading advertising practices and unfair methods of competition are prohibited.

Section 2. Section 1770 is amended to read:

§ 1770. List of proscribed practices

~~The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:~~

"The prohibitions referred to in section 1769 include but are not limited to, the following practices: . . ."

Section 3. Section 1780 is amended to read:

" (a) Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by ~~Section 1770~~ Section 1769 or 1770 may bring an action against such person to recover or obtain any of the following: . . ."

Section 4. Section 1780.5 is added to the Civil Code to read:

§ 1780.5. Injunctive relief; prosecutor; complainant

Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this title may be enjoined by any court of competent jurisdiction.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this State in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public; provided that neither the Attorney General nor any district attorney who brings such an action need comply with Section 1782 provided further that neither the Attorney General nor any district attorney need plead or prove irreparable injury for purposes of obtaining any injunction or stay order.

Section 5. Section 1780.6 is added to the Civil Code to read:

§ 1780.6. Civil penalties

Any person who violates any provision of this title shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California

by the Attorney General or by any district attorney in any court of competent jurisdiction. If brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer.

RKO'B:mt

AMENDED IN ASSEMBLY MAY 25, 1972

CALIFORNIA LEGISLATURE—1972 REGULAR SESSION

ASSEMBLY BILL No. 1937

Introduced by Assemblyman Warren

March 15, 1972

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend ~~Section 1780 of, to amend and renumber Section 1770 of, and to add Sections 1770, 1780.5, and 1780.6~~ SECTION 3369 OF, AND TO ADD SECTION 3370.1 *to, the Civil Code, relating to the ~~Consumer Legal Remedies Act~~* SPECIFIC OR PREVENTIVE RELIEF.

LEGISLATIVE COUNSEL'S DIGEST

AB 1937, as amended, Warren (Jud.). ~~Consumer Legal Remedies Act~~ *Specific or preventive relief.*

~~Makes additional specified acts unlawful under the Consumer Legal Remedies Act.~~

Includes "deceptive advertising" in definition of unfair competition for purposes of specific or preventive relief in penalty or forfeiture enforcement.

Permits the Attorney General or any district attorney in the name of the people of the state upon their own complaint or upon the complaint of specified others to seek injunctive relief against persons violating ~~the~~ *specified* provisions of *law relating to specific relief* ~~the Consumer Legal Remedies Act~~. Provides for civil penalty not to exceed $2,500 for each violation ~~under the act~~, and ~~specifies~~ *provides for* distribution of the penalty collected.

Vote—Majority; Appropriation—No; Fiscal Committee—Yes.

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

SECTION 1. Section 1780 of the Civil Code is amended to read:

1780. (a) Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 or 1770.5 may bring an action against such person to recover or obtain any of the following:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than three hundred dollars ($300).

(2) An order enjoining such methods, acts, or practices.

(3) Punitive damages.

(4) Any other relief which the court deems proper.

(b) Such action may be commenced in the county in which the person against whom it is brought resides, has his principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

If within any such county there is a municipal or justice court, having jurisdiction of the subject matter, established in the city and county or judicial district in which the person against whom the action is brought resides, has his principal place of business, or is doing business, or in which the transaction or any substantial portion thereof occurred, then such court is the proper court for the trial of such action. Otherwise, any municipal or justice court in such county having jurisdiction of the subject matter is the proper court for the trial thereof.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county or judicial district described in this section as a proper place for the trial of the action. If a plaintiff fails to file the affidavit required by this section, the court shall, upon its own motion or upon motion of any party, dismiss any such action without

prejudice.

SEC. 2. Section 1770 of the Civil Code is amended and renumbered to read:

1770.5. The prohibitions of Section 1770 include, but are not limited to, the following:

(a) Passing off goods or services as those of another.

(b) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(c) Misrepresenting the affiliation, connection, or association with, or certification by, another.

(d) Using deceptive representations or designations of geographic origin in connection with goods or services.

(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have.

(f) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.

(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(h) Disparaging the goods, services, or business of another by false or misleading representation of fact.

(i) Advertising goods or services with intent not to sell them as advertised.

(j) Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(k) Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

(l) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.

(m) Representing that a part, replacement, or repair service is needed when it is not.

(n) Representing that the subject of a transaction has been supplied in accordance with a previous

~~representation when it has not.~~

~~(o) Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.~~

~~(p) Misrepresenting the authority of a salesman, representative, or agent to negotiate the final terms of a transaction with a consumer.~~

~~SEC. 3. Section 1770 is added to the Civil Code, to read:~~

~~1770. Unfair, fraudulent or deceptive business or trade practices, and unfair, untrue or misleading advertising practices, and unfair methods of competition are unlawful.~~

~~SEC. 4. Section 1780.5 is added to the Civil Code, to read:~~

~~1780.5. Any person who violates or proposes to violate this title may be enjoined by any court of competent jurisdiction.~~

~~Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this state in the name of the people of the state upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members, or the general public. Neither the Attorney General nor any district attorney who brings an action need comply with Section 1782. Neither the Attorney General nor any district attorney need plead or prove irreparable injury for purposes of obtaining any injunction or stay order.~~

SECTION 1. Section 3369 of the Civil Code is amended to read:

3369. 1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, *deceptive,* untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 4. Section ~~1780.6~~ *3370.1* is added to the Civil Code, to read:

~~1780.6~~ *3370.1*. Any person who violates any provision of this ~~title~~ *chapter* shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney in any court of competent jurisdiction. If brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund.

O

AB 1937 as amended 5/25 (Warren)

Deceptive business practices.

Various unfair business practices are regulated by the Consumers Legal Remedies Act (CC 1750 et seq); unfair competition statutes (CC 3369 & 3370); the Unfair Practices Act (B & P 17500 et seq).

The Attorney General and District Attorney have standing to enjoin the denounced practices in lawsuits filed in all the above-cited consumer protection statutes except the Consumers Legal Remedies Act. Furthermore, in actions filed under the business representations to the public statutes cited above the AG or DA could sue for civil penalties of $2,500 for each violation. (B & P 17536).

Proposal: AB 1937 as amended provides:

1. The AG and DA standing to enjoin the 16 specifically described deceptive practices listed in Section 1770 of the Consumers Legal Remedies Act.

2. The AG and DA standing to prosecute fines of $2,500 for each offense of the unfair competition statutes (CC 3369-70) and the Consumers Legal Remedies Act.

3. The 16 specifically described deceptive practices of the Consumers Legal Remedies Act are "unfair competition" under the unfair competition statutes (CC 3369-70).

SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

AB 1237

1. **Source**

(a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill?

Attorney General's office (Jan Stevens)

(b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill? Support: Calif. Peace Officers' Assoc

(c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

Unknown

2. **Purpose**

What problem or deficiency under existing law does the bill seek to remedy?

See attached

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2046 AS SOON AS POSSIBLE. IN ANY CASE, PLEASE RETURN IT NOT LATER THAN 14 DAYS AFTER RECEIPT.

AB 1937 (Warren)
As amended May 25
Civil Code

A
B

1
9
3
7

SPECIFIC AND PREVENTIVE RELIEF
-CIVIL PENALTIES-

HISTORY

Source: Attorney General

Prior Legislation: None

Support: Calif. D.A.'s & P.O.'s Ass'n.

Opposition: No Known

DIGEST

Provides that a person who violates provisions governing actions for unfair competition including unlawful, unfair, or fraudulent business practices and unfair, untrue or misleading advertising, is liable for a civil penalty not to exceed $2,500 for each violation, in an action to enjoin such practices by the Attorney General or the district attorney. Where such actions are brought by the Attorney General, provides that 1/2 the penalty collected shall be paid to the county treasurer and the remainder to the state general fund (Secs. 3370.1, Civ. C.).

Includes deceptive advertising within the meaning of unfair competition for purposes of an action to enjoin unfair competition (para. 3, Sec. 3369, Civ. C.).

PURPOSE

Permit the Attorney General and a district attorney to collect civil penalties in addition to either specific or preventive relief in actions they commence to enjoin acts of unfair competition.

(More)

AB 1937

COMMENT

1. Existing law authorizes the Attorney General and a district attorney to commence actions to enjoin acts of unfair competition. It is contended that the injunctive remedy often proves ineffective as a deterrent to the resumption of such unlawful acts of fraudulent or unfair business practices as the "bait and switch", or the use of unfair, deceptive, and untrue advertising schemes. It is felt that the allowance of civil penalties, in addition to the requested injunctive relief, will provide a sufficient deterrent to the resumption of these unlawful practices.

****

ANALYSIS OF ASSEMBLY BILL NO. 1937 (Warren)
As Amended in Assembly May 25, 1972
1972 Session

Fiscal Effect:

Cost: No added state cost.

Revenue: Indeterminate but probably minor increased revenue for the General Fund and for counties in which civil actions are taken.

Analysis:

Under existing law, any person performing or proposing to perform an act of unfair competition may be enjoined in any court of competent jurisdiction by action of the Attorney General or any district attorney in the name of the people of the State of California. Specific and preventive civil action may also be granted to enforce a penalty, forfeiture or penal law in such cases. Among other things, unfair competition includes unlawful, unfair or fraudulent business practices and unfair, untrue or misleading advertising.

This bill includes "deceptive advertising" in the definition of unfair competition for the purposes of injunctions, civil actions, or penal law actions and provides a civil penalty not to exceed $2,500 for each violation. If the civil action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the state General Fund.

The Attorney General's office advises that this measure would not increase state costs. The penalty assessments could produce indeterminate but probably minor increased revenue for the state General Fund and for counties in which actions are take.

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FLOOR STATEMENT FOR ASSEMBLY BILL 1937 (Warren)

Assembly Bill 1937 brings the California law on unfair business practices into greater conformity with federal law and that of other states. It gives district attorneys and the Attorney General power to bring actions for injunctive relief and civil penalties for deceptive advertising. At present, these public attorneys have such jurisdiction over false or misleading advertising.

The modification made by Assembly Bill 1937 would permit the use of precedents from other jurisdictions. It would increase the degree of consumer protection available through civil actions brought by district attorneys and the Attorney General.

The bill is supported by the Consumer Coalition and the District Attorneys Association. We know of no opposition.

ENROLLED BILL REPORT

AGENCY	BILL NUMBER
Agriculture and Services	AB 1937
DEPARTMENT, BOARD OR COMMISSION	**AUTHOR**
Department of Consumer Affairs	Warren

SUBJECT:

Includes "deceptive advertising" in definition of unfair competition for purposes of specific or preventive relief in penalty or forfeiture enforcement. Permits the Attorney General or any district attorney in the name of the people of the state upon their own complaint or upon the complaint of specified others to seek injunctive relief against persons violating specified provisions of law relating to specific relief. Provides for civil penalty not to exceed $2,500 for each violation, and provides for distribution of the penalty collected.

HISTORY, SPONSORSHIP AND RELATED LEGISLATION:

The Attorney General sponsored this bill and this department has been in support. There are other advertising bills but none deal with the specific subject of this bill. The vote was 56 to 0 in the Assembly and 35 to 1 in the Senate.

ANALYSIS:

A. Specific Findings

The bill adds the words "deceptive advertising" in the definition of unfair competition. The affect of this amendment will be to tie in the unfair competition provisions in with existing definitions of deceptive acts under the Consumer Legal Remedies Act. Civil Code Section 3369, which is amended, is designed to prevent unfair competition and the injunction authority granted in the section is often utilized to eliminate fraudulent practices and unfair methods of competition. Consumer protection is aided by use of this section because business operations which are unfair to the competition are usually also designed to injure the consumer. This department cooperated with the Attorney General in several cases involving this section. The other change allows $2,500 civil penalties for violation. This bill will increase the protection for legitimate and honest businessmen while protecting consumers in the process.

B. Fiscal Analysis

No fiscal impact to this department.

This department maintained an approved support position.

RECOMMENDATION:

Sign.

DEPARTMENT DIRECTOR	DATE	AGENCY SECRETARY	DATE
S. T. Kehoe (signature)	8/14/72	(signature)	AUG 15 1972

99D-16 (Rev. 1/71)

ENROLLED BILL REPORT

AGENCY	BILL NUMBER
HUMAN RELATIONS	AB 1937
DEPARTMENT, BOARD OR COMMISSION	AUTHOR
	WARREN

AB 1937 provides that the Attorney General or District Attorney either in the name of the people or a consumer can seek injunctive relief for certain prohibitive actions, many of which are violative acts under the Sherman Act and regulations.

This is consumer protection legislation which should be supported.

Fiscal Impact: None to State Department of Public Health.

RECOMMENDATION:

APPROVAL

DEPARTMENT DIRECTOR	DATE	AGENCY SECRETARY	DATE
Leland B Hodges	8-9-72	Harry D. Whittaly	8/10/72

NO FORMAL ANALYSIS REQUIRED

Form BD-44C (Rev. 3-71 1M)

AGENCY	AUTHOR	BILL NUMBER
DEPARTMENT OF FINANCE	WARREN	AB 1937

☐ Technical bill--no program or fiscal changes to existing program. No analysis required. No recommendation on signature.

☑ Bill as enrolled no longer within scope of responsibility or program of Department of Finance. No recommendation on signature.

Comments: Includes "deceptive advertising" in definition of unfair competition. Limits the Attorney General or any District Attorney to seek an injunction against violators of unfair competition acts.

Provides that penalties will not exceed $2500 for each violation. The county and state will split the penalty (50/50) if the action is brought by the Attorney General.

There should be no cost to the state as a result of this bill. Consumer Affairs & AG support.

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RECOMMENDATION				
DEPARTMENT REPRESENTATIVE	DATE 8/9/72	DIRECTOR	DATE 8-11-72

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE August 14, 1972
BILL NO. AB 1937	AUTHOR Warren

Vote—Senate
Ayes— 35
Noes— 1 (Bradley)

Vote—Assembly
Ayes—
Noes— Unanimous

Authorizes district attorneys and the Attorney General to bring actions for injunctive relief and civil penalties for deceptive practices.

At present, these public attorneys have such jurisdiction over false or misleading advertising.

The Attorney General recommends approval.

The Department of Finance recommends approval.

The Department of Public Health recommends approval.

Recommendation Approve	Legislative Secretary WE

EVELLE J. YOUNGER
ATTORNEY GENERAL

CHARLES A. BARRETT
CHIEF DEPUTY ATTORNEY GENERAL

STATE OF CALIFORNIA

HERBERT L. ASHBY
CHIEF ASSISTANT ATTORNEY GEN
DIVISION OF CRIMINAL LAW

WARREN M. DEERING
CHIEF ASSISTANT ATTORNEY GEN
DIVISION OF SPECIAL OPERATIO

WILEY W. MANUEL
CHIEF ASSISTANT ATTORNEY GENE
DIVISION OF CIVIL LAW

OFFICE OF THE ATTORNEY GENERAL

Department of Justice

ROOM 500, WELLS FARGO BANK BUILDING
FIFTH STREET AND CAPITOL MALL, SACRAMENTO 95814

August 7, 1972

Honorable Ronald Reagan
Governor, State of California
State Capitol
Sacramento, California 95814

Dear Governor Reagan:

Re: Assembly Bill 1937 (Warren):
Deceptive business practices

We respectfully call your attention to the provisions of Assembly Bill 1937. This bill brings California law on unfair business practices into greater conformity with federal law and that of other states by authorizing district attorneys and the Attorney General to bring actions for injunctive relief and civil penalties for deceptive practices. At present, of course, these public attorneys have such jurisdiction over false or misleading advertising.

Enactment of Assembly Bill 1937 would permit the use of precedents from other jurisdictions, and would increase the degree of consumer protection available through civil actions brought by district attorneys and the Attorney General.

Assembly Bill 1937 is supported by the Consumer Coalition and the District Attorneys Association. It was introduced at the request of this office. We know of no opposition, and we respectfully request your favorable consideration.

Very truly yours,

Evelle J. Younger

EVELLE J. YOUNGER
Attorney General

er
cc: Charles Warren

SACRAMENTO ADDRESS
STATE CAPITOL
SACRAMENTO, CALIF. 95814
PHONE: (916) 445-7544

DISTRICT ADDRESS
1411 WEST OLYMPIC BLVD.
SUITE 309
LOS ANGELES, CALIF. 90015
PHONE: (213) 385-0042

Assembly
California Legislature

CHARLES WARREN
MEMBER OF THE ASSEMBLY, FIFTY-SIXTH DISTRICT
CHAIRMAN
COMMITTEE ON JUDICIARY

COMMITTEES
JUDICIARY
WAYS AND MEANS
NATURAL RESOURCE CONSERVATION
PLANNING AND LAND
SELECT COMMITTEE ADMINISTRATION OF JUSTICE
SELECT COMMITTEE HEALTH MANPOW
JUDICIAL COUNCIL OF CALIFORNIA
CALIFORNIA COUNCIL CRIMINAL JUSTICE

August 4, 1972

Honorable Ronald Reagan, Governor
State of California
State Capitol
Sacramento, California

Dear Governor Reagan:

Assembly Bill 1937, relating to unfair business competition, is before you for signature.

AB 1937 brings the California law on unfair business practices into greater conformity with federal law and that of other states. It gives district attorneys and the Attorney General power to bring actions for injunctive relief and civil penalties for deceptive advertising. At present, these public attorneys have such jurisdiction over false or misleading advertising.

The modification made by Assembly Bill 1937 would permit the use of precedents from other jurisdictions. It would increase the degree of consumer protection available through civil actions brought by district attorneys and the Attorney General.

The bill is supported by the Consumer Coalition and the District Attorneys Association. We know of no opposition.

Certain representatives of the business community expressed concern that AB 1937 would enlarge the role of governmental regulation of competition through other statutes. That is not the intent of the measure, and therefore Section 3 was added.

Your favorable action is respectfully requested.

Sincerely,

Charles Warren

CHARLES WARREN

CW:prt

EVELLE J. YOUNGER
ATTORNEY GENERAL

CHARLES A. BARRETT
CHIEF DEPUTY ATTORNEY GENERAL

STATE OF CALIFORNIA

HERBERT L. ASHBY
CHIEF ASSISTANT ATTORNEY GENERAL
DIVISION OF CRIMINAL LAW

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CHIEF ASSISTANT ATTORNEY GENERAL
DIVISION OF SPECIAL OPERATIONS

WILEY W. MANUEL
CHIEF ASSISTANT ATTORNEY GENERAL
DIVISION OF CIVIL LAW

OFFICE OF THE ATTORNEY GENERAL

Department of Justice

ROOM 500, WELLS FARGO BANK BUILDING
FIFTH STREET AND CAPITOL MALL, SACRAMENTO 95814

AUG 7 1972

Honorable Ronald Reagan
Governor, State of California
State Capitol
Sacramento, California 95814

Dear Governor Reagan:

Re: Assembly Bill 1937 (Warren):
Deceptive business practices

We respectfully call your attention to the provisions of Assembly Bill 1937. This bill brings California law on unfair business practices into greater conformity with federal law and that of other states by authorizing district attorneys and the Attorney General to bring actions for injunctive relief and civil penalties for deceptive practices. . At present, of course, these public attorneys have such jurisdiction over false or misleading advertising.

Enactment of Assembly Bill 1937 would permit the use of precedents from other jurisdictions, and would increase the degree of consumer protection available through civil actions brought by district attorneys and the Attorney General.

Assembly Bill 1937 is supported by the Consumer Coalition and the District Attorneys Association. It was introduced at the request of this office. We know of no opposition, and we respectfully request your favorable consideration.

Very truly yours,

ORIGINAL SIGNED BY
EVELLE J. YOUNGER
ATTORNEY GENERAL

EVELLE J. YOUNGER
Attorney General

er
cc: Charles Warren

EJY:JS:er

SUMMARY DIGEST

of

Statutes Enacted and Resolutions Adopted

Including Proposed Constitutional Amendments

and

1969–1972 Statutory Record

CALIFORNIA LEGISLATURE

1972 Regular Session

DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
GEORGE H. MURPHY
Legislative Counsel

Ch. 1083 (AB 1922) Hayes. Civil actions.

Eliminates requirement that affidavit of service by mail be made by person who is a citizen of the United States.

Permits clerk of the municipal court to maintain, as an alternative to the procedure for maintaining records provided by Section 1052, a register of actions by means of photographing, microphotographing or mechanically or electronically storing memoranda necessary to the keeping of such register of actions so long as the completeness and chronological sequence of the register are not disturbed.

Adds related provisions.

Ch. 1084 (AB 1937) Warren. Specific or preventive relief.

Includes "deceptive advertising" in definition of unfair competition for purposes of specific or preventive relief in penalty or forfeiture enforcement.

Permits the Attorney General or any district attorney in the name of the people of the state upon their own complaint or upon the complaint of specified others to seek injunctive relief against persons violating specified provisions of law relating to specific relief. Provides for civil penalty not to exceed $2,500 for each violation, and provides for distribution of the penalty collected.

Ch. 1085 (AB 1957) Duffy. Vector control districts.

Permits mosquito abatement districts to instead be designated as vector control districts.

Prohibits mosquito abatement districts or vector control districts from infringing upon the activities and duties of persons licensed as structural pest control operators.

Ch. 1086 (AB 2034) Maddy. State lands and improvements.

Revises definition of "project," as used in State College Contract Law and State Contract Act, to include state improvements costing over $10,000 rather than those costing over $5,000.

Provides that revenue received for granting easements or rights-of-way for specified purposes over state lands or letting of state lands by Director of General Services, shall be deposited in the General Fund for appropriation to the Department of General Services for specified purposes.

Ch. 1087 (AB 2072) MacGillivray. Apprentices.

Provides contractors already covered by local apprenticeship standards need not reapply for each public work contract.

Exempts from requirement of employing apprentices on public works prime contracts of less than $30,000 or 45 days.

Requires contractors who are not signatory to an apprenticeship fund in the area of the public worksite, and which fund's administrator is unable to accept the contractor's required contributions, to give the contributions to California Apprenticeship Council.

Places responsibility on prime contractor to meet apprenticeship requirements for public works.

Ch. 1088 (AB 2120) Quimby. Vending-machine theft.

Makes it a misdemeanor to possess keys or other specified items designed to open, break into, tamper with, or damage coin-operated machines, as defined, with intent to commit theft from coin-operated machines.

Ch. 1089 (AB 2189) Barnes. State Teachers' Retirement System.

Provides that the term "other public systems" includes any disability program financed from public funds and excludes from service credit time during receipt of disability allowance. Makes provision for minimum unmodified allowance inapplicable to disability retirement.

Provides that a stepchild or adopted child acquired subsequent to eligibility for disability or family benefits shall not be entitled to such benefits. Prescribes time when retirement and disability allowances, family benefits, and option benefits begin to accrue.

Permits payment of contributions for military service in installments and specifies failure to pay is a break in service. Provides that reduction in allowance received for retirement before age 60 is applicable to fraction of a month as well as each full month.

211565 2419

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1973–74 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS AND SENATE RESOLUTIONS

CONVENED JANUARY 8, 1973

ADJOURNED SINE DIE NOVEMBER 30, 1974

DAYS IN SESSION	254
CALENDAR DAYS	635

LT GOVERNOR JOHN L HARMER
President of the Senate

SENATOR JAMES R MILLS
President pro Tempore

Compiled Under the Direction of
DARRYL R WHITE
Secretary of the Senate

By
DAVID H KNEALE
History Clerk

S.B. No. 1723—Rodda.

An act to add Part 3 5 (commencing with Section 1140) to Division 2 of the Labor Code, relating to labor, and making an appropriation therefor

1974

Feb 14—Introduced Read first time To print
Feb 19—From print
Feb 20—To Com on I R
June 6—Hearing postponed by committee. From committee with author's amendments Read second time Amended Re-referred to committee.
June 13—Set, second hearing Failed passage in committee
Nov 30—From committee without further action

S.B. No. 1724—Rodda.

An act to add Part 3 5 (commencing with Section 1140) to Division 2 of the Labor Code, relating to agricultural labor relations

1974

Feb 14—Introduced Read first time To print
Feb. 19—From print
Feb 20—To Com on I R
Nov 30—From committee without further action

S B. No. 1725—Robbins.

An act to amend Sections 3369 and 3370 1 of the Civil Code, relating to the specific or preventive relief

1974

Feb 14—Introduced Read first time To print
Feb 19—From print
Feb 20—To Com on JUD
April 24—From committee with author's amendments Read second time Amended Re-referred to committee
April 30—Set, first hearing Hearing canceled at the request of author
May 13—From committee Do pass as amended (Ayes 10 Noes 0)
May 14—Read second time Amended To third reading
June 27—Read third time Amended To third reading
Aug 5—Read third time Passed To Assembly (Ayes 32 Noes 0 Page 11937)
Aug 6—In Assembly Read first time To Com on JUD
Aug 23—From committee Do pass as amended (Ayes 8 Noes 0) Read second time Amended To third reading
Aug. 26—Read third time Passed To Senate (Ayes 65 Noes 0 Page 17385)
Aug 26—In Senate To unfinished business.
Aug 27—Senate refuses to concur in Assembly amendments To unfinished business (Ayes 0 Noes 18) Senate appoints Conference Committee Senators Robbins, Roberti, Beilenson
Aug 28—Assembly appoints Conference Committee Messrs Keysor, Alatorre, Antonovich
Aug 29—Assembly adopts conference report (Ayes 68 Noes 0 Page 18037)
Aug 31—Senate adopts conference report (Ayes 37 Noes 0 Page 14234) To enrollment
Sept 6—Enrolled To Governor at 2 p m
Sept 18—Approved by Governor
Sept 18—Chaptered by Secretary of State Chapter 746, Statutes of 1974

S.B. No. 1726—Mills.

An act to amend Section 2108 of the Streets and Highways Code, relating to highways

1974

Feb 14—Introduced Read first time To print
Feb 19—From print
Feb 20—To Com on TRANS
June 10—Set, first hearing Hearing canceled at the request of author
Nov 30—From committee without further action

Introduced by Senator Robbins

February 14, 1974

An act to amend Sections 3369 and 3370.1 of the Civil Code, relating to the specific or preventive relief.

LEGISLATIVE COUNSEL'S DIGEST

SB 1725, as introduced, Robbins. Unfair competition.

Authorizes city attorney to prosecute actions in unfair competition cases.

Provides that in such case one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 3369 of the Civil Code is amended to read:

3369. 1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

4. As used in this section, the term person shall mean and include natural persons, corporations, firms,

partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney *or city attorney* in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 3370.1 of the Civil Code is amended to read:

3370.1. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney *or any city attorney* in any court of competent jurisdiction. If brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. *If brought by a city attorney, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered.*

O

SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

SB 1725

1. **Source**

(a) **What group, organization, governmental agency, or other person, if any, requested the introduction of the bill?**

City of Los Angeles

(b) **Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?**

City Attorneys' Office, City of Los Angeles
City of Los Angeles

(c) **If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?**

2. **Purpose**

What problem or deficiency under existing law does the bill seek to remedy?

At present, the District Attorneys and the Attorney General are permitted to seek injunctive and civil relief for acts of unfair competition. This bill would allow city attorneys to prosecute such cases also. Additionally, one half of the penalty collected would be paid to the city treasurer. This bill is a logical extension of present law and would put the city in a stronger position in enforcing consumer protection laws. As such it fills a void which was probably an unintentional omission.

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2046 AS SOON AS POSSIBLE. IN ANY CASE, PLEASE RETURN IT NOT LATER THAN 14 DAYS AFTER RECEIPT.

#2219

October 1, 1973

MEMO TO: DAVID PEREZ
Senior Assistant City Attorney

FROM: JOHN R. WILSON
Deputy City Attorney

SUBJECT: Legislative Changes

There are two areas of legislation that I would recommend for ammendment:

1. CC 3369 - Allows the District Attorney and the Attorney General to seek injunctive and civil relief for acts of unfair competition. The City Attorney has not been included with powers to bring similiar actions. We should be.

2. B&P 17508 - Requiring advertiser to prove advertising claim. The attorney General, District Attorney and the State Bureau of Consumer Affairs have this power. The City Attorney doesn't.

JRW:bd

OFFICE OF
CITY ATTORNEY
CITY HALL
LOS ANGELES, CALIFORNIA 90012

#2219

BURT PINES
CITY ATTORNEY

October 19, 1973

RECEIVED
OCT 19 1973
Chief Legislative Analyst

Committee on Proposed Legislation
C/O Kenneth G. Spiker, Secretary
Room 255, City Hall

Re: Suggestions for 1974 Legislative Program

Gentlemen:

As further recommendations from the City Attorney for the city's 1974 legislative program, it is recommended that the city sponsor amendments to Section 3369 of the Civil Code ~~and Section 17508 of the Business and Professions Code~~ for the reasons set forth in the attached memorandum prepared in the Criminal Division of this office.

As can be seen, these amendments would place the City Attorney's Office, and thus the city itself, in a stronger and more effective position in enforcing consumer protection laws. As you are aware, changes in the law effective last March made it possible for a city attorney to seek an injunction in false advertising cases. The amendments here proposed can be considered as designed to conform other provisions of the codes to the policy decision already made by the Legislature.

Should there be a need for additional information, there should be no hesitation in directly approaching

#227

Mr. David Perez or Mr. John Wilson of our Criminal Division. It will not be necessary to route such inquiries through the Civil Division.

Very truly yours,

BURT PINES, City Attorney

By James A. Doherty
JAMES A. DOHERTY
Assistant City Attorney

JAD:mc
Encl.

2219
Feb 4 LFL

ITEM No. 2 Date: December 10, 1973

This report is submitted for informational purposes only, to assist the Committee in their consideration of this item.

SOURCE OF ITEM:

Letter from the City Attorney dated October 19, 1973.

SUMMARY:

Currently Section 3369 of the California Civil Code permits the District Attorney and the Attorney General to seek injunctive and civil relief for acts of unfair competition. Under this statute unfair competition is defined to mean and include: "unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising...."

The City Attorney recommends that the City sponsor legislation to give a city attorney (and city prosecutor) power to bring similar actions:

STAFF COMMENTS:

Such legislation would, as pointed out by the City Attorney, place the City Attorney's office and the City itself in a stronger position in enforcing consumer protection laws.

The civil penalty for violation of this statute may not exceed $2,500 for each violation.

In 1972 state statutes were amended to permit a city attorney to seek injunctive relief in false advertising cases. This proposal is a logical extension of that expansion of the law.

In addition we recommend that an amendment be sought to Section 3370.1 of the Civil Code to provide that one half the penalty collected be paid to the treasurer of the city, when the action was bought by a city attorney or city prosecutor.

This is in line with similar provisions in the Business and Professions Code relative to consumer fraud.

This matter was defeated in Council on December 4, 1973, then reconsidered on December 5, and re-referred to the Committee on Proposed Legislation.

SB 1725 (Robbins)
As amended April 24
Civil Code

SB 1725

UNFAIR COMPETITION ACTIONS
-LOS ANGELES CITY ATTORNEY-

Source: City of Los Angeles

Prior Legislation: None

Support: Unknown

Opposition: Calif. D.A.'s & P.O.'s Ass'n.

DIGEST

Authorizes a city attorney of a city whose population exceeds 2 million to prosecute actions in unfair competition cases in the name of the people of the State of California (Sec. 3369, Civ. C.).

Provides that, in each such case, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment is entered (Sec. 3370.1, Civ. C.).

Requires that one-half of the penalty collected in an action for unfair competition be paid to the treasurer of the county in which the judgment is entered and one-half to the State General Fund if the action is brought by a district attorney Sec. 3370.1, Civ. C.).

PURPOSE

Permit the Los Angeles City Attorney to prosecute unfair competition cases.

COMMENT

1. Presently the Attorney General and the district attorney are authorized to prosecute unfair

(More)

competition cases in the name of the people of the State of California. These actions may be brought upon the complaint of the Attorney General or the district attorney or upon the complaint of any person or organization acting either in their own interests or for members of the public. (Sec. 3369, Civ. C.)

If the Attorney Geneneral brings the action one-half of the penalty is paid to the treasurer of the county in which judgment was entered and one-half to the State General Fund. The penalty may not exceed $2,500 for each violation. (Sec. 3370.1, Civ. C.)

2. This bill adds the city attorney of a city whose population exceeds 2 million as the third governmental entity authorized to prosecute unfair competition cases. At the present time, only the City of Los Angeles contains a population in excess of 2 million.

3. The opponents of the bill state that prosecution of unfair competition cases should be a county-wide function, rather than broken up into cities. The opponents feel that, by allowing district attorneys and city attorneys to prosecute unfair competition cases, harmful competition will arise between the two entities. Further, they state that there is no evidence that the Attorney General and the district attorneys are not adequately prosecuting such cases.

4. The bill states that, if a successful action is brought by a city attorney, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered.

(More)

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THIS BILL DOES NOT SPECIFY WHERE THE OTHER ONE-HALF OF THE PENALTY SHALL BE PAID. SHOULD NOT THE BILL BE AMENDED TO SO STATE?

5. Under existing law, when a district attorney brings an action for unfair competition, the entire penalty is paid to the county treasury. Under this bill, one-half would be paid to the county treasury and one-half would be paid to the State General Fund. (Sec. 3370.1, Civ. C.)

WHY IS THIS CHANGE NECESSARY?

****

ROBERT S. TEAZE
ASST. CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
JOHN W. WITT
CITY ATTORNEY

CITY ADMINISTRATION BUILDING
SAN DIEGO, CALIFORNIA 92101
(714) 236-6220

April 29, 1974

The Honorable Alfred H. Song
Chairman, Senate Judiciary Committee
State Capitol Building
Sacramento, California 95814

Dear Senator Song:

Consumer protection is a program of particularly great importance to San Diegans, as I'm sure it is to other Californians, as well. The Consumer Protection Unit of the San Diego City Attorney's office is an important and effective arm of San Diego local government's strong effort to assist consumers and legitimate businessmen in their fight to resist unfair business practices, fraud and false advertising.

I am particularly pleased that Senator Alan Robbins of Los Angeles County has introduced Senate Bill 1725 which would authorize city attorneys to seek injunctive relief and civil penalties in cases involving unlawful, unfair or fradulent business practices and unfair, deceptive, untrue or misleading advertising. I support the bill fully and I stand ready to assist you in seeking its adoption.

The San Diego City Attorney's office in 1973 obtained restitution for consumer-victims in business fraud cases amounting to $23,882.84 and prosecuted criminal cases in which fines totaling $14,225 were also imposed. Over 1,600 consumer complaints were processed during Fiscal Year 1973. By the end of Fiscal 1974, another 1,942 will have been processed. Projections for Fiscal 1975 indicate that 2,135 consumer complaints will be processed that year. The attorneys assigned to my Consumer Protection Unit inform me that S.B. 1725 is absolutely necessary to the continued success of their efforts.

Since you are a concerned member of our State Senate, I know it is unnecessary to inform you of its importance. I want you to know, however, that I join the League of California Cities, my brother City Attorney Burt Pines of Los Angeles and others active in consumer affairs in wholehearted support of S.B. 1725.

Respectfully yours,

John W. Witt
City Attorney

JWW:as

SB 1725 May 7, 1974

SUPPORT:
Gion Morrow - City Attorney - City of Los Angeles
Bill Deiser - League of Calif. Cities
John Witzel - City of San Diego

City Council of the City of Los Angeles

KEN SPIKER
CHIEF LEGISLATIVE ANALYST

September 4, 1974

Honorable Ronald Reagan
Governor
State of California
Sacramento, California

Dear Governor Reagan:

Senate Bill 1725 is on your desk for your consideration. This measure was introduced by Senator Robbins at the request of the City of Los Angeles. As you know, this measure would permit certain city attorneys and city prosecutors to prosecute actions in unfair competition cases.

Current statutes permit only district attorneys to prosecute consumer protection cases. However, there are several large municipal jurisdictions with legal staffs that are highly capable of prosecuting this type of case.

As you know, the City of Los Angeles maintains an Office of Consumer Affairs and in the course of their activities become involved in a number of cases on unfair competition. Under current statutes, although the City Attorney's Office of the City of Los Angeles could very easily prosecute such cases, they are currently prevented from doing so by State statute.

SB 1725 would solve this problem by providing that city attorneys or city prosecutors in cities over 750,000 population, and city prosecutors in smaller cities, with the consent of the district attorney, seek injunctive and civil relief for acts of unfair competition.

I urge your affirmative action on SB 1725, as a means to provide a more coordinated effort in the prosectution of acts of unfair competition.

Yours very truly,

Kenneth G. Spiker

KGS/lv

BERNARD CZESLA
CHIEF DEPUTY

J. GOULD
OWEN K. KUNS
RAY H. WHITAKER

KENT L. DECHAMBEAU
ERNEST H. KUNZI
STANLEY M. LOURIMORE
SHERWIN C. MACKENZIE, JR.
EDWARD F. NOWAK
EDWARD K. PURCELL
PRINCIPAL DEPUTIES

ANN M. MACKEY
PRINCIPAL DEPUTY
LOS ANGELES OFFICE

3021 STATE CAPITOL
SACRAMENTO 95814

110 STATE BUILDING
LOS ANGELES 90012

Legislative Counsel of California

GEORGE H. MURPHY

GERALD ROSS ADAMS
DAVID D. ALVES
MARTIN L. ANDERSON
CARL M. ARNOLD
CHARLES C. ASBILL
JAMES L. ASHFORD
JERRY L. BASSETT
EDWARD RICHARD COHEN
JOHN CORZINE
BEN E. DALE
DENNIS W. DE CUIR
CLINTON J. DEWITT
JERALD S. DICK
ROBERT CULLEN DUFFY
LAWRENCE H. FEIN
JOHN FOSSETTE
HARVEY J. FOSTER
ROBERT D. GRONKE
JAMES W. HEINZER
THOMAS R. HEUER
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
JAMES A. MARSALA
EUGENE W. MCCABE
PETER F. MELNICOE
MILO A. MILICEVICH
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MARGUERITE ROTH
MARY SHAW
ARTHUR R. SILEN
ROY K. SIMMONS
RUSSELL L. SPARLING
JOHN T. STUDEBAKER
BRIAN L. WALKUP
THOMAS D. WHELAN
DAVID E. WHITTINGTON
JIMMIE WING
CHRISTOPHER ZIRKLE
DEPUTIES

September 10, 1974
Sacramento, California

Honorable Ronald Reagan
Governor of California
Sacramento, California

Senate Bill No. 1725

Dear Governor Reagan:

Pursuant to your request we have reviewed the above-numbered bill authored by Senator Robbins and, in our opinion, the title and form are sufficient and the bill if approved by the Governor will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,
George H. Murphy
Legislative Counsel

By Edward K. Purcell
Principal Deputy

Copy to Honorable Alan Robbins
pursuant to Joint Rule 34.

League of California Cities
CALIFORNIA CITIES WORK TOGETHER

SACRAMENTO 95814 • 1108 "O" STREET • (916) 444-5790
BERKELEY 94705 • HOTEL CLAREMONT • (415) 843-8083
LOS ANGELES 90017 • 703 HILTON CENTER • (213) 624-4924

Sacramento, Ca. 95814
September 11, 1974

Legislative Section
Governor's Office
State Capitol
Sacramento, Ca. 95814

Re: SB 1725

Gentlemen:

The League supports the above numbered bill by Senator Robbins. It was amended at our request to include cities of less than 750,000 population, but under such circumstances before a full-time city prosecutor may prosecute consumer fraud cases the consent of the district attorney must be obtained.

Approval is requested.

Sincerely,

Richard Carpenter

Richard Carpenter
Director of Legislative Affairs
and General Counsel

RC:mvb

ENROLLED BILL REPORT

AGENCY	BILL NUMBER
GOVERNOR'S OFFICE	SB 1733
DEPARTMENT, BOARD OR COMMISSION	AUTHOR
LEGAL AFFAIRS	Robbins

This bill authorizes the city attorney, in a city with a population in excess of 750,000, to prosecute actions in unfair competition cases, if the district attorney gives his prior consent.

If a judgment is recovered in an unfair competition case brought by the city attorney, one-half the penalty collected shall be paid to the city treasury, and one-half to the county treasury.

RECOMMENDATION:

SIGN

ANALYST	DATE	LEGAL AFFAIRS SECRETARY	DATE
R. J. Blonien, Assistant Legal Affairs Secretary	9/13/14		

746

ENROLLED BILL REPORT

Agriculture and Services	BILL NUMBER SB 1725
Department of Consumer Affairs	AUTHOR Robbins

SUBJECT: Prosecution by a City Attorney in Unfair Competition Cases

HISTORY, SPONSORSHIP, AND RELATED LEGISLATION:

The Los Angeles County D.A.'s Office is currently unable to become involved in many cases because of insufficient staffing. The City of Los Angeles sponsored SB 1725 in an effort to reduce the work load of the D.A.'s Office by allowing city attorneys to handle cases involving violations of existing unfair competition provisions which must now be enforced either by the Attorney General or a District Attorney.

ANALYSIS

Specific Findings

SB 1725 authorizes the city attorney in a city of more than 750,000 people to prosecute, with the consent of the D.A., violators of unfair competition statutes. Presently either the A.G. or the D.A. may initiate such actions, but some cities have a city attorney staff of sufficient size to handle these cases. The city of L.A. in particular believes this legislation would reduce the work load of the A.G. or D.A. SB 1725 originally authorized every city attorney to handle such cases but due to opposition from the District Attorneys Association of California it was finally amended to affect only city attorneys in cities of more than 750,000 people, and with the consent of the D.A., As written, the bill would affect the cities of Los Angeles, San Diego, and San Francisco.

Fiscal Analysis

No fiscal impact on this department.

VOTE: Senate: 32-0 Assembly: 65-0

John,

THIS COULD BE A POLITICAL TURKEY!

for some

RECOMMENDATION			
Sign -			
DEPARTMENT DIRECTOR	DATE	AGENCY SECRETARY	DATE
T. Hayman	9/18/74		

99D-16 (Rev. 1/71)

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE September 14, 1974
BILL NO. Senate Bill 1725	AUTHOR Robbins

Vote—Senate X Unanimous

Ayes—
Noes—

Vote—Assembly X Unanimous

Ayes—
Noes—

SB 1725 (Robbins)
Chapter_____

Authorizes the city attorney of a city having a population in excess of 750,000 to prosecute actions in unfair competition cases.

The bill authorizes city prosecutor, with the consen of the district attorney, in any city or city and county having a full-time city prosecutor to prosecu actions in unfair competition cases.

The bill further provides that in such cases one-hal of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered.

The bill was introduced at the request of the City of Los Angeles.

The League of California Cities requests approval.

The Legal Affairs Unit recommends approval.

Recommendation APPROVE	Legislative Secretary J. T.

May 15, 1974

Mr. John W. Witt, City Attorney
City of San Diego
City Administration Building
San Diego, California 92101

Dear Mr. Witt:

Thank you for your letter of April 29 regarding Senate Bill 1725 relating to unfair competition.

This bill received a favorable recommendation from the committee at the last hearing. However, prior to its passage, its author amended the bill to make it applicable only to the City of Las Angeles.

We appreciate receiving comments on legislation pending before us by city attorneys in this state.

Sincerely,

Bion M. Gregory
Chief Counsel

BMG:ljs

DATE TYPED: 5-15-74

BILL NUMBER: SB-1725

AUTHOR: Robbins

AMENDED COPY: 5-13-74

POSITIONS

NO INPUT.

DIGEST This bill, relating to unfair competition, would authorize a city attorney of a city having a population in excess of two million to prosecute actions in unfair competition cases. It would provide that in such a case one-half of the penalty collected would be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered. It would further provide that if action is prosecuted by the district attorney, the penalty collected would be paid to the treasurer of the count in which the judgment was entered.

FISCAL EFFECT: Appropriation, no. Fisc. Comm., no.

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
JOHN W. WITT
CITY ATTORNEY

CITY ADMINISTRATION BUILDING
SAN DIEGO, CALIFORNIA 92101
(714) 236-6220

SB 1725

May 20, 1974

The Honorable Alan Robbins
State Senator
State Capitol Building
Sacramento, California 95814

Dear Senator Robbins:

On April 29 I wrote you indicating my unlimited support of Senate Bill 1725, a measure introduced by you, which would add authority for City Attorneys to file civil actions in certain consumer protection cases. Subsequently, I was informed the bill was amended to grant such authority only to City Attorneys of cities exceeding two million in population. Among California City Attorneys, only Mr. Pines of Los Angeles could support such an amendment.

I have been informed, however, that you have agreed in principle to further amendment which would reduce the population floor for the authorization to a figure mose closely aligned with population figures of large California cities other than Los Angeles. I am certain that you appreciate that my support of S.B. 1725 depends on the two million population figure being eliminated or reduced to permit my office to have the authority contemplated in the bill.

Your assistance is greatly appreciated.

Sincerely yours,

John W. Witt

John W. Witt
City Attorney

JWW:as
cc See attached list

The Honorable Alan Robbins
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable Alfred H. Song
Chairman, Senate Judiciary Committee
State Capitol Building
Sacramento, California 95814

The Honorable Nicholas C. Petris
Vice Chairman, Senate Judiciary Committee
State Capitol Building
Sacramento, California 95814

The Honorable W. Craig Biddle
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable Clark L. Bradley
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable George Deukmejian
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable Donald L. Grunsky
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable John W. Holmdahl
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable Fred W. Marler, Jr.
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable George R. Moscone
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable David A. Roberti
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable Robert S. Stevens
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable Alan Short
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable James R. Mills
President Pro Tempore of the Senate
State Capitol Building
Sacramento, California 95814

The Honorable Jack Schrade
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable John Stull
State Senator
State Capitol Building
Sacramento, California 95814

The Honorable Bob Wilson
State Assemblyman
State Capitol Building
Sacramento, California 95814

The Honorable Wadie P. Deddeh
State Assemblyman
State Capitol Building
Sacramento, California 95814

The Honorable Lawrence Kapiloff
State Assemblyman
State Capitol Building
Sacramento, California 95814

The Honorable Peter R. Chacon
State Assemblyman
State Capitol Building
Sacramento, California 95814

The Honorable William A. Craven
State Assemblyman
State Capitol Building
Sacramento, California 95814

Richard Carpenter
Director of Legislative Affairs
and General Counsel
League of Calif. Cities
1108 "O" Street
Sacramento, Calif. 95814

Burt Pines
City Attorney
City of Los Angeles

John Witzel
Legislative Representative
City of San Diego
Sacramento, Calif.

Mayor Pete Wilson

AMENDED IN SENATE MAY 14, 1974

AMENDED IN SENATE APRIL 24, 1974

SENATE BILL No. 1725

Introduced by Senator Robbins

February 14, 1974

An act to amend Sections 3369 and 3370.1 of the Civil Code, relating to the specific or preventive relief.

LEGISLATIVE COUNSEL'S DIGEST

SB 1725, as amended, Robbins. Unfair competition.

Authorizes city attorney of a city having a population in excess of 2,000,000 to prosecute actions in unfair competition cases.

Provides that in such case one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered *and one-half to the treasurer of the county in which the judgment was entered*.

Provides that if action is prosecuted by district attorney, ~~one-half of~~ the penalty collected shall be paid to the treasurer of the county in which the judgment was entered; ~~and one-half to the State General Fund~~.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 3369 of the Civil Code is amended to read:

3369. 1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney or city attorney of a city having a population in excess of 2,000,000 in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 3370.1 of the Civil Code is amended to read:

3370.1. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500), for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 2,000,000 in any court of competent jurisdiction. If brought by the Attorney General ~~or district attorney~~, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. *If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered.* If brought by a city attorney, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, *and one-half to the treasurer of the county in*

which the judgment was entered.

O

AMENDED IN SENATE JUNE 27, 1974

AMENDED IN SENATE MAY 14, 1974

AMENDED IN SENATE APRIL 24, 1974

SENATE BILL No. 1725

Introduced by Senator Robbins

February 14, 1974

An act to amend Sections 3369 and 3370.1 of the Civil Code, relating to the specific or preventive relief.

LEGISLATIVE COUNSEL'S DIGEST

SB 1725, as amended, Robbins. Unfair competition.

Authorizes city attorney of a city having a population in excess of ~~2,000,000~~ *750,000* to prosecute actions in unfair competition cases.

Provides that in such case one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered.

Provides that if action is prosecuted by district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 3369 of the Civil Code is amended to read:

3369. 1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney or city attorney of a city having a population in excess of ~~2,000,000~~ *750,000* in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 3370.1 of the Civil Code is amended to read:

3370.1. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of ~~2,000,000~~ *750,000* in any court of competent jurisdiction. If brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the

treasurer of the county in which the judgment was entered.

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ASSEMBLY COMMITTEE ON JUDICIARY
JOHN J. MILLER, CHAIRMAN

BILL DIGEST

Bill: SB 1725 Hearing Date: 8/20/74

AUTHOR: Robbins

SUBJECT: Unfair Competition

BILL DESCRIPTION:

Under the current law, any district attorney and the Attorney General are authorized to prosecute unfair competition cases in the name of the people of California. A complaint made by the Attorney General, District Attorney, or any person or organization, acting either in their own interest or on behalf of the members of the public, may form the basis for these actions.

This bill extends authorization for the prosecution of unfair competition cases to the City Attorney in cities with a population in excess of 750,000. The bill provides that when a successful action is brought by a city attorney, one-half of the penalty collected will be paid to the treasurer of the city and one-half to the treasurer of the county in which the judgment was entered. When an action is brought by the district attorney, the entire penalty will be paid to the treasurer of the county involved.

SOURCE: City of Los Angeles.

COMMENT:

This bill was introduced to permit the Los Angeles City Attorney to prosecute unfair competition cases -- especially those cases that the Attorney General and District Attorney may be unable to prosecute because of other caseload demands.

The population requirement limiting this authorization to those cities with a population in excess of 750,000 was established to

ensure that this authorisation was extended only to [redacted] with adequate staffing capabilities. Does the [redacted] limit adequately reflect the ability of the city to provide a staff with the expertise required for the successful prosecution of these cases? Are less populated areas, by definition, incapable of the successful prosecution of these cases?

AMENDED IN ASSEMBLY AUGUST 23, 1974

AMENDED IN SENATE JUNE 27, 1974

AMENDED IN SENATE MAY 14, 1974

AMENDED IN SENATE APRIL 24, 1974

SENATE BILL No. 1725

Introduced by Senator Robbins

February 14, 1974

An act to amend Sections 3369 and 3370.1 of the Civil Code, relating to the specific or preventive relief.

LEGISLATIVE COUNSEL'S DIGEST

SB 1725, as amended, Robbins. Unfair competition.

~~Authorizes city attorney of a city having a population in excess of 750,000 to prosecute actions in unfair competition cases.~~

Authorizes city prosecutor, with the consent of the district attorney, in any city or city and county having a full-time city prosecutor to prosecute actions in unfair competition cases.

Provides that in such case one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered.

Provides that if action is prosecuted by district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 3369 of the Civil Code is amended to read:

3369. 1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this section may be prosecuted by the Attorney General or any district ~~attorney or city attorney of a city having a population in excess of 750,000 in this state in the name of the~~ *attorney and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the* people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 3370.1 of the Civil Code is amended to read:

3370.1. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district ~~attorney or any city attorney of a city having a population~~

~~in excess of 750,000 in any court of competent~~ *attorney and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent* jurisdiction. If brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city ~~attorney~~ *prosecutor*, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

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AMENDED IN CONFERENCE
SENATE AUGUST 31, 1974; ASSEMBLY AUGUST 29, 1974
AMENDED IN ASSEMBLY AUGUST 23, 1974
AMENDED IN SENATE JUNE 27, 1974
AMENDED IN SENATE MAY 14, 1974
AMENDED IN SENATE APRIL 24, 1974

SENATE BILL No. 1725

Introduced by Senator Robbins

February 14, 1974

An act to amend Sections 3369 and 3370.1 of the Civil Code, relating to the specific or preventive relief.

LEGISLATIVE COUNSEL'S DIGEST

SB 1725, as amended, Robbins. Unfair competition.

Authorizes city attorney of a city having a population in excess of 750,000 to prosecute actions in unfair competition cases.

Authorizes city prosecutor, with the consent of the district attorney, in any city or city and county having a full-time city prosecutor, to prosecute actions in unfair competition cases.

Provides that in such ~~case~~ *cases* one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered.

Provides that if action is prosecuted by district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 3369 of the Civil Code is amended to read:

3369. 1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney *or any city attorney of a city having a population in excess of 750,000,* and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 3370.1 of the Civil Code is amended to read:

3370.1. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney *or any city attorney of a city having a population*

in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction. If brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city *attorney or city* prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

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STATUTES OF CALIFORNIA

1973–74

REGULAR SESSION

1974 CHAPTERS

section, the court may also make an order authorizing the release of information concerning such care to probation officers, parole officers, or any other qualified individuals or agencies caring for or acting in the interest and welfare of the minor under order, commitment, or approval of the court.

(f) Nothing in this section shall be construed as limiting the right of a parent, guardian, or person standing in loco parentis, who has not been deprived of the custody or control of the minor by order of the court, in providing any medical, surgical, dental, or other remedial treatment recognized or permitted under the laws of this state.

(g) The mother of any person described in this section may authorize the performance of medical, surgical, dental, or other remedial care provided for in this section notwithstanding the fact that she is unmarried and under the age of 18 years.

CHAPTER 746

An act to amend Sections 3369 and 3370.1 of the Civil Code, relating to the specific or preventive relief.

[Approved by Governor September 18, 1974. Filed with Secretary of State September 18, 1974]

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

SECTION 1. Section 3369 of the Civil Code is amended to read:

3369. 1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the

4 1725 64 1 115 25

complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 3370.1 of the Civil Code is amended to read:

3370.1. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction. If brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

CHAPTER 747

An act to add and repeal Section 99267.5 of the Public Utilities Code, relating to public transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1974 Filed with Secretary of State September 18, 1974]

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

SECTION 1. Section 99267.5 is added to the Public Utilities Code, to read:

99267.5. Notwithstanding any other provision of this chapter, if federal funds or assistance grants are made available on a matching basis for the operating expenditures of public transportation systems, any operator may budget and expend for operating purposes funds received under this article in an amount sufficient to enable the operator to receive the maximum amount of federal funds or assistance grants available for such purposes.

This section shall remain in effect only until June 30, 1977, and as of such date is repealed, unless a later enacted statute, which is chaptered before June 30, 1977, deletes or extends such date.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into

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CALIFORNIA LEGISLATURE

1973–74 REGULAR SESSION

and

1973–74 SECOND EXTRAORDINARY SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed Constitutional Amendments) Adopted in 1974

and

1969–1974 Statutory Record

DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
GEORGE H. MURPHY
Legislative Counsel

To take effect immediately, tax levy.

Ch. 745 (SB 1719) Kennick Minors

Authorizes performance of dental work on persons in custody pursuant to provisions of juvenile court law, in designated situations, upon written recommendation of attending or licensed dentist, rather than written recommendation of physician

Makes technical change

Ch 746 (SB 1725) Robbins. Unfair competition

Authorizes city attorney of a city having a population in excess of 750,000 to prosecute actions in unfair competition cases.

Authorizes city prosecutor, with the consent of the district attorney, in any city or city and county having a full-time city prosecutor to prosecute actions in unfair competition cases

Provides that in such cases one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered.

Provides that if action is prosecuted by district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered

Ch. 747 (SB 1727) Mills Public transportation· federal funds

Authorizes public transportation system operators to budget and expend Mills-Alquist-Deddeh Act funds for operating purposes to enable them to receive the maximum amount of matching federal funds for operating expenditures if they become available

To remain in effect only until June 30, 1977.

To take effect immediately, urgency statute.

Ch. 748 (SB 1783) Dymally Instructional materials, testing programs

Specifies that when governing boards of school districts are adopting instructional materials for use in the schools, such materials are to accurately portray the role and contributions of European Americans, among other prescribed ethnic and cultural groups, to the total development of California and the United States

Authorizes State Board of Education to combine available tests or develop a new test if no published test is deemed suitable to be given to pupils in grades 2 and 3 to determine reading ability, rather than requiring adoption of standardized reading achievement test.

Requires answer sheets of such mandatory reading test to be transmitted to Department of Education for scoring rather than just submitting test results.

Requires performance test answer sheets of basic skill courses required of pupils in grades 6 and 12 to be submitted to the State Board of Education for scoring rather than just submitting test results.

Makes related changes.

Ch 749 (SB 1807) Way Judicial districts.

Provides that if the board of supervisors of Madera County consolidates the Madera Judicial District and the Sierra Judicial District into the same district, any justice court established in the consolidated district shall have 2 judges

Provides that notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because this act is in accordance with the request of a local government entity or entities which desired legislative authority to act to carry out the program specified in this act

Ch 750 (SB 1829) Deukmejian Crimes

Extends provision for termination of the California Crime Technological Research Foundation from [the 61st day after]* adjournment of the 1975 Regular Session of the Legislature to December 31, 1976.

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Volume 8

Journal of the Senate

Legislature of the State of California

1973–1974 Regular Session
January 8, 1973, to November 30, 1974

1973–74 First Extraordinary Session
December 4, 1973

1973–74 Second Extraordinary Session
September 25 to October 2, 1974

HON. ED REINECKE
President of the Senate

HON. JAMES R. MILLS
President pro Tempore

DARRYL R. WHITE
Secretary of the Senate

S.B. No.

Volume 11

Index to Journal of the Assembly

Legislature of the State of California

1973–74 Regular Session

January 6, 1973 to November 30, 1974

HON LEO T. McCARTHY
Speaker of the Assembly

HON. CARLOS BEE
Speaker pro Tempore

HON. HOWARD L. BERMAN
Majority Floor Leader

HON. ROBERT G. BEVERLY
Minority Floor Leader

JAMES D. DRISCOLL
Chief Clerk of the Assembly

16 5 125

SB No

1712 In Assembly, held at desk, 12931, to committee, 12942, from committee without action, to Senate, Nov 30, 1974

1715 In Assembly, held at desk, 11693, to committee, 11714, from committee, 16395, read second time, 16469, passed, to Senate, 17240

1717 In Assembly, held at desk, 11101, to committee, 11112, Joint Rule 62(a) waived, 11298, amended (author's), re-referred, 11401, from committee, re-referred, 11500, from committee, amended (author's), re-referred, 11599, withdrawn, to third reading, 11647, urgency clause adopted, passed, to Senate, 11769, Assembly amendments concurred in, 11944

1719 In Assembly, 11521, held at desk, 11523, to committee, 11585, from committee, 15408, pursuant to previous Rules suspension (15404), read second time, to third reading, 15424, passed, to Senate, 17343

1721 In Assembly, held at desk, 12712, to committee, 12822, from committee, 17096, pursuant to previous rules suspension (17025), read second time, amended, to third reading, 17102, re-referred, 17207, withdrawn, 17364, passed, to Senate, 17559, Assembly amendments concurred in, 19099

1722 In Assembly, held at desk, 13408, to committee, 13450, from committee, 15077, read second time, 15205, urgency clause adopted, passed, to Senate, 15838

1725 In Assembly, to committee, 16018, from committee, 17272, pursuant to previous Rules suspension (17216), read second time, amended, to third reading, 17296, passed, to Senate, 17385, amendments refused concurrence, Senate appoints Conference Committee, 17616, Assembly appoints Conference Committee, 17775, Assembly adopts conference report, 18037, Senate adopts conference report, 18709

1727 In Assembly, held at desk, 12683, to committee, 12691, from committee, 16161, read second time, to Consent Calendar, 16329, urgency clause adopted, passed, to Senate, 16638

1728 In Assembly, 16396, held at desk, 16397, to committee, 16398, from committee, amended (author's), re-referred, 16702, Joint Rule 62(a) waived, 16929, from committee, amended (author's), re-referred, 17021, from committee, pursuant to Joint Rule 62(a), Nov 30, 1974

1729 In Assembly, 16320, held at desk, 16323, to committee, 16376, from committee, 17268, pursuant to previous Rules suspension (17216), read second time, amended, re-referred, 17286, from committee, 17808, pursuant to previous Rules suspension (17806), read second time, amended, to third reading, 17815, passed, to Senate, 18072, Assembly amendments concurred in, 19099

1731 In Assembly, 15629, held at desk, 15630, to committee, 15731, from committee, 16938, pursuant to previous Rules suspension (16726), read second time, amended, re-referred, 17011, withdrawn, re-referred, 17025, from committee, 17808, pursuant to previous Rules suspension (17806), read second time, to third reading, 17822, passed, to Senate, 18091, Assembly amendments concurred in, 18291

1733 In Assembly, held at desk, 11411, to committee, 11423, from committee, amended (author's), re-referred, 12858, from committee, read second time, amended, (author's), re-referred, 16025, from committee, amended (author's), re-referred, 16902, Joint Rule 62(a) waived, 16928, from committee, 17267, pursuant to previous Rules suspension (17216), read second time, to third reading, 17282, urgency clause adopted, passed, to Senate, 17405, Assembly amendments concurred in, 18199

1736 In Assembly, held at desk, 11348, to committee, 11368, from committee, amended (author's), re-referred, 11501, from committee, 11705, read second time, amended, re-referred, 11731, withdrawn, to third reading, 12079, read third time, amended, 12355, urgency clause adopted, passed, to Senate, 12516, Assembly amendments concurred in, 12712

1737 In Assembly, held at desk, 12166, to committee, 12305, from committee, 16102, read second time, 16142, re-referred, 16150, withdrawn, to third reading, 17025, urgency clause adopted, passed, to Senate, 17581

1738 In Assembly, held at desk, 13865, to committee, 13866, Joint Rule 62(a) waived, 14389, from committee, 14531, read second time, to Consent Calendar, 14636, passed, to Senate, 14915

1739 In Assembly, held at desk, 12712, to committee, 12822, from committee, 16648, read second time, amended, pursuant to previous Rules suspension (16726), to third reading, 16741, passed, to Senate, 18007, Assembly amendments concurred in, 19099

VOLUME 2

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1975–76 REGULAR SESSION
1975–76 FIRST EXTRAORDINARY SESSION
1975–76 SECOND EXTRAORDINARY SESSION
1975–76 THIRD EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

Commencing With A.B. 2620 and Ending With A.B. 4540

SYNOPSIS OF

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

Assembly Convened December 2, 1974

Recessed December 4, 1974	Reconvened January 6, 1975
Recessed March 20, 1975	Reconvened March 31, 1975
Recessed June 27, 1975	Reconvened August 4, 1975
Recessed September 12, 1975	Reconvened January 5, 1976
Recessed April 8, 1976	Reconvened April 19, 1976
Recessed July 1, 1976	Reconvened August 2, 1976

Adjourned August 31, 1976

Adjourned Sine Die November 30, 1976

Legislative Days..... 256

HON. LEO T. McCARTHY
Speaker

HON. JOHN T. KNOX
Speaker pro Tempore

HON. PAULINE L. DAVIS
Assistant Speaker pro Tempore

HON. HOWARD L. BERMAN
Majority Floor Leader

HON. PAUL PRIOLO
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

A.B. No. 4077—Davis.

An act to amend Sections 5003, 6200, and 6203 of the Penal Code, relating to conservation centers.

1976

Mar. 19—Introduced.
Mar. 22—Read first time. Referred to Com. on CRIM.J. To print.
April 1—From printer. May be heard in committee May 1.
Nov. 30—From committee without further action.

A.B. No. 4078—Davis.

An act to amend Sections 41802 and 41803 of the Health and Safety Code, relating to air pollution.

1976

Mar. 19—Introduced.
Mar. 22—Read first time. Referred to Com. on TRANS. To print.
April 1—From printer. May be heard in committee May 1.
Nov. 30—From committee without further action.

A.B. No. 4079—Torres.

An act to repeal Section 3370 of the Civil Code, relating to unfair competition.

1976

Mar. 19—Introduced.
Mar. 22—Read first time. Referred to Com. on JUD. To print.
Mar. 31—From printer. May be heard in committee April 30.
May 25—From committee: Do pass. (Ayes 6. Noes 1.)
May 26—Read second time. To third reading.
June 3—Read third time, passed, and to Senate. (Ayes 67. Noes 1. Page 16540.)
June 9—*In* Senate. Read first time.
June 11—Referred to Com. on JUD.
Aug. 11—From committee: Do pass. (Ayes 9. Noes 0.)
Aug. 12—Read second time. To third reading.
Aug. 19—Read third time, passed, and to Assembly. (Ayes 21. Noes 0. Page 15841.)
Aug. 19—In Assembly. To enrollment.
Aug. 23—Enrolled and to the Governor at 11 a.m.
Sept. 8—Approved by the Governor.
Sept. 10—Chaptered by Secretary of State—Chapter 837.

A.B. No. 4080—Torres.

An act to amend Section 16758 of the Business and Professions Code, relating to restraints of trade.

1976

Mar. 19—Introduced.
Mar. 22—Read first time. Referred to Com. on JUD. To print.
Mar. 31—From printer. May be heard in committee April 30.
April 19—Withdrawn from committee. Re-referred to Com. on CRIM.J.
May 12—In committee: Set, first hearing. Hearing canceled at the request of author.
May 19—In committee: Set, second hearing. Held under submission.
Nov. 30—From committee without further action.

ASSEMBLY BILL No. 4079

Introduced by Assemblyman Torres

March 19, 1976

REFERRED TO COMMITTEE ON JUDICIARY

An act to repeal Section 3370 of the Civil Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

AB 4079, as introduced, Torres (Jud.). Unfair competition.

Existing law specifies that "unfair competition" for purposes of specified provisions of law includes any act made unlawful by the Unfair Pri[illegible]ices Act and specifies that the right of a district attorney to prosecute an action for a violation of the Unfair Practices Act is limited to a criminal prosecution of the violator.

This bill would delete those specific provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 3370 of the Civil Code is repealed.

~~3370. The words "unfair competition" as used in Section 3369 above shall also mean and include any act denounced by the "Unfair Practices Act," Chapter 4, Part 2, Division 7 of the Business and Professions Code except that no action may be prosecuted by any district attorney in this state for a violation of the said "Unfair Practices~~

~~Act" except as provided in Article 6 thereof.~~

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ASSEMBLY COMMITTEE ON)ICIARY
JOHN J. MILLER, CHAIRMAN

BILL DIGEST

BILL: AB 4079 HEARING DATE: 5/24/76

AUTHOR: Torres

SUBJECT: Unfair Competition

BILL DESCRIPTION:

The Civil Code contains a series of statutes authorizing the obtaining of an injunction in cases of unfair competition. One of those statutes defines the phrase, "unfair competition" to include violations of the "Unfair Practices Act" which is contained in the Business and Professions Code. That act is one of three restricting business practices that are either fraudulent or damaging to the economy. Of the other two, one is the Cartwright Act (anti-trust) and the other relates to false advertising.

The section of the Civil Code which defines the phrase, "unfair competition" to include the Unfair Practices Act also limits the right of a district attorney to prosecute actions under that act. It provides that district attorneys can prosecute such actions only to the extent that the applicable statute in the Business and Professions Code allows them to.

This bill repeals that Civil Code provision. The effect of this repeal is not clear, but apparently does the following:

1. The repeal of that part of the statute which defines "unfair competition" to include violations of the "Unfair Practices Act" accomplishes nothing of a negative nature. Other provisions of law clearly include violations of the Unfair Practices Act within the meaning of the phrase "unfair competition".

2. The repeal of that part of the statute which limits the right of district attorneys to prosecute violations of the "Unfair Practices Act" removes any question regarding whether district attorneys can seek injunctions against individuals or companies violating that act.

ASSEMBLY THIRD READING

AB 4079 (Torres) As Introduced: 19 March 1976

COMMITTEE JUD. VOTE 6-1 COMMITTEE VOTE

Ayes: Ayes:

Nays: McVittie Nays:

DIGEST

Existing law contains a series of statutes authorizing the obtaining of an injunction in cases of unfair competition. One of those statutes defines the phrase, "unfair competition" to include violations of the "Unfair Practices Act," which is contained in the Business and Professions Code. That act is one of three restricting business practices that are either fraudulert or damaging to the economy. Of the other two, one is the Cartwright Act (antitrust) and the other relates to false advertising.

The section of the Civil Code which defines the phrase, "unfair competition" to include the Unfair Practices Act also limits the right of a district attorney to prosecute actions under that act. It provides that district attorneys can prosecute such actions only to the extent that the applicable statute in the Business and Professions Code allows them to.

This bill repeals that Civil Code provision.

FISCAL EFFECT

None

COMMENTS

Under existing Civil Code provisions, there may be some question whether district attorneys can seek injunctions and civil remedies against companies or individuals engaged in unfair competition. There is no such question under other provisions of the Business and Professions Code frequently used by district attorneys in cases involving deceptive business practices. This bill seeks to remove any doubt regarding the ability to prosecute both civilly and criminally, and to conform the Civil Code to the Business and Professions Code.

SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

AB 3072

1. Source

(a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill?

Los Angeles County District Attorney's Office

(b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

Support - San Diego District Attorney
Attorney General

(c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

None

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

Statute denies right to District Attorney to bring certain business practice action though A.G. and City Attorneys have right. District Attorney can bring any other type of unfair competition action - And, under case law, he has de facto right to bring this action despite statute. Statute makes no sc...

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2046 AS SOON AS POSSIBLE. IN ANY CASE, PLEASE RETURN IT NOT LATER THAN 14 DAYS AFTER RECEIPT.

STATEMENT BY LOS ANGELES COUNTY DISTRICT ATTORNEY JOHN K. VAN DE KAMP ON BEHALF OF ASSEMBLY BILL 4079

File

Civil Code Section 3370 states that the term "unfair competition" as used within Civil Code Section 3369 includes an unfair business practice (e.g., locality discrimination, secret rebates, and selling below cost to injure competitors). California cases have interpreted the term "unfair competition" so broadly that this portion of the statute is unnecessary.

The real problem with Civil Code Section 3370 is that it denies the district attorney the right to bring an unfair competition action predicated on an unfair business practice "except as provided in Article 6" of the "Unfair Practices Act." No rational reason exists for limiting the standing of district attorneys in this type of action as opposed to any other type of unfair competition action. Not only the Attorney General but local City Attorneys have standing to bring this type of lawsuit under Civil Code Section 3369 and 3370.1. The statute really is utter nonsense. To compound the

problem, though, the California Supreme Court has held that the district attorney has jurisdiction to seek injunctive relief for a violation of the Unfair Practices Act under the language contained in Section 17070 of the Business and Professions Code. See People v. Centr-O-Mart, 34 Cal.2d 702 (1950).

The result of this confusion is that district attorneys can seek injunctive relief but their right to obtain civil penalties unlike other state or local prosecutorial agencies, is in question. The statute, in short, simply creates confusion at the trial level without adding anything substantive to Civil Code Section 3369 which creates the cause of action. The statute should be repealed so district attorneys can be free to vigorously prosecute, without question as to their standing, actions against large business enterprises trying to drive smaller competitors out of business.

JK/cl
6/25/76

AB 4079 (Torres)
As introduced
Civil Code

A
B

4
0
7
9

UNFAIR COMPETITION
-INJUNCTIONS-

HISTORY

Source: Los Angeles County District Attorney

Prior Legislation: None

Support: Attorney General, San Diego County District Attorney

Opposition: No Known

DIGEST

Repeals a provision of law under which (1) "unfair competition," as used in a provision of law permitting acts of unfair competition to be enjoined, means and includes acts denounced by the Unfair Practices Act, and (2) district attorneys are limited in prosecuting violations of the Unfair Practices Act.

PURPOSE

Clarify the authority of district attorneys to bring actions for unfair competition.

COMMENT

1. Under present law, violations of the Unfair Practices Act may be enjoined under the joint authority of Sections 3369 and 3370 of the Civil Code or under Section 17070 of the Business & Professions Code. Any person, including the state, may proceed under either provision (see People v. Centr-O-Mart (1950) 34 Cal. 2d 702, permitting the state to seek an injunction under Section 17070 of the Business & Professions Code).

(More)

Section 3369 permits the bringing of an action for injunctive relief against acts of "unfair competition." In Section 3370, "unfair competition" is defined to include violations of the Unfair Practices Act.

This bill would repeal Section 3370 of the Civil Code.

2. According to proponents, California case law has interpreted the term "unfair competition," as used in Section 3369, so broadly that the definitional portion of Section 3370 is unnecessary.

3. Section 3370 also, however, prohibits a district attorney from prosecuting violations of the Unfair Practices Act, except to seek the imprisonment of, or imposition of a criminal fine against, violators. To the extent that Section 3370 would prohibit the pursuit of injunctive relief by the district attorney, it would seem to be preempted by the Centr-O-Mart decision. In addition, while Section 3370 prohibits district attorneys from seeking injunctive relief against violations of the Unfair Practices Act as such, they may seek injunctive relief under the general authority of Section 3369 against unlawful, unfair, or fraudulent business practices, and unfair deceptive, untrue, or misleading advertising.

However, Section 3370 does preclude the pursuit by district attorneys of civil penalties.

The bill would clarify the standing of district attorneys to pursue any appropriate form of relief--whether criminal fines, civil penalties, or injunctions--against violations of the Unfair Practices Act.

****

POSITIONS

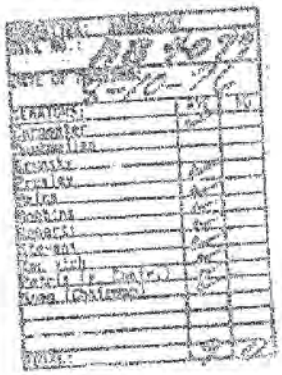
DATE TYPED: 8/10/76

BILL NUMBER: AB 4079

AUTHOR: Torres

AMENDED COPY: Original

Committee Votes: Senate Floor Vote:



Assembly Floor Vote: 67-1 pg.16540 (6/3/76)

DIGEST

Existing law contains a series of statutes authorizing the obtaining of an injunction in cases of unfair competition. One of those statutes defines the phrase, "unfair competition" to include violations of the Unfair Practices Act," which is contained in the Business and Professions Code. That act is one of three restricting business practices that are either fraudulent or damaging to the economy. Of the other two, one is the Cartwright Act (antitrust) and the other relates to false advertising.

The section of the Civil Code which defines the phrase, "unfair competition" to include the Unfair Practices Act also limits the right of a district attorney to prosecute actions under that act. It provides that district attorneys can prosecute such actions only to the extent that the applicable statute in the Business and Professions Code allows them to. This bill repeals that Civil Code provision
This bill repeals that Civil C ode
FISCAL EFFECT Appropriation. No Fiscal Committee: No Local: No

COMMENTS

Under existing Civil Code provisions, there may be some question whether district attorneys can seek injunctions and civil remedies against companies or individuals engaged in unfair competition. There is no such question under other provisions of the Business and Professions Code frequently used by district attorneys in cases involving deceptive business practices. This bill seeks to remove any doubt regarding the ability to prosecute both civilly and criminally, and to conform the Civil Code to the Business and Professions Code.

Assembly No

Lewis

SENATE DEMOCRATIC CAUCUS

SENATOR JOHN F. DUNLAP, *Chairman*

Bill No. AB 4079

Author: Torres (D)

Subject: Unfair Competition

Policy Committee: Judiciary Version of Bill: Original

Ayes (9)Carpenter, Presley, Rains, Robbins, Roberti, Stevens, Zenovich, Petris, Song

Noes (0)

Purpose of Legislation:

Existing law specifies that "unfair competition" for purposes of specified provisions of law includes any act made unlawful by the Unfair Practices Act and specifies that the right of a district attorney to prosecute an action for a violation of the Unfair Practices Act is limited to a criminal prosecution of the violator.

This bill would delete those specific provisions.

Most Recent Amendments:

Proponents:

Los Angeles County District Attorney (Sponsor)
Attorney General
San Diego County District Attorney

Opponents:

Arguments in Support:

The bill clarifies the authority of district attorneys to bring actions for unfair competition. In addition, California case law has interpreted the term "unfair competition" so broadly, the definitional portion deleted is no longer necessary.

Arguments in Opposition:

ENROLLED BILL REPORT

AGENCY	BILL NUMBER
Agriculture and Services	AB 4079
DEPARTMENT, BOARD OR COMMISSION	AUTHOR
Department of Consumer Affairs	Torres

SUBJECT: UNFAIR COMPETITION

HISTORY, SPONSORSHIP AND RELATED LEGISLATION:

Under Civil Code Section 3370 present law defines the words "unfair competition" to include acts denounced by the "Unfair Practices Act" and prohibits a district attorney from prosecuting violations of the "Unfair Practices Act" except by misdemeanor prosecution.

This bill would repeal Section 3370 of the Civil Code. Repealing Civil Code Section 3370 would make the statutory law consistent with case law which presently allows a district attorney to seek injunctive relief in an unfair practices act case. AB 4079 is sponsored by San Diego District Attorney Ed Miller.

ANALYSIS

A. SPECIFIC FINDINGS

At present, the district attorney cannot enforce the Unfair Practices Act (Business and Professions Code Section 17000 to 17100.) except by misdemeanor prosecution. Civil Code Section 3370 defines "unfair competition" to include any act denounced by the "Unfair Practices Act." Civil Code Section 3369 gives the Attorney General, district attorneys and certain city attorneys the power to enjoin acts of unfair competition. Civil Code Section 3370.1 empowers the Attorney General, district attorney, or certain city attorneys to seek civil penalities for "unfair" or "unlawful" acts.

Civil Code Section 3370 provides that district attorneys may only prosecute violations of the "Unfair Practices Act" as misdemeanors.

The anomalous result of this is that while City Attorneys and the Attorney General can prosecute violations of the Unfair Practices Act for injunctive relief and civil penalities, district attorneys cannot.

The case of People v Cent-R-Mart 34C. 2d702 (1950) ignored Civil Code Section 3370 and allowed the district attorney to get an injunction. In a case presently pending the defense has been raised that the district attorney does not have power to seek an injunction. The district attorneys are concerned that the court will decide against them in this case.

This bill would clear up the ambiguity in this area by repealing Civil Code Section 3370 thus leaving only People v Cen-R-Mart, supra, which gives district attorneys the power to seek injunctions.

SUPPORT: The Attorney General
The Consumer Protection Council of the California District Attorneys' Association

OPPOSITION: The National Association of Realtors
The Association of California Insurance Companies
California Chamber of Commerce

B. FISCAL IMPACT

None

C. VOTES

Assembly Judiciary Committee 6 - 1
Assembly 67 - 1

Senate Judiciary Committee 9 - 0
Senate 21 - 0

3. RECOMMENDATION: Sign

It is important that district attorneys have the power to seek injunctive relief in dealing with unfair trade practices. In many cases the district attorney's consumer frauds unit is the most experienced local litigation agency that deals with unfair trade practices. It seems archaic to limit the district attorney to seeking a fine of $1,000 or imprisonment of under six months while allowing the city attorney to seek an injunction or a civil penalty of up to $2,500.

ENROLLED BILL REPORT

AGENCY	BILL NUMBER
GOVERNOR'S OFFICE	AB 4079
DEPARTMENT, BOARD OR COMMISSION	AUTHOR
LEGAL AFFAIRS	Torres

This bill repeals a section of the Civil Code which specifically defines "unfair competition" to include violations of the Unfair Practices Act. Since these violations are clearly included in the other section defining "unfair competition" (Civil Code Sec. 3369), this portion of the statute may be repealed with no effect on the law.

The remaining portion of the section repealed by this bill provides that a district attorney may prosecute for a violation of the Unfair Practices Act only to the extent specified in Sections 17100 and 17101 of the Business and Professions Code. These sections refer only to criminal prosecutions, but it has been held that the State is a proper party to bring an action to enjoin violations of the Act. People v Center-O-Mart, 34 Cal. 2d 702 (1950). Thus, under the current law, while it is permissable and common practice for city attorneys to bring actions to enjoin unfair practices, the statutory and case law do not agree on whether a district attorney can bring such an action. Repeal of this section will clarify the law and make it possible for district attorneys, as well as city attorneys, to bring suit under the Unfair Practices Act.

RECOMMENDATION: SIGN

ANALYST	DATE	LEGAL AFFAIRS SECRETARY	DATE
Alice Stewart	8/26/76	J. Anthony Kline	

BILL ANALYSIS		
SUBJECT UNFAIR COMPETITION	Author TORRES	Bill Number AB 4079
SPONSORED BY None	Related Bills	Date Last Amended

BILL SUMMARY

What AB 4079 Would Do

AB 4079 would delete Civil Code section 3370. Section 3370 has two functions: (1) to include in the definition of "unfair competition" any act denounced by the Unfair Practices Act (Chap. 4, Part 2, Div. 7 of B & P Code) e.g., locality discrimination, below cost sales, loss leaders, secret rebates, use of threats, intimidation and boycott to effectuate any violation of the Act; (2) to prohibit district attorneys from bringing actions under either § 3369 or 3370.1 for violations of the Unfair Practices Act. (Therefore DA's are left with proceeding criminally against offenders.)

Relationship Of CC 3370 With Other Statutes

Section 3370 must be read in conjunction with Civil Code §§ 3369 and 3370.1. Section 3369 prohibits specific and preventive relief to enforce a penalty or forfeiture, but expressly excepts nuisance and unfair competition. It provides for injunctive relief for any act or threatened act of unfair competition, and defines "unfair competition" to "mean and include unlawful, unfair or fraudulent business practice and unfair, untrue or misleading advertising and any act denounced by Business and Professions Code sections 17500 to 17535, inclusive." Section 3369 also provides for injunction actions to be brought by the Attorney General, district attorneys, and certain city attorneys and city prosecutors. Section 3370.1 provides that these same public officers can commence civil actions against violators for collection of civil penalties.

Analysis Of Effects Of AB 4079

Passage of this bill would leave acts prohibited by the Unfair Practices Act within the § 3369 definition of "unfair competition". Each such act is declared to be "unlawful" by the specific B & P Code section in the Unfair Practices Act. Civil Code § 3369 defines "unfair competition" to include any unlawful business practice. Therefore, no substantive change would be effected, only the surplus specific reference to the Unfair Practices Act would be deleted.

POSITION Support				Atty. Gen.'s Position
				Position Approved
Section Head	Date	Chief Assistant	Date	Position Disapproved

Further, AB 4079 would broaden the power of district attorneys because they could then bring civil actions under 3369 or 3370.1 for violation of the Unfair Practices Act.

REPLY TO:
SACRAMENTO OFFICE
STATE CAPITOL
SACRAMENTO, 95814
TELEPHONE (916) 445-0970

DISTRICT ADDRESS
5261 EAST BEVERLY BOULEVARD
LOS ANGELES, CA 90022
TELEPHONE (213) 725-0064

GLORIA MOLINA
ADMINISTRATIVE ASSISTANT
(DISTRICT OFFICE)

Assembly California Legislature

ART TORRES
ASSEMBLYMAN, FIFTY-SIXTH DISTRICT
INCLE. BELL GARDENS, BICYCLEDGE, BOYLE HEIGHTS, CHINATOWN, COMMERCE, DOWNTOWN LOS ANGELES, EAST LOS ANGELES, LITTLE TOKYO, MARAVILLA, MAYWOOD, MONTEBELLO PARK, VERNON

CHAIRMAN
SUBCOMMITTEE ON CHILDREN AND PARENT SERVICES

COMMITTEES
CRIMINAL JUSTICE
VICE CHAIRMAN
HUMAN RESOURCES
JUDICIARY

August 25, 1976

Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol
Sacramento, California 95814

Dear Governor Brown:

My Assembly Bill 4079 is presently before you for signature.

This bill would delete Civil Code Section 3370, which states that the term "unfair competition" as used within Civil Code Section 3369 includes an unfair business practice (e.g., locality discrimination, secret rebates, and selling below cost to injure competitors).

California case law has interpreted the term "unfair competition" so broadly as to make this portion of the statute unnecessary. Further, Civil Code Section 3370 creates a problem by denying the district attorney the right to bring an unfair competition action predicated on an unfair business practice "except as provided in Article 6" of the "Unfair Practices Act". No rational reason exists for limiting the standing of district attorneys in this type of action as opposed to any other type of unfair competitive action. Both the Attorney General and local city attorneys have standing to bring this type of lawsuit under Civil Code Section 3369 and 3370.1.

To compound the problem, the California Supreme Court has held that the district attorney has jurisdiction to seek injunctive relief for a violation of the Unfair Practices Act under the language contained in Section 17070 of the Business and Professions Code (see People v. Centr-O-Mart, 34 Cal. 2d 702 (1950). The result is that district attorneys can seek injunctive relief but their right to obtain civil penalties, unlike other state or local prosecutorial agencies, is in question.

The statute, in short, simply creates confusion at the trial level without adding anything substantive to Civil Code Section 3369 which creates the cause of action. It should be repealed so district attorneys can be free to vigorously prosecute, without question as to their standing, actions against large business enterprises trying to drive smaller competitors out of business.

The measure is supported by the Los Angeles and San Diego District Attorneys as well as the State Attorney General. There is no known opposition. I urge your favorable consideration.

Respectfully,

ART TORRES
Assemblyman

AT:im

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE September 7, 1976
BILL NO. AB 4079	AUTHOR Torres

Vote—Senate ... Unanimous

Ayes—21
Noes— 0

Vote—Assembly ... Unanimous

Ayes— 67
Noes— 1 (Lewis)

AB 4079 - Torres

Existing law specifies that "unfair competition" of purposes of specified provisions of law include any act made unlawful by the Unfair Practices Act and specifies that the right of a district attorney to prosecute an action for a violation of the Unfair Practices Act is limited to a criminal prosecution of the violator.

This bill would delete those provisions.

Repeal would make the statutory law consistent with case law which presently allows a district attorney to seek injunctive relief in an unfair practices act case.

SPONSOR

San Diego District Attorney

SUPPORT

Department of Consumer Affairs
Legal Affairs
Attorney General

OPPOSITION

No expressed opposition

Recommendation	Legislative Secretary
APPROVE	

CALIFORNIA LEGISLATURE

1975–76 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed Constitutional Amendments) Adopted in 1976

and

1969–1976 Statutory Record

DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

serve) milk products plant different from the fee for any other ice cream or other frozen milk products plant.

This bill would provide a separate license fee of $75 annually for such plants.

(3) Existing law, as provided in Chapter 240 of the Statutes of 1976, provides for a separate license fee of $75 annually for a semifrozen (soft-serve) milk products plant for manufacture of frozen yogurt dessert or low-fat frozen yogurt dessert.

This bill would repeal such separate license provision for a semifrozen (soft-serve) milk products plant for manufacture of frozen yogurt dessert or low-fat yogurt dessert, making such plant subject to the general provisions for semifrozen (soft-serve) milk products plants.

Ch. 837 (AB 4079) Torres. Unfair competition.

Existing law specifies that "unfair competition" for purposes of specified provisions of law includes any act made unlawful by the Unfair Practices Act and specifies that the right of a district attorney to prosecute an action for a violation of the Unfair Practices Act is limited to a criminal prosecution of the violator.

This bill would delete those specific provisions.

Ch. 838 (AB 4091) Davis. Appropriation: emergency medical care delivery.

Under existing law, $473,579 was appropriated in the Budget Act of 1973 for support of a pilot project establishing an emergency medical care delivery system in 7 counties. Such appropriation was originally to be available for expenditure until June 30, 1976, without regard to fiscal year, except that no more than $200,000 was to be made available for expenditure in any single fiscal year. The Budget Act of 1976 (Chapter 320, Statutes of 1976), however, makes such appropriation available for expenditure until June 30, 1977.

Such pilot project is to terminate on September 30, 1976. In addition, existing law requires quarterly reports to be made to the State Department of Health by the Northern California Emergency Medical Care Council regarding the project's progress and the council and the department are required to submit annual reports to the Legislature.

This bill would extend the termination date of the project to June 30, 1978, would extend the expiration date for the appropriation to June 30, 1978, would also eliminate the $200,000 limitation, and would expand the counties participating to nine, as specified. The bill would continue the requirement for quarterly reports by the council to June 30, 1977, and would also require annual reports to the Legislature by the department and the council.

This bill also makes related technical changes.

The bill would take effect immediately as an urgency statute.

Ch. 839 (AB 4092) Maddy. Mechanics' liens: preliminary notice.

Existing law requires, as a condition to enforcing a mechanic's lien, that a claimant give a preliminary 20-day notice that a mechanic's lien may be claimed in respect to a private work of improvement. The law specifies that the original contractor shall make a copy of the written contract entered into between a property owner and the original contractor available for inspection by any person seeking to serve such preliminary 20-day notice.

This bill would delete the requirement that the contract be made available for inspection and would require, instead, the original contractor to make available the name and address of residence of the owner to any person seeking to serve such preliminary 20-day notice.

Existing law grants to every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safekeeping, or carriage thereof, a special lien on such personal property, dependent on possession, for the compensation, if any, which is due to him from the owner for such service. Existing law also grants to a person who makes, alters, or repairs any article of personal property, at the request of the owner or legal possessor of the property, a lien in such property for his reasonable charges for the balance due for such work done and materials furnished, and permits retention of possession of the property until such charges are paid. Existing law enumerates specific categories of proprietors and businesses who are entitled to such liens.

21 10 165 807

VOLUME 2

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1975–76 REGULAR SESSION
1975–76 FIRST EXTRAORDINARY SESSION
1975–76 SECOND EXTRAORDINARY SESSION
1975–76 THIRD EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

Commencing With A.B. 2620 and Ending With A.B. 4540

SYNOPSIS OF

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

Assembly Convened December 2, 1974

Recessed December 4, 1974	Reconvened January 6, 1975
Recessed March 20, 1975	Reconvened March 31, 1975
Recessed June 27, 1975	Reconvened August 4, 1975
Recessed September 12, 1975	Reconvened January 5, 1976
Recessed April 8, 1976	Reconvened April 19, 1976
Recessed July 1, 1976	Reconvened August 2, 1976

Adjourned August 31, 1976

Adjourned Sine Die November 30, 1976

Legislative Days..... 256

HON. LEO T. McCARTHY
Speaker

HON. JOHN T. KNOX
Speaker pro Tempore

HON. PAULINE L. DAVIS
Assistant Speaker pro Tempore

HON. HOWARD L. BERMAN
Majority Floor Leader

HON. PAUL PRIOLO
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

A.B. No. 3279—Fazio, Kapiloff, Perino, Egeland, Hart, and Wornum.

An act to amend Section 3369 of the Civil Code, relating to judicial relief.

1976

Mar. 1—Read first time.
Mar. 2—Referred to Com. on JUD. To print.
Mar. 5—From printer. May be heard in committee April 4.
April 22—From committee: Do pass. (Ayes 6. Noes 3.)
April 26—Read second time. To third reading.
April 29—Read third time, passed, and to Senate. (Ayes 56. Noes 8. Page 14514.)
April 29—In Senate. Read first time.
May 5—Referred to Com. on JUD.
Aug. 17—In committee: Hearing postponed by committee.
Aug. 20—From committee: Amend, and do pass as amended. To Consent Calendar.
Aug. 23—Read second time, amended, and to Consent Calendar.
Aug. 25—Read third time, passed, and to Assembly. (Ayes 34. Noes 0. Page 16443.)
Aug. 26—In Assembly. Concurrence in Senate amendments pending.
Aug. 27—Senate amendments concurred in. To enrollment. (Ayes 72. Noes 0. Page 20311.)
Sept. 2—Enrolled and to the Governor at 10:30 a.m.
Sept. 16—Approved by the Governor.
Sept. 17—Chaptered by Secretary of State—Chapter 1005.

A.B. No. 3280—Fazio, Kapiloff, Perino, Egeland, Hart, and Wornum.

An act to add Section 3370.2 to the Civil Code, relating to injunctions.

1976

Mar. 1—Read first time.
Mar. 2—Referred to Com. on JUD. To print.
Mar. 5—From printer. May be heard in committee April 4.
April 22—From committee: Amend, and do pass as amended. (Ayes 6. Noes 0.)
April 26—Read second time and amended. Ordered returned to second reading.
April 27—Read second time. To third reading.
April 29—Read third time, passed, and to Senate. (Ayes 74. Noes 0. Page 14517.)
April 29—In Senate. Read first time.
May 5—Referred to Com. on JUD.
Aug. 17—In committee: Hearing postponed by committee.
Aug. 19—From committee: Do pass. To Consent Calendar.
Aug. 20—Read second time. To Consent Calendar.
Aug. 24—Read third time, passed, and to Assembly. (Ayes 38. Noes 0. Page 16315.)
Aug. 25—In Assembly. To enrollment.
Aug. 30—Enrolled and to the Governor at 11:30 a.m.
Sept. 16—Approved by the Governor.
Sept. 17—Chaptered by Secretary of State—Chapter 1006.

ASSEMBLY BILL No. 3279

Introduced by Assemblymen Fazio, Kapiloff, Perino, Egeland, Hart, and Wornum

March 1, 1976

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 3369 of the Civil Code, relating to judicial relief.

LEGISLATIVE COUNSEL'S DIGEST

AB 3279, as introduced, Fazio (Jud.). Judicial relief.

Existing law provides that any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction or may be liable for a specified civil penalty.

This bill, in addition, would expressly authorize a court, in the event of an act or proposed act of unfair competition, to make such orders or judgments, including the appointment of a receiver, necessary to prevent the use of any practice which constitutes unfair competition or necessary to restore to any person any money or property which may have been acquired by means of such unfair competition. It also would expressly provide that, unless otherwise provided, the remedies or penalties provided for such acts of unfair competition are cumulative to each other and to the remedies or penalties available under all other laws of this state.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 3369 of the Civil Code is amended to read:

3369. 1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. *The court may make such orders or judgments, including the appointment of a receiver, as as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this section, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.*

3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

6. Unless otherwise expressly provided, the remedies

or penalties provided by this section and Section 3370.1 are cumulative to each other and to the remedies or penalties available under all other laws of this state.

O

BILL ANALYSIS

SUBJECT	Author	Bill Number
UNFAIR COMPETITION - RECEIVERS	Fazio, et al.	AB 3279
SPONSORED BY	Related Bills	Date Last Amended-as
Unknown	AB 3280 & AB 3299	introduced 3/1/76

BILL SUMMARY

Bill would amend Civil Code section 3369, which is used frequently by this office to seek remedies for unfair competition, to make it clear that some of the relief that may be obtained under this section includes the appointment of a receiver with the restoration of property acquired by means of unfair competition. It also provides that the remedies of sectionss 3369 and 3370.1 are cumulative to all other remedies.

The Business Law Section is currently arguing for the appointment of a receiver under section 3369. The amendment would make it clear that such a remedy was authorized.

POSITION				
SUPPORT				Atty. Gen.'s Position
				Position Approved
Section Head	Date	Chief Assistant	Date	Position Disapproved
W. J. Abbott				

ASSEMBLY COMMITTEE ON JUDICIARY
JOHN J. MILLER, CHAIRMAN

BILL DIGEST

BILL: AB 3279 HEARING DATE: 4/19/76

AUTHOR: Fazio

SUBJECT: Unfair Competition - Injunctive Relief

BILL DESCRIPTION:

Under existing law, an injunction can be obtained against any person engaging in an act of unfair competition. This bill provides that when an injunction is sought, the court can make whatever orders or judgment as may be necessary to prevent further acts of unfair competition or to restore property to those who lost it as a result of the unfair competition.

(Actually, the language in the bill does not create new authority. Almost identical language is already contained in Section 17535 B&P, which governs the issuance of injunctions in false advertising cases. The Supreme Court recently held that that language did not grant the court new authority. It simply codified authority which was already inherent in the equity powers of the court. People vs. Jayhill, 9 Cal 3d 283. The language contained in this bill would be interpreted in the same way.)

Existing law has a general statute which provides injunctive relief in cases of unfair competition. Another statute provides a civil penalty of up to $2,500 for each violation of the laws governing unfair competition. In addition to these general statutes, there are various laws dealing specifically with certain kinds of acts which also constitute "unfair competition". There have been

(CONTINUED)

occasions when defendants in unfair competition proceedings have argued that these more specific statutes with their lighter penalties apply to them rather than the general "unfair competition" statutes. This bill seeks to close this "loophole" by which some businesses seek to avoid the imposition of the more severe "unfair competition" penalties by providing that the remedies and penalties contained in sections 3369 and 3370.1 of the Civil Code are cumulative to each other and all other laws of this state.

SUPPORT:

Consumer Protection Council of the California District Attorney's Association

Department of Consumer Affairs

COMMENT:

There are a multitude of statutes spread throughout a number of codes dealing in various ways with unfair competition and false advertising. While this bill might not be the vehicle for reorganizing this body of law, it might be wise if all of the statutes were brought together in one code and rewritten to provide a more coherent statutory basis for acting in such cases.

ASSEMBLY THIRD READING

AB 3279 (Fazio) As Introduced: 1 March 1976

COMMITTEE JUD. VOTE 6-3 COMMITTEE VOTE

Ayes: Ayes:

Nays: adham, Wilson, Murphy Nays:

DIGEST

Under existing law, an injunction can be obtained against any person engaging in an act of unfair competition.

This bill provides that when an injunction is sought, the court can make whatever orders or judgment as may be necessary to prevent further acts of unfair competition or to restore property to those who lost it as a result of the unfair competition.

Existing law has a general statute which provides injunctive relief in cases of unfair competition. Another statute provides a civil penalty of up to $2,500 for each violation of the laws governing unfair competition. In addition to these general statutes, there are various laws dealing specificially with certain kinds of acts which also constitute unfair competition. There have been occasions when defendants in unfair competition proceedings have argued that these more specific statutes with their lighter penalties apply to them rather than the general unfair competition statutes.

This bill seeks to close this loophole by which some businesses seek to avoid the imposition of the more severe unfair competition penalties by providing that the remedies and penalties contained in the Civil Code are cumulative to each other and all other laws of this state.

FISCAL EFFECT

None

COMMENTS

The Assembly Judiciary Committee analysis points out that the language in this bill does not create new authority. Almost identical language is already contained in existing law, which governs the issuance of injunctions in false advertising cases. The Supreme Court recently held that that language did not grant the court new authority. It simply codified authority which was already inherent in the equity powers of the court. (People v. Jayhill, 9 Cal 3d 283). The language contained in this bill would be interpreted in the same way.

- continued -

The analysis advises that there are a multitude of statutes spread throughout a number of codes dealing in various ways with unfair competition and false advertising. While this bill might not be the vehicle for reorganizing this body of law, it might be wise if all of the statutes were brought together in one code and rewritten to provide a more coherent statutory basis for acting in such cases.

AB 3279

ASSEMBLY THIRD READING

CO-AUTHORS:
Kapiloff, Perino, Egeland, Hart, Wornum

AB 3279 (Fazio)

AS AMENDED As Introduced

ANALYSIS BY: T. Cecil

ASSEMBLY COMMITTEE Jud. VOTE 6-3
NAYS: Badham, Wilson, Murphy

ASSEMBLY COMMITTEE _____ VOTE ____
NAYS:

SENATE COMMITTEE _____ VOTE ____
NAYS:

SENATE COMMITTEE _____ VOTE ____
NAYS:

SENATE FLOOR VOTE _____
NAYS:

GOVERNOR/DEPARTMENT POSITIONS:

SUPPORT	NEUTRAL	OPPOSE
Dept. of Consumer Affairs	Business & Transportation	

SPECIAL INTEREST POSITIONS:

SUPPORT	OPPOSE
D.A.'s Association	Consumer Protection Council

DIGEST

This measure enables a court to make whatever orders are necessary, in addition to injunctions, to prevent further acts of unfair competition.

FISCAL EFFECT

None

COMMENTS

See Attached Sheet.

AB 3279 (Fazio)

Comments:

The proponents of this measure state that the current law is unclear as to the power of the court to make orders which would deter the continuation of unfair business practices. This measure specifically authorizes the court to appoint a receiver or any other remedy designed to restore property to any person who lost money or property as a result of an unfair business practice.

-- This bill does not expand the definition of unfair business practices; it deals with clarifying the remedies available to the court.

-- In another area, false advertising, almost identical language was recently construed by the California Supreme Court as a mere codification of power already inherent in the courts' equity power.

-- The penalties for unfair competition are embodied in general and very specific statutes. A business which sues another business for violations occasionally finds itself receiving only the weakest remedies. This measure specifically states that all current remedies are available to a business which has been damaged as a result of unfair competition violations.

Assembly Bill No. 3279 (Fazio).—An act to amend Section 3369 of the Civil Code, relating to judicial relief.

Bill read third time, and passed by the following vote:

AYES—56

Alatorre	Chel	Hayden	Perino
Antonovich	Chimbole	Ingalls	Priolo
Arnett	Cline	Kapiloff	Robinson
Bane	Cullen	Keene	Rosenthal
Bannai	Davis	Keysor	Siegler
Berman	Deddeh	Knox	Sieroty
Boatwright	Duffy	Lockyer	Suitt
Brown	Egeland	MacDonald	Thurman
Burke	Fazio	McAlister	Torres
Calvo	Fenton	McVittie	Tucker
Campbell	Garamendi	Montoya	Vicencia
Carpenter	Greene	Mori	Warren
Chacon	Gualco	Nimmo	Wornum
Chapple	Hart	Papan	Mr. Speaker

NOES—8

Collier	Maddy	Murphy	Thomas, William
Lanterman	McLennan	Nestande	Wilson

Bill ordered transmitted to the Senate. APR 29 1976

news from VIC FAZIO

FOURTH DISTRICT ASSEMBLYMAN
CALIFORNIA STATE LEGISLATURE

#77 RELEASE DATE: April 29, 1976

Two consumer protection measures authored by Assemblyman Vic Fazio (D-Sacramento, Solano, Yolo) were approved on the floor of the State Assembly today and forwarded to the Senate for further consideration.

The bills, AB 3279 and 3280, strongly supported by the Consumer Protection Council of the California District Attorneys' Association, make the courts a more visible ally of the public in the fight against unfair business practices.

"When the court issues an injunction to stop unfair business practices or false advertising, it's financially advantageous for some enterprises to yawn and continue what they're doing.

"That's because the sanction is only a $500 fine, which may be peanuts to an outfit coining 10 times that much a day by using the unfair techniques.

"What my legislation (AB 3280) does is to increase that civil penalty to $6,000. It further counts each daily violation of the court order as a separate offense," Fazio said.

SACRAMENTO County Office: 6003 State Capitol, Sacramento 95814 • (916) 445-8368
SOLANO County Office: 1000 Webster Street, Fairfield 94533 • (707) 429-2383
YOLO County Office: 434 Main Street Woodland 95695 • (916) 666-4471

The second bill, AB 3279, gives the consumer a better chance of recovering lost funds.

"Presently a victim of unfair competition may indirectly be helping others fall into the trap. That's because the business still has the money -- using this capital while the case is in court.

"This bill would give a judge authority to create a 'constructive trust' fund to safeguard the proceeds in question until the matter is finally resolved.

"In this way the consumer's chance of getting back some of the loss are increased greatly and the defendant no longer can make hay with questionably-obtained revenue," the first-term Democratic Assemblyman said.

Fazio noted this proposal stems from a local case in which a travel agency allegedly booked tours that were never delivered. For nearly two years, according to the legislator, district attorney's officials have been trying to recover funds for victims, but since the money is not held by the courts the defendants still have it instead of the customers.

The bills are also supported by the State Attorney General and the Department of Consumer Affairs.

# # # # #

AB 3279 (Fazio)
As introduced
Civil Code

A
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UNFAIR COMPETITION
-SANCTIONS-

HISTORY

Source: Consumer Protection Council of the Calif. District Attorneys Ass'n.

Prior Legislation: None

Support: Dept. of Consumer Affairs, San Bernardino County

Opposition: No Known

DIGEST

Permits a court, in enjoining acts of unfair competition, to make such orders or judgments, including the appointment of a receiver, as may be necessary to do either of the following:

(1) Prevent the use or employment by any person of any practice which constitutes unfair competition.

(2) Restore to any person in interest any money or property which may have been acquired by means of the unfair competition.

Provides that remedies available under this bill and existing statutes for acts of unfair competition are cumulative.

PURPOSE

Clarify the sanctions available against acts of unfair competition.

(More)

COMMENT

1. Section 3369 of the Civil Code permits any person performing or proposing to perform an act of unfair competition to be enjoined in any court of competent jurisdiction.

This bill would permit a court, in issuing such an injunction, to make such orders or judgments, including the appointment of a receiver, as may be necessary to do either of the following:

(a) Prevent the use or employment of acts which constitute unfair competition.

(b) Restore money or property which may have been acquired by means of unfair competition.

Language similar to that contained in this bill has been held by the Supreme Court of California not to constitute a grant of new authority, but simply a codification of inherent equity powers possessed by the court (People v. Jayhill (1973) 9 Cal. 3d 283, 287, n. 1).

2. Sanctions against acts of unfair competition appear in a number of different statutes. Section 3369 of the Civil Code provides generally for injunctive relief. Section 3370.1 provides generally for a civil penalty of as much as $2,500. In addition to these general statutes, there are a number of statutes dealing specifically with certain kinds of acts which also constitute urfair competition (e.g., Sec. 1770, Civ. C.; Ch. 4 (commencing with Sec. 17000), Pt. 2, Div. 7, B. & P.C.). Defendants in some unfair competition proceedings have argued that these more specific statutes, with their lighter penalties, supersede the general unfair competition statutes.

This bill seeks to foreclose this argument by providing that the remedies and penalties

(More)

contained in Sections 3369 and 3370.1 of the Civil Code are cumulative to each other and all other laws of this state.

3. Technical Amendment

On page 2, line 11, strike out the first "as"

****

POSITIONS

DATE TYPED: 8/18/76

BILL NUMBER: AB 3279

AUTHOR: Fazio, et al

AMENDED COPY: Original

CONSENT CALENDAR

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY
BILL NO.: AB 3279
DATE OF HEARING: 8-19-76

SENATORS:	AYE	NO
Carpenter		
Dunlap	✓	
Grunsky		
Presley	✓	
Rains		
Schrade	✓	
Schmitt		
Stevens		
Wedgovich	✓	
Petris (V. Chair.)	✓	
Song (Chairman)	✓	
VOTE:	6	0

NOTE: THIS BILL WAS AMENDED 8-23-76. THOSE AMENDMENTS WERE NOT AVAILABLE AT THE TIME THIS ANALYSIS WAS PREPARED.

Assembly Floor Vote: 58- 8 pg.14515 (4/29/76)

DIGEST

Expressly authorizes a court to make whatever orders or judgments are necessary including the appointment of a receiver, to prevent acts of unfair competition, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

The bill also provides, unless otherwise provided, the remedies or penalties for acts of unfair competition are culmulative to each other and to the remedies or penalties available under all other laws of the state.

FISCAL EFFECT Appropriation: No Fiscal Committee: No Local: No

COMMENTS

Unfair competition means unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising.

NOES

Collier	McLennan	W. Thomas
Lanterman	Nestande	Wilson
Maddy	Murphy	

Assembly Co-Authors: Kapiloff, Perino, Egeland, Hart, Wornum

AMENDED IN SENATE AUGUST 23, 1976

CALIFORNIA LEGISLATURE—1975–76 REGULAR SESSION

ASSEMBLY BILL **No. 3279**

Introduced by Assemblymen Fazio, Kapiloff, Perino, Egeland, Hart, and Wornum

March 1, 1976

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 3369 of the Civil Code, relating to judicial relief.

LEGISLATIVE COUNSEL'S DIGEST

AB 3279, as amended, Fazio (Jud.). Judicial relief.

Existing law provides that any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction or may be liable for a specified civil penalty.

This bill, in addition, would expressly authorize a court, in the event of an act or proposed act of unfair competition, to make such orders or judgments, including the appointment of a receiver, necessary to prevent the use of any practice which constitutes unfair competition or necessary to restore to any person any money or property which may have been acquired by means of such unfair competition. It also would expressly provide that, unless otherwise provided, the remedies or penalties provided for such acts of unfair competition are cumulative to each other and to the remedies or penalties available under all other laws of this state.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 3369 of the Civil Code is amended to read:

3369. 1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, ~~as~~ as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this section, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

6. Unless otherwise expressly provided, the remedies

or penalties provided by this section and Section 3370.1 are cumulative to each other and to the remedies or penalties available under all other laws of this state.

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UNFINISHED BUSINESS

CONCURRENCE IN SENATE AMENDMENTS

AB 3279 (Fazio) As Amended: 23 August 1976

ASSEMBLY VOTE 56-8 (29 April 1976) SENATE VOTE 34-0 (25 August 1976)

DIGEST

Under existing law, an injunction can be obtained against any person engaging in an act of unfair competition.

As it was passed by the Assembly, this bill provided that when an injunction is sought, the court can make whatever orders or judgment as may be necessary to prevent further acts of unfair competition or to restore property to those who lost it as a result of the unfair competition.

Existing law has a general statute which provides injunctive relief in cases of unfair competition. Another statute provides a civil penalty of up to $2,500 for each violation of the laws governing unfair competition. In addition to these general statutes, there are various laws dealing specifically with certain kinds of acts which also constitute unfair competition. There have been occasions when defendants in unfair competition proceedings have argued that these more specific statutes with their lighter penalties apply to them rather than the general unfair competition statutes.

As it was passed by the Assembly, this bill sought to close this loophole by which some businesses seek to avoid the imposition of the more severe unfair competition penalties by providing that the remedies and penalties contained in the Civil Code are cumulative to each other and all other laws of this state.

The Senate amendments make technical changes.

FISCAL EFFECT

None

COMMENTS

The Assembly Judiciary Committee analysis points out that the language in this bill does not create new authority. Almost identical language is already contained in existing law, which governs the issuance of injunctions in false advertising cases. The California Supreme Court recently held that that language did not grant the court new authority; it simply codified authority which was already inherent in the equity powers of the court. (People v. Jayhill, 9 Cal 3d 283) The language contained in this bill could be interpreted in the same way.

ENROLLED BILL REPORT

AGENCY	BILL NUMBER
GOVERNOR'S OFFICE	AB 3279
DEPARTMENT, BOARD OR COMMISSION: LEGAL AFFAIRS	AUTHOR: Fazio etc.

Under existing law, an injunction can be obtained against any person engaging in an act of unfair competition. This bill provides that when an injunction is sought, the court may make whatever orders or judgment necessary under the circumstances. This provision would allow the appointment of a receiver in order to carry out the order of the court.

Under existing law, there are two general statutes relating to unfair competition which provide for injunctive relief and a civil penalty of up to $2,500. Additionally, there are various laws dealing with specific kinds of acts which also constitute "unfair competition." (e.g., misrepresentation, false advertising.)

This bill provides that penalties for violations of "unfair competition" laws are cumulative to each other and to the penalties under all other laws of the state, thus foreclosing the argument of the defendants in such actions that they are only liable to the penalty provided in a more specific violation rather than under general unfair competition laws.

Thus the measure of damages would be determined by the number of acts of unfair competition rather than the measure provided for one violation under the false advertising section.

The Department of Consumer Affairs indicates that this bill will effectively prevent defendants from arguing that the more specific, less drastic penalty is applicable. However, there is no substantial danger of the imposition of penalties which are unduly harsh, as the penalty to be imposed is still at the discretion of the judge.

The provision which allows the appointment of a receiver will save court time and generally result in more efficient implementation of court orders.

RECOMMENDATION:

SIGN

ANALYST	DATE	LEGAL AFFAIRS SECRETARY	DATE
Scott Steffen	9/10/76	Peter Sly, Assistant	9/10/76

ENROLLED BILL REPORT

Department	Author	Bill Number
DEPARTMENT OF INSURANCE	Fazio, et al.	AB 3279
Subject: Unfair Competition -- Injunctions		

SUMMARY

Provides for immediate court action to enjoin unfair competition and provide for other remedies.

ANALYSIS

A. Detailed.

Existing provisions of the Insurance Code prohibit unfair competition. Violations are subject to administrative orders to show cause as to whether a cease and desist order should issue. If unfair competition is not discontinued upon the issuance of a cease and desist order, the Attorney General may seek an injunction after 30 days after the service of such order upon the respondent.

This bill would authorize immediate court action to obtain an injunction or such other orders or judgments, including the appointment of a receiver, to prevent unfair competition and other action as may be necessary to restore to any person money or property which may have been acquired by such unfair competition.

B. Cost

None. By by-passing the current administrative procedure set forth in the Insurance Code, there could be a reduction of cost to this Department.

LEGISLATIVE HISTORY

This bill is sponsored by the Consumer Protection Council, which is a subdivision of the California District Attorneys Association. The bill is supported by the District Attorneys and the Department of Consumer Affairs. It is expected that the Attorney General will support this bill. There is no known opposition.

REASONS FOR RECOMMENDATION

This Department recommends that the Governor SIGN this bill because it will expedite the elimination of unfair competition.

Recommendation			
SIGN		home 444-0132 office 445-1332	
Department	Date SEP 2 1976	Agency	Date 9/14/76

CALIFORNIA LEGISLATURE

1975–76 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed Constitutional Amendments) Adopted in 1976

and

1969–1976 Statutory Record

DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

Ch. 1005 (AB 3279) Fazio. Judicial relief.

Existing law provides that any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction or may be liable for a specified civil penalty.

This bill, in addition, would expressly authorize a court, in the event of an act or proposed act of unfair competition, to make such orders or judgments, including the appointment of a receiver, necessary to prevent the use of any practice which constitutes unfair competition or necessary to restore to any person any money or property which may have been acquired by means of such unfair competition. It also would expressly provide that, unless otherwise provided, the remedies or penalties provided for such acts of unfair competition are cumulative to each other and to the remedies or penalties available under all other laws of this state.

Ch. 1006 (AB 3280) Fazio. Injunctions.

Under existing law, a person engaged in certain unfair trade practices involving unfair competition is liable for a civil penalty not to exceed $2,500 for each act. In addition, an injunction may be obtained to prohibit such acts.

Under existing law, a person violating such an injunction may be found in contempt by the court that issued the injunction and, among other things, may be liable for a penalty not to exceed $500 for each violation.

This bill would provide that a person who violates certain injunctions relating to unfair trade practices involving unfair competition would be liable for a civil penalty not to exceed $6,000 for each violation. The amount of the penalty would be set by the court in accordance with specified criteria. An action to recover the penalty could be brought in specified courts, by the Attorney General, district attorneys, or city attorneys. The bill provides for the payment of such penalty to the state, counties, or cities, or a combination, depending on who brought the action.

Ch. 1007 (AB 3385) McVittie. Livestock: California Beef Council.

Under existing law, the California Beef Council consists of 20 members and 20 alternates.

This bill would require the Director of Food and Agriculture to appoint 1 additional member and 1 additional alternate to represent the general public on the council.

Ch. 1008 (AB 3424) Wilson. Restraints.

Existing law authorizes the Attorney General to bring a civil action on behalf of the state or any of its political subdivisions or public agencies to recover damages resulting from a violation of the state and federal provisions prohibiting restraints on competition.

Existing law also specifies that, of the moneys received in payment of fines imposed for violation of prohibited restraints on competition, 75% is to be paid to the State Treasurer and 25% is to be paid to the treasurer of the county in which the prosecution is conducted.

This bill would revise such distribution of moneys by specifying that 100% is to be paid to the state if such moneys resulted from an action initiated and prosecuted by the Attorney General. Where the action is initiated and prosecuted by a district attorney then 100% is to be paid to the county in which such prosecution is conducted. Where such action was initiated and prosecuted jointly by the Attorney General and a district attorney the distribution is to be made as agreed upon by the Attorney General and such district attorney and as approved by the court.

Ch. 1009 (AB 3464) Hughes. Unemployment insurance: employer contributions.

The existing law includes an elective coverage agreement which provides for the payment into the Unemployment Fund of the additional cost of benefits paid under such election in lieu of contributions required of employers, as one of several factors used in determining the balance in the Unemployment Fund for purposes of determining employer contribution rates.

This bill would delete such elective coverage agreements as one of the factors used in determining the balance in the Unemployment Fund for purposes of determining employer contribution rates.

The bill would also appropriate $41,000 to the State Controller for specified reimburse-

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION
CONSUMER PROTECTION COUNCIL

February 23, 1976

TO ASSEMBLYMAN VIC FAZIO, FOURTH ASSEMBLY DISTRICT

FROM GORDON F. BOWLEY, SUPERVISING DEPUTY DISTRICT ATTORNEY, SACRAMENTO COUNTY FRAUD DIVISION

SUBJECT AMENDMENT TO CIVIL CODE SECTION 3369

Civil Code Section 3369(2):

California law, specifically People v. Jayhill, 9 Cal3d 258 allows the People to seek, in a consumer fraud action, restitution for the victims of the fraud. Business and Professions Code Section 17535 allows the court in such an action, to make an order setting up a fund, (a constructive trust), from which to dispurse this restitution. This fund is composed of the money paid by the victims on the contracts \induced by the fraud. This amendment to Civil Code Section 3369 (2) allows a similar procedure to be undertaken in an action brought by the People to prohibit unfair and deceptive business practices. This amendment, then, would clarify California law and in so doing assist the People in that they would no longer have to go through protracted pre-trial motions when seeking restitution and a constructive trust from which this restitution could be made. The defendants in these cases are usually very large corporations which are defended by large well manned law firms which usually make it a practice to protract the litigation through numerous and extensive pre-trial motions thus enabling the company to continue to engage in the unfair and deceptive business practices.

An example of such protracted litigation and pre trial motions is People vs. Beltz Travel Service, et al. In this action the Santa Clara, San Mateo, Alameda, San Francisco, Contra Costa and Sacramento District Attorney's Offices sued Beltz Travel Service and almost every major airline alleging as unfair business

practices, kickbacks by these airlines to Beltz Travel Service in violation of certain Civil Aeronautics Board Rules and Regulations. The action also sought restitution through a constructive trust, for the individual victims who had paid for tours, but then were refused service or left stranded. The action which was begun over a year and a half ago, is still continuing, and the victims have not yet been paid back, (even though the defendants are still using their money), because of protracted pre trial motions concerning the proposed restitution. Civil Code Section 3369(2) would clearly allow such restitution and allow such a fund to be set up.

Civil Code Section 3369(6):

Similarly, this amendment to subsection 6 of Civil Code Section 3369 is a clarification of California law. It states that the remedy of an injunction and civil penalties against those businesses engaging in unfair and deceptive practices, (which by the way injure not only the consumer, but honest businessmen), is cumulative, separate and in addition to, all other California laws. This enables the People to seek under Civil Code Section 3369 as an adequate remedy, an injunction to prohibit future conduct, civil penalties to punish the defendant and restitution to retrieve from the defendant company, its ill gotten gains rather than be limited by other California laws which do not give such adequate remedies.

For example, People vs. Beltz Travel Service, et. al. (see above), People vs. Lucky Stores, People vs. Bel Air Markets and People vs. Farmers Markets, the latter wherein the Sacramento County District Attorney Fraud Division sued the above three markets for misrepresenting the fat content of their regular, lean and extra lean ground beef, that is, in many instances the "extra lean" had a higher fat content than the"lean" and the "lean" had a higher fat content than the "regular" ground beef even though the extra lean and the lean cost, respectively, from 25 to 30 cents more than the grades below it. In Luckys, Bel Air, and Farmers the argument was raised by the defendants in pre trial motions that certain specific

sections of the Health and Safety Code preempted consumer fraud actions. The defendants wanted the Health and Safety Code Sections to apply because the remedies of an injunction, civil penalties and restitution were not available under the Health and Safety Code. The defendants lost these motions at a lower court level, but again, the motions necessitated protracted litigation pending the outcome of the suit thus enabling the defendants to continue their business practices.

Supported by:

California District Attorney's Association - Consumer Protection Council

California Attorney General

California Department of Consumer Affairs

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION
CONSUMER PROTECTION COUNCIL

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Deputy District Attorney
Santa Clara County

Newsletter
R. RICHARD FARNELL
Deputy District Attorney
Orange County

SECTION I

SECTION 3369 of the Civil Code is amended to read:

3369.

1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, not to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or purporting to perform an act of unfair competition within the State may be enjoined in any Court of competent jurisdiction. The Court may make such orders or judgments, including the appointment of a receivor, as may be necessary to prevent the use or employment by any person of any practices which constitute unfair competition as used in this Section or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

3. As used in this Section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

4. As used in this Section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this Section may be prosecuted by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full time city prosecutor, in the name of the People of the State of California upon their own complaint or upon the complaint of any

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION
923 12TH STREET, SUITE 300, SACRAMENTO, CALIFORNIA 95814 Area Code (916) 443-2017

Consumer Protection Council

board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

6. Unless otherwise expressly provided, the remedies or penalties provided by this Section and Sections 3370.1 and 3370.2 of this Chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

FAZIO - Sacramento County

FROM THE OFFICE OF:
ASSEMBLYMAN VIC FAZIO
ROOM 6003, STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
(916) 445-8368

FOR IMMEDIATE RELEASE

MARCH 1, 1976

#25

Three legislative measures to give county district attorneys greater muscle in prosecuting consumer fraud cases were introduced today by Assemblyman Vic Fazio (D-Sacramento, Solano, Yolo).

"The Consumer Protection Council of the California District Attorneys' Association has brought to my attention a number of loopholes which are hurdles in the path of redressing legitimate consumer grievances. And many large corporations accused of violating consumer protection laws have a legal staff trained to use these loopholes so they can avoid or delay compliance with the law," the first-term lawmaker said.

The first Fazio bill would place stiff penalties against firms which violate court orders to discontinue unfair business practices that deceive the public and damage honest businesses in the community.

"The way things now stand, a company using unfair and deceptive practices risk a $500 'slap on the wrist.' What this means in actual practice is that often it's well worth the gamble because profits will far outdistance a contempt of court fine," Fazio said.

His legislation would create a penalty of up to $6,000 for violation of court orders regarding unfair competition laws. It would conform California with federal laws which apply similar penalties to violations of "cease and desist" orders.

--more--

"Not only will this take the profit out of flaunting the law, it will also serve as a deterrent to future abuses and save time and taxpayers' dollars now being consumed by D.A. offices which have been forced to repeatedly prosecute a company for the same fraudulent practice."

The second Fazio bill would empower the court to set aside money a business collects through unfair or deceptive trade practices, "thereby assuring the victim the loss will be restored and also denying the perpetrators opportunity to further capitalize on the take."

Under the legislation, once the court determines the public may be in financial jeopardy owing to alleged violation of business laws, it can establish a "constructive trust" fund to safeguard proceeds in question until the matter is resolved.

"A local case underscoring the need for this change in law involved a travel agency which allegedly booked tours that were never delivered and then accepted kickbacks from major airlines in violation of federal regulations. For the past year and one-half, local district attorneys have been trying to recover funds for the victims. Since the money has not been held by the court, the defendants still have it in their pockets, not the customers," Fazio said.

Another provision of the bill, Fazio explained, was triggered by several Sacramento area supermarkets that were

--more--

charged with mislabeling and overpricing inferior grades of ground beef.

"When this case got to court, the defendants attempted to opt for weaker sanctions under another section of state law. They preferred a Health and Safety Code citation to a consumer fraud rap.

"My legislation authorizes the court to apply the strongest penalty it deems appropriate under the circumstances. It also will streamline prosecution by eliminating time-consuming legal wrangling," Fazio declared.

The third bill in the Fazio consumer protection package would give district attorneys up to three years from the date of discovery to prosecute unfair or deceptive business practices.

"District attorneys inform me that we need to clarify laws covering the statute of limitations. Because of the complex nature of many cases, there must be sufficient time for thorough investigation and preparation prior to initiating court action. Weak cases will be recognized for what they are and strong cases will not be lost on legal technicalities or incomplete documentation," Fazio said.

Fazio noted that in addition to the district attorneys' association, his legislation has the support of the Office of the Attorney General and the State Department of Consumer Affairs.

--more--

"I believe that good consumer protection laws, aggressively enforced, are in the interests of the general public and the business community as well. Good business is built upon a climate of trust. Weeding out those who betray that trust is in the best interests of all Californians," Fazio concluded.

# # # # # #

Sutton AB 3217
3280
3299

EVELLE J. YOUNGER
ATTORNEY GENERAL

STATE OF CALIFORNIA

Doug - FYI
& followup

OFFICE OF THE ATTORNEY GENERAL
Department of Justice
555 CAPITOL MALL, SUITE 550
SACRAMENTO 95814
(916) 445-9555

April 23, 1976

Honorable Victor Fazio
Assemblyman, Fourth District
State Capitol, Room 6003
Sacramento, California 95814

RE: Assembly Bills 3279, 3280 and 3299

Dear Assemblyman Fazio:

This office has reviewed the above three bills which essentially relate to Civil Code section 3369. The Antitrust Unit and the Consumer Protection Unit of this office make frequent use of section 3369 as an effective civil remedy against businesses engaged in unfair competition in this State.

The bills introduced by you would make clarifications in relation to section 3369 which we feel would be most useful. We have argued in cases that section 3369 allows the appointment of a receiver or the restoration of property acquired by means of unfair competition, but disposition has been disputed. Assembly Bill 3279 would make it clear that such remedies are available under section 3369, and would also expressly provide that the remedies of that section are cumulative to all others. The civil remedies provided by Assembly Bill 3280 for an intentional violation of an injunction issued pursuant to Civil Code section 3369 would also give this office and district attorneys and other prosecutors a useful enforcement tool for those cases where a party might violate an injunction obtained under that section. Finally the clarification of the statute of limitations of section 3369 cases contained in Assembly Bill 3299 will codify the position that we believe is correct, namely that a statute of limitations on cases brought under that section is subject to a fraudulent concealment argument, that is, that the statute does not commence to run until the Attorney General or district attorney or prosecutor discovers the facts constituting the grounds for commencing the action.

In passing, we note a discrepancy in Assembly Bill 3280 that should be remedied. Subdivision (b) of proposed section 3370.2 does not now parallel Civil Code section 3369, subdivision 5 in its list of public officials who may bring actions pursuant to section 3369. These two sections should be brought into conformity. If we can be of assistance in that regard, please contact Deputy Attorney General Peter DeMauro, in the Sacramento Office.

In sum, we believe the three bills are useful, and we support them and urge their adoption by the Legislature.

Very truly yours,

EVELLE J. YOUNGER
Attorney General

lp

COUNTY OF SACRAMENTO
DISTRICT ATTORNEY

FRAUD DIVISION
P. O. BOX 749
SACRAMENTO, CALIFORNIA 95804

TELEPHONE (916) 440-6823

JOHN M. PRICE
DISTRICT ATTORNEY

GEOFFREY BURROUGHS
CHIEF DEPUTY

August 12, 1976

Senate Judiciary Committee
State Capitol
Room 2046
Sacramento, California

ATTN FRANK AUSTIN

RE A.B. 3279 and 3280

Dear Mr. Austin

Pursuant to our telephone conversation of this date, I enclose copies of memoranda describing the above captioned legislation. Should you have any questions, please contact me. Someone from this office will be present at the hearing on behalf of the bills.

Thank you for your cooperation in this matter.

Very truly yours

JOHN M. PRICE
DISTRICT ATTORNEY

GORDON F. BOWLEY
Supervising Deputy District Attorney

mly

Enc.

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION
CONSUMER PROTECTION COUNCIL

February 23, 1976

TO ASSEMBLYMAN VIC FAZIO, FOURTH ASSEMBLY DISTRICT

FROM GORDON F. BOWLEY, SUPERVISING DEPUTY DISTRICT ATTORNEY, SACRAMENTO COUNTY FRAUD DIVISION

SUBJECT AMENDMENT TO CIVIL CODE SECTION 3369

Civil Code Section 3369(2): AB 3279.

California law, specifically People v. Jayhill. 9 Cal3d 283 allows the People to seek, in a consumer fraud action, restitution for the victims of the fraud. Business and Professions Code Section 17535 allows the court in such an action, to make an order setting up a fund, (a constructive trust), from which to dispurse this restitution. This fund is composed of the money paid by the victims on the contracts induced by the fraud. This amendment to Civil Code Section 3369 (2) allows a similar procedure to be undertaken in an action brought by the People to pronibit unfair and deceptive business practices. This amendment, then, would clarify California law and in so doing assist the People in that they would no longer have to go through protracted pre-trial motions when seeking restitution and a constructive trust from which this restitution could be made. The defendants in these cases are usually very large corporations which are defended by large well manned law firms which usually make it a practice to protract the litigation through numerous and extensive pre-trial motions thus enabling the company to continue to engage in the unfair and deceptive business practices.

An example of such protracted litigation and pre trial motions is People vs. Beltz Travel Service, et al. In this action the Santa Clara, San Mateo, Alameda, San Francisco, Contra Costa and Sacramento District Attorney's Offices sued Beltz Travel Service and almost every major airline alleging as unfair business

3279 - Amd. Bill.

practices, kickbacks by these airlines to Beltz Travel Service in violation of certain Civil Aeronautics Board Rules and Regulations. The action also sought restitution through a constructive trust, for the individual victims who had paid for tours, but then were refused service or left stranded. The action which was begun over a year and a half ago, is still continuing, and the victims have not yet been paid back, (even though the defendants are still using their money), because of protracted pre trial motions concerning the proposed restitution. Civil Code Section 3369(2) would clearly allow such restitution and allow such a fund to be set up.

Civil Code Section 3369(6):

Similarly, this amendment to subsection 6 of Civil Code Section 3369 is a clarification of California law. It states that the remedy of an injunction and civil penalties against those businesses engaging in unfair and deceptive practices, (which by the way injure not only the consumer, but honest businessmen), is cumulative, separate and in addition to, all other California laws. This enables the People to seek under Civil Code Section 3369 as an adequate remedy, an injunction to prohibit future conduct, civil penalties to punish the defendant and restitution to retrieve from the defendant company, its ill gotten gains rather than be limited by other California laws which do not give such adequate remedies.

For example, People vs. Beltz Travel Service, et. al. (see above), People vs. Lucky Stores, People vs. Bel Air Markets and People vs. Farmers Markets, the latter wherein the Sacramento County District Attorney Fraud Division sued the above three markets for misrepresenting the fat content of their regular, lean and extra lean ground beef, that is, in many instances the "extra lean" had a higher fat content than the "lean" and the "lean" had a higher fat content than the "regular" ground beef even though the extra lean and the lean cost, respectively, from 25 to 30 cents more than the grades below it. In Luckys, Bel Air, and Farmers the argument was raised by the defendants in pre trial motions that certain specific

sections of the Health and Safety Code preempted consumer fraud actions. The defendants wanted the Health and Safety Code Sections to apply because the remedies of an injunction, civil penalties and restitution were not available under the Health and Safety Code. The defendants lost these motions at a lower court level, but again, the motions necessitated protracted litigation pending the outcome of the suit thus enabling the defendants to continue their business practices.

Supported by:

California District Attorney's Association - Consumer Protection Council

California Attorney General

California Department of Consumer Affairs

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION
CONSUMER PROTECTION COUNCIL

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Deputy District Attorney
Santa Clara County

Newsletter
R. RICHARD FARNELL
Deputy District Attorney
Orange County

SECTION I

SECTION 3369 of the Civil Code is amended to read:

3369.

1. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, not to enforce a penal law, except in a case of nuisance or unfair competition.

2. Any person performing or purporting to perform an act of unfair competition within the State may be enjoined in any Court of competent jurisdiction. The Court may make such orders or judgments, including the appointment of a receivor, as may be necessary to prevent the use or employment by any person of any practices which constitute unfair competition as used in this Section or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

3. As used in this Section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.

4. As used in this Section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

5. Actions for injunction under this Section may be prosecuted by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full time city prosecutor, in the name of the People of the State of California upon their own complaint or upon the complaint of any

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION
923 12TH STREET, SUITE 300, SACRAMENTO, CALIFORNIA 95814 Area Code (916) 442-2017

Consumer Protection Council

board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

6. Unless otherwise expressly provided, the remedies or penalties provided by this Section and Sections 3370.1 and 3370.2 of this Chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

FAZIO - Sacramento County

(2)

SUP. AB3279 ✓

LEGISLATIVE ADVOCATE

STEVE FRANKS
Suite 233, Eleventh & "L" Building
Sacramento, CA 95814
(916) 441-1333

COUNTY OF SAN BERNARDINO

July 8, 1976

The Honorable Vic Fazio
Assemblyman, 4th District
California State Assembly
State Capitol, Room 6003
Sacramento, California 95814

Re: Assembly Bill 3279

Dear Assemblyman Fazio:

The San Bernardino Board of Supervisors considered the provisions of your legislation and has adopted a support position for the bill.

Sincerely yours,

Steve Franks
Legislative Advocate

SF/mms

cc: Chairman, Committee on Senate Judiciary

cc: Senator Ruben S. Ayala
cc: Senator Robert B. Presley
cc: Senator Walter W. Stiern

cc: Assemblyman Larry Chimbole
cc: Assemblyman Terry Goggin
cc: Assemblyman Jerry Lewis
cc: Assemblyman Bill McVittie

5th AB3279-3280 file

COUNTY OF SACRAMENTO
DISTRICT ATTORNEY

FRAUD DIVISION
P. O. BOX 749
SACRAMENTO, CALIFORNIA 95804

TELEPHONE (916) 440-6823

JOHN M. PRICE
DISTRICT ATTORNEY

GEOFFREY BURROUGHS
CHIEF DEPUTY

September 1, 1976

The Honorable Edmund G. Brown
Governor of California
State Capitol
Sacramento, California 95814

RE A.B. 3279 and 3280

Dear Governor Brown

This letter is forwarded on behalf of the Sacramento County District Attorney's Office and on behalf of the Legislative Committee of the California District Attorney's Association, Consumer Protection Council, urging your signature of A.B. 3279 and 3280. Both bills are needed consumer protection legislation.

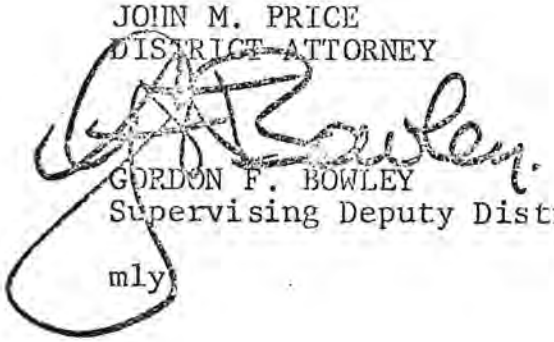
A.B. 3279 would allow a court to order restitution to be paid by a company engaged in unfair business practices to individuals injured by those unfair business practices and allow a court to set up a Constructive Trust from which to pay this restitution.

A.B. 3280 would create as a remedy, civil penalties up to $6,000 per day for a continual violation of an injunction already obtained against a company prohibiting such unfair business practices. A.B. 3280, then, would add a needed remedy to existing consumer protection laws. Presently, a corporation may be punished for violation of an injunction prohibiting unfair business practices only by a misdemeanor contempt action after conviction of which can be imposed, at most, a $500 misdemeanor fine. Past experience has shown that it has been profitable for companies to violate such an injunction by continuing these unfair business practices and therefore earn in excess of the above $500 fine. A.B. 3280 takes the profit out of continuing unfair business practices.

Again, I urge your signature of A.B. 3279 and 3280 to further protect the consumer from unfair business practices while also protecting the honest businessman from unfair competition.

Very truly yours

JOHN M. PRICE
DISTRICT ATTORNEY



GORDON F. BOWLEY
Supervising Deputy District Attorney

mly

cc: Vic Fazio

COUNTY OF SACRAMENTO

DISTRICT ATTORNEY

FRAUD DIVISION
P. O. BOX 749
SACRAMENTO, CALIFORNIA 95804

TELEPHONE (916) 440-6823

JOHN M. PRICE
DISTRICT ATTORNEY

GEOFFREY BURROUGHS
CHIEF DEPUTY

September 1, 1976

The Honorable Edmund G. Brown
Governor of California
State Capitol
Sacramento, California 95814

RE A.B. 3279 and 3280 pro

Dear Governor Brown

This letter is forwarded on behalf of the Sacramento County District Attorney's Office and on behalf of the Legislative Committee of the California District Attorney's Association, Consumer Protection Council, urging your signature of A.B. 3279 and 3280. Both bills are needed consumer protection legislation.

A.B. 3279 would allow a court to order restitution to be paid by a company engaged in unfair business practices to individuals injured by those unfair business practices and allow a court to set up a Constructive Trust from which to pay this restitution.

A.B. 3280 would create as a remedy, civil penalties up to $6,000 per day for a continual violation of an injunction already obtained against a company prohibiting such unfair business practices. A.B. 3280, then, would add a needed remedy to existing consumer protection laws. Presently, a corporation may be punished for violation of an injunction prohibiting unfair business practices only by a misdemeanor contempt action after conviction of which can be imposed, at most, a $500 misdemeanor fine. Past experience has shown that it has been profitable for companies to violate such an injunction by continuing these unfair business practices and therefore earn in excess of the above $500 fine. A.B. 3280 takes the profit out of continuing unfair business practices.

Again, I urge your signature of A.B. 3279 and 3280 to further protect the consumer from unfair business practices while also protecting the honest businessman from unfair competition.

Very truly yours

JOHN M. PRICE
DISTRICT ATTORNEY

GORDON F. BOWLEY
Supervising Deputy District Attorney

mly

cc: Vic Fazio

PLEASE REPLY TO:
☒ SACRAMENTO ADDRESS
STATE CAPITOL
SACRAMENTO 95814
(916) 445-8368

☐ DISTRICT OFFICES
CITY HALL
1000 WEBSTER STREET
FAIRFIELD, CA 94533
(707) 429-2383

☐ 434 MAIN STREET
WOODLAND, CA 95695
(916) 666-4471

Assembly
California Legislature

COMMITTEES
AGRICULTURE
ELECTIONS AND
REAPPORTIONMENT
REVENUE AND TAXATION

VIC FAZIO
ASSEMBLYMAN, FOURTH DISTRICT
YOLO, SOLANO, SACRAMENTO

September 7, 1976

The Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol
Sacramento, California 95814

Dear Governor Brown:

The Attorney General and the Consumer Protection Council of the California District Attorney's Association have indicated that Section 3369 of the Civil Code, which permits a court to issue an injunction against a company engaging in an unfair business practice, is in need of further clarification to protect victims of those unfair practices.

AB 3279 would extend the court's authority, following the issuance of such an injunction, by allowing for the creation of a constructive trust. The constructive trust would be used to restore money or property acquired by the company through the use of its unfair business practice. Although this authority is currently set forth in case law (People v. Jayhill (1973), 9 Cal. 3d 283), many companies have been able to challenge this authority by engaging in lengthy and protracted litigation. During this period, the company continues to receive monetary benefits through the use of the very unfair business practices being challenged.

AB 3279 would make it clear that the creation of a constructive trust is available under Section 3369 and would also expressly provide that the remedies of that section are cumulative to all others. This would enable the people to seek an injunction to prohibit future unfair conduct; civil penalties to punish the defendant; and restitution to retrieve from the defendant company funds derived in an unlawful manner. Moreover, plaintiffs would not be limited by other California laws which do not give such adequate remedies.

The Santa Clara, San Mateo, Alameda, San Francisco, Contra Costa, and Sacramento District Attorneys' offices are currently involved in lengthy litigation against Beltz Travel Service and a number of major airlines who allegedly paid kickbacks to Beltz Travel Service in violation of certain Civil Aeronautics Board Rules and Regulations. The action also sought restitution through a constructive trust for the individual victims who had paid for the tours, but were then refused service or left stranded. This case began over a year ago and the victims have to date not been reimbursed. The company continues to use those funds since it has successfully engaged in protracted litigation challenging the proposed constructive trust.

The clarifications of Section 3369 are needed to protect similar victims of unfair business practices and honest businessmen who must compete against those businesses.

I respectfully request that you sign AB 3279 into law. There is no public opposition. If you have further questions, please feel free to contact me or my staff at any time.

Best regards,

Vic

VIC FAZIO

VF:lcl

VOLUME 2

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1975–76 REGULAR SESSION
1975–76 FIRST EXTRAORDINARY SESSION
1975–76 SECOND EXTRAORDINARY SESSION
1975–76 THIRD EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

Commencing With A.B. 2620 and Ending With A.B. 4540

SYNOPSIS OF

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

Assembly Convened December 2, 1974

Recessed December 4, 1974	Reconvened January 6, 1975
Recessed March 20, 1975	Reconvened March 31, 1975
Recessed June 27, 1975	Reconvened August 4, 1975
Recessed September 12, 1975	Reconvened January 5, 1976
Recessed April 8, 1976	Reconvened April 19, 1976
Recessed July 1, 1976	Reconvened August 2, 1976

Adjourned August 31, 1976

Adjourned Sine Die November 30, 1976

Legislative Days..... 256

HON. LEO T. McCARTHY
Speaker

HON. JOHN T. KNOX
Speaker pro Tempore

HON. PAULINE L. DAVIS
Assistant Speaker pro Tempore

HON. HOWARD L. BERMAN
Majority Floor Leader

HON. PAUL PRIOLO
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

A.B. No. 3279—Fazio, Kapiloff, Perino, Egeland, Hart, and Wornum.

An act to amend Section 3369 of the Civil Code, relating to judicial relief.

1976

Mar. 1—Read first time.
Mar. 2—Referred to Com. on JUD. To print.
Mar. 5—From printer. May be heard in committee April 4.
April 22—From committee: Do pass. (Ayes 6. Noes 3.)
April 26—Read second time. To third reading.
April 29—Read third time, passed, and to Senate. (Ayes 56. Noes 8. Page 14514.)
April 29—In Senate. Read first time.
May 5—Referred to Com. on JUD.
Aug. 17—In committee: Hearing postponed by committee.
Aug. 20—From committee: Amend, and do pass as amended. To Consent Calendar.
Aug. 23—Read second time, amended, and to Consent Calendar.
Aug. 25—Read third time, passed, and to Assembly. (Ayes 34. Noes 0. Page 16443.)
Aug. 26—In Assembly. Concurrence in Senate amendments pending.
Aug. 27—Senate amendments concurred in. To enrollment. (Ayes 72. Noes 0. Page 20311.)
Sept. 2—Enrolled and to the Governor at 10:30 a.m.
Sept. 16—Approved by the Governor.
Sept. 17—Chaptered by Secretary of State—Chapter 1005.

A.B. No. 3280—Fazio, Kapiloff, Perino, Egeland, Hart, and Wornum.

An act to add Section 3370.2 to the Civil Code, relating to injunctions.

1976

Mar. 1—Read first time.
Mar. 2—Referred to Com. on JUD. To print.
Mar. 5—From printer. May be heard in committee April 4.
April 22—From committee: Amend, and do pass as amended. (Ayes 6. Noes 0.)
April 26—Read second time and amended. Ordered returned to second reading.
April 27—Read second time. To third reading.
April 29—Read third time, passed, and to Senate. (Ayes 74. Noes 0. Page 14517.)
April 29—In Senate. Read first time.
May 5—Referred to Com. on JUD.
Aug. 17—In committee: Hearing postponed by committee.
Aug. 19—From committee: Do pass. To Consent Calendar.
Aug. 20—Read second time. To Consent Calendar.
Aug. 24—Read third time, passed, and to Assembly. (Ayes 38. Noes 0. Page 16315.)
Aug. 25—In Assembly. To enrollment.
Aug. 30—Enrolled and to the Governor at 11:30 a.m.
Sept. 16—Approved by the Governor.
Sept. 17—Chaptered by Secretary of State—Chapter 1006.

ASSEMBLY BILL No. 3280

Introduced by Assemblymen Fazio, Kapiloff, Perino, Egeland, Hart, and Wornum

March 1, 1976

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 3370.2 to the Civil Code, relating to injunctions.

LEGISLATIVE COUNSEL'S DIGEST

AB 3280, as introduced, Fazio (Jud.). Injunctions.

Under existing law, a person engaged in certain unfair trade practices is liable for a civil penalty not to exceed $2,500 for each act. In addition, an injunction may be obtained to prohibit such acts, or to prohibit certain nuisances.

Under existing law, a person violating such an injunction may be found in contempt by the court that issued the injunction and, among other things, may be liable for a penalty not to exceed $500 for each violation.

This bill would provide that a person who violates certain injunctions relating to nuisances or unfair trade practices would be liable for a civil penalty not to exceed $6,000 for each violation. The amount of the penalty would be set by the court in accordance with specified criteria. An action to recover the penalty could be brought in specified courts, by the Attorney General, district attorneys, county counsels, or city attorneys. The bill provides for the payment of such penalty to the state, counties, or cities, or a combination, depending on who brought the action.

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

State-mandated local program: no.

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

Section 3370.2 is added to the Civil Code, to read:

(a) Any person who intentionally violates any injunction issued pursuant to Section 3369 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000), for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or any city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city

attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

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ASSEMBLY COMMITTEE ON JUDICIARY
JOHN J. MILLER, CHAIRMAN

BILL DIGEST

BILL: AB 3280 HEARING DATE: 4/19/76

AUTHOR: Fazio

SUBJECT: Unfair Competition - Penalties

BILL DESCRIPTION:

Under existing law, there are two basic statutes governing the issuance of injunctions in cases of unfair competition and false advertising. The first is contained in the Civil Code and covers all forms of unfiar competition including false advertising. The second is contained in the Business and Professions Code and is limited to false advertising. This latter provision is followed by another section which provides for a $6,000 penalty whenever an injunction is violated. The Civil Code injunction provision is not reinforced by a similar penalty provision.

This bill adds a penalty provision to the Civil Code. It is identical to that contained in the Business and Professions Code. It provides that whenever anyone intentionally violates an injunction issued under Section 3369 C.C., that person shall be liable for a civil penalty of up to $6,000 for each violation. If the violation is continuing, each day is to constitute a separate violation.

In determining the amount of penalty to be imposed, the court must consider all relevant factors, including the harm caused by the violation, the length of time over which it occurred, the wealth of the person, and any corrective actions taken.

(CONTINUED)

The Attorney General, a district attorney, county counsel or city attorney are all authorized to bring an action for violations occurring within their jurisdiction.

If an action is brought by the Attorney General, one-half of the penalty collected is to go to the state and one-half to the county in which the action was brought. If a district attorney or county counsel brings the action, the entire amount goes to the county. If a city attorney brings the action, one-half of the penalty goes to the county and one-half to the city.

SUPPORT:

Consumer Protection Council of the California District Attorneys Association

Attorney General

Department of Consumer Affairs

COMMENT:

This bill provides for a penalty of up to $6,000 for a violation of an injunction issued pursuant to section 3369 of the Civil Code. Actually, that section authorizes the issuance of an injunction in two kinds of cases: nuisances and unfair competition. Perhaps the penalty provisions of this bill should apply only when an injunction against unfair competition is violated.

This bill adds section 3370.2 to the Civil Code to provide a penalty of up to $6,000 for violations of an injunction against unfair competition. However, another section (3370.1) already exists which authorizes a penalty of up to $2,500 for a violation of the statute which

(CONTINUED)

authorizes the issuance of an injunction in unfair competition cases. It is not clear whether the penalty contained in this other existing statute applies to violations of an injunction, actual acts of unfair competition, or both. Before this bill is passed, its relationship to section 3370.1, and the effect of each should be clarified.

There are a multitude of statutes spread throughout a number of codes dealing in various ways with unfair competition and false advertising. While this bill might not be the vehicle for reorganizing this body of law, it might be wise if all of the statutes were brought together in one code and rewritten to provide a more coherent statutory basis for acting in such cases.

AMENDED IN ASSEMBLY APRIL 26, 1976

CALIFORNIA LEGISLATURE—1975–76 REGULAR SESSION

ASSEMBLY BILL No. 3280

Introduced by Assemblymen Fazio, Kapiloff, Perino, Egeland, Hart, and Wornum

March 1, 1976

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 3370.2 to the Civil Code, relating to injunctions.

LEGISLATIVE COUNSEL'S DIGEST

AB 3280, as amended, Fazio (Jud.). Injunctions.

Under existing law, a person engaged in certain unfair trade practices *involving unfair competition* is liable for a civil penalty not to exceed $2,500 for each act. In addition, an injunction may be obtained to prohibit such acts; ~~or to prohibit certain nuisances~~.

Under existing law, a person violating such an injunction may be found in contempt by the court that issued the injunction and, among other things, may be liable for a penalty not to exceed $500 for each violation.

This bill would provide that a person who violates certain injunctions relating to ~~nuisances or~~ unfair trade practices *involving unfair competition* would be liable for a civil penalty not to exceed $6,000 for each violation. The amount of the penalty would be set by the court in accordance with specified criteria. An action to recover the penalty could be brought in specified courts, by the Attorney General, district attorneys, ~~county counsels,~~ or city attorneys. The bill provides

for the payment of such penalty to the state, counties, or cities, or a combination, depending on who brought the action.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

~~Section~~ *SECTION 1. Section* 3370.2 is added to the Civil Code, to read:

~~(a)~~ *3370.2. (a)* Any person who intentionally violates any injunction *prohibiting unfair competition* issued pursuant to Section 3369 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) ; for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities , and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, ~~county counsel,~~ or any city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this

section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney ~~or county counsel,~~ the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

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ASSEMBLY THIRD READING

AB 3280 (Fazio) As Amended. 26 April 1976

COMMITTEE	VOTE	COMMITTEE	VOTE
JUD.	6-0		
Ayes:		Ayes:	
Nays:		Nays:	

DIGEST

Under existing law, there are two basic statutes governing the issuance of injunctions in cases of unfair competition and false advertising. The first is contained in the Civil Code and covers all forms of unfair competition including false advertising. The second is contained in the Business and Professions Code and is limited to false advertising. This latter provision is followed by another section which provides for a $6,000 penalty whenever an injunction is violated. The Civil Code injunction provision is not reinforced by a similar penalty provision.

This bill adds a penalty provision to the Civil Code. It is identical to that contained in the Business and Professions Code. It provides that whenever anyone intentionally violates an injunction, that person shall be liable for a civil penalty of up to $6,000 for each violation. If the violation is continuing, each day is to constitute a separate violation.

FISCAL EFFECT

None.

COMMENTS

None.

AB 3280 (Fazio)
As amended April 26
Civil Code

FILE COPY

AB 3280

UNFAIR COMPETITION
-CIVIL PENALTIES-

HISTORY

Source: Consumer Protection Council of the Calif. District Attorneys Ass'n.

Prior Legislation: None

Support: Calif. Peace Officers Ass'n.; Attorney General; Dept. of Consumer Affairs; San Bernardino County

Opposition: No Known

DIGEST

Prescribes a maximum civil penalty of $6,000 for each intentional violation of an injunction prohibiting unfair competition. Provides that each day of a continuing violation constitutes a separate violation.

Requires a court, in determining the amount of the penalty, to consider all relevant circumstances, including, but not limited to, the following:

(1) The extent of the harm caused by the violation.

(2) The nature and persistence of the conduct.

(3) The length of time over which the conduct occurred.

(4) The assets, liabilities, and net worth of the defendant.

(More)

(5) Any corrective action taken by the defendant.

Requires the civil penalty to be assessed and recovered in a civil action brought in the name of the people of the state by a public prosecutor, and prescribes the following rules to govern distribution of the penalty:

(1) If the action is brought by the Attorney General, 1/2 is paid to the county in which the judgment was entered, and 1/2 to the state.

(2) If brought by a district attorney, the entire penalty is paid to the county in which the judgment was entered.

(3) If brought by a city attorney or city prosecutor, 1/2 is paid to the county in which the judgment was entered, and 1/2 to the city.

PURPOSE

Permit the imposition of a maximum civil penalty of $6,000 for intentional violations of injunctions against unfair competition.

COMMENT

1. Section 3369 of the Civil Code permits the issuance of an injunction against acts of unfair competition. Although no penalty is prescribed for the violation of such an injunction, as such, Section 3370.1 of the Civil Code does prescribe a civil penalty ($2,500) for acts of unfair competition.

   This bill would permit the assessment of a civil penalty up to $6,000 for a violation of

(More)

such an injunction.

2. Section 17535 of the Business and Professions Code permits the issuance of an injunction against acts of false advertising. Section 17535.5 permits the imposition of a civil penalty of not more than $6,000 for each intentional violation of such an injunction.

The language of this bill is identical to that of Section 17535.5. The bill would afford the same sanction for violations of injunctions issued pursuant to Section 3369 of the Civil Code as Section 17535.5 affords for violations of injunctions issued pursuant to Section 17535 of the Business & Professions Code.

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Analyst: Sandra Thompson
Bus. Ph: 322-4292
Home Ph: 443-6287

ENROLLED BILL REPORT

AGENCY	BILL NUMBER
Agriculture and Services	AB 3280
DEPARTMENT, BOARD OR COMMISSION	AUTHOR
Department of Consumer Affairs	Fazio

SUBJECT: UNFAIR COMPETITION: PENALTIES

HISTORY, SPONSORSHIP AND RELATED LEGISLATION

This bill was introduced at the request of Gordon Bowley, Deputy District Attorney, Consumer Fraud Division, Sacramento County, to provide a meaningful deterrent effect for the violation of an injunction issued pursuant to Section 3369 of the Civil Code. AB 3280 provides for a potential maximum penalty of $6,000 would make it unprofitable to continue the prohibited acts. If this proposed proceeding is instituted as a new cause of action, court costs may also be recovered.

A companion bill, AB 3279, amends Section 3369 of the Civil Code (injunctive relief) to provide for the appointment of a receiver or any other orders necessary to restore injured individuals to the status quo. This codifies case law relating to inherent equitable powers of a court. (People v. Superior Court, 107 Cal. Rptr. 192; McClenny v. Superior Court, 41 Cal. Rptr. 148, 149.) A third related bill, AB 3299, which granted a longer Statute of Limitations, was killed in the Assembly Judiciary Committee.

ANALYSIS

A. SPECIFIC FINDINGS

Under existing law, civil penalities for engaging in certain unfair trade practices may be assessed up to $2,500. Additionally, an injunction may be obtained under Section 3369 of the Civil Code or Section 17535 of the Business and Professions Code to prohibit such acts in the future.

Under existing law, a person violating an injunction issued pursuant to Section 3369 of the Civil Code may be found in contempt of court and, among other things, may be liable for a penalty not to exceed $500 for each violation.

AB 3280 provides for a potential maximum penalty of $6,000 for the violation of such an injunction. The bill also provides for precedence over all civil matters on the court calendar, except those granted equal precedence by existing law. The proposed section also correlates with the Business and Professions Code in providing a companion cause of action to Section 17535.5 of the Business and Professions Code. It is also in conformity with the penalties for violations of federal cease and desist orders.

Support: Consumer Protection Council of the California District Attorneys' Association

Attorney General

Department of Consumer Affairs

B. FISCAL IMPACT

None to this department.

C. VOTE

Assembly: 74-0

Senate: 38-0

D. RECOMMENDATION: Sign

This measure adds an important, more meaningful deterrent effect for the violation of injunctions issued pursuant to Section 3369 of the Civil Code. It will also provide for prompt action in view of the establishment of precedence over those civil matters which are not granted equal precedence by existing law.

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE September 14, 1976
BILL NO. AB 328	AUTHOR Fazio

Vote—Senate ____Unanimous

Ayes— 38
Noes— 0

Vote—Assembly ____Unanimous

Ayes— 74
Noes— 0

AB 328 - Fazio

Under existing law, a person engaged in certain unfair trade practices involving unfair competition is liable for a civil penalty not to exceed $2,500 for each act. In addition, an injunction may be obtained to prohibit such acts.

Under existing law, a person violating such an injunction may be found in contempt by the court that issued the injunction and, among other things, may be liable for a penalty not to exceed $500 for each violation.

This bill would provide that a person who violates certain injunctions relating to unfair trade practices involving unfair competition would be liable for a civil penalty not to exceed $6,000 for each violation. The amount of the penalty would be set by the court in accordance with specified criteria. An action to recover the penalty by the Attorney General, district attorneys, or city attorneys could be brought in specified courts. The bill provides for the payment of such penalty to the state, counties or cities or a combination depending on who brought the action.

SPONSOR

Sacramento County District Attorney's Office

SUPPORT

Consumer Affairs

Recommendation Approve	Legislative Secretary

OPPOSITION

No expressed opposition

STATE FISCAL IMPACT

None

CALIFORNIA LEGISLATURE

1975–76 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed Constitutional Amendments) Adopted in 1976

and

1969–1976 Statutory Record

DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

Ch. 1005 (AB 3279) Fazio. Judicial relief.

Existing law provides that any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction or may be liable for a specified civil penalty.

This bill, in addition, would expressly authorize a court, in the event of an act or proposed act of unfair competition, to make such orders or judgments, including the appointment of a receiver, necessary to prevent the use of any practice which constitutes unfair competition or necessary to restore to any person any money or property which may have been acquired by means of such unfair competition. It also would expressly provide that, unless otherwise provided, the remedies or penalties provided for such acts of unfair competition are cumulative to each other and to the remedies or penalties available under all other laws of this state.

Ch. 1006 (AB 3280) Fazio. Injunctions.

Under existing law, a person engaged in certain unfair trade practices involving unfair competition is liable for a civil penalty not to exceed $2,500 for each act. In addition, an injunction may be obtained to prohibit such acts.

Under existing law, a person violating such an injunction may be found in contempt by the court that issued the injunction and, among other things, may be liable for a penalty not to exceed $500 for each violation.

This bill would provide that a person who violates certain injunctions relating to unfair trade practices involving unfair competition would be liable for a civil penalty not to exceed $6,000 for each violation. The amount of the penalty would be set by the court in accordance with specified criteria. An action to recover the penalty could be brought in specified courts, by the Attorney General, district attorneys, or city attorneys. The bill provides for the payment of such penalty to the state, counties, or cities, or a combination, depending on who brought the action.

Ch. 1007 (AB 3385) McVittie. Livestock: California Beef Council.

Under existing law, the California Beef Council consists of 20 members and 20 alternates.

This bill would require the Director of Food and Agriculture to appoint 1 additional member and 1 additional alternate to represent the general public on the council.

Ch. 1008 (AB 3424) Wilson. Restraints.

Existing law authorizes the Attorney General to bring a civil action on behalf of the state or any of its political subdivisions or public agencies to recover damages resulting from a violation of the state and federal provisions prohibiting restraints on competition.

Existing law also specifies that, of the moneys received in payment of fines imposed for violation of prohibited restraints on competition, 75% is to be paid to the State Treasurer and 25% is to be paid to the treasurer of the county in which the prosecution is conducted.

This bill would revise such distribution of moneys by specifying that 100% is to be paid to the state if such moneys resulted from an action initiated and prosecuted by the Attorney General. Where the action is initiated and prosecuted by a district attorney then 100% is to be paid to the county in which such prosecution is conducted. Where such action was initiated and prosecuted jointly by the Attorney General and a district attorney the distribution is to be made as agreed upon by the Attorney General and such district attorney and as approved by the court.

Ch. 1009 (AB 3464) Hughes. Unemployment insurance: employer contributions.

The existing law includes an elective coverage agreement which provides for the payment into the Unemployment Fund of the additional cost of benefits paid under such election in lieu of contributions required of employers, as one of several factors used in determining the balance in the Unemployment Fund for purposes of determining employer contribution rates.

This bill would delete such elective coverage agreements as one of the factors used in determining the balance in the Unemployment Fund for purposes of determining employer contribution rates.

The bill would also appropriate $41,000 to the State Controller for specified reimburse-

223150 444

VOLUME 1

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1977–78 REGULAR SESSION
1977–78 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 6, 1976

Recessed December 8, 1976	Reconvened January 3, 1977
Recessed March 31, 1977	Reconvened April 11, 1977
Recessed June 24, 1977	Reconvened August 1, 1977
Recessed September 15, 1977	Reconvened January 3, 1978
Recessed March 16, 1978	Reconvened March 27, 1978
Recessed July 5, 1978	Reconvened August 7, 1978

Adjourned September 1, 1978

Adjourned Sine Die November 30, 1978

Legislative Days..... 256

HON. LEO T. McCARTHY
Speaker

HON. JOHN T. KNOX
Speaker pro Tempore

HON. VINCENT THOMAS
Assistant Speaker pro Tempore

HON. HOWARD L. BERMAN
Majority Floor Leader

HON. PAUL PRIOLO
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

A.B. No. 1280—Chel.

An act to add Chapter 5 (commencing with Section 17200) to Part 2 of Division 7 of the Business and Professions Code, and to amend Section 3369 of, and to repeal Sections 3370.1 and 3370.2 of, the Civil Code, relating to unfair competition.

1977

Mar. 31—Read first time.
April 1—Referred to Com. on JUD. To print.
April 7—From printer. May be heard in committee May 7.
May 19—From committee: Do pass. (Ayes 9. Noes 0.) (May 19.)
May 23—Read second time. To third reading.
May 26—Read third time, passed, and to Senate. (Ayes 75. Noes 0. Page 4001.)
May 27—In Senate. Read first time.
June 2—Referred to Com. on JUD.
June 3—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
June 15—From committee: Do pass. To Consent Calendar.
June 16—Read second time. To Consent Calendar.
June 20—Read third time, passed, and to Assembly. (Ayes 37. Noes 0. Page 3704.)
June 21—In Assembly. Concurrence in Senate amendments pending.
June 22—Senate amendments concurred in. To enrollment. (Ayes 72. Noes 0. Page 5464.)
June 28—Enrolled and to the Governor at 10 a.m.
July 7—Approved by the Governor.
July 8—Chaptered by Secretary of State—Chapter 299, Statutes of 1977.

A.B. No. 1281—Antonovich, Chel, Imbrecht, and Lanterman.

An act to amend Section 19501.5 of the Revenue and Taxation Code, relating to taxation.

1977

Mar. 31—Read first time.
April 1—Referred to Com. on REV. & TAX. To print.
April 5—From printer. May be heard in committee May 5.
May 16—In committee: Hearing postponed by committee.
June 13—In committee: Set, first hearing. Failed passage.

1978

Jan. 3—From committee without further action pursuant to Joint Rule 62(a).
Jan. 31—Died pursuant to Art. IV, Sec. 10(a) of the Constitution.

ASSEMBLY BILL No. 1280

Introduced by Assemblyman Chel

March 31, 1977

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Chapter 5 (commencing with Section 17200) to Part 2 of Division 7 of the Business and Professions Code, and to amend Section 3369 of, and to repeal Sections 3370.1 and 3370.2 of, the Civil Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

AB 1280, as introduced, Chel (Jud.). Unfair competition: injunctive relief.

Existing law provides for injunctive relief by any court of competent jurisdiction against any person performing or proposing to perform an act of unfair competition. The statutory provisions authorizing such relief are contained in the Civil Code.

Existing law also provides that a person who violates certain injunctions relating to unfair trade practices involving unfair competition is liable for a civil penalty not to exceed $6,000 for each violation. The amount of the penalty is set by the court in accordance with specified criteria. An action to recover the penalty may be brought in specified courts, by the Attorney General, district attorneys, or city attorneys. It also provides for the payment of such penalty to the state, counties, or cities, or a combination, depending on who brought the action.

This bill would transfer such provisions from the Civil Code to the Business and Professions Code.

It would additionally provide for a 4-year statute of limitations in which to commence a specified cause of action.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Chapter 5 (commencing with Section 17200) is added to Part 2 of Division 7 of the Business and Professions Code, to read:

CHAPTER 5. ENFORCEMENT

17200. As used in this chapter, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Section 17500 to Section 17535, inclusive.

17201. As used in this chapter, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

17202. Notwithstanding Section 3369 of the Civil Code, specific or preventive relief may be granted to enforce a penalty or forfeiture in a case of unfair competition.

17203. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this section, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of

the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

17205. Unless otherwise expressly provided, the remedies or penalties provided by this chapter and Section 3370.1 of the Civil Code are cumulative to each other and to the remedies or penalties available under all other laws of this state.

17206. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction. If brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the

amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, or any city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

17208. Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this section shall be revived by its enactment.

SEC. 2. Section 3369 of the Civil Code is amended to read:

3369. ~~1.~~ Neither specific nor preventive relief can be

granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or ~~unfair competition.~~ *as otherwise provided by law.*

~~2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this section, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.~~

~~3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act denounced by Business and Professions Code Sections 17500 to 17535, inclusive.~~

~~4. As used in this section, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.~~

~~5. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full/time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.~~

~~6. Unless otherwise expressly provided, the remedies or penalties provided by this section and Section 3370.1 are cumulative to each other and to the remedies or penalties available under all other laws of this state.~~

SEC. 3. Section 3370.1 of the Civil Code is repealed.

~~3370.1. Any person who violates any provision of this~~

~~chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction. If brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city of which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.~~

SEC. 4. Section 3370.2 of the Civil Code is repealed.

~~3370.2 (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 3369 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.~~

~~(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the~~

~~State of California by the Attorney General or by any district attorney, or any city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.~~

~~(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.~~

O

ASSEMBLY COMMITTEE ON JUDICIARY
JOHN J. MILLER, CHAIRMAN

Prepared by
T. Carroll

BILL DIGEST

BILL: AB 1280 HEARING DATE: 5/19/77

AUTHOR: Chel

SUBJECT: Unfair Competition

BILL DESCRIPTION:

The Civil Code contains a chapter (commencing with Section 3366) which contains the general principles governing injunctive relief. As injunctive relief became more prevalent in unfair competition cases, a process began of adding provisions to that chapter which related only to unfair competition cases. As a result of this process there is now a body of statutory law dealing solely with the enforcement of unfair competition laws which is located in the wrong part of the codes.

This bill transfers these provisions, without substantive change, from the Civil Code to a more appropriate location in the Business and Professions Code.

The bill also adds a four year statute of limitations which, while it appears duplicatory of existing law, should be added in order to clarify existing law.

ASSEMBLY THIRD READING

AB 1280 (Chel) As Introduced: 31 March 1977

ASSEMBLY ACTIONS:

COMMITTEE JUD. VOTE 9-0 COMMITTEE VOTE

Ayes: Ayes:

Nays: Nays:

DIGEST

This bill transfers unfair competition provisions, without substantive change, from the Civil Code to the Business and Professions Code.

The bill also adds a four-year statute of limitations relating to unfair competition actions, to clarify existing law.

FISCAL EFFECT

None

COMMENTS

According to the Assembly Judiciary Committee analysis, the Civil Code contains general principles governing injunctive relief. As injunctive relief became more prevalent in unfair competition cases, a process began of adding provisions to that chapter which related only to unfair competition cases. As a result of this process, there is now a body of statutory law dealing solely with the enforcement of unfair competition laws which is located in the wrong part of the codes.

SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

AB 1280

1. Source

(a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill? Please list the requestor's telephone number or, if unavailable, his address.

Assembly Judiciary STAFF
Tom Carroll

(b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

unknown

(c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

NO

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

Code adjustment

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

See attached Assembly analysis

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2046 AS SOON AS POSSIBLE. THE COMMITTEE STAFF CANNOT SET THE BILL FOR A HEARING UNTIL THIS FORM HAS BEEN RETURNED.

AMENDED IN SENATE JUNE 3, 1977

CALIFORNIA LEGISLATURE—1977–78 REGULAR SESSION

ASSEMBLY BILL No. 1280

Introduced by Assemblyman Chel

March 31, 1977

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Chapter 5 (commencing with Section 17200) to Part 2 of Division 7 of the Business and Professions Code, and to amend Section 3369 of, and to repeal Sections 3370.1 and 3370.2 of, the Civil Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

AB 1280, as amended, Chel (Jud.). Unfair competition: injunctive relief.

Existing law provides for injunctive relief by any court of competent jurisdiction against any person performing or proposing to perform an act of unfair competition. The statutory provisions authorizing such relief are contained in the Civil Code.

Existing law also provides that a person who violates certain injunctions relating to unfair trade practices involving unfair competition is liable for a civil penalty not to exceed $6,000 for each violation. The amount of the penalty is set by the court in accordance with specified criteria. An action to recover the penalty may be brought in specified courts, by the Attorney General, district attorneys, or city attorneys. It also provides for the payment of such penalty to the state, counties, or cities, or a combination, depending on who brought the action.

This bill would transfer such provisions from the Civil Code to the Business and Professions Code.

It would additionally provide for a 4-year statute of limitations in which to commence a specified cause of action.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Chapter 5 (commencing with Section 17200) is added to Part 2 of Division 7 of the Business and Professions Code, to read:

CHAPTER 5. ENFORCEMENT

17200. As used in this chapter, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by ~~Section 17500 to Section 17535, inclusive.~~ *Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.*

1720½ *1*. As used in this chapter, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.

17202. Notwithstanding Section 3369 of the Civil Code, specific or preventive relief may be granted to enforce a ~~penalty or forfeiture~~ *penalty, forfeiture, or penal law* in a case of unfair competition.

17203. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this ~~section~~ *chapter*, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of

such unfair competition.

17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

17205. Unless otherwise expressly provided, the remedies or penalties provided by this chapter ~~and Section 3370.1 of the Civil Code~~ are cumulative to each other and to the remedies or penalties available under all other laws of this state.

17206. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction. If brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued

pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, or any city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

17208. Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued. No cause of action

barred under existing law on the effective date of this section shall be revived by its enactment.

SEC. 2. Section 3369 of the Civil Code is amended to read:

3369. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or as otherwise provided by law.

SEC. 3. Section 3370.1 of the Civil Code is repealed.

SEC. 4. Section 3370.2 of the Civil Code is repealed.

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AB 1280 (Chel)
As amended June 3
Civil Code

UNFAIR COMPETITION

HISTORY

Source: Author

Prior Legislation: None

Support: Unknown

Opposition: No Known

PURPOSE

Existing statutory provisions governing injunctive relief in unfair competition cases are found in the Civil Code.

This bill would transfer those provisions to the Business and Professions Code, and add a four year statute of limitations.

The purpose is to place unfair competition statutes in the appropriate code.

COMMENT

1. Technical adjustment

This bill merely makes a technical code adjustment in the location of various statutes relating to unfair competition.

As injunctive relief became more common in unfair competition cases, a number of specific statutes relating solely to the enforcement of unfair competition laws were added to the Civil Code, which has general provisions governing injunctive relief. The specific provisions for enforcing unfair competition laws logically belong in the Business and Professions Code which contains the

(More)

basic unfair competition statutes.

DIGEST

See Legislative Counsel's Digest.

****

UNFINISHED BUSINESS

CONCURRENCE IN SENATE AMENDMENTS

AB 1280 (Chel) As Amended: 3 June 1977

ASSEMBLY VOTE 75-0 (26 May 1977) SENATE VOTE 37-0 (20 June 1977)

Original Committee Reference: JUD.

DIGEST

As it was passed by the Assembly, this bill transferred unfair competition provisions, without substantive change, from the Civil Code to the Business and Professions Code and added a four-year statute of limitations relating to unfair competition actions, to clarify existing law.

The Senate amendments make no substantive change in the bill.

FISCAL EFFECT

None

COMMENTS

According to the Senate Judiciary Committee analysis, this bill merely makes a technical code adjustment in the location of various statutes relating to unfair competition.

As injunctive relief became more common in unfair competition cases, a number of specific statutes relating solely to the enforcement of unfair competition laws were added to the Civil Code, which has general provisions governing injunctive relief. The specific provisions for enforcing unfair competition laws logically belong in the Business and Professions Code which contains the basic unfair competition statutes.

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE July 5, 1977
BILL NO. AB 1280	AUTHOR Chel

Vote—Senate ____Unanimous

Ayes— 37
Noes— 0

Vote—Assembly ____Unanimous

Ayes— 75
Noes— 0

AB 1280 - Chel

This bill would transfer certain Civil Code provision dealing with injunctive relief in cases involving unfair competition to the Business and Professions Co

It would additionally provide for a four-year statute of limitations in unfair compensation cases.

SPONSOR

Consultant to the Assembly Judiciary Committee

SUPPORT

Legal Affairs Unit

OPPOSITION

None

FISCAL IMPACT

None

Recommendation APPROVE	Legislative Secretary

OWEN K. KUNS
RAY H. WHITAKER
CHIEF DEPUTIES

STANLEY M. LOURIMORE
EDWARD F. NOWAK
EDWARD K. PURCELL

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JIMMIE WING
CHRISTOPHER ZIRKLE
DEPUTIES

Sacramento, California
June 30, 1977

Honorable Edmund G. Brown Jr.
Governor of California
Sacramento, California

Assembly Bill No. 1280

Dear Governor Brown:

Pursuant to your request we have reviewed the above-numbered bill authored by Assemblyman Chel and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By Ann MacKay
Principal Deputy

Two copies to Honorable Fred W. Chel
pursuant to Joint Rule 34.

ENROLLED BILL REPORT Due date: 6/29/77

AGENCY	BILL NUMBER
GOVERNOR'S OFFICE	AB 1280
DEPARTMENT, BOARD OR COMMISSION	**AUTHOR**
LEGAL AFFAIRS	Chel

Currently, the Civil Code contains several sections dealing with injunctive relief for false advertising and restraint of trade actions. In addition, the Business and Professions Code contains provisions dealing with unfair competition injunctions.

This bill would merely transfer the Civil Code provisions to be included under the relevant B & P Code sections. This would "clean up" the codes somewhat, by placing all relevant sections under one heading.

In addition, this bill places a four year statute of limitations on obtaining injunctive relief against duplicating the time period codified for restraint of trade actions. Questions concerning the point at which the statute of limitations begins will be left to judicial decision.

Legislative Counsel and the Assembly Judiciary Committee assert that no legal problems exist in this technical legislation.

RECOMMENDATION:

SIGN

ANALYST	DATE	LEGAL AFFAIRS SECRETARY	DATE
Gary E. Knell	6/27/77	J. Anthony Kline	

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COMMITTEES
JUDICIARY
REVENUE AND TAXATION
TRANSPORTATION

Assembly
California Legislature

FRED W. CHEL
MEMBER, CALIFORNIA LEGISLATURE
FIFTY-EIGHTH ASSEMBLY DISTRICT
(EAST LONG BEACH, LAKEWOOD, HAWAIIAN GARDENS AND SIGNAL HILL)

REPLY TO:
☐ DISTRICT OFFICE
☒ SACRAMENTO OFFICE

CHAIRMAN
SUBCOMMITTEE
ON
AGING

June 24, 1977

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol
Sacramento, California 95814

Re: Assembly Bill 1280

Dear Governor:

Assembly Bill 1280 is a technical measure which I introduced at the request of the Consultant to the Assembly's Judiciary Committee.

Essentially, the bill transfers various sections pertaining to unfair competition and injunctive relief from the Civil Code to the Business and Professions Code. This is better code practice since other provisions pertaining to unfair competition are also contained in the Business and Professions Code.

There has been no opposition to the bill, which passed both houses without negative vote.

Your favorable action is appreciated.

Very truly yours,

Fred W. Chel

FRED W. CHEL
Assemblyman, 58th District

FWC:cgw

CALIFORNIA LEGISLATURE

1977–78 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed Constitutional Amendments) Adopted in 1977

and

1969–1977 Statutory Record

DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

Ch. 297 (AB 1178) Hayden. Elections: ballot arguments.

Under existing law, arguments in favor of, and in opposition to local measures are printed in the ballot pamphlet.

This bill would require such arguments to be identified as such by specified titles.

Ch. 298 (AB 1205) Chappie. Property tax information.

Under existing property tax law, the county property tax assessor is required to maintain a list of property transfers in the county, other than transfers of undivided interests, which have occurred within the prior 2-year period, with specified information regarding such transfers, until May 1, 1980. Such list is required to be open to inspection by any assessee who has filed a timely application for reduction of his assessment before the local board of equalization or assessment appeals board, at the assessor's office upon payment of a specified fee.

This bill would exempt counties with a population of under 50,000 people from these provisions.

Ch. 299 (AB 1280) Chel. Unfair competition: injunctive relief.

Existing law provides for injunctive relief by any court of competent jurisdiction against any person performing or proposing to perform an act of unfair competition. The statutory provisions authorizing such relief are contained in the Civil Code.

Existing law also provides that a person who violates certain injunctions relating to unfair trade practices involving unfair competition is liable for a civil penalty not to exceed $6,000 for each violation. The amount of the penalty is set by the court in accordance with specified criteria. An action to recover the penalty may be brought in specified courts, by the Attorney General, district attorneys, or city attorneys. It also provides for the payment of such penalty to the state, counties, or cities, or a combination, depending on who brought the action.

This bill would transfer such provisions from the Civil Code to the Business and Professions Code.

It would additionally provide for a 4-year statute of limitations in which to commence a specified cause of action.

Ch. 300 (AB 1729) Maddy. School buildings: Field Act.

Currently, the law prohibits, with certain exceptions, the use, after June 30, 1975, of school buildings which do not conform to the structural standards of the so-called Field Act.

This bill would permit the continued use of a converted barracks building for classroom facilities of the Planada Elementary School District until the completion of replacement facilities, or until March 1, 1978, whichever occurs first, and would exempt the building from provisions of the so-called Field Act during the period of such continued use.

This bill would take effect immediately as an urgency statute.

Ch. 301 (AB 1926) Lehman. School facilities: leases; maximum revenue limits.

Under existing law, school districts may enter lease agreements for real property and buildings to be used by the district. The district must obtain voter approval therefor and must enter into the lease-purchase agreement within 3 years after voters of the district have approved the tax increase.

This bill, which would apply only to the Clovis Unified School District, would make an exception to the calling and holding of an election for voter approval of such lease agreements for the lease or lease-purchase of athletic, physical education, and cultural facilities due to unique specified circumstances.

This bill would remain in effect for 3 years after the effective date of this act, and as of that date would be repealed.

This bill would take effect immediately as an urgency statute.

Ch. 302 (AB 1952) Keene. School buildings: Field Act.

Currently, the law prohibits, with certain exceptions, the use, after June 30, 1975, of school buildings which do not conform to the structural standards of the so-called Field Act.

An exception exists in the case of a school district which has let a contract for the

VOLUME 1

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1979–80 REGULAR SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 4, 1978

Recessed December 5, 1978	Reconvened January 2, 1979
Recessed April 5, 1979	Reconvened April 16, 1979
Recessed July 20, 1979	Reconvened August 20, 1979
Recessed September 14, 1979	Reconvened January 7, 1980
Recessed March 27, 1980	Reconvened April 7, 1980
Recessed July 16, 1980	Reconvened August 18, 1980

Adjourned August 31, 1980

Adjourned Sine Die November 30, 1980

Legislative Days..... 251

HON. LEO T. McCARTHY
Speaker

HON. JOHN T. KNOX
Speaker pro Tempore

HON. TOM BANE
Assistant Speaker pro Tempore

HON. WILLIE L. BROWN JR.
Majority Floor Leader

HON. CAROL HALLETT
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk

A.B. No. 1416—Maxine Waters.

An act to amend Sections 17206, 17207, 17535.5, and 17536 of, and to add Section 17201.5 and 17506.5 to, the Business and Professions Code, relating to consumer affairs, and making an appropriation therefor.

1979

Mar. 28—Read first time.
Mar. 29—Referred to Com. on L., E., & C.A. To print.
Mar. 31—From printer. May be heard in committee April 30.
May 3—From committee: Do pass, and re-refer to Com. on W. & M. Re-referred to Com. on W. & M. (Ayes 11. Noes 0.) (May 1.)
June 13—From committee: Do pass. To Consent Calendar. (June 12.)
June 14—Read second time. To Consent Calendar.
June 19—Read third time, passed, and to Senate. (Ayes 77. Noes 0. Page 6839.)
June 19—In Senate. Read first time.
June 27—Referred to Com. on B. & P.
July 9—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on B. & P.
July 18—From committee: Do pass, and re-refer to Com. on FIN. Re-referred to Com. on FIN. (Ayes 5. Noes 0.)
Aug. 23—In committee: Hearing postponed by committee.
Aug. 30—From committee: Do pass. To Consent Calendar.
Aug. 31—Read second time. To Consent Calendar.
Sept. 5—Read third time, passed, and to Assembly. (Ayes 40. Noes 0. Page 7147.)
Sept. 5—In Assembly. Concurrence in Senate amendments pending. Ordered to Special Consent Calendar.
Sept. 10—Senate amendments concurred in. To enrollment. (Ayes 79. Noes 0. Page 9505.)
Sept. 11—Enrolled and to the Governor at 1 p.m.
Sept. 21—Approved by the Governor.
Sept. 22—Chaptered by Secretary of State—Chapter 897, Statutes of 1979.

A.B. No. 1417—Felando and Cline.

An act to add Article 1 (commencing with Section 18600) to Chapter 9 of Part 6 of Division 9 of the Welfare and Institutions Code, relating to public social services.

1979

Mar. 28—Read first time.
Mar. 29—Referred to Com. on HUMAN RES. To print.
Mar. 30—From printer. May be heard in committee April 29.
April 30—From committee chairman, with author's amendments: Amend, and re-refer to Com. on HUMAN RES. Read second time and amended.
May 1—Re-referred to Com. on HUMAN RES.
May 8—From committee: Amend, and do pass as amended, and re-refer to Com. on W. & M. (Ayes 6. Noes 0.) (May 1.)
May 9—Read second time and amended.
May 14—Re-referred to Com. on W. & M.
June 11—From committee chairman, with author's amendments: Amend, and re-refer to Com. on W. & M. Read second time and amended.
June 12—Re-referred to Com. on W. & M.
June 12—In committee: Set, first hearing. Referred to W. & M. suspense file. (Ayes 15. Noes 0.)
June 20—In committee: Set, second hearing.
June 20—From committee: Amend, and re-refer to Com. on W. & M. (Ayes 15. Noes 0.) (June 12.)
June 21—Read second time and amended.
June 25—Re-referred to Com. on W. & M.

1980

Jan. 30—From committee: Filed with the Chief Clerk pursuant to Joint Rule 56. Died pursuant to Art. IV, Sec. 10(a) of the Constitution.

ASSEMBLY BILL No. 1416

Introduced by Assemblywoman Maxine Waters

March 28, 1979

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER AFFAIRS

An act to amend Sections 17206, 17207, 17535.5, and 17536 of, and to add Sections 17201.5 and 17506.5 to, the Business and Professions Code, relating to consumer affairs, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1416, as introduced, M. Waters (L., E., & C.A.). Consumer affairs.

Existing law provides that if a civil action for unlawful advertising is brought at the request of a board within the Department of Consumer Affairs, then the reasonable expenses incurred by the board in the investigation and prosecution of the action shall be paid, as specified, out of the civil penalty collected.

This bill would provide that where a civil action is brought for (1) unlawful advertising, (2) violation of an injunction prohibiting unlawful advertising, (3) unfair competition, or (4) violation of an injunction prohibiting unfair competition, at the request of a board within the Department of Consumer Affairs or at the request of a local consumer affairs agency, then the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action shall be paid, as specified, out of the civil penalty collected.

Vote: majority. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

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

SECTION 1. Section 17201.5 is added to the Business and Professions Code, to read:

17201.5. As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. *(a)* Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction.

(b) If *the action is* brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local

consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

SEC. 3. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, or any city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those

matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

SEC. 4. Section 17506.5 is added to the Business and Professions Code, to read:

17506.5. As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

SEC. 5. Section 17535.5 of the Business and Professions Code is amended to read:

17535.5. (a) Any person who intentionally violates

any injunction issued pursuant to Section 17535 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the

reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

SEC. 6. Section 17536 of the Business and Professions Code is amended to read:

17536. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs *or a local consumer affairs agency*, the court shall determine the reasonable expenses incurred by the board *or local agency* in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in

Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. *The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.*

~~As used in this subdivision, "board" includes commission, bureau, division, and other similarly constituted agency.~~

(d) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

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ASSEMBLY COMMITTEE ON LABOR, EMPLOYMENT, & CONSUMER AFFAIRS
Bill Lockyer, Chairman

HEARING DATE: May 1, 1979

BILL: AB 1416

AUTHOR: Maxine Waters

SUBJECT: Reimbursement for Investigations of Unfair Business Practices

BACKGROUND

The Business and Professions Code prohibits certain unfair business practices and activities. Among these are unfair competition and false advertising. Unfair competition is defined in part as "unlawfu unfair, or fraudulent business practice; this has been interpreted to mean "on-going wrongful business conduct in whatever context such activity may occur". Barquis v. Merchants Collection Associatio of Oakland (1972) 101 Cal. Reporter 745. False advertising is define in part as making a representation, in the course of conducting a business transaction, which is "known...to be untrue or misleading" or "with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated" (B & P Code, Sec. 17500).

Violation of these provisions is to be pursued by the Attorney Genera a district attorney, or a city prosecutor. Under normal procedures, an injunction of the illegal activity would be sought and a penalty levied; the law specifies a $2,500 fine for the initial violation, and a $6,000 fine for violation of an injunction. In most cases, the fine is divided between the state and county if the case is filed by the Attorney General, retained in whole by the county if filed by the district attorney, or divided between city and county if filed by a city prosecutor. There is one exception to the fine distribution: if an initial action against false advertising is pursued upon request of a board within the Department of Consumer Affairs, the board is entitled to reimbursement from the penalty for expenses incurred in investigating the case.

BILL

AB 1416 provides that boards within the Department of Consumer Affairs and local consumer protection agencies are entitled to reimbursement for investigative expenses when any action relating to false advertising, violation of an injunction against false advertising, unfair competition, or violation of an injunction against unfair competition, is successfully pursued upor the request of the board or agency.

ANALYSIS

1. This bill is one of a number of proposals being made to provide some additional funding sources for local consumer protection agencies in the wake of Proposition 13. It creates no new manner of raising revenues but only redistributes among government agencies funds derived from penalties imposed for the violators of law.

2. Consumer agencies and regulatory boards are often the first to discover false advertising or unfair competition practices, through complaints received from consumers or regular monitoring of business activities. Personnel from these agencies collect evidence needed for a case, then turn it over to the Attorney General or district attorney for prosecution. The prosecutors save themslves staff time and expense by using the evidence gathered by another agency, but do not regularly reimburse that agency for the costs it has incurred in preparing the case. It seems fair that they do so. The amount to be received would be determined by the court.

3. District Attorneys sometimes agree that the evidence they receiv from boards or consumer agencies is flawed or inadmissible, gathered by improper means or not sufficient to establish a case. They then have to send out their own personnel to re-investigate. To the exte that the evidence gathered by the consumer group or board is useless for court purposes, the reimbursement should be denied. That may inspire local agencies and the Department of Consumer Affairs to sharpen the skills and knowledge of the investigators in the Rules of Evidence.

4. Historically, there is some indication that district attorneys do indicate a willingness to reimburse agencies for their help, but fail to do so when the bookkeeping is done. With all gover ment agencies pressed for money nowadays, it's unlikely that such reimbursements would ever be made without specific legislation to that effect.

SUPPORT:

OPPOSE:

Consultant: Greg Schmidt
(mh)

ANALYSIS OF ASSEMBLY BILL NO. 1416 (Maxine Waters)

1979-80 Session

Fiscal Effect:

Cost: None.

Revenue: State: Possible minor increases to various consumer affairs special funds.

Local: Possible minor reduction in penalty revenues as well as transfer of existing revenues between local agencies.

Analysis:

This bill would broaden provisions related to the payment of expenses incurred by state and local consumer affairs agencies in investigating and prosecuting unfair business and advertising practices. Specifically, any board within the Department of Consumer Affairs or any local consumer affairs agency which initiated an action against a business engaged in unfair business practices, as specified, could recover its expenses from any penalties assessed upon the successful prosecution of the case. The court would be required to determine the expenses incurred by the particular consumer affairs board or agency which would be eligible for reimbursement.

Because boards within the Department of Consumer Affairs would be able to recover their expenses for investigation and prosecution, some of the penalty revenues which now accrue to local agencies would instead accrue to the state. Thus, local revenues could decline by an undetermined but probably minor amount, while state revenues would increase by the same amount. Also, because local consumer

agencies' expenses would be reimbursed from penalty fees and such funds would be deposited in the general fund of the municipality funding the agency, a minor shift of penalty revenue from counties to cities could occur.

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WAYS AND MEANS STAFF ANALYSIS

BILL NUMBER AB 1416 AUTHOR M. Waters AMENDED -0- ITEM 57

INDEX Consumer Affairs POLICY COMMITTEE Labor, Employment and Consumer Affairs CONSULTANT Sharpless

SUBJECT: Reimbursement for Investigation of Unfair Business Practices

FISCAL SUMMARY:	FUND (G,S,N,B, F, or L)	1978/79 FY	1979/80 FY	1980/81 FY
State Cost: None.				
State Revenue Gain: Redistribution to various special funds within Consumer Affairs.	S		Minor	
Local Cost: None				
Local Revenue Gain: Redistribution of penalty fines.			Minor	

Urgency: Yes // No /x/

SUMMARY:

AB 1416 provides for boards within the Department of Consumer Affairs and local consumer protection agencies to share in penalties collected when at the request of a board or agency an action relating to false advertising, violation of an injunction against false advertising, unfair competition or violation of an injunction against unfair competition is successfully pursued by the Attorney General, a district attorney or a city prosecutor.

COMMENTS:

1. This bill could create additional revenue sources for local consumer protection agencies which are suffering from the effects of Proposition 13. While the bill will allow additional revenues to be collected by local consumer agencies, it does not impose any new revenue requirements but rather redistributes, among government agencies, funds already derived from penalties imposed for violators of law.

2. Proponents argue that agencies who investigate a case and turn evidence over to the Attorney General or a district attorney should be reimbursed for their cost. The amount to be reimbursed to the boards and agencies will be determined by the court.

FISCAL IMPACT:

No State or local cost. Possible increase to special funds attributed to redistribution of penalty funds. Potential increase in revenues to local consumer protection agencies resulting from redistribution of fines which will result in a commensurate reduction, although minor, in revenues to district attorneys and city prosecutors.

ANALYSIS:

Violation of the provisions regarding unfair competition and false advertising is to be pursued by the Attorney General, a district attorney or a city prosecutor. Typically in such cases, an injunction of the illegal activity is sought and a penalty levied. Fines are $2,500 for an initial violation and $6,000 for violation of an injunction. Currently, the law provides that the fine be divided between the State and county if the case is filed by the Attorney General, retained by the county if filed by the district attorney or divided between the city and county if filed by a city prosecutor. In addition to this distribution formula, however, a board may receive reimbursement from this penalty for expenses incurred in investigating a case, if the initial action taken in a false advertising case was done at the request of the board.

AB 1416 provides that boards within the Department of Consumer Affairs and local consume protection agencies are entitled to reimbursement for investigation and prosecution ex penses when any action relating to false advertising, violation of an injunction agains false advertising, unfair competition or violation against unfair competition is successfully pursued by the Attorney General, a district attorney or a city prosecutor. The court is to determine what "reasonable expenses" are to be returned to the boards and local consumer agencies.

RECOMMENDATION:
Approve.

jl

AMENDED IN SENATE JULY 9, 1979

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

ASSEMBLY BILL No. 1416

Introduced by Assemblywoman Maxine Waters

March 28, 1979

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER AFFAIRS

An act to amend Sections 17206, 17207, 17535.5, and 17536 of, and to add Sections 17201.5 and 17506.5 to, the Business and Professions Code, relating to consumer affairs, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1416, as amended, M. Waters (L., E., & C.A.). Consumer affairs.

Existing law provides that if a civil action for unlawful advertising is brought at the request of a board within the Department of Consumer Affairs, then the reasonable expenses incurred by the board in the investigation and prosecution of the action shall be paid, as specified, out of the civil penalty collected.

This bill would provide that where a civil action is brought for (1) unlawful advertising, (2) violation of an injunction prohibiting unlawful advertising, (3) unfair competition, or (4) violation of an injunction prohibiting unfair competition, at the request of a board within the Department of Consumer Affairs or at the request of a local consumer affairs agency, then the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action shall

be paid, as specified, out of the civil penalty collected.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 17201.5 is added to the Business and Professions Code, to read:

17201.5. As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality *or county* which funds the local agency.

SEC. 3. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, or any city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to

recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality *or county* which funds the local agency.

SEC. 4. Section 17506.5 is added to the Business and Professions Code, to read:

17506.5. As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

SEC. 5. Section 17535.5 of the Business and

Professions Code is amended to read:

17535.5. (a) Any person who intentionally violates any injunction issued pursuant to Section 17535 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board

within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality *or county* which funds the local agency.

SEC. 6. Section 17536 of the Business and Professions Code is amended to read:

17536. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses

incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(d) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

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MS. Walsh

BILL NO.: AB 1416

SENATE COMMITTEE ON BUSINESS AND PROFESSIONS
BILL ANALYSIS WORK SHEET

We would appreciate any assistance you can give in providing the information requested below. If you or the bill's sponsor have on hand background materials, please attach them to this form and forward to the committee consultant at least 10 days prior to the hearing date.

1. HEARING THE BILL:

   Give requested or anticipated date for hearing bill. July 11

2. SOURCE OF THE MEASURE:
   (Briefly stated)

   a. What person, organization or governmental entity requested introduction?
      California Consumer Affairs Assn

   b. Has a similar bill been introduced this session or previously? If so, please identify the bill number, author and session.
      No

3. PURPOSE OF THE BILL:

   a. Problem or deficiency in the present law which the bill addresses
      Existing law permits boards within the Dept. of Consumer Affairs who request civil actions for unlawful advertising to recover their investigative and prosecution expenses from civil penalties collected. This bill extends that right to local consumer agencies and expands the actions covered to unfair competition an injunction violations of prohibitions on unlawful advertising and unfair competition.

4. BACKGROUND INFORMATION:

   a. Legal, social, economic or other.
      Because of budget constraints imposed by Prop. 13, many cities and counties are decreasing appropriations to local consumer agencies. The provisions of AB 1416 will provide substitute funding for the agencies at no cost to the state, counties or cities.

   b. Groups supporting the bill.
      Dept. of Consumer Affairs
      California Consumer Affairs Assn.

   c. Groups opposing the bill.
      None

5. Who in your office should we contact if we have questions?

   Burt McChesney

Please return to: Senate Committee on Business & Professions
Room 4032, State Capitol
Phone:

7/11/79

SENATE COMMITTEE ON
BUSINESS & PROFESSIONS

Staff Analysis of AB 1416 (M.Waters)
As Amended July 9, 1979

AB 1416 FINANCE YES

HISTORY: Assembly Bill 1416 was introduced at the request of the Consumer Affairs Association. It passed the Assembly on Consent.

BACKGROUND: The Attorney General, district attorneys, and city prosecutors may bring action against individuals or firms engaged in practices that constitute unfair competition or false advertising. Similarly, action can be brought on grounds of violation of an injunction to prohibit such activities. Successful prosecutions normally bring a fine of $2,500 for a first time offender, and $6,000 for violation of an injunction.

Under current law, this money is divided between the state, counties, and cities, depending on who brought the case and where the decision was entered. If the Attorney General prosecutes, the money is divided evenly between the state and the county where decision was entered. If a city prosecutor brings the action, the money is divided between that city and the county where the decision was entered. If a district attorney prosecutes, all the money goes to the county.

Often the first official knowledge of a violation of the unfair competition or false advertsing laws occurs within a board of the State Consumer Affairs Department, or a county or city consumer protection agency. Investigation and evidence gathering leading to prosecution is also carried out by these units. Under current law, with the exception of the Consumer Affairs Department in the case of false advertising only, there is no provision for reimbursement to consumer agencies for costs involved in their investigative work.

PROPOSED LEGISLATION: AB 1416 mandates that the courts shall reimburse any board within the Department of Consumer Affairs, or the funding jurisdiction for local

Cont'd . . . . .

consumer protection agencies, when such agency requests a successful prosecution for any of the four violations. The reimbursement is to cover costs involved to the agency in investigating and helping to prosecute the case. This appropriation shall be made prior to the distribution of funds according to the standard formula.

COMMENTS: This legislation is aimed at revitalizing consumer protection units investigative efforts in the wake of Proposition 13 fiscal restrictions.

POSITIONS:

Support - California Consumer Affairs Association
Department of Consumer Affairs

There is no known opposition.

KDB:nw

POSITIONS

DATE TYPED: 8-6-79

SOURCE: California Consumers Affairs Assn.

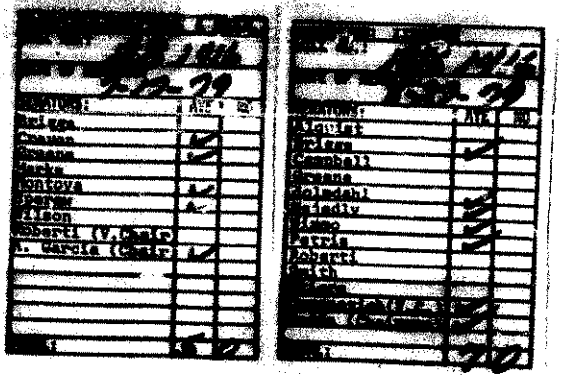
SUPPORT: Department of Consumer Affairs

BILL NUMBER: AB 1416

AUTHOR: M. Waters

AMENDED COPY: 7-9-79

Committee Votes:



Senate Floor Vote:

MAJORITY VOTE

CONSENT CALENDAR

Assembly Floor Vote: 77-0, pg. 6839 (6-19-7

DIGEST

AB 1416 provides that boards within the Department of Consumer Affairs and local consumer protection agencies are entitled to reimbursement for investigation and prosecution expenses when any action relating to false advertising, violation of an injunction against false advertising unfair competition or violation against unfair competition is successfully pursued by the Attorney General, a district attorney or a city prosecutor. The court is to determine what "reasonable expenses" are to be returned to the boards and local consumer agencies.

FISCAL EFFECT:

Appropriation: Yes Fiscal Committee: Yes Local: No

Because boards within the Department of Consumer Affairs would be able to recover their expenses for investigation and prosecution, some of the penalty revenues which now accrue to local agencies would instead accrue to the state. Thus, local revenues could decline by an undetermined but probably minor amount, while state revenues would increase by the same amount.

COMMENTS:

The Attorney General, district attorneys, and city prosecutors may bring action against individuals or firms engaged in practices that constitute unfair competition or false advertising. Similarly, action can be brought on grounds of violation of an injunction to prohibit such activities. Successful prosecutions normally bring a fine of $2,500 for a first time offender, and $6,000 for violation of an injunction.

Under current law, this money is divided between the state, counties, and cities, depending on who brought the case and where the decision was entered. If the Attorney General prosecutes, the money is divided evenly between the state and the county where decision was entered. If a city prosecutor brings the action, the money is divided between that city and the county where the decision was entered. If a district attorney prosecutes, all the money goes to the county.

- NEXT PAGE -

Often the first official knowledge of a violation of the unfair competition or false advertising laws occurs within a board of the State Consumer Affairs Department, or a county or city consumer protection agency. Investigation and evidence-gathering leading to prosecution is also carried out by these units. Under current law, with the exception of the Consumer Affairs Department in the case of false advertising only, there is no provision for reimbursement to consumer agencies for costs involved in their investigative work.

AB 1416 passed the Assembly on the Consent Calendar.

ANALYSIS OF ASSEMBLY BILL NO. 1416 (Maxine Waters)
As Amended in Senate July 9, 1979
1979-80 Session

Fiscal Effect:

Cost: None.

Revenue: State: Possible minor increases to various consumer affairs special funds.

Local: Possible minor increase in penalty revenues as well as transfer of existing revenues between local agencies.

Analysis:

This bill broadens provisions relating to the payment of expenses incurred by state and local consumer affairs agencies in investigating and prosecuting unfair business and advertising practices. Specifically, any board within the Department of Consumer Affairs or any local consumer affairs agency which initiated an action against a business engaged in unfair business practices, as specified, could recover its expenses from any penalties assessed upon the successful prosecution of the case. The court would be required to determine the expenses incurred by the particular consumer affairs board or agency which would be eligible for reimbursement.

Because boards within the Department of Consumer Affairs would be able to recover their expenses for investigation and prosecution, some of the penalty revenues which now accrue to local agencies would instead accrue to the state. Thus, local revenues could decline by an undetermined but probably minor amount, while state revenues would increase by the same amount.

Similarly, cities which refer cases to counties for prosecution would be able to recover their investigation expenses. This would shift some penalty revenue from counties to cities. Because counties do not refer cases to cities, there would be no shift in the other direction. Thus, a minor shift of penalty revenue from counties to cities could occur.

Because this bill would expand the provisions under which both local and state consumer agencies could collect penalty revenues, an overall minor increase in both local and state revenues could occur in addition to increases resulting from any shift in revenue allocations.

85

~~SB 1~~

President & Members

Mr. ~~Chairman and Members~~:

AB 1416 was introduced at the request of the California Consumer Affairs Association and the Los Angeles County Department of Consumer Affairs. It requires reimbursements to local consumer agencies and boards within the Department of Consumer Affairs for the costs they incur in investigating cases of false advertising and unfair competition.

Let me emphasize that this involves no new expense to consumers or the general taxpaying public: It merely requires the redistribution of funds between government agencies in a manner that is just and totally justifiable.

Under current law, fines can be levied against individuals found guilty of engaging in unfair competition or false advertising. These cases are filed by public prosecutors -- the Attorney General, district attorneys, etc. -- who generally seek an injunction against the offender and the specified fine. ~~A first offender~~ can be fined up ~~to $2500; the violator of an injunction can be fined up to $6000~~. This fine money is now divided between the state and county, held by the county, or divided between the county and city within which the violation occurred. Presumably, this money is used by the legal offices to defray expenses. Many of these cases are discovered and investigated by consumer agencies, who take staff time and effort to do what is essentially background work for the district attorney. It is only fair that they recover a piece of the fine to cover their costs.

Local consumer agencies have suffered greatly under Proposition 13. This is especially unfortunate because it's proven that they

spend in tax dollars. I believe we need to provide them with some support, particularly in these instances when they provide inexpensive auxiliary services to help law enforcement. This bill provides them with that support at no new cost to anyone.

I ask for an aye vote.

Consumer Affairs - Sponsor -

witness

Barry Hamilton - Consumer Affairs Assn

PREPARED BY: [redacted]niel Buntjer
445-4216 (work phone)
481-7188 (home phone)

ENROLLED BILL REPORT

AGENCY	BILL NUMBER
STATE AND CONSUMER SERVICES	AB 1416
DEPARTMENT, BOARD OR COMMISSION	AUTHOR
Department of Consumer Affairs	Waters

SUBJECT

Recoupment of costs of investigation and prosecution by boards within DCA and local consumer affairs agencies.

HISTORY, SPONSORSHIP AND RELATED LEGISLATION

The bill is sponsored by the Consumer Affairs Association. There is no related legislation.

Current law provides that if a civil action for false and misleading advertising is filed at the request of a board within the Department of Consumer Affairs ~~(DCA)~~, and civil penalties are levied, the board shall be reimbursed the reasonable expenses incurred in the investigation and prosecution of the action.

This bill would provide that where a civil action is brought for (1) unlawful advertising, (2) violation of an injunction prohibiting unlawful advertising, (3) unfair competion, or (4) violation of an injunction prohibiting unfair competition, at the request of a board within DCA or at the request of a local consumer affairs agency, then the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action shall be paid out of the civil penalty collected.

ANALYSIS

A. Specific Findings

We are advised that in the aftermath of Proposition 13 some six local consumer protection agencies went out of business and that others have been forced ~~to~~ curtail their activities. The primary purpose of this bill is to give local consumer protection agencies a needed source of revenue--a cut of civil penalties collected to offset costs of investigation and prosecution.

The bill would also increase the types of actions in which agencies in this Department could be reimbursed for costs incurred. In the past, boards have infrequently availed themselves of filings under false and misleading advertising provisions. The Bureaus of Home Furnishings and Automotive Repair have requested action under such section several times and the Board of Cosmetology on at least one occasion. In the future, however, there may be more agencies requesting prosecution under unfair business practices provisions as such provisions are much broader in scope than those prohibiting false and misleading advertising.

This bill is a strong consumer protection measure.

RECOMMENDATION:

DEPARTMENT DIRECTOR	DATE	AGENCY SECRETARY	DATE
[signature]	9-19-79	[signature]	9/20/79

B. Fiscal Impact

Undetermined savings from reimbursement for those agencies able to avail themselves of the provisions of this bill.

C. Support/Opposition

The Department of Consumer Affairs and San Francisco District Attorney's Office are in support.

There is no known opposition.

The vote was 79-0 in the Assembly and 40-0 in the Senate.

ENROLLED BILL REPORT

AGENCY	BILL NUMBER
GOVERNOR'S OFFICE	AB 1416
DEPARTMENT, BOARD OR COMMISSION: LEGAL AFFAIRS	AUTHOR: M. Waters

Existing law provides specified civil penalties for false advertising and unfair competition, and allocates the revenues derived from such penalties between the State and individual counties depending upon whether the action was handled by the Attorney General or a local district attorney.

This bill provides that the specific board within the Department of Consumer Affairs or the local consumer agency which initiated the action shall be reimbursed for its expenses before the remaining penalty revenues are allocated to the state or local general fund. The bill does not increase the initial civil fines themselves.

This bill was introduced in response to Proposition 13 to insure that state and local consumer agencies are [redacted] reimbursement for their costs. We defer to the Department of Finance since the bill deals entirely with distribution of public revenues, not substantive law or procedures.

RECOMMENDATION:

FOR INFORMATION ONLY

ANALYST	DATE	LEGAL AFFAIRS SECRETARY	DATE
Allen Sumner	9/19/7952	J. Anthony Kline	

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE 9/20/79
BILL NO. AB 1416	AUTHOR M. Waters

Vote—Senate ____Unanimous

Ayes— 40
Noes— 0

Vote—Assembly ____Unanimous

Ayes— 77
Noes— 0

AB 1416 -M. Waters Current law provides that if a civil action for false and misleading advertising is filed at the request of a board within the Department of Consumer Affairs, and civil penalties are levied, the board shall be reimbursed the reasonable expenses incurred in the investigation and prosecution of the action.

This bill would provide that where a civil action is brought for (1) unlawful advertising, (2) violation of an injunction prohibiting unlawful advertising, (3) unfair competition, or (4) violation of an injunction prohibiting unfair competition, at the request of a board within DCA or at the request of a local consumer affairs agency, then the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action shall be paid out of the civil penalty collected.

SPONSOR

Consumer Affairs Association

SUPPORT

Consumer Affairs

OPPOSITION

No known opposition

FISCAL IMPACT

None

Recommendation	Legislative Secretary
APPROVE	

ENROLLED BILL REPORT
DEPARTMENT OF FINANCE

Form DF-44D (Rev. 5/79 4M)

AUTHOR: Waters

BILL NUMBER: AB 1416 Ch 89

SUBJECT:

DATE LAST AMENDED: July 9, 1979

This bill would provide that where a civil action is brought for (1) unlawful advertising, (2) violation of an injunction prohibiting unlawful advertising, (3) unfair competion, or (4) violation of an injunction prohibiting unfair competition, at the request of a board within DCA or at the request of a local consumer affairs agency, then the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action shall be paid out of the civil penalty collected.

SUMMARY OF REASONS FOR SIGNATURE

This bill is a strong consumer protection measure. Its provisions provides a financial incentive to for the various State and local consumer protection agencies to bring more consumer protection lawsuits.

FISCAL SUMMARY

	1979-80	1980-81	1981-82	Fund
Consumer Affairs Various Boards (Revenue)	R Minor	R Minor	R Minor	various
Local Agencies (Revenue)	Minor	Minor	Minor	

SPONSORSHIP

San Francisco District Attorney's Office

ANALYSIS

A. Specific Findings

This bill would broaden provisions related to the payment of expenses incurred by State and local consumer affairs agencies in investigating and prosecuting unfair business and advertising practices. Specifically, any board within the Department of Consumer Affairs or any local consumer affairs agency which initiated an action against a business engaged in unfair business practices, as specified, could recover its expenses from any penalties assessed upon the successful prosecution of the case. The court would be required to determine the expenses incurred by the particular consumer affairs board or agency which would be eligible for reimbursement.

B. Fiscal Effect

Because boards within the Department of Consumer Affairs would be able to recover their expenses for investigation and prosecution, some of the penalty revenues which now accrue to local agencies would instead accrue to the State. Thus, local revenues would decline by an undetermined by probably minor amount, while State revenues would increase by the same amount. Also, because local consumer agencies' expenses would be reimbursed from penalty fees and such funds would be deposited

RECOMMENDATION	PRINCIPAL ANALYST	PROGRAM BUDGET MANAGER
SIGN THE BILL	A. Roxburgh	
DEPARTMENT REPRESENTATIVE	DATE	DIRECTOR
	9/20/79	DATE 9/22/79

B. Fiscal Effect (Continued)

in the general fund of the muncipality funding the agency, a minor shift of penalty revenue from counties to cities could occur.

Additionally, increased revenues may potentially result from the agencies ability to recover costs from penalty assessments.

Volume 2

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1979

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Special Election, November 6, 1979

General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature

1979–80 Regular Session

Compiled by
BION M. GREGORY
Legislative Counsel

65—3548

5465. It is the intent of the Legislature that programs serving children and adolescents shall be established under this chapter. Such programs shall follow the guidelines and principles set forth in this chapter and in addition shall meet the following criteria unique to the population to be served:

(a) The programs shall, to the maximum extent feasible, be designed so as to reduce the disruption and promote the reintegration of the family unit of which the child is a part.

(b) The programs shall have an education focus and shall demonstrate specific linkage with community education resources.

(c) The programs shall contain a specific followup component.

SEC. 9. Section 5466 is added to the Welfare and Institutions Code, to read:

5466. An interdepartmental coordinating group to be chaired by the Secretary of the Health and Welfare Agency shall be established to include at minimum the Directors of the State Departments of Mental Health, Rehabilitation, Transportation, Housing and Community Development, and Social Services and the Superintendent of Public Instruction or a designee of each of these officers, for coordinating the existing and ongoing efforts of each state department to enhance the effectiveness of the programs developed under this chapter and for advising the Legislature on future program development.

CHAPTER 897

An act to amend Sections 17206, 17207, 17535.5, and 17536 of, and to add Sections 17201.5 and 17506.5 to, the Business and Professions Code, relating to consumer affairs, and making an appropriation therefor.

[Approved by Governor September 21, 1979. Filed with Secretary of State September 22, 1979.]

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

SECTION 1. Section 17201.5 is added to the Business and Professions Code, to read:

17201.5. As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter

shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 3. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, or any city attorney in any court of competent

jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 4. Section 17506.5 is added to the Business and Professions Code, to read:

17506.5. As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

SEC. 5. Section 17535.5 of the Business and Professions Code is amended to read:

17535.5. (a) Any person who intentionally violates any injunction issued pursuant to Section 17535 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities and net worth of the person,

whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction within his jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 6. Section 17536 of the Business and Professions Code is amended to read:

17536. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of

the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(d) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

CHAPTER 898

An act to amend Section 146.5 of, to repeal and add Section 148 of, and to repeal Section 147 of, the Streets and Highways Code, relating to transit facilities.

[Approved by Governor September 21, 1979. Filed with Secretary of State September 22, 1979.]

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

SECTION 1. Section 146.5 of the Streets and Highways Code, as amended by Chapter 161 of the Statutes of 1979, is amended to read:

146.5. The department may construct, maintain, and operate fringe and transportation corridor parking facilities along the state highway system when such facilities would reduce motor vehicle congestion or improve highway safety. For the purposes of this code, such facilities shall be considered as part of the state highway and the department shall acquire the right-of-way necessary for such facilities in accordance with all of the laws and procedures applicable to other state highway projects.

The department may enter into agreements with other public agencies for the joint financing of such facilities. The rights and obligations of the department and other public agencies with respect to such fringe and transportation corridor parking facilities shall be determined by agreement.

Facilities estimated to cost thirty thousand dollars ($30,000) or more and located in an urbanized area shall be limited to such

CALIFORNIA LEGISLATURE

1979–80 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed Constitutional Amendments) Adopted in 1979

and

1979 Statutory Record

DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

at the time of execution, to orally inform the transferor of the right to cancel. The 90-day cancellation period runs from the date of compliance with such provisions.

This bill would delete the requirement for such oral notification.

(6) Existing law requires, upon cancellation of a life care contract, for all property transferred to the provider under such contract to be returned to the transferor, and existing law makes any attempted or actual transfer of such property to a third party during the 90-day cancellation period void as contrary to public policy.

This bill would authorize the deduction of a reasonable processing fee to cover costs.

The bill would make an actual transfer of property to a third party voidable, but not void, at the option of the transferor unless that transfer to a third party is to a bona fide purchaser without notice of the cancellation period. The bill would delete attempted transfer of such property from such provisions. The bill would require, with respect to real property, that the provider undertake to perform such other acts as are necessary to effect a restoration of such real property, or to effect title to such real property, to the transferor. The bill would also provide, for real property, that failure to record the notice of cancellation with the county recorder of the county in which such real property is located within the 90-day cancellation period would terminate the right of rescission.

(7) Existing law requires each provider, as defined, which is holding a certificate of authority to file an annual audit and make specified annual reports within 90 days after the end of the fiscal year of such provider.

This bill would require all providers, as defined, to file such audit and make such reports within 4 months after the end of their fiscal year.

(8) Existing law prohibits the design of, or use of, specified printed matter to be used to solicit agreements providing for a transfer of property conditioned upon a life care contract except as expressly provided.

This bill would delete from such prohibition the design of such printed matter, and change such provisions to prohibit use of such printed matter to solicit life care contracts, as defined.

Ch. 896 (AB 1320) Bates. Mental health: community residential treatment system programs.

Existing statutes provide for a community mental health residential treatment system, implemented with available county allocations or, as new moneys become available, by grants from the State Department of Mental Health. Approved system programs are incorporated into the county Short-Doyle plan.

This bill would provide that no local financial participation is required for the first year funding for such grants and subsequent years funding would be identical to the local financial participation for Short-Doyle programs.

Under existing law, community residential treatment programs are encouraged to use paraprofessionals where appropriate.

The bill would require the use of paraprofessionals and persons who have been consumers of mental health services, where appropriate, and would require each county to utilize available resources and facilities within the county prior to contracting with other providers.

The bill would also require the Director of Mental Health to appoint 3 persons with expertise in the provision of services to children and adolescents to assist the advisory committee that screens system proposals and would establish further guidelines for residential treatment programs serving children and adolescents.

The bill in addition would require an interdepartmental coordinating group to be established.

Ch. 897 (AB 1416) M. Waters. Consumer affairs.

Existing law provides that if a civil action for unlawful advertising is brought at the request of a board within the Department of Consumer Affairs, then the reasonable expenses incurred by the board in the investigation and prosecution of the action shall be paid, as specified, out of the civil penalty collected.

This bill would provide that where a civil action is brought for (1) unlawful advertising, (2) violation of an injunction prohibiting unlawful advertising, (3) unfair competition, or (4) violation of an injunction prohibiting unfair competition, at the request of a board within the Department of Consumer Affairs or at the request of a local consumer

affairs agency, then the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action shall be paid, as specified, out of the civil penalty collected.

Ch. 898 (SB 807) Montoya. Transportation: transit facilities.

Under existing law, the Department of Transportation is authorized to construct, maintain, and operate fringe and transportation corridor parking facilities that would reduce motor vehicle congestion or improve highway safety.

This bill would authorize the department to construct transit related highway facilities such as passenger benches and shelters along the state highway system.

The bill would require that such a parking or transit related facility be included by transportation planning agencies in a regional transportation improvement program if the facility would cost $30,000 or more and is located in an urbanized area. The bill would limit the amount of state funds appropriated for state highway construction that could be expended each year for transit related highway facilities to $1,000,000. For any such transit related highway facility costing more than $30,000, the state funds could only be used to match federal or local funds, or both.

The bill would make other related changes.

Ch. 899 (SB 715) Craven. Coastal zone: local coastal programs.

The California Coastal Act of 1976, generally, provides for the planning, and regulation of development, within the coastal zone, as defined, and requires each local government lying within the coastal zone to prepare a local coastal program for that portion of the coastal zone within its jurisdiction, in conformity with the act.

It prohibits the California Coastal Commission from certifying any such program which provides for a lesser degree of environmental protection than that provided by the plans and policies of any state regulatory agency.

This bill would, instead, prohibit the commission from certifying any such program which provides for a lesser degree of environmental protection than that provided by the plans and policies of any state regulatory agency that are formally adopted by such agency, are used in the regulatory program of such agency, and are legally enforceable. It would declare legislative intent as to sufficiency of local coastal programs certified by the commission.

Ch. 900 (AB 73) Lockyer. Municipal utility districts.

(1) Under existing law, the secretary of a municipal utility district is required to issue and to receive nomination papers and candidates' declaration of candidacy papers from persons seeking office to the board of directors of a municipal utility district.

This bill would require the appropriate county clerk to undertake such functions.

(2) Existing law provides election requirements and nomination procedures for candidates for the office of director of municipal utility districts containing a certain population and districts owning and operating electric distribution systems and containing a certain population.

This bill would provide that, in any such district, circulators of nomination papers must be residents of the ward in which they seek signatures and may obtain signatures from any registered voter residing within the ward.

(3) Under existing law, the board of directors of a municipal utility district may provide $50 compensation for attendance at meetings by members of the board, not to exceed 2 such paid meetings per month.

This bill would authorize a board having 7 members to authorize a maximum of 4 paid meetings per month.

(4) Existing law contains provisions applicable generally to all districts regarding the qualifications and submission of initiative and referendum measures.

This bill would specify that provisions governing initiative and referendum measures apply to municipal utility districts.

(5) The bill would provide that no appropriation or reimbursement is made to local agencies because of a specified reason.

Ch. 901 (AB 971) Alatorre. Public social services.

(1) Existing law requires certain recipients under the Aid to Families with Depend-

VOLUME 2

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1987–88 REGULAR SESSION
1987–88 FIRST EXTRAORDINARY SESSION

SENATE FINAL HISTORY

SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS AND SENATE RESOLUTIONS

CONVENED DECEMBER 6, 1986
ADJOURNED SINE DIE NOVEMBER 30, 1988

DAYS IN SESSION 253

CALENDAR DAYS 731

LT. GOVERNOR LEO T. McCARTHY
President of the Senate

SENATOR DAVID ROBERTI
President pro Tempore

Compiled Under the Direction of
DARRYL R. WHITE
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk

S.B. No. 2440—Alquist.

An act to add and repeal Sections 17204.5 and 17206.5 of the Business and Professions Code, relating to unfair competition.

1988

Feb. 18—Introduced. Read first time. To Com. on RLS. for assignment. To print.
Feb. 23—From print. May be acted upon on or after March 23.
Mar. 3—To Com. on JUD.
April 5—Set for hearing April 12.
April 11—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
April 14—From committee: Do pass, but first be re-referred to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 10. Noes 0. Page 5405.) Re-referred to Com. on APPR.
April 28—Set for hearing May 9.
May 5—From committee: Be placed on second reading file pursuant to Senate Rule 28.8
May 9—Read second time. To third reading.
May 19—Read third time. Passed. (Ayes 29. Noes 0. Page 5992.) To Assembly.
May 23—In Assembly. Read first time. Held at Desk.
May 27—To Com. on JUD.
June 9—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
June 16—From committee: Do pass as amended. To Consent Calendar.
June 20—Read second time. Amended. To second reading.
June 21—Read second time. To Consent Calendar.
June 23—Read third time. Passed. (Ayes 74. Noes 0. Page 8573.) To Senate.
June 23—In Senate. To unfinished business.
Aug. 1—Returned to Assembly for further action.
Aug. 1—In Assembly. Held at Desk.
Aug. 8—Action rescinded whereby bill passed and to Senate. Read third time. Amended. To third reading.
Aug. 10—Read third time. Passed. (Ayes 76. Noes 0. Page 9415.) To Senate.
Aug. 11—In Senate. To unfinished business.
Aug. 18—To Special Consent Calendar.
Aug. 23—Senate concurs in Assembly amendments. (Ayes 37. Noes 0. Page 7728.) To enrollment.
Sept. 2—Enrolled. To Governor at 11 a.m.
Sept. 9—Approved by Governor.
Sept. 9—Chaptered by Secretary of State. Chapter 790, Statutes of 1988.

S.B. No. 2441—Alquist.

An act to add Article 3.5 (commencing with Section 19152) to Chapter 2 of Part 3 of Division 13 of the Health and Safety Code, relating to seismic safety, and making an appropriation therefor.

1988

Feb. 18—Introduced. Read first time. To Com. on RLS. for assignment. To print.
Feb. 22—From print. May be acted upon on or after March 23.
Mar. 3—To Com. on H. & U.A.
Mar. 8—Set for hearing April 5.
April 5—From committee: That the bill be retained in committee, and that the subject matter be referred to the Committee on Rules for assignment to the proper committee for study.
Nov. 30—From committee without further action.

SB 2440 JAN 12 RECD

CITY OF SAN JOSE - MEMORANDUM

TO: GEORGIANA FLAHERTY

FROM: LEE A. VINOCOUR
Deputy City Attorney

SUBJECT: Proposed Amendment to Business and Professions Code § 17204 + 17206

DATE: December 21, 1987

APPROVED DATE

This memorandum responds to your request for additional information regarding sponsorship of legislation for the 1988-89 Legislative Session regarding unfair competition practices.

1. Need for the Bill

State law prohibits any unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising (Business and Professions Code § 17200 et seq.).

Any person who violates this law is liable for a civil penalty not to exceed $2,500 for each violation. Any person performing or proposing to perform an act of unfair competition may be enjoined. A violation of such injunction is punishable by a civil penalty not to exceed $6,000 for each violation. Currently, violations may only be prosecuted by the Attorney General, any district attorney, or any city attorney of a city having a population in excess of 750,000.

If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. San Jose's current population is approximately 719,000 and we are therefore unable to bring such actions under current law. In order to enable us to bring such suits, we are asking that the threshhold in § 17204 and § 17206, as indicated, be lowered to a number below 719,000. Any population figure below 719,000 would be acceptable to us.

2. Background Material

A copy of Business and Professional Code § 17200 et seq. is attached.

1028i/3159a/1

3. Costs Imposed by the Bill

The purpose in bringing forward this proposal is to provide authority for us to add an unfair competition practice assertion as a separate cause of action in those cases where we have filed litigation on other grounds. This will give us an additional ground upon which to base many of our lawsuits. This authority will not create a new or additional workload.

Yours truly,

JOAN R. GALLO
City Attorney

By: Lee A Vinocour
LEE A. VINOCOUR
Deputy City Attorney

LAV:vmm
Enclosure

SENATE BILL No. 2440

Introduced by Senator Alquist

February 18, 1988

An act to amend Section 17206 of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 2440, as introduced, Alquist. Unfair competition: prosecution.

Existing law provides that any person who violates specified provisions on unfair competition shall be liable for a civil penalty which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by, among others, any city attorney of a city having a population in excess of 750,000.

This bill would provide, instead, that an action shall be brought by any city attorney of a city having a population in excess of 700,000, and thus, this bill would impose a state-mandated local program by expanding the scope of a requirement imposed upon city attorneys.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $500,000 statewide and other procedures for claims whose statewide costs exceed $500,000.

This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of ~~750,000~~ *700,000*, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 2. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

O

@bSENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1987-88 Regular Session@p

SB 2440 (Alquist)
As introduced February 18
Hearing date: April 12, 1988
Business and Professions Code
CRH

-UNFAIR COMPETITION-
PROSECUTION BY CITY ATTORNEYS

HISTORY

Source: City of San Jose

Prior Legislation: No Known

Support: No Known

Opposition: No Known

(THIS ANALYSIS REFLECTS AUTHOR'S AMENDMENTS TO BE OFFERED IN COMMITTEE)

KEY ISSUE

SHOULD A CITY ATTORNEY FROM A CITY HAVING A POPULATION IN EXCESS OF 700,000 (RATHER THAN THE CURRENT MINIMUM POPULATION OF 750,000) BE AUTHORIZED TO BRING AN ACTION FOR VIOLATION OF UNFAIR COMPETITION LAWS?

PURPOSE

Existing law provides that any person who violates specified provisions on unfair competition shall be liable for a civil penalty. Existing law also provides that an action to assess and recover this penalty shall be brought in the name of the people of California by the Attorney General, any district attorney or any city attorney of a city having a population in excess of 750,000.

This bill would provide that any city attorney of a city having a population in excess of 700,000 may bring an action for violation of, or an injunction pursuant to, specified provisions on unfair competition.

(More)

The purpose of this bill is to lower the minimum population size required before the city attorney would be authorized to bring an action for unfair competition, thereby allowing the sponsor's city attorney to bring such an action.

COMMENT

1. Background

California's Business and Professions Code §17200 et seq. defines and prohibits unfair competition. Unfair competition includes unlawful, unfair or fraudulent business practice and unlawful, deceptive, untrue or misleading advertising and other specified acts.

A violation of this law is punishable by a civil penalty not to exceed $2,500 for each violation. Any person performing or proposing to perform an act of unfair competititon may be enjoined. A violation of this injunction is punishable by a civil penalty not to exceed $6,000 for each violation.

If the unfair competition action is brought by a city attorney or city prosecutor, one-half of the penalty collected is paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which judgment was entered.

2. Need for legislation

Currently, violations of the unfair competition provisions may only be brought by, among others, any city attorney of a city having a population in excess of $750,000.

According to proponents, this minimum population requirement limits the authority to bring unfair competition actions to city attorneys from San Francisco, San Diego and Los Angeles. City attorneys from San Jose, which has a population of approximately 719,000, may not bring unfair competition actions.

Proponents also state that this bill would expand the authority to bring unfair competititon actions only to the City of San Jose. Proponents state that, after San Jose, the next largest city is Anaheim with a population of approximately 325,000.

(More)

According to a memo from the San Jose City Attorney's Office, the purpose of this bill is to provide authority for that office to add an unfair competititon assertion as a separate cause of action in those cases where litigation has been filed on other grounds. According to that office, this authority will not create a new or additional workload.

****

Honorable Alfred Alquist Member of the Senate State Capitol, Room 5100 Sacramento, CA 95814	DEPARTMENT Finance	AUTHOR Alquist	BILL NUMBER SB 2440
	SPONSORED BY City of San Jose	RELATED BILLS	AMENDMENT DATE April 11, 1988

BILL SUMMARY

Authorizes the City Attorney of the City of San Jose to bring an unfair competition action under the provisions of the California anti-trust statute.

SUMMARY OF CHANGES

This bill has not been analyzed previously.

SUMMARY OF COMMENTS

This bill would allow San Jose to prosecute unfair competition cases without any additional State Operations costs or state-mandated local costs.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1987-88	FC 1988-89	FC 1989-90	Code Fund
		None			

Impact on State Appropriations Limit--No

FISCAL SUMMARY--LOCAL LEVEL

	1987-88	1988-89	1989-90
Reimbursable Expenditures	--	--	--
Non-Reimbursable Expenditures	--	--	--
Revenues	--	--	--

ANALYSIS

A. Specific Findings

Under the California anti-trust statute, every contract which is in restraint of trade is void. For purposes of enforcement, unfair competition is defined as any unlawful, unfair or fraudulent business practice and deceptive or untrue advertising. The court is authorized to prevent the use of any practice which constitutes unfair competition.

(continued)

POSITION: Department Director Date

Neutral, recommend amendment

Principal Analyst (634) Stewart	Date	Program Budget Manager Fred Klass	Date	Governor's Office Position noted Position approved Position disapproved by: date:
	5/4/88		5/4/88	

LR:2284L

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued) Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Alquist	April 11, 1988	SB 2440

ANALYSIS (continued)

A. Specific Findings (continued)

The law also authorizes the Attorney General, any district attorney, or the city attorney of any city with a population in excess of 750,000 to prosecute an injunction for enforcement of unfair competition provisions. A person who violates these provisions is liable for a $2,500 penalty for each violation. An intentional violation of an injunction can result in a $6,000 fine for each violation. Proceeds from the collection of these violations is distributed between the jurisdictions involved as specified. This bill would lower the population threshold of a city that is needed for the city attorney to bring an action from 750,000 to 700,000. The City of San Jose is the only city with a population of between 700,000 and 750,000 and, therefore, would be the only city impacted by the bill.

B. Fiscal Analysis

This bill would not impact State Operations costs. The provisions for bringing an action are permissive rather than mandatory and, therefore, as specified in the attached "Local Cost Estimate", the measure would not create any reimbursable state-mandated local costs. The extent of any costs to San Jose is totally dependent upon the extent to which the City utilize the authority conferred by the bill. We would recommend that the attached technical amendments be adopted to clarify this point. Since the entity which brings an action to halt unfair competition practices shares in the allocation of any penalties assessed, the City of San Jose could also receive additional revenues as the result of the bill.

LR:2284L-2

PROPOSED AMENDMENTS
SB 2440

As Amended April 11, 1988

On page 3, delete lines 25 through 33, inclusive, and insert:

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

LR:2284L-3

Form DF-A/R (Rev. 3/87) REVISED

Local Cost ESTIMATE	NO. 1	ISSUE DATE MAY 04 1988	BILL NUMBER SB 2440
Department of Finance	AUTHOR Alquist		DATE LAST AMENDED April 11, 1988

I. SUMMARY OF LOCAL IMPACT:

Authorizes the City Attorney of the City of San Jose to bring an unfair competition action under the provisions of the California anti-trust statute.

II. FISCAL SUMMARY--LOCAL LEVEL	1987-88	1988-89 (Dollars in Thousands)	1989-90
Reimbursable Expenditures:	--	--	--
Non-Reimbursable Expenditures:	--	--	--
Revenues:	--	--	--

III. ANALYSIS:

A. Introduction

Under the California anti-trust statute, every contract which is in restraint of trade is void. For purposes of enforcement, unfair competition is defined as any unlawful, unfair or fraudulent business practice and deceptive or untrue advertising. The court is authorized to prevent the use of any practice which constitutes unfair competition.

The law also authorizes the Attorney General, any district attorney, or the city attorney of any city with a population in excess of 750,000 to prosecute an injunction for enforcement of unfair competition provisions. A person who violates these provisions is liable for a $2,500 penalty for each violation. An intentional violation of an injunction can result in a $6,000 fine for each violation. Proceeds from the collection of these violations is distributed between the jurisdictions involved as specified. This bill would lower the population threshold of a city that is needed for the city attorney to bring an action from 750,000 to 700,000.

B. Working Data

1. According to the most recent population estimates from the Population Research Unit in the Department of Finance, the City of San Jose is the only city in the State with a population of between 700,000 and 750,000 (732,800 as of January 1, 1988) and, therefore, is the only city that would be impacted by the bill.

2. According to staff of the author's office, this bill was requested by and is supported by the City of San Jose.

(continued)

PREPARED	Date	* REVIEWED	Date	* APPROVED	Date
(634) Doug Bustata	5/4/88	*	5/4/88	*	5/4/88

LR:2305L

III. ANALYSIS (continued)

B. Working Data (continued)

3. Section 6 of Article XIII B of the California Constitution reads as follows:

> Whenever the Legislature or any State agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
>
> (a) Legislative mandates requested by the local agency affected;
> (b) Legislation defining a new crime or changing an existing definition of a crimes; or
> (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

4. Under Section 6(a) of Article XIII B of the California Constitution, any costs to a unit of local government which result from legislation specifically requested by the affected local entity are not "state mandated costs" and therefore are not reimbursable by the State. In addition, Section 17556(a)1 of the Government Code prohibits the Commission on State Mandates from allowing a claim for reimbursement of costs from a local entity based on such legislation. Therefore, although this bill will result in additional costs to local government, those costs are not state-mandated and, accordingly, are not reimbursable.

C. Conclusion

Because this bill simply authorizes, but does not require, the City of San Jose to pursue certain legal actions, there is no mandate in the bill. In addition, the bill was requested by the City of San Jose.

Although Section 3 of the bill contains language which attempts to disclaim any reimbursement of costs to local government or school districts which may arise from the enactment of the provisions of SB 2440, it is technically deficient because: (1) it does not clearly acknowledge that no reimbursable mandate is established by the bill; and (2) it prohibits reimbursement only from the State Mandates Claims Fund, which leaves open the question of whether the General Fund or some other Fund should provide any reimbursement. A local agency could still submit a claim for reimbursement from the General Fund to the Commission on State Mandates which, if it agreed with the claimant, would request such funding in a claims bill.

AUTHOR	DATE LAST AMENDED	BILL NUMBER
Alquist	April 11, 1988	SB 2440

III. ANALYSIS (continued)

C. Conclusion (continued)

The following language would be technically more appropriate:

> No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

LR:2305L-3

THIRD READING

SENATE RULES COMMITTEE

Office of
Senate Floor Analyses
1100 J Street, Suite 120
445-6614

Bill No.	SB 2440
Author:	Alquist (D)
Amended:	4/11/88
Vote Required:	Majority

Committee Votes:

COMMITTEE: JUDICIARY
BILL NO.: SB 2440
DATE OF HEARING: 4-12-88

SENATORS:	AYE	NO
Doolittle	✓	
Keene	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Richardson	✓	
Roberti	✓	
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	11	0

PLACED
ON FILE
PURSUANT
TO SENATE
RULE 28.8

Senate Floor Vote:

Assembly Floor Vote:

SUBJECT: Unfair competition: prosecution

SOURCE: City of San Jose

DIGEST: This bill would provide that any city attorney of a city having a population in excess of 700,000 (rather than the current minimum population of 750,000) be authorized to bring an action for violation of unfair competition laws.

ANALYSIS: Existing law provides that any person who violates specified provisions on unfair competition shall be liable for a civil penalty. Existing law also provides that an action to assess and recover this penalty shall be brought in the name of the people of California by the Attorney General, any district attorney or any city attorney of a city having a population in excess of 750,000.

This bill would provide that any city attorney of a city having a population in excess of 700,000 may bring an action for violation of, or an injunction pursuant to, specified provisions on unfair competition.

The purpose of this bill is to lower the minimum population size required before the city attorney would be authorized to bring an action for unfair competition, thereby allowing the sponsor's city attorney to bring such an action.

Currently, violations of the unfair competition provisions may only be brought by, among other, any city attorney of a city having a population in excess of $750,000.

CONTINUED

According to proponents, this minimum population requirement limits the authority to bring unfair competition actions to city attorneys from San Francisco, San Diego and Los Angeles. City attorneys from San Jose, which has a population of approximately 719,000 may not bring unfair competition actions.

Proponents also state that this bill would expand the authority to bring unfair competition actions only to the next largest city in Anaheim with a population of approximately 325,000.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: Yes

SUPPORT: (Verified 5/5/88)

City of San Jose (source)

OPPOSITION: (Verified 5/5/88)

Alameda County District Attorney

ARGUMENTS IN SUPPORT: According to the San Jose City Attorney's Office, the purpose of this bill is to "provide authority for that office to add an unfair competition assertion as a separate cause of action in those cases where litigation has been filed on other grounds." According to that office, this authority will not create a new or additional workload."

ARGUMENTS IN OPPOSITION: The District Attorney of Alameda County states: "I realize that the passage of Senate Bill 2440 would initially have a relatively limited effect. According to statistics, only the cities of San Francisco (estimated 1987 population 742,681) and San Jose (estimated 1987 population 719,468) would fall within the proposed 700,000 limitation. However, I respectfully suggest that the extension of what are fundamentally law enforcement responsibilities to the City Attorneys of those two jurisdictions might provide the impetus for subsequent attempts to further reduce the limit or eliminate it entirely. it seems to me that the current limitation should be retained without modification. It should be noted that limitations identical to Section 17206 including the present 750,000 city population restriction were incorporated within the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) in Health and Safety Code section 25249.7(c)."

RJG:nf 5/6/88 Senate Floor Analyses

FLOOR STATEMENT

SB 2440 - (Alquist)

Mr. Chairman and members,

Senate Bill 2440 is sponsored by the City of San Jose.

Under current law, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising are prohibited. Prosecution of these violations are however restricted to the Attorney General, any district attorney or any city attorney of a city having a population in excess of 750,000, thereby excluding the City of San Jose.

This bill would amend this population threshold to effectively allow the City of San Jose to also prosecute these violators.

Your aye vote on SB 2440 would be appreciated.

AMENDED IN ASSEMBLY JUNE 9, 1988

AMENDED IN SENATE APRIL 11, 1988

SENATE BILL No. 2440

Introduced by Senator Alquist

February 18, 1988

An act to amend Sections 17204 and 17206 of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 2440, as amended, Alquist. Unfair competition: prosecution.

Existing law authorizes certain injunctive actions based upon a violation of specified unfair competition provisions to be brought by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000.

This bill would, with respect to that authorization, reduce the required city population to 700,000.

Existing law provides that any person who violates specified provisions on unfair competition shall be liable for a civil penalty which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by, among others, any city attorney of a city having a population in excess of 750,000.

This bill would provide, instead, that an action shall be brought by any city attorney of a city having a population in excess of 700,000; ~~and thus, this bill would impose a state-mandated local program by expanding the scope of a requirement imposed upon city attorneys~~.

~~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, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $500,000 statewide and other procedures for claims whose statewide costs exceed $500,000.~~

~~This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: ~~yes~~ *no*.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 700,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 700,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

~~SEC. 3. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 1 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.~~

O

SB 2440 (Alquist)
Analyzed: 6/14/88

ASSEMBLY JUDICIARY COMMITTEE
REPUBLICAN ANALYSIS

SB 2440 (Alquist) -- UNFAIR COMPETITION: PROSECUTION
Version: 6/ /88 Vice-Chairman: Tom McClintock
Recommendation: Support. Vote: Majority

Summary: To be amended in committee to authorize the city attorney of San Jose with the annual consent of the Santa Clara County District Attorney to prosecute those who use unfair business practices or deceptive advertising (or who violate injunctions against such practices). Under current law the Attorney General, district attorneys and city attorneys of cities of 750,000 or more people may bring such actions. Fiscal effect: Unknown.

Supported by City of San Jose (sponsor). Opposed by Unknown. Governor's position: Unknown.

Comments: A bill to allow San Jose's city attorney to prosecute those who violate California's antitrust law pertaining to use of unfair business practices and deceptive advertising. This bill may not be necessary by the time it would go into effect as San Jose as of January 1988 was less than 18,000 people shy of 750,000. Only three cities (LA, San Diego, and San Francisco) meet the population limit which allows a city attorney to prosecute such actions. The alleged benefit to the city is that where its city attorney prosecutes such action (rather than the county DA), the city retains half of the civil penalty that the state law imposes upon the offender (the county otherwise would retain all of such penalty). That penalty is $2500 for violation of an unfair business practice and $6,000 for violation of an injunction issued previously against such practice. The bill was amended to only allow San Jose's city attorney to bring such actions with the approval of the Santa Clara County D.A. San Jose has been California's fourth largest city for nearly two decades and is soon expected to reach the 750,000 threshold and probably move into third place ahead of San Francisco. (The fifth, sixth and seventh largest cities are probably Long Beach, Oakland, and Anaheim with each having less than 400,000 people). This provision for San Jose will automatically be repealed when it reaches 750,000 people.

The Department of Finance may again seek an amendment to specify that this bill as amended does not require state reimbursement pursuant to Section 6 of Article XIII B of the state constitution as this provision is made at the request of the local government entity (City of San Jose).

Senate Republican Floor Vote -- 5/19/88
(29-0) Ayes: Bergeson, Beverly, Davis, Ellis, Morgan, Nielsen, Rogers, Royce, Russell
Assembly Republican Committee Vote
Judiciary -- 6/15/88
() Ayes:

WORKSHEET

PLEASE COMPLETE AND RETURN IMMEDIATELY TO:

ASSEMBLY COMMITTEE ON JUDICIARY
STATE CAPITOL, ROOM 6005

Bill No./Author: SB 2440 - Alquist

Your Office Contact Person: Keith Umemoto Room 5100

Telephone Number: 5-9740

1. Attach copies of background and related materials, including letters of support and opposition.

2. Provide Senate Floor Vote: Ayes 29 Nays 0

   Senate Committee Appropriation ~~Ayes ---- Nays ----~~ Consent - 28.8

   Judiciary Ayes 10 Nays ---

3. a. Preference for hearing date: _____

   b. Amount of time to present testimony: 5 minutes

   c. Names of witnesses: Roxanne Miller
   City of San Jose

4. Name and address of source of bill. (What person, organization or governmental entity, if any, requested introduction?)

   Roxanne Miller
   City of San Jose
   443-3946

5. Please identify and attach, if possible any interim committee reports or other reports on this bill:

   None known.

6. Please identify the session, bill number and disposition of similar bills previously introduced and any companion bills:

   None known.

7. Please provide author's statement as to the purpose of this bill. What is the problem or deficiency in the present law which the bill seeks to remedy? This bill would only immediately affe the County of Santa Clara and the City of San Jose. The county. as a other county which is affected, would benefit fiscally as the fines levied as a result of this bill would be distributed evenly by the City and County.

*Representatives from the City of San Jose and the California Distric Attorneys Association will be meeting Thursday 6/9, 2pm and expect t resolve CDD's concerns.

3021 STATE CAPITOL
SACRAMENTO, CA 95814
(916) 445-3057

8011 STATE BUILDING
107 SOUTH BROADWAY
LOS ANGELES, CA 90012
(213) 620-2550

Legislative Counsel of California

BION M. GREGORY

Sacramento, California

June 13, 1988

Honorable Alfred E. Alquist
5100 State Capitol

Unfair Competition (S.B. 2440) - #16869

Dear Senator Alquist:

Pursuant to your request we have prepared the enclosed amendments relating to the above-named subject. In this connection we call your attention to the possibility that the effect of this enactment might be limited or nullified by reason of:

The bill, as it would be amended, would only apply to the City of San Jose without the recitation of facts that would demonstrate the special or unique circumstances that might justify the application of the bill to only that city. A question may, therefore, be raised whether the bill would violate Section 16 of Article IV of the California Constitution, which declares that a local or special statute is invalid in any case if a general statute can be made applicable.

In the interest of time we have not attempted to analyze the question to determine the extent to which this may present a problem; however, we feel obligated to alert you to the existence of any possible problem for such consideration and action as you may desire.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By
William K. Stark
Deputy Legislative Counsel

DF #26a
1/13/86
WKS:jdg

Date of Hearing: June 15, 1988

SB 2440

ASSEMBLY COMMITTEE ON JUDICIARY
ELIHU M. HARRIS, Chairman

SB 2440 (Alquist) - As Amended: June 9, 1988

PRIOR ACTION

Sen. Com. on JUD. 10-0 Sen. Floor 29-0

SUBJECT: This bill expands the list of cities whose city attorneys may bring an unfair business practice or deceptive advertising action by reducing the requisite population threshold.

DIGEST

Existing law provides that an unfair business practice or deceptive advertising action may be brought by the Attorney General, any district attorney, or the city attorney of any city having a population in excess of 750,000.

This bill reduces the city population threshold for the bringing of an unfair business practice or deceptive advertising actions by a city attorney to 700,000.

FISCAL EFFECT

None

COMMENTS

1) The City of San Jose, which is the source of this bill, is the only city in California with a population between 700,000-750,000. The next largest city in the state in Anaheim which has a population of approximately 325,000.

2) The City of San Jose states that its purpose in sponsoring this bill "is to provide authority for us to add an unfair competition practice assertion as a separate cause of action in those cases where we have filed litigation on other grounds. This will give us an additional ground upon which to base many of our lawsuits."

3) The California District Attorneys Association opposes this bill. CDAA states that, given the "substantial harm which can result to a business by the mere filing of an unfair competition action by a prosecutor," the availability of such an action should continue to be limited to only "those who are accustomed by training and experience to the exercise of

- continued -

prosecutorial discretion," i.e. the Attorney General, district attorney and those city attorneys whose "offices have a long history of law enforcement experience and have traditionally been responsible for the prosecution of misdemeanor offenses which occur within their city limits."

CDAA further states that "several measures were introduced this session to restrict the use of the unfair competition sections of the Business and Professions code by prosecutors. This is a major tool used in consumer protection cases and it has been inaccurately alleged that these sections have been used inappropriately. We are concerned that if there is a proliferation of un-warranted cases by 'newly authorized' jurisdictions, there would be renewed efforts to curtail their legitimate use by prosecutors."

SUPPORT

Unknown

OPPOSITION

California District Attorneys Association
California Consumer Protection Council

R. LeBov
445-4560
ajud

CITY OF SAN JOSE

Author's amendments remove OAs' opposition

ROXANNE L. MILLER
LEGISLATIVE REPRESENTATIVE

(916) 443-3946

1400 "K" STREET, ROOM 315
SACRAMENTO, CALIFORNIA 95814

PROPOSED AUTHOR'S AMENDMENTS TO SB 2440

Add new sections 17204.1 and 17206.1 each with the same wording as follows:

Section 17204.1

In addition to the persons authorized to bring an action pursuant to section 17204, the city attorney of the City of San Jose with the annual consent of the Santa Clara County District Attorney is authorized to prosecute such actions.

At such time as the population of the City of San Jose exceeds 750,000 this section shall be automatically repealed.

Section 17206.1

In addition to the persons authorized to bring an action pursuant to section 17206, the city attorney of the City of San Jose with the annual consent of the Santa Clara County District Attorney is authorized to prosecute such actions.

At such time as the population of the City of San Jose exceeds 750,000 this section shall be automatically repealed.

Contact: Roxanne L. Miller
Legislative Representative
City of San Jose
Sacramento Office (916) 443-3946

AMENDED IN ASSEMBLY JUNE 20, 1988

AMENDED IN ASSEMBLY JUNE 9, 1988

AMENDED IN SENATE APRIL 11, 1988

ENATE BILL No. 2440

Introduced by Senator Alquist

February 18, 1988

An act to ~~amend~~ ~~Sections~~ ~~17204~~ ~~and~~ ~~17206~~ *add and repeal Sections 17204.5 and 17206.5* of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 2440, as amended, Alquist. Unfair competition: prosecution.

Existing law authorizes certain injunctive actions based upon a violation of specified unfair competition provisions to be brought by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000.

~~This bill would, with respect to that authorization, reduce the required city population to 700,000.~~

Existing law provides that any person who violates specified provisions on unfair competition shall be liable for a civil penalty which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by, among others, any city attorney of a city having a population in excess of 750,000.

~~This bill would provide, instead, that an action shall be brought by any city attorney of a city having a population in excess of 700,000.~~

The bill would authorize the City Attorney of San Jose to bring those actions, with the annual concurrence of the district attorney. These provisions would remain in effect

until San Jose's population exceeds 750,000.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

~~SECTION 1.~~ ~~Section 17204 of the Business and~~

SECTION 1. Section 17204.5 is added to the Business and Professions Code, to read:

17204.5. In addition to the persons authorized to bring an action pursuant to Section 17204, the City Attorney of the City of San Jose, with the annual consent of the Santa Clara County District Attorney, is authorized to prosecute those actions.

This section shall remain in effect until such time as the population of the City of San Jose exceeds 750,000, as determined by the Population Research Unit of the Department of Finance, and at that time shall be repealed.

SEC. 2. Section 17206.5 is added to the Business and Professions Code, to read:

17206.5. In addition to the persons authorized to bring an action pursuant to Section 17206, the City Attorney of the City of San Jose, with the annual consent of the Santa Clara County District Attorney, is authorized to prosecute those actions.

This section shall remain in effect until such time as the population of the City of San Jose exceeds 750,000, as determined by the Population Research Unit of the Department of Finance, and at that time shall be repealed.

~~Professions Code is amended to read:~~

~~17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 700,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full/time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board,~~

officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 700,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the

~~municipality or county which funds the local agency.~~

O

AMENDED IN ASSEMBLY AUGUST 8, 1988

AMENDED IN ASSEMBLY JUNE 20, 1988

AMENDED IN ASSEMBLY JUNE 9, 1988

AMENDED IN SENATE APRIL 11, 1988

SENATE BILL No. 2440

Introduced by Senator Alquist

February 18, 1988

An act to add and repeal Sections 17204.5 and 17206.5 of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 2440, as amended, Alquist. Unfair competition: prosecution.

Existing law authorizes certain injunctive actions based upon a violation of specified unfair competition provisions to be brought by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000.

Existing law provides that any person who violates specified provisions on unfair competition shall be liable for a civil penalty which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by, among others, any city attorney of a city having a population in excess of 750,000.

The bill would authorize the City Attorney of San Jose to bring those actions, with the annual concurrence of the district attorney. These provisions would remain in effect until San Jose's population exceeds 750,000.

The bill also would set forth legislative findings.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17204.5 is added to the Business and Professions Code, to read:

17204.5. In addition to the persons authorized to bring an action pursuant to Section 17204, the City Attorney of the City of San Jose, with the annual consent of the Santa Clara County District Attorney, is authorized to prosecute those actions.

This section shall remain in effect until such time as the population of the City of San Jose exceeds 750,000, as determined by the Population Research Unit of the Department of Finance, and at that time shall be repealed.

SEC. 2. Section 17206.5 is added to the Business and Professions Code, to read:

17206.5. In addition to the persons authorized to bring an action pursuant to Section 17206, the City Attorney of the City of San Jose, with the annual consent of the Santa Clara County District Attorney, is authorized to prosecute those actions.

This section shall remain in effect until such time as the population of the City of San Jose exceeds 750,000, as determined by the Population Research Unit of the Department of Finance, and at that time shall be repealed.

SEC. 3. The Legislature finds that there are unique circumstances that warrant permitting the City Attorney of San Jose to bring actions based upon a violation of laws relating to unfair competition, with the annual concurrence of the district attorney, as permitted by this act. Although the City of San Jose does not yet have a population of 750,000 and, accordingly, cannot bring those actions under existing law, because the size of the city is close to that population requirement, and because the office of the City Attorney of San Jose has demonstrated its competence, the enforcement of the laws relating to unfair competition will be enhanced by this act.

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SENATE THIRD READING

SB 2440 (Alquist) - As Amended: August 8, 1988

SENATE VOTE:

ASSEMBLY ACTIONS:

COMMITTEE JUD. VOTE 8-0 COMMITTEE _____ VOTE _____

Ayes: Ayes:

Nays: Nays:

DIGEST

Existing law provides that an unfair business practice or deceptive advertising action may be brought by the Attorney General, any district attorney, or the city attorney of any city having a population in excess of 750,000.

This bill:

1) Authorizes the City Attorney of San Jose, with the annual consent of the Santa Clara County District Attorney, to bring unfair business practice or deceptive advertising actions. This authorization will be repealed when San Jose's population exceeds 750,000.

2) States the legislative finding that there are unique circumstances that warrant permitting the City Attorney of San Jose to bring unfair competition actions with the concurrence of the District Attorney of Santa Clara County. The finding states that because San Jose is close to the requisite 750,000 population and because the city attorney's office has demonstrated its competence, the enforcement of unfair competition laws will be enhanced by the bill.

FISCAL EFFECT

None

COMMENTS

The City of San Jose, which has a current population of approximately 720,000, states that its purpose in sponsoring this bill "is to provide authority for us to add an unfair competition practice assertion as a separate cause of action in those cases where we have filed litigation on other grounds. This will give us an additional ground upon which to base many of our lawsuits."

R. LeBov
445-4560
8/10/88:ajud

SENATE BILL 2440 (ALQUIST)

ASSEMBLY FLOOR STATEMENT

SENATE BILL 2440 WAS INTRODUCED BY SENATOR ALQUIST AT THE REQUEST OF THE CITY OF SAN JOSE. SENATE BILL 2440 WOULD EXPAND THE LIST OF CITIES WHOSE CITY ATTORNEYS MAY BRING AN UNFAIR BUSINESS PRACTICE OR DECEPTIVE ADVERTISING ACTION BY REDUCING THE REQUISITE POPULATION THRESHOLD TO INCLUDE THE CITY OF SAN JOSE. THE BILL REQUIRES THE ANNUAL CONCURRENCE OF THE DISTRICT ATTORNEY.

THE BILL IS AT THE ASSEMBLY DESK, RETURNED FROM THE SENATE FOR PURPOSES OF TECHNICAL AMENDMENTS WHICH RECITE THE FACTS THAT WOULD DEMONSTRATE THE SPECIAL CIRCUMSTANCES THAT JUSTIFY THE APPLICATION OF THE BILL TO ONLY THE CITY OF SAN JOSE.

SENATE BILL 2440 HAS PASSED ALL COMMITTEES OF THE SENATE AND ASSEMBLY WITH UNANIMOUS VOTES. THERE IS NO OPPOSITION TO THE BILL AND THE LANGUAGE OF THE BILL WAS WORKED OUT WITH THE DISTRICT ATTORNEY'S ASSOCIATION.

I ASK FOR YOUR "AYE" VOTE TO ADOPT THESE TECHNICAL AMENDMENTS AND RETURN SB 2440 TO THE SENATE.

CONTACT: ROXANNE L. MILLER
CITY OF SAN JOSE
(916) 443-3946

8/8/88

DEPARTMENT	BILL NUMBER
Finance	SB 2440
AUTHOR	**AMENDMENT DATE**
Alquist	August 8, 1988

SUBJECT

Authorizes the City Attorney of the City of San Jose to bring an unfair competition action under the provisions of the California anti-trust statute.

SUMMARY OF REASONS FOR SIGNATURE

This bill would allow San Jose to prosecute unfair competition cases. It would not result in any additional State operations costs or state-mandated local costs.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1988-89	FC 1989-90	FC 1990-91	Code Fund
		None			

Impact on State Appropriations Limit--No

FISCAL SUMMARY--LOCAL LEVEL

Reimbursable Expenditures	--	--	--
Non-Reimbursable Expenditures	--	--	--
Revenues	--	--	--

ANALYSIS

A. Specific Findings

Under the California anti-trust statute, every contract which is in restraint of trade is void. For purposes of enforcement, unfair competition is defined as any unlawful, unfair or fraudulent business practice and deceptive or untrue advertising. The court is authorized to prevent the use of any practice which constitutes unfair competition.

(continued)

RECOMMENDATION:

Sign

Department Director Date: Nancy Sweet 8/29/88

Principal Analyst (634) Stewart Date: GN 8/26/88 K.D. Stewart 9/16/88

Program Budget Manager Fred Klass Date: 8-26-88

Governor's Office
Position noted
Position approved
Position disapproved
by: date:

LR:2284L

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued) Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Alquist	August 8, 1988	SB 2440

ANALYSIS (continued)

A. Specific Findings (continued)

The law also authorizes the Attorney General, any district attorney, or the city attorney of any city with a population in excess of 750,000 to prosecute an injunction for enforcement of unfair competition provisions.

A person who violates these provisions is liable for a $2,500 penalty for each violation. An intentional violation of an injunction can result in a $6,000 fine for each violation. Proceeds from the collection of these fines are distributed between the jurisdictions involved, as specified.

This bill would allow the City Attorney of San Jose, with the annual consent of the Santa Clara District Attorney, to prosecute such actions. This provision would remain in effect until the population of San Jose exceeds 750,000, as determined by the Department of Finance, and at that time would be repealed, leaving the city's authority for this activity under the existing general law.

San Jose's January 1, 1988, population estimate is 732,800 as published by our Population Research Unit.

B. Fiscal Analysis

This bill would not impact State operations costs. The provisions for bringing an action are permissive rather than mandatory and, therefore, would not create any reimbursable state-mandated local costs. The extent of any costs incurred by San Jose would be totally dependent upon the extent to which the City utilizes the authority conferred by the bill. We would point out that the entity which brings an action to halt unfair competition practices shares in the allocation of any penalties assessed; therefore, the City of San Jose could receive additional revenues as the result of the bill.

LR:2284L-2

ENROLLED BILL REPORT

Analyst: Gale Baker
Bus. Ph: 322-4292
Home Ph: 933-6314

AGENCY: STATE AND CONSUMER SERVICES AGENCY

BILL NUMBER: SB 2440 (as amended 8/8/88)

DEPARTMENT, BOARD OR COMMISSION: CONSUMER AFFAIRS

AUTHOR: Alquist

SUMMARY
1 ___Description
BACKGROUND
2 ___History
3 ___Purpose
4 ___Sponsor
5 ___Current Practice
6 ___Implementation
7 ___Justification
8 ___Alternatives
9 ___Responsibility
10 ___Other Agencies
11 ___Future Impact
12 ___Termination
FISCAL IMPACT ON STATE BUDGET
13 ___Budget
14 ___Future Budget
15 ___Other Agencies
16 ___Federal
17 ___Tax Impact
18 ___Governor's Budget
19 ___Continuous Appropriation
20 ___Assumptions
21 ___Deficiency Measure
22 ___Deficiency Resolution
23 ___Absorption of Costs
24 ___Personnel Changes
25 ___Organizational Changes
26 ___Funds Transfer
27 ___Tax Revenue
28 ___Other Fiscal
SOCIO-ECONOMIC IMPACT
29 ___Rights Effect
30 ___Monetary
31 ___Consumer Choice
32 ___Competition
33 ___Employment
34 ___Economic Development
INTERESTED PARTIES
35 ___Proponents
36 ___Opponents
37 ___Pro/Con Arguments
RECOMMENDATION JUSTIFICATION
38 ___Support
39 ___Oppose
40 ___Neutral
41 ___No Position
42 ___If Amended

Bill Summary

Under existing law, actions to enjoin acts of unfair competition under Business and Professions Code sections 17200 et seq. may be brought by the Attorney General, district attorney, or any city attorney of a city with a population exceeding 750,000 and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor.

This bill would authorize the San Jose City Attorney to bring actions to enjoin acts of unfair competition under Business and Professions Code sections 17200 et seq., with the annual consent of the Santa Clara County District Attorney. This provision would remain in effect until the population of San Jose, which currently is about 720,000, exceeds 750,000, as determined by the Population Research Unit of the Department of Finance.

Under existing law, the Attorney General, district attorney or the city attorney of a city with a population in excess of 750,000 may bring actions to recover civil penalties of up to $2,500 for each violation of the unfair competition provisions found in Business and Professions Code sections 17200 et seq. When the city's population does not exceed 750,000, the district attorney may consent to the city attorney bringing civil penalty actions.

If the action is brought by the district attorney, the full amount of the penalty collected is paid to the treasurer of the county in which judgment is entered. If the action is brought by the city attorney, 50 percent of the penalty is paid to the treasurer of the city in which judgment is entered, and 50 percent of the penalty is paid to the treasurer of the county in which judgment is entered.

This bill would authorize the San Jose City Attorney to bring actions to recover civil penalties for acts of unfair competition under Business and Professions Code section 17200 et seq., with the annual consent of the Santa Clara County District

VOTE:

	Assembly	Partisan R D		Senate	Partisan R D
Floor:	74-0 (6/23/88);	76-0 8/10/88)	Floor:	29-0 (conc.	37-0)
Policy Committee:	8-0		Policy Committee:	10-0	
Fiscal Committee:	N/A		Fiscal Committee:	28.8 Cal.	

RECOMMENDATION TO GOVERNOR: SIGN X VETO ____ NO POSITION ____ DEFER TO OTHER AGENCY ____

DEPARTMENT DIRECTOR: Michael A. Kelley DATE: 8/26/88 AGENCY SECRETARY: [signature] DATE: 8/26/88

Attorney. This provision would remain in effect until the population of San Jose exceeds 750,000, as determined by the Population Research Unit of the Department of Finance.

This bill also would make a legislative finding that there are unique circumstances that warrant permitting the San Jose City Attorney to bring actions relating to unfair competition. The findings state that because the city is so close to the population requirement, and because of the city attorney's demonstrated competence, the enforcement of the unfair competition laws will be enhanced by this bill.

Background

This bill is sponsored by the City of San Jose, which currently has a population of about 720,000. The sponsor states that the purpose of the bill is to allow the city to add an unfair competition practice allegation as a separate cause of action in cases where the city has filed suit on other grounds, in order to give the city an additional ground upon which to base many of its lawsuits.

The current minimum population requirement limits the authority to bring unfair competition actions to the city attorneys of San Francisco, San Diego and Los Angeles.

Prior versions of this bill would have decreased the minimum population requirement to 700,000. The Alameda County District Attorney stated that although passage of the bill in that form would initially have a very limited effect, the bill might provide an impetus for subsequent attempts to further reduce the population requirement or eliminate it entirely.

The bill was amended on June 20, 1988 to respond to this concern and to make the San Jose City Attorney's authority to bring those actions contingent upon the annual approval of the Santa Clara County District Attorney. There is no known opposition to the current version of the bill.

Specific Findings

This bill would give the San Jose City Attorney temporary authority, with the annual concurrence of the Santa Clara County District Attorney, to prosecute unfair competition cases until its population exceeds 750,000. At that time the San Jose City Attorney will become eligible to prosecute those actions because the city will meet the statutory population requirement and there will be no further need for this bill. This bill would remain in effect until San Jose reaches the population requirement.

This bill would have the effect of increasing government resources for combating consumer fraud. In addition, the bill will provide a potential source of revenue to the City of San Jose and the County of Santa Clara, each of whom will receive

one-half of any civil penalties recovered in an unfair competition action by the city attorney. (Current law specifies that in an unfair competition action by a city attorney, any civil penalties recovered are to be split 50/50 between the city and the county in which judgment is entered.)

Fiscal Impact

None to the department.

Argument

Proponents: City of San Jose (sponsor)

Opponents: None

The purpose of and argument for this bill are stated under Background, above.

There is no known opposition to this bill. It has been amended to respond to previous concerns expressed by the district attorneys of Santa Clara and Alameda.

Recommendation

The Department of Consumer Affairs recommends that this bill be SIGNED.

☐ SACRAMENTO ADDRESS
ROOM 5100
STATE CAPITOL 95814
AREA CODE (916) 445-9740

☐ DISTRICT ADDRESS
100 PASEO DE SAN ANTONIO, SUITE 209
SAN JOSE, CA 95113
AREA CODE (408) 286-8318

STATE SENATOR
ALFRED E. ALQUIST
THIRTEENTH SENATORIAL DISTRICT
REPRESENTING
SANTA CLARA COUNTY
IN THE
Senate

COMMITTEES
BUDGET AND FISCAL REVIEW
CHAIRMAN
APPROPRIATIONS
CONSTITUTIONAL AMENDMENTS
ENERGY AND PUBLIC UTILITIES
GOVERNMENTAL ORGANIZATION
SENATE SELECT COMMITTEE ON
CALIFORNIA'S WINE INDUSTRY
CHAIRMAN

September 1, 1988

The Honorable George Deukmejian
State Capitol
Sacramento, California 95814

Dear Governor Deukmejian:

Your favorable consideration of Senate Bill 2440, sponsored by the City of San Jose, would be most appreciated.

The City Attorney of San Jose has been filing litigation on cases which a violation of unfair competition practice has also occurred. Due to existing statutes, they are unauthorized to prosecute this offense and add this assertion to these cases.

SB 2440 would add the City Attorney of San Jose to those who are already authorized to prosecute these cases.

The California District Attorney's Association and the Santa Clara County District Attorney have no objection to this bill as presented to you. Furthermore, no negative votes were cast against this bill.

In order for the City of San Jose to protect its citizens, I respectfully ask for your approval in this matter.

Respectfully yours,

ALFRED E. ALQUIST

AEA/kupc

bcc: Roxanne Miller, City of San Jose
Joan Gallo, City Attorney, City of San Jose.

CITY OF SAN JOSE, CALIFORNIA

801 NORTH FIRST STREET
SAN JOSE, CALIFORNIA 95110
(408) 277-4000

CITY MANAGER

September 2, 1988

The Honorable George Deukmejian
Governor, State of California
Attention: Bob Williams
State Capitol
Sacramento, California 95814

RE: Senate Bill 2440 (Alquist) - REQUEST FOR SIGNATURE

Dear Governor Deukmejian:

The Legislature has passed and sent to you for your consideration Senate Bill 2440 (Alquist) relating to unfair competition: prosecution. Senator Alquist introduced this measure at the request of the City of San Jose.

Existing law prohibits any unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising (Business and Professions Code Section 17200). Any person who violates this law is liable for a civil penalty not to exceed $2,500 for each violation. Any person performing or proposing to perform an act of unfair competition may be enjoined. A violation of such injunction is punishable by a civil penalty not to exceed $6,000 for each violation.

Currently, violations may only be prosecuted by the Attorney General, any district attorney or any city attorney of a city having a population in excess of 750,000 population.

In order to enable the City of San Jose to bring such suits, we seek your signature of SB 2440 to authorize the city attorney of San Jose, with the annual concurrence of the district attorney, to bring such actions.

Your favorable consideration of this measure would be appreciated.

Sincerely,

Roxanne L. Miller

ROXANNE L. MILLER
Legislative Representative
Sacramento Office (916) 443-3946

RLM:sc
cc: Senator Alfred Alquist

SACRAMENTO ADDRESS
ROOM 5100
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STATE SENATOR
ALFRED E. ALQUIST
THIRTEENTH SENATORIAL DISTRICT
REPRESENTING
SANTA CLARA COUNTY
IN THE
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COMMITTEES
BUDGET AND FISCAL REVIEW
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CALIFORNIA'S WINE INDUSTRY
CHAIRMAN

September 1, 1988

The Honorable George Deukmejian
State Capitol
Sacramento, California 95814

Dear Governor Deukmejian:

Your favorable consideration of Senate Bill 2440, sponsored by the City of San Jose, would be most appreciated.

The City Attorney of San Jose has been filing litigation on cases which a violation of unfair competition practice has also occurred. Due to existing statutes, they are unauthorized to prosecute this offense and add this assertion to these cases.

SB 2440 would add the City Attorney of San Jose to those who are already authorized to prosecute these cases.

The California District Attorney's Association and the Santa Clara County District Attorney have no objection to this bill as presented to you. Furthermore, no negative votes were cast against this bill.

In order for the City of San Jose to protect its citizens, I respectfully ask for your approval in this matter.

Respectfully yours,

ALFRED E. ALQUIST

AEA/kupc

JACK I. HORTON
ANN MACKEY
CHIEF DEPUTIES

JAMES L. ASHFORD
JERRY L. BASSETT
STANLEY M. LOURIMORE
JOHN T. STUDEBAKER
JIMMIE WING

DAVID D. ALVES
JOHN A. CORZINE
C. DAVID DICKERSON
ROBERT CULLEN DUFFY
ROBERT D. GRONKE
SHERWIN C. MACKENZIE, JR.
TRACY O. POWELL II
MARGUERITE ROTH
PRINCIPAL DEPUTIES

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DEPUTIES

September 9, 1988
Sacramento, California

Honorable George Deukmejian
Governor of California
Sacramento, CA 95814

Senate Bill No. 2440

Dear Governor Deukmejian:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Alquist and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By John T. Studebaker
John T. Studebaker
Principal Deputy

JTS:wld

Two copies to Honorable Alfred E. Alquist, pursuant to Joint Rule 34.

Volume 2

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1988

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, June 7, 1988
and General Election, November 8, 1988

eneral Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature

1987–88 Regular Session

Compiled by
BION M. GREGORY
Legislative Counsel

Senate Bill No. 2440

CHAPTER 790

An act to add and repeal Sections 17204.5 and 17206.5 of the Business and Professions Code, relating to unfair competition.

[Approved by Governor September 9, 1988. Filed with Secretary of State September 9, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2440, Alquist. Unfair competition: prosecution.

Existing law authorizes certain injunctive actions based upon a violation of specified unfair competition provisions to be brought by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000.

Existing law provides that any person who violates specified provisions on unfair competition shall be liable for a civil penalty which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by, among others, any city attorney of a city having a population in excess of 750,000.

The bill would authorize the City Attorney of San Jose to bring those actions, with the annual concurrence of the district attorney. These provisions would remain in effect until San Jose's population exceeds 750,000.

The bill also would set forth legislative findings.

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

SECTION 1. Section 17204.5 is added to the Business and Professions Code, to read:

17204.5. In addition to the persons authorized to bring an action pursuant to Section 17204, the City Attorney of the City of San Jose, with the annual consent of the Santa Clara County District Attorney, is authorized to prosecute those actions.

This section shall remain in effect until such time as the population of the City of San Jose exceeds 750,000, as determined by the Population Research Unit of the Department of Finance, and at that time shall be repealed.

SEC. 2. Section 17206.5 is added to the Business and Professions Code, to read:

17206.5. In addition to the persons authorized to bring an action pursuant to Section 17206, the City Attorney of the City of San Jose, with the annual consent of the Santa Clara County District Attorney, is authorized to prosecute those actions.

This section shall remain in effect until such time as the population of the City of San Jose exceeds 750,000, as determined by the Population Research Unit of the Department of Finance, and at that

time shall be repealed.

SEC. 3. The Legislature finds that there are unique circumstances that warrant permitting the City Attorney of San Jose to bring actions based upon a violation of laws relating to unfair competition, with the annual concurrence of the district attorney, as permitted by this act. Although the City of San Jose does not yet have a population of 750,000 and, accordingly, cannot bring those actions under existing law, because the size of the city is close to that population requirement, and because the office of the City Attorney of San Jose has demonstrated its competence, the enforcement of the laws relating to unfair competition will be enhanced by this act.

O

CALIFORNIA LEGISLATURE

1987–88 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed Constitutional Amendments) Adopted in 1988

and

1979–1988 Statutory Record

VOLUME ONE

DARRYL R. WHITE
Secretary of the Senate

R. BRIAN KIDNEY
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

Ch. 789 (SB 1969) Ellis. Civil procedure: sanctions.

Existing law provides that an appeal may be taken from a final judgment or order, as specified. Existing law also provides that a court order imposing monetary sanctions is a final, appealable order.

This bill would make nonappealable court orders imposing monetary sanctions not exceeding $500 for abuse of the discovery process or actions or tactics that are frivolous or solely intended to cause unnecessary delay, as specified.

This bill would also limit the effect of these provisions to San Diego County for a period of one year as a pilot project.

Ch. 790 (SB 2440) Alquist. Unfair competition: prosecution.

Existing law authorizes certain injunctive actions based upon a violation of specified unfair competition provisions to be brought by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000.

Existing law provides that any person who violates specified provisions on unfair competition shall be liable for a civil penalty which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by, among others, any city attorney of a city having a population in excess of 750,000.

The bill would authorize the City Attorney of San Jose to bring those actions, with the annual concurrence of the district attorney. These provisions would remain in effect until San Jose's population exceeds 750,000.

The bill also would set forth legislative findings.

Ch. 791 (SB 2673) Doolittle. Blood: donations.

(1) Existing law makes it unlawful for any person to prohibit an individual from donating blood to be used directly for an individual specified by the donor when prescribed by a physician and surgeon, and from directing that blood donated by the donor be used in any blood transfusion to the individual specified by the donor if the blood type is compatible with the blood type of the individual specified by the donor, and the use of the blood, or the drawing of the blood, is not contraindicated as determined by a physician and surgeon.

This bill would also make directing that blood donated by the donor be used in any blood transfusion to the individual specified by the donor contingent upon either the donation being specifically requested by the designee, or in the event that the designee is medically or legally incapable of making the request, by the designee's next of kin, legal guardian, or legal representative.

The bill would prohibit a donor from redesignating the use of his or her blood except that he or she would be authorized to release it to a licensed blood bank or transfusion service.

Under existing law, when blood is released for use by someone other than the person designated by the donor, only specified costs may be charged to the original designee.

This bill would require that when a unit of blood is released at the request of a blood collection center prior to the time the blood is needed by the designee, that the transfusion service bear these costs for that unit.

This bill would impose a state-mandated local program since any violation of the bill would constitute a misdemeanor, thereby imposing duties upon local law enforcement agencies.

(2) The California Consitution 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.

Ch. 792 (AB 3172) Elder. STRS payments: transmission to financial institutions.

An existing statute authorizes the State Teachers' Retirement System, upon request of any retirant, disabilitant, or beneficiary, to transmit payments to a bank, savings and loan association, or credit union for deposit in that person's account.

This bill would require the system to send, commencing on July 1, 1989, a copy of the

NOTE: Superior numbers appear as a separate section at the end of the digests.

Alameda County
District Attorney's Office
John J. Meehan, District Attorney

April 15, 1988

The Honorable Alfred Alquist
13th Senatorial District
State Capitol, Room 5100
Sacramento, California 95814

Re: Senate Bill 2440

Dear Senator Alquist:

I have been requested by Alameda County District Attorney John J. Meehan to express the views of this Office concerning Senate Bill 2440. That bill, as you will recall, will amend Business and Professions Code section 17206 to permit the city attorney of a city with a population in excess of 700,000 to initiate actions seeking civil penalties for violations of the unfair competition provisions of California law. The present population limit is 750,000.

While Business and Professions Code section 17206 provides for the initiation of a civil rather than criminal action, the potential monetary sanctions which can be imposed through its utilization are extremely high. For the past ten years I have been responsible for filing all such actions in Alameda County and am aware of scores of cases where the possible financial exposure of the defendant exceeded $100,000. I have personally prosecuted many cases where the potential sanctions exceeded $1,000,000.

In light of penalties which can quite literally result in the imposition of the economic "death penalty" for offending businesses and the substantial harm which can result to a business by the mere filing of an unfair competition action by a prosecutor, the present language of Section 17206 limits the availability of such sanctions to those who are accustomed by training and experience to the exercise of prosecutorial discretion. These actions are brought in the name of the people of the State of California and the interests represented by the prosecutor may be substantially different from those more limited client interests normally represented by city attorneys. When we as district attorneys initiate an unfair competition action we are engaging in a law enforcement function. In a decision involving such an action brought by the California Attorney General and the District Attorney of San Diego, the California Supreme Court noted, "An action filed by the People seeking injunctive relief and civil penalties is fundamentally a law enforcement action designed to protect the public and not to benefit private parties." People v. Pacific Land Research Co. (1977) 20 Cal.3d 10, 17.

I do not want to belabor this point but merely wish to suggest that those governmental officials who are currently authorized to prosecute these actions are law enforcement personnel fully cognizant of and bound by ethical guidelines pertaining to prosecutors. While the present list includes the City Attorneys of Los Angeles and San Diego by virtue of their city populations, both offices have a long history of law enforcement experience and have traditionally been responsible for the prosecution of misdemeanor offenses which occur within their city limits.

I realize that the passage of Senate Bill 2440 would initially have a relatively limited effect. According to statistics which I received from the California Department of Finance, Population Research Unit, only the Cities of San Francisco (estimated 1987 population 742,681) and San Jose (estimated 1987 population 719,468) would fall within the proposed 700,000 limitation. However, I respectfully suggest that the extension of what are fundamentally law enforcement responsibilities to the City Attorneys of those two jurisdictions might provide the impetus for subsequent attempts to further reduce the limit or eliminate it entirely. It seems to me that the current limitation should be retained without modification. It should be noted that limitations identical to Section 17206 including the present 750,000 city population restriction were incorporated within the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) in Health and Safety Code section 25249.7(c).

I have been informed that the essential purpose of Senate Bill 2440 is to permit the City Attorney of San Jose to initiate unfair competition actions for civil penalties. I have had the opportunity to work closely with various members of the Consumer Fraud Division of the Santa Clara County District Attorney's Office for the past fourteen years on matters relating to unfair competition prosecutions and have the highest regard for them. If this bill is the result of some disagreement between those two agencies, perhaps it might be possible to encourage representatives of those offices to meet and resolve any differences that exist so as to obviate the need for modification of Section 17206. Finally, as stated above, the population of San Jose was estimated to be just short of 720,000 in 1987. Assuming a growth rate of just 1.5%, San Jose will reach the 750,000 jurisdictional population threshold of that provision within two years. I respectfully submit that simply permitting the natural growth of that community to confer jurisdiction upon the City Attorney of San Jose without legislative action is preferable to establishing a precedent through Senate Bill 2440 on which other non-law enforcement agencies might rely for further modification of Business and Profession Code section 17206.

Thank you for the opportunity to present my views on this subject.

Very truly yours,

JOHN J. MEEHAN
District Attorney

By: Richard S. Michaels
Richard S. Michaels
Assistant District Attorney

RSM:rm

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATIO

1414 K STREET, SUITE 300 • SACRAMENTO, CALIFORNIA 95814-3929 • 916/443-2017

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GARY S. MULLEN

May 25, 1988

The Honorable Alfred Alquist
13th State Senate District
State Capitol, Room 5100
Sacramento, California 95814

Dear Senator Alquist:

The California District Attorneys Association must oppose your Senate Bill 2440 as amended April 11, 1988.

City Attorneys, under current law, can commence unfair competition prosecution with the consent of the District Attorney. We believe your measure, as presently drafted, is a further encroachment upon the authority of District Attorneys. We anticipate that by allowing City Attorneys of citys with populations in excess of 700,000 to commence unfair competition prosecutions, there is a real possibility of conflict between the City and District Attorneys. We believe your bill creates a danger of forum shopping; wherein if one authority finds insufficient evidence for prosecution another, more favorably inclined, jurisdiction may be sought out to prosecute.

As you are undoubtedly aware, several measures were introduced this session to restrict the use of the unfair competition sections of the Business and Professions code by prosecutors. This is a major tool used in consumer protection cases and it has been inaccurately alleged that these sections have been used inappropriately. We are concerned that if there is a proliferation of un-warranted B & P code § 17200 cases by "newly authorized" jurisdictions, there would be renewed efforts to curtail their legitimate use by prosecutors. For this reason, we suggest that the District Attorney retain his existing authority under § 17206 to consent to the City Attorneys prosecution under these code sections.

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

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Los Angeles County

EXECUTIVE DIRECTOR

GARY S. MULLEN

May 25, 1988

MAY 31 RECD

The Honorable Alfred Alquist
13th State Senate District
State Capitol, Room 5100
Sacramento, California 95814

Dear Senator Alquist:

The California District Attorneys Association must reluctantly oppose your Senate Bill 2440 as amended April 11, 1988.

City Attorneys, under current law (B&P code §17206), can commence unfair competition prosecution with the consent of the District Attorney. We believe your measure, as presently drafted, is a further encroachment upon the authority of District Attorneys. We anticipate that by allowing City Attorneys of cities with populations in excess of 700,000 to commence unfair competition prosecutions, there is a real possibility of conflict between City and District Attorneys. We believe your bill creates a danger of forum shopping; wherein if one authority finds insufficient evidence for prosecution another, more favorably inclined, jurisdiction may be sought out to prosecute.

As you are undoubtedly aware, several measures were introduced this session to restrict the use of the unfair competition sections of the Business and Professions code by prosecutors. This is a major tool used in consumer protection cases and it has been inaccurately alleged that these sections have been used inappropriately. We are concerned that if there is a proliferation of unwarranted B & P code § 17200 cases by "newly authorized" jurisdictions, there would be renewed efforts to curtail their legitimate use by prosecutors. For this reason, we suggest that the District Attorney retain his existing

authority under § 17206 to consent to the City Attorneys prosecution under these code sections.

We respectfully ask that you reconsider this measure.

Yours truly,

GARY MULLEN
Executive Director

GM:rm

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CLARA

COUNTY GOVERNMENT CENTER
70 WEST HEDDING ST., WEST WING
SAN JOSE, CA 95110
(408) 299-7400

ROXANNE L. MILLER
LEGISLATIVE REPRESENTATIVE

(916) 443-3946

1400 K STREET ROOM 3
SACRAMENTO CALIFORNIA 95

May 25, 1988

Gary S. Mullen, Executive Director
California District Attorneys Assn.
1414 K Street, Suite 300
Sacramento, California 95814-3929

RE: SENATE BILL 2440

Dear Gary:

I have discussed this bill with members of my management staff as well as Al Bender who is in charge of this office's Consumer Fraud Unit. Initially we all had some concerns, but after discussion, the consensus was we should not oppose the bill.

I have talked with Joan Gallo, the City Attorney of San Jose, who advises me the City's primary reason for wanting 17200 B&P Code authority is to provide the City with an effective tool for dealing with some of the more gross housing code violations. Local city ordinances simply do not have the teeth of a $2500 per violation fine that can be imposed under the unfair competition provisions of the Business and Professions Code. An additional advantage to the City is the lighter burden of proof attendant to a civil action as compared with a criminal action, and of course the advantage of being able to seek injunctive relief pursuant to 17204 B&P.

I can understand your reaction to the possible "encroachment" problem should SB 2440 become law. However, with all due respect, I really do not believe your concern is well founded. I am unaware of any problems created for the District Attorneys of Los Angeles and San Diego counties, the two counties (excluding the City and County of San Francisco) which I believe have cities with a population over 750,000. Perhaps you have heard from them to the contrary; and I would certainly be interested in their views. Certainly the CDAA ought to have the benefit of Ira Reiner and Ed Miller's views before taking a position on the bill.

Finally, I also note that the bill retains the provision of 17206(b) which provides that one-half of any fine imposed be paid to the County Treasurer. We can always use the money.

If you would like to discuss the matter further, please feel free to give me a call.

Very truly yours,

LEO HIMMELSBACH
District Attorney

LH/jm

cc: The Honorable Alfred Alquist
13th Senatorial District

Joan Gallo, City Attorney
City of San Jose

Joan,

I personally spoke to Al on May 24th concerning my support of the bill.

Leo

CITY OF SAN JOSÉ, CALIFORNIA

801 NORTH FIRST STREET
SAN JOSE, CALIFORNIA 95110
(408) 277-4000

CITY MANAGER

June 9, 1988

Assembly Member Elihu M. Harris
Chair, Assembly Judiciary Committee
Room 6005, State Capitol
Sacramento, California 95814

RE: SENATE BILL 2440 (ALQUIST) - SUPPORT

Dear Assembly Member Harris:

Senator Alfred Alquist has introduced Senate Bill 2440 relating to unfair competition: prosecution at the request of the City of San Jose. It is our understanding that the bill is now set for hearing on Wednesday, June 15 before the Assembly Judiciary Committee.

Existing law prohibits any unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising (Business and Professions Code Section 17200). Any person who violates this law is liable for a civil penalty not to exceed $2,500 for each violation. Any person performing or proposing to perform an act of unfair competition may be enjoined. A violation of such injunction is punishable by a civil penalty not to exceed $6,000 for each violation.

Currently, violations may only be prosecuted by the Attorney General, any district attorney or any city attorney of a city having a population in excess of 750,000.

In order to enable the City of San Jose to bring such suits, we seek approval of SB 2440 to authorize the city attorney of a city with a population over 700,000 to bring such suits.

Your favorable consideration of this measure would be appreciated.

Sincerely,

ROXANNE L. MILLER
Legislative Representative
Sacramento Office (916) 443-3946

RLM:sc
cc: Members, Assembly Judiciary Committee
Ray LeBov, Committee Consultant
Senator Alfred Alquist

VOLUME 1

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1991–92 REGULAR SESSION

CALIFORNIA STATE ARCHIVES
SECRETARY OF STATE

SENATE FINAL HISTORY

SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS AND SENATE RESOLUTIONS

CONVENED DECEMBER 3, 1990
ADJOURNED SINE DIE NOVEMBER 30, 1992

DAYS IN SESSION 284

CALENDAR DAYS 728

LT. GOVERNOR
President of the Senate

SENATOR DAVID ROBERTI
President pro Tempore

Compiled Under the Direction of
RICK ROLLENS
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk

S.B. No. 708—Petris.

An act to amend Sections 19610.3, 19610.4, and 19610.6 of the Business and Professions Code, relating to horseracing.

1991

Mar. 6—Introduced. Read first time. To Com. on RLS. for assignment. To print.
Mar. 7—From print. May be acted upon on or after April 6.
Mar. 14—To Com. on G.O.
April 2—Set for hearing April 30.
April 30—Set, first hearing. Hearing canceled at the request of author.

1992

Feb. 3—Returned to Secretary of Senate pursuant to Joint Rule 56.

S.B. No. 709—Leonard.

An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, and to amend Section 533.5 of the Insurance Code, relating to regulation of commerce.

1991

Mar. 6—Introduced. Read first time. To Com. on RLS. for assignment. To print.
Mar. 7—From print. May be acted upon on or after April 6.
Mar. 14—To Com. on JUD.
April 8—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
April 10—Set for hearing May 14.
May 22—From committee: Do pass as amended. (Ayes 7. Noes 1. Page 1294.)
May 23—Read second time. Amended. To third reading.
June 9—Read third time. Passed. (Ayes 29. Noes 2. Page 1715.) To Assembly.
June 9—In Assembly. Read first time. Held at Desk.
June 13—To Com. on JUD.
July 8—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
July 18—From committee: Do pass. (Ayes 9. Noes 0.)
Aug. 19—Read second time. To third reading.
Aug. 22—Read third time. Passed. (Ayes 58. Noes 14. Page 3756.) To Senate.
Aug. 22—In Senate. To unfinished business.
Aug. 28—Senate concurs in Assembly amendments (Ayes 36. Noes 0. Page 2838.) To enrollment.
Sept. 4—Enrolled. To Governor at 1 p.m.
Oct. 14—Approved by Governor.
Oct. 14—Chaptered by Secretary of State. Chapter 1185, Statutes of 1991.

SENATE BILL No. 709

Introduced by Senator Ayala

March 6, 1991

An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 709, as introduced, Ayala. Unfair competition.

Under existing law, any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. Existing law provides that actions for injunctions to enjoin unfair competition may be prosecuted by the Attorney General, any district attorney, or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor.

This bill would also allow a county counsel to prosecute an action for injunction with the consent of the district attorney.

Existing law provides that any person who violates the unfair competition laws or violates an injunction prohibiting unfair competition, shall be liable for civil penalties with the allocation of the money collected to be apportioned, as specified.

This bill would provide that if an action is brought by a county counsel for violation of the unfair competition laws or to enjoin unfair competition, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or *any county counsel with the consent of the district attorney or* any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or *any county counsel with the consent of the district attorney or* any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney *or county counsel*, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer

of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 3. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, *any county counsel with the consent of the district attorney,* or any city attorney in any court of competent jurisdiction within his *or her* jurisdiction

without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney *or county counsel,* the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

O

Senate Judiciary Committee
Background Information
5-5957
SB 709 (Ayala)

Please complete this form and return it to the Senate Judiciary Committee, Room 2032, as soon as possible. Your bill cannot be heard until this form is returned.

1. Who on your staff is responsible for this measure?

2. Which agency, organization or individual requested the introduction of this bill?

   Name: **County of San Bernardino**

   Contact Person: **John P. Quimby/Pam Milligan**

   Phone Number: **(916) 552-7979**

3. Which agencies, organization, or individuals (outside of the sponsor) have expressed support?

   San Bernardino District Attorney

4. Which agencies, organization of individuals have expressed opposition?

   Unknown

5. If a similar bill has been introduced in a previous session, what was the number and year of its introduction?

6. What problem or deficiency under current law does the bill seek to remedy?

   See the attached

7. Are you planning any amendments to be offered before the Committee hearing?

   Unknown

If you have any further background information or material relating to this measure (letters of support or opposition, reports, opinions, citations, etc.) please attach copies of state where such information is available.

Your cooperation is appreciated.

COUNTY OF SAN BERNARDINO

1991 SPONSORED LEGISLATION

1. **Short Title:** Authority for County Counsel to enforce the Unfair Trade Practices Act.

2. **Department:** County Counsel

3A. **Primary Contact Person:** Susan L. Nash, Deputy County Counsel, (714) 387-5476.

3B. **Backup Contact Person:** Craig S. Jordan, Assistant County Counsel, (714) 387-5460.

4. **Proposal:** Amend law to allow the County Counsel to file actions under the Unfair Trade Practices Act (Business and Professions Code Section 17000 et seq.).

5. **Statement of Need:** Existing law omits County Counsel from the list of governmental entities authorized to bring Unfair Trade Practices actions for civil penalties. The Attorney General, district attorneys, and city attorneys are authorized to bring such actions.

   The San Bernardino County Counsel currently files injunctive actions to enjoin violations of the County Code. These injunctions are limited to stopping the violation of the Code. There is no authority for the court to award the County attorney fees or any other costs incurred by the County in bringing the action against the violator; nor does the County have authority to collect a fine or penalty from the Code violator.

   The County Code does provide that if there is a suspected fraudulent or unfair business practice as defined in the Business and Professions Code, the Department of Environmental Health Services shall refer the matter to "the appropriate prosecutorial authority for further investigation and civil remedies" (§ 33.0111). The Unfair Trade Practices Act's specific prohibitions against unfair competition were enacted for the purpose of safeguarding the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented (B & P § 17001). While not all County Code violations are also a violation of the Act, any business which is operating without the required permits and without complying with required conditions, certainly has an unfair advantage over law-abiding competitors.

   As the San Bernardino County Counsel presently does not have this prosecutorial authority, the District Attorney must file

actions for injunctions or civil penalties pursuant to the Unfair Trade Practices Act. It is an unnecessary and inefficient use of District Attorney time to file a separate action under the Unfair Trade Practices Act when the County Counsel has filed an injunctive action. It would be much simpler and more efficient for County Counsel to include an Unfair Trade Practices cause of action, in appropriate cases, when an injunction is sought by County Counsel to enforce the County Codes.

It is anticipated that the County will reduce its cost of bringing injunctive actions for County Code violations. With the prospect of civil penalties, violators should be more likely to voluntarily comply with the County Code. In addition, any penalties collected go directly into the County General Fund.

6. **Description of the Problem:** If Business and Professions Code §§ 17204, 17206 and 17207 are amended to explicitly state that County Counsel is authorized to bring actions to collect civil penalties for unfair trade practices, it will increase County Counsel's effectiveness in bringing injunctive actions. There are some businesses which appear to consider that the cost of a court action and an order to stop operating is an acceptable cost of doing business, as long as they can continue operating at a profit while the injunctive action winds its way through the courts. It would be an added incentive for businesses to comply with County Codes and settle cases quickly, as well as providing revenue to the County to help defray the costs of enforcement, if County Counsel could include a cause of action for civil penalties for unfair trade practices with injunctive actions.

   There is precedent for authorizing County Counsel to bring civil penalty actions. The Business and Professions Code sections dealing with False Advertising (§ 17500 et seq.), in language almost identical to the Unfair Trade Practices Act, authorize County Counsel to bring injunction actions (§ 17535), collect civil penalties for violations of an injunction (§ 17535.5), and collect civil penalties for violations of the chapter (§ 17536).

7. **Examples:** Three examples of illegally operating businesses for which the threat of civil penalties may increase the chances of settlement and compliance are illegal billboards, gravel mining operations, and mobile home or recreational vehicle parks. All of these businesses are highly profitable. The cost of prolonging a lawsuit is minor compared to the profits to be made while operating illegally, unless the threat of daily civil penalties is present.

8. **Suggested Language:**

   Business and Professions Code § 17204 shall be amended to

read:

> Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney, county counsel, or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the People of the State of California upon their own complaint or upon the complaint of any board, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

Business and Professions Code § 17206(a) shall be amended to read:

> (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the People of the State of California by the Attorney General or by any district attorney, county counsel, or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction.

Business and Professions Code § 17206(b) shall be amended to read:

> (b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

Business and Professions Code § 17207(b) shall be amended to read:

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the People of the State of California by the Attorney General or by any district attorney, county counsel, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original jurisdiction was issued. An action brought pursuant to this section to recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

Business and Professions Code § 17207(c) shall be amended to read:

(c) If such action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

CSJ/Trade2

Patricia Gayman
SACRAMENTO REPRESENTATIVE
COUNTY OF SAN DIEGO

1100 K STREET, SUITE 100
SACRAMENTO, CALIFORNIA 95814
(916) 447-2868

April 8, 1991

RECEIVED
A...
Ans'd..........

The Honorable Ruben Ayala
Member of the Senate
State Capitol, Room 2082
Sacramento, CA 95814

Re: SB 709 (Set in Senate Judiciary Committee)

Dear Ruben:

The San Diego County Board of Supervisors supports your Senate Bill 709 dealing with enforcement of unfair competition laws. Attached is a copy of the County's proposal.

Please let me know if I can be of further assistance in securing passage of this measure.

Sincerely,

Pat

Patricia Gayman
Sacramento Representative

Attachment

cc: Senator Bill Lockyer, Chair
Senate Judiciary Committee
Mr. James Provenza
Senate Judiciary Committee
County Supervisors Association of California
Office of Intergovernmental Affairs

County of San Diego

1991 LEGISLATIVE SPONSORSHIP PROPOSAL

ENFORCEMENT OF UNFAIR COMPETITION LAWS

Proposal: To amend Sections 17204, 17206 and 17207 of the Business and Professions Code to authorize a county counsel to file civil actions for violations of unfair competition laws.

Present Law: Provides that civil actions for violations of unfair competition laws may be filed by (1) the State Attorney General, (2) a district attorney, (3) a city attorney in a city having a population in excess of 750,000, (4) a city prosecutor, with the consent of the local district attorney, in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction, and (5) the City Attorney of the City of San Jose, with the consent of the Santa Clara County District Attorney.

Discussion: This proposal is intended to expand the ability of counties to enforce local land use policies by providing county counsels additional authority to pursue legal remedies against businesses that are in violation of local zoning and regulatory ordinances. Specifically, the proposal would provide county counsels the authority to file civil actions against businesses violating unfair competition laws which carry a penalty of $2,500 per violation.

A example experienced by San Diego County of a business in violation of local zoning and regulatory ordinances, as well as unfair business laws, related to a trucking business operating in an unincorporated area not zoned for commercial use. Typically, commercial property is more expensive to purchase or lease. By locating in an unincorporated area zoned for rural residential use, the business was able to benefit from lower overhead costs. The owner then used the savings in lower operating costs to under bid the competition operating within legal requirements, thereby profiting from the zoning violation.

The process for seeking compliance with zoning and regulatory ordinances is time-consuming, and lacks court penalties which might otherwise discourage continuing illegal activities. As a result, violations of local zoning and regulatory ordinances in unincorporated areas are not promptly resolved, and the businesses that are in violation continue to operate. In fact, it took more than a year to force the owner the of the trucking company into compliance. Until he was faced with contempt

charges by a judge, it was more profitable to operating illegally.

It is most appropriate that county counsels be permitted to concurrently file in the same litigation for zoning and regulatory violation civil actions for violations of unfair competition laws. Currently, the City Attorney may file both civil actions. It may have been an oversight in the original legislation to omit county counsels from the list of agencies authorized to enforce such laws. This proposal would provide counties an additional legal tool to enforce local zoning and regulatory ordinances. Furthermore, it is anticipated that business operating legally would be supportive of increased enforcement of these laws to prevent an unfair advantage to those who would otherwise operate illegally.

Fiscal Impact: Undetermined. However, it could save money since it would avoid duplicate effort by two County officials.

MINUTES OF THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, ALIFORNIA

Legislation-State;
Co. Counsel

January 14, 1991

FROM: FAZLE RAB QUADRI, County Legislative Analyst
Board of Supervisors Government Relations

SUBJECT: 1991 COUNTY SPONSORED LEGISLATION--
UNFAIR TRADE PRACTICES ACT

RECOMMENDATION: Co-sponsor legislation to authorize the County Counsel to file actions under the Unfair Trade Practices Act.

BACKGROUND: Currently, the County Counsel may file injunctive actions enjoining violations of the County Code; however, the County Counsel may not bring action for civil penalties under the Unfair Trade Practices Act. Since the County Counsel cannot bring such actions, he must have any matters of suspected fraudulent or unfair business practices referred to the District Attorney. It is an unnecessary and inefficient use of District Attorney's time to file a separate action under the Unfair Trade Practices Act if the County Counsel has filed an injunctive action.

Additionally, some businesses view the cost of a court action and an injunction order "an acceptable cost of doing business", as long as they can continue operating at a profit during court deliberations. The prospect of civil penalties is likely to make violators more likely to voluntarily comply with the law.

This proposal will amend the current law to allow County Counsel to file actions under the Unfair Trade Practices Act. It has been indicated that the District Attorney Office supports the proposal; and other counties are also considering co-sponsoring the legislation.

cc: Gov't. Relations (4)
Co. Counsel
File

lw

Action of the Board of Supervisors

APPROVED BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO

MOTION	Aye	Aye	Second	Aye	Motion
	1	2	3	4	5

EARLENE SCROAT, CLERK OF THE BOARD
BY Laura Welch
DATED: JAN 14 1991

ITEM 51-10

14-9507-000
Rev. 10/81

AMENDED IN SENATE APRIL 8, 1991

SENATE BILL No. 709

Introduced by Senator Ayala

March 6, 1991

An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, ~~relating to unfair competition~~ *and to amend Section 533.5 of the Insurance Code, relating to regulation of commerce.*

LEGISLATIVE COUNSEL'S DIGEST

SB 709, as amended, Ayala. ~~Unfair competition~~ *Regulation of commerce.*

Under existing law, any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. Existing law provides that actions for injunctions to enjoin unfair competition may be prosecuted by the Attorney General, any district attorney, or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor.

This bill would also allow a county counsel to prosecute an action for injunction ~~with the consent of the district attorney~~ *to enjoin unfair competition.*

Existing law provides that any person who violates the unfair competition laws or violates an injunction prohibiting unfair competition, shall be liable for civil penalties with the allocation of the money collected to be apportioned, as specified.

This bill would provide that if an action is brought by a county counsel for violation of the unfair competition laws or to enjoin unfair competition, the penalty collected shall be paid to the treasurer of the county in which the judgment was

entered.

Existing law provides that no policy of insurance shall provide any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal or specified civil action or proceeding brought by the Attorney General, any district attorney, or any city prosecutor, and that no policy shall provide any duty to defend those actions.

This bill would include under these provisions, an action or proceeding brought by a county counsel.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or any county counsel ~~with the consent of the district attorney~~ or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any county counsel ~~with the consent of the district attorney~~ or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or

city and county having a full-time city prosecutor in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 3. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the

length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, any county counsel ~~with the consent of the district attorney~~, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount

of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 4. Section 533.5 of the Insurance Code is amended to read:

533.5. (a) No policy of insurance shall provide, or be construed to provide, any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code by the Attorney General, any district attorney, ~~or~~ any city prosecutor, *or any county counsel,* notwithstanding whether the exclusion or exception regarding this type of coverage or indemnity is expressly stated in the policy.

(b) No policy of insurance shall provide, or be construed to provide, any duty to defend, as defined in subdivision (c), any claim in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code in which the recovery of a fine, penalty, or restitution is sought by the Attorney General, any district attorney, ~~or~~ any city prosecutor, *or any county counsel,* notwithstanding whether the exclusion or exception regarding the duty to defend this type of claim is expressly stated in the policy.

(c) For the purpose of this section, "duty to defend" means the insurer's right or obligation to investigate, contest, defend, control the defense of, compromise, settle, negotiate the compromise or settlement of, or indemnify for the cost of any aspect of defending any claim in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code in which the

insured expects or contends that (1) the insurer is liable or is potentially liable to make any payment on behalf of the insured or (2) the insurer will provide a defense for a claim even though the insurer is precluded by law from indemnifying that claim.

(d) Any provision in a policy of insurance which is in violation of subdivision (a) or (b) is contrary to public policy and void.

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SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1991-92 Regular Session

SB 709 (Ayala)
As amended April 8
Hearing date: May 14, 1991
Business & Professions/Insurance Codes
ART

REGULATION OF COMMERCE: ACTIONS BY COUNTY COUNSEL

HISTORY

Source: County of San Bernardino

Prior Legislation: None

Support: County of San Diego

Opposition: California District Attorneys Association

KEY ISSUE

SHOULD COUNTY COUNSEL BE GRANTED AUTHORIZATION TO FILE CIVIL ACTIONS FOR VIOLATIONS OF THE UNFAIR COMPETITION LAWS?

PURPOSE

Existing law provides that any person who violates the unfair competition laws or violates an injunction shall be liable for a civil penalty. Existing law also provides that an action to assess and recover this penalty shall be brought in the name of the people of California by the Attorney General, any district attorney or any city attorney of a city having a population in excess of 750,000.

It also provides for a city prosecutor in any city or city and county having a full-time city prosecutor to bring an action in the name to the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for their own behalf or the general public.

(More)

Existing law also provides that no policy of insurance shall provide, or be construed to provide coverage or indemnity of the payment of any fine, penalty, or restitution in any action brought under unfair competition laws brought by the Attorney General, any district attorney and city attorney.

This bill would provide that in addition to the Attorney General, the district attorney and the city attorney, any county counsel can bring an action for any violation of, or an injunction pursuant to, specified provisions on unfair competition.

The purpose of this bill is grant county counsels the authority to enforce the Unfair Trade Practices Act.

COMMENT

1. Background

California's Business and Professions Code Section 17200 et.seq. defines and prohibits unfair competition. Unfair competition includes unlawful, unfair or fraudulent business practice and unlawful, deceptive, untrue or misleading advertising and other specified acts.

A violation of this law is punishable by a civil penalty not to exceed $2,500 for each violation. Any person performing or proposing to perform an act of unfair competition may be enjoined. A violation of this injunction is punishable by a civil penalty not to exceed $6,000 for each violation.

If the unfair competition action is brought by a city attorney or city prosecutor, one-half of the penalty collected is paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which judgment was entered.

2. Stated need for legislation

Existing law omits County Counsel from the list of governmental entities authorized to bring Unfair Trade Practices actions for civil penalties. The Attorney General, district attorneys and city attorneys are authorized to bring such actions.

The sponsor of this bill, the County of San Bernardino, asserts that currently they file injunctive actions to enjoin violations of the county code. These injunctions are limited to stopping the violation of the Code. There is no authority for the court to award the County attorney fees or any other costs incurred by the County in bringing the action against the

violation; nor does the County have authority to collect a fine or penalty from the Code violator.

The County Code does provide that if there is a suspected fraudulent or unfair business practice as defined in the Business and Professions Code, the Department of Environmental Health Services shall refer the matter to "the appropriate prosecutorial authority for further investigation and civil remedies" (Section 33.0111). The Unfair Trade Practices Act's specific prohibitions against unfair competition were enacted for the purpose of safeguarding the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented. While not all county code violations are also a violation of the Act, any business which is operating without the required permits and without complying with required conditions, certainly has an unfair advantage over law-abiding competitors.

As the San Bernardino County Counsel presently does not have this prosecutorial authority, the District Attorney must file actions for injunctions or civil penalties pursuant to the Unfair Trade Practices Act. It is an unnecessary and ~~inefficient use of District Attorney~~ time to file a separate action under the Unfair Trade Practices Act when the County Counsel has filed an injunctive action. It would be much simpler and more efficient for County Counsel to include an Unfair Trade Practices cause of action, in appropriate cases, when an injunction is sought by County Counsel to enforce the County Codes.

The sponsors believe that the County will reduce its cost of bringing injunctive actions for County Code violations. With the prospect of civil penalties, violators should be more likely to voluntarily comply with the County Code. In addition, any penalties collected go directly into the County General Fund.

3. Other Acts authorizing County Counsel to bring civil penalty actions

There is precedent for authorizing County Counsel to bring civil penalty actions.

The Business and Professions Code sections dealing with False Advertising (Sections 17500 et.seq.), in language almost identical to the Unfair Trade Practices Act, authorize County Counsel to bring ~~injunction actions, collect~~ civil penalties for violations of an injunction and collect civil penalties for violations of the chapter.

4. Who is authorize to file civil actions for violation of Unfair Competition Laws

Currently only the Attorney General, district attorney or any city attorney of a city having a population in excess of 750,000 with the consent of the district attorney or a city prosecutor in any city that has a full-time city prosecutor may file actions for injunctions or for civil penalties.

5. Insurance Policy

Current law provides that no insurance policy will provide coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal proceeding or in any action brought for violations of the unfair competition laws brought by the Attorney General, district attorney, city prosecutor or city attorney of a large city (750,000 residents or more).

This bill would include county counsel.

6. Expansion of counties' ability to enforce local land use and zoning codes

This proposal will expand the ability of counties to enforce local land use policies by providing county counsels additional authority to pursue legal remedies against businesses that are in violation of local zoning and regulatory ordinances. Specifically, the proposal would provide county counsels the authority to file civil actions against businesses violating unfair competition laws which carry a penalty of $2,500 per violation.

The County of San Diego points to the following example: San Diego County had a business in violation of local zoning and regulatory ordinances, as well as unfair business laws, related to a trucking business operating in an unincorporated area not zoned for commercial use. Typically, commercial property is more expensive to purchase or lease. By locating in an unincorporated areas zoned for rural residential use, the business was able to benefit from lower overhead costs. The owner then used the savings in lower operating costs to under bid the competition opiating within legal requirements, thereby profiting from the zoning violation. In this case, it took more than a year to force the owner of the trucking company into compliance. Until he was faced with contempt charges by a judge, it was more profitable to operate illegally.

This proposal would provide counties an additional legal tool to enforce local zoning and regulatory ordinances.

Furthermore, it is anticipated that business operating legally would be supportive of increased enforcement of these laws to prevent an unfair advantage to those who would otherwise operate illegally.

5. Opposition

The California District Attorneys Association (CDAA) opposes this bill on several grounds. They believe that it would be a mistake to expand Business & Professions Code section 17200 by allowing other agencies to file these actions. They state: [t]his area (of the law) is rather specialized which requires a certain amount of expertise to ensure that these statutes are judiciously used. . . . we see no compelling reason to grant them authority to bring enforcement actions for unfair competition."

****

AMENDED IN SENATE MAY 23, 1991

AMENDED IN SENATE APRIL 8, 1991

SENATE BILL No. 709

Introduced by Senator Ayala

March 6, 1991

An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, and to amend Section 533.5 of the Insurance Code, relating to regulation of commerce.

LEGISLATIVE COUNSEL'S DIGEST

SB 709, as amended, Ayala. Regulation of commerce.

Under existing law, any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. Existing law provides that actions for injunctions to enjoin unfair competition may be prosecuted by the Attorney General, any district attorney, or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor.

This bill would also allow a county counsel *authorized by agreement with the district attorney on a case-by-case basis* to prosecute an action for injunction to enjoin unfair competition.

Existing law provides that any person who violates the unfair competition laws or violates an injunction prohibiting unfair competition, shall be liable for civil penalties with the allocation of the money collected to be apportioned, as specified.

This bill would provide that if an action is brought by a county counsel for violation of the unfair competition laws or to enjoin unfair competition, the penalty collected shall be

paid to the treasurer of the county in which the judgment was entered.

Existing law provides that no policy of insurance shall provide any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal or specified civil action or proceeding brought by the Attorney General, any district attorney, or any city prosecutor, and that no policy shall provide any duty to defend those actions.

This bill would include under these provisions, an action or proceeding brought by a county counsel.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or any county counsel *authorized by agreement with the district attorney on a case-by-case basis* or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any county counsel *authorized by agreement with the district attorney on a case-by-case basis* or any

city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 3. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all

relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, any county counsel *authorized by agreement with the district attorney on a case-by-case basis*, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses

incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 4. Section 533.5 of the Insurance Code is amended to read:

533.5. (a) No policy of insurance shall provide, or be construed to provide, any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code by the Attorney General, any district attorney, any city prosecutor, or any county counsel, notwithstanding whether the exclusion or exception regarding this type of coverage or indemnity is expressly stated in the policy.

(b) No policy of insurance shall provide, or be construed to provide, any duty to defend, as defined in subdivision (c), any claim in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code in which the recovery of a fine, penalty, or restitution is sought by the Attorney General, any district attorney, any city prosecutor, or any county counsel, notwithstanding whether the exclusion or exception regarding the duty to defend this type of claim is expressly stated in the policy.

(c) For the purpose of this section, "duty to defend" means the insurer's right or obligation to investigate, contest, defend, control the defense of, compromise, settle, negotiate the compromise or settlement of, or indemnify for the cost of any aspect of defending any claim in any criminal action or proceeding or in any

action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code in which the insured expects or contends that (1) the insurer is liable or is potentially liable to make any payment on behalf of the insured or (2) the insurer will provide a defense for a claim even though the insurer is precluded by law from indemnifying that claim.

(d) Any provision in a policy of insurance which is in violation of subdivision (a) or (b) is contrary to public policy and void.

O

THIRD READING

SB 709

Ayala (D)

5/23/91

21

SUBJECT: Regulation of commerce

SOURCE: County of San Bernardino

DIGEST: This bill would provide that county counsel be granted authorization to file civil actions for violations of the unfair competition laws that are authorized by agreement with the district attorney on a case-by-case basis.

ANALYSIS: Existing law provides that any person who violates the unfair competition laws or violates an injunction shall be liable for a civil penalty. Existing law also provides that an action to assess and recover this penalty shall be brought in the name of the people of California by the Attorney General, any district attorney or any city attorney of a city having a population in excess of 750,000.

It also provides for a city prosecutor in any city or city and county having a full-time city prosecutor to bring an action in the name to the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for their own behalf or the general public.

Existing law also provides that no policy of insurance shall provide, or be construed to provide coverage or indemnity of the payment of any fine, penalty, or restitution in any action brought under unfair competition laws brought by the Attorney General, any district attorney and city attorney.

This bill would provide that in addition to the Attorney General, the district attorney and the city attorney, any county counsel, authorized by agreement with the district attorney on a case-by-case basis, can bring an action for any violation of, or an injunction pursuant to, specified provisions on unfair competition.

The purpose of this bill is grant county counsels the authority to enforce the Unfair Trade Practices Act.

California's Business and Professions Code Section 17200 et.seq. defines and prohibits unfair competition. Unfair competition includes unlawful, unfair or fraudulent business practice and unlawful, deceptive, untrue or misleading advertising and other specified acts.

A violation of this law is punishable by a civil penalty not to exceed $2,500 for each violation. Any person performing or proposing to perform an act of unfair competition may be enjoined. A violation of this injunction is punishable by a civil penalty not to exceed $6,000 for each violation.

If the unfair competition action is brought by a city attorney or city prosecutor, one-half of the penalty collected is paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which judgment was entered.

According to the Senate Judiciary Committee analysis:

This proposal will expand the ability of counties to enforce local land use policies by providing county counsels additional authority to pursue legal remedies against businesses that are in violation of local zoning and regulatory ordinances. Specifically, the proposal would provide county counsels the authority to file civil actions against businesses violating unfair competition laws which carry a penalty of $2,500 per violation.

The County of San Diego points to the following example: San Diego County had a business in violation of local zoning and regulatory ordinances, as well as unfair business laws, related to a trucking business operating in an unincorporated area not zoned for commercial use. Typically, commercial property is more expensive to purchase or lease. By locating in an unincorporated areas zoned for rural residential use, the business was able to benefit from lower overhead costs. The owner then used the savings in lower operating costs to under bid the competition opiating within legal requirements, thereby profiting from the zoning violation. In this case, it took more than a year to force the owner of the trucking company into compliance. Until he was faced with contempt charges by a judge, it was more profitable to operate illegally.

This proposal would provide counties an additional legal tool to enforce local zoning and regulatory ordinances. Furthermore, it is anticipated that business operating legally would be supportive of increased enforcement of these laws to prevent an unfair advantage to those who would otherwise operate illegally.

CONTINUED

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 5/23/91)

County of San Bernardino (source)
County of San Diego

ARGUMENTS IN SUPPORT: Existing law omits County Counsel from the list of governmental entities authorized to bring Unfair Trade Practices actions for civil penalties. The Attorney General, district attorneys and city attorneys are authorized to bring such actions.

The sponsor of this bill, the County of San Bernardino, asserts that currently they file injunctive actions to enjoin violations of the county code. These injunctions are limited to stopping the violation of the Code. There is no authority for the court to award the County attorney fees or any other costs incurred by the County in bringing the action against the violation; nor does the County have authority to collect a fine or penalty from the Code violator.

The sponsors believe that the County will reduce its cost of bringing injunctive actions for County Code violations. With the prospect of civil penalties, violators should be more likely to voluntarily comply with the County Code. In addition, any penalties collected go directly into the County General Fund.

RJG:lm 5/23/91 Senate Floor Analyses

CONTINUED

June 13, 1991

The Honorable Ruben S. Ayala
California State Senate
State Capitol, Room 2082
Sacramento, CA 95814

Re: SB 709 - Oppose

Dear Senator Ayala:

On behalf of the California District Attorneys Association (CDAA), I regret to inform you we must oppose your bill, Senate Bill 709.

SB 709 would allow the county counsel to prosecute an action for injunction for unfair competition. We believe it would be a mistake to expand Business and Professions Code section 17200 by allowing other agencies to file these actions. This area is a rather specialized one which requires a certain amount of expertise to ensure that these statutes are judiciously used.

Unfair competition actions under section 17200 are enforcement in nature that are brought on behalf of the People of the State of California. As the county counsel generally defends against civil lawsuits brought against the county, we see no compelling reason to grant them authority to bring enforcement actions for unfair competition. District attorneys are actively involved in prosecuting these actions and are comfortable with their role.

Additionally, enabling county counsels to bring enforcement actions under this section may produce potential conflicts of interest. For example, if a resident at a county operated nursing home brings a suit against the county because of deplorable conditions which exist there, the county counsel would defend against that action. If another resident in the same nursing home were to ask county counsel to bring a 17200 action against the proprietors of that nursing home, what would the county counsel do?

Lastly, we see the possibility of confusion if both the district attorney and the county counsel are authorized to enforce unfair competition statutes. These agencies may wind up competing with one another, which would, at least initially, result in multiple prosecutions for the same offense, or each agency may be unaware that the other has initiated enforcement action under 17200.

Your bill also does not authorize county counsel to obtain consent of the district attorney. We believe this would present a chaotic situation where the two agencies would be unaware of each other's actions.

The unfair competition laws were to enacted to protect the public interest. The Attorney General and District attorney are directly accountable to the public for their actions. We believe their training and experience serve to protect the public interest in this area and their effectiveness may well be jeopardized or compromised through the expansion of this section.

Should you have any questions regarding our position on this measure, please contact me.

Sincerely,

Michael W. Sweet
Executive Director

MS:mi

cc: Senate Committee on Judiciary

STATEMENT FOR JOHN TO PRESENT SB 709 IN SENATE JUDICIARY 5/14.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, JOHN QUIMBY, REPRESENTING SAN BERNARDINO COUNTY. SB 709 WOULD AMEND CURRENT LAW TO ALLOW COUNTY COUNSELS TO FILE ACTIONS UNDER THE UNFAIR TRADE PRACTICES ACT. CURRENTLY, COUNTY COUNSELS MAY FILE AN INJUNCTIVE ACTION TO ENJOIN VIOLATIONS OF THE COUNTY CODE, BUT A DISTRICT ATTORNEY MUST FILE ACTIONS FOR INJUNCTIONS OR CIVIL PENALTIES PURSUANT TO THE UNFAIR TRADE PRACTICES ACT. WE BELIEVE THAT IT IS UNNECESSARY AND INEFFICIENT TO FILE SEPARATE ACTIONS FOR THE SAME VIOLATION. ALLOWING A COUNTY COUNSEL TO INCLUDE AN UNFAIR TRADE PRACTICES CAUSE OR ACTION WHEN AN INJUNCTION IS SOUGHT WOULD SIMPLIFY THE PROCESS AND PROVIDE FURTHER INCENTIVE FOR POTENTIAL VIOLATORS TO COMPLY WITH COUNTY CODES.

I HAVE WITH ME TODAY CRAIG JORDAN, ASSISTANT COUNTY COUNSEL FOR SAN BERNARDINO COUNTY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

TO: Honorable

RE: SB 709

JUL 2 - 1991

PLEASE RETURN BY asap TO: ASSEMBLY COMMITTEE ON JUDICIARY
STATE CAPITOL, ROOM 6005

WORKSHEET
(Please type)

Your bill has been referred to the Assembly Committee on Judiciary. It is imperative that you provide us with as much information regarding your bill as possible, including the following:

AUTHOR'S CONTACT PERSON:

Address, telephone number:

SPONSORING ORGANIZATION NAME: (Also list the bill's source if differs from sponsor.)

San Bernardino County
Name of contact person: John P. Quimby, Sr.
Address, telephone number: 1127 11th Street, Suite 925
Sacramento, CA 95814
(916) 552-7979

PRIOR COMMITTEE & FLOOR VOTES:

Senate Judiciary 7-1
Senate Floor 29-2

SET INFORMATION:

Preferred hearing dates: July 10,17
Estimated time to present testimony: 5 minutes
Names of witnesses: John P. Quimby, Sr.

PURPOSE OF BILL: (Specify problem or deficiency in existing law.)

See attached

HOW DOES THIS BILL REMEDY THE PROBLEM?

See Attached

STUDIES, REPORTS, STATISTICS & FACTS: (List all documented sources supporting your conclusion that there is a problem. Be specific and attach major sources.)

not applicable

PRIOR/SIMILAR/COMPANION LEGISLATION. (Bill number, author, coauthors, session and final disposition.)

unknown

POSITIONS OF THE DEPARTMENT OF FINANCE, STATE AGENCIES, & INTEREST GROUPS. (State precise reason if opposed.)

none

ADDITIONAL INFORMATION:

Attach copies of background and related materials, including letters of support & opposition.

Attach an author's or sponsor's statement as to the purpose of this bill.

(Revised 1/30/89, #105)

AMENDED IN ASSEMBLY JULY 8, 1991

AMENDED IN SENATE MAY 23, 1991

AMENDED IN SENATE APRIL 8, 1991

SENATE BILL No. 709

Introduced by Senator ~~Ayala~~ *Leonard*

March 6, 1991

An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, and to amend Section 533.5 of the Insurance Code, relating to regulation of commerce.

LEGISLATIVE COUNSEL'S DIGEST

SB 709, as amended, Ayala. Regulation of commerce.

Under existing law, any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. Existing law provides that actions for injunctions to enjoin unfair competition may be prosecuted by the Attorney General, any district attorney, or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor.

This bill would also allow a county counsel authorized by agreement with the district attorney ~~on a case/by/case basis~~ *in actions involving violation of a county ordinance* to prosecute an action for injunction to enjoin unfair competition.

Existing law provides that any person who violates the unfair competition laws or violates an injunction prohibiting unfair competition, shall be liable for civil penalties with the allocation of the money collected to be apportioned, as specified.

This bill would provide that if an action is brought by a

county counsel for violation of the unfair competition laws or to enjoin unfair competition, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

Existing law provides that no policy of insurance shall provide any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal or specified civil action or proceeding brought by the Attorney General, any district attorney, or any city prosecutor, and that no policy shall provide any duty to defend those actions.

This bill would include under these provisions, an action or proceeding brought by a county counsel.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or any county counsel authorized by agreement with the district attorney ~~on a case/by/case basis~~ *in actions involving violation of a county ordinance,* or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district

attorney or any county counsel authorized by agreement with the district attorney ~~on a case/by/case basis~~ *in actions involving violation of a county ordinance,* or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 3. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of

a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, any county counsel authorized by agreement with the district attorney ~~on a case-by-case basis~~ *in actions involving violation of a county ordinance*, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover such civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the

reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 4. Section 533.5 of the Insurance Code is amended to read:

533.5. (a) No policy of insurance shall provide, or be construed to provide, any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code by the Attorney General, any district attorney, any city prosecutor, or any county counsel, notwithstanding whether the exclusion or exception regarding this type of coverage or indemnity is expressly stated in the policy.

(b) No policy of insurance shall provide, or be construed to provide, any duty to defend, as defined in subdivision (c), any claim in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code in which the recovery of a fine, penalty, or restitution is sought by the Attorney General, any district attorney, any city prosecutor, or any county counsel, notwithstanding whether the exclusion or exception regarding the duty to defend this type of claim is expressly stated in the policy.

(c) For the purpose of this section, "duty to defend" means the insurer's right or obligation to investigate,

contest, defend, control the defense of, compromise, settle, negotiate the compromise or settlement of, or indemnify for the cost of any aspect of defending any claim in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code in which the insured expects or contends that (1) the insurer is liable or is potentially liable to make any payment on behalf of the insured or (2) the insurer will provide a defense for a claim even though the insurer is precluded by law from indemnifying that claim.

(d) Any provision in a policy of insurance which is in violation of subdivision (a) or (b) is contrary to public policy and void.

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Date of Hearing: July 17, 1991

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

SB 709 (Leonard) - As Amended: July 8, 1991

PRIOR ACTION

Sen. Com. on JUD. 7-1 Sen. Floor 29-2

SUBJECT: This bill permits county counsels, which have been authorized by the district attorney, to prosecute an action to enjoin unfair competition laws in actions involving violation of a county ordinance.

BACKGROUND

History. California's Business and Professions Code Section 17200 et.seq. defines and prohibits unfair competition. Unfair competition includes unlawful, unfair or fraudulent business practice and unlawful, deceptive, untrue or misleading advertising and other specified acts. A violation of this law entails a civil penalty not to exceed $2500 for each violation. Any person performing an act of unfair competition may be enjoined. A violation of this injunction entails a civil penalty not to exceed $6000 for each violation.

Traditionally, county governments are mandated to enforce state laws at the local level. Accordingly, state law has recognized the district attorney (in addition to the Attorney General) as the agency primarily responsible for prosecuting violations of the unfair competition laws described above. In response to the increasing burdens on the staff and resources of the district attorneys and to the prosecutorial competency of certain city attorneys, the law has been amended over the years to allow city attorneys of large cities (i.e., cities with a population exceeding 750,000) to also prosecute unfair competition actions. In addition, the city attorney of San Jose, even though its population has not yet reached 750,000, has also been authorized, with the annual consent of the Santa Clara District Attorney, to bring actions.

Existing law does not authorize county counsels to prosecute under the unfair competition laws.

The Assembly Judiciary Committee passed AB 1755 (Speier) earlier this year. AB 1755 authorizes any city attorney, with the annual consent of the district attorney, to prosecute unfair competition laws pursuant to human habitation and drug nuisance abatement.

Facts. The County of San Bernardino (County) currently has two cases that involve violations of the unfair competition laws. Under existing law, the county can not prosecute these violations.

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DIGEST

Existing law provides that:

1) Actions to enforce unfair competition laws may be prosecuted by the attorney general, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors and the city attorney of San Jose, with the annual consent of the Santa Clara County District Attorney.

2) If the district attorney brings action, any penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

3) No policy of insurance shall provide any coverage for the payment of any penalty in any criminal proceeding or in any action brought for violation of the unfair competition laws.

This bill provides that:

1) A county counsel authorized by agreement with the district attorney may prosecute an action to enjoin unfair competition laws in actions involving violation of a county ordinance.

2) If a county counsel brings such an action, any penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

3) No policy of insurance shall provide any coverage for the payment of any penalty in any criminal proceeding or in any action brought for violations of the unfair competition laws by a county counsel.

FISCAL EFFECT

Unknown. This bill will result in increased county costs to the extent county counsels exercise this new authority. These costs could be offset by any penalties that result from such actions. This bill will not be referred to the Assembly Committee on Ways and Means.

COMMENTS

1) **Sponsor's Statement**. The County of San Bernardino is the sponsor of this bill. Existing law permits the San Bernardino County counsel to file an injunction to stop the violation of a county code. However, the county counsel does not have the authority to collect a fine or penalty from the violator of the code. As a result, the district attorney must file actions for civil penalties pursuant to the unfair competition laws. The sponsor states: "It is an unnecessary and inefficient use of the District Attorney's time to file a separate action under the Unfair Trade Practices Act when the County Counsel has [already] filed an injunctive action. It would be much simpler and more efficient for County Counsel" to be able to bring action under the unfair competition laws in appropriate cases. The sponsor further states: "With the prospect of

- continued -

civil penalties, violators should be more likely to voluntarily comply with the County Code."

2) The California District Attorney's Association (CDAA) opposes this bill. CDAA states: "As the county counsel generally defends against civil lawsuits brought against the county, we see no compelling reason to grant them authority to bring enforcement actions for unfair competition...We believe it would be a mistake to expand Business and Professions Code Section 17200 by allowing other agencies to file these actions. This area is a rather specialized one which requires a certain amount of expertise to ensure that these statutes are judiciously used." CDAA also believes that authorizing county counsels to prosecute unfair competition violations might produce conflicts of interest. Furthermore, CDAA fears that this bill might lead to district attorneys and county counsels competing with one another and inadvertently duplicating each other's efforts.

3) Precedent exists in current law for authorizing county counsel to bring civil penalty actions. Business and Professions Code Section 17500 et. seq., which deals with false advertising, authorizes county counsels to collect civil penalties for violations of an injunction and collect civil penalties for violations of the chapter.

SUPPORT

County of San Bernardino

OPPOSITION

California District Attorney's Association

John Q. Young
445-4560
ajud

SB 709 (Leonard)
Analyzed: 07/15/91

ASSEMBLY COMMITTEE ON JUDICIARY
REPUBLICAN ANALYSIS

SB 709 (Leonard) -- REGULATION OF COMMERCE.
Version: 7/08/91 Lead Republican: Tom McClintock
Recommendation: Support. Vote: Majority.

Summary: **Permits county counsels, which have been authorized by the district attorney, to prosecute an action to enjoin unfair competition laws in actions involving violation of a county ordinance.** Any penalty collected would be paid to the treasurer of the county in which the judgment was entered. Fiscal Impact: Unknown.

Supported by: County of San Bernardino Opposed by: Calif. District Attorney's Assn. Governor's position: Unknown.

Comments: A San Bernardino County-sponsored bill to authorize collection of fines from county code violators. The sponsor contends that it is inefficient to use a DA's time to file a separate action under the Unfair Trade Practices Act when the County Counsel has previously filed an injunctive action. The sponsor further asserts that it would be more efficient for County Counsel to be able to bring action under the unfair competition laws in appropriate cases.

The Calif. District Attorney Association (CDAA) oppose the bill on the grounds that (1) DAs geneally have developed greater expertise for handling such unfair trade practice actions and (2) competition could ensue between DAs and County Counsel leading to unnecessary duplication of services. CDDA further adds that there could be conflict of interest situations developing from such authorization to County Counsels.

Sponsor cites precedent in current law that authorize county counsels to pursue false advertising.

Senate Republican Floor Vote -- 6/09/91
(29-2) Ayes: Beverly, Craven, Hill, Leonard, Leslie, Maddy, Russell
Noes: Lewis, Royce
Abs./N.V.: Davis, Morgan

Assembly Republican Committee vote
Judiciary -- 7/17/91
(>) Ayes: >
Noes: >
Abs.: >
N.V.: >

Consultant: Mark Redmond

SENATE THIRD READING

SB 709 (Leonard) - As Amended: July 8, 1991

SENATE VOTE: 29-2

ASSEMBLY ACTIONS:

COMMITTEE JUD. VOTE 9-0 COMMITTEE _____ VOTE _____

DIGEST

Existing law provides that:

1) Actions to enforce unfair competition laws may be prosecuted by the attorney general, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors and the city attorney of San Jose, with the annual consent of the Santa Clara County District Attorney.

2) If the district attorney brings action, any penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

3) No policy of insurance shall provide any coverage for the payment of any penalty in any criminal proceeding or in any action brought for violation of the unfair competition laws.

This bill provides that:

1) A county counsel authorized by agreement with the district attorney may prosecute an action to enjoin unfair competition laws in actions involving violation of a county ordinance.

2) If a county counsel brings such an action, any penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

3) No policy of insurance shall provide any coverage for the payment of any penalty in any criminal proceeding or in any action brought for violations of the unfair competition laws by a county counsel.

FISCAL EFFECT

None

COMMENTS

1) The County of San Bernardino is the sponsor of this bill. Existing law permits the San Bernardino County counsel to file an injunction to stop the violation of a county code. However, the county counsel does not have the authority to collect a fine or penalty from the violator of the

- continued -

code. As a result, the district attorney must file actions for civil penalties pursuant to the unfair competition laws. The sponsor states: "It is an unnecessary and inefficient use of the District Attorney's time to file a separate action under the Unfair Trade Practices Act when the County Counsel has [already] filed an injunctive action. It would be much simpler and more efficient for County Counsel" to be able to bring action under the unfair competition laws in appropriate cases. The sponsor further states: "With the prospect of civil penalties, violators should be more likely to voluntarily comply with the County Code."

2) The California District Attorney's Association (CDAA) opposes this bill. CDAA states: "As the county counsel generally defends against civil lawsuits brought against the county, we see no compelling reason to grant them authority to bring enforcement actions for unfair competition...We believe it would be a mistake to expand Business and Professions Code Section 17200 by allowing other agencies to file these actions. This area is a rather specialized one which requires a certain amount of expertise to ensure that these statutes are judiciously used." CDAA also believes that authorizing county counsels to prosecute unfair competition violations might produce conflicts of interest. Furthermore, CDAA fears that this bill might lead to district attorneys and county counsels competing with one another and inadvertently duplicating each other's efforts.

3) Precedent exists in current law for authorizing county counsel to bring civil penalty actions. Business and Professions Code Section 17500 et. seq., which deals with false advertising, authorizes county counsels to collect civil penalties for violations of an injunction and collect civil penalties for violations of the chapter.

FN 020156

John Q. Young
445-4560
ajud

UNFINISHED BUSINESS

SENATE RULES COMMITTEE

Office of
Senate Floor Analyses
1020 N Street, Suite 524
445-6614

Bill No. SB 709

Author: Ayala (D)

Amended: 7/8/91

Vote Required: 21

Committee Votes:

COMMITTEE: JUDICIARY		
BILL NO.: SB 709		
DATE OF HEARING: 5-14-91		
SENATORS:	AYE	NO
Keene	✓	
Marks	✓	
Petris	✓	
Presley		
Roberti	✓	
Royce		✓
Torres	✓	
Watson	✓	
Vacancy		
Davis (VC)	✓	
Lockyer (Ch)	✓	
VOTE:	7	1

Senate Floor Vote: p. 1715, 6/9/91

Senate Bill 709—An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, and to amend Section 533.5 of the Insurance Code, relating to regulation of commerce.

Bill read third time and presented by Senator Leonard.

Roll Call

The roll was called and the bill was passed by the following vote:

AYES (29)—Senators Alquist, Bergeson, Beverly, Boatwright, Craven, Dills, Cecil Green, Leroy Greene, Hill, Johnston, Keene, Killea, Kopp, Leonard, Leslie, Lockyer, Maddy, Marks, McCorquodale, Mello, Petris, Presley, Roberti, Rosenthal, Russell, Thompson, Torres, Vuich, and Watson.

NOES (2)—Senators Lewis and Royce.

Bill ordered transmitted to the Assembly.

Assembly Floor Vote: 58-14, p. 3756, 8/22/91

SUBJECT: Regulation of commerce

SOURCE: County of San Bernardino

DIGEST: This bill would provide that county counsel be granted authorization to file civil actions for violations of the unfair competition laws that are authorized by agreement with the district attorney in actions involving the violation of a county ordinance.

Assembly Amendments specify "cases involving the violation of a county ordinance", rather than "on a case-by-case basis".

ANALYSIS: Existing law provides that any person who violates the unfair competition laws or violates an injunction shall be liable for a civil penalty. Existing law also provides that an action to assess and recover this penalty shall be brought in the name of the people of California by the Attorney General, any district attorney or any city attorney of a city having a population in excess of 750,000.

It also provides for a city prosecutor in any city or city and county having a full-time city prosecutor to bring an action in the name to the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for their own behalf or the general public.

Existing law also provides that no policy of insurance shall provide, or be construed to provide coverage or indemnity of the payment of any fine, penalty, or restitution

CONTINUED

in any action brought under unfair competition laws brought by the Attorney General, any district attorney and city attorney.

This bill would provide that in addition to the Attorney General, the district attorney and the city attorney, any county counsel, authorized by agreement with the district attorney in actions involving violations of a county ordinance, can bring an action for any violation of, or an injunction pursuant to, specified provisions on unfair competition.

The purpose of this bill is grant county counsels the authority to enforce the Unfair Trade Practices Act.

California's Business and Professions Code Section 17200 et.seq. defines and prohibits unfair competition. Unfair competition includes unlawful, unfair or fraudulent business practice and unlawful, deceptive, untrue or misleading advertising and other specified acts.

A violation of this law is punishable by a civil penalty not to exceed $2,500 for each violation. Any person performing or proposing to perform an act of unfair competition may be enjoined. A violation of this injunction is punishable by a civil penalty not to exceed $6,000 for each violation.

If the unfair competition action is brought by a city attorney or city prosecutor, one-half of the penalty collected is paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which judgment was entered.

According to the Senate Judiciary Committee analysis:

This proposal will expand the ability of counties to enforce local land use policies by providing county counsels additional authority to pursue legal remedies against businesses that are in violation of local zoning and regulatory ordinances. Specifically, the proposal would provide county counsels the authority to file civil actions against businesses violating unfair competition laws which carry a penalty of $2,500 per violation.

The County of San Diego points to the following example: San Diego County had a business in violation of local zoning and regulatory ordinances, as well as unfair business laws, related to a trucking business operating in an unincorporated area not zoned for commercial use. Typically, commercial property is more expensive to purchase or lease. By locating in an unincorporated areas zoned for rural residential use, the business was able to benefit from lower overhead costs. The owner then used the savings in lower operating costs to under bid the competition opiating within legal requirements, thereby profiting from the zoning violation. In this case, it took more than a year to force the owner of the trucking company into compliance. Until he was faced with contempt charges by a judge, it was more profitable to operate illegally.

This proposal would provide counties an additional legal tool to enforce local zoning and regulatory ordinances. Furthermore, it is anticipated that business operating legally would be supportive of increased enforcement of these laws to prevent an unfair advantage to those who would otherwise operate illegally.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

CONTINUED

SUPPORT: (Verified 8/22/91)

County of San Bernardino (source)
County of San Diego

ARGUMENTS IN SUPPORT: Existing law omits County Counsel from the list of governmental entities authorized to bring Unfair Trade Practices actions for civil penalties. The Attorney General, district attorneys and city attorneys are authorized to bring such actions.

The sponsor of this bill, the County of San Bernardino, asserts that currently they file injunctive actions to enjoin violations of the county code. These injunctions are limited to stopping the violation of the Code. There is no authority for the court to award the County attorney fees or any other costs incurred by the County in bringing the action against the violation; nor does the County have authority to collect a fine or penalty from the Code violator.

The sponsors believe that the County will reduce its cost of bringing injunctive actions for County Code violations. With the prospect of civil penalties, violators should be more likely to voluntarily comply with the County Code. In addition, any penalties collected go directly into the County General Fund.

ASSEMBLY FLOOR VOTE:

SENATE BILL NO. 709 (Leonard)—An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, and to amend Section 533.5 of the Insurance Code, relating to regulation of commerce.

Bill read third time, and presented by Assembly Member Isenberg.

Bill passed by the following vote:

AYES—58

Alpert	Cortese	Hayden	Polanco
Archie-Hudson	Costa	Horcher	Roybal-Allard
Bane	Eastin	Hughes	Sher
Bates	Eaves	Hunter	Speier
Becerra	Elder	Isenberg	Statham
Bentley	Epple	Jones	Tanner
Bronzan	Farr	Katz	Tucker
Brulte	Felando	Kelley	Umberg
Burton	Filante	Klehs	Vasconcellos
Campbell	Friedman, Barbara	Knowles	Woodruff
Cannella	Friedman, Terry	Lee	Wright
Chacon	Gotch	Lempert	Wyman
Chandler	Hannigan	Margolin	Mr. Speaker
Clute	Hansen	Murray	
Connelly	Hauser	O'Connell	

NOES—14

Allen	Ferguson	McClintock	Quackenbush
Andal	Frazee	Mountjoy	Seastrand
Baker	Frizzelle	Nolan	
Boland	Johnson	Peace	

Bill ordered transmitted to the Senate.

RJG:lm 8/23/91 Senate Floor Analyses

ENROLLED BILL REPORT

Analyst: John C. Lamb
Bus. Ph: 445-5126
Home Ph:

AGENCY: State and Consumer Services Agency	BILL NUMBER: SB 709
DEPARTMENT: Department of Consumer Affairs	AUTHOR: Leonard

BILL SUMMARY

As enrolled, this bill would authorize county counsels to use California's unfair competition law to civilly prosecute violations of county ordinances. County counsels would be authorized to use the unfair competition provisions to seek injunction, restitution, and civil penalties for violations of county ordinances. County counsels also would be authorized to seek civil penalties under the unfair competition provisions where an injunction issued under these provisions has been violated. A county counsel would be required to obtain the district attorney's authorization before prosecuting ordinance violations under the unfair competition provisions; however, the bill is not clear whether this authorization would be ongoing, or whether it would have to be renewed each time a county counsel proposes to undertake such a prosecution.

BACKGROUND

Under existing law, county counsels are authorized generally to file actions seeking injunctive relief for violations of the county code, but cannot seek injunctions or civil penalties under the unfair competition provisions. The proponent (San Bernardino County is the sponsor) proposes to use the power to seek civil penalties under the unfair competition provisions to pursue violations of county codes relative to such matters as billboards, gravel mining operations, and mobile home or RV parks. The proponent contends that allowing county counsels to seek civil penalties in addition to injunctive relief would encourage more voluntary compliance with the county code.

The proponent also contends that some businesses consider the cost of a court action and an injunction to be an acceptable cost of doing business as long as they can continue to operate while the injunction action is pending. The proponent contends that allowing county counsels to seek civil penalties under the unfair competition provisions for violations of injunctions would encourage violators to comply with injunctions. The remedy of civil contempt is available to county counsels to redress such injunction violations, and in the department's view, is adequate in these code violation cases.

VOTE:	Assembly	Partisan R	Partisan D	Senate	Partisan R	Partisan D
Floor:	58-14			29-2		
Policy Committee:	9-0			7-1		
Fiscal Committee:						

RECOMMENDATION TO GOVERNOR:
SIGN X VETO ___ NO POSITION ___ DEFER TO OTHER AGENCY _____

DEPARTMENT DIRECTOR	DATE:	AGENCY SECRETARY:	DATE:
L. Lance Barrell	5,17,91	Jeanne Moore	9/5/91

SPECIFIC FINDINGS

o In May, the department proposed an Oppose Unless Amended position on SB 709, and on August 19, received a Neutral if Amended position. In general, our concerns were that: ordinance violations usually are minor in nature (e.g., illegal billboards), and so are not significant enough to allow county counsels to subject violators to the significant remedies provided by the unfair competition provisions (e.g., civil penalties of up to $2,500 per violation); the remedy of civil contempt is adequate to redress violations of injunctions by defendants who have been ordered to comply with county ordinances; and, neither case law nor the existing unfair competition statutes (Bus. & Prof. Code §§ 17200, 17206) countenance the seeking or obtaining of civil penalties by agencies which do not have a law enforcement function (such as county counsels).

o The department also felt that a county counsel should not be able to proceed under the unfair competition provisions without the authorization of the chief law enforcement officer in the county, the district attorney. The May 23 amendments required the district attorney's authorization on a case-by-case basis. The July 8 amendments limited county counsels' use of the unfair competition provisions to violations of county ordinances, but eliminated the "case-by-case" requirement. The department's concern that the unfair competition provisions' remedies are disproportionate to the seriousness of county code violations (and our other concerns stated above) were not resolved by these amendments.

o The department proposed amendments that were a fair effort to resolve its concerns and those stated by the sponsor. The proposed amendments would have authorized county counsels to bring actions under the unfair competition provisions for injunction, restitution, and other equitable relief, and to recover their costs of investigation and prosecution, in cases involving violations of county ordinances. Our proposed amendments would not have authorized county counsels to seek or obtain civil penalties in these cases. These amendments were not accepted, and the department's concerns remain unresolved.

o The California District Attorneys Association (CDAA) continues to strongly oppose the bill. The Association finds the scope and duration of the provision which requires the district attorney's authorization to be unclear. CDAA also finds the bill to be unnecessary because, under existing law, any district attorney can appoint a county counsel as a special deputy district attorney when conditions warrant.

o CDAA also continues to find the bill unacceptable conceptually because: the unfair competition provisions are quite specialized and require expertise in their use; the provisions require restraint in their use to assure that their powerful remedies are not abused and that fair, competitive business practices are not wrongfully interfered with, and also because abuse of the remedies could easily result in an appellate decision which weakens the unfair competition provisions, or declares them unconstitutional (i.e., bad facts usually makes bad law); district attorneys prosecute unfair competition actions, which are enforcement actions brought in the name of the People, while county counsels generally defend counties against civil actions; and,

enabling county counsels to bring enforcement actions under the unfair competition provisions could lead to conflict of interest where the county is sued on the underlying ordinance violation. The Association also observes that the district attorney is the chief law enforcement officer in the county and is directly accountable to the people for his or her actions, while the county counsel is accountable to his or her Board of Supervisors.

FISCAL IMPACT

No fiscal impact on the department.

INTERESTED PARTIES

SUPPORT: City of San Diego

OPPOSE: California District Attorneys Association
San Diego District Attorney
San Francisco District Attorney
(Other district attorneys are expected to express their opposition to the bill.)

NEUTRAL IF AMENDED: Department of Consumer Affairs

ARGUMENTS

Proponents argue that allowing county counsels to seek civil penalties under the unfair competition provisions in their injunction actions would encourage more voluntary compliance with the county code. Proponents also argue that once an injunction against violating the county code has been issued, the availability of civil penalties would encourage compliance with the injunction.

Opponents argue that violations of county ordinances are not significant enough to allow county counsels to subject violators to the significant remedies provided by the unfair competition provisions, and that the remedy of civil contempt is adequate to redress violations of injunctions in code violation cases. Opponents also argue that the bill is unnecessary because, under existing law, any district attorney can appoint a county counsel as a special deputy district attorney when conditions warrant.

RECOMMENDATION

The department was given a Neutral if Amended position on SB 709 and so recommends that the Governor SIGN the bill. However, given the department's unresolved concerns about the bill, and the concerns of CDAA and individual district attorneys, we have prepared a proposed veto message.

SUGGESTED VETO MESSAGE

SENATE BILL 709 (LEONARD)

To the Members of the California Senate:

I am returning Senate Bill 709 without my signature.

The bill would authorize county counsels to use California's unfair competition law to civilly prosecute violations of county ordinances. The bill would allow county counsels to seek civil penalties for such violations, and also for violations of injunctions requiring compliance with county ordinances.

This bill would provide sanctions disproportionate to the wrongs involved. Because ordinance violations usually are minor in nature (e.g., illegal billboards), such violations normally are not significant enough to allow county counsels to subject violators to civil penalties of up to $2,500 per violation as allowed under the unfair competition provisions. Similarly, the civil penalties authorized by the unfair competition provisions for violation of injunctions issued under those provisions (up to $6,000 per violation) are disproportionate when the injunction involves a county ordinance. The remedy of civil contempt is adequate to redress violations of injunctions requiring compliance with county code provisions.

The bill also is unnecessary. Where a violation is more significant in nature, current law allows a district attorney to appoint a county counsel as a special deputy district attorney, making the unfair competition provisions then available.

These problems could be resolved satisfactorily if the bill authorized county counsels to bring actions under the unfair competition provisions for injunction, restitution, and other equitable relief, and to recover their costs of investigation and prosecution of these actions, but did not authorize county counsels to seek or obtain civil penalties under these provisions.

CALIFORNIA LEGISLATURE

1991–92 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions Adopted in 1991

and

1989–1991 Statutory Record

:K ROLLENS
cretary of the Senate

The Office of the
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

(3) Under existing law, a portion of the fines and forfeitures collected for a violation of the provisions of the Fish and Game Code are deposited in the Fish and Game Preservation Fund, a continuously appropriated fund.

Because this bill would increase the amount of funds deposited in the Fish and Game Preservation Fund, it would make an appropriation.

Ch. 1194 (SB 1166) Hill. Air pollution: gasoline blends.

Existing law requires the State Air Resources Board to establish, by regulation, maximum standards for the volatility of gasoline sold in California at or below 9 pounds per square inch Reid vapor pressure, as determined by specified testing, except that a blend of gasoline consisting of at least 10% ethyl alcohol, as defined, is exempt, until October 1, 1993, from meeting the volatility standard if the gasoline used in the blend meets the volatility standard for gasoline.

This bill would exempt from that volatility standard, on and after October 1, 1993, any blend of gasoline of at least 10% ethyl alcohol, unless the state board determines that the use of the blend would result in a net increase in the ozone forming potential of the total vehicular emissions, as specified. If, at any time, the state board adopts standards for NOx emission levels for reformulated gasoline, any such blend which exceeds those levels would no longer be exempt.

Ch. 1195 (SB 709) Leonard. Regulation of commerce.

Under existing law, any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. Existing law provides that actions for injunctions to enjoin unfair competition may be prosecuted by the Attorney General, any district attorney, or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor.

This bill would also allow a county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance to prosecute an action for injunction to enjoin unfair competition.

Existing law provides that any person who violates the unfair competition laws or violates an injunction prohibiting unfair competition, shall be liable for civil penalties with the allocation of the money collected to be apportioned, as specified.

This bill would provide that if an action is brought by a county counsel for violation of the unfair competition laws or to enjoin unfair competition, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

Existing law provides that no policy of insurance shall provide any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal or specified civil action or proceeding brought by the Attorney General, any district attorney, or any city prosecutor, and that no policy shall provide any duty to defend those actions.

This bill would include under these provisions, an action or proceeding brought by a county counsel.

Ch. 1196 (AB 1755) Speier. Court actions.

(1) Existing law provides that specified actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law provides for civil penalties for the violation of unfair competition laws, and provides that if an action is brought by a city attorney, ½ of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and ½ to the treasurer of the county.

This bill would revise the above provision as respects a city and county to provide that any city attorney of a city and county having a population in excess of 750,000, may prosecute these actions. This bill would provide that a city attorney in any city and county, with the consent of the district attorney of the city and county, may also prosecute these actions. The bill would (a) authorize the county counsel, pursuant to an agreement with the district attorney, to prosecute these actions where the action in-

NOTE: Superior numbers appear as a separate section at the end of the digests.

COUNTY OF
SAN BERNARDINO

County Administrative Office

HARRY M. MAYS
County Administrative Officer

JOHN P. QUIMBY
Legislative Advocate

Sacramento Office
1127 Eleventh Street, Suite 925
Sacramento, CA 95814
(916) 441-1333
Telecopier (916) 441-1365

May 8, 1991

TO: Members, Senate Judiciary Committee

FROM: John Quimby and Pamela Milligan

RE: SB 709 (Ayala) -- As Amended April 8, 1991
Regulation of Commerce
SPONSOR/SUPPORT

The San Bernardino County Board of Supervisors supports SB 709 (Ayala) which is scheduled to be heard in Senate Judiciary Committee, Tuesday, May 14.

SB 709 would amend current law to allow County Counsels to file actions under the Unfair Trade Practices Act.

Currently, a County Counsel may file injunctive actions to enjoin violations of the County Code. These injunctions are limited to stopping the violation only. There is no authority for the court to award a county attorney fees or any other costs incurred by a county in bringing action against a violator nor does the county have authority to collect a fine or penalty from violators.

Due to a lack of adequate authority, the District Attorney must file actions for injunctions or civil penalties pursuant to the Unfair Trade Practices Act. It is an unnecessary and inefficient use of a District Attorney's time to file a separate action under the Act when a County Counsel has filed an injunctive action.

Allowing a County Counsel to include an Unfair Trade Practices cause or action, in appropriate cases, when an injunction is sought would simplify and make the process more efficient.

The provisions of SB 709 would encourage potential violators to voluntarily comply with County Codes. For this important reason, we ask your "Aye" vote on this measure. Thank you for your consideration.

cc: Sandy Miller, Senator Ruben Ayala
CSAC
Governor's Office of Planning and Research

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

1414 K STREET, SUITE 300 • SACRAMENTO, CALIFORNIA 95814 • (916) 443-2017

May 10, 1991

The Honorable Ruben S. Ayala
California State Senate
State Capitol, Room 2082
Sacramento, CA 95814

Re: SB 709 - Oppose

Dear Senator Ayala:

On behalf of the California District Attorneys Association (CDAA), I regret to inform you we must oppose your bill, Senate Bill 709.

SB 709 would allow the county counsel to prosecute an action for injunction for unfair competition. We believe it would be a mistake to expand Business and Professions Code section 17200 by allowing other agencies to file these actions. This area is a rather specialized one which requires a certain amount of expertise to ensure that these statutes are judiciously used.

Unfair competition actions under section 17200 are enforcement in nature that are brought on behalf of the People of the State of California. As the county counsel generally defends against civil lawsuits brought against the county, we see no compelling reason to grant them authority to bring enforcement actions for unfair competition. District attorneys are actively involved in prosecuting these actions and are comfortable with their role.

Additionally, we see the possibility of confusion if both the district attorney and the county counsel are authorized to enforce unfair competition statutes. These agencies may wind up competing with one another, or which would, at least initially, result in multiple prosecutions for the same offense, or each agency may be unaware that the other has initiated enforcement action under 17200.

The unfair competition laws were to enacted to

protect the public interest. The Attorney General and District attorney are directly accountable to the public for their actions. We believe their training and experience serve to protect the public interest in this area and their effectiveness may well be jeopardized or compromised through the expansion of this section.

Should you have any questions regarding our position on this measure, please contact me.

Sincerely,

Michael W. Sweet

Michael W. Sweet
Executive Director

MS:mi

cc: Senate Committee on Judiciary

COUNTY OF
SAN BERNARDINO

County Administrative Office

HARRY M. MAYS
County Administrative Officer

JOHN P. QUIMBY
Legislative Advocate

Sacramento Office
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June 25, 1991

The Honorable Phillip Isenberg
Chair, Assembly Judiciary Committee
State Capitol, Room 6005
Sacramento, California 95814

RE: SB 709 (Leonard) -- As Proposed to be Amended
Regulation of Commerce
SPONSOR/SUPPORT

JUN 2 [illegible]

Dear Assembly Member Isenberg:

The San Bernardino County Board of Supervisors supports SB 709 (Leonard) which has been referred to your committee.

SB 709 would amend current law to allow County Counsels in actions involving violations of county ordinances to file actions under the Unfair Trade Practices Act.

Currently, a County Counsel may file injunctive actions to enjoin violations of the County Code. These injunctions are limited to stopping the violation only. There is no authority for the court to award a county attorney fees or any other costs incurred by a county in bringing action against a violator nor does the county have authority to collect a fine or penalty from violators.

Due to a lack of adequate authority, the District Attorney must file actions for injunctions or civil penalties pursuant to the Unfair Trade Practices Act. It is an unnecessary and inefficient use of a District Attorney's time to file a separate action under the Act when a County Counsel has filed an injunctive action.

Allowing a County Counsel to include an Unfair Trade Practices cause or action, in appropriate cases, when an injunction is sought would simplify and make the process more efficient.

The provisions of SB 709 would encourage potential violators to voluntarily comply with County Codes. For this important reason, we request your support on this measure.

Sincerely,

John P. Quimby
Legislative Advocate

Pamela K. Milligan
Assistant Advocate

cc: Committee Consultant

VOLUME 1

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1991–92 REGULAR SESSION
1991–92 FIRST EXTRAORDINARY SESSION
1991–92 SECOND EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 3, 1990

Recessed December 4, 1990	Reconvened January 7, 1991
Recessed March 21, 1991	Reconvened April 1, 1991
Recessed July 18, 1991	Reconvened August 19, 1991
Recessed September 23, 1991	Reconvened January 6, 1992
Recessed April 9, 1992	Reconvened April 20, 1992
Recessed September 1, 1992	Reconvened September 9, 1992
Recessed September 9, 1992	Reconvened October 8, 1992

Adjourned October 9, 1992

Adjourned Sine Die November 30, 1992

Legislative Days..... 292

HON. WILLIE L. BROWN, JR.
Speaker

HON. JACK O'CONNELL
Speaker pro Tempore

HON. RICHARD POLANCO
Assistant Speaker pro Tempore

HON. THOMAS HANNIGAN
Majority Floor Leader

HON. JIM BRULTE
Minority Floor Leader

Compiled Under the Direction of
E. DOTSON WILSON
Chief Clerk

SUSAN S. FLYNN
History Clerk

A.B. No. 1755—Speier and Cannella.

An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, to amend Section 116.231 of, and to add and repeal Section 116.232 of, the Code of Civil Procedure, and to amend Section 11571 of the Health and Safety Code, relating to judicial proceedings.

1991

Mar. 8—Introduced. To print.
Mar. 11—Read first time.
Mar. 13—From printer. May be heard in committee April 12.
Mar. 21—Referred to Com. on JUD.
April 24—In committee: Set, first hearing. Hearing canceled at the request of author.
May 9—From committee: Do pass. (Ayes 6. Noes 1.) (May 8).
May 13—Read second time. To third reading.
May 24—Read third time, passed, and to Senate. (Ayes 53. Noes 13. Page 1998.)
May 24—In Senate. Read first time. To Com. on RLS. for assignment.
May 30—Referred to Com. on JUD.
June 12—In committee: Set, first hearing. Hearing canceled at the request of author.
July 9—From committee chairman, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended. Re-referred to Com. on JUD.
Aug. 19—From committee chairman, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended. Re-referred to Com. on JUD.
Aug. 19—Senate Rule 29.4(a)(9) suspended.
Aug. 28—From committee: Amend, and do pass as amended. (Ayes 11. Noes 0.).
Aug. 29—Read second time, amended, and to third reading.
Sept. 5—To inactive file - Senate Rule 29.
Sept. 6—From inactive file. To second reading.
Sept. 9—Read second time. To third reading. Read third time, amended. To second reading.
Sept. 10—Read second time. To third reading.
Sept. 11—Read third time, amended. To second reading.
Sept. 12—Read second time. To third reading.
Sept. 13—Read third time, passed, and to Assembly. (Ayes 38. Noes 0. Page 4347.)
Sept. 13—In Assembly. Senate amendments concurred in. To enrollment. (Ayes 71. Noes 3. Page 4728.)
Sept. 27—Enrolled and to the Governor at 3:15 p.m.
Oct. 14—Approved by the Governor.
Oct. 14—Chaptered by Secretary of State - Chapter 1196, Statutes of 1991.

ASSEMBLY BILL No. 1755

Introduced by Assembly Member Speier

March 8, 1991

An act to amend Sections 17206 and 17207 of, and to add Section 17204.6 to, the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

AB 1755, as introduced, Speier. Unfair competition: enforcement.

Existing law provides that specified actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law provides for civil penalties for the violation of unfair competition laws, and provides that if an action is brought by a city attorney, ½ of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and ½ to the treasurer of the county.

This bill would provide that any city attorney, with the consent of the district attorney of the county in which the city is located, is authorized to bring an action to enforce unfair competition laws, for the purposes of the enforcement of laws and regulations regarding buildings used for human habitation and the abatement of nuisance involving controlled substances.

This bill would provide that if an action for civil penalties is brought by a city attorney of a city and county, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon

the request of the city attorney, the court may order that up to ½ of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

This bill would also make related and conforming changes.

This bill would make findings and declarations regarding the supply of safe housing in the state, the law of unfair competition, and the intent of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The supply of safe housing in communities throughout the state is negatively affected by owners of substandard buildings who derive rental income from residents of the building and fail to repair or otherwise abate the noncomplying conditions on the premises.

(b) Under existing law, building owners are responsible for maintaining the premises free of nuisance and in minimal compliance with housing codes for the purpose of maintaining safe housing and not causing an unfair burden on the tenant.

(c) When the relationship of landlord and tenant is established, and safe housing is not provided by the owner of the building, the suffering of that burden unfairly falls on the tenant. The Legislature finds that the failure of a building owner to repair substandard housing and otherwise abate nuisance conditions, including drug nuisance activity, is a violation of the law governing unfair competition.

(d) Current law restricts prosecution of actions for the enforcement of unfair competition law under Sections 17204 and 17206 of the Business and Professions Code to the Attorney General, a district attorney, a city attorney of a city having a population in excess of 750,000, or a city

prosecutor. The broadening of these civil enforcement powers to include any city attorney in actions to restore safe housing would complement the efforts of district attorneys without any diminution in their powers.

(e) It is the intent of the Legislature to broaden the authority to prosecute civil enforcement actions pursuant to Sections 17204 and 17206 of the Business and Professions Code to include any city attorney for the purposes of allowing a greater amount of local legal resources to be utilized, and actions to be prosecuted, in enforcing provisions of state law regulating housing for human habitation and drug abatement as a nuisance.

SEC. 2. Section 17204.6 is added to the Business and Professions Code, to read:

17204.6. In addition to the persons authorized to bring an action pursuant to Sections 17204 and 17204.5, any city attorney, with the annual consent of the district attorney of the county in which the city is located, is authorized to prosecute actions for injunction under this chapter, for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code, and Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code.

SEC. 3. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor, *or by any city attorney pursuant to Section 17204.6,* in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was

entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. ~~If~~ *Except as provided in subdivision (d), if* brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(d) If the action is brought by a city attorney of a city and county, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 4. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of

a continuing nature, each day of ~~such~~ *that* conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of ~~such~~ *that* conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, or any city attorney in any court of competent jurisdiction within his *or her* jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover ~~such~~ civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city, *except that if the action was brought by a city attorney of a city and county the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment is entered.*

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the

reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of ~~such~~ *the* reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of ~~such~~ *the* reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

O

TO: Honorable Jackie Speier

RE: AB 1755

PLEASE RETURN BY 4-2-91 TO: ASSEMBLY COMMITTEE ON JUDICIARY
STATE CAPITOL, ROOM 6005

WORKSHEET
(Please type)

Your bill has been referred to the Assembly Committee on Judiciary. It is imperative that you provide us with as much information regarding your bill as possible, including the following:

AUTHOR'S CONTACT PERSON: Elise Thuraud

Address, telephone number: Rm. 4140 - 5-8020

SPONSORING ORGANIZATION NAME: (Also list the bill's source if differs from sponsor.)

Name of contact person: Hillan Dowden / County of S. Francisco
Address, telephone number: 916-443-6457

PRIOR COMMITTEE & FLOOR VOTES:

None

SET INFORMATION:

Preferred hearing dates: late April
Estimated time to present testimony: _____
Names of witnesses: Terence Hallinan S.F. City Attorney,
Hillan Dowden County of S.F.

PURPOSE OF BILL: (Specify problem or deficiency in existing law.)

To enhance the enforcement of California's Housing and Health and Safety Codes, in particular our drug nuisance abatement laws.

HOW DOES THIS BILL REMEDY THE PROBLEM?

It broadens the authority to prosecute civil enforcement actions (under B+P Code 17204) to include any City attorney.

STUDIES, REPORTS, STATISTICS & FACTS: (List all documented sources supporting your conclusion that there is a problem. Be specific and attach major sources.)

See attached.

PRIOR/SIMILAR/COMPANION LEGISLATION. (Bill number, author, coauthors, session and final disposition.)

None.

POSITIONS OF THE DEPARTMENT OF FINANCE, STATE AGENCIES, & INTEREST GROUPS. (State precise reason if opposed.)

Unknown

ADDITIONAL INFORMATION:

Attach copies of background and related materials, including letters of support & opposition.

Attach an author's or sponsor's statement as to the purpose of this bill.

Sponsor's statement is attached

(Revised 1/30/89, #105)

MEMORANDUM

LOUISE H RENNE
CITY ATTORNEY
CITY HALL

DATE: JANUARY 15, 1991

TO: DAVID FOX
Deputy City Attorney

FROM: MARY JANE SYLVIA
Legislative Assistant

RE: PROPOSED STATE LEGISLATION -- CITY ATTORNEY AUTHORITY

TECHNICAL CONTACT: DAVID FOX, DEPUTY CITY ATTORNEY (415) 554-3895
OR MARY JANE SYLVIA 554-4251

BACKGROUND

Existing provisions of the Business and Professions Code, Chapter 5, Enforcement, Section 17204, authorize actions for injunction to be prosecuted by the Attorney General or any district attorney or any city attorney of city having a population in excess of 750,000.

The City Attorney of the City and County of San Francisco recommends that an amendment be added to authorize any city attorney to bring action pursuant to Sections 17204, 17206, and 17207 to enhance the enforcement of State Housing and Health and Safety codes, including drug nuisance abatement laws. Currently, high crime activity requires the District Attorney to focus staff and resources on criminal cases. Consequently, civil prosecution under the authority of Section 17204 of the Business and Professions Code due to the crush of other work is not always utilized to require owners of substandard or drug nuisance housing to restore the building to a condition of compliance. If amended, a city attorney would also be allowed to utilize the civil enforcement prosecution powers of the sections of the Business and Professions Code described above in efforts to restore safe housing, complementing the district attorney who continues to prosecute any criminal or civil aspects they may choose, without any diminution in their powers. Drug nuisance and code enforcement are often intertwined. The proposed amendment broadens powers by including city attorneys specifically for the purpose of enhancing the abilities of cities to address the breadth of safe housing problems in which they are already deeply mired.

The proposed amendment would not affect Section 17204.5 which was added in 1988 to authorize the City Attorney of the City of San Jose to also prosecute actions under Section 17204. The added provisions require the annual consent of the Santa Clara County District Attorney and include a repeal of the section when the population of

San Jose exceeds 750,000. The Legislature found that there were unique circumstances that warranted permitting the City Attorney of San Jose to bring actions based upon a violation of laws relating to unfair competition, with the annual concurrence of the district attorney. Although the City of San Jose does not yet have a population of 750,000 and, accordingly, could not bring those actions under existing provisions of Section 17204, because the size of the city is close to that population requirement, and because the Office of the City Attorney of San Jose has demonstrated its competence, the Legislature determined that the enforcement of the laws relating to unfair competition would be enhanced by said amendments.

Additionally, Section 17206.5 was added to authorize the City Attorney of San Jose to bring an action pursuant to Section 17206, and, thereby making the City of San Jose entitled to a share of the civil penalties collected resulting from those actions.

According to the Population Research Unit of the Department of Finance, as of January 1, 1990, the population of the City and County of San Francisco is 727,000.

RECOMMENDATION:

Amend the Business and Professions Code as follows:

PART I

LEGISLATIVE INTENT LANGUAGE

SECTION 1. The Legislature finds and declares all of the following:

(a) The supply of safe housing in communities throughout the state is negatively affected by owners of substandard buildings who derive rental income from residents of the building and fail to repair or otherwise abate the non-complying conditions on the premises.

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(b) Under existing state laws, building owners are responsible for maintaining the premises free of nuisance and in minimum compliance with codes for the purpose of maintaining safe housing and not causing unfair burden on the tenant.

(d) When a business relationship is established by monetary payment by a tenant to an owner and safe housing is not provided by the owner of the building, the suffering of that nuisance is a burden that unfairly falls on tenants. The Legislature finds that the failure of a building owner to repair substandard housing and otherwise abate nuisance conditions, including drug nuisance activity, is an act of violation under the law governing unfair competition.

(e) Current law restricts prosecution by action of civil injunction under the authority of Section 17204 of the Business and Professions Code to the attorney general, a district attorney, or a city prosecutor. The broadening of these civil enforcement powers to include any city attorney in actions to restore safe housing would complement the efforts of district attorneys without any diminution in their powers.

(e) It is the intent of the Legislature to broaden the authority to prosecute civil enforcement actions pursuant to Section 17204 of the Business and Professions Code to include any city attorney for the purposes of allowing a greater amount of

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local legal resources and actions to be utilized in enforcing provisions of state laws regulating housing for human habitation and drug abatement as a nuisance.

PART II

ADD: Section 17204.6. Actions for injunctions; prosecution by city attorney.

In addition to the persons authorized to bring an action pursuant to Sections 17204 and 17204.5, any city attorney, with the annual consent of the county district attorney, is authorized to prosecute actions for injunctions for the purposes of civil enforcement actions pursuant to Section 17980 of the Health and Safety Code (Housing For Human Habitation) and Section 11570 et. seq. of the Health and Safety Code (Drug Abatement).

PART III

AMEND: Section 17206. Violations; penalty; actions for recovery; expenses of investigation and prosecution

(a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a

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population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor or any city attorney pursuant to Section 17204.6 in any court of competent jurisdiction.

(b) No Change.

(c) No Change.

ADD: (d) If the action is brought by a city attorney of a city and county, the penalty collected shall either be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney the court may order that up to one half of the penalty, under court supervision and approval be paid for purposes of restoring, maintaining, or enhancing the premises and the balance of the penalty to be paid to the treasurer of the city and county.

PART IV

Section 17207 provides: penalties for violation of injunction prohibiting unfair competition pursuant to Section 17203; civil penalty; actions to assess and recover; venue; prosecutors; expenses of investigation and prosecution.

This Section provides that one-half of the penalty paid as a result of civil action brought by a city attorney to be paid to the county in which the judgment was entered and one-half to the city.

A third amendment is recommended to clarify that the entire penalty collected pursuant to this Section as a result of civil action brought by a city attorney of a city and county shall be paid as follows:

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AMEND SECTION 17207 (c) to read as follows:

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city. If brought by a city attorney of a city and county the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment is entered.

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Date of Hearing: May 8, 1991

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

AB 1755 (Speier) - As Introduced: March 8, 1991

SUBJECT: This bill authorizes any city attorney, with the annual consent of the District Attorney, to bring civil action to enforce unfair competition laws pursuant to human habitation and drug nuisance abatement.

BACKGROUND

History. Traditionally, county governments are mandated to enforce state laws at the local level. For example, county supervisors are state officials elected at the local level. If a county supervisor dies, the governor rather than a local official appoints a replacement. Accordingly, state law has recognized the District Attorney (in addition to the Attorney General) as the agency primarily responsible for prosecuting violations of state law at the local level. However, in response to the increasing burdens on the staff and resources of District Attorneys and to the prosecutorial competency of certain city attorneys, the law has been amended over the years to allow city attorneys of large cities (i.e., cities with a population exceeding 750,000) to also prosecute unfair competition actions. In addition, the city attorney of San Jose, even though its population has not yet reached 750,000 has also been authorized, with the annual consent of the Santa Clara District Attorney, to bring actions. The City and County of San Francisco has a population of 727,000. Even though it faces the same burdens on the staff and resources of its District Attorney, its City Attorney may not under current law prosecute civil unfair competition actions relating to State Housing and Health and Safety Codes. This bill addresses this problem by authorizing any city attorney, with the annual consent of the District Attorney, to prosecute such actions.

Facts. Committee staff was unable to obtain any information on the number of unfair competition actions are currently being filed by either district attorneys or authorized city attorneys.

DIGEST

Existing law provides that actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law also provides for civil penalties for the violation of the unfair competition laws and provides that if a city attorney brings action, 1/2 of the penalty goes to the city and the other 1/2 to the county.

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This bill provides that any city attorney, with the consent of the District Attorney, may prosecute unfair competition actions pursuant to the enforcement of state housing and health and safety laws. This bill also provides that if a city attorney of a city and county brings an action for civil penalties, the penalty be paid entirely to the city and county or, upon the request of the city attorney, the court may order that up to 1/2 of the penalty be paid for the purpose of improving the premises. This bill also makes related and conforming changes.

FISCAL EFFECT

This bill will not be referred to the Committee on Ways and Means.

COMMENTS

1) Sponsor's Statement. The City and County of San Francisco is the sponsor of this bill. The sponsor states: "Currently, high crime activity requires the District Attorney to focus staff and resources on criminal cases. Consequently, civil prosecution under the authority of Section 17204 of the Business and Professions Code due to the crush of other work is not always utilized to require owners of substandard or drug nuisance housing to restore the building to a condition of compliance." This bill allows the city attorney to utilize the civil enforcement prosecution powers "in efforts to restore safe housing, complementing the district attorney who continues to prosecute any criminal or civil aspects they may choose, without any diminution in their powers." The sponsor argues that this bill will enhance the abilities of cities to address the significant safe housing problems they face.

2) This bill provides that if a city attorney of a city and county brings an action for civil penalties, the city attorney may request that the court order up to 1/2 of the penalty be used for improvements to the premises. Why is this provision extended only to situations where a city attorney of a city and county brings action? If such an option is to be made available in this situation, why not extend it to actions brought by any relevant prosecutorial agency, whether that be the Attorney General, a district attorney, a city attorney, or a city prosecutor? Some would argue against extending this provision to all actions because it begins to travel down the slippery slope of inappropriately converting a civil penalty into a restitutionary fund.

3) This bill requires the annual consent of the District Attorney. This bill could require consent on a case by case basis. Although less efficient, some argue that this arrangement would provide greater oversight authority to the District Attorney and better ensure that a city attorney only pursues appropriate cases and does not jeopardize an on-going investigation of the District Attorney or other relevant agencies.

4) An alternative approach to the one embodied in this bill exists. For example, the population threshold for cities allowed to prosecute unfair

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competition actions could be lowered from 750,000 to 500,000. Such an approach would satisfy San Francisco's concern without having to create a new authorization category in the statutes. Furthermore, some argue that cities today with populations over 500,000 have experienced enough prosecutors to appropriately exercise this broad and powerful statute. Some might argue against this approach because it would potentially encroach upon the authority of the District Attorney by not requiring the consent of the District Attorney and by authorizing city attorneys to bring all unfair competition actions, not just those relating to the enforcement of housing and drug nuisance abatement laws.

SUPPORT	OPPOSITION
City and County of San Francisco (sponsor)	Unknown

J. Q. Young
445-4560
ajud

AB 1755

ASSEMBLY THIRD READING

OUR CITIES INCREASINGLY FACE A GROWING PROBLEM OF CRIME, ESPECIALLY CRIMES INVOLVING DRUG USE. CRACK HOUSES OR ICE HOUSES ARE SET UP IN A NEIGHBORHOOD AND THE ASSOCIATED VIOLENCE OFTEN LEADS TO THE DISINTEGRATION OF THE NEIGHBORHOOD. HOUSING THAT IS ALLOWED TO DETERIORATE OFTEN BECOMES A SITE FOR SHOOTING GALLERIES AND A PLACE FOR OTHER ILLICIT DRUG USE. AB 1755 IS AN ATTEMPT TO CLEAN UP THIS DETERIORATING HOUSING BEFORE IT DESTROYS AND ENTIRE NEIGHBORHOOD.

UNDER CURRENT LAW, CITIES OVER 750,000, AND SAN JOSE, CAN USE PROVISIONS OF THE BUSINESS AND PROFESSIONS CODE TO ENFORCE DRUG NUISANCE ABATEMENT LAWS. AB 1755 WOULD ALLOW CITIES, THAT HAVE AN ANNUALLY RENEWABLE AGREEMENT WITH THE DISTRICT ATTORNEY, TO BRING CIVIL ACTION UNDER THE BUSINESS AND PROFESSIONS CODE FOR THE PURPOSE OF ENFORCING HEALTH AND SAFETY CODES INCLUDING DRUG NUISANCE ABATEMENT LAWS.

DISTRICT ATTORNEYS RIGHTLY FOCUS ON CRIMINAL DRUG ENFORCEMENT ACTIONS. THIS LEGISLATION WOULD PROVIDE SOME ADDITIONAL RESOURCES TO THE DISTRICT ATTORNEY BY ALLOWING THE CITY ATTORNEY TO BRING CIVIL ACTIONS WHERE THERE IS NON-COMPLIANCE WITH THE LAW. (THIS WOULD OCCUR ONLY IF THERE IS AN ANNUAL AGREEMENT BETWEEN THE DISTRICT ATTORNEY AND THE CITY ATTORNEY).

MY WITNESSES CAN ANSWER ANY QUESTIONS THE COMMITTEE MEMBERS MIGHT HAVE, AND THEY CAN SPEAK BRIEFLY TO THE POINTS RAISED IN THE BILL ANALYSIS.

AB 1755 (Speier)
Analyzed: 05/13/91

ASSEMBLY COMMITTEE ON JUDICIARY
REPUBLICAN ANALYSIS

AB 1755 (Speier) -- UNFAIR COMPETITION: ENFORCEMENT.

Version: Original
Lead Republican: Tom McClintock
Recommendation: None.
Vote: Majority.

Summary: **Would authorize any city attorney, with the annual consent of the county District Attorney, to initiate civil action to enforce unfair competition laws pursuant to human habitation and drug nuisance abatement.** Also permits San Francisco (as the state's only combined city and county government) to allocate up to one half of any penalty collected by its city attorney to be expended, under court supervision, to restore, maintain or enhance the premises subject to the civil action. Fiscal Impact: None.

Supported by: City and County of San Francisco (sponsor) Opposed by: San Francisco District Attorney (See Comments).
Governor's position: Unknown.

Comments: A San Francisco bill to enable its city attorney, as well as city attorneys of other cities, to prosecute statutory safe housing and drug abatement actions with DA consent, and to further specifcally give San Francisco the authority to expend half of such penalties collected on restoring the targeted housing.

Existing law allows Los Angeles, San Diego, and San Jose, the state's three most populated cities, to pursue such action through city attorneys with DA approval and to split any collected penalties between their respective city and county treasuries.

Note that this bill would establish a precedent for all cities (which this bill would now authorize to seek DA approval to pursue such actions) to subsequently seek similar legislation for the conversion of civil penalties to restitutionary-style funds sought solely by San Francisco in the other part of this bill.

Further note that city attorneys of many of the cities smaller than the above four cities, with less sophistocated and less experienced city attorneys, could disrupt and undermine ongoing county DA investigations after first attaining a blanket approval from their DAs. One solution to such concerns would be to only lower the current authorization for city counsel action to cities of 500,000 to thereby include San Francisco. To the extent that authorization may be desirable for smaller cities, such cities could be authorized to allow their city attorneys to seek DA approval on a case by case basis.

The California District Attorney Association (CDDA) is reviewing this bill and may take an opposed position, particularly regarding the bill's statewide authorization to all cities to be able to seek a blanket yearly authorization to probe

such actions rather than on a case-by-case approval basis. Arlo Smith's letter of opposition (not received before the hearing) states that existing law provides sufficient remedies for city attorneys in addressing housing code and drug abatement actions.

Assembly Republican Committee vote
Judiciary -- 5/08/91
(6-1) Noes: Horcher
Abs.: Bentley, McClintock
N.V.: Leslie
Consultant: Mark Redmond

Assembly Republican Committee vote
Public Safety -- 4/23/91
(6-0) Ayes: Bentley, Boland
Ways & Means -- 5/8/91
(13-8) Ayes: Woodruff
Noes: Baker, Felando, Frizzelle, Hansen, Lewis, Quackenbush, Wright
Abs.: Nolan
Consultant: Erika Neyhouse/Cliff Allenby

FILE NUMBER 99

FILE NUMBER 99

AB 1755 (Speier) -- UNFAIR COMPETITION: ENFORCEMENT.
Version: Original
Recommendation: None.
Lead Republican: Tom McClintock
Vote: Majority.

Summary: Authorizes any city attorney, with the annual consent of the county District Attorney, to initiate civil action to enforce unfair competition laws pursuant to human habitation and drug nuisance abatement. Also permits San Francisco (as the state's only combined city and county government) to allocate up to one half of any penalty collected by its city attorney to be expended, under court supervision, to restore, maintain or enhance the premises subject to the civil action. Fiscal Impact: None.

Supported by: City and County of San Francisco (sponsor).
Opposed by: San Francisco District Attorney (See Comments).
Governor's position: Unknown.

Comments: A San Francisco bill to enable its city attorney, as well as city attorneys of other cities, to prosecute statutory safe housing and drug abatement actions with DA consent, and to further specifically give San Francisco the authority to expend half of such penalties collected on restoring the targeted housing.

Existing law allows Los Angeles, San Diego, and San Jose, the state's three most populated cities, to pursue such action through city attorneys with DA approval and to split any collected penalties between their respective city and county treasuries.

Note that this bill would establish a precedent for all cities (which this bill would now authorize to seek DA approval to pursue such actions) to subsequently seek similar legislation for the conversion of civil penalties to restitutionary-style funds sought solely by San Francisco in the other part of this bill.

Further note that city attorneys of many of the cities smaller than the above four cities, with less sophisticated and less experienced city attorneys, could disrupt and undermine ongoing county DA investigations after first attaining a blanket approval from their DAs. One solution to such concerns would be to only lower the current authorization for city counsel action to cities

of 500,000 to thereby include San Francisco. To the extent that authorization may be desirable for smaller cities, such cities could be authorized to allow their city attorneys to seek DA approval on a case by case basis.

The California District Attorney Association (CDAA) is reviewing this bill and may take an opposed position, particularly regarding the bill's statewide authorization to all cities to be able to seek a blanket yearly authorization to probe such actions rather than on a case-by-case approval basis. Arlo Smith's letter of opposition (received after the hearing) states that existing law provides sufficient remedies for city attorneys in addressing housing code and drug abatement actions.

Assembly Republican Committee vote
Judiciary -- 5/8/91
(6-1) Noes: Horcher
Abs.: Bentley, McClintock
N.V.: Leslie
Consultant: Mark Redmond

FILE NUMBER 100 **FILE NUMBER 100**

AB 2146 (Chandler) -- MORTGAGES AND DEEDS OF TRUST.
Version: Original Lead Republican: Tom McClintock
Recommendation: Support Vote: Majority.

Summary: **Deletes the sunset on existing law which provides that a $65 fee is conclusively presumed reasonable for all services performed in connection with the discharge of a mortgage or the reconveyance of a deed of trust.** Fiscal Impact: Unknown.

Supported by: Calif. Trustee's Assoc. (sponsor). Opposed by: Mortgage Institute of Calif. Governor's position: Unknown.

Comments: The California Trustee's Association (CTA), in sponsoring the sunset deletion, states that "the real estate industry is making progress in addressing problems with reconveyances under the statutory scheme enacted in 1988". CTA indicates that evidence presented to the Legislature in 1988 disclosed that there was a significant disparity in fees connected with discharge and reconveyances. CTA reasons that the conclusive presumption that a $65 reconveyance fee is equitable assists in in keeping down the fees by "protecting lenders and trustees from suits as long as the fees" remain within the statutory limit.

The original legislation, AB 3893 (Harris) addressed problems experienced by mortgagors in obtaining reconveyance of title. That bill provided for (1) establishment of time limits for recording discharge certificates and reconveyances; (2) requiring fees for reconveyance to be reasonable; and (3) providing alternative procedures to reconvey title to mortgagors who have paid off their mortgages.

ASSEMBLY THIRD READING

AB 1755 (Speier) - As Introduced: March 8, 1991

ASSEMBLY ACTIONS:

COMMITTEE	VOTE	COMMITTEE	VOTE
JUD.	6-1		
Ayes: Archie-Hudson, Connelly, Epple, Floyd, Friedman, Speier		Ayes:	
Nays: Horcher		Nays:	

DIGEST

Existing law provides that actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law also provides for civil penalties for the violation of the unfair competition laws and provides that if a city attorney brings action, 1/2 of the penalty goes to the city and the other 1/2 to the county.

This bill provides that any city attorney, with the consent of the District Attorney, may prosecute unfair competition actions pursuant to the enforcement of state housing and health and safety laws. This bill also provides that if a city attorney of a city and county brings an action for civil penalties, the penalty be paid entirely to the city and county or, upon the request of the city attorney, the court may order that up to 1/2 of the penalty be paid for the purpose of improving the premises. This bill also makes related and conforming changes.

FISCAL EFFECT

None

COMMENTS

1) The City and County of San Francisco is the sponsor of this bill. The sponsor states: "Currently, high crime activity requires the District Attorney to focus staff and resources on criminal cases. Consequently, civil prosecution under the authority of Section 17204 of the Business and Professions Code due to the crush of other work is not always utilized to require owners of substandard or drug nuisance housing to restore the building to a condition of compliance." This bill allows the city attorney to utilize the civil enforcement prosecution powers "in efforts to restore safe housing, complementing the district attorney who continues to prosecute any criminal or civil aspects they may choose,

- continued -

without any diminution in their powers." The sponsor argues that this bill will enhance the abilities of cities to address the significant safe housing problems they face.

2) This bill provides that if a city attorney of a city and county brings an action for civil penalties, the city attorney may request that the court order up to 1/2 of the penalty be used for improvements to the premises. This bill extends this provision only to situations where a city attorney of a city and county brings action. This bill extends this provision to actions brought by any relevant prosecutorial agency, whether that be the Attorney General, a district attorney, a city attorney, or a city prosecutor.

   Some would argue against this provision or extending this provision to all actions because it begins to travel down the slippery slope of inappropriately converting a civil penalty into a restitutionary fund.

3) This bill requires the annual consent of the District Attorney rather than requiring consent on a case by case basis. Although less efficient, some argue that case by case consent would (a) provide greater oversight authority to the District Attorney and (b) better ensure that a city attorney only pursues appropriate cases and does not jeopardize an on-going investigation of the District Attorney or other relevant agencies.

4) The San Francisco DA office is opposed to this bill because it "believes that current statutory remedies provide sufficient legal avenues for City Attorneys and County Counsels in addressing housing code enforcement and nuisances involving controlled substances."

5) Several alternative approaches to the one embodied in this bill exist. For example, the population threshold for cities allowed to prosecute unfair competition actions could be lowered from 750,000 to 500,000. Such an approach would satisfy San Francisco's concern without having to create a new authorization category in the statutes. Furthermore, some argue that cities today with populations over 500,000 have experienced enough prosecutors to appropriately exercise this broad and powerful statute. Some DA's argue against this approach because it would potentially encroach upon the authority of the District Attorney by not requiring the consent of the District Attorney and by authorizing city attorneys to bring all unfair competition actions, not just those relating to the enforcement of housing and drug nuisance abatement laws.

RN 016630

J. Q. Young
445-4560
ajud

AMENDED IN SENATE JULY 9, 1991

CALIFORNIA LEGISLATURE—1991-92 REGULAR SESSION

ASSEMBLY BILL No. 1755

Introduced by Assembly Member Speier

March 8, 1991

An act to amend Sections ~~17206~~ *17204, 17206,* and 17207 of ~~, and to add Section 17204.6 to,~~ the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

AB 1755, as amended, Speier. Unfair competition: enforcement.

Existing law provides that specified actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law provides for civil penalties for the violation of unfair competition laws, and provides that if an action is brought by a city attorney, ½ of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and ½ to the treasurer of the county.

This bill would provide that ~~any~~ *a* city attorney *in any city and county*, with the consent of the district attorney of the *city and* county ~~in which the city is located~~, is authorized to bring *such* an action ~~to enforce unfair competition laws, for the purposes of the enforcement of laws and regulations regarding buildings used for human habitation and the abatement of nuisance involving controlled substances~~.

This bill would provide that if an action for civil penalties *for the violation of unfair competition laws* is brought by a city

attorney of a city and county, *the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. The bill would also provide, however, that if such an action is brought by a city attorney of a city and county to enforce laws and regulations regarding buildings used for human habitation and the abatement of nuisance involving controlled substances,* either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to ½ of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

This bill would also make related and conforming changes.

~~This bill would make findings and declarations regarding the supply of safe housing in the state, the law of unfair competition, and the intent of the Legislature.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

~~SECTION 1.~~ ~~The Legislature finds and declares all of~~

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city ~~or city and county~~ having a full-time city prosecutor *or by a city attorney in any city and county* in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public. ~~the following:~~

~~(a) The supply of safe housing in communities throughout the state is negatively affected by owners of~~

substandard buildings who derive rental income from residents of the building and fail to repair or otherwise abate the noncomplying conditions on the premises.

(b) Under existing law, building owners are responsible for maintaining the premises free of nuisance and in minimal compliance with housing codes for the purpose of maintaining safe housing and not causing an unfair burden on the tenant.

(c) When the relationship of landlord and tenant is established, and safe housing is not provided by the owner of the building, the suffering of that burden unfairly falls on the tenant. The Legislature finds that the failure of a building owner to repair substandard housing and otherwise abate nuisance conditions, including drug nuisance activity, is a violation of the law governing unfair competition.

(d) Current law restricts prosecution of actions for the enforcement of unfair competition law under Sections 17204 and 17206 of the Business and Professions Code to the Attorney General, a district attorney, a city attorney of a city having a population in excess of 750,000, or a city prosecutor. The broadening of these civil enforcement powers to include any city attorney in actions to restore safe housing would complement the efforts of district attorneys without any diminution in their powers.

(e) It is the intent of the Legislature to broaden the authority to prosecute civil enforcement actions pursuant to Sections 17204 and 17206 of the Business and Professions Code to include any city attorney for the purposes of allowing a greater amount of local legal resources to be utilized, and actions to be prosecuted, in enforcing provisions of state law regulating housing for human habitation and drug abatement as a nuisance.

SEC. 2. Section 17204.6 is added to the Business and Professions Code, to read:

17204.6. In addition to the persons authorized to bring an action pursuant to Sections 17204 and 17204.5, any city attorney, with the annual consent of the district attorney of the county in which the city is located, is authorized to prosecute actions for injunction under this chapter, for

~~the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code, and Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code.~~

~~SEC. 3.~~

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city ~~or city and county having a full/time city prosecutor, or by any city attorney pursuant to Section 17204.6, in any court of~~ *having a full-time city prosecutor or by a city attorney in any city and county, in any court of* competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses

incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(d) If the action is brought by a city attorney of a city and county, *the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code*, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

~~SEC. 4.~~

SEC. 3. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether

corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city, except that if the action was brought by a city attorney of a city and county the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment is entered.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of the reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount

of the reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

O

AMENDED IN SENATE AUGUST 19, 1991

AMENDED IN SENATE JULY 9, 1991

CALIFORNIA LEGISLATURE—1991–92 REGULAR SESSION

ASSEMBLY BILL No. 1755

Introduced by Assembly Member Speier

March 8, 1991

An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

AB 1755, as amended, Speier. Unfair competition: enforcement.

Existing law provides that specified actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law provides for civil penalties for the violation of unfair competition laws, and provides that if an action is brought by a city attorney, ½ of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and ½ to the treasurer of the county.

This bill would *revise the above provision as respects a city and county to* provide that *any city attorney of a city and county having a population in excess of 750,000, may prosecute these actions. This bill would further provide that* a city attorney in any city and county, with the consent of the district attorney of the city and county, ~~is authorized to bring such an action~~ *may also prosecute these actions.*

This bill would provide that if an action for civil penalties for the violation of unfair competition laws is brought by a city

attorney of a city and county, the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. The bill would also provide, however, that if such an action is brought by a city attorney of a city and county to enforce laws and regulations regarding buildings used for human habitation and the abatement of nuisance involving controlled substances, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to ½ of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

This bill would also make related and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or any city attorney of a city, *or city and county,* having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, *with the consent of the district attorney,* by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil

action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city *, or city and county,* having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or *, with the consent of the district attorney,* by a city attorney in any city and county, in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(d) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980

of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 3. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar

is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city, except that if the action was brought by a city attorney of a city and county the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment is entered.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of the reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of the reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

O

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1991-92 Regular Session

AB 1755 (Speier)
As amended August 19
Hearing date: August 20, 1991
Business & Professions Code
GWW

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B

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UNFAIR COMPETITION LAWS
-ENFORCEMENT BY SAN FRANCISCO CITY ATTORNEYS-

HISTORY

Source: City and County of San Francisco

Prior Legislation: None

Support: Unknown

Opposition: No known

Assembly Floor vote: Ayes 53 - Noes 13

KEY ISSUE

SHOULD CITY ATTORNEYS OF THE CITY AND COUNTY OF SAN FRANCISCO, WITH THE CONSENT OF THE COUNTY DISTRICT ATTORNEY, BE AUTHORIZED TO BRING ACTIONS TO PROSECUTE VIOLATIONS OF THE UNFAIR COMPETITION AND DRUG NUISANCE LAWS?

PURPOSE

Existing law provides that actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law also establishes civil penalties for the violation of the unfair competition laws and provides that if a city attorney brings the action, 1/2 of the penalty goes to the city and the other 1/2 to the county.

This bill would revise those provisions to provide:

- any city attorney of a "city and county" having a population of over 750,000 may prosecute unfair competition actions.

- any city attorney in any city and county, with the consent of the county district attorney, may prosecute unfair competition actions.

- If a city attorney of a city and county brings an unfair competition action, any civil penalties collected would be allocated entirely to the city and county or, if the action were brought to abate a drug nuisance in a building and upon request of the city attorney, the court may order that up to 1/2 of the penalty be allocated for the purpose of restoring and improving the building that was the subject of the nuisance action.

The purpose of this bill is to increase the ability of San Francisco to prosecute violations of the unfair competition laws and the drug nuisance abatement laws by authorizing its city attorneys, with the consent of the district attorney where specified, to bring civil action to enforce the laws.

COMMENT

1. Background on prosecutorial authority: stated need

Traditionally, county governments are mandated to enforce state laws at the local level. For example, county supervisors are state officials elected at the local level. If a county supervisor dies, the governor rather than a local official appoints a replacement. Correspondingly, state law recognizes the county district attorney (in addition to the Attorney General) as the office primarily responsible for prosecuting violations of state law at the local level. However, in response to the increasing burdens on the staff and resources of district attorneys and to the prosecutorial competency of certain city attorneys, the law has been amended over the years to allow city attorneys of large cities (i.e., cities with a population exceeding 750,000) to also prosecute unfair competition actions. In addition, the city attorney of San Jose, even though its population has not yet reached 750,000, has also been authorized, with the consent of the Santa Clara District Attorney, to bring these actions.

The City and County of San Francisco has a current population of 727,000, smaller than in previous years. Even though its district attorney faces significant burdens and limits on the staff and resources, its city attorney may not under current law prosecute civil unfair competition actions. This bill

addresses this problem by authorizing any city attorney in any "city and county", with the consent of the district attorney, to prosecute unfair competition actions.

2. Amendment needed to meet sponsor's second goal

Another goal of the sponsor, the City and County of San Francisco, is to authorize its city attorneys to seek abatement orders under Health and Safety Code Section 11570 to clean up buildings infested with drug activity. Authority is necessary to enable city attorneys to force owners of "drug nuisance housing to restore the building to a condition of compliance."

Under current law, only the county district attorney, the city attorney of an incorporated city, or a citizen resident of the county may bring the abatement action.

Prior versions of AB 1755 had conferred the authority, but the authorization may have been inadvertently deleted by the June 9 amendments.

SHOULD NOT THE AUTHORITY FOR SAN FRANCISCO CITY ATTORNEYS TO BRING DRUG NUISANCE ABATEMENT ACTIONS BE RESTORED TO THE BILL?

3. Division of collected fines

This bill would establish a formulae for distributing proceeds collected as a result of a successful prosecution by a city attorney of a city and county. As there is only one "city and county" in California, i.e., San Francisco, the provisions would apply only to that entity. And since the City and County of San Francisco is the sponsor of this measure, there is no apparent controversy over the proposed formulae. (There is, however, no provision in current law, as proposed by this bill, to allow the prosecutor to authorize the court in drug nuisance cases to allocate up to 50% of the collected proceeds to repair and improve the property that was the subject of the drug nuisance abatement action.)

By way of comparison, if the action is brought by the Attorney General, 50% of the collected penalty is paid to the State and 50% is paid to the county. If brought by the district attorney, 100% is paid to the county. And if brought by a city attorney or city prosecutor, 50% is paid to the city and 50% is paid to the county.

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AB 1755 SENATE JUDICIARY

AB 1755 CLARIFIES THAT A CITY ATTORNEY IN A CITY AND COUNTY IS AUTHORIZED TO FILE AN ACTION FOR INJUCTION TO ENFORCE STATUTES RELATING TO DRUG NUISANCE ABATEMENT AND UNSAFE HOUSING VIOLATIONS.

THE CURRENT LAW IS CONFUSING IN THAT A CITY ATTORNEY IN A CITY OVER 750,000 OR A CITY PROSECUTOR IN A CITY OR CITY AND COUNTY CAN CURRENTLY BRING THESE ACTIONS UNDER SECTION 17204. CONSEQUENTLY, ALTHOUGH THE LAW WOULD SEEM TO COVER SAN FRANCISCO UNDER EXISTING PROVISIONS, SAN FRANCISCO, AS THE ONLY CITY AND COUNTY IN THE STATE, DOES NOT HAVE A CITY PROSECUTOR. INSTEAD, THERE IS A CITY ATTORNEY.

THIS LEGISLATION CORRECTS THE CURRENT ERRONEOUS REFERENCE TO A NON-EXISTENT CITY PROSECUTOR IN A CITY AND COUNTY AND ADDS A CITY ATTORNEY IN A CITY AND COUNTY. IT HAS NO EFFECT ON ANY OTHER JURISDICTION IN THE STATE.

I ASK FOR YOUR AYE VOTE.

RECEIVED
AUG 22 1991
Ans'd. 8-26 noon

RECEIVED
Ans'd.....

AMENDED IN SENATE AUGUST 19, 1991
AMENDED IN SENATE JULY 9, 1991

CALIFORNIA LEGISLATURE—1991-92 REGULAR SESSION

ASSEMBLY BILL No. 1755

Introduced by Assembly Member Speier

March 8, 1991

Amend as noted on attached

An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, relating to unfair competition.

and to amend Section 11571 of the Health and Safety Code,

LEGISLATIVE COUNSEL'S DIGEST

AB 1755, as amended, Speier. Unfair competition: enforcement.

Existing law provides that specified actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law provides for civil penalties for the violation of unfair competition laws, and provides that if an action is brought by a city attorney, ½ of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and ½ to the treasurer of the county.

This bill would *revise the above provision as respects a city and county to* provide that *any city attorney of a city and county having a population in excess of 750,000, may prosecute these actions. This bill would further provide that* a city attorney in any city and county, with the consent of the district attorney of the city and county, ~~is authorized to bring such an action~~ *may also prosecute these actions.*

This bill would provide that if an action for civil penalties for the violation of unfair competition laws is brought by a city

HSC 11571 YR 1987 SESSN CHAP 1076 SEC 2

11571. Whenever there is reason to believe that such a nuisance is kept, maintained or exists in any county, the district attorney of the county, in the name of the people, may, or the city attorney of any incorporated city, or any citizen of the state resident in the county, in his or her own name, may, maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance.

(Amended by Stats. 1987, Ch. 1076, Sec. 2.)

insert:
or of
any city
and a county,

AMENDED IN SENATE AUGUST 29, 1991

AMENDED IN SENATE AUGUST 19, 1991

AMENDED IN SENATE JULY 9, 1991

CALIFORNIA LEGISLATURE—1991-92 REGULAR SESSION

ASSEMBLY BILL No. 1755

Introduced by Assembly Member Speier

March 8, 1991

An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, *and to amend Section 11571 of the Health and Safety Code,* relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

AB 1755, as amended, Speier. Unfair competition: *nuisance:* enforcement.

(1) Existing law provides that specified actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law provides for civil penalties for the violation of unfair competition laws, and provides that if an action is brought by a city attorney, ½ of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and ½ to the treasurer of the county.

This bill would revise the above provision as respects a city and county to provide that any city attorney of a city and county having a population in excess of 750,000, may prosecute these actions. This bill would further provide that a city attorney in any city and county, with the consent of the district attorney of the city and county, may also prosecute

these actions.

This bill would provide that if an action for civil penalties for the violation of unfair competition laws is brought by a city attorney of a city and county, the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. The bill would also provide, however, that if such an action is brought by a city attorney of a city and county to enforce laws and regulations regarding buildings used for human habitation and the abatement of nuisance involving controlled substances, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to ½ of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

This bill would also make related and conforming changes.

(2) Under existing law, an action for the abatement and prevention of nuisance involving controlled substances may be maintained by the district attorney, the city attorney of any incorporated city, or any citizen of the state resident in the county, where the nuisance exists.

This bill would, in addition, provide that the city attorney of any city and county may maintain such an action.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of

California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the

moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(d) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 3. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any

county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city, except that if the action was brought by a city attorney of a city and county the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment is entered.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of the reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of the reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 4. Section 11571 of the Health and Safety Code

is amended to read:

11571. Whenever there is reason to believe that such a nuisance is kept, maintained or exists in any county, the district attorney of the county, in the name of the people, may, or the city attorney of any incorporated city *or of any city and county*, or any citizen of the state resident in the county, in his or her own name, may, maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance.

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AMENDED IN SENATE SEPTEMBER 9, 1991

AMENDED IN SENATE AUGUST 29, 1991

AMENDED IN SENATE AUGUST 19, 1991

AMENDED IN SENATE JULY 9, 1991

CALIFORNIA LEGISLATURE—1991-92 REGULAR SESSION

ASSEMBLY BILL No. 1755

Introduced by Assembly ~~Member~~ ~~Speier~~ *Members Speier and Cannella*

March 8, 1991

An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, *to amend Section 116.231 of, and to add and repeal Section 116.232 of, the Code of Civil Procedure,* and to amend Section 11571 of the Health and Safety Code, relating to ~~unfair~~ ~~competition~~ *judicial proceedings.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1755, as amended, Speier. ~~Unfair~~ ~~competition: nuisance: enforcement~~ *Court actions.*

(1) Existing law provides that specified actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law provides for civil penalties for the violation of unfair competition laws, and provides that if an action is brought by a city attorney, ½ of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and ½ to the treasurer of the county.

This bill would revise the above provision as respects a city

and county to provide that any city attorney of a city and county having a population in excess of 750,000, may prosecute these actions. This bill would further provide that a city attorney in any city and county, with the consent of the district attorney of the city and county, may also prosecute these actions.

This bill would provide that if an action for civil penalties for the violation of unfair competition laws is brought by a city attorney of a city and county, the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. The bill would also provide, however, that if such an action is brought by a city attorney of a city and county to enforce laws and regulations regarding buildings used for human habitation and the abatement of nuisance involving controlled substances, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to ½ of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

This bill would also make related and conforming changes.

(2) Under existing law, an action for the abatement and prevention of nuisance involving controlled substances may be maintained by the district attorney, the city attorney of any incorporated city, or any citizen of the state resident in the county, where the nuisance exists.

This bill would, in addition, provide that the city attorney of any city and county may maintain such an action.

(3) Existing law prohibits any person from filing more than 2 small claims actions in which the amount demanded exceeds $2,500 anywhere in the state in any calendar year.

This bill would, authorize the City and County of San Francisco and the County of Stanislaus to participate in a pilot project under which the city and county or county, and specified local entities in those jurisdictions would be exempt from this limitation. However, the bill would provide for the transfer to municipal court of an action filed by those entities in small claims court in which the amount demanded exceeds

$2,500 if the defendant informs the court, as specified, that he or she is represented by a legal counsel. These provisions would be operative until January 1, 1995.

This bill would require the City and County of San Francisco and the County of Stanislaus, if they elect to participate in the pilot project, to conduct a study of the pilot project in their respective jurisdictions, as specified, and to submit a report on the conclusions of this study to the Governor and the Legislature on or before June 30, 1993.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the

consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(d) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to one-half

of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 3. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney the

entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city, except that if the action was brought by a city attorney of a city and county the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment is entered.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of the reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of the reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 4. *Section 116.231 of the Code of Civil Procedure is amended to read:*

116.231. ~~No~~ *(a) Except as provided in Section 116.232, no* person may file more than two small claims actions in which the amount demanded exceeds two thousand five hundred dollars ($2,500), anywhere in the state in any calendar year. ~~If~~

(b) If the amount demanded in any small claims action exceeds two thousand five hundred dollars ($2,500), the party making the demand shall file a declaration under penalty of perjury attesting to the fact that not more than two small claims actions in which the amount of the demand exceeded two thousand five hundred dollars ($2,500) have been filed by that party in this state within the calendar year.

SEC. 5. Section 116.232 is added to the Code of Civil Procedure, to read:

116.232. (a) The boards of supervisors of the City and County San Francisco and the County of Stanislaus may elect to participate in pilot projects within their respective jurisdictions under which the limitation on filings provided in Section 116.231 does not apply to the participating city and county or county respectively, or to any city, school district, county office of education, community college district, or local district within those jurisdictions. It is the intent of the Legislature that this additional authority shall constitute a pilot project to determine the efficacy of use by public entities of the small claims courts for actions on claims exceeding two thousand five hundred dollars ($2,500).

(b) If any small claims action is filed by the City and County of San Francisco or the County of Stanislaus, pursuant to subdivision (a), and the defendant informs the court either in advance of the hearing by written notice or at the time of the hearing, that he or she is represented in the action by legal counsel, the action shall be transferred to the municipal court.

(c) This section shall be repealed on January 1, 1995, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 6. If the City and County of San Francisco or the County of Stanislaus elects to participate in the pilot project specified in Section 116.232 of the Code of Civil Procedure, the participating city and county or county shall conduct a study in its respective jurisdiction to evaluate the use of small claims filings by public entities pursuant to the additional authority provided by Section 116.232 of the Code of Civil Procedure for claims in excess of two thousand five hundred dollars ($2,500). The study shall determine if this additional authority results in (1) an increase of 20 percent or more in collected revenue and (2) average cost savings of five hundred dollars ($500) or more per case filed and processed in the small claims court, when compared with the use of the municipal court for these filings.

Each study shall be conducted in consultation with each city, school district, county office of education,

community college district, and local district within the participating jurisdiction that utilizes the authority provided by Section 116.232 of the Code of Civil Procedure, small claims advisors, the clerks of the municipal courts, and other appropriate representatives within the participating jurisdiction. The studies shall include all of the following:

(a) The number of small claims actions in excess of two thousand five hundred dollars ($2,500) filed by the participating jurisdiction, and cities, school districts, county offices of education, community college districts, and local districts within those jurisdictions.

(b) The number of defendants in those actions who ask for transfer from small claims court to municipal court pursuant to subdivision (b) of Section 116.232 of the Code of Civil Procedure.

(c) The number of judgment awards in excess of two thousand five hundred dollars ($2,500) resulting from small claims actions specified in subdivision (a).

(d) The difference in cost to the City and County of San Francisco or the County of Stanislaus to file an action in excess of two thousand five hundred dollars ($2,500) in small claims court, based on an assumed average cost of one thousand dollars ($1,000) per case for a municipal court filing and, utilizing that assumption, the amount of money saved by the City and County of San Francisco or the County of Stanislaus by filing these actions in small claims court.

(e) The types of small claims actions filed pursuant to the authority provided in Section 116.232 of the Code of Civil Procedure.

(f) The impact that the number of filings added to the calendar of the small claims court pursuant to the authority provided in Section 116.232 of the Code of Civil Procedure, and whether those filings affect access to the small claims court by private citizens.

(g) The impact that the number of actions filed in small claims court pursuant to the authority provided in Section 116.232 of the Code of Civil Procedure would have upon the municipal court calendar if those actions

had been filed in municipal court, and whether those filings affect efficient resolution of claims involving private citizens.

Each city and county or the county participating in the pilot project shall each submit a report on the conclusions of its study to the Judiciary Committee of the Assembly and the Judiciary Committee of the Senate. If the studies determine, in accordance with the methodology specified in this section, that the authority provided in Section 116.232 of the Code of Civil Procedure has resulted in an increase of 20 percent or more in small claims filings by the affected public entities and an average cost savings per case of five hundred dollars ($500) or more, when compared with the use of the municipal court for these filings, the pilot project shall be considered a success.

SEC. 7. Section 11571 of the Health and Safety Code is amended to read:

11571. Whenever there is reason to believe that such a nuisance is kept, maintained or exists in any county, the district attorney of the county, in the name of the people, may, or the city attorney of any incorporated city or of any city and county, or any citizen of the state resident in the county, in his or her own name, may, maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance.

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AMENDED IN SENATE SEPTEMBER 11, 1991

AMENDED IN SENATE SEPTEMBER 9, 1991

AMENDED IN SENATE AUGUST 29, 1991

AMENDED IN SENATE AUGUST 19, 1991

AMENDED IN SENATE JULY 9, 1991

CALIFORNIA LEGISLATURE—1991–92 REGULAR SESSION

ASSEMBLY BILL No. 1755

Introduced by Assembly Members Speier and Cannella

March 8, 1991

An act to amend Sections 17204, 17206, and 17207 of the Business and Professions Code, to amend Section 116.231 of, and to add and repeal Section 116.232 of, the Code of Civil Procedure, and to amend Section 11571 of the Health and Safety Code, relating to judicial proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1755, as amended, Speier. Court actions.

(1) Existing law provides that specified actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law provides for civil penalties for the violation of unfair competition laws, and provides that if an action is brought by a city attorney, ½ of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and ½ to the treasurer of the county.

This bill would revise the above provision as respects a city and county to provide that any city attorney of a city and

county having a population in excess of 750,000, may prosecute these actions. This bill would ~~further~~ provide that a city attorney in any city and county, with the consent of the district attorney of the city and county, may also prosecute these actions. *The bill would (a) authorize the county counsel, pursuant to an agreement with the district attorney, to prosecute these actions where the action involves violation of a county ordinance, and (b) require distribution of any civil penalties recovered in an action brought by the county counsel for violation of laws on unfair competition, or of an injunction prohibiting unfair competition, in the same manner prescribed for these actions brought by the district attorney.*

This bill would provide that if an action for civil penalties for the violation of unfair competition laws is brought by a city attorney of a city and county, the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. The bill would also provide, however, that if such an action is brought by a city attorney of a city and county to enforce laws and regulations regarding buildings used for human habitation and the abatement of nuisance involving controlled substances, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to ½ of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

This bill would also make related and conforming changes.

(2) Under existing law, an action for the abatement and prevention of nuisance involving controlled substances may be maintained by the district attorney, the city attorney of any incorporated city, or any citizen of the state resident in the county, where the nuisance exists.

This bill would, in addition, provide that the city attorney of any city and county may maintain such an action.

(3) Existing law prohibits any person from filing more than 2 small claims actions in which the amount demanded exceeds $2,500 anywhere in the state in any calendar year.

This bill would, authorize the City and County of San Francisco and the County of Stanislaus to participate in a pilot project under which the city and county or county, and specified local entities in those jurisdictions would be exempt from this limitation. However, the bill would provide for the transfer to municipal court of an action filed by those entities in small claims court in which the amount demanded exceeds $2,500 if the defendant informs the court, as specified, that he or she is represented by a legal counsel. These provisions would be operative until January 1, 1995.

This bill would require the City and County of San Francisco and the County of Stanislaus, if they elect to participate in the pilot project, to conduct a study of the pilot project in their respective jurisdictions, as specified, and to submit a report on the conclusions of this study to the Governor and the Legislature on or before June 30, 1993.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for injunction pursuant to this chapter may be prosecuted by the Attorney General or any district attorney *or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance,* or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney *or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance,* or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney *or county counsel*, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the

municipality or county which funds the local agency.

(d) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 3. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any

district attorney, *any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance,* or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney *or county counsel* the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city, except that if the action was brought by a city attorney of a city and county the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment is entered.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of the reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of the reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 4. Section 116.231 of the Code of Civil Procedure

is amended to read:

116.231. (a) Except as provided in Section 116.232, no person may file more than two small claims actions in which the amount demanded exceeds two thousand five hundred dollars ($2,500), anywhere in the state in any calendar year.

(b) If the amount demanded in any small claims action exceeds two thousand five hundred dollars ($2,500), the party making the demand shall file a declaration under penalty of perjury attesting to the fact that not more than two small claims actions in which the amount of the demand exceeded two thousand five hundred dollars ($2,500) have been filed by that party in this state within the calendar year.

SEC. 5. Section 116.232 is added to the Code of Civil Procedure, to read:

116.232. (a) The boards of supervisors of the City and County San Francisco and the County of Stanislaus may elect to participate in pilot projects within their respective jurisdictions under which the limitation on filings provided in Section 116.231 does not apply to the participating city and county or county respectively, or to any city, school district, county office of education, community college district, or local district within those jurisdictions. It is the intent of the Legislature that this additional authority shall constitute a pilot project to determine the efficacy of use by public entities of the small claims courts for actions on claims exceeding two thousand five hundred dollars ($2,500).

(b) If any small claims action is filed by the City and County of San Francisco or the County of Stanislaus, pursuant to subdivision (a), and the defendant informs the court either in advance of the hearing by written notice or at the time of the hearing, that he or she is represented in the action by legal counsel, the action shall be transferred to the municipal court.

(c) This section shall be repealed on January 1, 1995, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 6. If the City and County of San Francisco or the

County of Stanislaus elects to participate in the pilot project specified in Section 116.232 of the Code of Civil Procedure, the participating city and county or county shall conduct a study in its respective jurisdiction to evaluate the use of small claims filings by public entities pursuant to the additional authority provided by Section 116.232 of the Code of Civil Procedure for claims in excess of two thousand five hundred dollars ($2,500). The study shall determine if this additional authority results in (1) an increase of 20 percent or more in collected revenue and (2) average cost savings of five hundred dollars ($500) or more per case filed and processed in the small claims court, when compared with the use of the municipal court for these filings.

Each study shall be conducted in consultation with each city, school district, county office of education, community college district, and local district within the participating jurisdiction that utilizes the authority provided by Section 116.232 of the Code of Civil Procedure, small claims advisors, the clerks of the municipal courts, and other appropriate representatives within the participating jurisdiction. The studies shall include all of the following:

(a) The number of small claims actions in excess of two thousand five hundred dollars ($2,500) filed by the participating jurisdiction, and cities, school districts, county offices of education, community college districts, and local districts within those jurisdictions.

(b) The number of defendants in those actions who ask for transfer from small claims court to municipal court pursuant to subdivision (b) of Section 116.232 of the Code of Civil Procedure.

(c) The number of judgment awards in excess of two thousand five hundred dollars ($2,500) resulting from small claims actions specified in subdivision (a).

(d) The difference in cost to the City and County of San Francisco or the County of Stanislaus to file an action in excess of two thousand five hundred dollars ($2,500) in small claims court, based on an assumed average cost of one thousand dollars ($1,000) per case for a municipal

court filing and, utilizing that assumption, the amount of money saved by the City and County of San Francisco or the County of Stanislaus by filing these actions in small claims court.

(e) The types of small claims actions filed pursuant to the authority provided in Section 116.232 of the Code of Civil Procedure.

(f) The impact that the number of filings added to the calendar of the small claims court pursuant to the authority provided in Section 116.232 of the Code of Civil Procedure, and whether those filings affect access to the small claims court by private citizens.

(g) The impact that the number of actions filed in small claims court pursuant to the authority provided in Section 116.232 of the Code of Civil Procedure would have upon the municipal court calendar if those actions had been filed in municipal court; and whether those filings affect efficient resolution of claims involving private citizens.

Each city and county or the county participating in the pilot project shall each submit a report on the conclusions of its study to the Judiciary Committee of the Assembly and the Judiciary Committee of the Senate. If the studies determine, in accordance with the methodology specified in this section, that the authority provided in Section 116.232 of the Code of Civil Procedure has resulted in an increase of 20 percent or more in small claims filings by the affected public entities and an average cost savings per case of five hundred dollars ($500) or more, when compared with the use of the municipal court for these filings, the pilot project shall be considered a success.

SEC. 7. Section 11571 of the Health and Safety Code is amended to read:

11571. Whenever there is reason to believe that such a nuisance is kept, maintained or exists in any county, the district attorney of the county, in the name of the people, may, or the city attorney of any incorporated city or of any city and county, or any citizen of the state resident in the county, in his or her own name, may, maintain an

action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance.

O

THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 445-6614	Bill No. AB 1755 Author: Speier (D), et al Amended: 9/11/91 in Senate Vote Required: 21

Committee Votes:

COMMITTEE: JUDICIARY		
BILL NO.: AB 1755		
DATE OF HEARING: 8/20/91		
SENATORS:	AYE	NO
Keene	✓	
Leslie	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Roberti	✓	
Royce	✓	
Torres	✓	
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	11	0

Senate Floor Vote:

Assembly Floor Vote: 53-13, p. 1998, 5/24/91

SUBJECT: Judicial proceedings

SOURCE: City and County of San Francisco

DIGEST: This bill would authorize city attorneys of the City and County of San Francisco, with the consent of the county district attorney, to bring actions to prosecute violations of the unfair competition and drug nuisance laws.

Senate Floor Amendments of 9/11/91 would include county counsel in provisions.

Senate Floor Amendments of 9/9/91 (1) add co-authors, and (2) add provisions creating a small claims pilot project in the counties of Stanislaus and San Francisco.

ANALYSIS: Existing law provides that actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law also establishes civil penalties for the violation of the unfair competition laws and provides that if a city attorney brings the action, 1/2 of the penalty goes to the city and the other 1/2 to the county.

This bill would revise those provisions to provide:

-- any city attorney or by any county counsel authorized by agreement with the district attorney in actions involving a violation of a county ordinance.

CONTINUED

-- any city attorney or county counsel in any city and county, with the consent of the county district attorney, may prosecute unfair competition actions.

-- If a city attorney or county counsel of a city and county brings an unfair competition action, any civil penalties collected would be allocated entirely to the city and county or, if the action were brought to abate a drug nuisance in a building and upon request of the city attorney, the court may order that up to 1/2 of the penalty be allocated for the purpose of restoring and improving the building that was the subject of the nuisance action.

Whenever there is reason to believe that such a nuisance is kept, maintained or exists in any county, the district attorney of the county, in the name of the people, may, or the city attorney of any incorporated city or of any city and county, or any citizen of the state resident in the county, in his or her own name, may, maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance.

The purpose of the above provision is to increase the ability of San Francisco to prosecute violations of the unfair competition laws and the drug nuisance abatement laws by authorizing its city attorneys, with the consent of the district attorney where specified, to bring civil action to enforce the laws.

Existing law prohibits any person from filing more than 2 small claims actions in which the amount demanded exceeds $2,500 anywhere in the state in any calendar year.

This bill would, authorize the City and County of San Francisco and the County of Stanislaus to participate in a pilot project under which the city and county or county, and specified local entities in those jurisdictions would be exempt from this limitation. However, the bill would provide for the transfer to municipal court of an action filed by those entities in small claims court in which the amount demanded exceeds $2,500 if the defendant informs the court, as specified, that he or she is represented by a legal counsel. These provisions would be operative until January 1, 1995.

This bill would require the City and County of San Francisco and the County of Stanislaus, if they elect to participate in the pilot project, to conduct a study of the pilot project in their respective jurisdictions, as specified, and to submit a report on the conclusions of this study to the Governor and the Legislature on or before June 30, 1993.

Background

Earlier this session, the Legislature passed AB 930 (Cannella) creating a small claims pilot project in the County of Stanislaus and City and County of San Franciso. Within those jurisdictions, local governmental agencies were not to be subject to the $2,500 monetary jurisdictional limit imposed after two filings per year in excess of that figure up to the maximum limit of $5,000. A study by the Judicial Council would have been required.

The bill was vetoed on the basis of the potential cost of such a study.

CONTINUED

These amendments would reinstitute the two-county pilot project proposal. However, to avoid even the possibility of state costs, the study would be conducted by the counties themselves, to include information required by statute.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 9/11/91)

City and County of San Francisco (source)
Stanislaus County

ARGUMENTS IN SUPPORT: The City and County of San Francisco states: "Currently, high crime activity requires the District Attorney to focus staff and resources on criminal cases. Consequently, civil prosecution under the authority of Section 17204 of the Business and Professions Code due to the crush of other work is not always utilized to require owners of substandard or drug nuisance housing to restore the building to a condition of compliance." This bill allows the city attorney to utilize the civil enforcement prosecution powers "in efforts to restore safe housing, complementing the district attorney who continues to prosecute any criminal or civil aspects they may choose, without any diminution in their powers." The sponsor argues that this bill will enhance the abilities of cities to address the significant safe housing problems they face.

ASSEMBLY FLOOR VOTE:

ASSEMBLY BILL NO. 1755 (Speier)—An act to amend Sections 17206 and 17207 of, and to add Section 17204.6 to, the Business and Professions Code, relating to unfair competition.

Bill read third time, and passed by the following vote:

AYES—53

Allen	Connelly	Hauser	Peace
Alpert	Cortese	Hunter	Polanco
Andal	Costa	Isenberg	Quackenbush
Areias	Eastin	Johnson	Roybal-Allard
Bane	Eaves	Kelley	Speier
Bates	Elder	Klehs	Tanner
Bentley	Epple	Knowles	Tucker
Bronzan	Farr	Lancaster	Vasconcellos
Brulte	Floyd	Lee	Woodruff
Burton	Frazee	Lempert	Wright
Cannella	Friedman	Margolin	Mr. Speaker
Chacon	Gotch	Moore	
Chandler	Hannigan	Murray	
Clute	Hansen	O'Connell	

NOES—13

Baker	Harvey	Mountjoy	Wyman
Boland	Horcher	Nolan	
Filante	Jones	Seastrand	
Frizzelle	McClintock	Statham	

Bill ordered transmitted to the Senate.

RJG:lm 9/12/91 Senate Floor Analyses

AB 1755 (SPEIER)
FLOOR STATEMENT

AB 1755 IS A MEASURE TO CLARIFY THAT THE CITY ATTORNEY OF SAN FRANCISCO, WITH THE CONSENT OF THE DISTRICT ATTORNEY, CAN BRING PROSECUTION TO ENFORCE DRUG NUISANCE ABATEMENT LAWS. CURRENT LAW STATES A CITY AND COUNTY WITH A CITY PROSECUTOR CAN BRING SUCH ACTIONS. SAN FRANCISCO IS THE ONLY CITY AND COUNTY BUT DOES NOT HAVE A CITY PROSECUTOR. THIS WILL CORRECT THE LAW.

THIS BILL WILL ALLOW FOR ADDITIONAL ENFORCEMENT AGAINST CRACK HOUSES BY GIVING THE SAN FRANCISCO CITY ATTORNEY, AS WELL AS THE DISTRICT ATTORNEY, THE POWER TO PROSECUTE THESE CASES. THE MEASURE, AS AMENDED IN THE SENATE, ONLY APPLIES TO SAN FRANCISCO.

SENATE AMENDMENTS HAVE ALSO BEEN ADDED TO ALLOW A PILOT PROJECT IN SAN FRANCISCO AND STANISLAUS COUNTY TO TEST ALLOWING PUBLIC JURISDICTIONS IN THOSE COUNTIES TO USE SMALL CLAIMS COURT IN ACTIONS UP TO $5,000. THE GOVERNOR VETOED THE MEASURE BASED ON COST ESTIMATES. THE COSTS OF THE PILOT PROJECT HAVE BEEN REMOVED TO MEET THE GOVERNOR'S OBJECTIONS.

FURTHER AMENDMENTS WERE TAKEN TO RESOLVE A CHAPTERING OUT PROBLEM WITH A MEASURE BY SENATOR LEONARD (SB 709) WHICH IS ON THE GOVERNOR'S DESK.

THERE IS NO OPPOSITION TO THE MEASURE.

I ASK FOR YOUR AYE VOTE ON AB 1755.

Jack I. Horton
Ann Mackey
Chief Deputies

James L. Ashford
Jerry L. Bassett
John T. Studebaker
Jimmie Wing

David D. Alves
John A. Corzine
C. David Dickerson
Robert Cullen Duffy
Robert D. Gronke
Robert G. Miller
Verne L. Oliver
Tracy O. Powell II
Marguerite Roth
Michael H. Upson
Daniel A. Weitzman
Christopher Zirkle
Principal Deputies

State Capitol, Suite 3021
Sacramento, CA 95814-4996
(916) 445-3057
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Legislative Counsel of California

BION M. GREGORY

Sacramento, California
September 6, 1991

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Raneene P. Belisle
Lara K. Bierman
Diane F. Boyer-Vine
Ann M. Burastero
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Michael J. Kersten
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S. Lynne Klein
Victor Kozielski
Eve B. Krotinger
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Jennifer Loomis
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Sharon Reilly
Michael B. Salerno
Keith Schulz
William K. Stark
Ellen Sward
Mark Franklin Terry
Jeff Thom
Elizabeth M. Ward
Richard B. Weisberg
Thomas D. Whelan
Belinda Whitsett
Debra J. Zidich
Jack G. Zorman
Deputies

Honorable K. Jacqueline Speier
4140 State Capitol

Court Actions (A.B. 1755) - #26547

Dear Ms. Speier:

Pursuant to your request we have prepared the enclosed amendments relating to the above-named subject. In this connection we call your attention to the possibility that the effect of this enactment might be limited or nullified by reason of the following:

The proposed amendments would, among other things, provide an exemption from a numerical limit on filing small claims actions, while the existing provisions of the bill provide that specified actions to enforce unfair competition laws may be prosecuted, as specified. Although both provisions relate to court actions, they may not be promotive of a single purpose, nor have a necessary and natural connection to the other, and may, therefore, violate the constitutional requirement that a statute may embrace but one subject, and that its provisions must be either functionally related to one another or reasonably germane to one another or the objects of the enactment (see Harbor v. Deukmejian, 43 Cal. 3d 1078; Perry v. Jordan, 34 Cal. 2d 87, see also Evans v. Superior Court, 215 Cal. 58, 63-64)

In the interest of time we have not attempted to analyze the question to determine the extent to which this may present a problem; however, we feel obligated to alert you to the existence of any possible problem for such consideration and action as you may desire.

In addition, the bill as introduced related to a subject different from the subject of these amendments.

Accordingly, a point of order could be raised with respect to the germaneness of these amendments since they relate to a subject different from that of the original bill in violation

of one or more of the rules regarding germaneness of amendments (see Joint Rule 9, Assembly Rule 92, and Senate Rule 38.5).

However, in the final analysis, the issue of germaneness must be resolved in the house considering the measure.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By
Peter Melnicoe
Deputy Legislative Counsel

DF26a
PM:lb

ASSEMBLY
CALIFORNIA LEGISLATURE

K. Jacqueline Speier

Representing
San Francisco & San Mateo Counties
ASSEMBLY MAJORITY WHIP

September 12, 1991

Mr. Rick Rollens
Secretary of the Senate
State Capitol, Room 3044
Sacramento, CA 95814

Dear Mr. Rollens:

This letter is to clarify the purpose of the pilot study provided by AB 1755, as amended September 9, 1991.

Amendments of September 9, 1991 to AB 1755 added provisions relating to a pilot study to evaluate the use and cost savings resulting from public entities being allowed to file claims between $2,500 and $5,000 as small claims action rather than as a filing in municipal court. These amendments designate the City and County of San Francisco and the County of Stanislaus as the public entities allowed to file claims between $2,500 and $5,000 as small claims actions for the purpose of conducting the study.

The purpose of this study is to test whether public entities are able to increase payment collections through small claims actions, and if the difference in cost for the public entity to handle these claims as a small claims action rather than a filing in municipal court creates cost savings for the public entities. The City and County of San Francisco and the County of Stanislaus are public entities that would seek recovery of costs as a small claims action for cases, such as, non-payment of county hospital bills, reimbursement costs for damaged public property, non-payment of restitution to victims and overpayment to welfare recipients.

All the best,

JACKIE SPEIER
State Assemblywoman

State Capitol
Sacramento, CA 94249-0001
(916) 445-8020

220 South Spruce Avenue, Suite 101
South San Francisco, CA 94080
(415) 871-4100

ASSEMBLY
CALIFORNIA LEGISLATURE

K. Jacqueline Speier

Representing
San Francisco & San Mateo Counties
ASSEMBLY MAJORITY WHIP

September 12, 1991

Honorable Pete Wilson
Governor
State of California
State Capitol
Sacramento, CA 95814

Dear Governor Wilson:

A conflict in provisions of Sections 17204, 17206, and 17207 of the Business and Professions Code amended by SB 709 (Leonard) and AB 1755 (Speier) has recently come to my attention.

Additionally, I was advised that a potential chaptering out problem exists as SB 709 is currently on your desk for signature and AB 1755 is pending Senate approval.

I write to inform you that I have resolved this problem by amending AB 1755 to include the provisions of SB 709 that amend the Business and Professions Code that were in conflict.

Therefore, your approval of AB 1755 would not chapter out provisions of SB 709 if you should approve both bills.

Please contact me or my staff if you have any questions.

All the best,

JACKIE SPEIER
State Assemblywoman

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CONCURRENCE STATEMENT - ASSEMBLY BILL NO. 1755

ASSEMBLY FLOOR - SEPTEMBER 13, 1991

MR. SPEAKER AND MEMBERS:

AB 1755 AS AMENDED IN THE SENATE WOULD NOW APPLY ONLY TO THE SAN FRANCISCO CITY ATTORNEY. FURTHER AMENDMENTS ADDED A PILOT PROJECT ON THE USE OF SMALL CLAIMS COURTS BY LOCAL JURISDICTIONS IN SAN FRANCISCO AND STANISLAUS COUNTIES. SENATE AMENDMENTS ALSO CORRECT A CHAPTERING OUT PROBLEM WITH ANOTHER MEASURE.

THERE IS NO OPPOSITION TO THE MEASURE.

ASSEMBLY
CALIFORNIA LEGISLATURE

K. Jacqueline Speier

Representing
San Francisco & San Mateo Counties
ASSEMBLY MAJORITY WHIP

September 23, 1991

The Honorable Pete Wilson
Governor, State of California
State Capitol
Sacramento, CA 95814

Dear Governor Wilson:

In an effort to help address the enforcement of unfair competition laws in San Francisco, I would like to urge your support for AB 1755, a measure sponsored by the County of San Francisco.

Specifically, AB 1755 is a measure to clarify that the City Attorney of San Francisco, with the consent of the District Attorney, can bring prosecution to enforce drug nuisance abatement laws. Current law states that a city and county with a city prosecutor can bring such actions. San Francisco is the only city and county, but does not have a city prosecutor. This bill will correct the law and provide the additional resources necessary to prosecute criminal drug enforcement actions in many of San Francisco's neighborhoods.

Amendments have also been added to allow a pilot project in San Francisco and Stanislaus County to test allowing public jurisdictions in those counties to use small claims court in actions up to $5,000. At the end of session, I requested that a letter be placed in the journal to clarify the scope of activities under the pilot project, a copy of which is attached. As you know, a similar bill was vetoed earlier this year because of fiscal concerns. To meet your objections, the financing of these projects has been removed.

Lastly, amendments have been taken to resolve a chaptering out problem with a measure by Senator Leonard (SB 709).

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There is no opposition to the measure and I respectfully request your signature. Thank you for your consideration.

All the best,

K. JACQUELINE SPEIER
State Assemblywoman

KJS: et

..nalyst: Gale Baker
Bus. Ph: 323-0399
Home Ph: 933-6314

ENROLLED BILL REPORT

AGENCY: State and Consumer Services Agency	BILL NUMBER: AB 1755
DEPARTMENT: Department of Consumer Affairs	AUTHOR: Speier

BILL SUMMARY

Existing law (Bus. & Prof.C. §§ 17200 et seq.) authorizes the Attorney General, district attorney, city attorney of cities with a population over 750,000 and, with the consent of the district attorney, city prosecutor of any city or <u>city and county</u> with a full-time city prosecutor to file actions for injunctive relief and civil penalties of up to $2,500 per violation for acts of unfair competition. Existing law (Stats. 1988, Ch. 790) also grants special temporary authority to the San Jose city attorney to file these actions, with the annual consent of the Santa Clara District Attorney, until the city's population reaches 750,000. Existing law also authorizes civil penalties of up to $6,000 per violation for violating an injunction issued pursuant to Bus. & Prof.C. §§ 17200 et seq.

This bill would in addition authorize a city attorney of a "city and county" (i.e., San Francisco) with a population over 750,000, and a city attorney of a "city and county" with the consent of the district attorney, to file these actions.

The bill also would permit the county counsel to use these provisions to enforce a county ordinance.

The bill would delete the current authorization for the city prosecutor of a "city and county" to file these actions, since there is no city prosecutor in the City and County of San Francisco, which is the only "city and county" in the state.

Existing law authorizes the district attorney, city attorney of any incorporated city, or any citizen of the state who resides in the county, to bring an action to abate and prevent a nuisance.

This bill would include among those authorized to bring such actions the city attorney of a "city and county."

Under current law, civil penalties collected pursuant to "unfair competition" actions are distributed as follows: if the action is brought by the Attorney General, half is paid to the county and half to the General Fund. If brought by a district attorney, the penalty is paid to the county. If brought by a city attorney or city prosecutor, half of the penalty is paid to the city and half to the county.

VOTE:	Assembly	Partisan R D		Senate	Partisan R D
Floor:	53-13/conc. 71-3		Floor:	38-0	
Policy Committee:	6-1		Policy Committee:	11-0	
Fiscal Committee:	N/A		Fiscal Committee:	N/A	

RECOMMENDATION TO GOVERNOR:
SIGN ___ VETO X NO POSITION ____ DEFER TO OTHER AGENCY ________

DEPARTMENT DIRECTOR:	DATE:	AGENCY SECRETARY:	DATE:
C. Lance Barnett	20, IX, 91	Diane Moore	9/23/91

This bill would provide that if the action is brought by a city attorney of a "city and county," the penalty would be paid to the city and county.

If the action is brought by a county counsel, the penalty would be paid to the county.

If the action is brought by a city attorney of a city and county to abate a drug nuisance pursuant to (Health & S.C. § 17980 or §§ 11570 et seq.), half of the penalty could be used to restore, maintain or enhance the premises that were the site of the nuisance.

As amended September 9, 1991, the bill also contains provisions similar to those contained in AB 930 (Cannella), which was just vetoed:

Existing law (Ch. 1683, Stats. 1990) increased the small claims monetary limit to $5,000, but prohibits anyone from filing more than two small claims actions exceeding $2,500 in any calendar year.

This bill would authorize the boards of supervisors of the City and County of San Francisco and the County of Stanislaus, and any city, school district, county office of education, community college district or local district within those jurisdictions, to elect to participate in a pilot project until January 1, 1995 to exceed the "two-filings per year over $2,500" limitation in small claims court.

If the defendant informs the court that he or she is represented by legal counsel, the action would be transferred to municipal court.

If these jurisdictions participate in the pilot project, they would be required to perform a study and report their findings to the Legislature.

The studies would be required to include:

- The number of small claims actions exceeding $2,500;
- The number of defendants who requested transfer to municipal court;
- The number of judgments in excess of $2,500;
- The amount saved by not filing the action in municipal court (assuming an average cost in municipal court of about $1,000);
- The types of actions so filed;
- The impact of these filings on the small claims calendar and whether those filings affect access by private citizens;
- The impact that the filings would have had on the municipal court calendar and whether those filings affect efficient resolution of claims involving private citizens.

If the studies find that the project results in an increase of 20 percent or more in collected revenue and average cost savings of $500 or more per case compared with the municipal court, the project(s) would be considered a success.

BACKGROUND

There are several sources for this bill. The first is the City and County of San Francisco, which wants to enable the city attorney to file "unfair competition" actions and also use the unfair competition remedies to enforce drug nuisance abatement laws. The sponsor states that the district attorney faces significant burdens and limits on its staff and resources and this bill would relieve some of that burden (However, the San Francisco District Attorney opposes this bill).

San Francisco's population is currently 727,000, smaller than in previous years. This is why the bill contains two provisions authorizing § 17200 actions by a city attorney of a "city and county." If the population exceeds 750,000 the city and county will have the authority to prosecute § 17200 actions without the consent of the district attorney (this is consistent with current law, which permits cities with a population of 750,000 to bring § 17200 actions without the district attorney's consent). At times when the population falls below 750,000, the city attorney will have to obtain the district attorney's approval to prosecute § 17200 actions.

The City and County also wants to allow its city attorney to seek abatement orders under Health & S.C. § 11570 to clean up buildings infested with drug activity. The sponsor argues that this will enhance the ability of San Francisco to address the significant safe housing problems it faces.

As amended September 9, 1991, bill also would authorize the City and County of San Francisco and the County of Stanislaus to file an unlimited number of actions in small claims court over $2,500 (subject, of course to the $5,000 limit). The sponsors anticipate using small claims court to recover money relating to welfare fraud, excessive traffic violations, property damage to government property, nonpayment of fines, and nonpayment of restitution for victims.

Governor Wilson recently vetoed a similar bill, AB 930 (Cannella), but for reasons that seem to have been addressed by the proponents in this bill. AB 930 required the Judicial Council, rather than the sponsor, to perform a study of the effects of the bill. The Governor stated in his veto message that "[w]hile I support efforts to provide an alternative judicial recourse to local government, the Judicial Council indicates that it cannot absorb the costs associated with the study required by this bill. In light of the current General Fund situation, I cannot support a measure that would create a new state cost that would further reduce funding available to existing state programs." AB 1755 therefore requires the City and County of San Francisco and the County of Stanislaus to conduct the study, if they decide to participate in the pilot project. (The bill also differs from AB 930 in that it creates a "pilot project" rather than giving these jurisdictions an outright exemption.)

As amended September 11, the bill also would permit county counsels to file "unfair competition" actions to enforce county ordinances with the permission of the district attorney. Another bill, SB 709 (Leonard), was recently sent to the Governor and would do the same thing. We were unable to get information from Assemblywoman Speier's office before submitting this analysis as to the reasons these provisions were also amended into AB 1755. However, the probable reason is that the two bills, which would amend some of the same sections, are not double-joined. If AB 1755 is signed after SB 709, there would be no chaptering-out problem.

SPECIFIC FINDINGS

1. § 17200 Actions by City Attorney of a "City and County"

- Through case law interpretation, § 17200 et seq. has evolved into one of the state's most powerful consumer protection statutes. The courts have consistently given the term "unfair competition" the broadest possible interpretation, defining "unlawful business practice" to include "'anything that can properly be called a business practice and that at the same time is forbidden by law'." (People v. McKale, 1979, 25 Cal.3d 626, 632.) In effect, § 17200 allows any violation of the law, when done as a business practice, to be prosecuted under its terms and to be subjected to the significant remedies described above.

- Although "drug abatement" seems like a strange use of § 17200, the California District Attorneys Association reports that district attorneys do use § 17200 for this purpose.

- The San Francisco District Attorney is opposed to allowing the city attorney to use § 17200. District attorneys traditionally oppose efforts to expand the list of officials authorized to bring § 17200 actions because of the possibility for bad decisions that could erode the effectiveness of § 17200 when persons inexperienced in that area of the law are authorized to bring suit.

- However, we note that the San Francisco DA will have "per-case" control over what cases the city attorney chooses to bring under § 17200. (Earlier versions of the bill would have permitted any city attorney with the "annual consent" of the DA to bring § 17200 actions and these versions were strongly opposed by the California District Attorneys Association (CDAA) because of the "annual consent" provision and because any city attorney would have been authorized to bring these actions.) From the DA's point of view, case-by-case consent is better than annual consent since it gives the DA more control over how the city attorney uses § 17200. (Cf. a similar provision in § 17206.5 which gives the San Jose city attorney temporary authority to file § 17200 actions, with the "annual consent" of the Santa Clara DA.)

- The CDAA regards this aspect of the bill as the "lesser of two evils" and remains "conceptually opposed" but officially neutral. The district attorneys generally resist attempts to expand the list of persons authorized to prosecute § 17200 actions because "when that authority is given to persons who are not trained or experienced in these kinds of actions, unfavorable decisions can result," sometimes necessitating requests by district attorneys to depublish opinions that could diminish the effectiveness of § 17200.

2. Small Claims Exemption Provisions

- As noted in our enrolled bill report on AB 930 (Cannella), we would prefer to remove the "two-filings per year over $2,500" limitation in small claims court rather than chipping away at it with special exemptions. Although we are sympathetic to the goals of the proponents of these provisions, we are conceptually opposed to granting special privileges to government entities and giving them better access to small claims court than private citizens.

- However, we note that the proponents appear to have addressed the Governor's concerns as stated in his veto message on AB 930 (the bill no longer requires the Judicial Council to perform a study).

- Please see our enrolled bill report on AB 930 (Cannella) for further discussion of the exemption issue.

3. Authorization for County Counsels to Use Unfair Competition Laws

- As noted in our enrolled bill report on SB 709 (Leonard), we have strong unresolved concerns about allowing county counsels to use § 17200 to enforce county ordinances. (Please refer to our enrolled bill report on SB 709 for further discussion of our concerns.)

FISCAL IMPACT

None to the department.

ARGUMENT

Proponents: City and County of San Francisco (sponsor)
City and County of San Francisco Judicial Council (sponsor)
City of San Diego
County of San Bernardino

Opponents: California District Attorneys Association
San Diego District Attorney
San Francisco District Attorney
(other district attorneys are expected to oppose the bill also)

The City and County of San Francisco states that this bill would increase its ability to prosecute violations of the unfair competition laws and the drug nuisance abatement laws by authorizing its city attorney, with the consent of the district attorney, to file § 17200 actions.

The San Francisco District Attorney is opposed to authorizing the city attorney to file § 17200 actions and argues that the current law has sufficient avenues for city attorneys to abate nuisances.

The City and County of San Francisco and the County of Stanislaus argue that the pilot project for these jurisdictions to exceed the "two-filings per year over $2,500" limitation in small claims court would permit cities and counties to pursue cases that would not be cost-effective in municipal court due to the filing and attorney fees.

Opponents could argue that currently, government agencies and private parties generally are subject to essentially the same standing requirements in judicial cases. While there is merit to making the limitations inapplicable to local government agencies, the better approach would be to delete the restriction altogether. The elimination of this restriction would be more consistent with the efforts of the Administration to maintain simple and straightforward procedures in small claims court. It also would be consistent with trends in other states. The piecemeal whittling away at the restriction is time-consuming and unreasonable.

The provision that would allow county counsels to use the unfair competition laws to enforce county ordinances is sponsored by the County of San Bernardino. Proponents argue that the purpose of this provision is to encourage more voluntary compliance with county codes. (The penalties authorized under §§ 17200 et seq. are substantial and widely recognized as an effective deterrent and punishment for acts of unfair competition, and are two powerful for the minor violations of county ordinances.)

The California District Attorneys Association (CDAA) is strongly opposed to this provision. The CDAA argues that violations of county ordinances are not significant enough to allow county counsels to subject violators to the significant remedies provided by the unfair competition provisions, and that the remedy of civil contempt is adequate to redress these violations. Opponents also argue that the bill is unnecessary because under existing law any district attorney can appoint a county counsel as a special deputy district attorney when conditions warrant. Opponents are also very concerned about allowing persons inexperienced in prosecuting unfair competition actions to do so because of the possibility for bad decisions that could erode the effectiveness of the unfair competition remedies.

RECOMMENDATION

VETO. We have reservations as to the various provisions of this bill.

The sponsors of the provisions that would permit the City and County of San Francisco and County of Stanislaus to exceed the "two-filings per year over $2,500" limit appear to have addressed the Governor's concerns and reason for vetoing AB 930. However, we note that we originally recommended SUPPORT IF AMENDED because we saw an opportunity to work with the sponsors to delete the two-filing limit for all parties using the small claims court system. We expressed serious concern with implementing a policy that allows greater privileges to government entities than to private citizens. It is inconsistent with the principles upon which the small claims court system is founded. We never received a position on the bill, and therefore, were unable to work with the sponsors to address our concerns earlier in the process. We thus did not recommend a VETO on AB 930 (Cannella) (although we once again expressed our concerns). After the veto of AB 930, we met with the sponsors at the direction of the Governor's Office to work through our concerns. However, at this point, the sponsors were not interested.

The department sought an "oppose unless amended" position on SB 709 (Leonard) which also would permit county counsels to use §§ 17200 et seq. to enforce county ordinances. SB 709 is awaiting action by the Governor. Due to our receipt of a "neutral if amended" position on SB 709, we recommended signature on that bill, but included a veto message because of our strong concerns.

We recommend VETO of this bill because of the provisions to extend greater privileges to government entities than to private individuals who use the small claims court system. It is our last attempt to have bearing on a fundamentally flawed proposal. A proposed VETO message is attached.

PROPOSED VETO MESSAGE

ASSEMBLY BILL 1755 (SPEIER)

To the Members of the California Assembly:

I am returning Assembly Bill 1755 without my signature.

The bill would authorize county counsel in the City and County of San Francisco to civilly prosecute violations of county ordinances. The bill would allow these county counsels to seek civil penalties for such violations, and also for violations of injunctions requiring compliance with county ordinances.

This bill would provide sanctions disproportionate to the violations involved. Ordinance violations normally are not significant enough to allow counsels to subject violators to penalties of up to $2,500. And, where a violation is more significant, existing law allows a district attorney to appoint a county counsel as a special deputy district attorney, thus, making the unfair competition provisions available. This bill is unnecessary.

This bill also would authorize the boards of supervisors of the City and County of San Francisco and the County of Stanislaus, and any city, school district, county office of education, community college district or local district within those jurisdictions, to participate in a pilot project until January 1, 1995 to exceed the "two-filings per year over $2,500" limitation in small claims court.

AB 930 would expand access of the small claims court system to local government by applying different rules of accessibility to the system that originally was intended to meet the needs of individuals and small businesses. This proposal, insofar as it would provide rules for government plaintiffs that are more favorable than those that apply to non-government plaintiffs is inconsistent with the principles upon which the small claims court system is founded and therefore, is not favorable public policy for consumers

1755

GOVERNOR'S OFFICE OF ANNING AND RESEARCH

Enrolled Bill Report

Bill Number	Author
AB 1755 (9/11/91)	SPEIER

Subject

COURT ACTIONS

SUMMARY

This bill would expand the prosecution powers of county counsels and San Francisco's city attorney; would revise the distribution of penalties collected from civil actions; and would establish a demonstration project exempting two counties from provisions limiting the filing of more than two small claims actions that exceed $2,500 in a calender year.

ANALYSIS

San Francisco City Attorney

The Unfair Practices Act prohibits unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices that destroy or prevent fair and honest competition. A violation of this law entails a civil penalty.

Current law specifies that the State Attorney General, any county district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors and the city attorney of San Jose, with the annual consent of the Santa Clara County District Attorney, may enforce the Unfair Practices Act.

Existing law provides that if an action is brought by a city attorney, one-half of the penalty collected is paid to the city treasurer in which the judgment was entered, and one-half to the county treasurer. If an action is brought by a county district attorney, all of the penalty collected is paid to the county treasurer in which the judgment was entered. Finally, if an action is brought by the State Attorney General, one-half of the penalty collected is paid to the county treasurer in which the judgment was entered, and one-half to the State General Fund.

AB 1755 would authorize the city attorney of a city and county to prosecute unfair competition actions if (1) the jurisdiction's population exceeds 750,000; or (2) the jurisdiction receives approval from the county district attorney.

Recommendation SIGN

By  Date 9/27/91

Title Richard Sybert
Director

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AB 1755 would provide that if civil action is brought for the violation of unfair competition laws by a city attorney of a city and county, all penalties collected would be paid to the treasurer of the city and county in which the judgement was entered.

Under the Uniform Controlled Substances Act, a county district attorney, city attorney of an incorporated city, or specified citizens may bring action for the abatement and prevention of a nuisance involving controlled substances.

AB 1755 would provide that the city attorney of any city and county may also bring such action.

If action is brought by the city attorney of a city and county to abate a drug nuisance in a building, the bill would authorize any collected penalties to be deposited as follows:

1. The entire amount of the penalty would be deposited into the city and county treasury.

2. Upon city attorney request, the court could order up to one-half of the penalty to be allocated for the restoration, maintenance, and enhancement of the building that was the subject of the nuisance abatement. The balance of the penalty would be paid into the city and county treasury.

Small Claims Court Demonstration Project

Currently, the monetary jurisdiction for each case in small claims court is set at $5,000. However, existing law prohibits any person from filing more than two small claims actions in which the amount exceeds $2,500 anywhere in the State in any calendar year.

AB 1755 would authorize the City and County of San Francisco and the County of Stanislaus to participate in a pilot project under which they, or any city, school district, county office of education, community college district, or special district within their jurisdictions, would be exempt from this filing limitation.

However, if such cases are filed in small claims court, and the defendant informs the court, either in advance of the hearing by written notice or at the time of the hearing, that he or she is represented by counsel, the bill would require the case to be transferred to the municipal court.

AB 1755 would require the City and County of San Francisco and the County of Stanislaus, if they elect to participate in the pilot project, to conduct a study of the project in their respective jurisdictions, including specific information, and to submit a report on the conclusions of this study to the Governor and the Legislature by June 30, 1993.

This section of AB 1755 contains a sunset clause and would be repealed on January 1, 1995.

COST

No appropriation. AB 1755 would not create a State-mandated local program.

LEGISLATIVE HISTORY

AB 1755 is sponsored by the City and County of San Francisco.

San Francisco City Attorney

Traditionally, county governments (i.e., district attorneys) are mandated to enforce state laws which are violated at the local level, such as unfair competition statutes. However, in response to the increasing burdens of the staff and resources of county district attorneys, the city attorneys of large cities (population over 750,000) have been increasingly authorized to also prosecute unfair competition actions. Because of San Francisco's unique designation as a "city and county," and the fact that its population does not exceed 750,000, its city attorney is precluded under these statutes from prosecuting such violations.

AB 1755 would provide San Francisco's city attorney with this authority in two ways. First, the city attorney of any city and county with a population over 750,000 would be authorized to prosecute unfair competition violations. Second, the city attorney of any city and county, upon agreement of its county district attorney, could prosecute these violations.

Hellan Roth Dowden, advocate for San Francisco, stated that two provisions for authorization were included because the official 1990 census figures establish San Francisco's population at 734,000. However, adjusted figures would place its population at 776,000. The issue of adjusting the 1990 census figures is currently pending court action. If the court rules that the census is to be adjusted, San Francisco's population will be set at 776,000. Therefore, San Francisco would be authorized to prosecute unfair competition violations as a city and county with a population over 750,000. However, if the court rules that current Department of Commerce census figures are correct, the second portion of the bill would allow San Francisco to prosecute these violations, upon agreement of the district attorney.

While civil penalties for violating an unfair competition law are divided based on which office (city attorney, county district attorney, or State Attorney General) prosecuted the case, this bill would allocate all the penalties collected by San Francisco to the city and county treasury. This section was added to clarify that since San Francisco's government acts as one entity, and utilizes one general fund, all the penalties collected should be deposited into this fund.

AB 1755 would also authorize the city attorney of a city and county to bring civil action for the abatement and prevention of nuisance involving controlled substances, and would allow San Francisco to utilize a portion of the collected penalties to restore buildings that were subject to nuisance abatement.

Ms. Dowden stated that most buildings used to deal drugs are uninhabitable and in a condemned state. If money were provided to restore such a building after drug dealers have been forced from the location, the chance of drug dealers returning to the site would be reduced. The city attorney seeks to abate the number "crack houses" located in San Francisco, and to utilize a portion of the penalties collected on prosecution of these nuisances to restore these buildings.

Ms. Dowden stressed that while San Francisco is unique in its approach to local government, like other local agencies it utilizes a city attorney and county district attorney. This bill does not provide San Francisco with greater authority than that currently provided to cities with populations over 750,000, or cities which are provided this authority upon agreement of county officials. It also does not grant San Francisco more prosecutorial authority than is provided to county district attorneys.

Small Claims Court Demonstration Project

For several years, legislation has been introduced to increase the monetary jurisdiction in small claims court. These measures failed passage due to strong opposition from collections agencies, which asserted that such increases would reduce the number of cases being referred to collection agencies. Last year, following extensive negotiation among several interested parties, AB 3916 (Ch. 1683) was enacted to increase the monetary jurisdiction of small claims court from $2,500 to $5,000. However, AB 3916 also limits any person or entity from filing more than two small claims court cases per year, if the claims exceed $2500.

Local agencies currently utilize small claims court to settle a variety of minor disputes. These cases include nonpayment of inspection or permit fees for public works projects, damage to locally-owned property, such as landscape, vehicles or parking meters, and cases involving overpayment of welfare revenues, or nonpayment of fines. However, like private parties, local entities are also limited to filing two small claims court cases per year, if the claims exceed $2,500. This restriction forces local agencies to seek settlement of additional claims through the municipal court system.

Proponents contend that local agencies are losing revenues under existing law since it is often cost prohibitive to seek reimbursement for minor cases through the municipal court system.

AB 1755 would authorize San Francisco and Stanislaus County to implement a pilot program which exempts these entities from the annual two-case restriction on small claims actions which exceed $2,500.

The author's staff indicated that AB 1755 would conserve valuable time for city attorneys and county counsel, and would reduce litigation costs for local agencies by allowing them to submit more small claims court filings.

This provision is supported by the League of California Cities, County Supervisors Association of California (CSAC), Cities of Diamond Bar and West Covina, and the County of Stanislaus.

CSAC staff also point out that the bill would reduce county court operation costs since small claims court is less expensive to operate than municipal court. In addition, county staff believe that these provisions could reduce litigation costs for defendants. Local agencies generally request award of attorney fees when seeking settlement in municipal court. Transferring these cases to small claims court would eliminate this cost being passed on to the defendant.

A similar small claims court demonstration project was included in AB 930 which was vetoed by Governor Wilson earlier this year. The author's office explained that AB 930 required the Judicial Council to prepare a report on the demonstration projects, whereas AB 1755 directs the counties to prepare the report. According to the author's office, the Judicial Council and the Department of Finance opposed AB 930 due to the costs Judicial Council would incur preparing this report.

Steve Birdlebough, representing Judicial Council, stated that it did not have a position on AB 1755 because the report requirement was removed. However, Judicial Council is concerned about the provision permitting a defendant to transfer his or her claim from small claims court to municipal court if he/she is represented by an attorney. The Judicial Council believes that if this sets a precedent, it could force more cases to municipal court and slow down the judicial process. Even with these concerns, the Judicial Council did not take a position on the bill.

This office supported AB 930 and supports this measure, because we believe effective measures should be taken to unclog courts and de-lawyer California.

Department of Finance staff indicated that the Department is not tracking the bill and has no position.

There is no known opposition to this provision of AB 1755.

County Counsels

The final provisions of AB 1755 would authorize county counsels, with permission from the local district attorney, to file actions under the Unfair Trade Practices Act when a violation of the county code has occurred. These provisions are identical to those contained in SB 709 (Leonard), which is also before the Governor. The Governor's Office of Planning and Research has already submitted an Enrolled Bill Report on SB 709.

Ms. Dowden explained that there was a drafting error in double-joining AB 1755 with SB 709. Instead of including language specifying that AB 1755 would not chapter out the provisions of SB 709, AB 1755 simply incorporates SB 709's provisions. Therefore, if the Governor vetoes SB 709 and signs AB 1755, the provisions of SB 709 would also become law.

VOTES:	Assembly - 24 May 1991	Senate - 13 September 1991
	Ayes - 53	Ayes - 38
	Noes - 13	Noes - 0

Concurrence - 13 September 1991
Ayes - 71
Noes - 3

The negative notes recorded in the Assembly were recorded by Republican members. However, staff with the Assembly Republican Caucus has taken no position on the bill. ARC staff stated that the no votes recorded on May 24, 1991, are based on opposition to a previous version of the bill.

RECOMMENDATION

The Governor's Office of Planning and Research recommends the Governor SIGN AB 1755.

This bill would expand the prosecution powers of county counsels and San Francisco's city attorney; would revise the distribution of penalties collected from civil actions; and would establish a demonstration project exempting two counties from provisions limiting the filing of more than two small claims actions that exceed $2,500 in a calendar year.

This bill provides the city attorney of San Francisco with the additional prosecutorial authority that is provided to city attorneys of other large cities. This enhanced authority will enable San Francisco to reduce the number of outstanding cases regarding abatement of drug nuisances and unfair competition statutes, while ensuring that the district attorney provides approval.

The bill would also allow San Francisco and Stanislaus County to establish a pilot program for small claims court that will assist these entities in recovering revenues in minor disputes, and reducing county litigation and court operation expenditures. A similar program was included in AB 930, which was vetoed by the Governor earlier this year. However, the Governor vetoed AB 930 because it imposed undue costs upon the Judicial Council for preparation of a related study. AB 1755 does not contain provisions to impose any requirements upon the Judicial Council. This office supported AB 930 and supports this measure, because we believe effective measures should be taken to unclog courts and de-lawyer California.

kc:np

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Legislative Counsel of California

BION M. GREGORY

Sacramento, California
October 11, 1991

Honorable Pete Wilson
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

A.B. 1755 SPEIER. Court actions.

SUMMARY: See Legislative Counsel's Digest on the attached copy of the bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: See Comments.

TITLE: Approved.

CONFLICTS: (1) This bill and Assembly Bill No. 894, which is also before the Governor, would both amend Section 11571 of the Health and Safety Code.

The changes in Section 11571 proposed by each bill are different. Neither bill contains provisions which would make all of the changes in the section proposed by both bills if both bills are chaptered.

This bill would amend Section 11571 to provide that the city attorney of any city and county may maintain an action for the abatement and prevention of nuisance involving controlled substances.

A.B. 894 would amend the section to require, until January 1, 1996, that a notice and a request to abate nuisance involving controlled substances be given by district attorneys and city attorneys to residential landlords, and tenants, under certain circumstances, with respect to the abatement of these nuisances in a

residential dwelling, building, or place, and would prescribe related procedures. The bill would also, among other things, require the notice to be given prior to bringing an action, except as specified, and would provide that notice and an opportunity to be heard shall be given to any particular tenant identified in the notice as responsible for the nuisance.

Thus, if this bill and A.B. 894 are chaptered, only the changes in that section proposed by the bill last chaptered will be given effect (Sec. 9605, Gov. C.).

(2) This bill and Senate Bill No. 709, which is also before the Governor, would both amend Sections 17204, 17206, and 17207 of the Business and Professions Code.

This bill would make various changes in those sections, including all of the changes proposed by S.B. 709, whether or not that bill is chaptered. S.B. 709 would not make all of the changes in those sections proposed by this bill.

This bill would amend Sections 17204, 17206, and 17207 to provide that any city attorney of a city and county having a population in excess of 750,000, and any city attorney in any city and county with the consent of the district attorney, may prosecute specified actions to enforce unfair competition laws. It would authorize the county counsel pursuant to an agreement with the district attorney, to prosecute these actions where the action involves violation of a county ordinance, and would provide that any civil penalties collected by the county counsel shall be paid to the treasurer of the county in which the judgment was entered. It would also provide for the distribution of any civil penalties collected by a city attorney of a city and county.

S.B. 709 would amend these sections to authorize the county counsel pursuant to an agreement with the district attorney, to prosecute specified actions to enforce unfair competition laws, where the action involves violation of a county ordinance, and would provide that any civil penalties collected by the county counsel shall be paid to the treasurer of the county in which the judgment was entered.

Thus, if this bill and S.B. 709 are chaptered and this bill is chaptered last, or if only this bill is

chaptered, all of the changes in Sections 17204, 17206, and 17207 proposed by both bills will be given effect. However, if S.B. 709 is chaptered last, or if only that bill is chaptered, only the changes proposed by that bill in those sections will be given effect (Sec. 9605, Gov. C.).

(3) This bill and Senate Bill No. 771, which is also before the Governor, would both amend Section 116.231 of the Code of Civil Procedure.

This bill would make various changes in that section, including all of the changes proposed by S.B. 771, whether or not that bill is chaptered. S.B. 771 would not make all of the changes in the section proposed by this bill.

This bill would amend Section 116.231 to specify that its provisions are subject to another section added by the bill, and would divide the section into two subdivisions.

S.B. 709 would amend the section to divide the section into two subdivisions.

Thus, if this bill and S.B. 771 are chaptered and this bill is chaptered last, or if only this bill is chaptered, all of the changes in Section 116.231 proposed by both bills will be given effect. However, if S.B. 771 is chaptered last, or if only that bill is chaptered, only the changes proposed by that bill in that section will be given effect (Sec. 9605, Gov. C.).

COMMENTS:

Section 9 of Article IV of the California Constitution provides, in pertinent part, as follows:

> "Sec. 9. A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. . . ."

In Harbor v. Deukmejian, 43 Cal. 3d 1078 (hereafter "Harbor"), the court held, among other things, that Chapter 268 of the Statutes of 1984 (S.B. 1379), a bill "relating to fiscal affairs and making an appropriation therefor," which amended, repealed, or added approximately 150 sections contained in more than 20 codes and legislative acts was invalid as a violation of the single subject provision of Section 9 of Article IV of the California Constitution (Harbor,

supra, at 1095-1101). The court, however, held that the rulings in this case were to be applied prospectively only (Harbor, supra, at 1101-1102).

In response to the contention that a statute with multiple subjects complies with Section 9 of Article IV of the California Constitution, the court in Harbor asserted that the two aspects of Section 9 of Article IV relating to the subject of an act and its title are independent provisions which serve separate purposes (Harbor, supra, at 1096). The court stated that a statute must comply with both the requirement that it be confined to one subject and with the command that this one subject be expressed in its title (Harbor, supra, at 1096).

In summarizing the holdings of prior cases involving the single subject rule, the court stated that a measure complies with the single subject rule if its provisions are either functionally related to one another or are reasonably germane to one another or the objects of the enactment (Harbor, supra, at 1100). In concluding that S.B. 1379 complied with neither of these standards, the court held that a bill which encompasses matters of excessive generality violates the purpose and intent of the single subject rule and that "fiscal affairs" as the subject of the bill and "statutory adjustment" to the budget as its object suffers from that same defect (Harbor, supra, at 1100).

Thus, in order for a bill to comply with the single subject rule, the provisions of the bill must be either functionally related to one another or reasonably germane to one another or the objects of the enactment. To meet the first inquiry, there must be some functional relationship between the various provisions of the bill. With respect to the second inquiry, whether the provisions of the bill can be fairly characterized as "reasonably germane" to one another or the objects of the measure, it may be more difficult to make that determination since, for instance, the objects of any particular bill are not always expressly articulated in the measure. In that regard, the court has provided little guidance in the actual application of that standard, other than to state that a bill which encompasses matters of "excessive generality" violates the single subject rule (Harbor, supra, at 1100).

We do not think it is probable that the provisions of a bill proposing to make various unrelated changes to statutes affecting judicial proceedings would

be considered functionally related. Therefore, it may be necessary, in determining whether the bill violates the single subject rule, to examine whether its provisions can be fairly characterized as "reasonably germane" to one another or the objects of the measure. That inquiry necessarily raises the question of whether the bill encompasses matters of excessive generality. On that point, the court in Harbor cited language in the case of Brosnahan v. Brown, 32 Cal. 3d 236, which states that the single subject rule is a constitutional safeguard adopted to protect against multifaceted measures of undue scope, and therefore, "the rule obviously forbids joining disparate provisions which appear germane only to topics of excessive generality such as 'government' or 'public welfare'" (Harbor, supra, at 1099).

Based on the reasoning discussed in the preceding paragraph, the provisions of this bill might be determined to be germane only to topics of excessive generality, notwithstanding the fact that the various provisions of the bill all in some way deal with judicial proceedings and may only be "minor" and "noncontroversial" and thus included in a single measure solely for purposes of legislative efficiency. The fact remains that the provisions of the bill would not be merely making technical, nonsubstantive changes, but instead would make various unrelated substantive changes.

In this regard, the scope of this bill, for example, includes, among other matters, provisions concerning who is authorized to bring actions to enforce unfair competition laws (Secs. 17204, 17206, and 17207, B.& P.C.); the distribution of civil penalties collected for the violation of unfair competition laws (Secs. 17206 and 17207, B.& P.C.); who is authorized to bring actions for the abatement and prevention of nuisance involving controlled substances (Sec. 11571, H.& S.C.); and a pilot project regarding limitations on filing in small claims court (Secs. 116.231 and 116.232, C.C.P.).

If the only relationship between the various provisions of the bill is that all of them relate to judicial proceedings, and if the only apparent reason for including the provisions in a single measure is legislative efficiency, it may be difficult to conceive of a rational basis for determining that the provisions are either reasonably germane to one another or to the objects of the measure.

While conceding that the application of the two standards for determining whether a particular bill complies with the single subject rule is no simple matter, on the basis of the foregoing discussion and in the absence of a determination that the various provisions of the bill are in some way functionally related, we think that this bill would not comply with the single subject rule of the California Constitution as construed by the California Supreme Court in Harbor.

Bion M. Gregory
Legislative Counsel

By Lara K. Bierman
Lara K. Bierman
Deputy Legislative Counsel

Two copies to:

Honorable K. Jacqueline Speier,
Honorable Carol Bentley,
Honorable Robert G. Beverly, and
Honorable Bill Leonard,
pursuant to Joint Rule 34.

Jack I. Horton
Ann Mackey
Chief Deputies

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Sacramento, California
September 25, 1991

Honorable Pete Wilson
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

S.B. 771 BEVERLY. Small claims court.

SUMMARY: See Legislative Counsel's Digest on the attached copy of the bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

CONFLICTS: (1) This bill and Assembly Bill No. 1827, which has been chaptered (Ch. 133, Stats. 1991), both amend Sections 116.220, 116.370, 116.610, and 116.770 of the Code of Civil Procedure.

The changes in these sections proposed by each bill are different. This bill does not contain provisions which would make all of the changes in these sections proposed by both bills if both bills are chaptered.

This bill would amend Section 116.220 to add provisions specifying that the small claims court shall retain jurisdiction until full payment and performance of any judgment or order, and to expand the authority of the small claims court to issue a writ of possession.

A.B. 1827 amends the section to remove unlawful detainer actions from the jurisdiction of small claims court.

This bill would amend Section 116.370 to provide that if a small claims court determines that an action was commenced within the proper venue, the court may hear the case if all parties are present; but if all parties are not present, the court shall postpone the hearing for at least 15 days and shall notify all parties by mail of the court's decision and the new hearing date, time, and place.

A.B. 1827 amends the section to make a technical, nonsubstantive change.

This bill would amend Section 116.610 to provide that if a defendant has filed a claim against the plaintiff, or if the judgment is against two or more defendants, the judgment, and the statement of decision if one is rendered, shall specify the basis for and the character and amount of the liability of each of the parties, including, in the case of multiple judgment debtors, whether the liability of each is joint or several; to expand the judgments which require the filing of a determination of judgment that the judgment resulted from a motor vehicle accident; and to revise the duties of the clerk with regard to entry of judgment.

A.B. 1827 amends the section to specify that a small claims court may continue a matter to a later date in order to permit the parties to attempt resolution by informal or alternative means.

This bill would amend Section 116.770 to specify that on appeal from small claims court, pretrial discovery procedures are not permitted, and to revise the scope of judicial review.

A.B. 1827 amends the section to specify that no party has the right to trial by jury on appeal from small claims court.

Thus, if this bill is chaptered, only the changes in that section proposed by this bill will be given effect since the last chaptered bill determines the form of a section of law amended by two chaptered bills (Sec. 9605, Gov. C.).

(2) This bill and Assembly Bill No. 1755, which is also before the Governor, would both amend Section 116.231 of the Code of Civil Procedure.

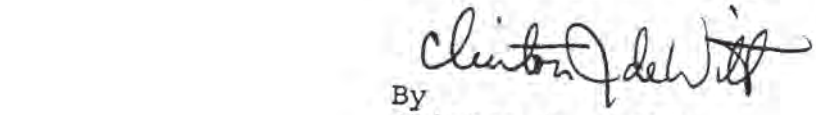
The changes in Section 116.231 proposed by each bill are different. Neither bill contains provisions which would make all of the changes in the section proposed by both bills if both bills are chaptered.

This bill would amend Section 116.231 to make technical, nonsubstantive changes.

A.B. 1755 would amend Section 116.231 to make an exception from its provisions with respect to Section 116.232 added by that bill.

Thus, if this bill and A.B. 1755 are chaptered, only the changes in that section proposed by the bill last chaptered will be given effect (Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel



By
Clinton J. deWitt
Deputy Legislative Counsel

CdeW:kg

Two copies to:

Honorable Robert G. Beverly,
Honorable Carol Bentley, and
Honorable K. Jacqueline Speier,
pursuant to Joint Rule 34.

CALIFORNIA LEGISLATURE

1991–92 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions Adopted in 1991

and

1989–1991 Statutory Record

CK ROLLENS
cretary of the Senate

The Office of the
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

(3) Under existing law, a portion of the fines and forfeitures collected for a violation of the provisions of the Fish and Game Code are deposited in the Fish and Game Preservation Fund, a continuously appropriated fund.

Because this bill would increase the amount of funds deposited in the Fish and Game Preservation Fund, it would make an appropriation.

Ch. 1194 (SB 1166) Hill. Air pollution: gasoline blends.

Existing law requires the State Air Resources Board to establish, by regulation, maximum standards for the volatility of gasoline sold in California at or below 9 pounds per square inch Reid vapor pressure, as determined by specified testing, except that a blend of gasoline consisting of at least 10% ethyl alcohol, as defined, is exempt, until October 1, 1993, from meeting the volatility standard if the gasoline used in the blend meets the volatility standard for gasoline.

This bill would exempt from that volatility standard, on and after October 1, 1993, any blend of gasoline of at least 10% ethyl alcohol, unless the state board determines that the use of the blend would result in a net increase in the ozone forming potential of the total vehicular emissions, as specified. If, at any time, the state board adopts standards for NOx emission levels for reformulated gasoline, any such blend which exceeds those levels would no longer be exempt.

Ch. 1195 (SB 709) Leonard. Regulation of commerce.

Under existing law, any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. Existing law provides that actions for injunctions to enjoin unfair competition may be prosecuted by the Attorney General, any district attorney, or any city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor.

This bill would also allow a county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance to prosecute an action for injunction to enjoin unfair competition.

Existing law provides that any person who violates the unfair competition laws or violates an injunction prohibiting unfair competition, shall be liable for civil penalties with the allocation of the money collected to be apportioned, as specified.

This bill would provide that if an action is brought by a county counsel for violation of the unfair competition laws or to enjoin unfair competition, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

Existing law provides that no policy of insurance shall provide any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal or specified civil action or proceeding brought by the Attorney General, any district attorney, or any city prosecutor, and that no policy shall provide any duty to defend those actions.

This bill would include under these provisions, an action or proceeding brought by a county counsel.

Ch. 1196 (AB 1755) Speier. Court actions.

(1) Existing law provides that specified actions to enforce unfair competition laws may be prosecuted by the Attorney General, any district attorney, any city attorney of a city having a population in excess of 750,000, certain city prosecutors, and the City Attorney of San Jose with the consent of the Santa Clara County District Attorney. Existing law provides for civil penalties for the violation of unfair competition laws, and provides that if an action is brought by a city attorney, ½ of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and ½ to the treasurer of the county.

This bill would revise the above provision as respects a city and county to provide that any city attorney of a city and county having a population in excess of 750,000, may prosecute these actions. This bill would provide that a city attorney in any city and county, with the consent of the district attorney of the city and county, may also prosecute these actions. The bill would (a) authorize the county counsel, pursuant to an agreement with the district attorney, to prosecute these actions where the action in-

NOTE: Superior numbers appear as a separate section at the end of the digests.

volves violation of a county ordinance, and (b) require distribution of any civil penalties recovered in an action brought by the county counsel for violation of laws on unfair competition, or of an injunction prohibiting unfair competition, in the same manner prescribed for these actions brought by the district attorney.

This bill would provide that if an action for civil penalties for the violation of unfair competition laws is brought by a city attorney of a city and county, the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. The bill would also provide, however, that if such an action is brought by a city attorney of a city and county to enforce laws and regulations regarding buildings used for human habitation and the abatement of nuisance involving controlled substances, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to ½ of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

This bill would also make related and conforming changes.

(2) Under existing law, an action for the abatement and prevention of nuisance involving controlled substances may be maintained by the district attorney, the city attorney of any incorporated city, or any citizen of the state resident in the county where the nuisance exists.

This bill would, in addition, provide that the city attorney of any city and county may maintain such an action.

(3) Existing law prohibits any person from filing more than 2 small claims actions in which the amount demanded exceeds $2,500 anywhere in the state in any calendar year.

This bill would authorize the City and County of San Francisco and the County of Stanislaus to participate in a pilot project under which the city and county or county, and specified local entities in those jurisdictions, would be exempt from this limitation. However, the bill would provide for the transfer to municipal court of an action filed by those entities in small claims court in which the amount demanded exceeds $2,500 if the defendant informs the court, as specified, that he or she is represented by a legal counsel. These provisions would be operative until January 1, 1995.

This bill would require the City and County of San Francisco and the County of Stanislaus, if they elect to participate in the pilot project, to conduct a study of the pilot project in their respective jurisdictions, as specified, and to submit a report on the conclusions of this study to the Legislature.

Ch. 1197 (AB 318) Polanco. Employment: farm labor contractors.

Existing law provides for the regulation and licensing of farm labor contractors, with specified civil and criminal penalties for violations of those provisions. Among other things, it prohibits acting as a farm labor contractor unless licensed, and prohibits the Labor Commissioner from issuing or renewing a license to act as a farm labor contractor, until certain conditions are satisfied, including the payment of a $250 license fee. It provides that any person who violates those provisions, or who causes or induces another to violate those provisions, is guilty of a misdemeanor, punishable by a fine of $1,000, or imprisonment in the county jail for not more than 6 months, or both.

This bill would increase to $350 the fee for a license.

Existing law requires the Labor Commissioner to consult with the Director of Food and Agriculture for purposes of preparing a licensing examination for farm labor contractors, as specified.

This bill would instead require the Labor Commissioner to consult with the Director of Pesticide Regulation for purposes of preparing that examination.

This bill would require every person acting in the capacity of a farm labor contractor to provide to a grower a copy of his or her current valid license prior to entering into a contract to supply agricultural labor or services. It would also prohibit a grower from entering into a contract or agreement with a person who fails to provide a copy of his or her license, without making reasonable inquiry to ensure that the person possesses a valid license.

NOTE: Superior numbers appear as a separate section at the end of the digests.

OFFICE OF MAYOR
ART AGNOS

SAN FRANCISCO

BOARD OF SUPERVISORS
DORIS WARD, PRESIDENT

August 13, 1991

RE: AB 1755 (Speier)
POSITION: Support/Sponsor
HEARING: 20 August 1991

Honorable Bill Lockyer
Member of the Senate
State Capitol, Room 2032
Sacramento, CA 95814

Dear Senator Lockyer:

AB 1755 (Speier) is sponsored by the City and County of San Francisco to amend Section 17204 of the Business and Professions Code. We wish to clarify this Section as it provides for a city and county to enhance the City's enforcement abilities and resources that address safe housing violations and drug abatement activities.

Existing provisions of Section 17204 specifically provide authority for the Attorney General, a district attorney, a city attorney of a city with a population over 750,000 to file an action for injunction for the purpose of enforcing unfair business violations. The Section also provides this authority to a city prosecutor of a city or city and county, with the consent of the district attorney.

San Francisco is the only city and county in the State of California. The term "city prosecutor" is used as it provides for a city or city and county. However, the San Francisco Charter provides for a full-time city attorney with civil enforcement powers who can bring suit through actions for injunction and a full-time district attorney charged to prosecute criminal actions. The City and County has no "city prosecutor."

AB 1755 changes the term "prosecutor" to "city attorney" to clarify the authority provided by this Section for the City and

LEGISLATIVE OFFICE: 1100 K ST., #406, SACRAMENTO, CA 95814
PHONE: [illegible]443-0457

County of San Francisco. The amendment does not alter the prosecutorial authority provided for any district attorney, including the District Attorney of San Francisco. Further, it retains the existing provision that provides for a city having a full-time city prosecutor without any effect.

Criminal drug activity, drug nuisance and code enforcement are often intertwined. Under the authority of Section 17204, civil action by the San Francisco City Attorney would be primarily utilized to require owners of substandard or drug nuisance housing to restore their buildings to a condition of compliance. Such actions would be undertaken in a manner that complements the district attorney, who would continue to prosecute any criminal or civil aspects he or she may choose without any diminution in powers. The San Francisco District Attorney is neutral on the bill.

We urge your support of AB 1755 (Speier) when it is before you.

Yours truly,

HELLAN ROTH DOWDEN
Legislative Advocate

cc: Members of the Committee and Staff
Honorable Jackie Speier
Louise Renne
Arlo Smith

DISTRICT ATTORNEY

ARLO SMITH
DISTRICT ATTORNEY

ROBERT M. PODESTA
CHIEF ASSISTANT
DISTRICT ATTORNEY

SAN FRANCISCO

880 BRYANT STREET, SAN FRANCISCO 94103 TEL. (415) 553-1752

August 14, 1991

The Honorable Pete Wilson
Governor
State of California
State Capitol
Sacramento, California 95814

Re: Senate Bill 709 (Bill Leonard) Regulation of Commerce

Dear Governor Wilson,

I wish to add my opposition to Senate Bill 709 originally introduced by Senator Ruben Ayala and carried by Senator Bill Leonard which has been consistently opposed by a majority of California District Attorneys who believe that the proposal is both unnecessary and duplicative of their prosecutorial efforts. After hearing arguments by the bill's proponents, I remain unconvinced and urge you to veto SB 709 .

SB 709 is unnecessary to the extent that SB 709 would permit County Counsels to file actions under Section 17200 of the California Business and Professions Code for violations of county ordinances, which violations are usually not significant enough to constitute unfair competition nor a pattern of business practice within the historical context of the application of Section 17200 in California courts.

County Counsel currently have an arsenal of adequate civil remedies to redress violations of county code provisions. The preferred course is to coordinate with District Attorneys where focused enforcement is desired in a difficult or problem area. Unfair Competition actions under 17200 B&P are enforcement in nature brought on behalf of the People of the State of California. District Attorneys are actively involved in prosecuting these actions and are comfortable in their role whereas County Counsel are accountable to Boards of Supervisors and not the public.

Finally, and more importantly, because Unfair Competition Statutes

constitute a specialized area of law requiring a certain amount of expertise to ensure that these statutes are judiciously employed, I believe that County Counsel, even with the best of intentions, may subject the statutes to potential judicial and perhaps legislative restriction where improperly used.

Accordingly, I ask that you veto SB 709 when it comes before you.

Very truly yours,

Arlo Smith
District Attorney

DISTRICT ATTORNEY

ARLO SMITH
DISTRICT ATTORNEY

RECEIVED
AUG 20 1991
Ans'd.....

ROBERT M. PODESTA
CHIEF ASSISTANT
DISTRICT ATTORNEY

SAN FRANCISCO

880 BRYANT STREET, SAN FRANCISCO 94103 TEL. (415) 553-1752

August 19, 1991

Honorable Bill Lockyer
Member of the Senate
Chairman Judiciary Committee
State Capitol, Room 2032
Sacramento, CA 95814

Re: Assembly Bill 1755 (Speier) Unfair Competition Enforcement
Next Hearing: Tuesday, August 20, 1991

Dear Senator Lockyer,

I wish to correct a statement made in the August 13, 1991 letter to you and members of the Senate Judiciary Committee with reference to AB 1755 forwarded by Hellan Roth Dowden, Legislative Advocate for the City and County of San Francisco. The letter at page 2 recites"...The San Francisco District Attorney is neutral on the bill".

While I am not able to appear to voice my opposition before the Committee, I remain opposed to AB 1755. I believe that the proposed amendments are unnecessary and may in fact be counter-productive to law enforcement efforts on behalf of consumers and the general public.

I attach for your reference a letter of opposition forwarded to Governor Pete Wilson opposing SB 709 which would permit County Counsels to likewise employ Business and Professions Code 17200 in code enforcement. I regret that my position on AB 1755 was misinterpreted.

Very truly yours,

ARLO SMITH
District Attorney

AS/mc

VOLUME 2

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1991–92 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS AND SENATE RESOLUTIONS

CONVENED DECEMBER 3, 1990
ADJOURNED SINE DIE NOVEMBER 30, 1992

DAYS IN SESSION 284

CALENDAR DAYS 728

LT. GOVERNOR
President of the Senate

SENATOR DAVID ROBERTI
President pro Tempore

Compiled Under the Direction of
RICK ROLLENS
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk

S.B. No. 1911—Kopp.

An act to amend Section 17204 of, and to add Sections 17209 and 17536.5 to, the Business and Professions Code, relating to business regulation.

1992

Feb. 21—Introduced. To Com. on RLS. for assignment. To print.
Feb. 23—From print. May be acted upon on or after March 24.
Feb. 24—Read first time.
Mar. 5—To Com. on JUD.
April 6—Set for hearing April 28.
April 21—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
April 23—Set for hearing May 5.
April 27—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
April 30—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
May 12—From committee: Do pass as amended. (Ayes 6. Noes 0. Page 5827.)
May 13—Read second time. Amended. To third reading.
May 18—To Special Consent Calendar.
May 22—Read third time. Passed. (Ayes 32. Noes 0. Page 6118.) To Assembly.
May 22—In Assembly. Read first time. Held at Desk.
June 1—To Com. on JUD.
June 25—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
July 2—From committee: Do pass. To Consent Calendar.
July 3—Read second time. To Consent Calendar.
July 7—Read third time. Passed. (Ayes 76. Noes 0. Page 8182.) To Senate.
July 7—In Senate. To unfinished business.
July 10—To Special Consent Calendar.
July 17—Senate concurs in Assembly amendments. (Ayes 32. Noes 0. Page 7085.) To enrollment.
July 22—Enrolled. To Governor at 4 p.m.
July 29—Approved by Governor.
July 30—Chaptered by Secretary of State. Chapter 385, Statutes of 1992.

S.B. No. 1912—Killea (Coauthors: Senators Alquist and Rosenthal) (Coauthors: Assembly Members Bates, Chacon, and Speier).

An act to amend Sections 6006, 6011, and 6012 of, and to add Section 6016.7 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

1992

Feb. 21—Introduced. To Com. on RLS. for assignment. To print.
Feb. 23—From print. May be acted upon on or after March 24.
Feb. 24—Read first time.
Mar. 5—To Com. on REV. & TAX.
Mar. 10—Set for hearing April 1.
Mar. 25—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
April 1—Set, first hearing. Failed passage in committee. (Ayes 3. Noes 2. Page 5451.)
April 8—Reconsideration granted.
April 20—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
April 20—Set for hearing May 6.
May 6—Set, first hearing. Failed passage in committee. (Ayes 2. Noes 5. Page 5867.)
May 7—Returned to Secretary of Senate pursuant to Joint Rule 62(a).

SENATE BILL No. 1911

Introduced by Senator Kopp

February 21, 1992

An act to amend Sections 1689.7 and 1689.21 of, and to repeal and add Sections 1689.11 and 1689.23 of, the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1911, as introduced, Kopp. Home solicitation contracts: seminar solicitation contracts.

Under existing law, with certain exceptions, the buyer under a defined home solicitation contract or offer, or under a defined seminar sales solicitation contract or offer, has a right to cancel the contract if notice to the seller is deposited in the mail by midnight of the 3rd business day following the day when the buyer signs the contract or an offer to purchase. However, the cancellation period with respect to home solicitation contracts for defined personal emergency response units is 7 business days. Under existing law, a buyer who cancels a home solicitation contract or offer, or a seminar sales solicitation contract or offer, is required to return any goods delivered by the seller, upon demand made within 20 days following cancellation. Under existing law, a seller who performs services under a home solicitation contract or offer, or under a seminar sales solicitation contract or offer, that is subsequently cancelled by the buyer, is not entitled to compensation for the services and is required to restore any property of the buyer altered by the services.

This bill would prohibit the seller from performing services or delivering materials under the contract until the buyer's cancellation period has expired. The bill would make related changes with respect to the form of these contracts.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 1689.7 of the Civil Code is amended to read:

1689.7. (a) (1) In a home solicitation contract or offer the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and except as provided in paragraph (2), shall contain in immediate proximity to the space reserved for his or her signature a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(2) The statement required pursuant to this subdivision for a home solicitation contract or offer for the purchase of a personal emergency response unit, as defined in Section 1689.6, is as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c) Except as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

_____

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

~~If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may; if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.~~

~~If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.~~

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____,

/name of seller/

at _____

/address of sellers place of business/

not later than midnight of _____

(Date)

I hereby cancel this transaction _____

(Date)

(Buyer's signature)

(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, shall be subject to the requirements of subdivision (c) and shall be accompanied by the "Notice of Cancellation" required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(e) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.

(f) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.

(g) "Contract or sale" as used in subdivision (c) means "home solicitation contract or offer" as defined by Section 1689.5.

SEC. 2. Section 1689.11 of the Civil Code is repealed.

~~1689.11. (a) Except as provided in subdivision (c) of Section 1689.10, within 20 days after a home solicitation contract or offer has been canceled, the buyer, upon demand, must tender to the seller any goods delivered by the seller pursuant to the sale or offer, but he is not obligated to tender at any place other than his own address. If the seller fails to demand possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them.~~

~~(b) The buyer has a duty to take reasonable care of the goods in his possession both prior to cancellation and during the 20/day period following. During the 20/day period after cancellation, except for the buyer's duty of care, the goods are at the seller's risk.~~

~~(c) If the seller has performed any services pursuant to a home solicitation contract or offer prior to its cancellation, the seller is entitled to no compensation. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.~~

SEC. 3. Section 1689.11 is added to the Civil Code, to read:

1689.11. Unless the buyer waives the right of cancellation pursuant to Section 1689.13, no services shall be performed and no materials shall be delivered under a home solicitation contract or offer until the cancellation period provided in Section 1689.6 has expired and the seller is reasonably satisfied that the buyer has not canceled.

SEC. 4. Section 1689.21 of the Civil Code is amended to read:

1689.21. (a) In a seminar sales solicitation contract or offer, the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and shall contain in immediate proximity to the space reserved for his or her signature, a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name and address of the seller to which the notice is to be mailed.

(2) The date the buyer signed the agreement or offer to purchase.

(c) The agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be

attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point, the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

_____

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

~~If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.~~

~~If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.~~

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

_____ at _____

/name of seller/ /Address of sellers place of business/

not later than midnight of _____

(Date)

I hereby cancel this transaction _____

(Date)

_____

(Buyer's signature)

(d) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel at the time the seminar sales solicitation contract or offer is executed.

(e) Until the seller has complied with this section, the buyer may cancel the seminar sales solicitation contract or offer.

(f) "Contract or sale" as used in subdivision (c), means "seminar sales solicitation contract or offer" as defined by Section 1689.24.

SEC. 5. Section 1689.23 of the Civil Code is repealed.

~~1689.23. (a) Except as provided in subdivision (c) of Section 1689.22, within 20 days after a seminar sales solicitation contract or offer has been canceled, the buyer, upon demand, must tender to the seller any goods delivered by the seller pursuant to the sale or offer, but he or she is not obligated to tender at any place other than his or her own address. If the seller fails to demand possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them.~~

~~(b) The buyer has a duty to take reasonable care of the goods in his or her possession, both prior to cancellation and during the 20/day period following. During the 20/day period after cancellation, except for the buyer's~~

~~duty of care, the goods are at the seller's risk.~~

~~(c) If the seller has performed any services pursuant to a seminar sales solicitation contract or offer prior to its cancellation, the seller is entitled to no compensation. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.~~

SEC. 6. Section 1689.23 is added to the Civil Code, to read:

1689.23. No services shall be performed and no material shall be delivered under a seminar sales solicitation contract or offer until the cancellation period provided in Section 1689.20 has expired and the seller is reasonably satisfied that the buyer has not canceled.

O

SENATE JUDICIARY COMMITTEE
BACKGROUND INFORMATION
5-5957

SB 1911

Please complete this form and return it to the Senate Judiciary Committee, Room 2032, as soon as possible. Your bill cannot be heard until this form is returned. PLEASE CALL AS SOON AS POSSIBLE TO SET YOUR BILL.

1. **Who on your staff is responsible for this measure?**

   Tuyen Ho (5-0503)

2. **Which agency, organization or individual requested the introduction of this bill?**

   Name: California District Attorney's Association

   Contact Person: Ron Reiter

   Phone number: 213: 897-2628

3. **Which agencies, organizations, or individuals (outside of the sponsor) have expressed support?**

   California District Attorney's Association

4. **Which agencies, organizations or individuals have expressed opposition?**

   Unknown

5. **If a similar bill has been introduced in a previous session, what was the number and year of its introduction?**

   Unaware of any recent legislation.

6. **What problem or deficiency under current law does the bill seek to remedy?** 1) Prohibits granting judgment or relief until proof of service of notice is filed with the court.
   2) Clarifies current law regarding whether a seller of goods or services under a "home solicitation contract" may deliver the goods or perform the services before the recission period expires.

7. **Are you planning any amendments to be offered before the Committee hearing?**

   Yes

If you have any further background information or material relating to this measure (letters of support or opposition, reports, opinions, citations, etc.) please attach copies or state where such information is available.

Your cooperation is appreciated.

James P. Fox, District Attorney
Consumer & Environmental Protection Unit

JOHN E. WILSON
Deputy In Charge

• Ron WaterReiter
• AT General Office
213:897-2628
Fax 213 897-4951

COUNTY OF SAN MATEO
COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063
(415) 363-4656

-2619

1/28

Fa

February 19, 1992

Mr. Dan Friedlander
Office of Senator Quentin Kopp
FAX (916) 327-2186

Re: Proposed legislation

Dear Dan:

The Consumer Protection Committee of the California District Attorney's Association is proposing the the attached legislation. I have included copies of the proposed bills and a memo detailing the reasons we are seeking this legislation. We are looking for an author and would appreciate it if Senator Kopp would review it for this purpose. Please call me if you have any questions. Thank you and Senator Kopp for your kind attention to this matter.

Very truly yours,

JAMES P. FOX, DISTRICT ATTORNEY

By _____
John E. Wilson
Deputy In Charge
Consumer & Environmental
Protection Unit

JEW:mkm

enclosure

MEMORANDUM

TO: JOHN WILSON

FROM: RON REITER

RE: SUGGESTIONS FOR CDAA SPONSORED LEGISLATION

I have suggestions for legislation in the following subject areas:

1. The insertion of an anti-spiking provision in the home solicitation rescission and seminar sales rescission laws (perhaps in other rescission laws also) that would prohibit the seller of goods or services from delivering any of the goods or performing any of the services until the expiration of the statutorily prescribed rescission period. The provision could be limited to transactions involving more than $100 to avoid smaller transactions that do not expose consumers to significant risk of loss.

2. A requirement that any party taking an appeal or seeking extraordinary relief in an appellate court in an action involving the application, construction, or interpretation of Bus. & Prof. Code §§17200 et seq. or 17500 et seq. must serve a copy of the opening brief on the Consumer Law Section of the Attorney General's office.

1. Anti-Spiking

A. Current Law

Civil Code §1689.6[1] permits a consumer to cancel a "home solicitation contract" until midnight of the third business day after the consumer signs an agreement complying with §1689.7. That section requires that the agreement contain a notice providing that if the consumer cancels the agreement, the consumer must make the goods delivered under the agreement available for recovery by the seller. §1689.7(c). The seller has the right to demand that the buyer tender the goods within 20 days after the agreement has been canceled, and the buyer must take reasonable care of the goods prior to cancellation and during the following 20-day period. §1689.11(a) and (b).

If the seller performs services before cancellation, the seller is not entitled to compensation and is required to restore any of the buyer's property altered by the seller to substantially as good condition as the property was in at the time the services were rendered. §1689.11(c).

Similar rules apply to "seminar sales" contracts. See

[1]All references are to the Civil Code unless otherwise stated.

§§1689.20, 1689.21(c), 1689.23.

B. Problem

Current law is unclear regarding whether a seller of goods or services under a "home solicitation contract" may deliver the goods or perform the services before the customer's three-day right to rescind elapses. The law prescribes rights in the event goods or services are provided by the seller before cancellation, but the law does not authorize sellers to deliver goods or render services before cancellation.

The problem is that most sellers do not wait until the rescission period expires. Sellers frequently "spike the job" -- i.e., they deliver goods and perform services prior to the expiration of the cancellation period -- because consumers are less likely to cancel. Many consumers, for example, feel psychologically committed or morally obliged to pay for services rendered or for goods delivered, particularly if those goods have been installed and cannot be easily returned to the seller. Some consumers are concerned that the status quo before the purchase cannot be restored if the consumer cancels a contract involving the installation of home improvement goods or services; for example, the seller may have replaced carpeting or kitchen cabinets, and the consumer fears that the old carpeting or cabinets could never be adequately replaced. Other consumers are intimidated to cancel because they fear that the obnoxious salesman who pressured them into signing the contract will return to pick up the merchandise.

Because spiking undermines the policy and effectiveness of the rescission right, the Court of Appeal concluded that work could not be performed prior to the expiration of the rescission period. Louis Luskin and Sons, Inc. v. Samovitz (1985) 166 Cal.App.3d 533. In Luskin, a plumber brought an action to recover the balance of the contract price for the replacement of a sewer line installed before the end of the three-day rescission period. Ruling for the customer, the Court stated that

> Section 1689.11 was intended to prevent the seller from defeating the purposes of the statute by performing the contract during the three-day cancellation period thereby pressuring the buyer to pay for the work or find someone else to make the repairs . . . ." 166 Cal.App.3d at 538.

See also Beley v. Municipal Court (1979) 100 Cal.App.3d 5, 9.

Trial courts have not been uniformly enforcing the statute consistent with Luskin.

Moreover, Luskin is uncertain authority in cases involving the delivery of goods, rather than the performance of services, during the rescission period. Luskin dealt with the performance of

services (goods were provided incident with the service). The Court relied greatly on §1689.11(c) which prohibits any compensation for services performed before the termination of the rescission period. The Court reasoned that since the Legislature prohibited compensation during the rescission period, the Legislature must have intended to prevent the performance of services.

There is no prohibition against the seller's receipt of compensation for goods. Indeed, the seller can collect on the contract notwithstanding the customer's rescission if the customer fails to tender the goods in good condition for return to the seller within 20 days of cancellation.

C. Recommendation

I recommend a provision prohibiting sellers from delivering goods or performing services during the rescission periods allowed for the home solicitation and seminar sales contracts. As indicated in Luskin, spiking undermines the policy and effect of the rescission rules. This exception, of course, would not apply in the limited emergency circumstances in which a consumer could waive the right of rescission under §1689.13.

This suggestion would parallel the anti-spiking provision under federal Truth in Lending Law. Under federal law, consumers have a three-day right to rescind credit transactions secured by the consumer's principal dwelling. No goods or services (and no money) can be provided to the consumer until the rescission right elapses and the creditor is reasonably satisfied that the consumer has not rescinded. See 12 C.F.R. §226.15(c); 226.23(c).

I suggest that the recommendation be characterized as the codification of existing case law and conforming state and federal law.

Some limitation should be considered for transactions involving relatively small amounts in which the consumer bears a small risk of loss. I think that an exception for transactions under $100 would suffice. Thus, for example, a $50 sale of personal care products would be subject to the right of rescission but the products could be delivered at the time of the sale presentation. A proposal that applies to all sales over $25 may invoke the opposition of sellers such as Avon or Amway.

The major problem with any dollar exception (or a minimum dollar amount) before the anti-spiking provision would apply is that it undermines the rationale for having the home solicitation rule apply to transactions of $25 or more. If we argue that a $100 threshold is adequate for consumer protection, someone may try to amend the definition of "home solicitation contract" so that only contracts exceeding $100, rather than $25, would be subject to a

right of rescission.

I suggest the following language:

Unless a buyer waives the right of cancelation pursuant to Section 1689.13, no services shall be performed and no materials delivered until the cancelation period has expired and the seller is reasonably satisfied that the buyer has not canceled. [This section applies to home solicitation contracts in the amount of $100 or more.]

A similar provision should be included in the seminar sales contract law.

2. Notice on 17200 and 17500 Appeals

A. Current Law

Current law does not require that the Attorney General be informed of appeals or writs taken in cases involving the construction and application of Business and Professions Code §§17200 and 17500. Notice must be provided in cases involving facts or issues concerning pollution or adverse environmental effects (Code of Civ. Pro. §389.6) or antitrust matters. (Bus. & Prof. Code §16750.2).

B. Problem

The Attorney General, district attorneys, city attorneys, county counsel, and any other person may bring an action for injunctive and equitable relief for violations of Business and Professions Code sections 17200 and 17500 et seq. Appellate cases impact law enforcement actions regardless of who the plaintiff may be. Often cases are not handled well and parties may advance positions which could undermine theories advanced by prosecutorial agencies. On many occasions, the Attorney General's office has learned of adverse opinions after they were issued. On some of those occasions, the Attorney General's office and CDAA have successfully obtained modifications or depublication of opinions. Obviously, advance notice of appeal and writ proceedings would enable the Attorney General's office, CDAA, and individual district attorneys' offices to learn of pending appellate issues that could profoundly affect law enforcement activities. We would have the time to evaluate the issues and, when appropriate, intervene or, more likely, submit amicus briefs to present our points of view.

C. Recommendation

Add sections to the Bus. & Prof. Code §§17200 and 17500 series to provide:

If a violation of this chapter is alleged or the

application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate department of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. Notice shall be served within three days after the commencement of the appellate proceeding, provided that such time may be extended by the Chief Justice or presiding justice for good cause shown. No relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

CDAA

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A

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, ____.

General Subject: Home solicitation contracts: seminar solicitation contracts.

Under existing law, with certain exceptions, the buyer under a defined home solicitation contract or offer, or under a defined seminar sales solicitation contract or offer, has a right to cancel the contract if notice to the seller is deposited in the mail by midnight of the 3rd business day following the day when the buyer signs the contract or an offer to purchase. However, the cancellation period with respect to home solicitation contracts for defined personal emergency response units is 7 business days. Under existing law, a buyer who cancels a home solicitation contract or offer, or a seminar sales solicitation contract or offer, is required to return any goods delivered by the seller, upon demand made within 20 days following cancellation. Under existing law, a seller who performs services under a home solicitation contract or offer, or under a seminar sales solicitation contract or offer, that is subsequently cancelled by the buyer, is not entitled to

compensation for the services and is required to restore any property of the buyer altered by the services.

This bill would prohibit the seller from performing services or delivering materials under the contract until the buyer's cancellation period has expired. The bill would make related changes with respect to the form of these contracts.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1689.7 of the Civil Code is amended to read:

1689.7. (a) (1) In a home solicitation contract or offer the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and except as provided in paragraph (2), shall contain in immediate proximity to the space reserved for his or her signature a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(2) The statement required pursuant to this subdivision for a home solicitation contract or offer for the purchase of a personal emergency response unit, as defined in Section 1689.6, is as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c) Except as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"
/enter date of transaction/

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to _____, /name of seller/ at _____ /address of sellers place of business/ not later than midnight of _____ (Date)

I hereby cancel this transaction _____ (Date)

_____ (Buyer's signature)

(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, shall be subject to the requirements of subdivision (c), and shall be accompanied by the "Notice of Cancellation" required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(e) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.

(f) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.

(g) "Contract or sale" as used in subdivision (c) means "home solicitation contract or offer" as defined by Section 1689.5.

SEC. 2. Section 1689.11 of the Civil Code is repealed.

~~1689.11. (a) Except as provided in subdivision (c) of~~

Section 1689.10, within 20 days after a home solicitation contract or offer has been canceled, the buyer, upon demand, must tender to the seller any goods delivered by the seller pursuant to the sale or offer, but he is not obligated to tender at any place other than his own address. If the seller fails to demand possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them.

(b) The buyer has a duty to take reasonable care of the goods in his possession both prior to cancellation and during the 20-day period following. During the 20-day period after cancellation, except for the buyer's duty of care, the goods are at the seller's risk.

(c) If the seller has performed any services pursuant to a home solicitation contract or offer prior to its cancellation, the seller is entitled to no compensation. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.

SEC. 3. Section 1689.11 is added to the Civil Code, to read:

1689.11. Unless the buyer waives the right of cancellation pursuant to Section 1689.13, no services shall be performed and no materials shall be delivered under a home solicitation contract or offer until the cancellation period provided in Section 1689.6 has expired and the seller is reasonably satisfied that the buyer has not canceled.

SEC. 4. Section 1689.21 of the Civil Code is amended to

read:

1689.21. (a) In a seminar sales solicitation contract or offer, the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and shall contain in immediate proximity to the space reserved for his or her signature, a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name and address of the seller to which the notice is to be mailed.

(2) The date the buyer signed the agreement or offer to purchase.

(c) The agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point, the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"
/enter date of transaction/

_____
(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

_____ at _____
/name of seller/ /Address of sellers place of business/

not later than midnight of _____
(Date)

I hereby cancel this transaction _____
(Date)

_____
(Buyer's signature)

(d) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel at the time the seminar sales solicitation contract or offer is executed.

(e) Until the seller has complied with this section, the buyer may cancel the seminar sales solicitation contract or offer.

(f) "Contract or sale" as used in subdivision (c), means "seminar sales solicitation contract or offer" as defined by Section 1689.24.

SEC. 5. Section 1689.23 of the Civil Code is repealed.

~~1689.23. (a) Except as provided in subdivision (c) of Section 1689.28, within 20 days after a seminar sales solicitation contract or offer has been canceled, the buyer, upon demand, must tender to the seller any goods delivered by the seller pursuant to the sale or offer, but he or she is not obligated to tender at any place other than his or her own address. If the seller fails to demand possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them.~~

~~(b) The buyer has a duty to take reasonable care of the goods in his or her possession, both prior to cancellation and during the 20-day period following. During the 20-day period after cancellation, except for the buyer's duty of care, the goods are at the seller's risk.~~

~~(c) If the seller has performed any services pursuant to a seminar sales solicitation contract or offer prior to its cancellation, the seller is entitled to no compensation. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.~~

SEC. 6. Section 1689.23 is added to the Civil Code, to read:

1689.23. No services shall be performed and no material shall be delivered under a seminar sales solicitation contract or offer until the cancellation period provided in Section 1689.20 has expired and the seller is reasonably satisfied that the buyer has not canceled.

- 0 -

Legislative Counsel of California

BION M. GREGORY

Sacramento, California
March 23, 1992

Honorable Quentin L. Kopp
2057 State Capitol

Business Regulation (S.B. 1911) - #7071

Dear Senator Kopp:

Pursuant to your request we have prepared the enclosed amendments relating to the above-named subject. In this connection we call your attention to the possibility that the effect of this enactment might be limited or nullified by reason of the following:

The requirement of Section 9 of Article IV of the California Constitution that a statute shall embrace a single subject.

In the interest of time we have not attempted to analyze the question to determine the extent to which this may present a problem; however, we feel obligated to alert you to the existence of any possible problem for such consideration and action as you may desire.

Additionally, a point of order could be raised with respect to the germaneness of these amendments since they relate to a subject different from that of the original bill in violation of one or more of the rules regarding germaneness of amendments (see Joint Rule 9, Assembly Rule 92, and Senate Rule 38.5).

However, in the final analysis, the issue of germaneness must be resolved in the house considering the measure.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By
Peter Melnicoe
Deputy Legislative Counsel

PM:sjm

M E M O R A N D U M

March 25, 1992

TO: **Senator Kopp**

FROM: Tuyen

RE: Medical Board's proposal; CMA's objection

As you know, the Medical Board of California has asked you to author amendments to SB 1911. The amendment would require physician advertising to include the full name of the specialty board or association to which membership is claimed. The provision would also allow the Medical Board to collect a fee to recover the costs of reviewing specialty boards. The Medical Board must approve non-ABMS specialty boards for the purpose of specialty advertising. Current law has no provision to recover the costs incurred for this service.

As you also know, California Medical Association opposes that proposal because it believes the requirement is "unnecessary and will have the unintended effect of placing certain practitioners at a competitive disadvantage with others who practice in the same specialty area."

CMA claims that under existing law, the Medical Board has authority to prohibit false advertising. CMA refers to a compromise regarding physician advertising controversy in 1990. Chaptered legislation by McCorquodale in 1990 (SB 2036) requires physicians who advertise themselves as "board certified" to be certified by a board that meets the following requirement:

1) is a member board of the American Board of Medical Specialties;

2) has been determined by the Medical Board of California to have requirements equivalent to one of the member boards; or

3) has an Accrediting Council on Graduate Medical Education approval of a board or association post-graduate training program.

It is important that sufficient restrictive regulations are in place to prevent individuals who essentially have no training advertise "bogus" board qualifications. On the other hand it is equally vital to preclude "delegitimizing" legitimately constituted boards who as yet do not have ABMS sanction.

The bill draft of SB 1911 includes an anti-spiking provision in the home solicitation rescission and seminar sales rescission laws. A provision, which would require a notice of appeals or writ to be served to the Attorney General's office, will be added as an amendment, although a question of germaneness is raised.

Amending the physician advertising provision into SB 1911 will change the bill into a fiscal bill. The deadline for fiscal bills to be heard in committee is Friday, April 9th. You need to make a decision.

DO YOU WANT TO AMEND THE PHYSICIAN ADVERTISING PROVISION INTO SB 1911?

CALIFORNIA MEDICAL ASSOCIATION

TIMOTHY J. SHANNON, JR.
Associate Vice President
Attorney at Law
Division of Government Relations

1201 "K" Street, Suite 1050
Sacramento, CA 95814-3906
(916) 444-5532

SB 2036 (McCorquodale) Chaptered 9/30/90

SB 2036 requires physicians who advertise themselves as "board certified" to be certified by a board that

1) is a member board of the American Board of Medical Specialties,

2) has been determined by the Medical Board of California to have requirements equivalent to one of the member boards, or

3) an Accrediting Council on Graduate Medical Education approval of a board or association postgraduate training program.

Proposal by Medical Board of California

Proposal would require physician advertising to include the full name of the speciality board to which membership is claimed. It also allows the Medical Board to collect a fee to recover the costs of reviewing speciality boards. The Medical Board must approve non-ABMS speciality boards for the purpose of specialty advertising.

Objections to MBC's proposal

Issue of equivalency: permit advertising of specialty only by those who have ABMS-recognized boards? Delegitimize legitimately constituted boards who as yet do not have ABMS sanction?

Turf battle: alleged real purpose of MBC's proposal is to restrict the ability of non-ABMS board certified cosmetic surgeons and otolaryngologists to compete with ABMS certified plastic surgeons for certain popular surgical procedures.

SACRAMENTO ADDRESS
STATE CAPITOL
95814
(916) 445-0503
ATSS 8-485-0503

DISTRICT OFFICES
33 EL CAMINO REAL, #205
SAN FRANCISCO, CA 94080
(415) 952-5666
ATSS 8-597-3706

California State Senate

COMMITTEES
TRANSPORTATION, CHAIRMAN
HOUSING & URBAN AFFAIRS
LOCAL GOVERNMENT
REVENUE & TAXATION
TOXICS & PUBLIC SAFETY MANAGEMENT

STATE SENATOR
QUENTIN L. KOPP
EIGHTH SENATORIAL DISTRICT
REPRESENTING SAN FRANCISCO AND SAN MATEO COUNTIES

DATE: April 7, 1992 TIME: 3:30 p.m.

TO: Ron Reiter NO. OF PAGES: 4
(INCLUDING THIS PAGE)

AT: AG Fax (213) 897-4951

FROM: Tuyen Ho

If you have not received all pages in this transmission, please contact the office of Senator Quentin Kopp at (916) 445-0503.

Ron: I attach language pertaining to notice of appeals. Please review. I'd like to put the complete set of amendments to SB 1911 over the desk by Friday, April 7th, in order to allow sufficient time for a consultant to analyze. Senator Kopp would need to see/review any proposed amendments before April 7th.

Meritorious concerns have been raised regarding the anti-spiking provision. Evelyn Jarvis-Ferris of Shaklee and Mario Brossi of Direct Selling Association would appreciate an opportunity to speak with you. Perhaps a mutual meeting may be scheduled? Please advise.

I will be out of the office from April 9 - April 13.

Tuyen

II. Notice of Appeals

A. Existing law

Current law does not require that the Attorney General or other public prosecutors be informed of appeals or writs taken in cases involving acts constituting unfair competition and unlawful advertising. Notice must be provided, however, in cases involving facts or issues concerning pollution or adverse environmental effects.

B. Problem

AG, DA, city attorney, county counsels and any other person may bring an action for injunction and equitable relief for acts constituting unfair competition and unlawful advertising. Appellate cases impact law enforcement actions regardless of who the plaintiff may be.

Notice of appeals and writ proceedings would provide AG, CDAA and individual DA offices time to evaluate the pending appellate issues that could profoundly affect law enforcement activities.

C. SB 1911

Requires notification to the Attorney General's office and to the respective district attorney's office by the moving party appealing an action, pursuant to the unfair competition and advertising laws. The notice requirement applies whether the action is brought in the appellate department of a superior court, before the state court of appeal or before the Supreme Court of California. The moving party shall have three days after the commencement of the appellate proceeding to serve this notice, including a copy of their brief or petition and brief. No judgment or relief, temporary or permanent, may be granted until proof of the service of this notice is provided to the reviewing court.

D. Witness

CA District Attorney' Association representatives.

I. HOME SOLICITATION CONTRACT OR OFFER:

Existing law provides a buyer with a 3 day right of rescission of home solicitation contracts and seminar solicitation contracts.
-The consumer receives his/her money back within ten days upon receipt of a written notice to cancel by the seller.
-Within 20 days, the consumer must make available to the seller any goods delivered pursuant to the contract.
-A seller is not entitled to compensation for work performed prior to a valid cancellation.
-If alterations to property have been made, a seller must restore the property to its original condition.

Problem: Current law is unclear regarding whether a seller of good or services under a "home solicitation contract" may deliver the goods or perform the services before the consumer's 3-day right to rescind elapses.

A

The problem arises when sellers do not wait until the rescission period expires. **("Spiking the Job")** - Sellers frequently deliver goods and perform services prior to the expiration of the cancellation period. They do this because experience shows consumers are less likely to exercise their right to cancel once delivery of goods or services has been effected.

Prohibiting spiking helps assure that the consumer may take full advantage of the cooling off period without interference form the seller and without intimidation or psychological coercion influencing his/her decision.

SB 1911 would prohibit the delivery of any goods or the performance of any service pursuant to a "home solicitation contract or offer" within the rescission period unless the contract or offer is only for goods that are not going to be attached to real property and the total contract is less than $500. The provision is limited to transactions greater than $500 to avoid smaller transactions that do not expose consumers to significant risk of loss.
-Additionally, if seller performs services or delivers goods during the 3-day period in violation of this bill, the buyer has the right to cancel the contract until the expiration of the statute of limitations on the contract.
-Furthermore, the buyer does not need to return goods if delivered in violation of the bill during the cancellation period if used or consumed by the buyer.

Issues:
1) Language is needed to clarify that Civil Code §1689.13 which makes inapplicable the 3-day right to cancel when the consumer has initiated the contract and the contract is executed in connection with emergency repairs or service, should be left intact.
2) Further exemptions should be made for the installation of cable television services.

AMENDED IN SENATE APRIL 21, 1992

SENATE BILL No. 1911

Introduced by Senator Kopp

February 21, 1992

An act *to amend Section 651 of the Business and Professions Code, and* to amend Sections 1689.7 and 1689.21 of, and to repeal and add Sections 1689.11 and 1689.23 of, the Civil Code, relating to ~~contracts~~ *business regulation*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1911, as amended, Kopp. Home solicitation contracts ~~:~~ ; seminar solicitation contracts ; *physician specialization*.

Under existing law, with certain exceptions, the buyer under a defined home solicitation contract or offer, or under a defined seminar sales solicitation contract or offer, has a right to cancel the contract if notice to the seller is deposited in the mail by midnight of the 3rd business day following the day when the buyer signs the contract or an offer to purchase. However, the cancellation period with respect to home solicitation contracts for defined personal emergency response units is 7 business days. Under existing law, a buyer who cancels a home solicitation contract or offer, or a seminar sales solicitation contract or offer, is required to return any goods delivered by the seller, upon demand made within 20 days following cancellation. Under existing law, a seller who performs services under a home solicitation contract or offer, or under a seminar sales solicitation contract or offer, that is subsequently cancelled by the buyer, is not entitled to compensation for the services and is required to restore any property of the buyer altered by the services.

This bill would prohibit the seller from performing services or delivering materials under the contract until the buyer's cancellation period has expired. The bill would make related

changes with respect to the form of these contracts.

Under existing law, a physician and surgeon may include in advertising a statement that he or she is certified or eligible for certification in a specialty or subspecialty by a private or public board or parent association if that board is a prescribed private board, a board or association with equivalent requirements approved by the physician and surgeon's licensing board, or a board or association with an approved postgraduate training program that meets certain criteria.

This bill would require, as a condition of including such a statement in advertising, that the statement set forth the full name of the board or association.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. *Section 651 of the Business and Professions Code, as amended by Chapter 1660 of the Statutes of 1990, is amended to read:*

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated, any form of public communication containing a false, fraudulent, misleading, or deceptive statement or claim, for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

(b) A false, fraudulent, misleading, or deceptive statement or claim includes a statement or claim which does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) Is intended or is likely to create false or unjustified

expectations of favorable results.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(c) Any price advertisement shall be exact, without the use of such phrases as "as low as," "and up," "lowest prices" or words or phrases of similar import. Any advertisement which refers to services, or costs for services, and which uses words of comparison must be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates any provision

of this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision but only to this subdivision.

(g) Any violation of any provision of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields. For the purposes of this section, the statement of a practitioner licensed under Chapter 4 (commencing with Section 1600) who limits his or her practice to a specific field or fields, shall only include a statement that he or she is certified or is eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board. A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but may only include a statement that he or she is certified or eligible for certification by a private or public board or parent association if *the statement includes the full name of the board or association and* that board or association is an

American Board of Medical Specialties member board, a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (15), inclusive, provided, that any statement shall not violate subdivision (a), (b), (c), or (e) of this section or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining

committees within ~~Division 2~~ *this division* shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within ~~Division 2~~ *this division* shall, by regulation, define those efficacious services to be advertised by business or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining which services may be advertised, the manner in which defined services may be advertised, and restricting advertising which would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate

relief.

SEC. 1.5. Section 1689.7 of the Civil Code is amended to read:

1689.7. (a) (1) In a home solicitation contract or offer the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and except as provided in paragraph (2), shall contain in immediate proximity to the space reserved for his or her signature a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(2) The statement required pursuant to this subdivision for a home solicitation contract or offer for the purchase of a personal emergency response unit, as defined in Section 1689.6, is as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c) Except as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

_____

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____,

/name of seller/

at _____

/address of sellers place of business/

not later than midnight of _____

(Date)

I hereby cancel this transaction _____

(Date)

_____

(Buyer's signature)

(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, shall be subject to the requirements of subdivision (c), and shall be accompanied by the "Notice of Cancellation" required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(e) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.

(f) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.

(g) "Contract or sale" as used in subdivision (c) means "home solicitation contract or offer" as defined by Section 1689.5.

SEC. 2. Section 1689.11 of the Civil Code is repealed.

SEC. 3. Section 1689.11 is added to the Civil Code, to read:

1689.11. Unless the buyer waives the right of cancellation pursuant to Section 1689.13, no services shall be performed and no materials shall be delivered under a home solicitation contract or offer until the cancellation period provided in Section 1689.6 has expired and the seller is reasonably satisfied that the buyer has not canceled.

SEC. 4. Section 1689.21 of the Civil Code is amended to read:

1689.21. (a) In a seminar sales solicitation contract or offer, the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and shall contain in immediate proximity to the space reserved for his or her signature, a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name and address of the seller to which the notice is to be mailed.

(2) The date the buyer signed the agreement or offer to purchase.

(c) The agreement or offer to purchase shall be accompanied by a completed form in duplicate captioned "Notice of Cancellation," which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point, the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

_____

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

_____ at _____

/name of seller/ /Address of sellers place of business/

not later than midnight of _____

(Date)

I hereby cancel this transaction _____

(Date)

_____

(Buyer's signature)

(d) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel at the time the seminar sales solicitation contract or offer is executed.

(e) Until the seller has complied with this section, the buyer may cancel the seminar sales solicitation contract or offer.

(f) "Contract or sale" as used in subdivision (c), means "seminar sales solicitation contract or offer" as defined by Section 1689.24.

SEC. 5. Section 1689.23 of the Civil Code is repealed.

SEC. 6. Section 1689.23 is added to the Civil Code, to read:

1689.23. No services shall be performed and no material shall be delivered under a seminar sales solicitation contract or offer until the cancellation period provided in Section 1689.20 has expired and the seller is reasonably satisfied that the buyer has not canceled.

O

AMENDED IN SENATE APRIL 27, 1992

AMENDED IN SENATE APRIL 21, 1992

SENATE BILL No. 1911

Introduced by Senator Kopp

February 21, 1992

An act to amend Section 651 of, *and to add Sections 17209 and 17536.5 to,* the Business and Professions Code, and to amend Sections ~~1689.7~~ ~~and~~ ~~1689.21~~ ~~of,~~ ~~and~~ ~~to~~ ~~repeal~~ ~~and~~ ~~add~~ ~~Sections~~ ~~1689.11~~ ~~and~~ ~~1689.23~~ ~~of,~~ *1689.6, 1689.7, 1689.11, 1689.20, 1689.21, and 1689.23 of* the Civil Code, relating to business regulation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1911, as amended, Kopp. Home solicitation contracts; seminar solicitation contracts; physician specialization.

(1) Under existing law, acts of unfair competition may be enjoined and are also subject to prescribed civil penalties in an action brought by the Attorney General, a district attorney, or, in specified cases, a city attorney or prosecutor or county counsel. These actions for injunction may also be brought by any person or organization. Existing law provides similar remedies in provisions dealing primarily with unlawful advertising.

This bill would require the person who initiated such an action to notify the Attorney General, as specified, whenever there is in issue in any action before the California Supreme Court, any court of appeal, or any appellate department of the superior court, any violation of the above provisions.

(2) Under existing law, with certain exceptions, the buyer under a defined home solicitation contract or offer, or under a defined seminar sales solicitation contract or offer, has a right to cancel the contract if notice to the seller is deposited

in the mail by midnight of the 3rd business day following the day when the buyer signs the contract or an offer to purchase. However, the cancellation period with respect to home solicitation contracts for defined personal emergency response units is 7 business days. Under existing law, a buyer who cancels a home solicitation contract or offer, or a seminar sales solicitation contract or offer, is required to return any goods delivered by the seller, upon demand made within 20 days following cancellation. Under existing law, a seller who performs services under a home solicitation contract or offer or under a seminar sales solicitation contract or offer, that is subsequently cancelled by the buyer, is not entitled to compensation for the services and is required to restore any property of the buyer altered by the services.

This bill would prohibit the seller from performing services or, *with exceptions for certain contracts of $500 or less,* delivering ~~materials~~ *goods* under the contract until the buyer's cancellation period has expired. The bill would make related changes with respect to the form of these contracts. *The bill would give the buyer the right to cancel the contract until the expiration of the statute of limitations on the contract if the seller performs services or delivers goods during the buyer's cancellation period in violation of the bill. The bill would delete the special cancellation period for home solicitation contracts or offers for the sale of personal emergency response units. The bill would relieve the buyer of any duty to return goods provided in violation of the bill during the cancellation period if used up or consumed by the buyer.*

(3) Under existing law, a physician and surgeon may include in advertising a statement that he or she is certified or eligible for certification in a specialty or subspecialty by a private or public board or parent association if that board is a prescribed private board, a board or association with equivalent requirements approved by the physician and surgeon's licensing board, or a board or association with an approved postgraduate training program that meets certain criteria.

This bill would require, as a condition of including such a statement in advertising, that the statement set forth the full

name of the board or association.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 651 of the Business and Professions Code, as amended by Chapter 1660 of the Statutes of 1990, is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated, any form of public communication containing a false, fraudulent, misleading, or deceptive statement or claim, for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

(b) A false, fraudulent, misleading, or deceptive statement or claim includes a statement or claim which does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) Is intended or is likely to create false or unjustified expectations of favorable results.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(c) Any price advertisement shall be exact, without the use of such phrases as "as low as," "and up," "lowest prices" or words or phrases of similar import. Any

advertisement which refers to services, or costs for services, and which uses words of comparison must be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates any provision of this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision but only to this subdivision.

(g) Any violation of any provision of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers

of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields. For the purposes of this section, the statement of a practitioner licensed under Chapter 4 (commencing with Section 1600) who limits his or her practice to a specific field or fields, shall only include a statement that he or she is certified or is eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board. A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but may only include a statement that he or she is certified or eligible for certification by a private or public board or parent association if the statement includes the full name of the board or association and that board or association is an American Board of Medical Specialties member board, a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate

clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (15), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) of this section or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within this division shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within this division shall, by regulation, define those efficacious services to be advertised by business or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that

service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining which services may be advertised, the manner in which defined services may be advertised, and restricting advertising which would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

~~SEC. 1.5.~~

SEC. 2. Section 17209 is added to the Business and Professions Code, to read:

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate department of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law

Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 3. Section 17536.5 is added to the Business and Professions Code, to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate department of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 4. Section 1689.6 of the Civil Code is amended to read:

1689.6. (a) In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer *(1)* until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7 *or (2) if the seller violates subdivision (a) of Section 1689.11, until the expiration of the period within which an action could be brought on the contract or offer.*

(b) ~~In addition to any other right to revoke an offer, any buyer has the right to cancel a home solicitation contract or offer for the purchase of a personal emergency response unit until midnight of the seventh business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7.~~

~~(c)~~ Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

~~(d)~~

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

~~(e)~~

(d) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the home solicitation contract or offer.

~~(f) "Personal emergency response unit," for purposes of this section, means an in-home radio transmitter device or two-way radio device generally, but not exclusively, worn on a neckchain, wrist strap, or clipped to clothing, and connected to a telephone line through which a monitoring station is alerted of an emergency and emergency assistance is summoned.~~

SEC. 5. Section 1689.7 of the Civil Code is amended to read:

1689.7. (a) ~~(1)~~ In a home solicitation contract or offer the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and except as provided in paragraph (2), shall contain in immediate proximity to the space reserved for his or her signature a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation

form for an explanation of this right."

~~(2) The statement required pursuant to this subdivision for a home solicitation contract or offer for the purchase of a personal emergency response unit, as defined in Section 1689.6, is as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."~~

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c) Except as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

Until the three-day cancellation period is over, the seller cannot perform any services and cannot deliver any goods unless the contract is only for goods that are not going to be attached to real property and the total amount of the contract is $500 or less.

If the seller performs services or delivers goods which should not have been provided before the three-day

cancellation period is over, you have a continuing right to cancel this transaction without any penalty or obligation until the expiration of the time period within which a court action could be brought on the contract or offer.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel within three business days, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If the seller delivers goods which should not have been provided before the three-day cancellation period is over and you cancel, you must make available to the seller at your residence any goods delivered in reasonable condition, reasonable wear and tear excepted, unless the goods were used up or consumed.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under this contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to _____, /name of seller/ at _____ /address of sellers place of business/ not later than midnight of _____ (Date)

If the seller performs services or delivers goods which should not have been delivered before the three-day cancellation period is over, you have the right to cancel the transaction after the above date.

I hereby cancel this transaction _____ (Date)

_____ (Buyer's signature)

~~(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, shall be subject to the requirements of subdivision (c), and shall be accompanied by the "Notice of Cancellation" required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:~~

~~You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.~~

~~(e)~~

(d) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.

~~(f)~~

(e) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.

~~(g)~~

(f) "Contract or sale" as used in subdivision (c) means

"home solicitation contract or offer" as defined by Section 1689.5.

~~SEC. 2. Section 1689.11 of the Civil Code is repealed.~~

~~SEC. 3. Section 1689.11 is added to the Civil Code, to read:~~

~~1689.11. Unless the buyer waives the right of cancellation pursuant to Section 1689.13, no services shall be performed and no materials shall be delivered under a home solicitation contract or offer until the cancellation period provided in Section 1689.6 has expired and the seller is reasonably satisfied that the buyer has not canceled.~~

~~SEC. 4.~~

SEC. 6. Section 1689.11 of the Civil Code is amended to read:

1689.11. (a) *(1) No services shall be performed and, except as provided in paragraph (2), no goods shall be delivered, under a home solicitation contract or offer until the cancellation period provided in paragraph (1) of subdivision (a) of Section 1689.6 has expired and the seller is reasonably satisfied that the buyer has not canceled.*

(2) This subdivision does not apply to a home solicitation contract or offer in an amount of five hundred dollars ($500) or less, including finance and service charges, that is solely for the sale, lease, or rental of goods which are not in any manner to be attached to real property.

(b) Except as provided in subdivision (c) of Section 1689.10, within 20 days after a home solicitation contract or offer has been canceled, the buyer, upon demand, ~~must~~ *shall* tender to the seller any goods delivered by the seller pursuant to the sale or offer ~~, but he~~ *unless the seller delivered the goods in violation of subdivision (a) and the buyer has used up or consumed the goods. The buyer* is not obligated to tender at any place other than ~~his~~ *the buyer's* own address. If the seller fails to demand possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them.

~~(b)~~

(c) The buyer has a duty to take reasonable care of the goods in his *or her* possession both prior to cancellation and during the 20-day period following *unless the seller delivered the goods in violation of subdivision (a) and the buyer has used up or consumed the goods.* During the 20-day period after cancellation, except for the buyer's duty of care, the goods are at the seller's risk.

~~(c)~~

(d) If the seller has performed any services pursuant to a home solicitation contract or offer prior to its cancellation, the seller is entitled to no compensation. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.

SEC. 7. Section 1689.20 of the Civil Code is amended to read:

1689.20. (a) In addition to any other right to revoke an offer, the buyer has the right to cancel a seminar sales solicitation contract or offer *(1)* until midnight of the third "business day" after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.21, *or (2) if the seller violates subdivision (a) of Section 1689.23, until the expiration of the period within which an action could be brought on the contract or offer.*

(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the seminar sales solicitation contract or offer.

SEC. 8. Section 1689.21 of the Civil Code is amended to read:

1689.21. (a) In a seminar sales solicitation contract or offer, the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and shall contain in immediate proximity to the space reserved for his or her signature, a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name and address of the seller to which the notice is to be mailed.

(2) The date the buyer signed the agreement or offer to purchase.

(c) The agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point, the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

_____

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

Until the three-day cancellation period is over, the seller cannot perform any services and cannot deliver any goods unless the contract is only for goods that are not going to be attached to real property and the total amount of the contract is $500 or less.

If the seller performs services or delivers goods which should not have been provided before the three-day cancellation period is over, you have a continuing right to cancel this transaction without any penalty or obligation until the expiration of the time period within which a court action could be brought on the contract or offer.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel within three business days, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If the seller delivers goods which should not have been provided before the three-day cancellation period is over and you cancel, you must make available to the seller at your residence any goods delivered in reasonable condition, reasonable wear and tear excepted, unless the goods were used up or consumed.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

_____ at _____

/name of seller/ /Address of sellers place of business/

not later than midnight of _____

(Date)

If the seller performs services or delivers goods which should not have been delivered before the three-day cancellation period is over, you have the right to cancel the transaction after the above date.

I hereby cancel this transaction _____

(Date)

_____

(Buyer's signature)

(d) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel at the time the seminar sales solicitation contract or offer is executed.

(e) Until the seller has complied with this section, the buyer may cancel the seminar sales solicitation contract or offer.

(f) "Contract or sale" as used in subdivision (c), means "seminar sales solicitation contract or offer" as defined by Section 1689.24.

~~SEC. 5. Section 1689.23 of the Civil Code is repealed.~~

~~SEC. 6. Section 1689.23 is added to the Civil Code, to read:~~

~~1689.23. No services shall be performed and no material shall be delivered under a seminar sales solicitation contract or offer until the cancellation period provided in Section 1689.20 has expired and the seller is reasonably satisfied that the buyer has not canceled.~~

SEC. 9. Section 1689.23 of the Civil Code is amended to read:

1689.23. (a) *(1) No services shall be performed and, except as provided in paragraph (2), no goods shall be delivered, under a seminar sales solicitation contract or*

offer until the cancellation period provided in paragraph (1) of subdivision (a) of Section 1689.20 has expired and the seller is reasonably satisfied that the buyer has not canceled.

(2) This subdivision does not apply to a seminar sales solicitation contract or offer in an amount of five hundred dollars ($500) or less, including finance and services charges, that is solely for the sale, lease, or rental of goods which are not in any manner to be attached to real property.

(b) Except as provided in subdivision (c) of Section 1689.22, within 20 days after a seminar sales solicitation contract or offer has been canceled, the buyer, upon demand, ~~must~~ *shall* tender to the seller any goods delivered by the seller pursuant to the sale or offer ; ~~but he or she~~ *unless the seller delivered the goods in violation of subdivision (a) and the buyer has used up or consumed the goods. The buyer* is not obligated to tender at any place other than ~~his or her~~ *the buyer's* own address. If the seller fails to demand possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them.

~~(b)~~

(c) The buyer has a duty to take reasonable care of the goods in his or her possession, both prior to cancellation and during the 20-day period following *unless the seller delivered the goods in violation of subdivision (a) and the buyer has used up or consumed the goods.* During the 20-day period after cancellation, except for the buyer's duty of care, the goods are at the seller's risk.

~~(c)~~

(d) If the seller has performed any services pursuant to a seminar sales solicitation contract or offer prior to its cancellation, the seller is entitled to no compensation. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.

AMENDED IN SENATE APRIL 30, 1992

AMENDED IN SENATE APRIL 27, 1992

AMENDED IN SENATE APRIL 21, 1992

SENATE BILL No. 1911

Introduced by Senator Kopp

February 21, 1992

An act to ~~amend Section 651 of, and to~~ add Sections 17209 and 17536.5 to; the Business and Professions Code, and to amend Sections 1689.6, 1689.7, 1689.11, 1689.20, 1689.21, and 1689.23 of the Civil Code, relating to business regulation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1911, as amended, Kopp. Home solicitation contracts; seminar solicitation contracts; ~~physician specialization~~.

(1) Under existing law, acts of unfair competition may be enjoined and are also subject to prescribed civil penalties in an action brought by the Attorney General, a district attorney, or, in specified cases, a city attorney or prosecutor or county counsel. These actions for injunction may also be brought by any person or organization. Existing law provides similar remedies in provisions dealing primarily with unlawful advertising.

This bill would require the person who initiated such an action to notify the Attorney General, as specified, whenever there is in issue in any action before the California Supreme Court, any court of appeal, or any appellate department of the superior court, any violation of the above provisions.

(2) Under existing law, with certain exceptions, the buyer under a defined home solicitation contract or offer, or under a defined seminar sales solicitation contract or offer, has a right to cancel the contract if notice to the seller is deposited in the mail by midnight of the 3rd business day following the

day when the buyer signs the contract or an offer to purchase. However, the cancellation period with respect to home solicitation contracts for defined personal emergency response units is 7 business days. Under existing law, a buyer who cancels a home solicitation contract or offer, or a seminar sales solicitation contract or offer, is required to return any goods delivered by the seller, upon demand made within 20 days following cancellation. Under existing law, a seller who performs services under a home solicitation contract or offer, or under a seminar sales solicitation contract or offer, that is subsequently cancelled by the buyer, is not entitled to compensation for the services and is required to restore any property of the buyer altered by the services.

This bill would prohibit the seller from performing services or, with exceptions for certain contracts of $500 or less, delivering goods under the contract until the buyer's cancellation period has expired. The bill would make related changes with respect to the form of these contracts. The bill would give the buyer the right to cancel the contract until the expiration of the statute of limitations on the contract if the seller performs services or delivers goods during the buyer's cancellation period in violation of the bill. The bill would delete the special cancellation period for home solicitation contracts or offers for the sale of personal emergency response units. The bill would relieve the buyer of any duty to return goods provided in violation of the bill during the cancellation period if used up or consumed by the buyer.

~~(3) Under existing law, a physician and surgeon may include in advertising a statement that he or she is certified or eligible for certification in a specialty or subspecialty by a private or public board or parent association if that board is a prescribed private board, a board or association with equivalent requirements approved by the physician and surgeon's licensing board, or a board or association with an approved postgraduate training program that meets certain criteria.~~

~~This bill would require, as a condition of including such a statement in advertising, that the statement set forth the full name of the board or association.~~

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

State-mandated local program: no.

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

SECTION 1. Section 651 of the Business and Professions Code, as amended by Chapter 1660 of the Statutes of 1990, is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated, any form of public communication containing a false, fraudulent, misleading, or deceptive statement or claim, for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

(b) A false, fraudulent, misleading, or deceptive statement or claim includes a statement or claim which does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) Is intended or is likely to create false or unjustified expectations of favorable results.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(c) Any price advertisement shall be exact, without the use of such phrases as "as low as," "and up," "lowest prices" or words or phrases of similar import. Any advertisement which refers to services, or costs for services, and which uses words of comparison must be

~~(8) A statement of publications authored by the practitioner.~~

~~(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.~~

~~(10) A statement of his or her affiliations with hospitals or clinics.~~

~~(11) A statement of the charges or fees for services or commodities offered by the practitioner.~~

~~(12) A statement that the practitioner regularly accepts installment payments of fees.~~

~~(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.~~

~~(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.~~

~~(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (15), inclusive, provided, that any statement shall not violate subdivision (a), (b), (c), or (c) of this section or any other section of this code.~~

~~(16) A statement, or statements, providing public health information encouraging preventative or corrective care.~~

~~(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.~~

~~(i) Each of the healing arts boards and examining committees within this division shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~Each of the healing arts boards and committees and examining committees within this division shall, by regulation, define those efficacious services to be advertised by business or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee~~

~~within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining which services may be advertised, the manner in which defined services may be advertised, and restricting advertising which would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.~~

~~(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.~~

~~SEC. 2.~~

SECTION 1. Section 17209 is added to the Business and Professions Code, to read:

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate department of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally

filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

~~SEC. 3.~~

SEC. 2. Section 17536.5 is added to the Business and Professions Code, to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate department of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

~~SEC. 4.~~

SEC. 3. Section 1689.6 of the Civil Code is amended to read:

1689.6. (a) In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer (1) until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7, or (2) if the seller violates subdivision (a) of Section 1689.11, until the expiration of the period within which an action could be brought on the contract or offer.

(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the home solicitation contract or offer.

~~SEC. 5.~~

SEC. 4. Section 1689.7 of the Civil Code is amended to read:

1689.7. (a) In a home solicitation contract or offer the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and ~~except as provided in paragraph (2),~~ shall contain in immediate proximity to the space reserved for his or her signature a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c) Except as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

Until the three-day cancellation period is over, the seller cannot perform any services and cannot deliver any goods unless the contract is only for goods that are not going to be attached to real property and the total amount of the contract is $500 or less.

If the seller performs services or delivers goods which should not have been provided before the three-day cancellation period is over, you have a continuing right to cancel this transaction without any penalty or obligation until the expiration of the time period within which a court action could be brought on the contract or offer.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel within three business days, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If the seller delivers goods which should not have been provided before the three-day cancellation period is over and you cancel, you must make available to the seller at your residence any goods delivered in reasonable condition, reasonable wear and tear excepted, unless the

goods were used up or consumed.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under this contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____,

/name of seller/

at _____

/address of sellers place of business/

not later than midnight of _____

(Date)

If the seller performs services or delivers goods which should not have been delivered before the three-day cancellation period is over, you have the right to cancel the transaction after the above date.

I hereby cancel this transaction _____

(Date)

_____

(Buyer's signature)

(d) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.

(e) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.

(f) "Contract or sale" as used in subdivision (c) means "home solicitation contract or offer" as defined by Section 1689.5.

~~SEC. 6.~~

SEC. 5. Section 1689.11 of the Civil Code is amended

to read:

1689.11. (a) (1) No services shall be performed and, except as provided in paragraph (2), no goods shall be delivered, under a home solicitation contract or offer until the cancellation period provided in paragraph (1) of subdivision (a) of Section 1689.6 has expired and the seller is reasonably satisfied that the buyer has not canceled.

(2) This subdivision does not apply to a home solicitation contract or offer in an amount of five hundred dollars ($500) or less, including finance and service charges, that is solely for the sale, lease, or rental of goods which are not in any manner to be attached to real property.

(b) Except as provided in subdivision (c) of Section 1689.10, within 20 days after a home solicitation contract or offer has been canceled, the buyer, upon demand, shall tender to the seller any goods delivered by the seller pursuant to the sale or offer unless the seller delivered the goods in violation of subdivision (a) and the buyer has used up or consumed the goods. The buyer is not obligated to tender at any place other than the buyer's own address. If the seller fails to demand possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them.

(c) The buyer has a duty to take reasonable care of the goods in his or her possession both prior to cancellation and during the 20-day period following unless the seller delivered the goods in violation of subdivision (a) and the buyer has used up or consumed the goods. During the 20-day period after cancellation, except for the buyer's duty of care, the goods are at the seller's risk.

(d) If the seller has performed any services pursuant to a home solicitation contract or offer prior to its cancellation, the seller is entitled to no compensation. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.

~~SEC. 7.~~

SEC. 6. Section 1689.20 of the Civil Code is amended to read:

1689.20. (a) In addition to any other right to revoke an offer, the buyer has the right to cancel a seminar sales solicitation contract or offer (1) until midnight of the third "business day" after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.21, or (2) if the seller violates subdivision (a) of Section 1689.23, until the expiration of the period within which an action could be brought on the contract or offer.

(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the seminar sales solicitation contract or offer.

~~SEC. 8.~~

SEC. 7. Section 1689.21 of the Civil Code is amended to read:

1689.21. (a) In a seminar sales solicitation contract or offer, the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and shall contain in immediate proximity to the space reserved for his or her signature, a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the

following:

(1) The name and address of the seller to which the notice is to be mailed.

(2) The date the buyer signed the agreement or offer to purchase.

(c) The agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point, the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

_____

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

Until the three-day cancellation period is over, the seller cannot perform any services and cannot deliver any goods unless the contract is only for goods that are not going to be attached to real property and the total amount of the contract is $500 or less.

If the seller performs services or delivers goods which should not have been provided before the three-day cancellation period is over, you have a continuing right to cancel this transaction without any penalty or obligation until the expiration of the time period within which a court action could be brought on the contract or offer.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel within three business days, you must

make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If the seller delivers goods which should not have been provided before the three-day cancellation period is over and you cancel, you must make available to the seller at your residence any goods delivered in reasonable condition, reasonable wear and tear excepted, unless the goods were used up or consumed.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

_____ at _____

/name of seller/ /Address of sellers place of business/

not later than midnight of _____

(Date)

If the seller performs services or delivers goods which should not have been delivered before the three-day cancellation period is over, you have the right to cancel the transaction after the above date.

I hereby cancel this transaction _____

(Date)

_____

(Buyer's signature)

(d) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or

her right to cancel at the time the seminar sales solicitation contract or offer is executed.

(e) Until the seller has complied with this section, the buyer may cancel the seminar sales solicitation contract or offer.

(f) "Contract or sale" as used in subdivision (c), means "seminar sales solicitation contract or offer" as defined by Section 1689.24.

~~SEC. 9.~~

SEC. 8. Section 1689.23 of the Civil Code is amended to read:

1689.23. (a) (1) No services shall be performed and, except as provided in paragraph (2), no goods shall be delivered, under a seminar sales solicitation contract or offer until the cancellation period provided in paragraph (1) of subdivision (a) of Section 1689.20 has expired and the seller is reasonably satisfied that the buyer has not canceled.

(2) This subdivision does not apply to a seminar sales solicitation contract or offer in an amount of five hundred dollars ($500) or less, including finance and services charges, that is solely for the sale, lease, or rental of goods which are not in any manner to be attached to real property.

(b) Except as provided in subdivision (c) of Section 1689.22, within 20 days after a seminar sales solicitation contract or offer has been canceled, the buyer, upon demand, shall tender to the seller any goods delivered by the seller pursuant to the sale or offer unless the seller delivered the goods in violation of subdivision (a) and the buyer has used up or consumed the goods. The buyer is not obligated to tender at any place other than the buyer's own address. If the seller fails to demand possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them.

(c) The buyer has a duty to take reasonable care of the goods in his or her possession, both prior to cancellation and during the 20-day period following unless the seller delivered the goods in violation of subdivision (a) and the

buyer has used up or consumed the goods. During the 20-day period after cancellation, except for the buyer's duty of care, the goods are at the seller's risk.

(d) If the seller has performed any services pursuant to a seminar sales solicitation contract or offer prior to its cancellation, the seller is entitled to no compensation. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.

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SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1991-92 Regular Session

SB 1911 (Kopp)
As amended April 30
Hearing date: May 5, 1992
Civil/Business & Professions Code
ART

HOME SOLICITATION CONTRACTS

HISTORY

Source: California District Attorney's Association

Prior Legislation: None

Support: Unknown

Opposition: Amway Corporation; Natural World; Encyclopedia Britannica; Direct Selling Association; Shaklee Corp.; Mary Kay Cosmetics

(THIS ANALYSIS REFLECTS AUTHOR'S AMENDMENTS TO BE OFFERED IN COMMITTEE.)

KEY ISSUE

SHOULD A SELLER OF GOODS OR SERVICES UNDER A HOME SOLICITATION CONTRACT AND SEMINAR SALES SOLICITATION CONTRACT BE PROHIBITED FROM DELIVERING ANY OF THE GOODS OR PERFORMING ANY OF THE SERVICES UNTIL THE EXPIRATION OF THE STATUTORILY PRESCRIBED RESCISSION PERIOD?

SHOULD THE ATTORNEY GENERAL BE SERVED WITH NOTICE AND A COPY OF A BRIEF BY A PERSON APPEALING A DECISION OF A LOWER COURT PERTAINING TO UNFAIR COMPETITION AND UNLAWFUL ADVERTISING?

PURPOSE

Existing contract law allows for the rescission of a contract on many grounds, two of these grounds include: (1) by consent of all contracting parties and (2) if consent of rescinding party was given by mistake, or was obtained by duress, menace, fraud, or

(More)

undue influence. In most instances, a buyer must file a civil action to rescind a contract based on any of the above stated grounds.

Existing law provides a buyer with a 3 day right of rescission of home solicitation contracts and seminar solicitation contracts. However, the cancellation period with respect to home solicitation contracts for defined personal emergency response units is 7 business days.

This bill would provide that, in addition, if the seller performs services or delivers goods during the buyer's cancellation period in violation of the bill, the buyer has the right to cancel the contract until the expiration of the statute of limitations on the contract.

Existing law provides that if a consumer cancels the agreement, the consumer must make the goods delivered under the agreement available for recovery by the seller. Furthermore, the seller has the right to demand that the buyer tender the goods within 20 days after the agreement has been canceled, and the buyer must take reasonable care of the goods prior to cancellation and during the following 20-day period.

This bill would also provide that the buyer need not return goods provided in violation of the bill during the cancellation period if used or consumed by the buyer.

Existing law further provides that a seller who performs is not entitled to compensation if the contract is subsequently cancelled by the customer and is required to restore any of the buyer's property altered by the seller to substantially as good condition as the property was in at the time the services were rendered.

This bill would prohibit the seller from performing services or delivering goods under a home solicitation contract until the buyer's cancellation period has expired and the seller is reasonably satisfied that the buyer has not canceled.

This bill would also provide that the above provision does not apply to home solicitation contracts and seminar sales solicitation contracts of $500 or less, including finance and service charges, that are solely for the sale, lease, or rental of goods which are not attached to real property. The bill would make related changes with respect to the form of these contracts.

The purpose of this bill is to prohibit a seller of goods or services from delivering goods and performing services prior to the expiration of the cancellation period.

(More)

COMMENT

1. Stated need for legislation

The sponsor, California District Attorney's Association, believes this legislation is needed because current law is unclear regarding whether a seller of goods or services under a "home solicitation contract" may deliver the goods or perform the services before the customer's three-day right to rescind elapses. The law, they state, "... prescribes rights in the event goods or services are provided by the seller before cancellation, but the law does not authorize sellers to deliver goods or render services before cancellation."

They believe there is a problem in that most sellers do not wait until the rescission period expires. "Sellers frequently "spike the job" -- i.e., they deliver goods and perform services prior to the expiration of the cancellation period -- because consumers are less likely to cancel. Many consumers, for example, feel psychologically committed or morally obliged to pay for services rendered or for goods delivered, particularly if those goods have been installed and cannot be easily returned to the seller. Some consumers are concerned that the status quo before the purchase cannot be restored if the consumer cancels a contract involving the installation of home improvement goods or services; for example, the seller may have replaced carpeting or kitchen cabinets, and the consumer fears that the old carpeting or cabinets could never be adequately replaced. Other consumers are intimidated to cancel because they fear that the obnoxious salesman who pressured them into signing the contract will return to pick up the merchandise."

2. No Provision for Waivers

This bill would outrightly prohibit a seller from delivering goods or performing services prior to the expiration of the 3-day cancellation period.

There is no provision in the bill allowing the buyer to waive such restrictions.

While it is important to protect buyers from abusive door-to-door sales, it would probably be of no benefit to a buyer who has a clear understanding of what he or she wants not to be able to waive that restriction and accept receipt of the goods or services immediately.

(More)

SHOULD A BUYER WHO ENTERS INTO A HOME SOLICITATION CONTRACT OR A SEMINAR SALES SOLICITATION CONTRACT BE ALLOWED TO WAIVE THE SELLERS RESTRICTION AND EFFECTUATE DELIVERY OF GOODS AND SERVICES IMMEDIATELY?

3. Notice and filing of appellate brief with the Attorney General

Under existing law, acts constituting unfair competition may be enjoined and are also subject to prescribed civil penalties in an action brought by the Attorney General, a district attorney, or, in specified cases, a city attorney or prosecutor or county counsel.

In addition, any person or trade association may bring an action to enjoin, restrain and recover damages for acts constituting unfair competition. Similar remedies are provided for unlawful advertising.

This bill would require a person appealing an action, pursuant to the unfair competition and advertising laws, to notify the Attorney General.

The notice shall be served on the Attorney General, including a copy of the person's brief or petition and brief, and on the district attorney of the county in which the lower court action was originally filed.

The notice, including the brief, shall be served within three days after the commencement of the appeal's process.

This bill further provides that no judgment or relief, temporary or permanent, shall be granted until proof of service of this notice if filed with the court.

The sponsor believes these provisions are necessary because appellate cases impact law enforcement actions regardless of who the plaintiff may be. Often cases are not handled well and parties may advance positions which could undermine theories advanced by prosecutorial agencies. On many occasions, the Attorney General's office has learned of adverse opinions after they were issued. On some of those occasions, the Attorney General's office and CDAA have successfully obtained modifications or depublication of opinions. Obviously, advance notice of appeal and writ proceedings would enable the Attorney General's office, CDAA, and individual district attorneys' offices to learn of pending appellate issues that could profoundly affect law enforcement activities. The Attorney General would have the time to evaluate the issues and, when appropriate, intervene or, more likely, submit amicus briefs to present his point of view.

(More)

What purpose would it serve to deny an individual relief under the law because of the failure to notify the Attorney General and the district attorney?

SHOULD THIS NOT BE DONE?

4. Opposition

The opposition believes this bill would complicate home solicitation sales by direct sellers, and would disrupt the national standard which presently exists for such sales.

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SB 1911
(Sponsors: CA District Attorney's Association)

Senate Judiciary
May 5, 1992

Author's Amendment: To restore the provision that deletes the special cancellation period for home solicitation contracts or offers for the sale of personal emergency response units. (This was inadvertently deleted.)

SB 1911 contains two provisions:
1) Prohibits the delivery of any goods or the performance of any service pursuant to a "home solicitation contract or offer" within the rescission period unless the contract or offer is only for goods that are not going to be attached to real property and the total contract is less than $500.

2) Requires notification to the Attorney General's office and to the respective district attorney's office by the moving party appealing an action, pursuant to the unfair competition and advertising laws. The notice requirement applies whether the action is brought in the appellate department of a superior court, before the state court of appeal or before the Supreme Court of California. The moving party shall have three days after the commencement of the appellate proceeding to serve this notice, including a copy of their brief or petition and brief. No judgment or relief, temporary or permanent, may be granted until proof of the service of this notice is provided to the reviewing court.

(CONTINUED)

— Encyclopedias

SPECIAL CONSENT

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 445-6614	Bill No. SB 1911 Author: Kopp (I) Amended: 5/13/92 Vote Required: 21

Committee Votes:

COMMITTEE: JUDICIARY		
BILL NO.: SB 1911		
DATE OF HEARING: 5-5-92		
SENATORS:	AYE	NO
Calderon		
Leslie	✓	
Marks	✓	
Petris		
Presley	✓	
Roberti		
Royce	✓	
Torres		
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	6	0

Senate Floor Vote:

Assembly Floor Vote:

8

SUBJECT: Unfair competition

SOURCE: California District Attorney's Association

DIGEST: This bill provides that the Attorney General be served with a notice of appeal relative to a decision of a lower court pertaining to unfair competition and unlawful advertising.

ANALYSIS: Under existing law, acts constituting unfair competition may be enjoined and are also subject to prescribed civil penalties in an action brought by the Attorney General, a district attorney, or, in specified cases, a city attorney or prosecutor or county counsel.

In addition, any person or trade association may bring an action to enjoin, restrain and recover damages for acts constituting unfair competition. Similar remedies are provided for unlawful advertising.

This bill would require a person appealing an action, pursuant to the unfair competition and advertising laws, to serve notice of the appeal on the Attorney General and on the district attorney of the county in which the lower court action was originally filed.

The notice shall be served within three days after the commencement of the appeal's process.

CONTINUED

This bill further provides that no judgment or relief, temporary or permanent, shall be granted until proof of service of this notice if filed with the court.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 5/13/92)

California District Attorney's Association (source)

ARGUMENTS IN SUPPORT: The sponsor believes these provisions are necessary because appellate cases impact law enforcement actions regardless of who the plaintiff may be. Often cases are not handled well and parties may advance positions which could undermine theories advanced by prosecutorial agencies. On many occasions, the Attorney General's office has learned of adverse opinions after they were issued. On some of those occasions, the Attorney General's office and CDAA have successfully obtained modifications or depublication of opinions. Obviously, advance notice of appeal and writ proceedings would enable the Attorney General's office, CDAA, and individual district attorneys' offices to learn of pending appellate issues that could profoundly affect law enforcement activities. The Attorney General would have the time to evaluate the issues and, when appropriate, intervene or, more likely, submit amicus briefs to present his point of view.

RJG:nf 5/13/92 Senate Floor Analyses

JUN 3 1992

TO: Honorable Quentin Kopp

RE: SB 1911

JUN 4 1992

PLEASE RETURN BY asap TO: ASSEMBLY COMMITTEE ON JUDICIARY
STATE CAPITOL, ROOM 6005

WORKSHEET
(Please type)

Your bill has been referred to the Assembly Committee on Judiciary. It is imperative that you provide us with as much information regarding your bill as possible, including the following:

AUTHOR'S CONTACT PERSON:

Address, telephone number: Tuyen Ho
Room 2057
5-0503

SPONSORING ORGANIZATION NAME: (Also list the bill's source if differs from sponsor.)

Name of contact person: John Wilson for CA District Attorney's Association
Address, telephone number: Consumer & Environmental Protection Unit
County of San Mateo, Government Center
Redwood City, CA 94063 (415) 363-4656

PRIOR COMMITTEE & FLOOR VOTES:

Senate Judiciary 5-5-92 (6-0)
Floor Vote Special Consent Calendar (32-0)

SET INFORMATION:

Preferred hearing dates: June 23, 1992
Estimated time to present testimony: 10 minutes
Names of witnesses: John Wilson

PURPOSE OF BILL: (Specify problem or deficiency in existing law.)

Current law does not require that the Attorney General or other public prosecutors be informed of appeals or writs taken in cases involving acts constituting unfair competition and unlawful advertising. SB 1911 would require notification to the AG's office and to the respective DA's office by the moving party appealing an action, involving acts of unfair competition and unlawful advertising. Notice of appeals and writ proceedings would provide AG, CDAA and individual DA offices time to evaluate the pending appellate issues that could prfoundly affect law enforcement activities.

HOW DOES THIS BILL REMEDY THE PROBLEM?

STUDIES, REPORTS, STATISTICS & FACTS: (List all documented sources supporting your conclusion that there is a problem. Be specific and attach major sources.)

PRIOR/SIMILAR/COMPANION LEGISLATION. (Bill number, author, coauthors, session and final disposition.)

POSITIONS OF THE DEPARTMENT OF FINANCE, STATE AGENCIES, & INTEREST GROUPS. (State precise reason if opposed.)

Opposition: None to date.

NOTE: Amendments are currently being reviewed and considered.

ADDITIONAL INFORMATION:

Attach copies of background and related materials, including letters of support & opposition.

Attach an author's or sponsor's statement as to the purpose of this bill.

(Revised 1/30/89, #105)

AMENDED IN ASSEMBLY JUNE 25, 1992

AMENDED IN SENATE MAY 13, 1992

AMENDED IN SENATE APRIL 30, 1992

AMENDED IN SENATE APRIL 27, 1992

AMENDED IN SENATE APRIL 21, 1992

SENATE BILL No. 1911

Introduced by Senator Kopp

February 21, 1992

An act to *amend Section 17204 of, and to* add Sections 17209 and 17536.5 to, the Business and Professions Code, relating to business regulation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1911, as amended, Kopp. Unfair business practices.

(1) Existing law provides for the enforcement of laws regarding unfair competition by authorizing injunctive actions to be prosecuted by the Attorney General, district attorney, or county counsel, as specified.

This bill would provide that actions for any relief may be prosecuted by the Attorney General, district attorney, or county counsel, as specified.

(2) Under existing law, acts of unfair competition may be enjoined and are also subject to prescribed civil penalties in an action brought by the Attorney General, a district attorney, or, in specified cases, a city attorney or prosecutor or county counsel. These actions for injunction may also be brought by any person or organization. Existing law provides similar remedies in provisions dealing primarily with unlawful advertising.

This bill would require the person who initiated such an action to notify the Attorney General, as specified, whenever

there is in issue in any action before the California Supreme Court, any court of appeal, or any appellate department of the superior court, any violation of the above provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. *Section 17204 of the Business and Professions Code is amended to read:*

17204. Actions for ~~injunction~~ *any relief* pursuant to this chapter may be prosecuted by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2. Section 17209 is added to the Business and Professions Code, to read:

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate department of a superior court, the person who commenced that proceeding shall serve notice ~~of the appeal~~ *thereof, including a copy of the person's brief or petition and brief,* on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. ~~Notice of the appeal~~ *The notice, including the brief or petition and brief,* shall be served within three days after the commencement of the

appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

~~SEC. 2.~~

SEC. 3. Section 17536.5 is added to the Business and Professions Code, to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate department of a superior court, the person who commenced that proceeding shall serve notice ~~of the appeal~~ *thereof, including a copy of the person's brief or petition and brief,* on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. ~~Notice of the appeal~~ *The notice, including the brief or petition and brief,* shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

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SACRAMENTO ADDRESS
STATE CAPITOL
95814
(916) 445-0503

DISTRICT OFFICES
363 EL CAMINO REAL #205
SO. SAN FRANCISCO, CA 94080
(415) 952-5666

California State Senate

COMMITTEES
TRANSPORTATION, CHAIRMAN
HOUSING & URBAN AFFAIRS
LOCAL GOVERNMENT
REVENUE & TAXATION
TOXICS & PUBLIC SAFETY MANAGEMENT

STATE SENATOR
QUENTIN L. KOPP
EIGHTH SENATORIAL DISTRICT
REPRESENTING SAN FRANCISCO AND SAN MATEO COUNTIES

July 20, 1992

Honorable Pete Wilson
Governor
State of California
State Capitol
Sacramento, CA 95814

Attn: Karen Morgan

Senate Bill 1911

Dear Pete:

Senate Bill 1911 now awaits your approval. This legislation will require that the Attorney General and the respective district attorney be served with any notice of appeal from a decision of a lower court pertaining to unfair competition and unlawful advertising. The appeal notification will assist law enforcement agencies in preserving the effectiveness of California's most important consumer protection statutes.

Current law does not require that the Attorney General or other public prosecutors be informed of appeals or writs in cases involving acts constituting unfair competition and unlawful advertising. Appellate decisions, however, affect law enforcement actions regardless of the plaintiff. Often civil actions are deficiently prosecuted and parties may argue contentions which could undermine theories advanced by public law enforcement offices.

On many occasions, the Attorney General's office has learned of adverse opinions only after publication. On some of those occasions, the Attorney General's office has learned of opinions adverse to public policy positions of that office. Obviously, advance notice of appeal and writ proceedings would enable the Attorney General's office and affected county district attorney to learn of pending appellate issues that could profoundly affect law enforcement activities in the field of unfair competition and unlawful advertising. The Attorney

General will, by reason of SB 1911, be able to evaluate the issues and, as appropriate, intervene or submit amicus curiae briefs to present his or her points and authorities.

There is no known opposition to SB 1911. It was approved by the Senate, 32-0. The Assembly vote was 76-0. The Senate concurred in inconsequential Assembly amendments, 32-0.

I hope that you will approve SB 1911. Thank you for your attention and consideration.

Sincerely yours,

QUENTIN L. KOPP

QLK:th
Enclosure

A

SB 1911 ✓
support

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE

1515 K STREET, SUITE 511
P.O. Box 944255
SACRAMENTO, CA 94244-2550
(916) 445-9555

(916) 324-5477

July 28, 1992

The Honorable Pete Wilson
Governor of the State of California
State Capitol
Sacramento, CA 95814

RE: SB 1911 (Kopp)

Dear Governor Wilson:

You now have on your desk SB 1911 which would require individuals appealing Business and Professions Code §17200 cases to notify the Attorney General's office and provide a copy of a brief or petition. We respectfully urge you to sign this bill.

Many private lawsuits utilize Business and Professions Code §17200 causes of action. The cases sometimes reach the appellate courts without our knowledge and are poorly presented. The court then uses loose language which can affect, and has adversely affected, our office's and district attorney's consumer and environmental protection efforts since we use the same statutes. This bill will allow for advance notice and permit the filing of *amicus curiae* briefs in select cases aimed at directing the court's attention to potential language problems. As a result, there will be greater uniformity of decisions which could be most helpful to our efforts.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

DANIEL E. LUNGREN
Attorney General

PATRICK M. KENADY
Assistant Attorney General
for Legislation

cc: Honorable Quentin Kopp

Analyst Name: Gale Baker
Phone Number: 323-0399

STATE AND CONSUMER SERVICES AGENCY — ENROLLED BILL REPORT

DEPARTMENT	AUTHOR	BILL NUMBER
CONSUMER AFFAIRS	Kopp	SB 1911

Bill Summary

Existing law (Bus. & Prof. C. § 17200) prohibits "unfair competition," defined as any unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising, including any act prohibited under Business and Professions Code §§ 17500 et seq. (these sections deal with false and misleading advertising in general, and also contain specific requirements pertaining to mail order companies, telephonic sellers, travel promoters, etc.).

Acts of unfair competition are subject to civil penalties of up to $2,500 per violation (§ 17206), plus an enhanced penalty of up to $2,500 per violation if the victim is a senior citizen or disabled person (§ 17206.1), injunctive relief (§ 17203), and civil penalties of up to $6,000 per violation for violating an injunction (§ 17207).

Section 17204 authorizes actions for injunctive relief to be brought by the Attorney General, district attorney, county counsel in actions involving violations of a county ordinance (with the permission of the district attorney), city attorney of a city or city and county with a population over 750,000, full-time city prosecutor with the consent of the district attorney, or city attorney of a city and county.

This bill would revise § 17204 to permit these persons to bring an action for "any relief" authorized under §§ 17200 et seq. This change is merely a clarification of current law. While § 17206 (the civil penalties section) does not explicitly state that the same officials who are authorized to seek injunctive relief under § 17204 are also authorized to seek the civil penalties in § 17206, it does so indirectly by stating the disposition of the civil penalties, according to which of the officials named in § 17204 brought the action.

This bill also would require a copy of the notice of appeal of a decision relating to unfair competition (§§ 17200 et seq.) or false and misleading advertising (§§ 17500 et seq.) to be served on the Attorney General and the district attorney of the county in which the lower court action was filed, including a copy of the appellant's brief or petition and brief.

Background and Specific Findings

Proponents [the California District Attorneys Association (CDAA)] argue that appellate cases impact law enforcement actions regardless of who the plaintiff might be. Often cases are not handled well and parties may

VOTE: Assembly				VOTE: Senate			
Floor:	Aye 76	No 0		Floor:	Aye 32	No 0	
Policy Committee:	Aye 9	No 0		Policy Committee:	Aye 6	No 0	
Fiscal Committee:	Aye n/a	No		Fiscal Committee:	Aye n/a	No	

RECOMMENDATION TO GOVERNOR:	SIGN X	VETO	DEFER TO OTHER AGENCY

DEPARTMENT DIRECTOR: [signature] DATE: 7/23/92

AGENCY SECRETARY: [signature] DATE: 7/23/92

advance positions that could undermine theories advanced by prosecutorial agencies. Proponents state that they have learned on many occasions of adverse opinions after they were issued. On some of these occasions, the Attorney General and district attorneys have been able to get modifications or depublication of opinions; but clearly, advance notice would be preferable to prevent this from happening in the first place. Advance notice of appeal would enable the Attorney General and district attorneys to learn of pending appellate issues that could affect their activities, give them time to evaluate the issues, and enable them to intervene when appropriate or submit amicus briefs to present their point of view.

Part of the reason for the current bill is probably last year's AB 1755 (Ch. 1196), which authorized county counsels to use § 17200 to enforce county ordinances and also allowed the city attorney of a "city and county" to use § 17200 (San Francisco is the state's only "city and county"). The CDAA was concerned about the bill* because of the possibility for bad decisions that could erode the effectiveness of § 17200 when persons inexperienced in that area of the law bring suit. The CDAA argued last year that this sometimes necessitates requests for depublication of bad opinions. This bill would therefore decrease the likelihood that they will have to make these requests.

*The CDAA was only "conceptually" opposed to AB 1755 as enrolled because it required county counsels to get per-case consent, as opposed to annual consent, from the district attorney to prosecute § 17200 actions. Per-case consent gives the DAs greater control and so they went neutral on AB 1755, though still opposed in concept.

Fiscal Impact

None to the department.

Argument

Proponents: California District Attorneys Association (sponsor)

Opponents: None

No Position: Attorney General (following the bill)

This bill makes a clarifying change to Business and Professions Code § 17204 (described in Bill Summary). The bill also requires notice of appeals on actions brought under the unfair competition or false and misleading advertising statutes to be given to the Attorney General and appropriate district attorney to enable them to intervene or file an amicus brief when appropriate, to help prevent the possibility of an appellate opinion that will adversely affect the interests of consumers and the law enforcement efforts of those agencies.

The California Trial Lawyers Association is neutral on the bill.

Recommendation

The Department of Consumer Affairs recommends that the Governor SIGN Senate Bill 1911.

Jack I. Horton
Ann Mackey
Chief Deputies

James L. Ashford
John T. Studebaker
Jimmie Wing

David D. Alves
John A. Corzine
C. David Dickerson
Robert Cullen Duffy
Robert D. Gronke
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Belinda Whitsett
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Deputies

Sacramento, California

July 29, 1992

Honorable Pete Wilson
Governor of California
Sacramento, CA 95814

Senate Bill No. 1911

Dear Governor Wilson:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Kopp and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By John A. Corzine
John A. Corzine
Principal Deputy

JAC:wld

Two copies to Honorable Quentin L. Kopp
pursuant to Joint Rule 34.

CALIFORNIA LEGISLATURE

1991–92 REGULAR SESSION
1991–92 FIRST EXTRAORDINARY SESSION
1991–92 SECOND EXTRAORDINARY SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed Constitutional Amendments) Adopted in 1992

and

1989–1992 Statutory Record

RICK ROLLENS
Secretary of the Senate

E. DOTSON WILSON
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

within the Department of Consumer Affairs. Under existing law, these boards are authorized to suspend or revoke the license of health professionals on certain grounds, or to institute other disciplinary actions.

Existing law provides that whenever it appears that any person holding a license, permit, or certificate to practice may be unable to practice due to mental or physical illness, the licensing agency may order the licentiate to be examined by a physician and surgeon or psychologist designated by the agency, or may revoke or suspend the licentiate's right to practice.

This bill would provide that the applicable board may refuse to issue a license or registration to any applicant for licensure, registration, or certification as a psychologist, marriage, family, and child counselor, licensed educational psychologist, social worker, or respiratory therapist, whenever it appears that the applicant may be unable to practice safely due to mental illness or chemical dependency, and would make the procedures applicable to licentiates also applicable to applicants.

Existing law provides that the Board of Behavioral Science Examiners may deny any application for, or suspend or revoke the license or registration of a marriage, family, and child counselor if another state revokes, suspends, or otherwise disciplines that licensee. Existing law also provides that the revocation or suspension of a license, or discipline of a licensee in another state constitutes grounds for disciplinary action for unprofessional conduct in this state. Existing law also provides that the board may suspend or revoke the license of a marriage, family, and child counselor for revocation, suspension, or other discipline by the board of a license to practice as a social worker or educational psychologist, or by the Board of Psychology of a license or certificate to practice psychology.

This bill would provide that the Board of Psychology may deny any application for licensure or registration as a clinical psychologist, or may suspend or revoke a license or registration of, and that it constitutes grounds for disciplinary action for unprofessional conduct against, a psychologist if another state revokes or suspends the license, or otherwise disciplines that licensee. This bill would also provide that the Board of Psychology may deny any application for licensure or registration or suspend or revoke a license or registration to practice psychology if a board established under the law regulating healing arts licentiates, or an equivalent licensing agency of another state, has revoked, suspended, or taken other disciplinary action against a person licensed to practice any of the healing arts. The bill would require the grounds for the action to be substantially related to the qualifications, functions, or duties of a psychologist or psychological assistant.

Ch. 385 (SB 1911) Kopp. Unfair business practices.

(1) Existing law provides for the enforcement of laws regarding unfair competition by authorizing injunctive actions to be prosecuted by the Attorney General, district attorney, county counsel, or city attorney or prosecutor, as specified.

This bill would provide that actions for any relief may be prosecuted by the Attorney General, district attorney, county counsel, or city attorney or prosecutor, as specified.

(2) Under existing law, acts of unfair competition may be enjoined and are also subject to prescribed civil penalties in an action brought by the Attorney General, a district attorney, or, in specified cases, a city attorney or prosecutor or county counsel. These actions for injunction may also be brought by any person or organization. Existing law provides similar remedies in provisions dealing primarily with unlawful advertising.

This bill would require the person who initiated such an action to notify the Attorney General, as specified, whenever there is in issue in any action before the California Supreme Court, any court of appeal, or any appellate department of the superior court, any violation of the above provisions.

Ch. 386 (SB 1976) Rogers. Occupational safety and health: statistical reports.

Existing law requires the Division of Labor Statistics to complete, and make available to the public, no later than July 1 of the following year, an annual report containing statistics on California work injuries and occupational diseases and fatalities by industry classification.

NOTE: Superior numbers appear as a separate section at the end of the digests.

State of California Department of Consumer Affairs

MEDICAL BOARD OF CALIFORNIA
1426 HOWE AVENUE
SACRAMENTO, CA 95825-3236
(916) 920-6393

February 20, 1992

The Honorable Quentin L. Kopp
Member of the Senate
State Capitol
Sacramento, California 95814

Attention: Dan Friedlander
Chief of Staff

A

Dear Senator Kopp:

I am writing to respectfully request on behalf of the Medical Board of California that you introduce two bills that will improve the protection of the public and combat misleading medical advertising.

Yesterday I had the pleasure of visiting with Dan Friedlander, who was kind enough to listen to me outline the basic idea behind our "truth in advertising" proposal. I did not have the opportunity to completely set forth the provisions of the other bill. I will do so here.

First, you may wonder why we have made this request to you so close to the deadline for introduction of bills. The reason is that we originally worked with the staff of the Business and Professions Committee on a series of proposals which would strengthen the Medical Board in its efforts to protect the consumers. Early last month our proposals were developed to the point that we formally requested that the Chairman of the B&P Committee, Senator Boatwright, carry our legislation. Last week, we were informed that the Senator will be unable to do so, given the press of other business, including his imminent run for Congress. B&P Committee staff had already obtained drafts of the legislation from Legislative Counsel, which are ready for introduction. The staff suggested that we combine measures of a similar nature into consolidated proposals and look for other authors.

Second, given the pressures of time, it is my intention in this letter to clearly set forth what we perceive to be any controversial areas in either of these bills so that you can make a decision with a minimum of staff research. This is what our two bills would do:

Medical Quality

This measure would improve the effectiveness and efficiency of the medical investigations conducted by this Board. It would allow the Board to act more quickly to protect the public. The bill would have four components:

- Establish a 15-day compliance deadline to transmit copies of medical records to the Board. At present, the Board's only recourse in a doctor's noncompliance with a request for records is to obtain a court order. This wastes valuable staff time in obtaining records (ultimately obtained anyway through the courts) and only serves to delay discipline of the offending physician.

- Include Board investigators in "undercover wire" recording law to enable the Board to authorize investigators to wear an undercover "wire" while conducting investigations, primarily involving fraud, drugs, sexual abuse and unlicensed practice.

- Make practicing medicine while intoxicated a crime. At present, an investigator finding a physician practicing while obviously intoxicated has no authority to immediately intervene as no crime has been committed.

- Restore authority of Medical Quality Review Committees to make final decisions in petition cases. The Division of Medical Quality (DMQ) must now review and make final decisions on all MQRC petition cases. The previous system was more efficient, and allowed the DMQ to retain petition review in selected cases.

Physician Specialty Advertising

This bill would do two things:

- Require physician advertising to include the full name of the specialty board to which

membership is claimed. A loophole exists that is in need of closing. Without clarification, present law allows physicians board certified in dermatology, for example, to advertise that they specialize in surgery and are board certified, implying that they are certified in surgery. This is misleading to the public and contrary to the intent of recently enacted legislation (SB 2036, McCorquodale).

- Allow the Medical Board to collect a fee to recover the costs of reviewing specialty boards. The Medical Board must approve non-ABMS specialty boards for the purpose of specialty advertising. There was no provision in the law (SB 2036) to recover the costs incurred for this service.

What does the California Medical Association think of these proposals?

On the **medical records** language, the California Medical Association expressed its concern. They believe that the Board should not have access to medical records of any persons other than actual complainants. They did not express open opposition to the idea of a deadline for submission of records. The Board decided that it wanted to proceed with the proposal because there are many instances where patients other than the initial complainant will agree to cooperate with our review of the physician's practice, allowing us to review their medical records, but who do not wish to formally come forward as a complaining witness.

With respect to the **undercover wire** proposal, the medical association has long felt that we should leave the law alone. They believe that requiring the Medical Board's investigators to seek approval from other law enforcement agencies serves as a check against abuse of the privilege. The Board wishes to proceed with the bill, because if local police departments have this independent authority, then the investigators who are assigned to the Medical Board, and who themselves are police officers, should have it also. At the present time, arrangements for undercover recording are complicated, involving the permission of the Attorney General's office, the local district

attorney, or the local police department, and then our investigators must wait to borrow equipment that is owned by one of these entities. In other words, there is no legal issue as to whether our investigators can do undercover recording - there is only the hassle of putting the authority in effect. Health insurance and workers compensation fraud, illicit drug distribution, sexual abuse - in all of these areas, the only way that the Board can get corroborating evidence is often to send in an undercover person posing as a patient. This bill will make it possible for us to proceed without unreasonable delay.

The medical association has also expressed concern over our proposal making it a crime to attempt to render **medical care while intoxicated** from drugs or alcohol. Several years ago, when the Medical Practice Act was recodified to consolidate the unprofessional conduct sections, a number of actions which had previously been designated as misdemeanors became acts of unprofessional conduct. Since that time misdemeanor sanctions have been restored for such actions as tampering with or altering medical records. Practicing while intoxicated, however, remained an act of unprofessional conduct. If a physician is obviously intoxicated, we believe that a Board investigator should have the power to make an arrest. This would stop the physicians's practice. It would immediately protect the public. At the moment, our only recourse is to seek a temporary restraining order, which, given the current workload of the State Attorney General's office, may take several days. In the meantime, the physician has sobered up and can make a decent appearance in court. (Of course the physician continued to practice in the meantime.) If intoxicated practice were a misdemeanor, the individual could be booked right away.

The change relative to **Medical Quality Review Committees** was of little apparent interest to CMA. It is designed to enable the Board's Division of Medical Quality to focus on a very large workload of hearings and deliberations on current cases, and to shift the review of individual doctors' petitions to the Medical Quality Review Committees (MQRCs) that exist throughout the State. These petitions involve, for example, reducing probation for good behavior. The committees had this responsibility until January 1, 1991. With implementation of SB 2375 of 1990, the MQRC's review of petitions ended. The new statute clarified the Division's responsibility to issue all orders concerning medical misconduct. Inadvertently, the process whereby doctors petitioned the Board to have **prior** disciplinary orders revised was shifted from the MQRCs to the Division. This change was inadvertent. It had not been sought by the proponents of SB 2375. Unfortunately all it did was to add to the workload

burdens now faced by the Division, at a time when we are seeking to accelerate the pace of physician discipline. The MQRCs have for many years heard the petitions in question, and there was no problem with the efficiency or quality of this effort. In the interests of a fair distribution of work throughout the whole system, the Board wishes to restore the petition provisions to the way they were before.

The CMA also feels that there should be no legislation relative to physicians **specialty advertising**. There was a debate over SB 2036 (McCorquodale) which requires that physicians cannot claim a particular specialty board certificate unless the board is an approved board. The effort was to eliminate "bogus" specialty boards. The Medical Board of California has the responsibility under SB 2036 to review applications from any specialty board that is not nationally recognized to determine whether such a board would be equivalent to the traditional specialty boards. Regulations to implement the law are now in development. The CMA does not wish any bill to be introduced concerning the question of medical specialty boards until after the "dust has settled" and the Board's regulations have been implemented for SB 2036. The Board disagrees. At present a doctor can publish an advertisement implying that the physician is board certified in the specialty area for the type of practice set forth in the ad. All the doctor has to do is say "board certified". He or she does not have to say what board certificate he or she actually holds. Our Board believes it is important for the consumer to know that a physician claiming board certification in a particular type of practice is indeed board certified by the appropriate specialty board. For example, if a physician who is certified in family practice advertises plastic surgery and indicates "board certified" in the ad, this could mislead the consumer into believing that the doctor is board certified in plastic surgery.

I hope this letter is helpful to you. I have attempted to succinctly set forth the proposals we are making and to give you some idea of arguments that have been raised.

We earnestly hope that you will be able to introduce our legislation. Please do not hesitate to call me if I can answer any questions.

Sincerely,

Ken Wagstaff

KENNETH J. WAGSTAFF
Executive Director

KJW/bh

California Medical Association
221 Main Street, P.O. Box 7690, San Francisco, CA 94120-7690 (415)541-0900

Reply to: 1201 K Street, Suite 1050, Sacramento, CA 95814-3906
(916) 444-5532 • FAX: (916) 444-5689

March 10, 1992

The Honorable Quentin Kopp
State Capitol, Room 2057
Sacramento, CA 95814

Dear Senator Kopp:

I recently spoke with Tuyen Ho of your staff regarding Medical Board-sponsored amendments to your bill, SB 1911, which would require physicians and surgeons to who advertise themselves as board-certified to give the full name of the board that has certified them.

While this certainly appears unobjectionable on its face, CMA believes this requirement is unnecessary and will have the unintended effect of placing certain practitioners at a competitive disadvantage with others who practice in the same specialty area.

There is currently no problem with consumers being misled, by say, a physician board-certified in psychiatry advertising himself as "board-certified, specializing in brain surgery" or cardiology or some other practice area far afield from his own specialty training. If such advertising did occur, the Medical Board already has ample authority to prohibit such advertising as misleading under existing law.

The controversy arises in the area of what is generically called "plastic surgery". Here we have a situation where physicians certified in several different specialties, by virtue of their training programs, all have a completely legitimate claim to advertise themselves as plastic or cosmetic surgeons. Board-certified otolaryngologists, dermatologists, and ophthalmologists are all trained in facial plastic surgery. These practitioners certified by boards with the older, Greek designations believe that they would be placed at a disadvantage vis-a-vis the "newer" boards with English titles (i.e. American Board of Plastic Surgery) if they are required to include those board names in all of their advertisements.

CMA worked hard at achieving a compromise on the physician advertising controversy in 1990. That compromise resulted in the passage of SB 2036 (McCorquodale) which will give the Medical Board a much broader authority to deal with "bogus boards" and deceptive physician advertising. The Medical Board is in the process of developing regulations to implement SB 2036, and we have great hopes that consumer protection will thereby be enhanced.

We believe that absent any demonstration of public harm, it is unnecessary and premature to legislate an advertising requirement, the likely effect of which will be to aid one side in what is arguably a "turf" war.

I would be happy to discuss our concerns with you or your staff in greater detail.

Sincerely,

Tim Shannon

Timothy J. Shannon, Jr.
Associate Vice President
Government Relations

TS>bk3.10.92a

SB 1911 ✓ amendments desired

California Cable Television Association

4341 PIEDMONT AVENUE
P.O. BOX 11080
OAKLAND, CALIFORNIA 94611

(510) 428-2225
FAX (510) 428-0151

Reply to:
1121 L STREET, SUITE 209
SACRAMENTO, CALIFORNIA 95814

(916) 446-7732
FAX (916) 446-1605

Senior Vice President
DENNIS H. MANGERS

APR 10 1992

A

April 10, 1992

The Honorable Quentin L. Kopp
California State Senate
State Capitol Room 2057
Sacramento, CA 95814

Dear Senator Kopp:

On behalf of the California Cable Television Association's Legal Committee, I am writing to ask for consideration of amendatory language to your SB 1911, Home soliitation contracts.

As currently written, this legislation would preempt the prerogative of a cable operator from conducting an "instant install" campaign - an increasingly demanded option where cable subscribers are provided cable service the same day upon which they place the order. As this practice is the standard operating procedure for many of our members, your proposal as presently drafted would virtually double the operational costs for installing cable service by virtue of requiring at least two distinct visits to each customer's home. Our membership feels strongly that some amendatory language allowing for the provision of cable and other entertainment/informational services to be provided immediately upon request would be in the general public's best interest regarding customer service.

We thank you for your attention in this regard, and hope you understand our concern in this measure. Should you have any questions or need any additional information, please call me.

Sincerely,

Dennis Mangers
Senior Vice President

Serving Over 5,500,000 California Families

Amway Corporation, 7575 Fulton Street East, Ada, Michigan 49355-0001
Legal Division

April 15, 1991

The Honorable Bev Hansen
State Assembly Member
State Capitol, Room 3151
Sacramento, CA 95814

Subject: Assembly Bill 585 / Home Solicitation Sales

Dear Assembly Member Hansen:

Amway Corporation is opposed to Assembly Bill 585 and I wished to explain the reasons for our opposition.

As you may know, Amway distributors offer hundreds of home care and personal care products to consumers through home solicitation sales in California. Amway distributors must provide the three-day cancellation notice presently required by California's Home Solicitation Sales Act. Assembly Bill 585 would require a fourteen-day cancellation notice for sales to senior citizens and the developmentally disabled.

Assembly Bill 585 would require the development, printing and distribution of a separate set of forms for a particular customer group, and special instruction to our sellers on compliance. Because it is not always intuitively obvious whether one is developmentally disabled or a senior citizen, there is a substantial likelihood of inadvertent violations. Compliance with the existing requirements is fairly simple and inexpensive for Amway distributors and others, but Assembly Bill 585 seriously complicates those requirements.

While Assembly Bill 585 imposes considerable obligations on direct sellers, such as Amway distributors, it is unlikely to successfully deter the fraud at which it is aimed. Con-artists will not provide the required notice, or they will provide it with great fanfare, only to disappear after the sale. The notice will not be required for methods of sale other than home solicitation, which is not the most common or prominent environment for fraud. In fact, the Home Solicitation Sales Act was never intended to deter fraud, but was intended to allow a buyer a brief time for reflection without the presence of the salesperson.

Assembly Bill 585 is also contrary to the prevailing policy in California to set cancellation notice requirements at three days. The State of California has adopted a variety of statutes imposing cancellation notice requirements including the California Dating Service Contracts Act, the California Weight-loss Contracts Act, and the California Seminar Sales Solicitation Contracts Act. In each case, the cancellation notice is three business days. Amway Corporation certainly believes home solicitation sales should not be accorded a lesser status by state law.

FAX (616) 676-9027

Of course, California law already provides a panoply of protections and remedies to consumers, including senior citizens and the disabled. In particular, the Consumer Legal Remedies Act not only provides generally for actual and punitive damages, restitution, and injunctive relief, but also stipulates a $5,000 damage penalty for fraudulent or unconscionable practices directed toward senior citizens or the disabled.

Finally, it is my understanding that the concern giving impetus to Assembly Bill 585 was improper conduct in the sale of medical devices and emergency medical response systems. The California Pharmacy Law requires, among other things, that sellers of medical devices be licensed. The Medical Device Retailers Act further regulates the sale of medical devices, and is scheduled for full implementation on July 1, 1991. Arguably, the State Department of Health Services already has the authority to deal swiftly with improper conduct in the sale of such devices.

Specifically with regard to the sale of emergency medical response systems, the Department could adopt regulations declaring such systems to be a "device" under the California Pharmacy Law, or legislation could be introduced to achieve that objective. Such legislation would be more narrowly tailored to the problems sought to be addressed, and would not needlessly impact on direct selling companies. For this reason, I respectfully ask that you consider a substitute to Assembly Bill 585 which would focus attention more directly on such devices.

Thank you for your attention to our concerns.

Very truly yours,

John H. Brown
Senior Corporate Counsel

JHB1298:jb

Amway Corporation, 7575 Fulton Street East, Ada, Michigan 49355-0001
Legal Division

April 15, 1991

The Honorable Bev Hansen
State Assembly Member
State Capitol, Room 3151
Sacramento, CA 95814

Subject: Assembly Bill 585 / Home Solicitation Sales

Dear Assembly Member Hansen:

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FAX (616) 676-9027

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Thank you for your attention to our concerns.

Very truly yours,

John H. Brown
Senior Corporate Counsel

JHB1298:jb

Amway Corporation, 7575 Fulton Street, East, Ada, Michigan 49355-7410
Legal Division

April 16, 1992

The Honorable Bill Lockyer
California State Senate
2032 State Capitol
Sacramento, CA 95814

Subject: Senate Bill 1911 / Home Solicitation Contracts

Dear Senator Lockyer:

Amway Corporation is opposed to Senate Bill 1911 as it relates to home solicitation contracts. I understand Senate Bill 1911 has been referred to the Senate Judiciary Committee.

Thousands of Amway distributors offer Amway's wide variety of home care, personal care, and catalog products to their customers through home solicitation sales. Such sales require that the customer be provided a three-day cancellation notice and this identical requirement exists in all 50 states. If the customer is dissatisfied with the purchase, or has simply had a change of mind, the customer can cancel the sale within three days of receipt of the notice. The seller must arrange to pick-up the product and refund any payment received from the customer.

Senate Bill 1911 would now make it unlawful for direct sellers such as Amway, Avon, Mary Kay, Tupperware, Shaklee and others to deliver their products at the same time they provide the order receipt which explains the three-day cancellation notice. Instead, Senate Bill 1911 would command that the Amway distributor or Avon representative, for example, deliver the cancellation notice and then return three days later with the products. This is good for neither the customer nor the seller. It needlessly complicates home solicitation sales by direct sellers, and would disrupt the national standard which presently exist for such sales.

Apparently, the genesis for Senate Bill 1911 is home improvement contractors who begin construction on the home prior to expiration of the cancellation period thus complicating efforts to rescind the contract. Existing law makes it clear that contractors who begin their work before the cancellation period has expired do so at their own risk. Nonetheless, if a problem truly exists in this area that must be corrected, it should be addressed under the laws dealing with home improvement contractors, not direct sellers.

Thank you for your consideration.

Very truly yours,

John H. Brown
Senior Corporate Counsel

FAX SHEET INFO

Date April 20, 1992 SHAKLEE FAX # 954-2155

To Tuyen Ho

Where Sen. Kopp

Telecopier Number 916-327-2186

A

From EVIE JARVIS-FERRIS

Shaklee Department & Phone Number GOVERNMENT RELATIONS = 954-2016

Number of pages being sent including this header 2

Problems receiving?? Plz call (415) 954-2031

To: Ron Reiter

As a follow up to our conversation I have reviewed the California Business and Professions Code, Section 7159 dealing with requirements for home improvement contracts. I suggest that SB 1911 be amended to focus on where the primary problems exist, that is in the home improvement sales area. I therefore recommend for your consideration the following language.

Section 7159 (n)

In the case where the home improvement also constitutes a home solicitation sale as defined in Section 1689.5 of the Civil Code, no services shall be performed and no materials shall be delivered or offered until the cancellation period provided in Section 1689.7 has expired unless the buyer waives the right of cancellation.

Additionally if you feel it is necessary to extend this provision as well to the sale of emergency alarm products even though they are subjected to a 7 day cooling off period, Section 1689.7 of the Civil Code should be amended to include a similar provision.

I look forward to discussing this further with you.

Jarvis-Ferris
Director, Government Relations
Shaklee Corporation

cc Tuyen Ho

SACRAMENTO ADDRESS
STATE CAPITOL
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ATSS 8-485-0503

DISTRICT OFFICES
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California State Senate

COMMITTEES
TRANSPORTATION, CHAIRMAN
HOUSING & URBAN AFFAIRS
LOCAL GOVERNMENT
REVENUE & TAXATION
TOXICS & PUBLIC SAFETY MANAGEMENT

STATE SENATOR
QUENTIN L. KOPP
EIGHTH SENATORIAL DISTRICT
REPRESENTING SAN FRANCISCO AND SAN MATEO COUNTIES

DATE: April 29, 1992 TIME: 2:45 p.m.

TO: John Wilson NO. OF PAGES: /2
(INCLUDING THIS PAGE)

AT: (415) 363-4873

FROM: Tuyen

If you have not received all pages in this transmission, please contact the office of Senator Quentin Kopp at (916) 445-0503.

John,

I attach amendments proposed by Shaklee Corporation and the Direct Selling Association. Evelyn of Shaklee expressed frustration because no one from CDAA has responded to her suggestion. Please fax a copy to the other two participants from the DA's office so that they are aware and prepared for the discussion tomorrow.

Thanks,

Tuyen

Action Needed Bulletin
FAST-BREAKING LEGISLATIVE DEVELOPMENTS REQUIRING YOUR IMMEDIATE RESPONSE
DIRECT SELLING ASSOCIATION • 1776 K STREET, N.W. • WASHINGTON, DC 20006 • (202) 293-5760

April 30, 1992

California Senate Bill 1911
Home Solicitation Sales/"Cooling Off"
Position: Opposed

DESCRIPTION: This bill would fundamentally alter the direct seller to customer relationship in California in two central ways. First, all direct selling companies would be required to change their notices of cancellation (most frequently found on the back of their customer receipts) to reflect the proposed change in the law. Secondly, many direct selling companies and their direct sellers who perform any services whatsoever or who deliver good(s) the total price of which exceed $500, will be prohibited from rendering those services or delivering those goods during the "cooling off" period. The bill is being introduced at the behest of the California District Attorney Association which has related anecdotal consumer protection concerns. Efforts to resolve our differences have been unsuccessful and it is now vital that we express our opposition to the committee in anticipation of the bill's first hearing.

STATUS: The bill is scheduled to be heard in the Senate Judiciary Committee at 1:30 p.m., on Tuesday, May 5. DSA and member company representatives will be there to personally oppose S.B. 1911. It is critical that all members of the committee and the sponsor hear from you about the unwarranted and unjustifiably broad scope of this bill and its negative impact on the direct selling industry.

ACTION NEEDED: Telephone calls from companies to the sponsor and all members of the committee (their names and telephone numbers are listed below) are vital. In addition and wherever possible, it would be very helpful for a number of your key California distributors to contact their respective Senators expressing personal opposition to S.B. 1911 as one of their constituents. Lastly, corporate letters of opposition delivered by express mail to the Senate Judiciary Committee in anticipation of the hearing or shortly thereafter to develop the hearing record are also urgently requested. Some arguments that you may wish to use in expressing your opposition to the bill include:

- The existing three day cooling off law, which exists not only in California but in every other state in the country, is working well and there is no need to change the current rights and responsibilities of customers and the direct sellers alike. Existing law protects customers by allowing them to cancel a sale whether or not products have been delivered. S.B. 1911 would actually act as a disservice to the consumer, who would have to wait longer before enjoying the use of the product he has purchased.

• Because most, if not all, direct selling companies are national marketers, developing a state-specific form that can only be used in one state is highly undesirable. The costs of printing California-specific contract forms along with the costs of training corporate and distributor personnel about the ramifications of the new law would be substantial.

• A three day prohibition on being able to render any service or delivering any product exceeding $500 during the first three days would fundamentally alter the nature of the direct selling industry. The ability to demonstrate and explain products and hopefully to sell them on the spot is time honored.

Please telephone or express mail the sponsor, chairman and other members of the Senate Judiciary Committee listed below before Tuesday, May 5 or shortly thereafter while the hearing record remains open. To voice your opposition to the bill as drafted, please contact the members of the Senate Judiciary Committee listed below:

Senate Judiciary Committee
Room 2032
State Capitol
Sacramento, CA 95814

Member	Telephone Number
The Honorable Bill Lockyer (Chairman)	(916) 445-6671
The Honorable Ed Davis (Vice Chairman)	(916) 445-8873
The Honorable Charles Calderon	(916) 327-8315
The Honorable William A. Craven	(916) 445-3731
The Honorable Tim Leslie	(916) 445-5788
The Honorable Milton Marks	(916) 445-1412
The Honorable Nicholas C. Petris	(916) 445-6577
The Honorable Robert B. Presley	(916) 445-9781
The Honorable David Roberti	(916) 445-8390
The Honorable Ed Royce	(916) 445-5831
The Honorable Art Torres	(916) 445-3456
The Honorable Diane Watson	(916) 445-5215
Sponsor	
The Honorable Quentin L. Kopp	(916) 445-0503

If you need more information contact the DSA legislative department at (202) 293-57o0. Ask for Mario Brossi, Joe Mariano or Keith Hancock. Please send copies of your correspondence to DSA.

Anne Crews
Manager, Corporate Affairs

SB 1711
oppose

May 1, 1992

The Honorable Quentin L. Kopp
California Senate
State Capitol Partisan
Sacramento, CA 94248-0001

Dear Senator Kopp:

On behalf of Mary Kay Cosmetics and its independent salesforce in California, let me express opposition to your S.B. 1911 as it is related to home solicitation sales contracts. As you know, the bill will be heard by the Senate Judiciary Committee.

Its language prohibits a seller of goods or services, such as a Mary Kay Beauty Consultant offering quality skin care and glamour products, from delivering any of those products until three days have elapsed.

Many of these entrepreneurs work part-time to earn extra income for their families. They either conduct a skin care class in the home of a friend who invites four to five other friends, or an individual facial at the request of a friend. The Beauty Consultant usually has Mary Kay product available at these appointments. The sale and delivery of a desired product usually occurs at the skin care class or the facial. Or, a Beauty Consultant would deliver the product at a later date. Either way, the customer receives a Mary Kay sales ticket with product delivery. The back of the sales slip informs customers of their right of cancellation via the three day cooling off law. The same Mary Kay sales slip is used throughout the country.

The Mary Kay salesforce is informed and educated, through training and literature, about the cooling off law. We believe current cooling off laws are working for both the Mary Kay salesforce and their customers.

Because they are independent business people, the amount of a Mary Kay sale to a customer is as varied as our salesforce. What is consistent is the desire of the customer and the Beauty Consultant to obtain the product, if available, at the skin care class or facial. S.B. 1911 would put a huge burden on Mary Kay Beauty Consultants. Having to wait three days to deliver the product would frustrate customers and the salesforce. Also, a separate Mary Kay sales contract would have to be developed and printed for sales in California, spelling

Mary Kay Cosmetics Inc.
8787 Stemmons Freeway
Dallas, Texas 75247-3794
214-630-8787

out the three day waiting period. Furthermore, Mary Kay Beauty Consultants have no territories. If a California-based Beauty Consultant sells product to a customer in Texas, which sales slip will be used?

We understand that this bill aims at problems with home improvement contractors and not direct salespeople such as Mary Kay Beauty Consultants. Needed legal remedies, therefore, must focus on the problem and not disrupt activities of an entire separate industry such as direct sales.

Mary Kay Cosmetics hopes that an accommodation can be reached to address the actual problem. In the meantime, we must oppose your bill.

Thank you for your time.

Sincerely,

Anne Crews

Anne Crews, Manager
Corporate Affairs

MARY KAY COSMETICS, INC.

AC;mh

Hillestad
SIGN OF QUALITY

May 1, 1992

Honorable Bill Lockyer
Chairman of the Senate Judiciary Committee
Room 2032 State Capitol
Sacramento, CA 95814

RECEIVED
MAY 06 1992
Ans'd.....

Dear Honorable Senator:

I wish to express my opposition to S.B.#1911. This bill would alter the direct seller customer relationships. First, direct selling companies would be required to change the notices of concellation to reflect the proposed change in law. Secondly, many direct selling companies and their repres that perform any services whatsoever or who deliver good(s) of over $500, will be prohibited from rendering services or delivering goods during the 'cooling off' period.

Specifically I am in opposition of the proposed Senate Bill #1911 because of the following reasons and concerns:

*The existing three day cooling off law, which exists not only in California, but in every other state in this country, *is working well!* Therefore, I see no need to change the current rights and responsibilities of customers and the direct sellers alike. The existing law *protects the customers now* by allowing them to cancel a sale whether or not the product has been delivered. Senate Bill #1911 would actually act as a *disservice to the consumer*, who would have to wait longer before enjoying the use of the product he has purchased.

* Because we are a national marketer, developing a state-spcific form that can only be used on one state is highly undesirable. The costs of printing California-specific contract forms along with the costs of training corporate and distributor personnel about the ramifications of the new law would be substantial.

*A three day prohibition on being able to render any service or delivering any product exceeding $500 during the first three days would fundamentally alter the nature of the direct selling industry. The ability to demonstrate and explain products and hopefully to sell them on the spot is time honored.

Please oppose the proposed the Senate Bill #1911, it is unwarranted and unjustifiably broad in scope and it will have a negative impact on the direct selling industry as a whole.

Sincerely,

THE PAMPERED CHEF

205 Fencl Lane • Hillside, IL 60162 • 708/449-3906 • Fax 708/449-2941

May 1, 1992

The Honorable Bill Lockyer
Senate Judiciary Committee
Room 2032
State Capital
Sacramento, CA 95814

Dear Senator Lockyer:

The Pampered Chef is a direct selling company and we sell quality kitchen products throughout the United States.

Our sales in California are growing at a rapid pace, which not only means increased sales tax revenue, but increased job opportunities as well.

The Pampered Chef is strongly opposed to Senate Bill 1911. Home Solicitation Sales. "Cooling Off".

I urge you to vote "NO" on California Senate Bill 1911.

Sincerely,

George R. Pluister
Controller

jat

AVON

Avon Products Inc
One West Fifth Seventh Street
New York, NY 10019-2083

May 1, 1992

The Honorable Bill Lockyer, Chairman
California Senate
Judiciary Committee
2032 Capitol Building
Sacramento, CA 94248-0001

Dear Chairman Lockyer:

Re: Senate Bill 1911 - Home Solicitation Sales

We are writing in opposition to S. B. 1911, scheduled to be heard by the Judiciary Committee on May 5th. It is our understanding that S. B. 1911 would amend the existing cooling-off law to prohibit delivery of products until after the expiration of the three day cancellation period.

This legislation inadvertently poses problems for the majority of reputable direct sellers such as the thousands of Avon Representatives selling to consumers in California, who, as far as we know, are not the subject of any complaints. Of primary concern would be the obligation to print different disclosure sections on the right to rescind orders for California consumers only, rather than the nationally accepted FTC language. Since the average customer order ranges from $10 to $15, this unnecessary expense would ultimately be passed on to consumers.

The Avon Guarantee provides the customer with the ultimate in consumer protection since the guarantee is not limited to any time frame. It states: "If for any reason whatsoever an Avon product is not found satisfactory, it will be cheerfully exchanged or the full purchase price will be immediately refunded upon its return to us or to your Representative".

Therefore, we offer the following amendment:

> "This section does not apply if the consumer's right to cancel the order, refuse delivery, or return the goods without obligation or charge is clearly and legibly printed on the face or reverse side of the sales ticket or clearly and legibly printed in or on the package".

This amendment allows money back guarantees to function as alternative compliance to the notice requirements of S.B. 1911, offering far more consumer protection than a 3 day cooling-off period. This type of amendment is in effect in several states, namely Arkansas, Nebraska, New Hampshire, Tennessee, Virginia and Vermont.

I hope that the above amendment can be considered by the Judiciary Committee to obviate unnecessary costs and problems which would otherwise be placed on companies such as curs should S.B. 1911 be passed as currently written.

Sincerely,

Mary Ann Dirzis

Mary Ann Dirzis
Director
Government Affairs

MAD/cj

cc: Senate Judiciary Committee

M.D.H. DISTRIBUTORS

KIRBY COMPANY OF STOCKTON
7720 Lorraine Ave. Ste. 108
Stockton, CA 95210
(209) 951-3355

5/1/92

Senate Judiciary Committe
Room 2032
State Capitol
Sacramento, Ca. 95814

Ref. California Senate Bill 1911
Nome Solicitation Sales/"Cooling Off"
Position:Fervently Opposed!

It has been asked why business is leaving California?
This bill is simply another example of the over regulation,over taxation, and consistent harrassment California business is forced to attempt to operate within.
Should this bill pass, we will leave with our multi-million dollar business , which currently supplies work for over 100 people in our market alone.
These people earn a good living by the direct sale of quality Kirby products to the consumer.
Each pays substantial State and Federal income taxes. The sales tax alone generated by our business exceeds $150,000.00 annually, and frankly I am disgusted, that the most beautiful State in the Union, has forgotten what has made it what it is!
The effect of this bill would be as follows.
First, the consumer wants delivery of the product purchased at the time of sale, not three days later.
They wish to purchase what they see, as sometimes a concern is that the unit delivered later may not be of the same quality.
Also, the desire to use the product right away is intense; as the benefits of our product are enjoyed by the consumer immediately.
The current existing law is working (3-day), satisfactorily, so why change it?
The financial burden of rewriting our contracts again is unacceptable.
A change of this sort would destroy one of the only remaining avenues of self employment, where an average person, with honest hard work, can become a part of the American dream.
This would drive another big California business "OUT".

NO ON SB 1911

Marc D. Hoaglund
Owner and Tax payer.

SB 1911 ✓
oppose

natural world

Natural World Incorporated Glenbrook Industrial Park 652 Glenbrook Road Stamford, CT 06906
Fax: 203 961 8646 Tel: 203 356 0000

May 1, 1992

The Honorable Quentin C. Kopp
Sponsor
Senate Judiciary Committee
Room 2032
State Capitol
Sacremento, CA 95814

Dear Mr. Kopp,

Natural World, a direct selling company based in Stamford, CT is opposed to the proposed Senate Bill 1911 for the following reasons:

1/ The existing three day cooling off period which exists in all states has worked very well. The law protects the customer by allowing them to cancel a sale whether or not products have been delivered. The proposed bill will only serve to make the customer wait longer for delivery of the product. The immediacy of products being available for use is important in the direct selling industry.

2/ Most direct selling companies are national, therefore it would be difficult to develop and monitor state-specific forms.

The direct selling industry has based their business for decades on the ability to demonstrate and explain products and hopefully to sell them on the spot. The proposed bill would greatly inhibit this process.

Thank you for considering all of these points when discussing California Senate Bill 1911. This bill could unnecessarily hurt many direct sellers in the state of California.

Sincerely,

Janice K. DeLong
President

ENCYCLOPÆDIA BRITANNICA • NORTH AMERICA

May 1, 1992

5

The Honorable Bill Lockyer
Senate Judiciary Committee
Room 2032
State Capital
Sacramento, CA 95814

RE: California Senate Bill 1911

Dear Senator Lockyer:

The purpose of this letter is to express Encyclopaedia Britannica North America's opposition to California Senate Bill 1911.

We are opposed to Senate Bill 1911 because it would fundamentally alter the direct seller to customer relationship in California in two central ways. First, all direct selling companies would be required to change the notice of cancellation section of their sales contracts to reflect the proposed change in the law. Second, many direct selling companies and their direct sellers who perform any services whatsoever or who deliver merchandise, the total price of which exceeds $500, would be prohibited from rendering those services or delivering those goods during the cancellation period.

We believe that the existing three day cooling off laws which exist not only in California but in every other state in the country, are working well and there is no need to change the current rights and responsibilities of customers and direct sellers alike. Existing law protects customers by allowing them to cancel a sale whether or not products have been delivered. Many direct selling companies have operations that are national in scope and use a standard sales contract. Senate Bill 1911 would increase the cost of doing business by requiring a separate form for use in California as well as additional training regarding compliance with a different cancellation right. Finally, a three-day prohibition on being able to render any services or delivering any product exceeding $500 would fundamentally alter the nature of the direct selling industry because a customer would have to wait longer before enjoying the use of the service or product that was purchased.

BRITANNICA CENTRE
310 SOUTH MICHIGAN AVE CHICAGO IL 60604 4293
A DIVISION OF ENCYCLOPAEDIA BRITANNICA INC

We appreciate this opportunity to express our view regarding Senate Bill 1911. Thank you in advance for your consideration with this matter.

Yours very truly,

Alan M. Komensky
General Counsel

AMK;cp

DIRECT SELLING ASSOCIATION
1776 K Street, N.W., Suite 600, Washington, D.C. 20006
Phone: 202/293-5760 Fax: 202/463-4569

May 1, 1992

The Honorable Bill Lockyer
Chairman, Senate Judiciary Committee
Room 2032
State Capitol
Sacramento, CA 95814

Dear Chairman Lockyer:

I write to you on behalf of the Direct Selling Association (DSA) to express our strong opposition to S.B. 1911, which will be heard by your committee on May 5, 1992. DSA is seriously concerned about the detrimental impact that this bill would have on our hundred member companies and their 300,000 self-employed distributors who sell their products to customers in California. Efforts to narrow and streamline the bill with the proponents of the measure have reached an impasse and DSA must register our vehement opposition to the bill which would unnecessarily alter the fundamental business structure in much of our industry.

DSA is the national trade association that represents companies which market their products primarily through personal explanation and demonstration away from the fixed retail premise (a copy of our membership roster is enclosed). I'm sure you're familiar with the door-to-door and home party plan methods of our membership. Names like Avon, Tupperware, Mary Kay, Shaklee, Amway, Encyclopaedia Britannica and others have become part and parcel of the American marketplace. They are undoubtedly well known to you, your neighbors and friends. Conservatively estimated, at least 300,000 California citizens sold direct last year. Direct selling provides them with an opportunity to help themselves and help their communities at the same time.

S.B. 1911 would fundamentally alter the manner in which hundreds of legitimate companies and thousands of their self-employed salespersons sell consumer products and services in the marketplace. Under existing federal law, in effect since 1974, and similar state laws, in effect since the later 1970's, a consumer today is absolutely entitled to cancel a home solicitation sales transaction within three business days of entering into the contract. DSA and its membership actively supported this legislation which has been in place for almost twenty years and continues to work well today.

The proposed bill, for reasons that are far from clear, would fundamentally alter the rights and responsibilities of both the consumer and the vendor in a home solicitation sales context. It would outrightly prohibit a direct seller from delivering a product order exceeding $500 within the first three days or rendering any service of whatever amount within that same time period. In addition, all

direct selling companies regardless of the price of their products would be required at substantial cost to develop new California-specific notices of cancellation reflecting the requirements of this bill. The practical effects of S.B. 1911 will be to discourage direct selling and would unnecessarily hamper hundreds of thousands of legitimate small businesses in California. Here is just a sampling of the potential problems for direct sellers:

- National marketers, including virtually all direct selling companies today, are hesitant to develop state-specific contracts absent the showing of an overwhelming state need. The American marketplace is a uniform marketplace and a requirement to print special contracts and train corporate and field personnel about the requirements of a state-specific law can be substantial. This was certainly the case in 1974 based on voluminous testimony when the original FTC Trade Regulation Rule Concerning Door-to-Door Sales was enacted.

- Conservatively estimating that each of the 300,000 California direct sellers conduct only one commercial transaction per week, this would result in one and one-half million transactions per year. At a cost of a penny per new cancellation form, this would result in a printing cost alone of $1.5 million, never mind training and other overhead costs.

- Providers of services and sellers of goods exceeding $500 would fundamentally have to alter a method of product distribution that is as old as the Yankee Peddler. High ticket goods such as vacuum cleaners, encyclopedias, cookware and literally hundreds of other products that are sold through direct selling could no longer conveniently be demonstrated and explained to the consumer on the spot. This would unnecessarily alter an effective method of doing business and would prevent consumers from receiving accurate information promptly and courteously.

- The delivery of products or rendering of services exceeding $500 in price would be outrightly prohibited during the initial three day "cooling off" period. This would turn on its head the current and long-existing rule of "caveat vendor" which puts the seller who delivers products within the first three days at the risk of incurring the loss of that product if the buyer changes his or her mind. Existing law fairly apportions the risks and responsibilities in the marketplace.

Given fundamental problems such as these with S.B. 1911, I respectfully urge you to oppose any further action on this bill and to defeat it in committee. While DSA and its member companies have always been committed to addressing valid consumer protection concerns, we are unpersuaded that this proposed bill is deserving of further legislative attention.

Sincerely yours,

Mario Brossi
Vice President and Senior Counsel

cc- Senate Judiciary Committee

mlr
Enclosure

DSA Active Members

As of April 6, 1992

Direct
Selling
Association
1776 K Street, N.W.
Suite 600
Washington, DC 20006
202/293-5760
202/463-4569 FAX

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Act II Jewelry, Inc. - Lady Remington
Bensenville, IL

Alfa Metalcraft Corporation of America
Jacksonville, FL

Aloette Cosmetics, Inc.
West Chester, PA

American Horizons, Inc.
Jacksonville, FL

Amway Corporation
Ada, MI

Art Finds International, Inc.
Miramar, FL

Artistic Impressions, Inc.
Lombard, IL

Avon Products, Inc.
New York, NY

Book of Life
Grand Rapids, MI

Bose Corporation
Framingham, MA

Brite International
Salt Lake City, UT

The Bron-Shoe Company
Columbus, OH

Cameo Coutures, Inc.
Dallas, TX

Chambre' Cosmetic Corporation
San Antonio, TX

Cleveland Institute of Electronics, Inc.
Cleveland, OH

Contempo Fashions (The Gerson Company)
Shawnee Mission, KS

Country Home Collection
Warren, OH

Creative Memories
St. Cloud, MN

Crebel International Corp.
Miami, FL

CUTCO/Vector Corporation
Olean, NY

Diamite Corporation
Milpitas, CA

Discovery Toys, Inc.
Martinez, CA

Doncaster
Rutherfordton, NC

Dudley Products, Inc.
Greensboro, NC

Ekco Home Products Company
Westlake Village, CA

Electrolux Corporation
Marietta, GA

Encyclopaedia Britannica North America
Chicago, IL

Finelle Cosmetics
Lawrence, MA

ForYou, Inc.
Loris, SC

The Fuller Brush Company
Boulder, CO

Golden Pride/Rawleigh, Inc.
West Palm Beach, FL

Heart and Home, Inc.
East Providence, RI

Herbalife International
Los Angeles, CA

Highlights for Children, Inc.
Columbus, OH

Hillestad International, Inc.
San Jose, CA

Home Interiors & Gifts, Inc.
Dallas, TX

House of Lloyd, Inc.
Grandview, MO

Jafra, U.S.A.
Westlake Village, CA

Jeunique International, Inc.
City of Industry, CA

Just America (Tanner Companies, Inc.)
Rutherfordton, NC

The Kirby Company
Cleveland, OH

Kitchen Fair (Regal Ware, Inc.)
Jacksonville, AR

Lady Love Skin Care
Plano, TX

L'Arome (U.S.A.) Inc.
Rock Hill, SC

The Longaberger Company
Dresden, OH

Mary Kay Cosmetics, Inc.
Dallas, TX

Matol Botanical International
Sandy, UT

Melaleuca, Inc.
Idaho Falls, ID

NSA
Memphis, TN

Natural World, Inc.
Stamford, CT

Nature's Sunshine Products, Inc.
Provo, UT

Natus Corporation
Edina, MN

Neo-Life Company of America
Fremont, CA

Noevir, Inc.
Irvine, CA

NonPerre' International, Inc.
Anaheim Hills, CA

Nu Skin International Inc.
Provo, UT

Nutri-Metics International (USA) Inc.
City of Industry, CA

Omnitrition International, Inc.
Carrollton, TX

Oriflame Corporation
North Billerica, MA

The Pampered Chef, Ltd.
Hillside, IL

Parent & Child Resource Center dba Highlights Express
Columbus, OH

PartyLite Gifts, Inc.
Plymouth, MA

Pola U.S.A., Inc.
Carson, CA

Princess House, Inc.
North Dighton, MA

PRO-MA Systems (U.S.A.), Inc.
Longwood, FL

RACHAeL Cosmetics, Inc.
Winter Springs, FL

Regal Ware, Inc.
Kewaskum, WI

Rena-Ware Distributors, Inc.
Redmond, WA

Rexair, Inc.
Troy, MI

Rexall's Showcase International
Fort Lauderdale, FL

Rich Plan Corporation
Yorkville, NY

Rickshaw Collections (Wicker World Enterprises)
Elmhurst, IL

Saladmaster, Inc. (Regal Ware, Inc.)
Dallas, TX

SASCO
Farmers Branch, TX

Shaklee Corporation
San Francisco, CA

Society Corporation
Muncie, IN

The Southwestern Company
Nashville, TN

Stanhome Inc.
Westfield, MA

Tiara Exclusives
Dunkirk, IN

Time-Life Books, Inc.
Alexandria, VA

Tomorrow's Treasures, Inc.
Woodbury Heights, NJ

Tri-Chem, Inc.
Harrison, NJ

Tupperware
Orlando, FL

United Consumers Club, Inc.
Merrillville, IN

Usborne Books at Home
Tulsa, OK

U.S. Safety & Engineering Corporation
Sacramento, CA

Vita Craft Corporation
Shawnee, KS

Viva America Marketing, Inc.
Costa Mesa, CA

May 1, 1992

The Honorable Bill Lockyer, Chair
California Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, CA 94249-0001

Dear Senator Lockyer:

On behalf of Mary Kay Cosmetics and its independent salesforce in California, let me express opposition to S.B. 1911 as it is related to home solicitation sales contracts. The bill will be heard by the Senate Judiciary Committee.

Its language prohibits a seller of goods or services, such as a Mary Kay Beauty Consultant offering quality skin care and glamour products, from delivering any of those products until three days have elapsed.

Many of these entrepreneurs work part-time to earn extra income for their families. They either conduct a skin care class in the home of a friend who invites four to five other friends, or an individual facial at the request of a friend. The Beauty Consultant usually has Mary Kay product available at these appointments. The sale and delivery of a desired product usually occurs at the skin care class or the facial. Or, a Beauty Consultant would deliver the product at a later date. Either way, the customer receives a Mary Kay sales ticket with product delivery. The back of the sales slip informs customers of their right of cancellation via the three day cooling off law. The same Mary Kay sales slip is used throughout the country.

The Mary Kay salesforce is informed and educated, through training and literature, about the cooling off law. We believe current cooling off laws are working for both the Mary Kay salesforce and their customers.

Because they are independent business people, the amount of a Mary Kay sale to a customer is as varied as our salesforce. What is consistent is the desire of the customer and the Beauty Consultant to obtain the product, if available, at the skin care class or facial. S.B. 1911 would put a huge burden on Mary Kay Beauty Consultants. Having to wait three days to deliver the product would frustrate customers and the salesforce. Also, a separate Mary Kay sales contract would have to be developed and printed for sales in California, spelling

out the three day waiting period. Furthermore, Mary Kay Beauty Consultants have no territories. If a California-based Beauty Consultant sells product to a customer in Texas, which sales slip will be used?

We understand that this bill aims at problems with home improvement contractors and not direct salespeople such as Mary Kay Beauty Consultants. Needed legal remedies, therefore, must focus on the problem and not disrupt activities of an entire separate industry such as direct sales.

Mary Kay Cosmetics hopes that an accommodation can be reached to address the actual problem. In the meantime, we must oppose this bill.

Thank you for your time.

Sincerely,

Anne Crews

Anne Crews, Manager
Corporate Affairs

MARY KAY COSMETICS, INC.

AC;mh

Scott Fetzer

Via Express Delivery

May 4, 1992

RECEIVED
MAY 05 1992
Ads'd

The Honorable Bill Lockyer, Chairman
Senate Judiciary Committee
Room 2032, State Capital
Sacramento, CA 95814

Re: **California Senate Bill 1911; Home Solicitation Sales/"Cooling Off"**

Dear Chairman Lockyer:

By way of introduction, I am in-house counsel to The Scott Fetzer Company in Westlake, Ohio. I am writing this letter on behalf of The Kirby Company Division of The Scott Fetzer Company, as well as Scott Fetzer's affiliate company, World Book, Inc.

Both Kirby and World Book are in the business of selling, by direct door-to-door solicitation, high quality products for the home and family. The Kirby vacuum cleaner and The World Book Encyclopedia have long been regarded as exceptional products which provide long-lasting value to the people who purchase them. Kirby and World Book are committed to selling their high quality products through direct door-to-door solicitation, face-to-face with the consumer, to ensure the continued opportunity to demonstrate the product for the consumer and provide for the consumer information about the value of the product that would not be available through any other manner of sale.

Both Kirby and World Book are proud of the reputation that they have developed for ethical business practices. Kirby and World Book products are sold by honest, hard-working individuals who have a personal commitment to the ethical selling practices espoused by their companies. While I can certainly understand California's concern about protecting its citizens from unscrupulous individuals and firms less committed to ethical selling practices, I am very concerned that Senate Bill 1911 will have a negative impact on those citizens and on the honest, hard-working individuals whose livelihoods depend on the ability to solicit consumers door-to-door.

There currently exists, under state and federal law, "cooling off" laws, which provide purchasers a right to cancel legitimate commercial transactions within a reasonable period of time. Those laws allow customers to cancel a sale regardless of whether the products have been delivered. On the other hand, S.B. 1911 would force the customer to wait to use and enjoy the product until the expiration of the cancellation period.

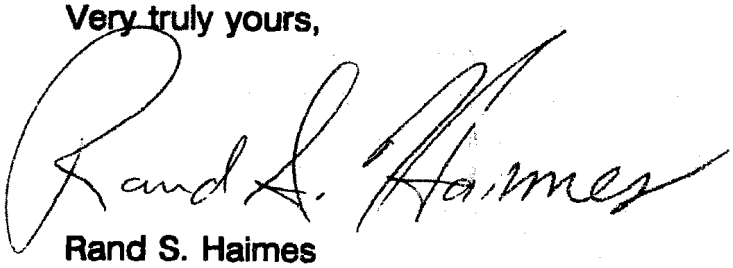
28800 Clemens Road • Westlake, Ohio 44145-1186 U.S.A. • (216) 892-3000 • FAX (216) 892-3060

Not only would S.B. 1911 unduly restrict California citizens by delaying their use and enjoyment of products that they have purchased, it would also unduly burden California salespersons and direct sellers. The ability to demonstrate and explain products and sell them at that time is a cornerstone of our free market economy. In addition, because most direct sellers market their products nationally, the cost of printing forms specifically for use in California and training personnel about the new law would be substantial.

While I recognize the need to protect citizens and to prosecute those who perpetrate fraud and otherwise prey on citizens through unethical selling practices, I believe that there are other existing laws in each state such as California, as well as at the federal level, that may be used for this purpose, without imposing an unnecessary and unreasonable burden on honest people who earn their living through legitimate, ethical direct selling. Accordingly, I urge you to oppose the Bill as currently drafted, and to give due consideration to any amendments offered by the Direct Selling Association which are designed to ensure that legitimate enterprises are not thwarted by otherwise honorable intentions and that the citizens of California are not unduly burdened.

Thank you for your consideration.

Very truly yours,



Rand S. Haimes
Attorney

RSH/clb

cc: F. Gagliardi - World Book Educational Products
W. Phillips - World Book Educational Products
G. Winfeldt - Kirby Company
M. Brossi - Direct Selling Association

James P. Fox, District Attorney
Consumer & Environmental Protection Unit

JOHN E. WILSON
Deputy In Charge

COUNTY OF SAN MATEO
COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063

(415) 363-4656

May 4, 1992

Honorable Quentin Kopp
California State Senate
P.O. Box 94248-0001
Sacramento, Ca 94248-0001

Re: SB 1911

Dear Senator Kopp:

I have enclosed our analysis of the anti-spiking and appeal notification provisions of SB 1911. Representatives of the California District Attorneys Association and several district attorney's offices will be available to testify at the hearing. Thank you again for carrying this legislation.

Very truly yours,

By _____
John E. Wilson, Chair
Consumer Protection Committee
California District Attorneys Association

JEW:mkm

DRAFT

MEMORANDUM

Date: May 4, 1992

To: John Wilson

From: Julia Freis

Re: SB 1911

A

ANTI-SPIKING

CURRENT LAW

Civil Code Section 1689.6 permits a consumer to cancel a "home solicitation contract or offer" until midnight of the third business day after the consumer signs an agreement. Civil Code Section 1689.7 requires that a home solicitation contract or offer contain notice to the consumer of this three-day right to cancel.

Civil Code Section 1689.7 through 1689.11 provide various contingencies for the cancellation of home solicitation contracts as follows:

The consumer will receive his/her money back within ten days upon receipt of a written notice to cancel by the seller.

Upon proper cancellation the consumer must make available to the seller any goods delivered pursuant to the contract. This must be done within 20 days of cancellation, at the residence of the consumer. The consumer must take proper care of the goods before cancellation and during the 20 day period.

If the seller fails to take possession of the goods within 20 days after cancellation, the goods become the property of the consumer without obligation to pay for them.

The seller is not entitled to any compensation for work performed prior to a valid cancellation.

If alterations of the property have already been made, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.

Similar rules apply to "seminar sales" contracts.

THE PROBLEM

Current law is unclear regarding whether a seller of goods or services under a "home solicitation contract or offer" may deliver the goods or perform the services before the consumer's three-day right to rescind elapses. The law neither authorizes sellers to deliver goods or render services during this time period nor does it explicitly bar them from doing so.

The law prescribes rights in the event goods or services are provided by the seller prior to the cancellation period running. However, this can be interpreted as either the Legislature's implicit acceptance of this practice or as the Legislature's recognition that violations would occur and the supplying of a remedy for such violations.

The problem arises when sellers do not wait until the rescission period expires. Sellers frequently "spike the job", that is, they deliver goods and perform services prior to the expiration of the cancellation period. They do this because experience shows consumers are less likely to exercise their right to cancel once delivery of the goods or service has been effected.

Many consumers feel that once a good or service has been delivered they can no longer cancel, either because they think they no longer have the right to cancel legally or because they feel psychologically committed or morally obligated to pay for services rendered or for goods delivered. This is particularly true if those goods have been installed and cannot be easily returned to the seller or if the service has altered the property of the consumer and cannot be easily restored to its original condition. For example, the seller may have sold and installed carpeting or kitchen cabinets, and the consumer fears that the old carpeting or cabinets could never be adequately replaced.

Often consumers subjected to high pressure sales are too intimidated to cancel. They fear that the aggressive sales representative who pressured them into signing the contract will return to pick up the merchandise. Consumers, anticipating further abuse at the hands of the business, will forego exercising their right of rescission to avoid this confrontation.

Since spiking undermines the policy and effectiveness of the rescission right, the Court of Appeal concluded that work could not be performed prior to the expiration of the rescission period. Louis Luskin and Sons, Inc. v. Samovits (1985) 166 Cal.App.3d 533. In Luskin, a plumber brought an action to recover the balance of the

contract price for the replacement of a sewer line installed before the end of the three-day rescission period. Ruling for the consumer, the Court stated that,

> "Section 1689.11 was intended to prevent the seller from defeating the purpose of the statute by performing the contract during the three-day cancellation period thereby pressuring the buyer to pay for the work or find someone else to make the repairs..." 166 Cal.App.3d at 538.

Trial courts have not been uniform in enforcing the statute consistent with Luskin. Moreover, Luskin is uncertain authority in cases involving the delivery of goods, rather than the performance of services, during the rescission period. The Luskin Court relied greatly on Section 1689.11(c) which prohibits any compensation for services performed before the termination of the rescission period. The Court reasoned that since the Legislature prohibited compensation during the rescission period, the Legislature must have intended to prevent the performance of services during the period.

There is no such prohibition against the seller's receipt of compensation for goods. While the consumer maintains a right of rescission, a seller can collect on a contract notwithstanding the consumer's rescission if the consumer fails to tender the goods, in good condition, for return to the seller within 20 days of cancellation.

PROPOSED AMENDMENTS

SB1911 amends Civil Code Sections 1689.6 et seq. to prohibit the delivery of any goods or the performance of any service pursuant to a "home solicitation contract or offer" within the rescission period unless the contract or offer is only for goods that are not going to be attached to real property and the total contract is less than $500.

Civil Code Section 1689.13 which makes inapplicable the three-day right to cancel when the consumer has initiated the contract and the contract is executed in connection with emergency repairs or service is left intact.

Further exemptions may be made for the installation of cable television services.

This amendment is designed to allow consumers to take advantage of the three-day cooling off period without any undue pressure from the seller. As the Legislature recognized with the initial passage of the right to rescind, in home sales presentations tend to be high pressure pitches stressing the urgency for the consumer to purchase at that moment. The cooling off period gives the consumer time to consider the purchase, discuss it with family and friends, read carefully all contracts and other documentation received from the seller, research competitors in the market and make a final decision based on this information gathered.

A

Prohibiting spiking helps assure that the consumer may take full advantage of this cooling off period without interference from the seller and without intimidation or psychological coercion influencing his/her decision.

Certain retail organizations have objected to the prohibition against spiking on several grounds. They object that consumers will not have the opportunity to lay hands on the product prior to the rescission period running, that this actually offers less protection to the consumers.

It is true the anti-spiking provisions were designed to address the problem of high pressure sales tactics prevalent in home solicitations and not the problem of quality control of the product. There are other provisions in the Civil Code and under warranty law that address this issue. Additionally, as the seller is not required to deliver the product or service within the rescission period, allowing spiking does nothing to insure a consumer will be happy with the product they purchased. It only serves to discourage consumers from taking advantage of the protection provided by the right to cancel.

Opponents object that consumers will now have to wait three days to take delivery of products traditionally provided at the end of the sales presentation, such as cosmetics, personal care products, cleaning products etc... The anti-spiking provision does not apply to goods valued at under $500 as long as no installation is required. This effectively exempts the majority of products consumers expect to receive at the close of a sales presentation.

Additionally, most consumers purchasing products valued at over $500 expect a product this expensive will be ordered and delivered at a later date. In these times of rising auto theft and vandalism consumers understand that it is not prudent for a salesperson to carry large amounts of product or high value goods with them.

Finally, retailers object that prohibiting spiking would place an undue burden on the way they conduct business. However, no evidence of this has been provided and it appears that this provision would, at worst, cause retailers some inconvenience.

For the protection provided by the right of rescission to be effective, consumers must actually have three days without pressure of any kind from the seller in which to review their decision to purchase. This bill merely implements measures necessary to ensure that consumers get the full benefit of the protection already accorded them by the Legislature.

NOTICE ON 17200 AND 17500 APPEALS

CURRENT LAW

Current law does not require that the Attorney General or other public prosecutors be informed of appeals or writs taken in cases involving the construction and application of Business and Professions Code Sections 17200 and 17500. Notice must be provided in cases involving facts or issues concerning pollution or adverse environmental effects (Code of Civil Procedure Section 389.6) or antitrust matters. (Business and Professions Code Section 16750.2).

THE PROBLEM

The Attorney General, district attorneys, city attorney, county counsels, and any other person may bring an action for injunctive and equitable relief for violations of Business and Professions Code Sections 17200 and 17500 et seq. Appellate cases impact law enforcement actions regardless of who the plaintiff may be. At times cases are not handled well and parties may advance positions which could undermine theories advanced by prosecutorial agencies. On many occasions, the Attorney General's office has learned of adverse opinions only after they are issued. On some of those occasions, the Attorney General's office and CDAA have successfully obtained modifications or depublications of opinions. Obviously, advance notice of appeal and writ proceedings would enable the Attorney General's office, CDAA, and individual district attorneys' offices to learn of pending appellate issues that could profoundly affect law enforcement activities. We would have the time to evaluate the issues and, when appropriate, intervene or, more likely, submit amicus briefs to present our points of view.

PROPOSED AMENDMENT

This bill amends Business and Professions Code to add Section 17209 and 17536.5. This requires notification to the Attorney General's office and to the respective district attorney's office by the moving party whenever an appeal is brought involving violations of Business and Professions Code Sections 17200 et seq. or 17500 et seq. This notice requirement applies whether the action is brought in the appellate department of a superior court, before the state court of appeal or before the Supreme Court of California.

The moving party shall have three days after the commencement of the appellate proceeding to serve this notice, including a copy of their brief or petition and brief. No judgment or relief, temporary or permanent, may be granted until proof of the service of this notice is provided to the reviewing court.

No opposition to this amendment is anticipated.

HERBALIFE™

HERBALIFE INTERNATIONAL OF AMERICA, INC.
9800 La Cienega Blvd., Inglewood, CA 90301
Mailing Address: P.O. Box 80210, Los Angeles, CA 90080-0210
(310) 410-9600 FAX: (310) 216-7264

May 5, 1992

The Honorable Bill Lockyer
Chairman
Senate Judiciary Committee
Room 2032
State Capitol
Sacramento, CA 95814

Re: Senate Bill 1911
Home Solicitation Sales/"Cooling Off"

Dear Sir:

It has come to our attention that the Judiciary Committee will be debating today the above noted bill. Please be advised that Herbalife International ("Herbalife"), a direct seller of health and cosmetic products, is strongly opposed to it. Herbalife believes that the current three day cooling off law is working well and no need exists to change the current rights and responsibilities of customers or direct sellers.

In addition to being unwarranted, this bill, if enacted, would require the creation and maintenance of special California specific materials and attendant training and/or instructions. Such burdens are completely inappropriate at this time given the troubled economy in our great state.

We urge rejection of this bill.

Sincerely,

Kendall C. Reed
House Counsel

D I S C O V E R Y T O Y S

May 5, 1992

Senate Judiciary Committee
Room 2032
State Capitol
Sacramento, Ca. 95814

Re: California Senate Bill 1911
Home Solicitation Sales/"Cooling Off"

Members of the Senate Judiciary Committee:

Discovery Toys, a member of the Direct Selling Association, would like to express our opposition to Senate Bill 1911, as follows:

1. The existing three day cooling off law, which exists not only in California, but in every other state in the country, is working well and there is no need to change the current rights and responsibilities of customers and the direct sellers alike. Existing law protects customers by allowing them to cancel a sale whether or not products have been delivered. S.B. 1911 would actually act as a disservice to the customer, who would have to wait longer before enjoying the use of the product they have purchased.

2. Discovery Toys, as most other direct selling companies, are national marketers, developing a state-specific form that can only be used in one state is highly undesirable and would cause unnecessary financial hardship on companies. The costs of printing California-specific forms along with personnel training would be prohibitive.

3. A three day prohibition on being able to render any service or delivering any product exceeding $500 during the first three days would drastically alter the nature of the direct selling industry. The ability to demonstrate and explain products and hopefully sell them on the spot is time honored.

We thank you in advance for giving consideration to our concerns.

Sincerely,

Sandy Bergeron

Sandy Bergeron
Legal Liaison

2530 Arnold Drive
Suite 400
Martinez, CA
94553
510·370·7575
FAX 510·370·0289
TLX 650·267·6579

DIAMITE CORPORATION

1625 McCandless Drive Milpitas, California 95035 (408) 945-1000

May 5, 1992

RECEIVED
MAY 06 1992
Ans'd.....

The Honorable Bill Lockyer (Chairman)
Senate Judiciary Committee
Room 2032
State Capitol
Sacramento, CA 95814

Dear Honorable Lockyer:

I am writing regarding the California Senate Bill 1911, Home Solicitation Sales/"Cooling Off." Some arguments that we wish to express in opposition to the bill include:

1. The existing three day cooling off law, which exists not only in California but in every other state in the country, is working well and there is no need to change the current rights and responsibilities of customers as well as the direct sellers alike. Existing law protects customers by allowing them to cancel a sale, whether or not products have been delivered. We feel this law actually acts as a disservice to the consumer, in that, the customer would have to wait longer to enjoy the use of the product he has purchased.

2. Because most, if not all, direct selling companies are national marketers, developing a state-specific form that can only be used in one state is highly undesirable. The costs of printing California-specific contract forms along with the costs of training corporate and distributor personnel about the ramifications of the new law would be substantial.

3. A three day prohibition on being able to render any service or delivering any product exceeding $500 during the first three days would fundamentally alter the nature of the direct selling industry. The ability to demonstrate and explain products and hopefully to sell them on the spot is time honored.

We feel that the above issues are extremely important ones and would appreciate your consideration of these concerns.

Yours truly,

John Ziegler

John Ziegler
Vice President Operations

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VECTOR
Marketing Corporation

May 5, 1992

RECEIVED
MAY 06 1992
Ans'd.....

The Honorable Bill Lockyer
Senate Judiciary Committee
Room 2032
State Capital
Sacramento, CA 95814

Dear Mr. Lockyer,

I am writing on the current legislation that comes before your committee on Tuesday, May 5, and I am specifically referencing S. B. 1911, which is sponsored by The Honorable Quentin L. Kopp.

As a national marketer of high quality cutlery, and a former temporary resident of California, I would like to tell you why I oppose this bill from both sides of a sales transaction.

As a marketer, we currently allow our customers to cancel at anytime within the first three days, by utilizing the notice of cancellation given to them at the time of the sales presentation. This form is universal throughout the United States and to make one language specific to California would be cost prohibitive. If this law passes, it could cause the prices in California to be higher than in other neighboring states. Obviously, higher prices will deter sales and this reduces the sales tax currently being collected and remitted to the state. As I mentioned earlier, we are a high price cutlery marketer and some sales exceed $500. As a company, and to some extent the industry, you will find a greater level of service than the mandatory three day cooling-off period. We currently give the consumer 15 days to try our product and if not pleased they may return it for a full refund. With this type of service, and most of the higher priced consumer items are like this, why deny people the opportunity to get their product as soon as possible.

As a consumer, if I write a check, even if it's not cashed until the product is shipped, I consider the money

spent and I want what I paid for. When I lived in California I felt cheated for having to pay a premium caused by the extra requirements placed on vendors who pass the cost on to the consumers.

I respectfully request that ideally this legislation should be removed from discussion and not become part of the laws of California. If your committee is unable to do this, then please solicit the input of the Direct Selling Association to make it compatible with their code of ethics and what the consumers truly need.

Sincerely,

John W. Whelpley
CFO/Controller

JWW:bjv

xc: Mario Brossi, DSA

U. S. SAFETY & ENGINEERING CORP.

May 6, 1992

RECEIVED
MAY 08 1992
Ans'd.....

The Honorable Bill Lockyer
Chairman
Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, CA 95814

Re: SB 1911 - Home Solicitation Sales/"Cooling Off"

Dear Senator Lockyer:

U.S. Safety & Engineering Corporation, a residential home security business with a network of nationwide distributors and representatives and with our sales headquarter's office based in California, is opposed to SB 1911, which is now being heard in your committee.

The existing three day cooling off law, which exists not only in California but in every other state in the country, is working well and there is no need to change the current rights and responsibilities of customers and direct sellers alike. Existing law protects customers by allowing them to cancel a sales whether or not the products have been delivered. SB 1911 would actually act as a disservice to the consumer, who would have to wait longer before enjoying the use of the product he or she has purchased.

In addition, most direct selling companies are national marketers, and developing a state-specific form that can only be used in one state is highly undesirable. The costs of printing California-specific contract forms, along with the costs of training corporate and distributor personnel about the ramifications of the law would be substantial.

A three day prohibition on being able to render any service or delivering any product exceeding $500 during the first three days would fundamentally alter the nature of the direct selling industry. The ability to demonstrate and explain products and hopefully sell them on the spot is time honored. We respectfully request your "NO" vote on SB 1911. Thank you very much.

Cordially,

H. WAYNE BOYD
President

SB 1911 ✓
oppose

KIRBY COMPANY
Roger's Vacuum Center

P.O. Box 2262 • Livermore, CA 94550 • (415) 449-3049 • Fax (415) 449-0623

MAY 7 1992

5

To Members of the Senate Judicial Committee

Re: California Senate Bill 1911
Home Solicitation Sales "Cooling Off" Period

I would like to go on record as opposing SB1911 because of the following reasons:

The current "Cooling off" law is working well and allows the customer to cancel the sale whether or not the product has been delivered.

The customer is losing their right to have their newly purchased product. And this would seriously alter the nature of the direct selling industry.

Because direct selling companies are frequently national marketers, and developing a state-specific form that can only be used in one state is highly undesirable.

I trust that you will take a closer look at this bill and consider the negative impact it will have on the rights of the customer, the free enterprise system, and the direct selling industry.

Respectfully,

Roger. E. Mantz,
Kirby Distributor

Ands.

SUNRIDER

May 8, 1992

RECEIVED
MAY 13 1992
Ans'd.....

The Honorable Bill Lockyer
Senate Judiciary Committee
Room 2032
State Capitol
Sacramento, CA 95814

RE: [redacted]

Dear Chairman Lockyer:

Sunrider International is opposed to Senate Bill 1911 which was heard by your committee on May 5, 1992. This bill seeks to substantially and detrimentally alter the rights and responsibilities of both the consumer and the vendor in home solicitation transactions.

By way of background, Sunrider International manufactures and distributes a complete line of health foods and cosmetic products and enjoys an excellent reputation worldwide. Thousands of our distributors in California offer these products in a home solicitation sales context. This door-to-door distribution method allows distributors to demonstrate our high quality products and provide valuable information to the consumers face-to-face in a manner not available through other selling methods. Our distributors are honest, conscientious, and hardworking and rely on this selling method for their livelihoods.

Sunrider is very concerned that while legitimate direct sellers such as our distributors are not the target of this legislation, they will be unintentionally and adversely impacted by this bill. The proposed bill would absolutely prohibit distributors from rendering any service or delivering any product exceeding $500 within the initial three-day "cooling off" period. Consequently, SB 1911 would discourage direct selling and needlessly impede our distributors' businesses.

Under current federal and state laws, including California, a consumer is entitled to cancel a home solicitation sales transaction within three business days of entering into the contract. These "cooling off" laws have been in effect for almost twenty years and have been very effective in protecting consumer interests by allowing the consumer to cancel a sale regardless of whether products are delivered. This proposed bill would in effect provide a disservice to the consumer, who would

102/lockyer1.ltr

Sunrider International, 3111 Lomita Boulevard, Torrance CA 90505 (213) 534-4786

SUNRIDER

have to wait longer before enjoying the use of the purchased product. It would also deny distributors the opportunity to demonstrate and explain the products to the consumer at the same time which they sell the product. This would unjustifiably change an effective method of doing business and would deny consumers receiving accurate information in a timely and courteous manner.

Additionally, Sunrider, like almost all direct selling companies, is a national (as well as international) marketer and developing a state-specific form that can only be used in one state is highly undesirable. The costs of printing California-specific contract forms along with the costs of training corporate and distributor personnel about the ramifications of the new law would be substantial.

In view of the deleterious effects that SB 1911 would have, I respectfully urge you to oppose any further action on this bill.

If I may provide further information, please do not hesitate to contact me.

Sincerely yours,

SUNRIDER INTERNATIONAL

Robert C. Katchen

Robert C. Katchen
Senior Associate Counsel

RCK:ks

James P. Fox, District Attorney
Consumer & Environmental Protection Unit

JOHN E. WILSON
Deputy In Charge

COUNTY OF SAN MATEO
COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063

(415) 363-4656

June 17, 1992

Honorable Quentin Kopp
California State Senate
P.O. Box 94248
Sacramento, Ca 94248-0001
FAX (916) 327-2186

Re: SB 1911, DA and AG Appeal Notification in 17200 and 17500 Actions.

Dear Senator Kopp:

I want to take this opportunity to thank you on behalf of my office and the California District Attorney's Association for your authorship of SB 1911. The appeal notification provisions of this bill will be of immense value to law enforcement to preserve the effectiveness of California's most important consumer protection statutes.

As you know, the requirement that the opening brief be served along with the notice of appeal was deleted during the Senate Judiciary Committee hearing. This may have occurred because I failed to adequately explain that in order to determine if an action is required the AG or DA must eventually obtain a copy of the opening brief from the court or the parties. It would seem that the simplest way to accomplish this is to require that a copy of the opening brief be served on the DA and AG with the notice of appeal. If it is possible to amend the bill be reincorporate this language, that would be ideal. I have enclosed possible language to accomplish this.

CDAA's Consumer Protection Committee has recently considered another Section 17200, procedural issue which you may wish to address in an amendment to SB 1911. Occasionally questions arise concerning the proper forum for unfair competition actions. Prosecutors have always taken the position that such actions should be filed in the Superior Court.

A recent decision of the California Supreme Court, Farmers Ins. Exchange v. Superior Court (1992) 2 Cal.4th 377, addressed this issue in the unique context of a 17200 action against an

insurance company alleging violations of Proposition 103. The Supreme Court decided that this was an appropriate case for exercise of the "primary jurisdiction doctrine" whereby a court can stay the civil action pending administrative proceedings before the Insurance Commissioner, in the interests of judicial economy and concern for uniformity in the interpretation and application of complex insurance regulations. The Supreme Court noted that this case required specialized factfinding expertise, that the commissioner had at his disposal a pervasive and self contained system of administrative procedures and that the Legislature had not specifically prohibited the trial court from suspending a matter which is originally cognizable in court until the administrative process is completed.

Consumer prosecutors believe that the Farmers decision only makes sense in the unique context of the insurance industry, which is so complex and so pervasively regulated. It would be an unfortunate misreading of the decision to argue that a trial court should suspend judicial proceedings in 17200 actions involving other businesses, simply because those business may also be subject to a licensing or regulatory scheme. This is especially true given Section 17205 which specifically provides that the remedies available under Section 17200 are cumulative to those available under all other laws of the state.

We believe that a simple amendment to Section 17204 to clarify that 17200 actions shall be prosecuted exclusively in a court of competent jurisdiction, would resolve any possible questions in this area. As we believe that the Farmers decision is directed specifically at the insurance industry, we would not be adverse to an amendment of the Insurance Code to provide that the doctrines of primary jurisdiction and exhaustion of administrative remedies may be applied in appropriate cases involving actions brought under that code. This would not abrogate the holding in the Farmers case, but would forstall potential future arguments to unreasonably extend it. It would, we hope, also address the concerns of groups which might oppose this amendment.

I have taken the liberty of enclosing proposed language to correct appeal notification provisions of SB 1911 and also language which would address the issue of the proper forum for 17200 actions. If you have any questions, or would like further information concerning any of these issues we are available tomeet or talk with you at your convenience.

Again, on behalf of CDAA I would like to thank you for carrying SB 1911 and for your consideration of our proposed amendments.

Very truly yours,

JAMES P. FOX, DISTRICT ATTORNEY

By _____
John E. Wilson
Deputy In Charge
Consumer & Environmental
Protection Unit

Chair, Consumer Protection
Committee, California
District Attorneys Assn.

JEW:mkm

AMENDMENTS TO SENATE BILL NO. 1911
AS AMENDED IN SENATE APRIL 30, 1992

AMENDMENT 1

On page 1 of the printed bill, in the second line of the title, strike the comma, and insert:

and Section 1861.035 to the Insurance Code, and to amend Section 17204 of the Business and Professions Code,

AMENDMENT 2

On page 2, line 1, after "SECTION 1.", insert:

Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for any relief ~~injunction~~ pursuant to this chapter shall ~~may~~ be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2.

AMENDMENT 3

On page 3, line 4, strike "of the appeal", and insert:

thereof, including a copy of the person's brief or petition and brief,

AMENDMENT 4

On page 3, lines 8 and 9, strike "Notice of the appeal", and insert:

The notice, including the brief or petition and brief,

AMENDMENT 5

On page 3, line 16, strike "SEC. 2", and insert:

:C. 3

AMENDMENT 6

On page 3, line 25, strike "of the appeal", and insert:

thereof, including a copy of the person's brief or petition and brief,

AMENDMENT 7

On page 3, lines 29 and 30, strike "Notice of the appeal", and insert:

The notice, including the brief or petition and brief,

AMENDMENT 8

On page 3, after line 36, insert:

SEC. 4. Section 1861.035 is added to the Insurance Code, to read:

1861.035. A court may apply the doctrines of primary jurisdiction and exhaustion of administrative remedies under appropriate circumstances in cases involving the business of insurance that are brought under the laws described in ubdivision (a) of Section 1861.03.

M E M O R A N D U M

Date: June 15, 1992

To: Senator Kopp

From: Tuyen

Re: Update on SB 1577, SJR 1 and SB 1911

SB 1577 Welfare Records and Confidentiality

SB 1577 was scheduled to be heard in Assembly Committee on Public Safety tomorrow, June 16th. The committee consultant has asked to put the bill over for another week to work out some amendments. The consultant will notify us as to the content of the amendments sometime this week.

SB 1911 Unfair business practices and Notice of Appeals

SB 1911 would require notification to the Attorney General's office and to the respective district attorney's office by the moving party appealing an action, involving acts of unfair competition and unlawful advertising.

The California Retailers' Association has contacted the sponsors and requested an amendment be added to SB 1911. Briefly, the amendment would require the AGs and DAs to publish the notice in the California Regulatory Journal.

The sponsors reject that proposed amendment because SB 1911 addresses the issue of assisting law enforcement not public notice. Moreover, the sponsors argue that information regarding notice of appeals is currently accessible through other publications. The responsibility of obtaining information should be assumed by the interested trade associations and not the AGs or DAs. At a time when the budget for the AGs and DAs are being cut, imposing additional responsibility on them is fiscally undesirable.

The sponsors are currently discussing an additional amendment that pertains to the same code section. I have not yet received the background information for your review and approval.

SJR 1 Congressional Pay Amendment

Who do you want to be the Assembly floor jockey for SJR 1? Lempert ? Harvidson ? - Connelly ?

VOLUME 2

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1991–92 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS AND SENATE RESOLUTIONS

CONVENED DECEMBER 3, 1990
ADJOURNED SINE DIE NOVEMBER 30, 1992

DAYS IN SESSION 284

CALENDAR DAYS 728

LT. GOVERNOR
President of the Senate

SENATOR DAVID ROBERTI
President pro Tempore

Compiled Under the Direction of
RICK ROLLENS
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk

28—SFH

S.B. No. 1586—Presley.

An act to amend Sections 12246, 17200, 17203, 17206, and 17536 of the Business and Professions Code, relating to unfair competition.

1992

Feb. 19—Introduced. Read first time. To Com. on RLS. for assignment. To print.
Feb. 21—From print. May be acted upon on or after March 22.
Mar. 5—To Com. on JUD.
April 29—Set for hearing May 5.
April 30—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
May 12—From committee: Do pass as amended. (Ayes 6. Noes 0. Page 5826.)
May 13—Read second time. Amended. To third reading.
May 18—To Special Consent Calendar.
May 22—Read third time. Passed. (Ayes 32. Noes 0. Page 6118.) To Assembly.
May 22—In Assembly. Read first time. Held at Desk.
May 28—To Com. on JUD.
June 25—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
July 2—From committee: Do pass. To Consent Calendar.
July 3—Read second time. To Consent Calendar.
July 7—Read third time. Passed. (Ayes 76. Noes 0. Page 8182.) To Senate.
July 7—In Senate. To unfinished business.
July 10—To Special Consent Calendar.
July 17—Senate concurs in Assembly amendments. (Ayes 32. Noes 0. Page 7085.) To enrollment.
July 21—Enrolled. To Governor at 3 p.m.
Aug. 1—Approved by Governor.
Aug. 3—Chaptered by Secretary of State. Chapter 430, Statutes of 1992.

S.B. No. 1587—Presley.

An act to add Sections 1871.5, 1871.6, and 1871.7 to the Insurance Code, relating to workers' compensation.

1992

Feb. 19—Introduced. Read first time. To Com. on RLS. for assignment. To print.
Feb. 21—From print. May be acted upon on or after March 22.
Mar. 5—To Com. on I.R.
Mar. 17—Set for hearing March 30.
Mar. 24—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
Mar. 30—Set, first hearing. Hearing canceled at the request of author.
Mar. 31—Set for hearing April 6.
April 6—Hearing postponed by committee.
April 7—Set for hearing April 8.
April 8—Hearing postponed by committee.
April 9—Joint Rule 61(b)(5) suspended.
April 9—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
April 15—Set for hearing April 22.
April 22—Set, second hearing. Hearing canceled at the request of author.
May 21—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
May 28—Joint Rule 61(b) (5), (8), & (10) suspended.
May 28—Set for hearing June 10.
June 10—Set, final hearing. Testimony taken. Further hearing to be set.
Nov. 30—From committee without further action.

SENATE BILL No. 1586

Introduced by Senator Presley

February 19, 1992

An act to add Section 17206.2 to the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 1586, as introduced, Presley. Unfair competition: civil penalty.

Existing law provides that any person who violates the unfair competition laws shall be liable for civil penalties, as specified. Existing law also provides that if the violation involves an act or acts of unfair competition against one or more senior citizens or disabled persons, the violator may be liable for additional civil penalties, as specified.

This bill would provide that in civil actions brought against persons who violate the unfair competition laws, a prevailing defendant may be awarded litigation expenses, as defined, if the court determines that the action was brought without substantial justification or that the amount of the civil penalty was unreasonable in light of all relevant circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17206.2 is added to the Business and Professions Code, to read:

17206.2. (a) In any action for a civil penalty brought pursuant to Section 17206 or 17206.1, litigation expenses may be awarded to a prevailing defendant if the court determines that the action was brought without substantial justification or that the amount of the civil penalty initially sought to be assessed and recovered was

unreasonable in light of all relevant circumstances.

(b) "Litigation expenses" means any expenses the court finds were reasonably incurred including court, but not limited to, costs, attorney's fees, and witness fees of all necessary witnesses.

O

Apr 2 - informal 10am mtg
Apr 7 - Comm Hearing in Sen Jud. 1:30

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AMENDMENTS TO SENATE BILL NO. 1585

Amendment 1

In line 1 of the title, strike out "add Section 17206.2 to" and insert:

amend Sections 12042.2, 12246, 17206, 17206.1, 17207, 17535.5, and 17536 of, to add Sections 17206.2, 17206.3, 17536.1, and 17536.5 to, and to repeal Sections 17205 and 17534.5 of,

Amendment 2

On page 1, line 1, after "SECTION 1." insert:

Section 12024.2 of the Business and Professions Code is amended to read:

12024.2. (a) It is unlawful for any person to compute, with an intent to deceive, at the time of sale of a commodity, a value which is not a true extension of a price per unit which is then advertised, posted, or quoted or to charge, at the time of sale of a commodity, a value which is more than the price which is then advertised, posted, or quoted.

A violation of this subdivision is a misdemeanor, punishable by a fine of not less than twenty-five dollars ($25) nor more than one thousand dollars ($1,000), by imprisonment in the county jail for a period not exceeding one year, or by both, if the violation is willful or grossly negligent, or when the difference between the value actually computed and the total true value of the commodity offered for sale (pursuant to the advertised, posted, or quoted price per unit) is more than one dollar ($1) greater than the total true value of the commodity offered for sale.

(b) A violation of this section is an infraction when the difference between the value actually computed and the total true value of the commodity offered for sale (pursuant to the advertised, posted, or quoted price per unit) is not more than one dollar ($1) greater than the total true value of the commodity offered for sale. The violation is punishable by a fine of not more than one hundred dollars ($100).

SEC. 2. Section 12246 of the Business and Professions Code is amended to read:

12246. This article shall remain in effect only until January 1, 1995 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995 1996, deletes or extends that date.

Tom P. (310) 535-7896

SEC. 3. Section 17205 of the Business and Professions Code is repealed.

~~17205. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.~~

SEC. 4. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who ~~violates any provision of this chapter shall~~ performing or proposing to perform an act of unfair competition in this state may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each ~~violation~~ act, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction. Where the conduct constituting unfair competition is of a continuing nature, each day of that conduct is a separate and distinct act; provided, that where the conduct involves advertising in print media or by radio or television broadcast, the publication of the advertisement shall constitute a single act of unfair competition with the number of additional acts determined by the number of persons who responded to the advertisement by purchasing the advertised product or service. In determining the amount of any civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the act of unfair competition, the nature and persistence of the conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, the intent of the defendant, and any corrective action taken by the defendant.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered for deposit in the general fund of the county, and one-half to the State General Fund. If brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered for deposit in the general fund of the county. Except as provided in subdivision (d), if

This would require a bloody victim; eliminates prophylactic; bait + switch.

brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered for deposit in the general fund of the city, and one-half to the treasurer of the county in which the judgment was entered for deposit in the general fund of the county. As used in this subdivision, "judgment" includes both stipulated judgments and judgments entered following trial.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court before entry of judgment, whether by stipulation or following trial, shall determine, following a hearing, the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such the reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such the reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(d) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for deposit in the general fund of the city and county. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered for deposit in the general fund of the city and county, or upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county in which the judgment was entered for deposit in the general fund of the city and county. As used in this subdivision, "judgment" includes both stipulated judgments and judgments entered following trial.

SEC. 5. Section 17206.1 of the Business and Professions Code is amended to read:

17206.1. (a) In addition to any liability for

a civil penalty pursuant to Section 17206, any person who violates this chapter performs an act or acts of unfair competition, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation act, which may be assessed and recovered in a civil action as prescribed in Section 17206.

Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206. Where the conduct constituting unfair competition is of a continuing nature, each day of the conduct is a separate and distinct act; provided, that where the conduct involves advertising in print media or by radio or television broadcast, the publication of the advertisement shall constitute a single act of unfair competition with the number of additional acts determined by the number of persons who responded to the advertisement by purchasing the advertised product or service.

(b) As used in this section, the following terms have the following meanings:

(1) "Senior citizen" means a person who is 65 years of age or older.

(2) "Disabled person" means any person who has a physical or mental impairment which substantially limits one or more major life activities.

(A) As used in this subdivision, "physical or mental impairment" means any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

(B) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount

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thereof, the court shall consider, in addition to any other appropriate factors, including the factors set forth in subdivision (a) of Section 17206, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) Any court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as may be necessary to restore to any senior citizen or disabled person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over any civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

SEC. 6.

Amendment 3

On page 2, lines 3 and 4, strike out "court, but not limited to," and insert:

, but not limited to, court

Amendment 4

On page 2, below line 5, insert:

SEC. 7. Section 17206.3 is added to the Business and Professions Code, to read:

17206.3. Litigation and investigation expenses may be awarded to a prevailing plaintiff in a judgment, whether stipulated or entered following trial, in an action for violation of this chapter only if the court determines that the expenses were actually and reasonably incurred.

SEC. 8. Section 17207 of the Business and Professions Code is amended to read:

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation; provided, that where the violation involves advertising in print media or by radio or television broadcast, the publication of the advertisement shall constitute a single violation with the number of additional violations determined by the number of persons who responded to the advertisement by purchasing the advertised product or service. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover civil penalties shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action to recover civil penalties is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered for deposit in the general fund of the county,

and one-half to the State Treasurer. If brought by a district attorney or county counsel the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered for deposit in the general fund of the county. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered for deposit in the general fund of the county and one-half to the city for deposit in the general fund of the city, except that if the action was brought by a city attorney of a city and county the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment is entered for deposit in the general fund of the city and county.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court before entry of judgment, whether by stipulation or following trial, shall determine, following a hearing, the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of the reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of the reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

SEC. 9. Section 17534.5 of the Business and Professions Code is repealed.

~~17534.5. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.~~

SEC. 10. Section 17535.5 of the Business and Professions Code is amended to read:

17535.5. (a) Any person who intentionally violates any injunction issued pursuant to Section 17535 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation; provided, that where the violation involves advertising in print media or by radio or television broadcast, the publication of the advertisement shall constitute a single violation with the number of additional violations determined by the number of persons

trial, determine, following a hearing, the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(d) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

SEC. 12. Section 17536.1 is added to the Business and Professions Code, to read:

17536.1. (a) In any action for a civil penalty brought pursuant to Section 17536, litigation expenses may be awarded to a prevailing defendant if the court determines that the action was brought without substantial justification or that the amount of the civil penalty initially sought to be assessed and recovered was unreasonable in light of all relevant circumstances.

(b) "Litigation expenses" means any expenses the court finds were reasonably incurred, including, but not limited to, court costs, attorney's fees, and witness fees of all necessary witnesses.

SEC. 13. Section 17536.5 is added to the Business and Professions Code, to read:

17536.5. Litigation and investigation expenses may be awarded to a prevailing plaintiff in a judgment, whether stipulated or entered following trial, in an action brought for violation of this chapter only if the court determines that the expenses were actually and reasonably incurred.

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BUS. & PROF. CODE SECTION 17206(a)

[AMEND]

17206 (a) Any person who violates any provision of this chapter by performing, proposing to perform, or having performed an act of unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving a violation of a county ordinance, or any city attorney of a city, or a city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction. Where the conduct involves advertising in print media or by radio or television broadcast, the publication or broadcast of the advertisement shall constitute a minimum of a single violation, with as many additional violations as there are persons who read, viewed or heard the advertisement, or who respond to the advertisement by purchasing the advertised product or service or by making inquiries concerning said product or service. The methods for determining the number of violations in such media advertising may include, among others, expert testimony and circumstantial evidence.

OFFICE OF THE
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WILLIAM J. MORISON
ADMINISTRATIVE MANAGER

PLEASE REPLY TO:

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☐ JUVENILE OFFICE
301 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

March 27, 1992

MAR 30 1992

Senator Bill Lockyer
22634 2nd Street, #104
Hayward, CA 94541

Dear Senator Lockyer:

On April 1, 1992 the Senate Judiciary Committee is scheduled to consider SB 1586. This bill, sponsored by the California Retailer's Association and the California Grocer's Association, is potentially devastating to consumer and environmental enforcement efforts in this state. Should this bill become law, prosecutor's offices throughout the state would be prevented from pursuing enforcement actions because of the potential financial liability.

Subjecting plaintiffs in Business and Professions Code Section 17200 actions to possible liability for "defendant's litigation expenses," will have a profound chilling effect on the decision to bring cases against wrongful actors. Smaller prosecutor's offices, in particular, will be discouraged from filing complex consumer and environmental protection cases when the potential litigation expenses begin to approach the office's entire operations budget.

SB 1538 in essence operates to eliminate prosecutorial immunity for purposes of consumer and environmental protection cases. Such a piece of legislation would be unique and unprecedented in both California and the nation. The reality is that there is no need for such draconian measures. There is no history of unjustified prosecution under this statute. Section 17200 in its present form is not being used to create an unfriendly climate for business as this bill's sponsors would suggest. In fact, many or most of Section 17200 prosecutions arise from complaints by legitimate businesses which object to the unfair or illegal practices of their competitors.

The proposed amendment within this bill to Section 17206 is a blatant attempt to legalize "bait and switch" operations--a kind of activity which has long been recognized as inherently unfair to the public. Since penalties could only be allowed in false advertising situations where persons responded to the advertisement and actually purchased the advertised product or service, businesses which falsely advertise a product or service for the sole purpose of bringing customers to the store will be immune from prosecution if they do not have or offer the product or service.

This is a poorly conceived piece of legislation that will have an immediate and profoundly negative impact on legitimate business, the environment, and the citizenry of this State. The California District Attorney's Association has taken a "most strongly opposed" position with regard to SB 1586. I join in that opposition. I urge you to recognize this legislation as a potential tragedy in the making and treat it accordingly.

Sincerely,

Michael R. Capizzi
District Attorney
County of Orange

County of FRESNO

Edward W. Hunt
District Attorney

April 7, 1992

The Honorable Robert Presley
California State Senate
State Capitol, Room 4048
Sacramento, CA 95814

RE: SB 1586

Dear Senator Presley:

I recently learned of your sponsorship of SB 1586 and its recent amendments. Along with the California District Attorneys Association and the elected county District Attorneys of this state, I want to express my strong opposition to this proposed anti-consumer protection legislation.

This office has an active consumer and environmental protection unit, staffed by two experienced prosecutors and one paralegal assistant. The consumer protection prosecutors are subject to all of the ethical standards of criminal prosecutors because these cases are part of our law enforcement function. I can assure you that this office does not take the initiation of consumer protection cases lightly. All cases are thoroughly investigated before any official action is taken and when it is taken, it is warranted by the facts of the case. Our case initiation policy is to foster honest and truthful competition in the business community by protecting consumers and honest merchants from dishonest business activity. In this regard, it is not at all unusual that many of our cases have originated from the complaints of honest business people who are being hurt financially by the unfair, dishonest and unlawful business practices and advertising of a few.

Contrary to what you may have been led to believe by the proponents of SB 1586, California's Unfair Competition Statute (Business and Professions Section 17200, et seq.), commonly referred to as the "little FTC Act", is substantially similar to Section 5 of the Federal Trade Commission Act which prohibits "unfair methods of competition." Similarly, California case law has looked to federal law in interpreting 17200 and 17500 cases. California statutes and their interpreting case law are truly in step with the nation as a whole.

2220 Tulare Street/Suite 1000/10th Floor/Fresno, California 93721/(209) 488-3141 HX 3156
Equal Employment Opportunity — Affirmative Action — Handicap Employer

These federal and state legislative schemes were created for the intended purpose of protecting our economic system by seeking and encouraging free competition wherein all participants play by the same rules, and that no one player has an unfair advantage over his or her competitors by engaging in unlawful, unfair or fraudulent business practices. The protections of Business and Professions Code §§ 17200 and 17500 inure to the advantage of honest California businesses and our citizen-consumers.

SB 1586 and its amendments if enacted would prove simply devastating to practical and viable consumer protection prosecution by local District Attorneys and the State Attorney General. It is unprecedented that a prosecutor's office would be ordered to pay attorney fees to a civil defendant's attorney if the prosecution were not to "prevail" in its civil case. No such provision of law now exists in any state in the nation as regarding legal actions brought by a prosecutor.

Furthermore, this bill would, practically speaking, eliminate the attorney general's and district attorney's ability to obtain equitable injunctive relief to stop wrongdoing and even worse, our ability to collect restitution for multiple victims involved in multiple violation cases.

The two consumer and environmental prosecutors in this office have informed me that our settlements have been very reasonable and in no case has the settlement even come close to the probable amount of money a civil defendant has wrongfully gained by his wrongful conduct or omissions. Our financial and staff resources are more limited now than ever before. This legislation would only undermine our law enforcement function which is to protect our honest businesses and citizens.

If the proponents of this bill have a particular problem with Business and Professions Code Section 12024.2, then I suggest that a study and review of those concerns be addressed by separate legislation without their seeking to destroy Sections 17200 and 17500, which need no amending and have served this state and its citizens well.

Lastly, while I share your concerns for the business climate in California, I sincerely and strongly suggest to you that SB 1586 in no way encourages a positive business

environment in this state. It is bad public policy, bad for business, and bad for consumers. I respectfully urge you to withdraw this legislation.

Very truly yours,

Edward W. Hunt

EDWARD W. HUNT
DISTRICT ATTORNEY
COUNTY OF FRESNO

EWH/dn
cc: The Honorable Pete Wilson, Governor
Senator Bill Lockyer
Senator Ed Davis
Senator Charles M. Calderon
Senator Tim Leslie
Senator Milton Marks
Senator Nicholas C. Petris
Senator David Roberti
Senator Ed Royce
Senator Art Torres
Senator Diane E. Watson
Daniel Lungren, Attorney General
Jim Conran, Director of Department of Consumer Affairs
Assemblyperson Jackie Speier
Senator Ken Maddy
Senator Rose Ann Vuich
Michael W. Sweet, CDAA Executive Director

April 6, 1992

The Honorable Bill Lockyer, Chairman
Senate Judiciary Committee
California State Senate
2032 Capitol Building
Sacramento, CA 95814

Subject: Senate Bill 1586 PRESLEY - OPPOSE

Dear Senator:

This bill, as proposed, would remove the strict liability rule of Business and Professions Code Section 12024.2. This law change would severely hamper the local Weights & Measures official's ability to pursue unlawful price extensions on commodities advertised, posted or quoted. The burden of intent has always been a prerogative of the courts, and should remain so. This bill further changes civil liability law to shield violators from "bait and switch" tactics in advertising.

CACASA supports one reference in Section 2, the Business and Professions Code Section 12246. This proposal would extend the counties' device registration to 1996. This legislation is scheduled to sunset on January 1, 1993. Should that happen, a vital local funding source would be lost.

We urge the committee to oppose the bill, as proposed, with the exception of Section 2.

Thank you,

Monty H. Hopper, CACASA
Vice President, W/M Affairs

For: Patrick Nichols, Chairman
W/M Legislative Committee

cc: Robert Presley, State Senator
CACASA Officers
W/M Legislative Committee Members
Jerry Desmond, Jr., Attorney at Law

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE

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April 7, 1992

The Honorable Bill Lockyer
California State Senate
State Capitol, Room 2032
Sacramento, CA 95814

RE: SB 1586 (Lockyer), Set for Hearing in the
Senate Judiciary Committee for April 7, 1992

Dear Senator Lockyer:

The Attorney General's office is opposed to SB 1586.

This office has reviewed Senate Bill 1586 which affects the bringing of civil law enforcement actions by the Attorney General, district attorneys, and other prosecutors under Business and Professions Code section 17200 which prohibits fraudulent, unlawful, and unfair business practice and deceptive advertising. This section is the basic law enforcement tool utilized by public prosecutors to redress various fraudulent and unlawful business practices. For example, this law is enforced by prosecutors to combat consumer fraud and economic crimes targeted against senior citizens. Under current law in place for decades, injunctive relief, restitution to victims, and civil penalties may be awarded by a court.

The bill would provide that law enforcement offices would be required to pay all defense litigation costs if a court determined that an action were brought without "substantial justification" or "the amount of the civil penalty initially sought to be assessed and recovered was unreasonable in light of all relevant circumstances."

The bill essentially permits a court, perhaps years after a case is filed, to second guess a prosecutor's determination to file the case and seek a penalty. If the court evaluates the case differently than the prosecutor originally did at the time of filing, the

court could impose all of the defendant's litigation costs on the prosecutorial office, including attorney's fees, expert witness fees, and other expenses.

This bill would dramatically chill law enforcement efforts. Prosecutors have no control over defense costs. Many defendants and their attorneys in fraud and other economic crime cases run up costs into the tens or hundreds of thousands, and sometimes even into the millions, of dollars. Law enforcement agencies would be deterred from bring cases because of the fear that they would be saddled with enormous attorney fee, expert witness fee, and discovery costs in the event, however unlikely, that they lost a case or were found to have initially asked for too high a penalty.

For example, the amount of monetary recovery sought must be stated in the civil complaint. The prosecutor normally cannot collect more than the amount stated in the complaint's prayer, and certainly cannot do so in the event of a default. But, this bill would hold a prosecutor potentially liable if the amount of the penalty initially sought in the civil complaint was found improper. The bill would thus cause the prosecutor not to file cases or to dramatically undervalue the amount of the penalty sought. The situation would be worse if a prosecutor lost a case. Of course, a case can always be lost, no matter how strong it appears to be when it is filed, for various reasons such as the disappearance of a key witness.

If this bill were passed, many law enforcement offices could not risk bringing a case. In today's times of budget constraints, a prosecutor's office could be destroyed if it had to pay both the costs of the prosecution and the defense.

This bill is a radical departure from current law which protects prosecutors from being intimidated by potential civil liability when they discharge prosecutorial functions such as charging defendants with offenses and proceeding through trial. For example, prosecutors are expressly immune from civil liability for abuse of process, malicious prosecution, and civil rights violations in connection with initiating and prosecuting cases.

In addition, the bill would virtually eliminate all pre-filing settlement discussions. A court could second guess the law enforcement office's first settlement proposal, often made before all facts are known, and could subject the prosecutor's office to all of the defendant's litigation costs even if the prosecutor prevailed at trial. For example, if a prosecutor had first proposed a $25,000 penalty but obtained a $15,000 penalty after proving the defendant guilty of wrongdoing, the court could hold the prosecutor liable to pay $250,000 in high-priced defense lawyer fees because the court thought that the Attorney General's office or a district attorney overvalued the potential penalty.

This situation is like a prosecutor, who criminally charged a person with second degree murder and obtained a conviction of voluntary manslaughter, being forced to pay all defense attorney and other costs because the court found the initial charge "unreasonable" under some unspecified standard.

The bill could also be used to force a prosecutor to accept an unsatisfactory settlement proposal to avoid potential liability for defense litigation costs. Resistance to pressure would even be weaker if a judge attempted to force a settlement which the prosecutor thought unfair; the prosecutor's decision not to accept a judge's suggestion could be deemed unreasonable by a court and thus devastatingly expensive to the law enforcement office. This bill would convert the mandatory settlement conference required in civil cases into a conference forcing mandatory settlement.

Please feel free to contact me if you would like to discuss this matter further.

Sincerely,

DANIEL E. LUNGREN
Attorney General

PATRICK M. KENADY
Assistant Attorney General
for Legislative Affairs

DISTRICT ATTORNEY

ARLO SMITH
DISTRICT ATTORNEY

ROBERT M. PODESTA
CHIEF ASSISTANT
DISTRICT ATTORNEY

SAN FRANCISCO

880 BRYANT STREET, SAN FRANCISCO 94103 TEL. (415) 553-1752

April 9, 1992

The Honorable Robert Presley
Member of the California Senate
State Capitol, Room 4048
Sacramento, California 95814

Re: Senate Bill 1586 (Robert Presley) Unfair Competition: Civil Penalty
Position on Bill: Oppose

Dear Senator Presley,

I wish to state my opposition to SB 1586 introduced by your office. Joining in my opposition to SB 1586, as now amended, is the membership of the California District Attorneys Association. It is my belief that SB 1586 will substantially weaken California's primary consumer protection statutes, Section 17200 et.seq.and Section 17500 et.seq. of the Business and Professions Code, and will seriously hamper law enforcement efforts by local prosecutors.

California's Unfair Competition Statute is intended to protect consumers and honest businesses from the unfair and deceptive practices of an unscrupulous few in the market place. As the history of consumer protection in California clearly shows, Sections 17200 and 17500 B&P have insured a level playing field for businesses who operate within applicable laws and who do not seek to gain unfair advantage over their competitors.

SB 1586 in its present form proposes to impose potential civil liability on consumer and environmental protection prosecutors in the exercise of their discretion in carrying out official prosecutorial functions. A chilling effect will certainly result under SB 1586 in the prosecution of consumer protection cases where the prosecutorial agency becomes liable for litigation expenses if it does not prevail in the litigation. As a further consequence, consumers assume an additional potential burden as tax payers.

The Unfair Competition Statute presently provides for injunctive

relief and civil penalties in amounts deemed appropriate by trial courts to deter continued or future illegal or unfair conduct. SB 1586 proposes to strip away the civil penalties remedy for many consumer and environmental cases by eliminating the cumulative remedies provision of the Unfair Competition Statute in cases involving concurrent administrative processing by regulatory agencies.

Finally, but by no means the last reason for opposing SB 1586, the amendments would amend Sections 17200 et.seq. and 17500 et.seq. of the Business and Professions Code to state that while the publication of false or deceptive advertising can constitute a single act of unfair competition, additional acts can only be alleged if consumers actually relied on the false or deceptive advertising by purchasing the advertised product or service. This requires that the consumer be injured before additional violations can be acted on by prosecutors who prefer to act in a preventative law enforcement approach to false advertising and unfair business practices.

SB 1586 in all of its facets proposes to seriously impair California's most important consumer protection laws. Predictably, the bill is vigorously opposed by a coalition of law enforcement agencies, local governments, and consumer and environmental interest groups. I respectfully urge you to reconsider moving SB 1586 through the legislative process.

Very truly yours,

Arlo Smith
District Attorney

Board of Supervisors

COUNTY OF SAN MATEO

COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063

RICHARD L. SILVER
CLERK OF THE BOARD
(415) 363-4566

April 14, 1992

The Honorable Robert Presley
California State Senate
State Capitol, Room 4048
Sacramento, CA 95814

RE: Senate Bill 1586 (Presley)

Dear Senator Presley:

For the past twenty years the "unfair competition" statutes have proven to be an effective remedy for consumer protection from fraudulent, unlawful and unfair business practices for both the consumer and for lawful business.

The San Mateo County Board of Supervisors opposes your Senate Bill 1586 that would significantly weaken these consumer protection statutes. Senate Bill 1586 proposes to amend the Business and Professions Code that has been used as the primary cause of action in virtually every law enforcement civil action to protect consumers and most recently for prosecutions of environmental protection. Most recently, these provisions have been well utilized to abate premises used in the manufacture and selling of illicit drugs.

The San Mateo County Board of Supervisors opposes your Senate Bill 1586 that serves to dilute consumer protection in California.

Sincerely,

WILLIAM J. SCHUMACHER
President of the Board

mmp/1299
attachment

cc: San Mateo County Delegation
Senate Judiciary Committee
California State Association of Counties (CSAC)
Lyle Defenbaugh, San Mateo County Advocate

ASSOCIATION FOR CALIFORNIA TORT REFORM

April 20, 1992

The Honorable Bob Presley
California State Senate
State Capitol
Sacramento, CA 95814

RE: SB 1586 (Presley) - Support

Dear Bob:

The Association for California Tort Reform (ACTR) is in support of your SB 1586.

SB 1586 provides that a prevailing defendant can recover litigation expenses in civil actions for violation of unfair competition laws if the court determines that the action was without substantial justification or that the amount of the penalty was unreasonable.

SB 1586 will clarify the law with respect to false advertising and unfair competition. The current law fails to distinguish between intentional and misleading business practices and those that are the result of inadvertence. By subjecting businesses to harsh penalties, California further contributes to the adverse "anti-business climate" in this State.

Wilful and intentional acts by businesses would continue to be subject to state and local prosecution including up to $2,500.00 per violation. The bill will restore a necessary element of fairness into civil actions in this field.

For the foregoing reasons, we are pleased to support your SB 1586.

Sincerely,

John F. Foran

John F. Foran
Legislative Advocate

351/JFF:jw

1201 K Street, Suite 1150, Sacramento, California 95814, 916-443-4900, Facsimile 916-448-1709

DISTRICT ATTORNEY

ARLO SMITH
DISTRICT ATTORNEY

ROBERT M. PODESTA
CHIEF ASSISTANT
DISTRICT ATTORNEY

SAN FRANCISCO

880 BRYANT STREET, SAN FRANCISCO 94103 TEL. (415) 553-1752

April 10, 1992

Bill Lockyer
Chairman
Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, California 95814

Re: Senate Bill 1586 (Robert Presley) Unfair Competition: Civil Penalty
Position: Oppose

Dear Senator Lockyer,

Please find enclosed for your information and committee file, a copy of the letter forwarded to Senator Robert Presley setting forth this office' opposition to Senate Bill 1586 introduced by his office. We are advised that the bill has not been scheduled for a definite hearing date in your committee and will probably be calendared for the April 28 agenda.

Very truly yours,

Arlo Smith
District Attorney
by Robert H. Perez
Assistant In Charge
Consumer & Environmental
Protection Unit
(415) 552-6400

AMENDMENTS TO SENATE BILL NO. 1586

Amendment 1

In line 1 of the title, strike out "add Section 17206.2 to" and insert:

amend Sections 12246 and 17206 of

Amendment 2

On page 1, strike out line 1 and insert:

SECTION 1. Section 12246 of the Business and Professions Code is amended to read:

12246. This article shall remain in effect only until January 1, ~~1993~~ 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, ~~1993~~ 1996, deletes or extends that date.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter by ~~performing~~, proposing to perform, or having performed an act of unfair competition in this state shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction. Where the conduct involves advertising in print media or by radio or television broadcast, the publication or broadcast of the advertisement shall constitute a minimum of a single violation, with as many additional violations as there are persons who read, viewed or heard the advertisement, or who respond to the advertisement by purchasing the advertised product or service or by making inquiries concerning that product or service. The methods for determining the number of violations in any media advertising may include, among others, expert testimony and circumstantial evidence.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was

entered, and one-half to the State General Fund. If brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(d) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

Amendment 3

On page 1, strike out lines 2 to 8, inclusive, and strike out page 2

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AMENDED IN SENATE APRIL 30, 1992

SENATE BILL No. 1586

Introduced by Senator Presley

February 19, 1992

An act to ~~add Section 17206.2 to~~ *amend Sections 12246 and 17206 of* the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 1586, as amended, Presley. Unfair competition: ~~civil penalty~~.

Existing law, which is to be repealed on January 1, 1993, authorizes counties to charge an annual device registration fee, within prescribed limits, to recover the costs of the county sealer of inspecting or testing weighing and measuring devices pursuant to designated provisions.

This bill would continue that existing law to January 1, 1996, by extending the repeal date to January 1, 1996.

Existing law provides that any person who violates the unfair competition laws shall be liable for civil penalties, as specified. ~~Existing law also provides that if the violation involves an act or acts of unfair competition against one or more senior citizens or disabled persons, the violator may be liable for additional civil penalties, as specified.~~

~~This bill would provide that in civil actions brought against persons who violate the unfair competition laws, a prevailing defendant may be awarded litigation expenses, as defined, if the court determines that the action was brought without substantial justification or that the amount of the civil penalty was unreasonable in light of all relevant circumstances.~~

This bill would provide that any person performing, proposing to perform, or having performed an act of unfair competition in this state shall be liable for a civil penalty for

each act, as specified. This bill would also provide that where the conduct involves advertising, the publication or broadcast of the advertisement shall constitute a minimum of a single act of unfair competition, with as many additional violations as there are persons who are subjected to the advertisement, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

~~SECTION 1.~~ ~~Section 17206.2 is added to the Business~~
SECTION 1. Section 12246 of the Business and Professions Code is amended to read:

12246. This article shall remain in effect only until January 1, ~~1993~~ *1996*, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, ~~1993~~ *1996*, deletes or extends that date.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter *by performing, proposing to perform, or having performed an act of unfair competition in this state* shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction. *Where the conduct involves advertising in print media or by radio or television broadcast, the publication or broadcast of the advertisement shall constitute a minimum of a single*

violation, with as many additional violations as there are persons who read, viewed or heard the advertisement, or who respond to the advertisement by purchasing the advertised product or service or by making inquiries concerning that product or service. The methods for determining the number of violations in any media advertising may include, among others, expert testimony and circumstantial evidence.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(d) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980

of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

~~and Professions Code, to read:~~

~~17206.2. (a) In any action for a civil penalty brought pursuant to Section 17206 or 17206.1, litigation expenses may be awarded to a prevailing defendant if the court determines that the action was brought without substantial justification or that the amount of the civil penalty initially sought to be assessed and recovered was unreasonable in light of all relevant circumstances.~~

~~(b) "Litigation expenses" means any expenses the court finds were reasonably incurred including court, but not limited to, costs, attorney's fees, and witness fees of all necessary witnesses.~~

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SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1991-92 Regular Session

SB 1586 (Presley)
As amended May 4
Hearing date: May 5, 1992
Business and Professions Code
GWW/elm

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6

UNFAIR COMPETITION VIOLATIONS

HISTORY

Source: California Retailers Association

Prior Legislation: None

Support: ACTR; California Agricultural Commissioners and Sealers Association

Opposition: No known (as amended May 4)

KEY ISSUE

SHOULD THE LAW PROHIBITING UNFAIR COMPETITION BE CLARIFIED, AS SPECIFIED, AND AMENDED TO CODIFY A STANDARD SET FORTH IN PEOPLE v. SUPERIOR COURT (OLSON) FOR DETERMINING THE NUMBER OF VIOLATIONS RESULTING FROM A SINGLE PUBLICATION OF A MEDIA ADVERTISEMENT?

SHOULD THE AUTHORIZATION FOR COUNTY BOARDS OF SUPERVISORS TO CHARGE AN ANNUAL WEIGHT DEVICE REGISTRATION FEE TO COVER THE COSTS OF INSPECTING AND TESTING WEIGHT AND MEASURMENT DEVICES BE EXTENDED THREE ADDITIONAL YEARS, UP UNTIL JANUARY 1, 1996?

PURPOSE

1. Existing law prohibits any act or acts of unfair competition and provides for civil penalties for each violation. In People v. Superior Court (Forest E. Olson) (1979) 96 Cal.App.3d 181, the Fourth District Court of Appeal held that a single

(More)

publication of a newspaper advertisement constitutes a minimum of one violation with as many additional violations as there were persons who read the advertisement, or who responded to the advertisement by purchasing the advertised product or service, or by making inquiries concerning the product or service. The court also noted, in dicta, that the methods by which the number of violations may be proved may include expert testimony and circumstantial evidence.

This bill would codify the Forest E. Olson standard for determining the number of violations resulting from a publication or broadcast of a media advertisement. It would also codify the Olson dicta and provide that the methods for determining the number of violations in any media advertising may include, among others, expert testimony and circumstantial evidence.

Further, the bill would provide that the unfair competition laws apply to a person who violates the chapter "by performing, proposing to perform, or having performed an act of unfair competition in this state."

2. Existing law authorizes until January 1, 1993, county boards of supervisors to charge an annual weight device registration fee to recover the costs of inspecting or testing weight and measurement devices.

This bill would extend that authorization for three additional years to January 1, 1996.

The purpose of this measure is to clarify the application of the unfair competition law as it pertains to media advertisements.

COMMENT

1. Recent amendments remove opposition of prosecutors

As introduced, SB 1586 provided that a prevailing defendant in an unfair competition complaint would be entitled to recover its litigation expenses if the court found that the action brought or the amount of civil penalty sought was without substantial justification. The measure was heavily opposed by county district attorneys, local governments, and the State Attorney General's Office. They all expressed concern that the change would practically eliminate their ability to effectively enforce the unfair competition laws.

Following a meeting between the sponsors and opponents, SB 1586 has been amended to the mutual satisfaction of both groups. As amended, it would codify case law for determining the number of

(More)

violations flowing from a single publication of a media advertisement. As amended, the prosecutors are "neutral" on the bill.

(The Olson case standard was itself a compromise. Prosecutors had argued in Olson that the number of violations should be determined by the number of persons to whom the misrepresentations were made. In the case of a false newspaper advertisement, it was urged that the circulation of the newspaper should be the measure of the number of violations. In contrast, the business had urged that each appearance of an advertisement in a single edition of a newspaper was only a single violation, notwithstanding the circulation numbers. The Olson court rejected both arguments and presented its middle ground.)

2. Possible unintended narrowing of unfair competition laws

Both sides state that it is not the sponsor's intent to change the present unfair competition laws which hold that a violation is determined on a "per-victim" basis. (See People v. Superior Court (Jayhill Corp.) (1973) 9 Cal.3d 283, and People v. Superior Court (Olson), supra.)

However, the new language may be read to change the law. The language reads in relevant part (Amended language underlined. Key words in bold.): "Any person who violates any provision of this chapter by performing, proposing to perform, or having performed **an act** of unfair competition **in this state** shall be liable for a civil penalty . . . for each violation."

(a) Interpreting "an act" to be the violation would narrow law

A possible interpretation of the new language is that the law is violated by an act of unfair competition. If the act is then read to constitute the violation, then case law holding that a violation is determined on a per-victim basis is undermined. For example, a retailer has an in-store promotion or advertisement which is misleading and violates the unfair competition law. The retailer claims that his violation was a single act which, if the new language is read literally, is punishable by a civil penalty for each violation. At the very least, the new language appears ambiguous and could invite litigation.

To preclude this result, language could be added which states that "an act of unfair competition may result in one or more violations, depending on the circumstances of the act."

SHOULD NOT THIS ISSUE BE CLARIFIED?

(More)

(b) Prosecutors question additional requirement of "in this state"

Prosecutors have questioned the reason for requiring that the act be performed "in this state."

WOULD THE REQUIREMENT LIMIT PROSECUTIONS WHERE THE ACT, SUCH AS A PREPARATION AND MAILING OF A MAIL-ORDER CATALOG OR A PROSPECTUS, IS PERFORMED WHOLLY OUT-OF-STATE?

3. Extension of county authorization to collect fees

Proponents assert that this provision is necessary to allow counties to continue their inspection and testing program. The extension is a non-controversial issue.

****

AMENDED IN SENATE MAY 13, 1992

AMENDED IN SENATE APRIL 30, 1992

ENATE BILL No. 1586

Introduced by Senator Presley

February 19, 1992

An act to amend Sections 12246 and 17206 of the Business nd Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 1586, as amended, Presley. Unfair competition.

Existing law, which is to be repealed on January 1, 1993, authorizes counties to charge an annual device registration fee, within prescribed limits, to recover the costs of the county sealer of inspecting or testing weighing and measuring devices pursuant to designated provisions.

This bill would continue that existing law to January 1, 1996, by extending the repeal date to January 1, 1996.

Existing law provides that any person who violates the unfair competition laws shall be liable for civil penalties, as specified.

This bill would provide that any person performing, proposing to perform, or having performed an act of unfair competition ~~in this state~~ shall be liable for a civil penalty for each act, as specified. *The bill would provide that an act of unfair competition may result in one or more violations, depending on the circumstances of the act.* This bill would also provide that where the conduct involves advertising, the publication or broadcast of the advertisement shall constitute a minimum of a single act of unfair competition, with as many additional violations as there are persons who are subjected to the advertisement, as specified.

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

State-mandated local program: no.

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

SECTION 1. Section 12246 of the Business and Professions Code is amended to read:

12246. This article shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. (a) Any person who violates any provision of this chapter by performing, proposing to perform, or having performed an act of unfair competition ~~in this state~~ shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction. ~~Where~~ *An act of unfair competition may result in one or more violations, depending on the circumstances of the act.*

Where the conduct involves advertising in print media or by radio or television broadcast, the publication or broadcast of the advertisement shall constitute a minimum of a single violation, with as many additional violations as there are persons who read, viewed or heard the advertisement, or who respond to the advertisement by purchasing the advertised product or service or by making inquiries concerning that product or service. The methods for determining the number of violations in any

media advertising may include, among others, expert testimony and circumstantial evidence.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(c) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

(d) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to one-half

of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

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THIRD READING

SENATE RULES COMMITTEE	Bill No.	SB 1586
Office of Senate Floor Analyses 1020 N Street, Suite 524 445-6614	Author:	Presley (D)
	Amended:	5/13/92
	Vote Required:	21

Committee Votes:

COMMITTEE: JUDICIARY		
BILL NO.: SB 1586		
DATE OF HEARING: 5-5-92		
SENATORS:	AYE	NO
Calderon		
Leslie	✓	
Marks	✓	
Petris		
Presley	✓	
Roberti		
Royce	✓	
Torres		
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	6	0

Senate Floor Vote:

Assembly Floor Vote:

SUBJECT: Unfair Competition

SOURCE: California Realtors Association

DIGEST: This bill would clarify the law prohibiting unfair competition as specified, and to codify a standard set forth in People v. Superior Court (Olson) for determining the number of violations resulting from a single publication of a media advertisement.

The bill would extend the authorization for county boards of supervisors to charge an annual weight device registration fee to cover the costs of inspecting and testing weight and measurement devices three additional years, until January 1, 1996.

ANALYSIS: Existing law prohibits any act or acts of unfair competition and provides for civil penalties for each violation. In People v. Superior Court (Forest E. Olson) (1979) 96 Cal.App.3d 181, the Fourth District Court of Appeal held that a single publication of a newspaper advertisement constitutes a minimum of one violation with as many additional violations as there were persons who read the advertisement, or who responded to the advertisement by purchasing the advertised product or service, or by making inquiries concerning the product or service. The court also noted, in dicta, that the methods by which the number of violations may be proved may include expert testimony and circumstantial evidence.

This bill would codify the Forest E. Olson standard for determining the number of violations resulting from a publication or broadcast of a media advertisement. It would also codify the Olson dicta and provide that the methods for determining the

CONTINUED

number of violations in any media advertising may include, among others, expert testimony and circumstantial evidence.

Further, the bill would provide that the unfair competition laws apply to a person who violates the chapter "by performing, proposing to perform, or having performed an act of unfair competition."

Existing law authorizes until January 1, 1993, county boards of supervisors to charge an annual weight device registration fee to recover the costs of inspecting or testing weight and measurement devices.

This bill would extend that authorization for three additional years to January 1, 1996.

The purpose of this measure is to clarify the application of the unfair competition law as it pertains to media advertisements.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 5/13/92)

California Realtors Association (source)
ACTR
California Agricultural Commissioners and Sealers Association

ARGUMENTS IN SUPPORT: Proponents assert that the provision extending the counties authorization to collect fees is necessary to allow counties to continue their inspection and testing program. The extension is a non-controversial issue.

RJG:nf 5/13/92 Senate Floor Analyses

TO: Honorable Robert Presley

RE: SB 1586

MAY 29 1992

PLEASE RETURN BY asap TO: **ASSEMBLY COMMITTEE ON JUDICIARY**
STATE CAPITOL, ROOM 6005

WORKSHEET
(Please type)

Your bill has been referred to the Assembly Committee on Judiciary. It is imperative that you provide us with as much information regarding your bill as possible, including the following:

AUTHOR'S CONTACT PERSON: NANCY ARMENTROUT

Address, telephone number: 445-9781

SPONSORING ORGANIZATION NAME: (Also list the bill's source if differs from sponsor.)

CALIFORNIA RETAILORS ASSOCIATION
Name of contact person: BRUCE YOUNG
Address, telephone number: 1127 11th Street, Suite 1030
Sacramento, CA 95814
(916) 443-1975

PRIOR COMMITTEE & FLOOR VOTES:

SENATE JUDICIARY 6-0
SENATE FLOOR 32-0 Consent Calendar

SET INFORMATION:

Preferred hearing dates: June 10
Estimated time to present testimony: 5 minutes
Names of witnesses: Les Howe/Bruce Young

PURPOSE OF BILL: (Specify problem or deficiency in existing law.)

SB 1586 is the first step in reform of CA's civil penalty laws to give retailers and law enforcement the flexibility to differentiate between in advertent errors and more serious consumer fraud.
It is the intent of this bill to minimize the number of unfair penaltie awarded against unintentional actions by retailors, while leaving all consumer protections in place.
In cases which are often unintentional or minor, the civil penalties awarded in actions filed by the local district attorneys/Attorney Gener Office result in costly fines or settlements and harmful publicity for alleged violations.

HOW DOES THIS BILL REMEDY THE PROBLEM?

STUDIES, REPORTS, STATISTICS & FACTS: (List all documented sources supporting your conclusion that there is a problem. Be specific and attach major sources.)

Attached

PRIOR/SIMILAR/COMPANION LEGISLATION. (Bill number, author, coauthors, session and final disposition.)

n/a

POSITIONS OF THE DEPARTMENT OF FINANCE, STATE AGENCIES, & INTEREST GROUPS. (State precise reason if opposed.)

CA District Attorney's Association- neutral

ADDITIONAL INFORMATION:

Attach copies of background and related materials, including letters of support & opposition.

Attach an author's or sponsor's statement as to the purpose of this bill.

BILL STATEMENT

SB 1586 -- UNFAIR COMPETITION: CIVIL PENALTIES

BACKGROUND:

SB 1586 is the product of many hours of intense discussions and negotiations between the sponsors, the California Retailers Association, and the representatives of the California District Attorney's Association.

The bill I bring before you today has removed a substantial amount of the initial opposition and will serve to set the stage for future discussion in the area of civil penalty reform.

As a result of SB 1586, the California Retailers Association and the District Attorney's Association have agreed to form a working group under the auspices of my office to continue to meet in the coming months to develop further reforms in civil penalty laws.

WHY THIS BILL IS NEEDED:

SB 1586 is the first step in reform of California's civil penalty laws to give retailers and law enforcement the flexibility to differentiate between inadvertent errors and more serious consumer fraud.

The business and retail industries in California have been unfairly penalized by civil penalty actions filed against them by local district attorneys and/or the Attorney General's Office. In recent years, retailers have experienced an increase in the number of cases filed by district attorneys.

The civil penalties awarded in these cases result in costly fines or settlements and harmful publicity for alleged violations, which often are unintentional and minor.

It is the intent of this bill to minimize the number of unfair penalties awarded against unintentional actions by retailers, while leaving all consumer protections in place.

WHAT THIS BILL WOULD DO:

The first step in this cooperative effort is SB 1586, which will enact three important changes in the law. They are:

1. Add specific definition regarding mass media advertisement so the law will now deal with those truly affected by a faulty advertisement, rather than simply the frequency of publication.

2. Amends the Business & Professions Code #17206 to conform to other sections of the law dealing with unfair competition.

3. Continues funding authority for Boards of Supervisors to support local weights and measures enforcement.

AUTHOR'S AMENDMENTS:

The author will accept the language suggested for clarification which states that "an act of unfair competition may result in one or more violations, depending on the circumstances of the act."

Nancy: 29-May-1992

M E M O R A N D U M

DATE: June 18, 1992

To: Gene Urban
From: NANCY (445-9781)
RE: Amendments to SB 1586

Attached are the proposed amendments to SB 1586. I have sent them to Legislative Council today, but I wanted you to have the draft as soon as possible.

Both sides are in agreement on the changes. Let me know if you want to change the hearing date if you think there is a problem or need more time for analysis.

I have taken a copy down to Gene Wong in Senate Judiciary, he has asked to be kept in the loop on this.

Thanks for your help.

AMENDMENTS TO SENATE BILL NO. 1586
AS AMENDED IN SENATE MAY 13, 1992

DRAFT

AMENDMENT 1

On page 1 of the printed bill, in the title, strike "and 17206", and insert:

, 17200, 17203, 17206, and 17536

AMENDMENT 2

On page 2, line 7, after "SEC. 2.", insert:

Section 17200 of the Business and Professions Code is amended to read:

17200. As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

SEC. 3. Section 17203 of the Business and Professions Code is amended to read:

17203. Any person who engages, has engaged, or proposes to engage in ~~performing or proposing to perform an act of~~ unfair competition ~~within this state~~ may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

SEC. 4.

AMENDMENT 3

On page 2, strike lines 9 through 11, inclusive, and insert:

17206. (a) Any person who engages, has engaged, or proposes to engage in unfair competition

AMENDMENT 4

On page 2, strike line 25 through 36, inclusive, on page 3, strike lines 1 and 2, and insert:

competent jurisdiction.

AMENDMENT 5

On page 3, line 3, after "(b)", insert:

The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct and the length of time over which the misconduct occurred, the wilfulness of defendant's misconduct, and the defendant's ~~financial condition.~~ assets, liabilities and net worth.

(c)

AMENDMENT 6

On page 3, line 15, strike "(c)" and insert:

(d)

AMENDMENT 7

On page 3, line 29, strike "(d)" and insert:

(e)

AMENDMENT 8*

AMENDMENT 9

On page 4, after line 5, insert:

(f) It is the intent of the Legislature that the court determine the number of violations on which an award of civil penalties is based in accordance with the decisional law of this state as of January 1, 1992.

SEC. 4. Section 17536 of the Business and Professions Code is amended to read:

17536. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct and the length of time over which the misconduct occurred, the wilfulness of defendant's misconduct, and the defendant's ~~financial condition.~~ assets, liabilities and net worth.

*Amendment 8 should consist of the proposed subparagraph (f) in Amendment 9 duplicated and inserted as a new subparagraph (f) of 17206.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

(d) ~~(c)~~ If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision ~~(b)~~ (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(e) ~~(d)~~ As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

~~(f) It is the intent of the Legislature that the court determine the number of violations on which an award of civil penalties is based in accordance with the decisional law of this state as of January 1, 1993.~~

(f) In enacting the amendments to the Business & Professions Code contained in Senate Bill 1586, 1993 Stats. Ch. ___, it is the intent of the Legislature not to change the decisional law of this state regarding the method of determining the number of violations on which an award of civil penalties is based.

-oOo-

AMENDED IN ASSEMBLY JUNE 25, 1992

AMENDED IN SENATE MAY 13, 1992

AMENDED IN SENATE APRIL 30, 1992

SENATE BILL No. 1586

Introduced by Senator Presley

February 19, 1992

An act to amend Sections 12246 ~~and 17206~~ , *17200, 17203, 17206, and 17536* of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 1586, as amended, Presley. Unfair competition.

Existing law, which is to be repealed on January 1, 1993, authorizes counties to charge an annual device registration fee, within prescribed limits, to recover the costs of the county sealer of inspecting or testing weighing and measuring devices pursuant to designated provisions.

This bill would continue that existing law to January 1, 1996, by extending the repeal date to January 1, 1996.

Existing law provides that any person who violates the unfair competition laws shall be liable for civil penalties, as specified.

This bill would provide that any person ~~performing, proposing to perform, or having performed an act of~~ *who engages, has engaged, or proposes to engage in* unfair competition *may be enjoined in a court of competent jurisdiction and* shall be liable for a civil penalty for each act, as specified. ~~The bill would provide that an act of unfair competition may result in one or more violations, depending on the circumstances of the act.~~ This bill would also provide that where the conduct involves advertising, the publication or broadcast of the advertisement shall constitute a minimum

of a single act of unfair competition, with as many additional violations as there are persons who are subjected to the advertisement, as specified. *It would authorize the court to impose civil penalties, as specified, for each violation.*

The bill would also state legislative intent.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 12246 of the Business and Professions Code is amended to read:

12246. This article shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 2. *Section 17200 of the Business and Professions Code is amended to read:*

17200. As used in this chapter, unfair competition shall mean and include *any* unlawful, unfair or fraudulent business *act or* practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

SEC. 3. Section 17203 of the Business and Professions Code is amended to read:

17203. Any person ~~performing or proposing to perform an act of~~ *who engages, has engaged, or proposes to engage in* unfair competition ~~within this state~~ may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

SEC. 4. Section 17206 of the Business and Professions Code is amended to read:

~~17206. (a) Any person who violates any provision of this chapter by performing, proposing to perform, or having performed an act of unfair competition~~

17206. (a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county, in any court of ~~competent jurisdiction. An act of unfair competition may result in one or more violations, depending on the circumstances of the act.~~

~~Where the conduct involves advertising in print media or by radio or television broadcast, the publication or broadcast of the advertisement shall constitute a minimum of a single violation, with as many additional violations as there are persons who read, viewed or heard the advertisement, or who respond to the advertisement by purchasing the advertised product or service or by making inquiries concerning that product or service. The methods for determining the number of violations in any media advertising may include, among others, expert testimony and circumstantial evidence.~~ *competent jurisdiction.*

(b) *The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the*

misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

~~(c)~~

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (b), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

~~(d)~~

(e) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall

be paid entirely to the treasurer of the city and county in which the judgment was entered, or upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises which were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 5. Section 17536 of the Business and Professions Code is amended to read:

17536. (a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) *The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.*

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

~~(c)~~

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision ~~(b)~~ *(c)*, the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

~~(d)~~

(e) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

SEC. 6. In enacting the amendments contained in this act, it is the intent of the Legislature not to change the decisional law of this state regarding the methods of determining the number of violations on which an award of civil penalties is based.

O

SB 1586 (Presley)
Analyzed: 06/26/92

ASSEMBLY COMMITTEE ON JUDICIARY
MINORITY ANALYSIS
Carol Bentley, Vice Chair

SB 1586 (Presley) -- UNFAIR COMPETITION.

Version: 6/25/92 Vote: Majority.

Summary: **This bill would provide a list of factors to be considered by a court when assessing penalties against any person or entity who engages in prohibited acts of unfair competition.** The factors to be considered include: 1) Nature and seriousness of the misconduct; 2) Number of violations; 3) Persistence of the misconduct; 4) Length of time over which the misconduct occurred; 5) Willfulness of the defendant's misconduct; and 6) Assets, liabilities, and net worth of the defendant.

This bill also would extend authority of counties to charge an annual weight device registration fee for three additional years (to 1/1/96) to recover the costs of inspecting and testing weighing and measuring devices.

Fiscal Effect: None.

Supported by: Calif. Reatilers Association (sponsor)
Opposed by: Unknown.

Comments: The California Retailers Association sponsors SB 1586 to codify case law factors to be considered by courts in determining the amount of civil penalty to be assessed on persons or entities who violate the unfair competition laws. Retail stores, newspapers and media broadcasters view this modification of existing law as one that removes some ambiguity as to how penalty assessments would be calculated against them in unfair competition actions (e.g. false advertising). The California District Attorneys Association has worked with the author to craft this bill to remove their concerns that it not discourage prosecution of the unfair business practice statutes.

Counties assert that the extension of the weight device fee is necessary for their continuation of inspection and testing of weights and measures to protect consumer interests.

Consultant: Mark Redmond

Date of Hearing: June 30, 1992

ASSEMBLY SUBCOMMITTEE ON THE ADMINISTRATION OF JUSTICE
LLOYD G. CONNELLY, Chairperson

SB 1586 (Presley) - As Amended: June 25, 1992

SUBJECT: This bill specifies the factors to be considered by a court when assessing penalties against any person who engages, has engaged, or proposes to engage in prohibited acts of unfair competition.

DIGEST

Existing law, as found in Business and Professions Code Section 17200 et. seq., generally provides that various public prosecutors may pursue civil penalties against persons who perform acts of unfair competition, including unfair or fraudulent businesses practices and unfair, deceptive, untrue, or misleading advertising.

Section 17206 (and Section 17536) provides for a maximum civil penalty of $2,500 "for each violation."

This bill modifies the provisions of Section 17206 (and Section 17536) by adding the following series of illustrative factors to be considered by the court when determining the amount of civil penalty to be assessed:

1) The nature and seriousness of the misconduct.

2) The number of violations.

3) The persistence of the misconduct.

4) The length of time over which the misconduct occurred.

5) The willfulness of the defendant's misconduct.

6) The defendant's assets, liabilities, and net worth.

Lastly, the bill states that it is the intent of the Legislature that the court "determine the number" of violations, against which civil penalties are assessed, based on California's "decisional law" as of January 1, 1992.

This bill also extends a January 1, 1993 date relating to the authority of counties to charge an annual device registration fee to recover the costs of inspecting and testing weighing and measuring devices to January 1, 1996.

FISCAL EFFECT

This bill will not be referred to Ways and Means Committee.

- continued -

COMMENTS

1) SB 1586 has been developed by the California Retailers Association, the sponsor of SB 1586, in close consultation with the California District Attorneys Association, which has no objection to the bill.

(Likewise, other interested organizations, such as Consumers Union, have no objection to SB 1586.)

2) Basically, this bill codifies case law with regard to the factors to be considered by courts when determining the amount of civil penalty to be assessed a person who violates the anti-unfair competition statutes.

3) There is no objection to the provision of SB 1586 that extends the Sunset date relating to the fee for inspecting various weighing and measuring devices.

4) SB 1586 did not receive a "No" vote in the Senate and there is no known opposition to it. On this basis, SB 1586 is recommended for Consent Calendar.

SUPPORT

California Retailers Association

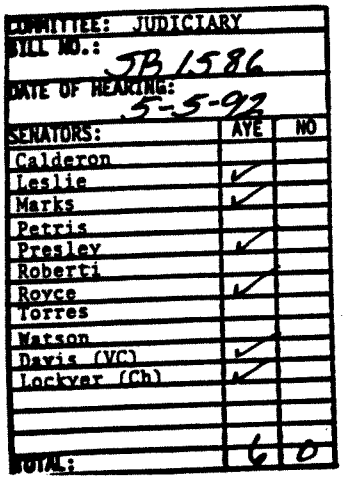
SPECIAL CONSENT

SENATE RULES COMMITTEE

Office of
Senate Floor Analyses
1020 N Street, Suite 524
445-6614

Bill No.	SB 1586
Author:	Presley (D)
Amended:	6/25/92
Vote Required:	21

Committee Votes:



COMMITTEE: JUDICIARY		
BILL NO.: SB 1586		
DATE OF HEARING: 5-5-92		
SENATORS:	AYE	NO
Calderon	✓	
Leslie	✓	
Marks	✓	
Petris	✓	
Presley	✓	
Roberti		
Royce	✓	
Torres		
Watson		
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	6	0

Senate Floor Vote: Page 6118, 5/22/92

Senate Bill 1586—An act to amend Sections 12246 and 17206 o the Business and Professions Code, relating to unfair competition.

Bill read third time, passed, and ordered transmitted to th Assembly.

The names of the absentees were called and the measures on the Consent Calendar passed by the following vote:

AYES (32)—Senators Alquist, Ayala, Bergeson, Beverly Boatwright, Calderon, Davis, Dills, Cecil Green, Bill Greene, Hart Hill, Johnston, Keene, Kopp, Leonard, Leslie, Lewis, Lockyer Maddy, Marks, McCorquodale, Mello, Morgan, Petris, Presley Rosenthal, Royce, Russell, Thompson, Torres, and Vuich.

NOES (0)—None.

Assembly Floor Vote: 76-0, 7/7/92
(Passed Assembly on Consent)

SUBJECT: Unfair Competition

SOURCE: California Retailers Association

DIGEST: This bill would clarify the law prohibiting unfair competition as specified, and to codify a standard set forth in People v. Superior Court (Olson) for determining the number of violations resulting from a single publication of a media advertisement.

The bill would extend the authorization for county boards of supervisors to charge an annual weight device registration fee to cover the costs of inspecting and testing weight and measurement devices three additional years, until January 1, 1996.

Assembly Amendments:

1) Made technical, grammatical changes.

2) Authorizes the court to impose civil penalties.

ANALYSIS: Existing law prohibits any act or acts of unfair competition and provides for civil penalties for each violation. In People v. Superior Court (Forest E. Olson) (1979) 96 Cal.App.3d 181, the Fourth District Court of Appeal held that a single publication of a newspaper advertisement constitutes a minimum of one violation with as many additional violations as there were persons who read the advertisement, or who responded to the advertisement by purchasing the advertised product or service, or by making inquiries concerning the product or service. The

CONTINUED

court also noted, in dicta, that the methods by which the number of violations may be proved may include expert testimony and circumstantial evidence.

This bill would codify the Forest E. Olson standard for determining the number of violations resulting from a publication or broadcast of a media advertisement. It would also codify the Olson dicta and provide that the methods for determining the number of violations in any media advertising may include, among others, expert testimony and circumstantial evidence.

Further, the bill provides that any person who engages, has engaged or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction.

The court would be required to impose a civil penalty for each violation.

Existing law authorizes until January 1, 1993, county boards of supervisors to charge an annual weight device registration fee to recover the costs of inspecting or testing weight and measurement devices.

This bill would extend that authorization for three additional years to January 1, 1996.

The purpose of this measure is to clarify the application of the unfair competition law as it pertains to media advertisements.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 7/7/92)

California Retailers Association (source)
ACTR
California Agricultural Commissioners and Sealers Association
Advocation, Inc.

ARGUMENTS IN SUPPORT: Proponents assert that the provision extending the counties authorization to collect fees is necessary to allow counties to continue their inspection and testing program. The extension is a non-controversial issue.

RJG:nf 7/8/92 Senate Floor Analyses

SB 1586

SACRAMENTO ADDRESS
STATE CAPITOL
95814
(916) 445-9781

DISTRICT OFFICE
3600 LIME STREET
SUITE 111
RIVERSIDE, CA 92501
(714) 782-4111

California State Senate

STATE SENATOR
ROBERT PRESLEY
THIRTY-SIXTH SENATORIAL DISTRICT
CHAIRMAN
SENATE COMMITTEE ON APPROPRIATIONS

COMMITTEES
APPROPRIATIONS (CHAIRMAN)
JUDICIARY
AGRICULTURE AND WATER RESOURCES

JOINT COMMITTEES
PRISON CONSTRUCTION AND OPERATIONS (CHAIRMAN)
LEGISLATIVE ETHICS (VICE CHAIRMAN)
LEGISLATIVE AUDIT
REVISION OF THE PENAL CODE

SELECT COMMITTEES
CHILDREN AND YOUTH (CHAIRMAN)
MOBILEHOMES
PACIFIC RIM (VICE CHAIRMAN)
BUSINESS DEVELOPMENT
FAIRS & RURAL ISSUES
PLANNING FOR CALIFORNIA'S GROWTH

SPECIAL COMMITTEES
SOLID & HAZARDOUS WASTE
THE GREENHOUSE EFFECT. OZONE DEPLETION & ATMOSPHERIC POLLUTION

July 23, 1992

The Honorable Pete Wilson
Governor, State of California
State Capitol, First Floor
Sacramento, California 95814

Dear Governor Wilson:

You have before you for signature my Senate Bill 1586 relating to unfair competition.

SB 1586 is the product of many hours of intense discussions and negotiations between the sponsors, the California Retailers Association, and representatives of the California District Attorney's Association. SB 1586 is the first step in reform of California's civil penalty laws to give retailers and law enforcement the flexibility to differentiate between inadvertent errors and more serious consumer fraud.

SB 1586 will enact three important changes in the law. The first is to add specific definitions regarding mass media advertisement, so the law now will deal with those truly affected by a faulty advertisement rather than simply the frequency of publication. This bill codifies the Forest E. Olson standard for determining the number of violations resulting from a publication or broadcast of a media advertisement. In addition, SB 1586 codifies the Olson dicta and provides that the methods for determining the number of violations in any media advertisement may include, among others, expert testimony and circumstantial evidence.

Second, this bill amends Business & Professions Code Section 17206 to conform to other sections of the law dealing with unfair competition. Third, SB 1586 continues the funding authority for Boards of Supervisors to support local weights and measures enforcement.

This measure was introduced in response to problems that have arisen with respect to the current increase in the number of cases filed by district attorneys. Specifically, the business and

retail industries in California have been unfairly penalized by civil penalty actions filed against them by local district attorneys or the Attorney General's Office. The civil penalties awarded in these cases result in costly fines or settlements and harmful publicity for alleged violations, which often are unintentional and minor. It is the intent of SB 1586 to minimize the number of unfair penalties awarded against unintentional actions by retailers, while leaving all consumer protections in place.

I urge your signature on SB 1586.

Sincerely,

ROBERT PRESLEY
State Senator

RP:nca:mw

Analyst Name: Gale Baker
Phone Numbe 323-0399

STATE AND CONSUMER SERVICES AGENCY — ENROLLED BILL REPORT

DEPARTMENT	AUTHOR	BILL NUMBER
CONSUMER AFFAIRS	Presley	SB 1586

Bill Summary

This bill would make various clarifying and interpretive changes to Business and Professions Code §§ 17200 et seq., dealing with unfair competition, and §§ 17500 et seq., dealing with false and misleading advertising. The changes are described in Specific Findings.

Background

This bill is sponsored by the California Retailers Association and California Grocers Association. The original purpose of the bill was to decrease defendants' potential liability for the civil penalties under Business and Professions Code §§ 17200 et seq. (up to $2,500 per violation). As enrolled, the bill merely codifies existing case law concerning how the amount of the civil penalties is to be determined, and makes other clarifying changes that also reflect existing practice.

Specific Findings

1) Business and Professions Code §§ 17200 et seq. authorize civil penalties, injunctive relief, and misdemeanor penalties for acts of "unfair competition." Section 17200 defines "unfair competition" to include "unlawful, unfair or fraudulent business practice."

This bill would revise that definition to instead read "any unlawful, unfair or fraudulent business act or practice."

Comment: Adding "any" is a grammatical change. Adding "act" clarifies that a single act of unfair competition is actionable; i.e., prosecutors need not wait to take action until the act has become a "practice" (until the act is done more than once). This is a clarifying change (e.g., § 17203 already allows injunctive relief for "an act" of unfair competition).

2) Section 17203 allows injunctive relief against anyone "performing or proposing to perform an act of unfair competition within this state."

This bill would revise that language to instead allow injunctive relief against anyone who "engages, has engaged, or proposes to engage in unfair competition."

VOTE: Assembly					VOTE: Senate				
Floor:	Aye	76	No	0	Floor:	Aye	32	No	0
Policy Committee:	Aye	9	No	0	Policy Committee:	Aye	6	No	0
Fiscal Committee:	Aye	n/a	No		Fiscal Committee:	Aye	n/a	No	

RECOMMENDATION TO GOVERNOR:	SIGN X	VETO	DEFER TO OTHER AGENCY
DEPARTMENT DIRECTOR	DATE:		AGENCY SECRETARY DATE:
Lance Barnett	22 JUL 92		Jeanne Moore 7/23/92

874

Comment: "An act" is deleted here because it is being included with the revised definition of unfair competition, above, so it is not necessary in this section. "Within this state" is redundant since California prosecutors do not have authority to take action against persons who engage in unfair competition outside of this state. "Engage" means substantially the same thing as "perform" and so it is a semantical change. The only other change clarifies that injunctive relief may be sought against someone who "has engaged" (as opposed to someone who is currently engaging or is proposing to engage) in unfair competition.

3) Section 17206 authorizes the Attorney General, district attorney and specified local prosecutors to sue for civil penalties of up to $2,500 per violation against anyone who "violates any provision of this chapter" (meaning the prohibitions against unfair competition).

This bill would instead permit those penalties against anyone who "engages, has engaged or proposes to engage in unfair competition."

Comment: This change clarifies that a "violation" of the unfair competition prohibition means past, present and proposed (for sure) acts of unfair competition. This change reflects existing law and practice.

4) The bill would require the court to impose the above civil penalty for each violation. In assessing the amount of the penalty, the court would be required to consider relevant circumstances including the nature and seriousness of the misconduct, number of violations, persistence of the misconduct, length of time the misconduct occurred, willfulness of the misconduct, and defendant's assets, liabilities and net worth. The bill would incorporate these requirements also into § 17536, which makes anyone who engages in false and misleading advertising (§§ 17500 et seq.) liable for a civil penalty of up to $2,500 per violation.

Comment: These changes codify case law concerning the factors to be considered by courts when determining the amount of civil penalties to be assessed defendants in unfair competition actions. ~~The bill would declare legislative intent to this effect.~~

5) Existing law permits counties to charge an annual device registration fee to recover the county sealer's costs in inspecting or testing weighing and measuring devices. This law is scheduled to be repealed on January 1, 1993.

This bill would continue that law to January 1, 1996.

Comment: These provisions do not impact the department or consumers. We defer to the Office of Planning and Research and/or Department of Food and Agriculture for comment on this provision.

Fiscal Impact

None to the department.

Argument

Proponents: California Grocers Association (sponsor)
California Retailers Association (sponsor)
J.C. Penney Co.
Attorney General

Opponents: None

Neutral: California District Attorneys Association

No Concerns: Department of Consumer Affairs
Consumers Union

This bill, as enrolled, was developed by the California Retailers Association and California Grocers Association in cooperation with the California District Attorneys Association (CDAA). The CDAA supplied the language for the current version, which codifies decisional law (Forest v. Olson 96 Cal.App.3d 181) concerning what circumstances courts should consider in apportioning civil penalties under § 17200 et seq.

Recommendation

The Department of Consumer Affairs recommends that the Governor SIGN Senate Bill 1586.

ENROLLED BILL REPORT

DEPARTMENT OF FOOD AND AGRICULTURE	BILL NUMBER SB 1586
	AUTHOR PRESLEY

SUMMARY

This bill extends the sunset date for local weights and measures jurisdictions to charge an annual device registration fee. It also makes amendments to the Business and Professions Code relating to the liability of a person in civil litigation involving unfair competition.

ANALYSIS:

Existing law authorizing counties to charge an annual device registration fee for commercially used weighing and measuring devices is set to sunset on January 1, 1993. This bill will extend the expiration date to January 1, 1996.

Existing law provides that violators of the unfair competition statutes are subject to civil penalties. This bill restricts violations of these statutes to specified conditions; defines what constitutes a violation involving advertisement; clarifies that an act of unfair competition may result in one or more violations, depending on the circumstances of the act; and provides that any person performing, proposing to perform or having performed an act of unfair competition is liable for civil penalties.

PRO:

Currently, local weights and measures jurisdictions obtain a portion of their revenue from fees charged to owners of commercially used weighing and measuring devices. Statewide, the revenue generated from device fees in fiscal year 90/91 was approximately $1.9 million. Removing this authority from local weights and measures jurisdictions will, in many instances, reduce the enforcement of weights and measures laws below an acceptable level.

Since that portion of the bill that addresses civil unfair competition laws is not within the scope of the Department, it is not part of this Enrolled Bill Report.

CON:

To our knowledge, there is no known opposition to that portion of the bill dealing with local weights and measures funding.

A B S HRH

Vote: Assembly Ayes 76 Noes 0 Senate Ayes 32 Noes 0

RECOMMENDATION:

☒ SIGN ☐ VETO DEFER TO

DEPARTMENT DIRECTOR

DATE 7/6/93

FISCAL IMPACT:

None to the Department.

BACKGROUND:

In 1982, legislation was passed authorizing counties to collect fees on certain weighing and measuring devices (Chapter 1380). The original legislation included a sunset date which has been extended several times since 1982.

AB 2510 (Kelley) also extends the repeal date authorizing counties to charge a device registration fee to January 1, 1996. AB 2510 is sponsored by the California Agricultural Commissioners and Sealers Association (CACASA).

RECOMMENDATION:

The Department recommends that the Governor sign this bill. The CACASA has worked closely with the affected members of industry in resolving the county's current funding difficulties. Without such revenue, Californians can expect a reduction in services involving weights and measures matters at the local level.

VOLUME 2

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1993–94 REGULAR SESSION
1993–94 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 7, 1992

Recessed December 8, 1992	Reconvened January 4, 1993
Recessed April 1, 1993	Reconvened April 12, 1993
Recessed September 11, 1993	Reconvened January 3, 1994
Recessed March 24, 1994	Reconvened April 4, 1994
Recessed July 7, 1994	Reconvened August 8, 1994
Recessed August 31, 1994	Reconvened November 17, 1994
Recessed November 17, 1994	

Adjourned Sine Die November 30, 1994

Legislative Days..... 245

HON. WILLIE L. BROWN
Speaker

HON. JACK O'CONNELL
Speaker pro Tempore

HON. RICHARD POLANCO
Assistant Speaker pro Tempore

HON. THOMAS HANNIGAN
Majority Floor Leader

HON. JIM BRULTE
Minority Floor Leader

Compiled Under the Direction of
E. DOTSON WILSON
Chief Clerk

SUSAN S. FLYNN
History Clerk

A.B. No. 2205—Introduced by the Committee on Judiciary as presented by Assembly Member Connolly on behalf of the committee (Archie-Hudson, Caldera, Collins, Epple, Goldsmith, Horcher, Isenberg, Snyder, Speier, Statham, and Weggeland).

An act to amend Sections 6086.13 and 17204 of the Business and Professions Code, to amend Sections 575.1, 712.020, 1094.6, 1987.5, 2020, and 2025 of, and to repeal Section 1167.6 of, the Code of Civil Procedure, and to amend Sections 6259 and 26800 of the Government Code, relating to civil remedies.

1993

Mar. 5—Introduced. To print.
Mar. 7—From printer. May be heard in committee April 6.
Mar. 11—Read first time.
Mar. 29—Referred to Com. on JUD.
May 10—From committee chairman, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended.
May 18—Re-referred to Com. on JUD.
May 20—From committee: Do pass, and re-refer to Com. on W. & M. with recommendation: To Consent Calendar. Re-referred. (Ayes 11. Noes 0.) (May 19).
June 3—From committee: Do pass. To Consent Calendar. (June 2).
June 7—Read second time. To Consent Calendar.
June 9—Read third time, passed, and to Senate. (Ayes 75. Noes 0. Page 2467.)
June 9—In Senate. Read first time. To Com. on RLS. for assignment.
June 11—Referred to Com. on JUD.
July 2—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
July 14—From committee: Do pass, and re-refer to Com. on APPR. with recommendation: To Consent Calendar. Re-referred. (Ayes 9. Noes 0.).
Aug. 16—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on APPR. From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
Aug. 17—Read second time. To third reading.
Aug. 27—Read third time, passed, and to Assembly. (Ayes 37. Noes 0. Page 2846.)
Aug. 30—In Assembly. Concurrence in Senate amendments pending. Ordered to Special Consent Calendar.
Sept. 2—Senate amendments concurred in. To enrollment. (Ayes 77. Noes 0. Page 3948.)
Sept. 15—Enrolled and to the Governor at 12 m.
Oct. 7—Approved by the Governor.
Oct. 8—Chaptered by Secretary of State - Chapter 926, Statutes of 1993.

ASSEMBLY BILL No. 2205

Introduced by Committee on Judiciary as presented by Assembly Member Connolly on behalf of the committee (Archie-Hudson, Caldera, Collins, Epple, Goldsmith, Horcher, Isenberg, Snyder, Speier, Statham, and Weggeland)

March 5, 1993

An act to amend Sections 1000, 1006, and 1007 of the Civil Code, relating to property.

LEGISLATIVE COUNSEL'S DIGEST

AB 2205, as introduced, Committee on Judiciary. Property.

Existing law prescribes the modes in which property may be acquired. Existing law provides that an occupant may acquire title to real property by prescription, where that occupant satisfies statutory requirements for title by prescription.

This bill would specify that acquisition of property by occupancy includes acquisition of personal property by possession. This bill would also provide that in an action to quiet title to personal property based on possession, the person bringing the action must satisfy statutory requirements for title by prescription.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 1000 of the Civil Code is amended to read:

1000. Property is acquired by *the following means:*

~~1.~~

(a) Occupancy ; . *Acquisition of property by occupancy includes acquisition of personal property by possession.*

~~2.~~

(b) Accession ; .

~~3.~~

(c) Transfer ; .

~~4.~~

(d) Will ; ~~or,~~ .

~~5.~~

(e) Succession.

SEC. 2. Section 1006 of the Civil Code is amended to read:

1006. ~~Occupancy~~ *(a) Subject to subdivision (b), occupancy* for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession ; ~~but the~~ .

(b) The title conferred by occupancy is not a sufficient interest in real *or personal* property to enable the occupant or the occupant's privies to commence or maintain an action to quiet title, unless the occupancy has ripened into title by prescription.

SEC. 3. Section 1007 of the Civil Code is amended to read:

1007. ~~Occupancy~~ *(a) Subject to subdivision (b), occupancy* for the period prescribed by the Code of Civil Procedure as sufficient to bar any action for the recovery of ~~the~~ *real or personal* property confers a title thereto, denominated a title by prescription, which is sufficient against all ; ~~but no~~ .

(b) No possession by any person, firm , or corporation no matter how long continued of any land, water, water right, easement, or other property whatsoever dedicated

to a public use by a public utility, or dedicated to or owned by the state or any public entity, shall ever ripen into any title, interest, or right against the owner thereof.

O

California Legislature

Assembly Committee on Judiciary

PHILLIP ISENBERG
CHAIRMAN

February 9, 1993

Loren Smith
California Judges Assn.
925 L Street, Ste. 350
Sacramento, CA 95814

Re: Assembly Judiciary Committee Omnibus Civil Practice Bill

Dear Loren:

Attached is the first packet of items that have been proposed for inclusion in the Assembly Judiciary Committee's omnibus civil practice bill for 1993.

There are 19 proposals (1 through 19). The initial provision in the omnibus bill is the California Law Revision Commission's item (proposal 1).

The process is the same as prior years -- if there are any items you feel should not be included in the bill, please give us your reasons in writing and identify the item by the circled number in the upper right hand corner. We must have your written objections no later than Friday, February 26.

Thanks for your help.

Delete Nos: 3, 4, 5, 6, 7, 9, 15, 18, 19

Sincerely,

Irene Ishizaka

II:mea

Enclosures

3/18/93 TO L/C

#1 Deleted per opposition orig bill
2 Proposal #8
~~3~~
~~4~~
~~5~~
~~6~~
8 Proposal #4
10 " #2
11 " #1

#12 Proposal #7
13 " #5
14 " #6
16 ~~#~~ #6
17 " #3
~~X9~~

Proposal #2 (10)

CLARIFYING PROPER FORUM FOR UNFAIR COMPETITION ACTIONS

Summary: Amend the Business & Professions Code Section 17200 et seq., California's unfair competition statute, to clarify the proper forum for unfair competition actions.

Analysis: California's unfair competition statute is a principal tool used by California prosecutors in consumer protection, antitrust and unfair business practice cases. Recent appellate decisions may have created uncertainty as to the proper forum for public actions under this statute to recover injunctions, civil penalties and other statutory remedies for acts of unfair competition. This proposal would clarify that actions for remedies under the unfair competition statute should be filed with and adjudicated by the "court of competent jurisdiction," generally the Superior Court in the county in which the unfair acts or practices took place.

Thomas A. Papageorge, Head Deputy D.A.
Consumer Protection Division
Los Angeles District Attorney's Office
(213) 974-3970

Proposed Language:

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for any relief pursuant to this chapter shall ~~may~~ be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, office, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

~~SEC. 2. Section 1861.035 is added to the Insurance Code, to read:~~

1861.035. A court may apply the doctrines of primary jurisdiction and exhaustion of administrative remedies under appropriate circumstances in cases involving the business of insurance that are brought under the laws described in subdivision (a) of Section 1861.03.

3/2/93

per Jim
Simpson

Remove #4 &
5. LA Judges
have problems
& asked that
they be pulled.

File copy

California Legislature

Assembly Committee on Judiciary

PHILLIP ISENBERG
CHAIRMAN

MEMORANDUM

TO: Tom Connolly, Vice Chair
Marguerite Archie-Hudson
Louis Caldera
Bob Epple
Terry Friedman
Jan Goldsmith
Paul Horcher
Margaret Snyder
Jackie Speier
Stan Statham
Ted Weggeland

FROM: Irene Ishizaka

RE: AB 2205 Omnibus Civil Practice and Court Procedures

DATE: April 23, 1993

Attached are eight proposals for inclusion in the Assembly Judiciary Committee's omnibus civil practice and court procedures bill.

Nineteen ideas were circulated among all identifiable interest groups (34 organizations). Of the 19, these eight received no opposition. A brief description and the language of each proposal are attached.

The existing provision in AB 2205 (as introduced March 5, 1993) will be deleted at the request of its sponsor, the California Law Revision Commission.

I'd appreciate your reviewing the material and letting me know by Thursday, April 29, if you object to any of the proposals.

Please feel free to call me at 445-4560 if you have any questions.

Attachments

STATE CAPITOL SACRAMENTO, CA 95814 TEL. (916) 445-4560

PROPOSAL #1

Rationale: AB 2300 (Umberg), Ch. 1270, Statutes of 1992, authorized the State Bar Court to include a monetary sanction in any order imposing suspension or disbarment.

The State Bar itself, however, does not have the authority to suspend or disbar a member -- it makes recommendations to the Supreme Court. This amendment makes that correction.

Source: State Bar

Section 6086.13 of the Business and Professions Code is amended to read:

6086.13. (a) Any order of the ~~State Bar court~~ Supreme Court imposing suspension or disbarment of a member of the State Bar, or accepting a resignation with a disciplinary matter pending may include an order that the member pay a monetary sanction not to exceed five thousand dollars ($5,000) for each violation, subject to a total limit of fifty thousand dollars ($50,000).

(b) Monetary sanctions collected under subdivision (a) shall be deposited into the Client Security Fund.

(c) The State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section.

(d) The authority granted under this section is in addition to the provisions of Section 6086.10 and any other authority to impose costs or monetary sanctions.

(e) Monetary sanctions imposed under this section shall not be collected to the extent that the collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney. In the event monetary sanctions are collected under this section and criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected under this section.

PROPOSAL #2

Rationale: The unfair competition statute is a principal tool of prosecutors in consumer protection, antitrust and unfair business practice cases.

This amendment clarifies the proper forum to bring actions seeking statutory remedies for acts of unfair competition.

Source: Los Angeles District Attorney's Office

Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for any relief pursuant to this chapter ~~may~~ shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

PROPOSAL #3

Rationale: Current law provides for the accessibility and distribution of local rules in connection with the superior court.

This amendment requires that municipal courts comply with the same local rule distribution requirements as the superior court.

Source: Beverly Hills Bar Association

Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior or municipal court may prepare with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, 61 copies shall be filed with the Judicial Council as required by Section 68071 of the Government Code. The Judicial Council shall deposit a copy of each rule and amendment with each county law library or county clerk where it shall be made available for public examination. The local rules shall also be published for general distribution.

(c) Rules adopted pursuant to this section shall not be inconsistent with law or with the rules adopted and prescribed by the Judicial Council. The clerk of the court may charge a reasonable fee to persons requesting copies of the local rules, to cover the cost of reproduction and distribution.

PROPOSAL #8

Rationale: Current law permits a superior court to appoint the county clerk as executive officer and to specify the powers, duties and reponsibilities of the officer.

This amendment removes confusion surrounding the offices of "county clerk" and "executive officer."

Source: County Clerks Association

Section 26800 of the Government Code is amended to read:

26800. The county clerk shall act as clerk of the superior court in and for his or her county. However, in any county in which a superior court executive officer has been appointed pursuant to Section 69898, the term "county clerk" shall mean the superior court executive officer to the extent that the superior court, by local rule, has delegated any duties of the county clerk to the superior court executive officer.

AMENDED IN ASSEMBLY MAY 10, 1993

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL No. 2205

Introduced by Committee on Judiciary as presented by Assembly Member Connolly on behalf of the committee (Archie-Hudson, Caldera, Collins, Epple, Goldsmith, Horcher, Isenberg, Snyder, Speier, Statham, and Weggeland)

March 5, 1993

~~An act to amend Sections 1000, 1006, and 1007 of the Civil Code, relating to property.~~ *An act to amend Sections 6086.13 and 17204 of the Business and Professions Code, to amend Sections 575.1, 712.020, 1094.6, and 2025 of the Code of Civil Procedure, and to amend Sections 6259 and 26800 of the Government Code, relating to civil remedies.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2205, as amended, Committee on Judiciary. ~~Property~~ *Civil remedies.*

(1) Existing law provides that any order of the State Bar Court imposing suspension or disbarment of a member of the State Bar, or accepting a resignation with a disciplinary matter pending, may include an order that the member pay a monetary sanction, as specified.

This bill would revise this provision to refer to an order of the Supreme Court, rather than the State Bar Court, imposing suspension or disbarment.

(2) Existing law provides for the enforcement of laws regarding unfair competition by authorizing injunctive actions to be prosecuted by the Attorney General, district attorney, county counsel, or city attorney or prosecutor, as specified.

This bill would specify that these injunctive actions shall be prosecuted exclusively in a court of competent jurisdiction.

(3) Existing law authorizes the presiding judge of each superior court to prepare proposed local rules designed to expedite and facilitate the business of the court, as specified.

This bill would expand this provision to apply to the presiding judge of each municipal court.

(4) Existing law requires a writ of possession or sale to include specified information.

This bill would make the inclusion of certain information at the option of the creditor.

(5) Existing law sets forth specified procedures and time limits for the review of any decision of a local agency other than a school district, which are applicable to a particular local agency only if the governing body of that agency adopts a specified resolution or ordinance.

This bill would make these procedures and time limits applicable to all local agencies, other than school districts, thereby imposing a state-mandated local program by requiring new duties of local officials.

(6) Existing law sets forth the procedure for reading, correcting, and signing the original transcript of stenographically recorded deposition testimony.

This bill would revise that procedure.

(7) Existing law requires a petition to review an order regarding the disclosure or nondisclosure of public records to be filed within 10 days of receipt of notice of the order.

This bill would extend that period to 20 days.

(8) Existing law provides that the county clerk shall act as clerk of the superior court.

This bill would provide that the term "county clerk" refers to the superior court executive officer to the extent the duties of the county clerk have been delegated to the superior court executive officer.

(9) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other

procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State mandates Claims Fund.

~~Existing law prescribes the modes in which property may be acquired. Existing law provides that an occupant may acquire title to real property by prescription, where that occupant satisfies statutory requirements for title by prescription.~~

~~This bill would specify that acquisition of property by occupancy includes acquisition of personal property by possession. This bill would also provide that in an action to quiet title to personal property based on possession, the person bringing the action must satisfy statutory requirements for title by prescription.~~

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:

~~SECTION 1. Section 1000 of the Civil Code is amended to read:~~

~~1000. Property is acquired by the following means:~~

~~(a) Occupancy. Acquisition of property by occupancy includes acquisition of personal property by possession.~~

~~(b) Accession.~~

~~(c) Transfer.~~

~~(d) Will.~~

~~(e) Succession.~~

~~SEC. 2. Section 1006 of the Civil Code is amended to read:~~

~~1006. (a) Subject to subdivision (b), occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession.~~

~~(b) The title conferred by occupancy is not a sufficient~~

~~interest in real or personal property to enable the occupant or the occupant's privies to commence or maintain an action to quiet title, unless the occupancy has ripened into title by prescription.~~

~~SEC. 3. Section 1007 of the Civil Code is amended to read:~~

~~1007. (a) Subject to subdivision (b), occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar any action for the recovery of real or personal property confers a title thereto, denominated a title by prescription, which is sufficient against all.~~

~~(b) No possession by any person, firm, or corporation no matter how long continued of any land, water, water right, easement, or other property whatsoever dedicated to a public use by a public utility, or dedicated to or owned by the state or any public entity, shall ever ripen into any title, interest, or right against the owner thereof.~~

SECTION 1. Section 6086.13 of the Business and Professions Code is amended to read:

6086.13. (a) Any order of the ~~State Bar court~~ *Supreme Court* imposing suspension or disbarment of a member of the State Bar, or accepting a resignation with a disciplinary matter pending may include an order that the member pay a monetary sanction not to exceed five thousand dollars ($5,000) for each violation, subject to a total limit of fifty thousand dollars ($50,000).

(b) Monetary sanctions collected under subdivision (a) shall be deposited into the Client Security Fund.

(c) The State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section.

(d) The authority granted under this section is in addition to the provisions of Section 6086.10 and any other authority to impose costs or monetary sanctions.

(e) Monetary sanctions imposed under this section shall not be collected to the extent that the collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney. In the event monetary

sanctions are collected under this section and criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected under this section.

SEC. 2. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for any relief pursuant to this chapter ~~may~~ *shall* be prosecuted *exclusively in a court of competent jurisdiction* by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 3. Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior *or municipal* court may prepare with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar for consideration and recommendations.

(b) After a majority of the judges have officially

adopted the rules, 61 copies shall be filed with the Judicial Council as required by Section 68071 of the Government Code. The Judicial Council shall deposit a copy of each rule and amendment with each county law library or county clerk where it shall be made available for public examination. The local rules shall also be published for general distribution.

(c) Rules adopted pursuant to this section shall not be inconsistent with law or with the rules adopted and prescribed by the Judicial Council. The clerk of the court may charge a reasonable fee to persons requesting copies of the local rules, to cover the cost of reproduction and distribution.

SEC. 4. Section 712.020 of the Code of Civil Procedure is amended to read:

712.020. A writ of possession or sale issued pursuant to this division shall require the levying officer to whom it is directed to enforce the judgment and shall include the following information:

(a) The date of issuance of the writ.

(b) The title of the court where the judgment for possession or sale is entered and the cause and number of the action.

(c) The name and address of the creditor and the name and last known address of the judgment debtor.

(d) The date the judgment was entered, and the date of any subsequent renewals, and where entered in the records of the court.

(e) If the judgment for possession or sale includes a money judgment, the amount required to satisfy the money judgment on the date the writ is issued and the amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued *may be included on the writ at the option of the creditor.*

(f) Whether any person has requested notice of sale under the judgment and, if so, the name and address of such person.

(g) Any other information required to be included in the particular writ.

SEC. 5. Section 1094.6 of the Code of Civil Procedure

is amended to read:

1094.6. (a) Judicial review of any decision of a local agency, other than school district, as the term local agency is defined in Section 54951 of the Government Code, or of any commission, board, officer or agent thereof, may be had pursuant to Section 1094.5 of this code only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

(b) Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision, or for a written decision or written findings supporting the decision, in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is announced. If the decision is not announced at the close of the hearing, the date, time, and place of the announcement of the decision shall be announced at the hearing. If there is a provision for reconsideration, the decision is final for purposes of this section upon the expiration of the period during which such reconsideration can be sought; provided, that if reconsideration is sought pursuant to any such provision the decision is final for the purposes of this section on the date that reconsideration is rejected. If there is a provision for a written decision or written findings, the decision is final for purposes of this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. Subdivision (a) of Section 1013 does not apply to extend the time, following deposit in the mail of the decision or findings, within which a petition shall be filed.

(c) The complete record of the proceedings shall be prepared by the local agency or its commission, board, officer, or agent which made the decision and shall be delivered to the petitioner within 190 days after he has filed a written request therefor. The local agency may recover from the petitioner its actual costs for

transcribing or otherwise preparing the record. Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.

(d) If the petitioner files a request for the record as specified in subdivision (c) within 10 days after the date the decision becomes final as provided in subdivision (b), the time within which a petition pursuant to Section 1094.5 may be filed shall be extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the petitioner or his attorney of record, if he has one.

(e) As used in this section, decision means a decision subject to review pursuant to Section 1094.5, suspending, demoting, or dismissing an officer or employee, revoking, or denying an application for a permit, license, or other entitlement, or denying an application for any retirement benefit or allowance.

(f) In making a final decision as defined in subdivision (e), the local agency shall provide notice to the party that the time within which judicial review must be sought is governed by this section.

As used in this subdivision, "party" means an officer or employee who has been suspended, demoted or dismissed; a person whose permit, license, or other entitlement has been revoked or suspended, or whose application for a permit, license, or other entitlement has been denied; or a person whose application for a retirement benefit or allowance has been denied.

(g) This section ~~shall be applicable to a local agency only if the governing board thereof adopts an ordinance or resolution making this section applicable. If such ordinance or resolution is adopted, the provisions of this section~~ shall prevail over any conflicting provision in any otherwise applicable law relating to the subject matter, unless the conflicting provision is a state or federal law which provides a shorter statute of limitations, in which

case the shorter statute of limitations shall apply.

SEC. 6. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of

privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audio tape or video tape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a video tape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the video tape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is

requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by

requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party-deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten

or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a video tape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against

that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also

impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audio tape or video tape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audio tape or video tape record of the deposition, provided that other party promptly, and in no event less

than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audio tape or video tape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audio tape or video tape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a video tape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audio tape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case,

the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audio tape.

(F) The oath shall be administered to the deponent on camera or on the audio tape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio tape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audio tape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audio tape or video tape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audio taped or video taped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio taped or video taped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audio tape or video tape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a video tape or an audio tape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to

enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio tape or video tape, the moving party is required to lodge a certified

copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio tape or video tape shall promptly (1) permit that other party to hear the audio tape or to view the video tape, and (2) furnish a copy of the audio tape or video tape to that other party on receipt of payment of the reasonable cost of making

that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audio tape or video tape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony *for each session of the deposition* is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record ~~to waive~~ *that* the reading, correcting, and signing of the transcript of the testimony ~~: For 30 days following this notice~~ *will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period*, the deponent may change the form or the substance of the answer to an question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same ~~30/day~~ period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the

transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audio tape or video tape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply such signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a

signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) The deposition officer shall certify on the transcript of the deposition, or in the writing accompanying an audio taped or video taped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)", and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audio tape or video tape record of deposition testimony, including a certified tape made by an operator

qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audio tape or the video tape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audio tape or video tape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audio tape or video tape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who ~~received, notice of the deposition~~ *has been served with a deposition notice pursuant to subdivision (c)* may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined as a result of that person's designation to testify on behalf of an organization under subdivision (d).

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party

who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the

interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a video tape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 7. Section 6259 of the Government Code is amended to read:

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within ~~10~~ *20* days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding *an additional* 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

SEC. 8. Section 26800 of the Government Code is amended to read:

26800. The county clerk shall act as clerk of the superior court in and for his *or her* county. *However, in any county in which a superior court executive officer has been appointed pursuant to Section 69898, the term "county clerk" shall mean the superior court executive officer to the extent that the superior court, by local rule, has delegated any duties of the county clerk to the superior court executive officer.*

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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Date of Hearing: May 19, 1993

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

AB 2205 (Committee on Judiciary) - Presented by
Assembly Member Connolly - As Amended: May 10, 1993

SUBJECT: This bill is the Assembly Committee on Judiciary's omnibus civil practice bill.

BACKGROUND

History. In past years, the Assembly Committee on Judiciary has considered and passed a large number of noncontroversial bills that affect civil practice and court procedures. Some of these bills made technical changes in the statutory language of the Code of Civil Procedure or Evidence Code, while others made minor but important substantive improvements to the civil justice system.

This Committee adopted the practice of sponsoring an omnibus bill each year in order to expedite the review process and remove the need to pass a large number of "small bills." Noncontroversial proposals and bills in the area of civil procedure and practice are consolidated into the omnibus bill. This practice saves considerable author and Committee time.

The provisions of this measure have been reviewed and agreed to by all identifiable, affected and interested groups. Additional candidates for inclusion may be circulated, and consensus items may be amended into the bill at a later time, subject to approval of Committee members.

DIGEST

This bill is the Assembly Committee on Judiciary's omnibus civil practice bill. Among other things, it:

1) Corrects existing law to reflect that it is the Supreme Court, rather than the State Bar Court, that issues orders imposing suspension or disbarment.

2) Extends to the presiding judge of each municipal court the authority already provided to presiding judges of the superior court to prepare proposed local rules designed to facilitate the business of the court.

3) Makes existing procedures and time limits for the review of a local agency decision applicable to all local agencies by deleting the requirement that the agency's governing body must first adopt an ordinance or resolution making the provisions applicable.

- continued -

4) Makes two clarifying changes relating to notice requirements and the review period in connection with depositions that require multiple sessions.

FISCAL EFFECT

This bill will be referred to the Assembly Committee on Ways and Means.

COMMENTS

1) The State Bar is the source of the provision that makes clarifying changes relating to depositions. The Bar cites two areas that are ambiguous.

Current law provides 30 days, upon written notice that the transcript is complete, within which the deponent may read, correct and sign the deposition transcript. The 30-day period may be shortened by the court for good cause.

The Bar states that current law is not clear when the 30-day period commences in the case of depositions that require multiple sessions to complete over a period of weeks or months, and does not provide flexibility to modify the 30-day period if all parties agree.

Current law precludes any person who has received notice of a deposition from taking a subsequent deposition of that deposed party. The Bar states that, because there are no requirements on the type of notice that must be given, it could be oral, untimely or otherwise insufficient notice.

The amendments clarify that: (a) the notice triggering the 30-day period is to be given when the transcript for each session of the deposition is available, and permits the attending parties and the deponent to shorten or lengthen the time by agreement, and (b) a deposition notice must be in accordance with a specific subdivision that sets out the requirements of the notice.

SUPPORT

Association of Municipal Court Clerks
Beverly Hills Bar Association
County Clerks Association
Los Angeles District Attorney's Office
State Bar

OPPOSITION

Unknown

Irene Ishizaka
445-4560
ajud

WAYS AND MEANS COMMITTEE ANALYSIS

Author: Judiciary | Amended: 05/10/93 | Bill No.: AB 2205

Policy Committee: Judiciary | Vote: 11-0 (Consent)

Urgency: No | Hearing Date: 06/02/93

State Mandated Local Program: Yes | Staff Comments By:

Reimbursable: Yes | Jeanette Rapp

Summary

This bill is the Assembly Committee on Judiciary's omnibus civil practice bill.

Please see attached policy committee analysis for specific details.

Fiscal

The bill may result in minor mandated costs related to review of local agency decisions; these costs are potentially state-reimbursable.

AMENDMENTS TO SENATE BILL NO. 1911
AS AMENDED IN SENATE APRIL 30, 1992

AMENDMENT 1

On page 1 of the printed bill, in the second line of the title, strike the comma, and insert:

and Section 1861.035 to the Insurance Code, and to amend Section 17204 of the Business and Professions Code,

AMENDMENT 2

On page 2, line 1, after "SECTION 1.", insert:

Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for any relief ~~injunction~~ pursuant to this chapter shall ~~may~~ be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 2.

AMENDMENT 3

On page 3, line 4, strike "of the appeal", and insert:

thereof, including a copy of the person's brief or petition and brief,

AMENDMENT 4

On page 3, lines 8 and 9, strike "Notice of the appeal", and insert:

The notice, including the brief or petition and brief,

AMENDMENT 5

On page 3, line 16, strike "SEC. 2", and insert:

:C. 3

AMENDMENT 6

On page 3, line 25, strike "of the appeal", and insert:

thereof, including a copy of the person's brief or petition and brief,

AMENDMENT 7

On page 3, lines 29 and 30, strike "Notice of the appeal", and insert:

The notice, including the brief or petition and brief,

AMENDMENT 8

On page 3, after line 36, insert:

SEC. 4. Section 1861.035 is added to the Insurance Code, to read:

1861.035. A court may apply the doctrines of primary jurisdiction and exhaustion of administrative remedies under appropriate circumstances in cases involving the business of insurance that are brought under the laws described in ubdivision (a) of Section 1861.03.

AMENDMENTS TO ASSEMBLY BILL NO. 2205

Amendment 1

Strike out lines 1 and 2 of the title and insert:

An act to amend Sections 6086.13 and 17204 of the Business and Professions Code, to amend Sections 575.1, 712.020, 1094.6, and 2025 of the Code of Civil Procedure, and to amend Sections 6259 and 26800 of the Government Code, relating to civil remedies.

Amendment 2

On page 2, strike out lines 1 to 38, inclusive, strike out page 3 and insert:

Proposal #1

(11)

SECTION 1. Section 6086.13 of the Business and Professions Code is amended to read:

6086.13. (a) Any order of the ~~State Bar court~~ Supreme Court imposing suspension or disbarment of a member of the State Bar, or accepting a resignation with a disciplinary matter pending may include an order that the member pay a monetary sanction not to exceed five thousand dollars ($5,000) for each violation, subject to a total limit of fifty thousand dollars ($50,000).

(b) Monetary sanctions collected under subdivision (a) shall be deposited into the Client Security Fund.

(c) The State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section.

(d) The authority granted under this section is in addition to the provisions of Section 6086.10 and any other authority to impose costs or monetary sanctions.

(e) Monetary sanctions imposed under this section shall not be collected to the extent that the collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney. In the event monetary sanctions are collected under this section and criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected under this section.

Proposal #2

(10)

SEC. 2. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for any relief pursuant to this chapter ~~may~~ shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population

L12

in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

Proposal #3 (17)

SEC. 3. Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior or municipal court may prepare with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, 61 copies shall be filed with the Judicial Council as required by Section 68071 of the Government Code. The Judicial Council shall deposit a copy of each rule and amendment with each county law library or county clerk where it shall be made available for public examination. The local rules shall also be published for general distribution.

(c) Rules adopted pursuant to this section shall not be inconsistent with law or with the rules adopted and prescribed by the Judicial Council. The clerk of the court may charge a reasonable fee to persons requesting copies of the local rules, to cover the cost of reproduction and distribution.

Proposal #4 (8)

SEC. 4. Section 712.020 of the Code of Civil Procedure is amended to read:

712.020. A writ of possession or sale issued pursuant to this division shall require the levying officer to whom it is directed to enforce the judgment and shall include the following information:

(a) The date of issuance of the writ.

(b) The title of the court where the judgment for possession or sale is entered and the cause and number of the action.

(c) The name and address of the creditor and the name and last known address of the judgment debtor.

(d) The date the judgment was entered, and the date of any subsequent renewals, and where entered in the records of the court.

(e) If the judgment for possession or sale includes a money judgment, the amount required to satisfy the money judgment on the date the writ is issued and the amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued may be included on the writ at the option of the creditor.

clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

Proposed 8 SEC. 8. Section 26800 of the Government Code is amended to read:

(2) 26800. The county clerk shall act as clerk of the superior court in and for his or her county. However, in any county in which a superior court executive officer has been appointed pursuant to Section 69898, the term "county clerk" shall mean the superior court executive officer to the extent that the superior court, by local rule, has delegated any duties of the county clerk to the superior court executive officer.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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SENATE JUDICIARY COMMITTEE
BACKGROUND INFORMATION
5-5957

AB 2205

Please complete this form and return it to the Senate Judiciary Committee, Room 2032, as soon as possible. Your bill cannot be heard until this form is returned. PLEASE CALL AS SOON AS POSSIBLE TO SET YOUR BILL.

1. **Who on your staff is responsible for this measure?**

   Irene Ishizaka, 445-1611

2. **Which agency, organization or individual requested the introduction of this bill?**

   Name: Assembly Judiciary Committee's annual omnibus bill into which noncontroversial technical changes to civil practice and court procedures are amended.

   Contact Person:

   Phone number:

3. **Which agencies, organizations, or individuals (outside of the sponsor) have expressed support?**

   Assn. of Municipal Court Clerks, Beverly Hills Bar Assn., County Clerks Assn., Los Angeles District Attorney's Office.

4. **Which agencies, organizations or individuals have expressed opposition?**

   None

5. **If a similar bill has been introduced in a previous session, what was the number and year of its introduction?**

   AB 1484, Ch. 1090, Statutes of 1991
   AB 3296, Ch. 876, Statutes of 1992

6. **What problem or deficiency under current law does the bill seek to remedy?**

   A variety of minor changes as per attached.

7. **Are you planning any amendments to be offered before the Committee hearing?**

   Yes -- please see attached "AMENDMENTS." Being drafted by Leg. Counsel

If you have any further background information or material relating to this measure (letters of support or opposition, reports, opinions, citations, etc.) please attach copies or state where such information is available.

Proposal #2 (10)

CLARIFYING PROPER FORUM FOR UNFAIR COMPETITION ACTIONS

Summary: Amend the Business & Professions Code Section 17200 et seq., California's unfair competition statute, to clarify the proper forum for unfair competition actions.

Analysis: California's unfair competition statute is a principal tool used by California prosecutors in consumer protection, antitrust and unfair business practice cases. Recent appellate decisions may have created uncertainty as to the proper forum for public actions under this statute to recover injunctions, civil penalties and other statutory remedies for acts of unfair competition. This proposal would clarify that actions for remedies under the unfair competition statute should be filed with and adjudicated by the "court of competent jurisdiction," generally the Superior Court in the county in which the unfair acts or practices took place.

Thomas A. Papageorge, Head Deputy D.A.
Consumer Protection Division
Los Angeles District Attorney's Office
(213) 974-3970

Proposed Language:

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for any relief pursuant to this chapter shall ~~may~~ be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, office, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

~~SEC. 2. Section 1861.035 is added to the Insurance Code, to read:~~

1861.035. A court may apply the doctrines of primary jurisdiction and exhaustion of administrative remedies under appropriate circumstances in cases involving the business of insurance that are brought under the laws described in subdivision (a) of Section 1861.03.

AMENDED IN SENATE JULY 2, 1993

AMENDED IN ASSEMBLY MAY 10, 1993

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL No. 2205

Introduced by Committee on Judiciary as presented by Assembly Member Connolly on behalf of the committee (Archie-Hudson, Caldera, Collins, Epple, Goldsmith, Horcher, Isenberg, Snyder, Speier, Statham, and Weggeland)

March 5, 1993

An act to amend Sections 6086.13 and 17204 of the Business and Professions Code, to amend Sections 575.1, 712.020, 1094.6, *1987.5, 2020,* and 2025 of, *and to repeal Section 1167.6 of,* the Code of Civil Procedure, and to amend Sections 6259 and 26800 of the Government Code, relating to civil remedies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2205, as amended, Committee on Judiciary. Civil remedies.

(1) Existing law provides that any order of the State Bar Court imposing suspension or disbarment of a member of the State Bar, or accepting a resignation with a disciplinary matter pending, may include an order that the member pay a monetary sanction, as specified.

This bill would revise this provision to refer to an order of the Supreme Court, rather than the State Bar Court, imposing suspension or disbarment.

(2) Existing law provides for the enforcement of laws regarding unfair competition by authorizing injunctive actions to be prosecuted by the Attorney General, district attorney, county counsel, or city attorney or prosecutor, as

specified.

This bill would specify that these injunctive actions shall be prosecuted exclusively in a court of competent jurisdiction.

(3) Existing law authorizes the presiding judge of each superior court to prepare proposed local rules designed to expedite and facilitate the business of the court, as specified.

This bill would expand this provision to apply to the presiding judge of each municipal court.

(4) Existing law requires a writ of possession or sale to include specified information.

This bill would make the inclusion of certain information at the option of the creditor.

(5) Existing law sets forth specified procedures and time limits for the review of any decision of a local agency other than a school district, which are applicable to a particular local agency only if the governing body of that agency adopts a specified resolution or ordinance.

This bill would make these procedures and time limits applicable to all local agencies, other than school districts, thereby imposing a state-mandated local program by requiring new duties of local officials.

(6) *Existing law provides a stay of eviction procedures if one or more of the defendants in an action is the spouse, dependent child, or otherwise a dependent of a reservist who has been called to active duty as a result of the Iraq-Kuwait crisis.*

This bill would delete that provision.

(7) Existing law generally specifies the procedures for valid service of a subpoena duces tecum. Existing law also includes a separate provision governing deposition subpoenas that command only the production of business records.

This bill would specifically provide that the general provision specifying the manner of service of a subpoena duces tecum does not apply to deposition subpoenas commanding only the production of business records for copying.

(8) Existing law specifies the manner in which deposition subpoenas that command only the production of business records for copying may be delivered. Existing law provides that the custodian of the records or other qualified person

may (a) permit the deposition officer specified in the deposition subpoena to make a copy of the originals of the designated business records, or (b) deliver a copy of the records, as specified.

This bill would instead provide that the custodian of the records or other qualified person shall elect one of those methods of delivery.

(9) Existing law sets forth the procedure for reading, correcting, and signing the original transcript of stenographically recorded deposition testimony.

This bill would revise that procedure.

~~(7)~~

(10) Existing law requires a petition to review an order regarding the disclosure or nondisclosure of public records to be filed within 10 days of receipt of notice of the order.

This bill would extend that period to 20 days.

~~(8)~~

(11) Existing law provides that the county clerk shall act as clerk of the superior court.

This bill would provide that the term "county clerk" refers to the superior court executive officer to the extent the duties of the county clerk have been delegated to the superior court executive officer.

~~(9)~~

(12) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State mandates Claims Fund.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 6086.13 of the Business and Professions Code is amended to read:

6086.13. (a) Any order of the Supreme Court imposing suspension or disbarment of a member of the State Bar, or accepting a resignation with a disciplinary matter pending may include an order that the member pay a monetary sanction not to exceed five thousand dollars ($5,000) for each violation, subject to a total limit of fifty thousand dollars ($50,000).

(b) Monetary sanctions collected under subdivision (a) shall be deposited into the Client Security Fund.

(c) The State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section.

(d) The authority granted under this section is in addition to the provisions of Section 6086.10 and any other authority to impose costs or monetary sanctions.

(e) Monetary sanctions imposed under this section shall not be collected to the extent that the collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney. In the event monetary sanctions are collected under this section and criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected under this section.

SEC. 2. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a

city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 3. Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior or municipal court may prepare with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, 61 copies shall be filed with the Judicial Council as required by Section 68071 of the Government Code. The Judicial Council shall deposit a copy of each rule and amendment with each county law library or county clerk where it shall be made available for public examination. The local rules shall also be published for general distribution.

(c) Rules adopted pursuant to this section shall not be inconsistent with law or with the rules adopted and prescribed by the Judicial Council. The clerk of the court may charge a reasonable fee to persons requesting copies of the local rules, to cover the cost of reproduction and distribution.

SEC. 4. Section 712.020 of the Code of Civil Procedure is amended to read:

712.020. A writ of possession or sale issued pursuant to this division shall require the levying officer to whom it is directed to enforce the judgment and shall include the following information:

(a) The date of issuance of the writ.

(b) The title of the court where the judgment for possession or sale is entered and the cause and number of the action.

(c) The name and address of the creditor and the name and last known address of the judgment debtor.

(d) The date the judgment was entered, and the date of any subsequent renewals, and where entered in the records of the court.

(e) If the judgment for possession or sale includes a money judgment, the amount required to satisfy the money judgment on the date the writ is issued and the amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued may be included on the writ at the option of the creditor.

(f) Whether any person has requested notice of sale under the judgment and, if so, the name and address of such person.

(g) Any other information required to be included in the particular writ.

SEC. 5. Section 1094.6 of the Code of Civil Procedure is amended to read:

1094.6. (a) Judicial review of any decision of a local agency, other than school district, as the term local agency is defined in Section 54951 of the Government Code, or of any commission, board, officer or agent thereof, may be had pursuant to Section 1094.5 of this code only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

(b) Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision, or for a written decision or written findings supporting the decision, in any applicable provision of any statute, charter, or rule, for the purposes

of this section, the decision is final on the date it is announced. If the decision is not announced at the close of the hearing, the date, time, and place of the announcement of the decision shall be announced at the hearing. If there is a provision for reconsideration, the decision is final for purposes of this section upon the expiration of the period during which such reconsideration can be sought; provided, that if reconsideration is sought pursuant to any such provision the decision is final for the purposes of this section on the date that reconsideration is rejected. If there is a provision for a written decision or written findings, the decision is final for purposes of this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. Subdivision (a) of Section 1013 does not apply to extend the time, following deposit in the mail of the decision or findings, within which a petition shall be filed.

(c) The complete record of the proceedings shall be prepared by the local agency or its commission, board, officer, or agent which made the decision and shall be delivered to the petitioner within 190 days after he has filed a written request therefor. The local agency may recover from the petitioner its actual costs for transcribing or otherwise preparing the record. Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.

(d) If the petitioner files a request for the record as specified in subdivision (c) within 10 days after the date the decision becomes final as provided in subdivision (b), the time within which a petition pursuant to Section 1094.5 may be filed shall be extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the petitioner or his attorney of record, if he has one.

(e) As used in this section, decision means a decision subject to review pursuant to Section 1094.5, suspending, demoting, or dismissing an officer or employee, revoking, or denying an application for a permit, license, or other entitlement, or denying an application for any retirement benefit or allowance.

(f) In making a final decision as defined in subdivision (e), the local agency shall provide notice to the party that the time within which judicial review must be sought is governed by this section.

As used in this subdivision, "party" means an officer or employee who has been suspended, demoted or dismissed; a person whose permit, license, or other entitlement has been revoked or suspended, or whose application for a permit, license, or other entitlement has been denied; or a person whose application for a retirement benefit or allowance has been denied.

(g) This section shall prevail over any conflicting provision in any otherwise applicable law relating to the subject matter, unless the conflicting provision is a state or federal law which provides a shorter statute of limitations, in which case the shorter statute of limitations shall apply.

SEC. 6. *Section 1167.6 of the Code of Civil Procedure is repealed.*

~~1167.6. Any summons issued in a complaint for unlawful detainer shall state in English and Spanish that if one or more of the defendants is the spouse, dependent child or children, or otherwise a dependent of a reservist, as defined in Section 803 of the Military and Veterans Code, those defendants may be entitled to a stay of eviction proceedures as provided in Section 399.5 of the Military and Veterans Code.~~

SEC. 7. Section 1987.5 of the Code of Civil Procedure is amended to read:

1987.5. The service of a subpoena duces tecum is invalid unless at the time of such service a copy of the affidavit upon which the subpoena is based is served on the person served with the subpoena. In the case of a subpoena duces tecum which requires appearance and

the production of matters and things at the taking of a deposition, the subpoena shall not be valid unless a copy of the affidavit upon which the subpoena is based and the designation of the materials to be produced, as set forth in the subpoena, is attached to the notice of taking the deposition served upon each party or its attorney as provided in Chapter 3 (commencing with Section 2002). If matters and things are produced pursuant to a subpoena duces tecum in violation of this section, any other party to the action may file a motion for, and the court may grant, an order providing appropriate relief, including, but not limited to, exclusion of the evidence affected by the violation, a retaking of the deposition notwithstanding any other limitation on discovery proceedings, or a continuance. The party causing the subpoena to be served shall retain the original affidavit until final judgment in the action, and shall file the affidavit with the court only upon reasonable request by any party or witness affected thereby.. *This section does not apply to deposition subpoenas commanding only the production of business records for copying under subdivision (d) of Section 2020.*

SEC. 8. Section 2020 of the Code of Civil Procedure is amended to read:

2020. (a) The method for obtaining discovery within the state from one who is not a party to the action is an oral deposition under Section 2025, a written deposition under Section 2028, or a deposition for production of business records and things under subdivisions (d) and (e). Except as provided in paragraph (1) of subdivision (h) of Section 2025, the process by which a nonparty is required to provide discovery is a deposition subpoena. The deposition subpoena may command any of the following:

(1) Only the attendance and the testimony of the deponent, under subdivision (c).

(2) Only the production of business records for copying, under subdivision (d).

(3) Both the attendance and the testimony of the deponent, as well as the production of business records,

other documents, and tangible things, under subdivision (e).

Except as modified in this section, the provisions of Chapter 2 (commencing with Section 1985), and of Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of the Evidence Code, apply to a deposition subpoena.

(b) The clerk of the court in which the action is pending shall issue a deposition subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service. In lieu of the court-issued deposition subpoena, an attorney of record for any party may sign and issue a deposition subpoena; the deposition subpoena in that case need not be sealed.

(c) A deposition subpoena that commands only the attendance and the testimony of the deponent shall specify the time when and the place where the deponent is commanded to attend for the deposition. It shall set forth a summary of (1) the nature of a deposition, (2) the rights and duties of the deponent, and (3) the penalties for disobedience of a deposition subpoena described in subdivision (h). If the deposition will be recorded by videotape under paragraph (2) of subdivision (*l*) of Section 2025, the deposition subpoena shall state that it will be recorded in that manner. If the deponent is an organization, the deposition subpoena shall describe with reasonable particularity the matters on which examination is requested, and shall advise that organization of its duty to make the designation of employees or agents who will attend described in subdivision (d) of Section 2025.

(d) (1) A deposition subpoena that commands only the production of business records for copying shall designate the business records to be produced either by specifically describing each individual item or by reasonably particularizing each category of item. This deposition subpoena need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. It shall be directed to the custodian of those records or

another person qualified to certify the records. It shall command compliance in accordance with paragraph (4) on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.

(2) If, under Section 1985.3, the one to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3.

(3) The officer for a deposition seeking discovery only of business records for copying under this subdivision shall be a professional photocopier registered under Chapter 20 (commencing with Section 22450) of Division 8 of the Business and Professions Code, or a person exempted from the registration requirements of that chapter under Section 22451 of the Business and Professions Code. This deposition officer shall not be financially interested in the action, or a relative or employee of any attorney of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the date of production or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(4) Unless directed to make the records available for inspection or copying by the subpoenaing party's attorney or a representative of that attorney at the witness' business address under subdivision (e) of Section 1560 of the Evidence Code, the custodian of the records or other qualified person shall, in person, by messenger, or by mail, deliver only to the deposition officer specified in the deposition subpoena (1) a true, legible, and durable copy of the records, and (2) an affidavit in compliance with Section 1561 of the Evidence Code. If this delivery is made to the office of the deposition

officer, the records shall be enclosed, sealed, and directed as described in subdivision (c) of Section 1560 of the Evidence Code. If this delivery is made at the office of the business whose records are the subject of the deposition subpoena, the custodian of those records or other qualified person ~~may~~ *shall* (1) permit the deposition officer specified in the deposition subpoena to make a copy of the originals of the designated business records, or (2) deliver to that deposition officer a true, legible, and durable copy of the records on receipt of payment in cash or by check, by or on behalf of the party serving the deposition subpoena, of the reasonable costs of preparing that copy as determined under subdivision (b) of Section 1563 of the Evidence Code. This copy need not be delivered in a sealed envelope. Unless the parties, and if the records are those of a consumer as defined in Section 1985.3, the consumer, stipulate to an earlier date, the custodian of the records shall not deliver to the deposition officer the records that are the subject of the deposition subpoena prior to the date and time specified in the deposition subpoena. The following legend shall appear in boldface type on the deposition subpoena immediately following the date and time specified for production: "Do not release the requested records to the deposition officer prior to the date and time stated above."

(5) Promptly *on or after the deposition date and* after the receipt or the making of a copy of business records under this subdivision, the deposition officer shall provide that copy to the party at whose instance the deposition subpoena was served, and a copy of those records to any other party to the action who then or subsequently notifies the deposition officer that the party desires to purchase a copy of those records.

(6) The provisions of Section 1562 of the Evidence Code concerning the admissibility of the affidavit of the custodian or other qualified person apply to a deposition subpoena served under this subdivision.

(e) A deposition subpoena that commands both the attendance and the testimony of the deponent, as well as

the production of business records, documents, and tangible things, shall (1) comply with the requirements of subdivision (c), (2) designate the business records, documents, and tangible things to be produced either by specifically describing each individual item or by reasonably particularizing each category of item, and (3) specify any testing or sampling that is being sought. This deposition subpoena need not be accompanied by an affidavit or declaration showing good cause for the production of the documents and things designated.

Where, as described in Section 1985.3, the person to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3.

(f) Subject to paragraph (1) of subdivision (d), service of a deposition subpoena shall be effected a sufficient time in advance of the deposition to provide the deponent a reasonable opportunity to locate and produce any designated business records, documents, and tangible things, and, where personal attendance is commanded, a reasonable time to travel to the place of deposition. Any person may serve the subpoena by personal delivery of a copy of it (1) if the deponent is a natural person, to that person, and (2) if the deponent is an organization, to any officer, director, custodian of records, or to any agent or employee authorized by the organization to accept service of a subpoena.

If a deposition subpoena requires the personal attendance of the deponent, under subdivision (c) or (e), the party noticing the deposition shall pay to the deponent in cash or by check the same witness fee and mileage required by Chapter 1 (commencing with Section 68070) of Title 8 of the Government Code for attendance and testimony before the court in which the

action is pending. This payment, whether or not demanded by the deponent, shall be made, at the option of the party noticing the deposition, either at the time of service of the deposition subpoena, or at the time the deponent attends for the taking of testimony.

Service of a deposition subpoena that does not require the personal attendance of a custodian of records or other qualified person, under subdivision (d), shall be accompanied, whether or not demanded by the deponent, by a payment in cash or by check of the witness fee required by paragraph (6) of subdivision (b) of Section 1563 of the Evidence Code.

(g) Personal service of any deposition subpoena is effective to require of any deponent who is a resident of California at the time of service (1) personal attendance and testimony, if the subpoena so specifies, (2) any specified production, inspection, testing, and sampling, and (3) the deponent's attendance at a court session to consider any issue arising out of the deponent's refusal to be sworn, or to answer any question, or to produce specified items, or to permit inspection or specified testing and sampling of the items produced.

(h) A deponent who disobeys a deposition subpoena in any manner described in subdivision (g) may be punished for contempt under Section 2023 without the necessity of a prior order of court directing compliance by the witness, and is subject to the forfeiture and the payment of damages set forth in Section 1992.

SEC. 9. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audio tape or video tape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a video tape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the video tape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to

the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the

deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party-deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal

service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order

that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a video tape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified

documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to

the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that

deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audio tape or video tape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audio tape or video tape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audio tape or video tape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audio tape or video tape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a video tape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audio tape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audio tape.

(F) The oath shall be administered to the deponent on camera or on the audio tape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio tape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audio tape that the

deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audio tape or video tape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audio taped or video taped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio taped or video taped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audio tape or video tape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a video tape or an audio tape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly

presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court. The court shall impose a monetary sanction under

Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio tape or video tape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this

subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio tape or video tape shall promptly (1) permit that other party to hear the audio tape or to view the video tape, and (2) furnish a copy of the audio tape or video tape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audio tape or video tape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading,

correcting, and signing of the transcript of the testimonywill be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to an question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audio tape or video tape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply such signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction

unjust.

(r) The deposition officer shall certify on the transcript of the deposition, or in the writing accompanying an audio taped or video taped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)", and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audio tape or video tape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audio tape or the video tape recording to the one making

the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audio tape or video tape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audio tape or video tape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined as a result of that person's designation to testify on behalf of an organization under subdivision (d).

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection

to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a video tape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

~~SEC. 7.~~

SEC. 10. Section 6259 of the Government Code is amended to read:

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall

be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

~~SEC. 8.~~

SEC. 11. Section 26800 of the Government Code is amended to read:

26800. The county clerk shall act as clerk of the superior court in and for his or her county. However, in any county in which a superior court executive officer has been appointed pursuant to Section 69898, the term "county clerk" shall mean the superior court executive officer to the extent that the superior court, by local rule, has delegated any duties of the county clerk to the superior court executive officer.

~~SEC. 9.~~

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school

districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1993-94 Regular Session

AB 2205 (Assembly Committee on Judiciary)
As Amended July 2
Hearing date: July 13, 1993
Business and Professions, Civil Procedure, Government Codes
GPS/lhm

CIVIL PROCEDURE AND COURT PRACTICES

HISTORY

Source: Assembly Committee on Judiciary

Prior Legislation: AB 3296 (1992) - Chaptered
AB 1484 (1991) - Chaptered

Support: Association of Municipal Court Clerks; Beverly Hills Bar Association; County Clerks Association of California; California Association of Photocopiers and Process Servers; State Bar; Los Angeles County District Attorney

Opposition: No Known

Assembly Floor vote: Ayes 75 - Noes 0

KEY ISSUE

SHOULD A NUMBER OF TECHNICAL AND CLARIFYING CHANGES BE MADE TO STATUTES RELATING TO CIVIL PROCEDURE AND COURT PRACTICES?

PURPOSE

Existing law (B&PC. Sec. 6086.13) permits the imposition of a monetary sanction upon attorneys disciplined by the State Bar Court. This bill would correct current references to specify that the Supreme Court, rather than the Bar Court, is the ultimate arbiter of discipline in imposing suspensions or disbarment.

Current law (B&PC. Sec. 17204) authorizes the prosecutorial agencies of the state to pursue injunctions against unfair competition. This bill would clarify that such injunctions must be prosecuted in a court of competent jurisdiction.

The Code of Civil Procedure (Sec. 1094.6) specifies procedures for judicial review of the decisions of local agencies, to be followed only if the governing board of the agency adopts a resolution subjecting itself thereto. This bill would make the procedures applicable to all agencies, regardless of local resolution, in recognition of the universal adoption of the review standards specified.

This bill would repeal C.C.P. Sec. 1167.6, relating to protections from eviction afforded dependents of military personnel serving in the Persian Gulf War.

Current law (C.C.P. Sec. 2025) provides that a deponent enjoys 30 days following written notice of the completion of a transcript in which to read, correct, and sign a deposition. This bill would clarify that the 30-day period commences following notice that the transcript for a particular session of a deposition is completed and available for review. Current law precludes any person who has received notice of a deposition from taking a subsequent deposition of that deposed party. This bill would specify the nature of the notice to be given to avoid ambiguity and confusion.

This bill would also clarify the authority of the presiding judges of the municipal court to prepare proposed rules of court for their venues, and would specify that any statutory reference to "county clerk" refers additionally to the executive officer of the superior court in those counties having established a separate court administrative position.

The purpose of this measure to is expedite the annual review of minor statutory changes to civil procedure by the crafting of an "omnibus" bill of proposed amendments, thereby reducing the overall bill load.

COMMENT

1. This measure is non-controversial

Each year the Judiciary Committees of the Senate and Assembly receive numerous suggestions and requests from the Bench and Bar regarding clarification of statute, minor procedural changes, and general code maintenance. Two years ago, the Assembly Judiciary Committee decided to gather meritorious suggestions into a single measure for expeditious passage. What is proposed represents matter of slightly more substance than "maintenance of the codes", but nothing of controversy or significant policy alteration.

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DEPARTMENT OF FINANCE BILL ANALYSIS 24.8

AMENDMENT DATE: July 2, 1993
POSITION: NEUTRAL
SPONSOR: Assembly Committee on Judiciary

BILL NUMBER: AB 2205
AUTHOR: Connolly

BILL SUMMARY

This bill is the Assembly Committee on Judiciary's omnibus civil practice bill which would make various changes in civil practice and court procedures.

FISCAL SUMMARY

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1993-94	FC 1994-95	FC 1995-96	Code Fund
			See Fiscal Analysis			

COMMENTS

AB 2205 would, among other things, correct existing law to reflect that it is the Supreme Court, rather than the State Bar Court, that issues orders imposing suspension or disbarment; extend to the presiding judge of each municipal court the authority already provided to presiding judges of the superior court to prepare proposed local rules designed to facilitate the business of the court; and make two clarifying changes relating to notice requirements and the review period in connection with depositions that require multiple sessions.

In addition, the bill would make existing procedures and time limits for the review of a local agency decision applicable to all local agencies by deleting the requirement that the agency's governing body must first adopt an ordinance or resolution making the provisions applicable. The Judicial Council, the Senate Committee on Judiciary consultant's analysis, and a member of the State Bar familiar with this amendment indicate it would provide continuity statewide and provide clarification to practitioners regarding the deadlines for processing writs of mandate.

The bill does not require local entities to prepare any information that is not currently required. As such, this bill would have the effect of requiring the same information be provided but at a different point in time. Advancing the due date would not, by itself, increase locals' costs. Although the shorter deadline might, in some instances require a shift in workload organization, this should not result in any increased costs.

This bill does not impact any state department or program.

Analyst/Principal (556) 550 — Date 8/5/93

Program Budget Manager Diane M. Cummins — Date Diane M. Cummins 8/5/93

Department Deputy Director — Date Diane M. Cummins for 8/5/93

Governor's Office: By: — Date: — Position Noted ____ Position Approved ____ Position Disapproved ____

BILL ANALYSIS — Form DF-43 (Rev 03/92 Buff)
AB2205.556

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: August 16, 1993
POSITION: NEUTRAL
SPONSOR: Assembly Committee on Judiciary

BILL NUMBER: AB 2205
AUTHOR: Connolly

BILL SUMMARY

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This bill does not impact any state department or program.

Analyst/Principal (556) 550	Date	Program Budget Manager Diane M. Cummins	Date
TD [signature]	8/6/93	[signature] Diane M. Cummins	8/9/93
Department Deputy Director			Date
[signature] Diane M. Cummins			8/9/93

Governor's Office: By: Date: Position Noted_____
Position Approved_____
Position Disapproved

BILL ANALYSIS — Form DF-43 (Rev 03/92 Buff)
AB2205.556

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED) Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Connolly	August 16, 1993	AB 2205

SUMMARY OF CHANGES

Amendments to this bill since our last analysis of the July 2, 1993 version are minor and do not alter our previous analysis. As amended, the bill is double joined to SB 425.

AMENDED IN SENATE AUGUST 16, 1993

AMENDED IN SENATE JULY 2, 1993

AMENDED IN ASSEMBLY MAY 10, 1993

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL No. 2205

Introduced by Committee on Judiciary as presented by Assembly Member Connolly on behalf of the committee (Archie-Hudson, Caldera, Collins, Epple, Goldsmith, Horcher, Isenberg, Snyder, Speier, Statham, and Weggeland)

March 5, 1993

An act to amend Sections 6086.13 and 17204 of the Business and Professions Code, to amend Sections 575.1, 712.020, 1094.6, 1987.5, 2020, and 2025 of, and to repeal Section 1167.6 of, the Code of Civil Procedure, and to amend Sections 6259 and 26800 of the Government Code, relating to civil remedies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2205, as amended, Committee on Judiciary. Civil remedies.

(1) Existing law provides that any order of the State Bar Court imposing suspension or disbarment of a member of the State Bar, or accepting a resignation with a disciplinary matter pending, may include an order that the member pay a monetary sanction, as specified.

This bill would revise this provision to refer to an order of the Supreme Court, rather than the State Bar Court, imposing suspension or disbarment.

(2) Existing law provides for the enforcement of laws regarding unfair competition by authorizing injunctive actions to be prosecuted by the Attorney General, district

attorney, county counsel, or city attorney or prosecutor, as specified.

This bill would specify that these injunctive actions shall be prosecuted exclusively in a court of competent jurisdiction.

(3) Existing law authorizes the presiding judge of each superior court to prepare proposed local rules designed to expedite and facilitate the business of the court, as specified.

This bill would expand this provision to apply to the presiding judge of each municipal court. *The bill would also incorporate further changes to Section 575.1 of the Code of Civil Procedure proposed by SB 425, contingent upon its prior enactment.*

(4) Existing law requires a writ of possession or sale to include specified information.

This bill would make the inclusion of certain information at the option of the creditor.

(5) Existing law sets forth specified procedures and time limits for the review of any decision of a local agency other than a school district, which are applicable to a particular local agency only if the governing body of that agency adopts a specified resolution or ordinance.

This bill would make these procedures and time limits applicable to all local agencies, other than school districts, thereby imposing a state-mandated local program by requiring new duties of local officials.

(6) Existing law provides a stay of eviction procedures if one or more of the defendants in an action is the spouse, dependent child, or otherwise a dependent of a reservist who has been called to active duty as a result of the Iraq-Kuwait crisis.

This bill would delete that provision.

(7) Existing law generally specifies the procedures for valid service of a subpoena duces tecum. Existing law also includes a separate provision governing deposition subpoenas that command only the production of business records.

This bill would specifically provide that the general provision specifying the manner of service of a subpoena duces tecum does not apply to deposition subpoenas commanding only the production of business records for copying.

(8) Existing law specifies the manner in which deposition subpoenas that command only the production of business records for copying may be delivered. Existing law provides that the custodian of the records or other qualified person may (a) permit the deposition officer specified in the deposition subpoena to make a copy of the originals of the designated business records, or (b) deliver a copy of the records, as specified.

This bill would instead provide that the custodian of the records or other qualified person shall elect one of those methods of delivery.

(9) Existing law sets forth the procedure for reading, correcting, and signing the original transcript of stenographically recorded deposition testimony.

This bill would revise that procedure.

(10) Existing law requires a petition to review an order regarding the disclosure or nondisclosure of public records to be filed within 10 days of receipt of notice of the order.

This bill would extend that period to 20 days.

(11) Existing law provides that the county clerk shall act as clerk of the superior court.

This bill would provide that the term "county clerk" refers to the superior court executive officer to the extent the duties of the county clerk have been delegated to the superior court executive officer.

(12) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State mandates Claims Fund.

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

State-mandated local program: yes.

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

SECTION 1. Section 6086.13 of the Business and Professions Code is amended to read:

6086.13. (a) Any order of the Supreme Court imposing suspension or disbarment of a member of the State Bar, or accepting a resignation with a disciplinary matter pending may include an order that the member pay a monetary sanction not to exceed five thousand dollars ($5,000) for each violation, subject to a total limit of fifty thousand dollars ($50,000).

(b) Monetary sanctions collected under subdivision (a) shall be deposited into the Client Security Fund.

(c) The State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section.

(d) The authority granted under this section is in addition to the provisions of Section 6086.10 and any other authority to impose costs or monetary sanctions.

(e) Monetary sanctions imposed under this section shall not be collected to the extent that the collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney. In the event monetary sanctions are collected under this section and criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected under this section.

SEC. 2. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by

agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 3. Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior or municipal court may prepare with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, 61 copies shall be filed with the Judicial Council as required by Section 68071 of the Government Code. The Judicial Council shall deposit a copy of each rule and amendment with each county law library or county clerk where it shall be made available for public examination. The local rules shall also be published for general distribution.

(c) Rules adopted pursuant to this section shall not be inconsistent with law or with the rules adopted and prescribed by the Judicial Council. The clerk of the court may charge a reasonable fee to persons requesting copies of the local rules, to cover the cost of reproduction and distribution.

SEC. 3.5. Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior, *municipal, and justice* court may prepare, with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar *and others, as specified by the Judicial Council,* for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, 61 copies *or a greater number as specified by Judicial Council rule,* shall be filed with the Judicial Council as required by Section 68071 of the Government Code. The Judicial Council shall deposit a copy of each rule and amendment with each county law library or county clerk where it shall be made available for public examination. The local rules shall also be published for general distribution *in accordance with rules adopted by the Judicial Council. Each court shall make its local rules available for inspection and copying in every location of the court that generally accepts filing of papers. The court may impose a reasonable charge for copying the rules and may impose a reasonable page limit on copying. The rules shall be accompanied by a notice indicating where a full set of the rules may be purchased.*

(c) If a judge of a court adopts a rule which applies solely to cases in that judge's courtroom, or a particular branch or district of a court adopts a rule that applies solely to cases in that particular branch or district of a court, the court shall publish these rules as part of the general publication of rules required by the California Rules of Court. The court shall organize the rules so that rules on a common subject, whether individual, branch,

district, or courtwide appear sequentially. Individual judges' rules and branch and district rules are local rules of court for purposes of this section and for purposes of the adoption, publication, comment, and filing requirements set forth in the Judicial Council rules applicable to local court rules.

~~(c) Rules adopted pursuant to this section shall not be inconsistent with law or with the rules adopted and prescribed by the Judicial Council. The clerk of the court may charge a reasonable fee to persons requesting copies of the local rules, to cover the cost of reproduction and distribution.~~

SEC. 4. Section 712.020 of the Code of Civil Procedure is amended to read:

712.020. A writ of possession or sale issued pursuant to this division shall require the levying officer to whom it is directed to enforce the judgment and shall include the following information:

(a) The date of issuance of the writ.

(b) The title of the court where the judgment for possession or sale is entered and the cause and number of the action.

(c) The name and address of the creditor and the name and last known address of the judgment debtor.

(d) The date the judgment was entered, and the date of any subsequent renewals, and where entered in the records of the court.

(e) If the judgment for possession or sale includes a money judgment, the amount required to satisfy the money judgment on the date the writ is issued and the amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued may be included on the writ at the option of the creditor.

(f) Whether any person has requested notice of sale under the judgment and, if so, the name and address of such person.

(g) Any other information required to be included in the particular writ.

SEC. 5. Section 1094.6 of the Code of Civil Procedure is amended to read:

1094.6. (a) Judicial review of any decision of a local agency, other than school district, as the term local agency is defined in Section 54951 of the Government Code, or of any commission, board, officer or agent thereof, may be had pursuant to Section 1094.5 of this code only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

(b) Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision, or for a written decision or written findings supporting the decision, in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is announced. If the decision is not announced at the close of the hearing, the date, time, and place of the announcement of the decision shall be announced at the hearing. If there is a provision for reconsideration, the decision is final for purposes of this section upon the expiration of the period during which such reconsideration can be sought; provided, that if reconsideration is sought pursuant to any such provision the decision is final for the purposes of this section on the date that reconsideration is rejected. If there is a provision for a written decision or written findings, the decision is final for purposes of this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. Subdivision (a) of Section 1013 does not apply to extend the time, following deposit in the mail of the decision or findings, within which a petition shall be filed.

(c) The complete record of the proceedings shall be prepared by the local agency or its commission, board, officer, or agent which made the decision and shall be delivered to the petitioner within 190 days after he has filed a written request therefor. The local agency may recover from the petitioner its actual costs for transcribing or otherwise preparing the record. Such

record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.

(d) If the petitioner files a request for the record as specified in subdivision (c) within 10 days after the date the decision becomes final as provided in subdivision (b), the time within which a petition pursuant to Section 1094.5 may be filed shall be extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the petitioner or his attorney of record, if he has one.

(e) As used in this section, decision means a decision subject to review pursuant to Section 1094.5, suspending, demoting, or dismissing an officer or employee, revoking, or denying an application for a permit, license, or other entitlement, or denying an application for any retirement benefit or allowance.

(f) In making a final decision as defined in subdivision (e), the local agency shall provide notice to the party that the time within which judicial review must be sought is governed by this section.

As used in this subdivision, "party" means an officer or employee who has been suspended, demoted or dismissed; a person whose permit, license, or other entitlement has been revoked or suspended, or whose application for a permit, license, or other entitlement has been denied; or a person whose application for a retirement benefit or allowance has been denied.

(g) This section shall prevail over any conflicting provision in any otherwise applicable law relating to the subject matter, unless the conflicting provision is a state or federal law which provides a shorter statute of limitations, in which case the shorter statute of limitations shall apply.

SEC. 6. Section 1167.6 of the Code of Civil Procedure is repealed.

SEC. 7. Section 1987.5 of the Code of Civil Procedure

is amended to read:

1987.5. The service of a subpoena duces tecum is invalid unless at the time of such service a copy of the affidavit upon which the subpoena is based is served on the person served with the subpoena. In the case of a subpoena duces tecum which requires appearance and the production of matters and things at the taking of a deposition, the subpoena shall not be valid unless a copy of the affidavit upon which the subpoena is based and the designation of the materials to be produced, as set forth in the subpoena, is attached to the notice of taking the deposition served upon each party or its attorney as provided in Chapter 3 (commencing with Section 2002). If matters and things are produced pursuant to a subpoena duces tecum in violation of this section, any other party to the action may file a motion for, and the court may grant, an order providing appropriate relief, including, but not limited to, exclusion of the evidence affected by the violation, a retaking of the deposition notwithstanding any other limitation on discovery proceedings, or a continuance. The party causing the subpoena to be served shall retain the original affidavit until final judgment in the action, and shall file the affidavit with the court only upon reasonable request by any party or witness affected thereby. This section does not apply to deposition subpoenas commanding only the production of business records for copying under subdivision (d) of Section 2020.

SEC. 8. Section 2020 of the Code of Civil Procedure is amended to read:

2020. (a) The method for obtaining discovery within the state from one who is not a party to the action is an oral deposition under Section 2025, a written deposition under Section 2028, or a deposition for production of business records and things under subdivisions (d) and (e). Except as provided in paragraph (1) of subdivision (h) of Section 2025, the process by which a nonparty is required to provide discovery is a deposition subpoena. The deposition subpoena may command any of the following:

(1) Only the attendance and the testimony of the deponent, under subdivision (c).

(2) Only the production of business records for copying, under subdivision (d).

(3) Both the attendance and the testimony of the deponent, as well as the production of business records, other documents, and tangible things, under subdivision (e).

Except as modified in this section, the provisions of Chapter 2 (commencing with Section 1985), and of Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of the Evidence Code, apply to a deposition subpoena.

(b) The clerk of the court in which the action is pending shall issue a deposition subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service. In lieu of the court-issued deposition subpoena, an attorney of record for any party may sign and issue a deposition subpoena; the deposition subpoena in that case need not be sealed.

(c) A deposition subpoena that commands only the attendance and the testimony of the deponent shall specify the time when and the place where the deponent is commanded to attend for the deposition. It shall set forth a summary of (1) the nature of a deposition, (2) the rights and duties of the deponent, and (3) the penalties for disobedience of a deposition subpoena described in subdivision (h). If the deposition will be recorded by videotape under paragraph (2) of subdivision (*l*) of Section 2025, the deposition subpoena shall state that it will be recorded in that manner. If the deponent is an organization, the deposition subpoena shall describe with reasonable particularity the matters on which examination is requested, and shall advise that organization of its duty to make the designation of employees or agents who will attend described in subdivision (d) of Section 2025.

(d) (1) A deposition subpoena that commands only the production of business records for copying shall designate the business records to be produced either by

specifically describing each individual item or by reasonably particularizing each category of item. This deposition subpoena need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. It shall be directed to the custodian of those records or another person qualified to certify the records. It shall command compliance in accordance with paragraph (4) on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.

(2) If, under Section 1985.3, the one to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3.

(3) The officer for a deposition seeking discovery only of business records for copying under this subdivision shall be a professional photocopier registered under Chapter 20 (commencing with Section 22450) of Division 8 of the Business and Professions Code, or a person exempted from the registration requirements of that chapter under Section 22451 of the Business and Professions Code. This deposition officer shall not be financially interested in the action, or a relative or employee of any attorney of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the date of production or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(4) Unless directed to make the records available for inspection or copying by the subpoenaing party's attorney or a representative of that attorney at the witness' business address under subdivision (e) of Section 1560 of the Evidence Code, the custodian of the records

or other qualified person shall, in person, by messenger, or by mail, deliver only to the deposition officer specified in the deposition subpoena (1) a true, legible, and durable copy of the records, and (2) an affidavit in compliance with Section 1561 of the Evidence Code. If this delivery is made to the office of the deposition officer, the records shall be enclosed, sealed, and directed as described in subdivision (c) of Section 1560 of the Evidence Code. If this delivery is made at the office of the business whose records are the subject of the deposition subpoena, the custodian of those records or other qualified person shall (1) permit the deposition officer specified in the deposition subpoena to make a copy of the originals of the designated business records, or (2) deliver to that deposition officer a true, legible, and durable copy of the records on receipt of payment in cash or by check, by or on behalf of the party serving the deposition subpoena, of the reasonable costs of preparing that copy as determined under subdivision (b) of Section 1563 of the Evidence Code. This copy need not be delivered in a sealed envelope. Unless the parties, and if the records are those of a consumer as defined in Section 1985.3, the consumer, stipulate to an earlier date, the custodian of the records shall not deliver to the deposition officer the records that are the subject of the deposition subpoena prior to the date and time specified in the deposition subpoena. The following legend shall appear in boldface type on the deposition subpoena immediately following the date and time specified for production: "Do not release the requested records to the deposition officer prior to the date and time stated above."

(5) Promptly on or after the deposition date and after the receipt or the making of a copy of business records under this subdivision, the deposition officer shall provide that copy to the party at whose instance the deposition subpoena was served, and a copy of those records to any other party to the action who then or subsequently notifies the deposition officer that the party desires to purchase a copy of those records.

(6) The provisions of Section 1562 of the Evidence Code concerning the admissibility of the affidavit of the custodian or other qualified person apply to a deposition subpoena served under this subdivision.

(e) A deposition subpoena that commands both the attendance and the testimony of the deponent, as well as the production of business records, documents, and tangible things, shall (1) comply with the requirements of subdivision (c), (2) designate the business records, documents, and tangible things to be produced either by specifically describing each individual item or by reasonably particularizing each category of item, and (3) specify any testing or sampling that is being sought. This deposition subpoena need not be accompanied by an affidavit or declaration showing good cause for the production of the documents and things designated.

Where, as described in Section 1985.3, the person to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3.

(f) Subject to paragraph (1) of subdivision (d), service of a deposition subpoena shall be effected a sufficient time in advance of the deposition to provide the deponent a reasonable opportunity to locate and produce any designated business records, documents, and tangible things, and, where personal attendance is commanded, a reasonable time to travel to the place of deposition. Any person may serve the subpoena by personal delivery of a copy of it (1) if the deponent is a natural person, to that person, and (2) if the deponent is an organization, to any officer, director, custodian of records, or to any agent or employee authorized by the organization to accept service of a subpoena.

If a deposition subpoena requires the personal

attendance of the deponent, under subdivision (c) or (e), the party noticing the deposition shall pay to the deponent in cash or by check the same witness fee and mileage required by Chapter 1 (commencing with Section 68070) of Title 8 of the Government Code for attendance and testimony before the court in which the action is pending. This payment, whether or not demanded by the deponent, shall be made, at the option of the party noticing the deposition, either at the time of service of the deposition subpoena, or at the time the deponent attends for the taking of testimony.

Service of a deposition subpoena that does not require the personal attendance of a custodian of records or other qualified person, under subdivision (d), shall be accompanied, whether or not demanded by the deponent, by a payment in cash or by check of the witness fee required by paragraph (6) of subdivision (b) of Section 1563 of the Evidence Code.

(g) Personal service of any deposition subpoena is effective to require of any deponent who is a resident of California at the time of service (1) personal attendance and testimony, if the subpoena so specifies, (2) any specified production, inspection, testing, and sampling, and (3) the deponent's attendance at a court session to consider any issue arising out of the deponent's refusal to be sworn, or to answer any question, or to produce specified items, or to permit inspection or specified testing and sampling of the items produced.

(h) A deponent who disobeys a deposition subpoena in any manner described in subdivision (g) may be punished for contempt under Section 2023 without the necessity of a prior order of court directing compliance by the witness, and is subject to the forfeiture and the payment of damages set forth in Section 1992.

SEC. 9. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including

any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audio tape or video tape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a video tape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the video tape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is,

at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by

written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party-deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error

or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or

organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a video tape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded

from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the

sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are

just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audio tape or video tape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audio tape or video tape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audio tape or video tape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled

by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audio tape or video tape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a video tape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audio tape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audio tape.

(F) The oath shall be administered to the deponent on camera or on the audio tape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio tape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audio tape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audio tape or video tape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audio taped or video taped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio taped or video taped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audio tape or video tape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a video tape or an audio tape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery

on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the

motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio tape or video tape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who

unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio tape or video tape shall promptly (1) permit that other party to hear the audio tape or to view the video tape, and (2) furnish a copy of the audio tape or video tape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audio tape or video tape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically

recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to an question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to

suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audio tape or video tape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply such signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) The deposition officer shall certify on the transcript of the deposition, or in the writing accompanying an audio taped or video taped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)", and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audio tape or video tape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition

testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audio tape or the video tape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audio tape or video tape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audio tape or video tape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined as a result of that person's designation to testify on behalf of an organization under subdivision (d).

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose

permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a video tape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of

subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 10. Section 6259 of the Government Code is amended to read:

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an

order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

SEC. 11. Section 26800 of the Government Code is amended to read:

26800. The county clerk shall act as clerk of the superior court in and for his or her county. However, in any county in which a superior court executive officer has been appointed pursuant to Section 69898, the term "county clerk" shall mean the superior court executive officer to the extent that the superior court, by local rule, has delegated any duties of the county clerk to the superior court executive officer.

SEC. 11.5. Section 3.5 of this bill incorporates

amendments to Section 575.1 of the Code of Civil Procedure proposed by both this bill and SB 425. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 575.1 of the Code of Civil Procedure, and (3) this bill is enacted after SB 425, in which case Section 3 of this bill shall not become operative.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

O

THIRD READING

SENATE RULES COMMITTEE		
Office of Senate Floor Analyses 1020 N Street, Suite 524 445-6614	Bill No.	AB 2205
	Author:	Assembly Judiciary Committee
	Amended:	8/16/93 in Senate
	Vote Required:	21

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.: AB 2205		
DATE OF HEARING: 7-13-93		
SENATORS:	AYE	NO
Calderon	✓	
Hurtt	✓	
Marks	✓	
Petris		
Presley	✓	
Roberti	✓	
Torres		
Watson	✓	
Wright	✓	
Leslie (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	9	0

PLACED ON FILE PURSUANT TO SENATE RULE 28.8

Assembly Floor Vote: 75-0, p. 2467, 6/9/93
(Passed Assembly on Consent)

SUBJECT: Civil remedies: maintenance of the codes

SOURCE: Assembly Judiciary Committee

DIGEST: This bill makes a number of technical and clarifying changes be made to statutes relating to civil procedure and court practices.

ANALYSIS: Existing law permits the imposition of a monetary sanction upon attorneys disciplined by the State Bar Court.

This bill would correct current references to specify that the Supreme Court, rather than the Bar Court, is the ultimate arbiter of discipline in imposing suspensions or disbarment.

Current law authorizes the prosecutorial agencies of the state to pursue injunctions against unfair competition.

This bill would clarify that such injunctions must be prosecuted in a court of competent jurisdiction.

The Code of Civil Procedure specifies procedures for judicial review of the decisions of local agencies, to be followed only if the governing board of the agency adopts a resolution subjecting itself thereto.

This bill would make the procedures applicable to all agencies, regardless of local resolution, in recognition of the universal adoption of the review standards specified.

CONTINUED

This bill would repeal existing law relating to protections from eviction afforded dependents of military personnel serving in the Persian Gulf War.

Current law provides that a deponent enjoys 30 days following written notice of the completion of a transcript in which to read, correct, and sign a deposition.

This bill would clarify that the 30-day period commences following notice that the transcript for a particular session of a deposition is completed and available for review.

Current law precludes any person who has received notice of a deposition from taking a subsequent deposition of that deposed party.

This bill would specify the nature of the notice to be given to avoid ambiguity and confusion.

This bill would also clarify the authority of the presiding judges of the municipal court to prepare proposed rules of court for their venues, and would specify that any statutory reference to "county clerk" refers additionally to the executive officer of the superior court in those counties having established a separate court administrative position.

The purpose of this measure to is expedite the annual review of minor statutory changes to civil procedure by the crafting of an "omnibus" bill of proposed amendments, thereby reducing the overall bill load.

Each year, the Judiciary Committees of the Senate and Assembly receive numerous suggestions and requests from the Bench and Bar regarding clarification of statute, minor procedural changes, and general code maintenance. Two years ago, the Assembly Judiciary Committee decided to gather meritorious suggestions into a single measure for expeditious passage. What is proposed represents matter of slightly more substance than "maintenance of the codes", but nothing of controversy or significant policy alteration.

This bill is double joined with SB 425 (Lockyer) dealing with procedures.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: Yes

SUPPORT: (Verified 8/17/93)

Association of Municipal Court Clerks
Beverly Hills Bar Association
County Clerks Association of California
California Association of Photocopiers and Process Servers
State Bar
Los Angeles County District Attorney

RJG:sl 8/17/93 Senate Floor Analyses

GOVERNOR'S OFFICE OF [ANNING AND RESEARCH

Enrolled Bill Report

Bill Number	Author	As Amended
AB 2205	ASSEMBLY JUDICIARY COMM.	8/16/93

Subject
CIVIL REMEDIES

SUMMARY

This bill would make various technical changes pertaining to suspension and sanctions imposed on members of the State Bar, procedures for the adoption of local court rules by municipal courts, and judicial review of decisions made by local agencies.

ANALYSIS

State Bar

Under existing law, any order of the State Bar Court imposing suspension of a member of the State Bar, or accepting a resignation with a disciplinary matter pending, may include an order that the member pay a monetary sanction not to exceed $5000 for each violation, subject to a total limit of $50,000.

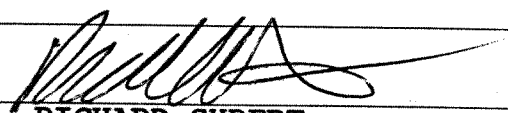
AB 2205 would clarify that the State Supreme Court, not the State Bar Court, may impose suspension or an order to pay a monetary sanction.

This provisions corrects a technical error, and clarifies that the State Supreme Court is the ultimate arbiter of discipline in imposing suspensions or disbarment.

Court Rules

Under existing law, the presiding judge of each superior court may prepare, with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. These rules must be submitted for consideration to the

Recommendation
SIGN

By  Date 9/12/93

Title RICHARD SYBERT
Director

judges of the court. Upon approval of the majority of the judges, the judges must publish the rules and submit them to the local bar for consideration and recommendation.

AB 2205 would extend these provisions pertaining to the adoption of local rules to include municipal courts.

AB 2205 would standardize the adoption of local rules of court to ensure that court rules in the various municipal courts are easily accessible to attorneys throughout the State.

Local Agency Decisions

Under existing law, any decision of a local agency, other than a school district, is subject to judicial review only if the petition for writ of mandate is filed within 90 days after the date on which the decision becomes final. Decisions subject to judicial review include:

1. Suspending, demoting, or dismissing an officer or employee.

2. Revoking or denying an application for a permit, license, or other entitlement.

3. Denying an application for any retirement benefit or allowance.

In making a final decision, the local agency is required to provide notice of the time limit to file a petition for judicial review. Under existing law, these provisions are applicable to a local agency only if the governing board adopts an ordinance or resolution making them applicable.

AB 2205 would make these provisions applicable to all local agencies, except school districts, without adoption of a local ordinance or resolution.

This provisions would confirm existing practices by local agencies throughout the State.

AB 2205 would make other nonsubstantive technical amendments to various court procedures.

COST

No appropriation. AB 2205 would create a State-mandated local program by making procedures pertaining to the judicial review of local agency decisions, applicable to all local agencies, except school districts.

The Department of Finance (DOF) has a neutral position on AB 2205.

ECONOMIC IMPACT

AB 2205 would have no economic impact on businesses in the State.

LEGAL IMPACT

AB 2205 is double-joined with SB 425. AB 2205 would incorporate additional changes made by SB 425. These changes shall only become operative if both bills are enacted and AB 2205 is enacted after SB 425.

LEGISLATIVE HISTORY

AB 2205 is sponsored by the Assembly Judiciary Committee.

Each year, the Assembly Judiciary Committee receives suggestions from the Bench and State Bar regarding clarification of statute, minor procedural changes, and nonsubstantive changes to the codes to clarify, correct, and otherwise reorganize various sections. AB 2205 is the annual measure used to expedite the passage of these changes.

AB 2205 is supported by the Association of Municipal Court Clerks, the Beverly Hills Bar Association, the County Clerks Association of California, the California Association of Photocopiers and Process Servers, the State Bar, and the Los Angeles County District Attorney.

Each of these groups made contributions and suggestions to the Assembly Judiciary Committee that were included in this bill.

There is no known opposition.

Related Legislation

SB 425, currently enrolled before the Governor, would authorize municipal and justice courts to follow the same procedures for the adoption of local rules as superior courts.

VOTE:

Assembly - 09 June 1993	Senate - 27 August 1993
Ayes - 75	Ayes - 37
Noes - 0	Noes - 0
(On Consent)	

Concurrence - 02 September 1993
Ayes - 77
Noes - 0
(On Consent)

RECOMMENDATION

The Governor's Office of Planning and Research recommends the Governor SIGN AB 2205.

This bill would make various technical changes pertaining to suspension and sanctions imposed on members of the State Bar, procedures for the adoption of local court rules by municipal courts, and judicial review of decisions made by local agencies.

This bill would maintain the clarity of existing law, provide more uniform court procedures, and make other technical changes to the codes pertaining to civil remedies.

Michael Glenn Levitt, Analyst
Nancy Patton, Assistant Deputy Director, Legislation

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: August 16, 1993
RECOMMENDATION: Sign
SPONSOR:
Assembly: 77/0
Senate: 37/0

BILL NUMBER: AB 2205
AUTHOR: Connolly

BILL SUMMARY

This bill is the Assembly Committee on Judiciary's omnibus civil practice bill which would make various changes in civil practice and court procedures.

FISCAL SUMMARY

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1993-94	FC 1994-95	FC 1995-96	Code Fund
			----------No/Minor Fiscal Impact--------			

COMMENTS

AB 2205 would, among other things, correct existing law to reflect that it is the Supreme Court, rather than the State Bar Court, that issues orders imposing suspension or disbarment; extend to the presiding judge of each municipal court the authority already provided to presiding judges of the superior court to prepare proposed local rules designed to facilitate the business of the court; and make two clarifying changes relating to notice requirements and the review period in connection with depositions that require multiple sessions.

In addition, the bill would make existing procedures and time limits for the review of a local agency decision applicable to all local agencies by deleting the requirement that the agency's governing body must first adopt an ordinance or resolution making the provisions applicable. The Judicial Council, the Senate Committee on Judiciary consultant's analysis, and a member of the State Bar familiar with this amendment indicate it would provide continuity statewide and provide clarification to practitioners regarding the deadlines for processing writs of mandate.

The bill does not require local entities to prepare any information that is not currently required. As such, this bill would have the effect of requiring the same information be provided but at a different point in time. Advancing the due date would not, by itself, increase locals' costs. Although the shorter deadline might, in some instances require a shift in workload organization, this should not result in any increased costs.

This bill does not impact any state department or program.

Analyst/Principal	Date	Program Budget Manager	Date
(556) 550		Diane M. Cummins	
		Diane M. Cummins	9/13/93
Department Deputy Director			Date
			9-14-93

California Legislature

Assembly Committee on Judiciary

PHILLIP ISENBERG
CHAIRMAN

September 14, 1993

The Honorable Pete Wilson
Governor, State of California
First Floor, State Capitol
Sacramento, CA 95814

Dear Governor Wilson:

I urge you to sign AB 2205 and AB 2207, both of which are sponsored by the Assembly Judiciary Committee.

For several years now the committee has sponsored omnibus bills on specific issues in order to expedite the review process. These are the committee's annual omnibus bills:

1. AB 2205 contains technical, noncontroversial changes in civil practice and court procedures.

   Proposals submitted for inclusion are first reviewed by 34 organizations -- all the identifiable groups that have an interest in, or that are affected by, changes in civil practice and court procedures. If no opposition is received and no member of the Judiciary Committee objects, the proposal is amended into the committee bill. All the provisions in AB 2205 have passed this two-tier review process. The bill received unanimous support in both Houses, and there is no known opposition.

2. AB 2207 ratifies the changes requested by 22 boards of supervisors to the number, compensation and classification of their court personnel.

   Government Code Section 77003 specifies the state's funding level for court operations to be that in existence on June 30, 1991. Any costs resulting from these staff changes, therefore, will be borne by the counties and will not become part of the state's responsibility for trial court funding.

   AB 2207 received bipartisan support in both Houses, and there is no known opposition.

Sincerely,

PLI/ii

STATE CAPITOL SACRAMENTO, CA 95814 TEL. (916) 445-4560

GIL GARCETTI
LOS ANGELES COUNTY DISTRICT ATTORNEY

18000 CRIMINAL COURTS BUILDING 210 WEST TEMPLE STREET LOS ANGELES, CA 90012-3210 (213) 974-3501

10

September 15, 1993

RECEIVED
SEP 16 1993
ISENBERG
CAPITOL OFFICE

The Honorable Pete Wilson
Governor of California
State Capitol
Sacramento, California 95814

Dear Governor Wilson:

ASSEMBLY BILL 2205 (COMMITTEE ON JUDICIARY)

The Los Angeles District Attorney's Office is pleased to recommend your approval of AB 2205, a portion of which this office has sponsored, relating to civil remedies.

Our office has sponsored a small portion of AB 2205, the Assembly Judiciary Committee's omnibus civil remedies bill. SECTION 2 of this bill, the portion generated at the request of this office, would address the issue of the appropriate forum for unfair competition actions under the Business and Professions Code brought by the Attorney General, district attorneys, city attorneys and others specified.

SECTION 2 would clarify that actions for remedies under the unfair competition statute should be brought exclusively in a court of competent jurisdiction by the appropriate public agency or other person with standing as specified in Business & Professions Code Section 17204.

AB 2205 as a whole has been the subject of extensive hearings and opportunities for comment by the bar and public, and there is no known opposition to SECTION 2 of the bill.

We commend Assembly Member Phil Isenberg and his committee for introducing and carrying AB 2205. This office supports the bill in its entirety and I respectfully ask for your approval of the bill and its important clarification of the forum for unfair competition actions.

Very truly yours,

GIL GARCETTI
District Attorney

mbm
c: Assembly Member Phil Isenberg, Chairman

Analyst Name: M. Hansen
Phone Number: 32 5402

STATE AND CONSUMER SERVICES AGENCY

ENROLLED BILL REPORT

DEPARTMENT	AUTHOR	BILL NUMBER
Consumer Affairs	Assembly Judiciary Committee	AB 2205

BILL SUMMARY

Assembly Bill 2205 is an omnibus civil practice bill sponsored by the Assembly Committee on Judiciary. It would make the following technical and clarifying changes in the area of civil procedure and practice:

- correct existing law to specify that the Supreme Court, rather than the Bar Court, issues orders imposing suspension or disbarment;
- clarify that injunctions against unfair competition must be prosecuted in a court of competent jurisdiction;
- clarify the authority of the presiding judges of municipal court to prepare proposed rules of court for their venues;
- provide that the inclusion of certain information in a writ of possession or sale is at the option of the creditor;
- specify procedures for judicial review of the decisions of local agencies;
- repeal a provision that grants a stay of eviction to dependents of military reservists called to active duty as a result of the Persian Gulf War;
- revise the provision specifying the manner of service of a subpoena duces tecum so that it does not apply to deposition subpoenas commanding but only to the production of business records for copying;
- provide that the method of delivery of business records is to be decided by the custodian of business records;
- revise the procedure for reading, correcting, and signing the original transcript of a stenographically recorded deposition testimony;
- extend to 20 days the time for filing a petition to review an order regarding the disclosure or nondisclosure of public records; and
- specify that any statutory reference to "county clerk" refers additionally to the executive officer of the superior court in counties that have a separate court administrative position.

Vote: **ASSEMBLY**			Vote: **SENATE**		
Floor Concurrence:	Aye 75	No 0	Floor:	Aye 37	No 0
Policy Committee:	Aye 11	No 0	Policy Committee:	Aye 9	No 0
Fiscal Committee:	Aye 21	No 0	Fiscal Committee:	Aye 28.8	No

RECOMMENDATION TO GOVERNOR: SIGN X VETO ___

DEPARTMENT DIRECTOR: DATE: 9/7/92

DEFER TO OTHER AGENCY ___

AGENCY SECRETARY: DATE: 9/8/92

EBR 11/91

Provisions regarding local court rules are double-joined with similar provi-sions in Senate Bill 425 (Lockyer). SB 425 would add procedures to allow the Judicial Council discretion to publish local rules for general distribution. hese procedures would take effect if AB 2205 is chaptered before SB 425.

BACKGROUND

The Assembly Committee on Judiciary has adopted the practice of sponsoring an omnibus bill each year in order to eliminate the need for a large number of bills addressing individual technical issues. This year's proposals in the area of civil procedure and practice are consolidated into one bill, Assembly Bill 2205.

SPECIFIC FINDINGS

The Judiciary Committees of the Senate and Assembly receive numerous suggestions and requests for clarification of statutes, minor procedural changes, and general code maintenance. Beginning in 1991, the Assembly Judiciary Committee gathered the suggestions into a single measure for expeditious passage. The Committee's omnibus bills contain matters of slightly more substance than pure maintenance of the codes, but there is nothing in AB 2205 of controversy or making significant policy change.

The purpose of AB 2205 is to expedite the annual review of minor statutory changes to civil procedure by means of an omnibus bill, thereby reducing the number of bills.

FISCAL IMPACT

There is no fiscal impact to the Department of Consumer Affairs.

The Assembly Ways and Means Committee estimates that there may be minor mandated costs related to the review of local agency decisions.

INTERESTED PARTIES

SUPPORT: Association of Municipal Court Clerks
Beverly Hills Bar Association
County Clerks Association of California
State Bar of California
Los Angeles County District Attorney

OPPONENTS: None

ARGUMENTS

Supporters would argue that clean-up bills, such as AB 2205, are necessary to keep the statutes current and the meaning clear. Assembly Bill 2205 would resolve a number of noncontroversial issues in an efficient manner.

There is no opposition.

RECOMMENDATION

The Department of Consumer Affairs recommends that the Governor SIGN Assembly Bill 2205.

If AB 2205 is signed before Senate Bill 425, procedures allowing for the publication and distribution of local court rules also would be enacted

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Chief Deputy
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Harvey J. Foster
John T. Studebaker
Daniel A. Weitzman
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C. David Dickerson
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William K. Stark
Jessica L. Steele
Ellen Sward
Mark Franklin Terry
Jeff Thom
Richard Thomson
Elizabeth M. Warf
Richard B. Weisberg
Thomas D. Whelan
Jack G. Zorman

Deputies

Sacramento, California
September 30, 1993

Honorable Pete Wilson
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

A.B. 2205 COMMITTEE ON JUDICIARY. Civil remedies.

SUMMARY: See Legislative Counsel's Digest on the bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

CONFLICTS: This bill and Senate Bill No. 425, which is also before the Governor, would both amend Section 575.1 of the Code of Civil Procedure.

This bill contains provisions which make all of the changes in Section 575.1 proposed by S.B. 425 and this bill if both bills are chaptered and this bill is chaptered last (Secs. 3.5 and 11.5, this bill). S.B. 425 does not contain these provisions.

Thus, if both bills are chaptered and this bill is chaptered last, all of the changes in Section 575.1 of the Code of Civil Procedure proposed by each bill will be given effect. However, if S.B. 425 is chaptered last, only the changes proposed by that bill in that section will be given effect (Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel

By
Clinton J. deWitt
Deputy Legislative Counsel

CdeW:sjm

Two copies to Honorable Tom Connolly
and Honorable Bill Lockyer,
pursuant to Joint Rule 34.

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 947
AUTHOR : Committee on Judiciary
TOPIC : Maintenance of the Codes.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

BILL HISTORY
1997
May 30 Chaptered by Secretary of State. Chapter 17, Statutes of 1997.
May 30 Approved by Governor.
May 21 Enrolled. To Governor at 9:45 a.m.
May 15 In Senate. To enrollment.
May 15 Read third time. Passed. (Ayes 78. Noes 0. Page 1633.) To Senate.
May 13 Read second time. To Consent Calendar.
May 12 From committee: Do pass. To Consent Calendar.
Apr. 17 To Com. on JUD.
Apr. 10 In Assembly. Read first time. Held at Desk.
Apr. 10 Read third time. Passed. (Ayes 37. Noes 0. Page 681.) To Assembly.
Apr. 3 Read second time. To Consent Calendar.
Apr. 2 From committee: Do pass. To Consent Calendar. (Ayes 8. Noes 0. Page 560.)
Mar. 31 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
Mar. 20 Set for hearing April 1.
Mar. 18 To Com. on JUD.
Feb. 28 From print. May be acted upon on or after March 30.
Feb. 27 Introduced. Read first time. To Com. on RLS. for assignment. To print.

SENATE BILL No. 947

Introduced by Committee on Judiciary (Senators Burton (Chair), Calderon, Lee, Leslie, Lockyer, O'Connell, Sher, and Wright)

February 27, 1997

An act to amend Sections 30, 1680, 2052.5, 2365, 3041.1, 3041.3, 7044.2, 9884, 10250.2, 17206, 24071.2, and 25662 of, and to amend and renumber Section 11018.11 of, the Business and Professions Code, to amend Sections 1365 and 1375 of, and to amend and renumber Sections 1861.607 and 1861.608 of, the Civil Code, to amend Section 1201 of the Commercial Code, to amend Sections 8450, 15301, 15320, 15327, 15356, 15357, 15359, 15359.2, 42238.145, 44254, 52335.9, 52487, and 76002 of, to amend and renumber the heading of Article 6 (commencing with Section 60350) of Chapter 2 of Part 33 of, and to repeal Section 87869 of, the Education Code, to amend Sections 2157 and 12106 of, and to amend and renumber the heading of Division 0.5 (commencing with Section 1) of, the Elections Code, to amend and renumber the heading of Division 14 (commencing with Section 10100) of the Family Code, to amend Sections 17207, 21301, and 21304 of the Financial Code, to amend Sections 3332, 12648, 12815, 13144, and 46003.5 of the Food and Agricultural Code, to amend Sections 951, 8670.7, 8670.13.2, 8670.21, 11504, 15363.7, 15379.28, 30054, 30061, 30064, 50030, and 65850.2 of the Government Code, to amend Sections 1226, 1250.2, 1367, 1585, 11758.46, 13113, 19183, 19825, 19881, 25143.2, 25179.8, 25299.92, 25330.4, 25532, 25534, 25538, 25548.1, 33459.1, 33493.4, 34120, 41751, 44081, 44243.5, and 129885 of, to amend and renumber Sections 11527.3 and 27604 of, and to amend the heading of

Article 11 (commencing with Section 25299.90) of Chapter 6.75 of Division 20 of, the Health and Safety Code, to amend Sections 742.33, 10123.13, 10145.3, 10164.2, 10509.963, and 10509.975 of the Insurance Code, to amend Sections 1777.5 and 6500 of the Labor Code, to amend Sections 186.2, 273.1, 290, 290.4, 311, 350, 831.5, 1295, 1529, 4415, 7500, 7501, 7515, 11106, 12033, 12071, 12072, 12078, 12084, and 12403.7 of, to amend the heading of Article 8 (commencing with Section 12800) of Chapter 6 of Title 2 of Part 4 of, and to repeal Sections 269, 312.6, 312.7, and 667.61 of, the Penal Code, to amend Sections 4576.1, 6817, 42010, 42350, 43210, and 43211 of, and to repeal Section 3493 of, the Public Resources Code, to amend Sections 368, 489.1, 740.4, 5322, and 125105 of the Public Utilities Code, to amend Sections 401.11, 2188.8, 2611.7, 4528, 10753, and 19141.6 of, to amend and renumber Sections 410.10 and 19442 of, to amend, repeal, and add Section 69.5 of, and to repeal Section 401.10 of, the Revenue and Taxation Code, to amend Sections 3016, 22651.2, and 40513 of the Vehicle Code, to amend Section 13399.3 of the Water Code, to amend Sections 207.1, 366.21, 5778, 7325, 11462, and 14490 of, and to repeal Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of, the Welfare and Institutions Code, and to amend Section 6 of Chapter 920 of the Statutes of 1994, Section 5 of Chapter 76 of the Statutes of 1996, Section 1 of Chapter 663 of the Statutes of 1996, and Section 1 of Chapter 947 of the Statutes of 1996, relating to maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 947, as introduced, Committee on Judiciary. Maintenance of the Codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would restate existing provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature for consideration during 1997, and would not make any substantive change in the law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 30 of the Business and Professions Code is amended to read:

30. (a) Notwithstanding any other provision of law, any board, as defined in Section 22, ~~and~~ the State Bar, and the Department of Real Estate shall, at the time of issuance or renewal of the license, require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to *so* provide after notification pursuant to paragraph (1) of subdivision (b) of Section ~~19276~~ *19528* of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section ~~19276~~ *19528* of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license or for renewal of a license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number if the entity is a partnership or social security number for all others.

(4) Type of license.

(5) Effective date of license or renewal.

(6) Expiration date of license.

Security Act (42 U.S.C. Sec. 1396 et seq.), if all of the following conditions are met:

(1) The facility is a licensed facility.

(2) The facility is in compliance with all related statutes and regulations enforced by the State Department of Mental Health, including regulations contained in Chapter 9 (commencing with Section 77001) of Division 5 of Title 22 of the California Code of Regulations.

(3) The facility meets the definitions and requirements contained in subdivisions (e) and (f) of ~~Sections~~ *Section* 1861 of the federal Social Security Act (42 U.S.C. Sec. 1395x (e) and (f)), including the approval process specified in Section 1861(e)(7)(B) of the Social Security Act (42 U.S.C. *Sec.* 1395x(e)(7)(B)), which requires that the state agency responsible for licensing hospitals has assured that the facility meets licensing requirements.

(4) The facility meets the conditions of participation for hospitals pursuant to Part 482 of Title 42 of the Code of Federal Regulations.

SEC. 60. Section 1367 of the Health and Safety Code is amended to read:

1367. Each health care service plan~~,~~ and, where applicable, each specialized health care service plan, shall meet the following requirements:

(a) All facilities located in this state, including, but not limited to, clinics, hospitals, and skilled nursing facilities to be utilized by the plan, shall be licensed by the State Department of Health Services, where licensure is required by law. Facilities not located in this state shall conform to all licensing and other requirements of the jurisdiction in which they are located.

(b) All personnel employed by or under contract to the plan shall be licensed or certified by their respective board or agency, where licensure or certification is required by law.

(c) All equipment required to be licensed or registered by law shall be so licensed or registered and the

~~operating~~ personnel ~~for~~ *operating* that equipment shall be licensed or certified as required by law.

(d) The plan shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate, consistent with good professional practice.

(e) (1) All services shall be readily available at reasonable times to all enrollees. To the extent feasible, the plan shall make all services readily accessible to all enrollees.

(2) To the extent that telemedicine services are appropriately provided through telemedicine, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, these services shall be considered in determining compliance with Section 1300.67.2 of Title 10 of the California Code of Regulations.

(f) The plan shall employ and utilize allied health manpower for the furnishing of services to the extent permitted by law and consistent with good medical practice.

(g) The plan shall have the organizational and administrative capacity to provide services to subscribers and enrollees. The plan shall be able to demonstrate to the department that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

(h) All contracts with subscribers and enrollees, including group contracts, and all contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the plan, shall be fair, reasonable, and consistent with the objectives of this chapter. All contracts with providers shall contain provisions requiring a dispute resolution mechanism under which providers may submit disputes to the plan, and requiring the plan to inform its providers upon contracting with the plan, or upon change to these provisions, of the procedures for processing and resolving disputes, including the location and telephone number where information regarding disputes may be submitted.

(i) Each health care service plan contract shall provide to subscribers and enrollees all of the basic health care services included in subdivision (b) of Section 1345, except that the commissioner may, for good cause, by rule or order exempt a plan contract or any class of plan contracts from that requirement. The commissioner shall by rule define the scope of each basic health care service ~~which health care service plans shall be~~ required to ~~provide~~ *be provided by a health care service plan* as a minimum for licensure under this chapter. Nothing in this chapter ~~shall prohibit~~ *prohibits* a health care service plan from charging subscribers or enrollees a copayment or a deductible for a basic health care service or from setting forth, by contract, limitations on maximum coverage of basic health care services, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the commissioner and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

Nothing in this section shall be construed to permit the commissioner to establish the rates charged subscribers and enrollees for contractual health care services.

The ~~commissioner's~~ enforcement *by the commissioner* of Article 3.1 (commencing with Section 1357) shall not be deemed to establish the rates charged subscribers and enrollees for contractual health care services.

SEC. 61. Section 1585 of the Health and Safety Code is amended to read:

1585. (a) The governing board of an adult day health center~~,~~ having final authority and responsibility for conduct of the center~~,~~ shall be comprised of four or more persons, at least one-half of whom shall be recipients of the services of the adult day health center, relatives of the recipients, or representatives of community organizations with particular interest in programs for the elderly.

(b) The director shall, in individual cases, grant exceptions from the requirements of this section for applicants if both of the following conditions are met:

(a) if the public entity has provided that type of service for at least two years, and can demonstrate that attendance by pupils in the residential program has improved pupils' regular school attendance and has lowered the number of pupil suspensions or pupil referrals for disciplinary action by at least 60 percent.

(c) The State Department of Education shall conduct a review of the early intervention program operated by the Los Angeles Unified School District and shall report the findings of the review to the Legislature on or before January 31, 1997.

(d) For purposes of making computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202 of the Education Code for the 1995–96 fiscal year.

SEC. 159. Any section of any act enacted by the Legislature during the 1997 calendar year that takes effect on or before January 1, 1998, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 1997 calendar year and takes effect on or before January 1, 1998, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

O

AMENDED IN SENATE MARCH 31, 1997

SENATE BILL No. 947

Introduced by Committee on Judiciary (Senators Burton (Chair), Calderon, Lee, Leslie, Lockyer, O'Connell, Sher, and Wright)

February 27, 1997

An act to amend Sections 30, 1680, 2052.5, 2365, 3041.1, 3041.3, 7044.2, 9884, 10250.2, 17206, 24071.2, and 25662 of, and to amend and renumber Section 11018.11 of, the Business and Professions Code, to amend Sections 1365 and 1375 of, and to amend and renumber Sections 1861.607 and 1861.608 of, the Civil Code, to amend Section 1201 of the Commercial Code, to amend Sections 8450, 15301, 15320, 15327, 15356, 15357, 15359, 15359.2, 42238.145, 44254, 52335.9, 52487, and 76002 of, to amend and renumber the heading of Article 6 (commencing with Section 60350) of Chapter 2 of Part 33 of, and to repeal Section 87869 of, the Education Code, to amend Sections 2157 and 12106 of, and to ~~amend and renumber~~ *repeal* the heading of Division 0.5 ~~(commencing with Section 1)~~ of, the Elections Code, to amend and renumber the heading of Division 14 (commencing with Section 10100) of the Family Code, to amend Sections 17207, 21301, and 21304 of the Financial Code, to amend Sections 3332, 12648, 12815, 13144, and 46003.5 of the Food and Agricultural Code, to amend Sections 951, 8670.7, 8670.13.2, 8670.21, 11504, 15363.7, 15379.28, 30054, 30061, 30064, 50030, and 65850.2 of the Government Code, to amend Sections 1226, 1250.2, 1367, 1585, 11758.46, 13113, 19183, 19825, 19881, 25143.2, 25179.8, 25299.92, 25330.4, 25532, 25534, 25538, 25548.1, 33459.1, 33493.4, 34120,

41751, 44081, 44243.5, and 129885 of, to amend and renumber Sections 11527.3 and 27604 of, and to amend the heading of Article 11 (commencing with Section 25299.90) of Chapter 6.75 of Division 20 of, the Health and Safety Code, to amend Sections 742.33, 10123.13, 10145.3, 10164.2, 10509.963, and 10509.975 of the Insurance Code, to amend Sections 1777.5 and 6500 of the Labor Code, to amend Sections 186.2, 273.1, 290, 290.4, 311, 350, 831.5, 1295, 1529, 4415, 7500, 7501, 7515, 11106, 12033, 12071, 12072, 12078, 12084, and 12403.7 of, to amend the heading of Article 8 (commencing with Section 12800) of Chapter 6 of Title 2 of Part 4 of, and to repeal Sections 269, 312.6, 312.7, and 667.61 of, the Penal Code, to amend Sections 4576.1, 6817, 42010, 42350, 43210, and 43211 of, and to repeal Section 3493 of, the Public Resources Code, to amend Sections 368, 489.1, 740.4, 5322, and 125105 of the Public Utilities Code, to amend Sections 401.11, 2188.8, 2611.7, 4528, 10753, and 19141.6 of, to amend and renumber Sections 410.10 and 19442 of, to amend, repeal, and add Section 69.5 of, and to repeal Section 401.10 of, the Revenue and Taxation Code, to amend Sections 3016, 22651.2, and 40513 of the Vehicle Code, to amend Section 13399.3 of the Water Code, to amend Sections 207.1, 366.21, 5778, 7325, 11462, and 14490 of, and to repeal Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of, the Welfare and Institutions Code, and to amend Section 6 of Chapter 920 of the Statutes of 1994, Section 5 of Chapter 76 of the Statutes of 1996, Section 1 of Chapter 663 of the Statutes of 1996, and Section 1 of Chapter 947 of the Statutes of 1996, relating to maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 947, as amended, Committee on Judiciary. Maintenance of the Codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would restate existing provisions of law to effectuate the recommendations made by the Legislative

Counsel to the Legislature for consideration during 1997, and would not make any substantive change in the law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 30 of the Business and Professions Code is amended to read:

30. (a) Notwithstanding any other provision of law, any board, as defined in Section 22, the State Bar, and the Department of Real Estate shall, at the time of issuance or renewal of the license, require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to so provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license or for renewal of a license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number if the entity is a partnership or social security number for all others.

(4) Type of license.

(5) Effective date of license or renewal.

(4) The facility meets the conditions of participation for hospitals pursuant to Part 482 of Title 42 of the Code of Federal Regulations.

SEC. 60. Section 1367 of the Health and Safety Code is amended to read:

1367. Each health care service plan and, where applicable, each specialized health care service plan, shall meet the following requirements:

(a) All facilities located in this state, including, but not limited to, clinics, hospitals, and skilled nursing facilities to be utilized by the plan, shall be licensed by the State Department of Health Services, where licensure is required by law. Facilities not located in this state shall conform to all licensing and other requirements of the jurisdiction in which they are located.

(b) All personnel employed by or under contract to the plan shall be licensed or certified by their respective board or agency, where licensure or certification is required by law.

(c) All equipment required to be licensed or registered by law shall be so licensed or registered and the personnel operating that equipment shall be licensed or certified as required by law.

(d) The plan shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate, consistent with good professional practice.

(e) (1) All services shall be readily available at reasonable times to all enrollees. To the extent feasible, the plan shall make all services readily accessible to all enrollees.

(2) To the extent that telemedicine services are appropriately provided through telemedicine, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, these services shall be considered in determining compliance with Section 1300.67.2 of Title 10 of the California Code of Regulations.

(f) The plan shall employ and utilize allied health manpower for the furnishing of services to the extent

permitted by law and consistent with good medical practice.

(g) The plan shall have the organizational and administrative capacity to provide services to subscribers and enrollees. The plan shall be able to demonstrate to the department that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

(h) All contracts with subscribers and enrollees, including group contracts, and all contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the plan, shall be fair, reasonable, and consistent with the objectives of this chapter. All contracts with providers shall contain provisions requiring a dispute resolution mechanism under which providers may submit disputes to the plan, and requiring the plan to inform its providers upon contracting with the plan, or upon change to these provisions, of the procedures for processing and resolving disputes, including the location and telephone number where information regarding disputes may be submitted.

(i) Each health care service plan contract shall provide to subscribers and enrollees all of the basic health care services included in subdivision (b) of Section 1345, except that the commissioner may, for good cause, by rule or order exempt a plan contract or any class of plan contracts from that requirement. The commissioner shall by rule define the scope of each basic health care service required to be provided by a health care service plan as a minimum for licensure under this chapter. Nothing in this chapter prohibits a health care service plan from charging subscribers or enrollees a copayment or a deductible for a basic health care service or from setting forth, by contract, limitations on maximum coverage of basic health care services, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the commissioner and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

Nothing in this section shall be construed to permit the commissioner to establish the rates charged subscribers and enrollees for contractual health care services.

The enforcement by the commissioner of Article 3.1 (commencing with Section 1357) shall not be deemed to establish the rates charged subscribers and enrollees for contractual health care services.

SEC. 61. Section 1585 of the Health and Safety Code is amended to read:

1585. (a) The governing board of an adult day health center having final authority and responsibility for conduct of the center shall be comprised of four or more persons, at least one-half of whom shall be recipients of the services of the adult day health center, relatives of the recipients, or representatives of community organizations with particular interest in programs for the elderly.

(b) The director shall, in individual cases, grant exceptions from the requirements of this section for applicants if both of the following conditions are met:

(1) The applicant delegates primary responsibility for supervision of its adult day health program to a special board meeting the compositional requirements of this section.

(2) The special board reviews and recommends to the governing board of the applicant the budget, personnel, and subcontractors of the adult day health care program.

(c) No member of the governing board or a special board described in subdivision (b), nor any member of the immediate family of that board member, may have any direct or indirect interest in any contract for supplying services to the adult day health center.

SEC. 62. Section 11527.3 of the Health and Safety Code is amended and renumbered to read:

115271.3. If the state receives federal approval to implement and enforce emission standards for radionuclides pursuant to Section 115271.2, the department shall be responsible for the control of emissions of radionuclides into the air. However, nothing in this article shall be construed in any way to give the

(a) if the public entity has provided that type of service for at least two years, and can demonstrate that attendance by pupils in the residential program has improved pupils' regular school attendance and has lowered the number of pupil suspensions or pupil referrals for disciplinary action by at least 60 percent.

(c) The State Department of Education shall conduct a review of the early intervention program operated by the Los Angeles Unified School District and shall report the findings of the review to the Legislature on or before January 31, 1997.

(d) For purposes of making computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202 of the Education Code for the 1995–96 fiscal year.

SEC. 159. Any section of any act enacted by the Legislature during the 1997 calendar year that takes effect on or before January 1, 1998, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 1997 calendar year and takes effect on or before January 1, 1998, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

O

SENATE JUDICIARY COMMITTEE
John L. Burton, Chairman
1997-98 Regular Session

SB 947	S
Senate Committe on Judiciary	B
As Introduced	
Hearing Date: April 1, 1997	9
Civil Code	4
GWW	7

SUBJECT

Maintenance of the Codes

DESCRIPTION

This bill would make various nonsubstantive, technical changes in various codes, as recommended by the Legislative Counsel's Office.

BACKGROUND

Each year, the Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing the wholesale corrections. For inclusion into the measure, the change must be technical only and may not affect or enact substantive law. Any proposed change which is found to effect a substantive change is excised from the bill.

This bill would enact the recommendations of the Legislative Counsel for maintenance of the codes. The proposed changes would not make any substantive change in the law.

CHANGES TO EXISTING LAW

None

COMMENTS

1. Commitment to delete any substantive provision

   A condition for inclusion in the annual code maintenance bill is that the change must be nonsubstantive. Consequently, any provision which is

(more)

identified as making a substantive change in the law will be removed by the Legislative Counsel's Office.

Support: None Known

Opposition: None Known

HISTORY

Source: Office of Legislative Counsel

Related Pending Legislation: None Known

Prior Legislation: None

****

SENATE RULES COMMITTEE SB 947
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

CONSENT

Bill No: SB 947
Author: Senate Judiciary Committee, et al
Amended: ~~As introduced~~ 3-31-97
Vote: 21

SENATE JUDICIARY COMMITTEE: 8-0, 4/1/97
AYES: Burton, Calderon, Lee, Leslie, Lockyer, O'Connell, Sher, Wright
NOT VOTING: Haynes

SUBJECT: Maintenance of the Codes

SOURCE: Office of the Legislative Counsel

DIGEST: This bill would make various nonsubstantive, technical changes in various codes, as recommended by the Legislative Counsel's Office.

ANALYSIS: Each year, the Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing the wholesale corrections. For inclusion into the measure, the change must be technical only and may not affect or enact substantive law. Any proposed change which is found to effect a substantive change is excised from the bill.

This bill would enact the recommendations of the Legislative Counsel for maintenance of the codes. The proposed changes would not make any substantive change in the law.

CONTINUED

SENATE RULES COMMITTEE SB 947
Office of Senate Floor Analyses
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(916) 445-6614 Fax: (916) 327-4478

CONSENT

Bill No: SB 947
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AYES: Burton, Calderon, Lee, Leslie, Lockyer, O'Connell, Sher, Wright
NOT VOTING: Haynes

SUBJECT: Maintenance of the Codes

SOURCE: Office of the Legislative Counsel

DIGEST: This bill would make various nonsubstantive, technical changes in various codes, as recommended by the Legislative Counsel's Office.

ANALYSIS: Each year, the Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing the wholesale corrections. For inclusion into the measure, the change must be technical only and may not affect or enact substantive law. Any proposed change which is found to effect a substantive change is excised from the bill.

This bill would enact the recommendations of the Legislative Counsel for maintenance of the codes. The proposed changes would not make any substantive change in the law.

CONTINUED

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

RJG:ctl 4/3/97 Senate Floor Analyses
SUPPORT/OPPOSITION: NONE RECEIVED
**** END ****

Assembly Republican Caucus Bill Analysis

Judiciary Committee

SB 947 (JUDICIARY COMMITTEE)
MAINTENANCE OF THE CODES

Version: 3/31/97 Last Amended
Analyzed: 5/04/97
Recommendation: Support

Vice-Chair: Bill Morrow
Vote: Majority
Tax or Fee Increase: No

Summary	**Makes various nonsubstantive, technical changes in various codes.**

Proposed Amendments None.

Potential Effects Would clarify ambiguous provisions, correct grammatical errors and delete obsolete provisions to maintain the statutory codes.

Sponsor: Legislative Counsel Bureau
Support: None on File
Oppose: None on File

State Fiscal Effect Unknown

Local Fiscal Effect Unknown

Fiscal Comments

Comments

1. **This is the annual maintenance of the codes bill which the Legislative Counsel office prepares to correct grammatical errors in the codes oand otherwise provide for nonsubstantive, technical revisions.**

Assembly Republican Committee Votes **(Judiciary)** 5/7/97

(0-0) Ayes: None
Noes: None
Abs. / NV: None

Policy Consultant: Mark Redmond

Date of Hearing: May 7, 1997

ASSEMBLY COMMITTEE ON JUDICIARY
Martha Escutia, Chairwoman

SB 947 (Senate Judiciary Committee) - As Amended: March 31, 1997

SUBJECT: MAINTENANCE OF THE CODES.

KEY ISSUE: SHOULD VARIOUS NON-SUBSTANTIVE, TECHNICAL CHANGES IN VARIOUS CODES BE MADE AS RECOMMENDED BY THE LEGISLATIVE COUNSEL'S OFFICE?

SUMMARY: Specifically, this bill would enact the recommendations of the Legislative Counsel's Office for maintenance of the codes. The proposed changes would not make any substantive change in the law.

EXISTING LAW: Unaffected.

FISCAL EFFECT: Unknown.

COMMENTS: Each year, the Legislative Counsel's Office identifies grammatical and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing the wholesale corrections. For inclusion into the measure, the change must be technical only and may not affect or enact substantive law. Any proposed change which is found to effect a substantive change is excised from the bill.

A condition for inclusion in the annual code maintenance bill is that the change must be non-substantive. Consequently, any provision which is identified as making a substantive change in the law will be removed by the Legislative Counsel's Office.

REGISTERED SUPPORT / OPPOSITION:

Support	Opposition
None to date.	None to date.

Analysis prepared by: Committee Consultant / ajud / (916) 445-4560

Analyst Name: Dietmar Grellmann
Phone No.: 657-5022

STATE AND CONSUMER SERVICES AGENCY

ENROLLED BILL REPORT

DEPARTMENT	AUTHOR	BILL NUMBER
Office of Insurance Advisor	Senate Judiciary Committee	SB 947

SUMMARY

This bill makes nonsubstantive changes to all codes. As it relates to the Insurance Code, this bill makes grammatical and typographical corrections to six code sections.

ANALYSIS

This is an omnibus measure prepared by the Legislative Counsel to maintain the various codes by making nonsubstantive changes to correct typographical, grammatical or referencing errors. No policy questions are raised. Maintenance of the codes is an annual exercise undertaken by the Legislative Counsel.

As it relates to the Insurance Code, this bill makes non-substantive grammatical and typographical corrections to six Insurance Code sections.

FISCAL IMPACT

No fiscal impact on state government.

POSITIONS

Proponents: None recorded.

Opponents: None recorded.

RECOMMENDATION

The Office of Insurance Advisor recommends that the bill be **SIGNED** based on our review of the changes to the Insurance Code. We defer on the remaining provisions of the bill. The bill makes only non-substantive changes to the Insurance Code.

VOTE: Assembly	VOTE: Senate
Floor: Aye 78 No 0 Policy Committee: Aye 13 No 0 Fiscal Committee: Aye__ No__	Floor: Aye 37 No 0 Policy Committee: Aye 8 No 0 Fiscal Committee: Aye__ No__
RECOMMENDATION TO GOVERNOR: SIGN X VETO__	DEFER TO OTHER AGENCY_____
DEPARTMENT DIRECTOR: Dietmar Grellmann DATE: 5-16-97	AGENCY SECRETARY: Sue E. Sullivan DATE: 5-19-97

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH
Enrolled Bill Report

Bill Number	*Author*	*As Amended*
SB 947	COMMITTEE ON JUDICIARY	MARCH 31, 1997

Subject
MAINTENANCE OF THE CODES

SUMMARY

This bill would make numerous minor technical revisions to various code sections, as recommended by the Legislative Counsel.

ANALYSIS

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

SB 947 would make numerous nonsubstantive grammatical and punctuation revisions to various code sections. These revisions are recommended by the Legislative Counsel.

COST

No appropriation. This bill would not create a state-mandated local program.

ECONOMIC IMPACT

This bill would have no direct economic impact on business in the state.

LEGAL IMPACT

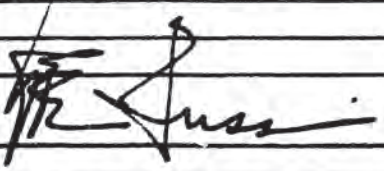
This bill would not appear to result in any increased liability for the state, nor conflict with existing state or federal law.

LEGISLATIVE HISTORY

SB 947 is sponsored by the author.

Each year, the Legislative Counsel recommends numerous revisions to various code sections to correct grammar or punctuation, to remove errors, to repeal obsolete code sections, and to otherwise clean up the code sections.

Recommendation
SIGN

By	*Date*
	May 20, 1997

Title
LEE GRISSOM
DIRECTOR

SB 947 is the code maintenance bill for 1997.

It is standard policy that this type of bill may contain no substantive revisions. This office has reviewed each section of the bill. We believe that all changes are technical.

There is no known support or opposition to the bill at this time.

VOTE:	Senate - 10 April 1997 Ayes - 37 Noes - 0	Assembly - 15 May 1997 Ayes - 78 Noes - 0 (On Consent)

RECOMMENDATION

The Office of Planning and Research recommends the Governor **SIGN** SB 947.

This bill would provide technical revisions to various code sections which will make the codes cleaner and easier to understand.

Victoria Scribner, Legislative Analyst
Nancy Patton, Deputy Director, Legislation
LWR

Jack Horton
Chief Deputy

James L. Ashford
Harvey J. Foster
John T. Studebaker
Daniel A. Weitzman

David D. Alves
Diane F. Boyer-Vine
C. David Dickerson
Robert Cullen Duffy
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Mark Franklin Terry
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Richard Thomson
Richard B. Weisberg
Thomas D. Whelan
Karen L. Ziskind
Jack G. Zorman
Deputies

Sacramento, California
June 10, 1997

Honorable Pete Wilson
Governor of California
Sacramento, CA 95814

Senate Bill No. 947

Dear Governor Wilson:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator John L. Burton and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By Daniel A. Weitzman
Daniel A. Weitzman
Principal Deputy

DAW: ths

Two copies to Honorable John L. Burton, pursuant to Joint Rule 34.

OFFICE OF THE LEGISLATIVE COUNSEL

Thirty-seventh Report on

LEGISLATION NECESSARY TO MAINTAIN THE CODES

June 12, 1997

Bion M. Gregory

Legislative Counsel

THIRTY-SEVENTH REPORT ON LEGISLATION NECESSARY TO MAINTAIN THE CODES

INTRODUCTION

The Legislative Counsel is required, by Section 10242 of the Government Code, to advise the Legislature from time to time as to legislation necessary to maintain the codes and legislation necessary to codify those statutes that are enacted subsequent to the enactment of the codes. This report is submitted to the Legislature in compliance with that requirement.

The present report includes recommendations only for nonsubstantive changes in the statutes, and continues without change the policies first stated in the March 1, 1954, Report on Legislation Necessary to Maintain the Codes.*

PART I

ACTS RECOMMENDED FOR CODIFICATION IN 1997

Since the publication in 1996 of the Thirty-sixth Report, no statutes have been proposed for codification.

PART II

CORRECTIVE LEGISLATION TO MAINTAIN THE CODES

Recommendations for Correction in 1997

The suggestions for corrective legislation necessary to maintain the codes in 1997 are set forth in the appendix to this report. These suggestions represent an accumulation of matters that have come to the attention of the Office of the Legislative Counsel since the 1996 report, through correspondence and the suggestions of public officials and members of the public.

---

* This report reflects the changes proposed in Senate Bill No. 947.

Further, with regard to any code provision that is a subject of this report, any reference to any individual, or class of individuals, by sex, or by any term that ordinarily refers only to one sex, has been revised to refer to both sexes or to a neutral class, except where the context of the provision otherwise requires.

In any code provision that is a subject of this report, the word "said" or "such," when it is used as a grammatical article in place of "the," "those," or any other term appropriately used in that context, has been deleted and replaced with a more appropriate word or phrase, to conform to code style. Furthermore, the phrase "the provisions of", when referring to an entire code or an otherwise designated body of law (for example, "pursuant to the provisions of the Civil Code" or "under the provisions of this chapter"), has been deleted to conform to code style.

No substantive change is involved in the proposed recommendations for correction in 1997.

Summary of Action on Prior Recommendations for Corrective Legislation

Assembly Bill No. 3470 was introduced in 1996 at the 1995-96 Regular Session for the correction of those errors in the codes listed in the appendix of the Thirty-sixth Report on Legislation Necessary to Maintain the Codes. The bill was enacted as Chapter 124 of the Statutes of 1996.

CONCLUSION

The Legislative Counsel recommends to the Legislature that the subject of this report be referred to the appropriate committees of the Senate and the Assembly for the purpose of ascertaining the propriety of the correction or repeal of those statutes listed in the appendix of this report, and of holding any hearings thereon that may appear desirable to those committees.

Respectfully submitted,

Bion M. Gregory

Legislative Counsel

Appendix

CORRECTIVE LEGISLATION NECESSARY TO MAINTAIN THE CODES

CORRECTIVE LEGISLATION NECESSARY TO MAINTAIN THE CODES

BUSINESS AND PROFESSIONS CODE

§ 30 *(Item 97-1)* To correct grammatical and punctuation errors, in subdivision (a) "and" should be deleted and commas should be inserted after "shall" and "license". In subdivision (b), to correct a grammatical error, "so" should be inserted after the second "to", and to correct an incorrect reference "19276" should be changed to "19528" in two places. To correct a grammatical error, in subdivision (i) "as provided in this section" should be deleted and instead inserted after "Franchise Tax Board".

§ 1680 *(Item 97-2)* The following changes should be made to conform to code style:

(1) In the first sentence, "the violation of" should be deleted.

(2) In subdivision (f), "as is" should be deleted.

(3) In subdivisions (i) and *(l)*, "shall" should be changed to "does".

(4) In subdivision (p), "or" should be deleted.

(5) In subdivision (q), "the provisions of" should be deleted and the last "the" should be changed to "that".

(6) In subdivision (aa), "which is in violation of" should be changed to "that violate".

To correct grammatical errors, in subdivision (r) "other" should be inserted after the second "or" and "which" should be changed to "that". To correct a grammatical error, in subdivision (x) "which" should be changed to "that". To correct punctuation, in paragraph (1) of subdivision (z) the semicolon should be changed to a comma and the existing comma should be deleted. To correct a grammatical error, in the second sentence of subdivision (dd) "developed" should be inserted after the second "regulations".

§ 2052.5 *(Item 97-3)* To correct punctuation, in subdivision (a) the period should be changed to a colon, in paragraph (1) of subdivision (a) a comma should be inserted after "practicing", and a comma should be inserted at the end of subparagraphs (A) and (B) of paragraph (2) of subdivision (b). To conform to code style, in subparagraph

§ 1226 *(Item 97-58)* To correct grammar, in the first sentence of subdivision (a) "which" should be changed to "that". To correct grammar and punctuation, in subdivision (c) "as to whether or not" should be changed to "that" in the second paragraph and a comma should be inserted after "certification" in the third paragraph. In paragraph (2) of subdivision (c), to correct punctuation, the first comma should be deleted and a comma should be inserted after "applicant" and after "construction". In subdivision (d), to correct punctuation and grammar, a comma should be inserted after "If", "who" should be changed to ", which", a comma should be inserted after "office", and "the" should be inserted after "in". To conform to code style, in subdivision (h) "be applicable" should be changed to "apply".

§ 1250.2 *(Item 97-59)* To conform to code style and to correct grammar, in the first sentence of subdivision (a) "the following type:" should be changed to "a", "facility" means" should be changed to "facility," defined to mean", and "which" should be changed to "that", and in the last sentence "stays" should be changed to "stay". In the second paragraph of subdivision (b) a comma should be inserted after the first "that" and ", for" should be inserted after the second "that". To clarify a reference, in subdivision (c) "of the Health and Safety Code" should be inserted after "1250". To correct grammatical and punctuation errors, in paragraph (3) of subdivision (d) "Sections" should be changed to "Section", a comma should be inserted after "(42 U.S.C. Sec. 1395x (e) and (f))", and, to conform to code style, "Sec." should be inserted after the second "U.S.C.".

§ 1367 *(Item 97-60)* To correct punctuation, in the first sentence the first comma should be deleted and a comma should be inserted after "and", and in the first sentence of subdivision (a) a comma should be inserted after the first "state" and after "plan". To conform to code style, in subdivision (c) "operating" should be deleted and "for" should be changed to "operating". To correct punctuation, in subdivision (d) a comma should be inserted after "appropriate". To conform to code style, in the second sentence of subdivision (i) "which health care service plan shall be" should be deleted, the second "provide" should be changed to "be provided by a health care service plan", in the third sentence "shall prohibit" should be changed to "prohibits", and in the last paragraph "commissioner's" should be deleted and "by the commissioner" should be inserted after "enforcement".

§ 1585 *(Item 97-61)* To correct punctuation, in subdivision (a) the first and second comma should be deleted and in subdivision (b) a comma should be inserted after "shall". In subdivision (c)

State of California—Health and Welfare Agency

BILL ANALYSIS

Department of Health Services

HWA Departments Affected	Author Gallegos	Bill Number AB 947 Original
Other Departments That May be Affected Department of Corporations	Sponsor California Psychological Association	Version 4-17-97 & 5-15-97
Assignment XX P ☐ A		Related Bills
Subject Health Service Plans: Contracting Provider Lists for Enrollees		

SUMMARY: AB 947 as amended May 15, 1997, requires health care service plans to provide to all prospective and new enrollees, and upon request to existing enrollees, a list of all contracting providers in the geographic area, and among other things, adds requirements for a number of new disclosures from plan providers to be provided to the enrollees.

POSITION AND SUPPORTING ARGUMENTS: OPPOSE. AB 947 will require health care service plans to provide on a regular basis disclosure information on plan providers to enrollees which could overwhelm the system and still not benefit all enrollees.

LEGISLATIVE HISTORY: This bill is sponsored by California Psychological Association. The sponsor's office believes the bill is necessary because many enrollees decide which plan to join based on the affiliated providers and health care specialists, and in order to make an informed decision, the information must be made available to the enrollees.

PROGRAM BACKGROUND: The Medi-Cal Managed Care Division develops and implements alternatives to the Medi-Cal fee-for-service system through managed care contracts. Health care service plans are licensed under the Knox-Keene Health Care Service Plan Act administered by the Department of Corporations. Most Medi-Cal managed care plans are Knox-Keene licensed, and legislation that impacts health care service plans may increase costs to the public and to the Medi-Cal program.

SPECIFIC FINDINGS:

_____ Requires Regulatory Action _____ Requires/Impacts Commissions, Boards.
_____ Requires/Impacts _____ Urgency Clause

Existing law requires each plan to use disclosure forms or materials containing information regarding the benefits, services and terms of the plan, and provides that an enrollee shall not be prohibited from selecting as a primary care physician any available primary care physician who contracts with the plan in the service area where the enrollee lives or works. AB 947 requires health care service plans to provide to all prospective and new enrollees, and upon request to existing enrollees, a list of contracting providers, including primary care physicians, specialists, health facilities, and other health care providers within the general geographic area. The bill also requires a quarterly notice of additions and deletions to the list; a 30 days' written notice prior to termination of an enrollee's primary care physician, speciality physician, or other health care provider; and requirements for a number of new disclosures from plan providers also to be provided to enrollees.

DHS Director Position	HWA Secretary Position	☐ State Mandate ☐ Governor's Appt.
__ S ✓ O __ SA __ OA __ N __ NP __ NA __ N/C __ D to: _____	__ S ✓ O 7/11 vers. __ SA __ OA __ N __ NP __ NA __ N/C __ D to: _____	**Governor's Office Use** Position Approved _____ Position Disapproved _____ Position Noted _____
By: [signature] Date: 6/20/97	By: Original Signed On Date: JUL 1008 1997	By: Date:

HAS 35 (1/93)

Joanna Royce

Providing enrollees with enough information to make an informed provider choice is agreeable, however, to over supply the enrollee with excessive information can defeat the purpose and certainly will overburden the system. Many health plans may have as many as 30,000 providers in their provider network, and some plans have millions of enrollees. To disseminate the information as required by this bill to each enrollee does not appear to be consistent with the requirements and intent of disclosure.

It is not feasible, to complete many of the requirements made by this bill. For example, to indicate on every provider list given to enrollees, which health care providers have closed practice or otherwise are not accepting new patients is not feasible at this time since that status fluctuates, nor is it feasible for the plan to provide information on the education and board certifications, and any subspecialty training a specialist may have for all providers, and distributed to all enrollees. This information is much better distributed on an as requested basis. The bill adds administrative and costs to HCSPs, which can increase the overall costs of care.

FISCAL IMPACT:	CURRENT FY	BUDGET FY	ONE TIME	ANNUAL ONGOING FY
G.F.	$-0-	Indeterminate	$-0-	Indeterminate
Other	$-0-	Indeterminate	$-0-	Indeterminate
Total	$-0-	Indeterminate	$-0-	Indeterminate
PYs	N/A	N/A	N/A	N/A

There is no direct fiscal impact to the Medi-Cal program, but overall increases in the cost of care increases pressure on DHS to increase capitation rates paid to Medi-Cal managed care plans. These requirements do not create direct costs to Medi-Cal, however they could discourage plans from participating in the Medi-Cal Managed Care program, which could result in a fiscal impact on the Medi-Cal program.

PROS: 1) Would provide a greater amount of information to the enrollees on providers available to them, where they can find special or individual doctors and other health care providers, and what services they may receive from each one.

CONS: 1) May increase the administrative cost to the plans which could result in increase premiums passed on to enrollees.

2) The quantity and specificity of information required to be provided may not be feasible for some plans or not practical for others.

3) This volume of information could defeat the purpose of simplifying the disclosure activity.

PROPONENTS:California Psychological Association (sponsor); California Chapter of the American College of Emergency Physicians; California Professional Firefighters; Congress of California Seniors; Right to Know Coalition;

OPPONENTS: Association of California Life and Health Insurance Companies, California Association of HMOs;

PROGRAM CONTACT/TELEPHONE: Janice Mullen Harris (916) 657-3033

Volume 6

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1997

Constitution of 1879 as Amended

General Laws, Amendments to the Codes,
and Resolutions passed by the
California Legislature

1997–98 Regular Session
1997–98 First Extraordinary Session

Compiled by
BION M. GREGORY
Legislative Counsel

Existing law had authorized any county or city, which is contained, in whole or in part, within the South Coast Air Quality Management District to declare by ordinance a reduced prima facie speed limit for air pollution control purposes, as specified. That law was repealed as of January 1, 1997.

This bill would reinstate that authorization.

The bill would declare that it is to take effect immediately as an urgency statute.

Ch. 17 (SB 947) Committee on Judiciary. Maintenance of the Codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would restate existing provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature for consideration during 1997, and would not make any substantive change in the law.

Ch. 18 (SB 115) Burton. Criminal procedure: civil compromise.

Under existing law, when a person injured by an act constituting a misdemeanor has a remedy by a civil action, the offense may be compromised by the victim upon receiving compensation for the injury. Civil compromise is not allowed in cases of domestic violence when the defendant previously has civilly compromised a domestic violence offense within 7 years.

This bill would eliminate the condition on civil compromise in domestic violence cases, thereby prohibiting civil compromise in all domestic violence cases.

Ch. 19 (AB 249) Cunneen. Criminal procedure: conditional examination: recorded testimony.

Existing law authorizes the conditional examination of a witness in specified cases, requires that the testimony of the witness be reduced to writing and authenticated in the same manner as that taken in support of an information, and provides that the deposition or a certified copy may be read in evidence by either party if the court finds that the witness is unavailable.

This bill would authorize the testimony of a witness conditionally examined to be video-recorded and would provide that the recording may be shown by either party at trial if the court finds that the witness is unavailable.

Ch. 20 (AB 710) Kuehl. Alcoholic beverages: on-sale licenses.

The Alcoholic Beverage Control Act provides for the issuance of an on-sale general license and provides for the issuance of various special or temporary licenses.

This bill would authorize the issuance of an on-sale general bona fide public eating place license to any nonprofit charitable arts trust, as defined, that meets specified conditions.

This bill would declare that it is to take effect immediately as an urgency statute.

Ch. 21 (AB 114) Battin. Alcoholic beverages: licenses: golf course facility.

The Alcoholic Beverage Control Act provides that a club license for a golf club entitles the licensee to make sales of alcoholic beverages from any golf cart, as defined, operating on the golf club premises.

This bill would delete that provision and instead provide that any license issued to any golf course facility, or any license issued to a licensee that operates at any golf course facility, entitles the licensee to make sales of alcoholic beverages from any golf cart, as defined, that the licensee operates on the golf course premises.

This bill would declare that it is to take effect immediately as an urgency statute.

Ch. 22 (AB 163) Baugh. Grand juries: exculpatory evidence.

Under existing law, the grand jury is not required to hear evidence for the defendant, but is required to weigh all the evidence submitted to it. When it has reason to believe that other evidence within its reach will explain away the charge, the grand jury is required to order that evidence to be produced, and for that purpose may require the district attorney to issue process for witnesses.

NOTE: Superior numbers appear as a separate section at the end of the digests.

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 2139
AUTHOR : Lockyer
TOPIC : Courts: unification.

TYPE OF BILL :
Inactive
Urgency
Non-Appropriations
2/3 Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY
1998
Sept. 28 Chaptered by Secretary of State. Chapter 931, Statutes of 1998.
Sept. 28 Approved by Governor.
Sept. 14 Enrolled. To Governor at 3 p.m.
Aug. 31 In Senate. Senate concurs in Assembly amendments. (Ayes 38. Noes 0. Page 6561.) To enrollment.
Aug. 31 Read third time. Urgency clause adopted. Passed. (Ayes 76. Noes 1. Page 9405.) To Senate.
Aug. 28 Read third time. Amended. To third reading.
Aug. 26 Read third time. Amended. To third reading.
Aug. 24 Read third time. Amended. To third reading.
Aug. 18 Action rescinded whereby bill read third time, urgency clause adopted, passed, and to Senate.
Aug. 17 In Assembly. Held at Desk.
Aug. 17 Returned to Assembly for further action.
Aug. 17 To Special Consent Calendar.
Aug. 13 In Senate. To unfinished business.
Aug. 13 Read third time. Urgency clause adopted. Passed. (Ayes 75. Noes 0. Page 8410.) To Senate.
Aug. 10 Read second time. To Consent Calendar.
Aug. 6 From committee: Do pass. To Consent Calendar. (Ayes 21. Noes 0.)
July 1 Read second time. Amended. Re-referred to Com. on APPR.
June 30 From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 16. Noes 0.)
June 15 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
May 28 To Com. on JUD.
May 14 In Assembly. Read first time. Held at Desk.
May 14 Read third time. Urgency clause adopted. Passed. (Ayes 37. Noes 0. Page 4601.) To Assembly.
May 11 To Special Consent Calendar.
May 5 Read second time. To third reading.
May 4 From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
Apr. 23 Set for hearing May 4.
Apr. 15 From committee: Do pass, but first be re-referred to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 7. Noes 0. Page 4157.) Re-referred to Com. on APPR.

Apr. 2 From committee with author's amendments. Read second time.
Amended. Re-referred to committee.
Apr. 2 Set for hearing April 14.
Mar. 5 To Com. on JUD.
Feb. 23 Read first time.
Feb. 21 From print. May be acted upon on or after March 23.
Feb. 20 Introduced. To Com. on RLS. for assignment. To print.

SENATE BILL No. 2139

Introduced by Senator Lockyer

February 20, 1998

An act to amend Section 911 of, and to add Sections 46, 76, and 80 to, the Code of Civil Procedure, and to add Chapter 5.1 (commencing with Section 70200) to Title 8 of the Government Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2139, as introduced, Lockyer. Courts: unification.

The California Constitution presently provides for the establishment of superior and municipal courts, as specified, in each county. SCA 4 of the 1995–96 Regular Session would provide for the abolition of municipal courts within a county, and for the establishment of a unified superior court for that county upon a majority vote of superior court judges and a majority vote of municipal court judges within the county; provide for the qualification and election of the judges; and revise the number of jurors required in certain civil actions.

This bill would, contingent upon the approval of SCA 4 of the 1995–96 Regular Session, make various statutory changes to implement and conform to the unification of trial courts pursuant to the constitutional amendment.

The bill would state that it is to take effect immediately as an urgency statute.

Vote: $^{2}/_{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 46 is added to the Code of Civil Procedure, to read:

46. (a) Courts of appeal have appellate jurisdiction in the following causes:

(1) In a county in which the municipal and superior courts have not unified, causes within the original jurisdiction of the superior court.

(2) In a county in which the municipal and superior courts have unified, causes within the original jurisdiction of the superior court, excluding causes that would be within the original jurisdiction of the municipal court absent unification.

(b) Nothing in this section limits the appellate jurisdiction of the courts of appeal in causes of a type within their appellate jurisdiction on June 30, 1995, or in other causes prescribed by statute.

SEC. 2. Section 76 is added to the Code of Civil Procedure, to read:

76. (a) A reference in any statute to the appellate department of the superior court means the appellate division of the superior court.

(b) Notwithstanding subdivision (e) of Section 77, the appellate division of the superior court has jurisdiction on appeal from the following courts, in all cases in which an appeal may be taken to the superior court as is now or may hereafter be provided by law, except appeals that require a retrial in the superior court:

(1) The municipal courts in the county.

(2) The superior court in a county in which the municipal and superior courts have unified in a cause that would be within the original jurisdiction of the municipal court absent unification.

SEC. 3. Section 80 is added to Chapter 5 (commencing with Section 81) of Title 1 of Part 1 of the Code of Civil Procedure, to read:

80. In a county in which the municipal and superior courts are unified:

(a) Causes that would be within the original jurisdiction of the municipal court absent unification, shall be within the original jurisdiction of the superior court.

(b) Statutes governing causes that would be within the original jurisdiction of the municipal court absent unification, including, but not limited to, statutes governing filing fees, publication of notices, reporting of proceedings, appeals, and other court procedures, shall be construed, to the extent practical and except to the extent necessary to avoid injustice, to govern those causes in the superior court.

SEC. 4. Section 911 of the Code of Civil Procedure is amended to read:

911. A court of appeal may order any case on appeal ~~within the original jurisdiction of the municipal and justice courts~~ *to the superior court* in its district transferred to it for hearing and decision as provided by rules of the Judicial Council when the superior court certifies, or the court of appeal determines, that such transfer appears necessary to secure uniformity of decision or to settle important questions of law.

No case in which there is a right on appeal to a trial anew in the superior court shall be transferred pursuant to this section before a decision in such case becomes final therein.

A court to which any case is transferred pursuant to this section shall have similar power to review any matter and make orders and judgments as the *appellate division of the* superior court would have in such case, except that if the case was tried anew in the superior court, the ~~reviewing~~ court *of appeal* shall have similar power to review any matter and make orders and judgments as it has in a case ~~within the original jurisdiction of the superior court~~ *appealed pursuant to Section 904.1*.

SEC. 5. Chapter 5.1 (commencing with Section 70200) is added to Title 8 of the Government Code, to read:

CHAPTER 5.1. UNIFICATION OF MUNICIPAL AND SUPERIOR COURTS

Article 1. Unification Voting Procedure

70200. (a) The municipal and superior courts in a county shall be unified on a majority vote of superior court judges and a majority vote of municipal court judges in the county, pursuant to the procedure provided in this article.

(b) The vote shall be conducted by the Judicial Council or, if authorized by the Judicial Council, the county's registrar of voters.

(c) The Judicial Council may adopt rules not inconsistent with this article for the conduct of the vote, including, but not limited to, rules governing the frequency of vote calls, manner of voting, duration of the voting period, and selection of the operative date of unification.

70201. (a) A vote of the judges in a county for unification shall be called by the Judicial Council on application of the presiding judge of the superior court or all of the presiding judges of the municipal courts in the county, or on application of a majority of the superior court judges or a majority of the municipal court judges in the county.

(b) The vote shall be taken 30 days after it is called.

(c) A judge is eligible to vote if the judge is serving in the court pursuant to an election or appointment under Section 16 of Article VI of the California Constitution at the time the vote is taken.

(d) The ballot shall be in substantially the following form:

"Shall the municipal and superior courts in the County of [name county] be unified on [specify date]? [Yes] [No]"

(e) Notwithstanding subdivisions (a) and (b), the judges in a county may vote for unification by delivering to the Judicial Council a ballot endorsed in favor of unification by unanimous written consent of all judges in the county eligible to vote.

70202. (a) The Judicial Council or registrar of voters shall certify the results of a vote to unify the municipal courts and the superior courts in a county.

(b) Unification of the municipal and superior courts in a county requires an affirmative vote of a majority of all superior court judges in the county eligible to vote and a majority of all municipal court judges in the county eligible to vote.

(c) On certification, a vote in favor of unification of the municipal and superior courts in a county is final and may not be rescinded or revoked by a subsequent vote.

70203. Unification of the municipal and superior courts in a county shall occur on the earlier of the date specified in the unification vote or 180 days following certification of the vote for unification.

Article 2. Transitional Provisions for Unification

70210. The Judicial Council shall adopt rules of court not inconsistent with statute for:

(a) The orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after the date the municipal and superior courts in a county are unified.

(b) Selection of persons to coordinate implementation activities for the unification of municipal courts with superior courts in a county, including:

(1) Selection of a presiding judge for the unified superior court.

(2) Selection of a court executive officer for the unified superior court.

(3) Appointment of court committees or working groups to assist the presiding judge and court executive officer in implementing unification.

(c) The authority of the presiding judge, in conjunction with the court executive officer and appropriate individuals or working groups of the unified superior court, to act on behalf of the court to implement unification.

(d) Preparation and submission of a written personnel plan to the judges of a unified superior court for adoption.

(e) Preparation of local court rules necessary to facilitate the orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after the date the municipal and superior courts in a county are unified. These rules shall, on the date the municipal and superior courts in a county are unified, be the rules of the unified superior court.

(f) Other necessary activities to facilitate the transition to a unified superior court.

70211. When the municipal and superior courts in a county are unified:

(a) The judgeships in each municipal court in that county are abolished and the previously selected municipal court judges become judges of the superior court in that county. Until revised by statute, the total number of judgeships in the unified superior court shall equal the previously authorized number of judgeships in the municipal court and superior court combined.

(b) The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court.

(c) The 10-year membership or service requirement of Section 15 of Article VI of the California Constitution does not apply to a previously selected municipal court judge.

70212. Except as provided by statute to the contrary, in a county in which the municipal and superior courts become unified, the following shall occur automatically in each preexisting municipal and superior court:

(a) Previously selected officers (including subordinate judicial officers), employees, and other personnel who serve the court become the officers and employees of the superior court.

(b) Preexisting court locations are retained as superior court locations.

(c) Preexisting court records become records of the superior court.

(d) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(e) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(f) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

(g) Subpoenas, summons of jurors, and other process issued by the court shall be enforceable by the superior court.

(h) The superior court and each judge of the superior court has all the powers and shall perform all of the acts that were by law conferred on or required of any court superseded by the superior court and any judge of the superseded court, and all laws applicable to the superseded court not inconsistent with the statutes governing unification of the municipal and superior courts, apply to the superior court and to each judge of the court.

70213. (a) In a county in which the municipal and superior courts become unified, until revised by the Judicial Council, forms for proceedings within the jurisdiction of municipal courts may be used as if the proceedings were in a municipal court.

(b) The Judicial Council may adopt rules resolving any problem that may arise in the conversion of statutory references from the municipal court to the superior court in a county in which the municipal and superior courts become unified.

70214. When the municipal and superior courts in a county are unified:

(a) Until revised by statute, the total number of authorized court commissioners in the unified superior court shall equal the previously authorized number of

court commissioners in the municipal court and superior court combined.

(b) Until revised by statute, the total number of authorized traffic referees or traffic trial commissioners in the unified superior court shall equal the previously authorized number of court traffic referees or traffic trial commissioners in the municipal court.

(c) The superior court or its judges may make appointments previously authorized to be made by a municipal court or its judges.

(d) Commissioners and referees of the unified superior court shall have all of the powers and authority of commissioners and referees of superior courts and of municipal courts.

70215. The provisions of this article and other statutes governing unification of the municipal and superior courts in a county shall prevail over inconsistent statutes otherwise applicable to the municipal or superior courts in the county, including, but not limited to, statutes governing the number of judges, selection of a presiding judge, selection of a court executive officer, and employment of officers (including subordinate judicial officers), employees, and other personnel who serve the court.

70216. The Attorney General shall, to the extent required by the preclearance provisions of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) seek to obtain preclearance of paragraph (1) of subdivision (b) of Section 16 of Article VI of the California Constitution as it applies in a county in which the courts are unified pursuant to subdivision (e) of Section 5 of Article VI of the California Constitution.

70217. On unification of the municipal and superior courts in a county, until adoption of a written personnel plan by the judges of the unified superior court and approval of the plan by the Legislature:

(a) Previously selected officers, employees, and other personnel who serve the courts become the officers, employees, and other personnel of the unified superior

court at their existing or equivalent classifications, salaries, and benefits.

(b) Permanent employees of the municipal and superior courts on the effective date of unification shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees on the effective date of unification shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(c) Employment seniority of an employee of the municipal or superior courts on the effective date of unification shall be counted toward seniority in the unified superior court, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

SEC. 6. This bill shall become operative only upon the adoption by the voters of Senate Constitutional Amendment 4 of the 1995–96 Regular Session of the Legislature, in which event it shall become operative at the same time as Senate Constitutional Amendment 4.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Senate Constitutional Amendment 4 of the 1995–96 Regular Session of the Legislature, if approved by the voters, would change the appellate jurisdiction of the courts and would enable the municipal and superior courts in a county to unify. It is necessary that implementing measures be taken immediately so that an orderly transition of the court system will occur.

O

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FROM SANTA CLARA COUNTY
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California State Senate

SENATE COMMITT
RULES, CHAIR
JUDICIARY

BILL LOCKYER
PRESIDENT PRO TEMPORE
TENTH SENATORIAL DISTRICT
COUNTIES OF ALAMEDA AND SANTA CLARA

Memorandum

To: Legislative Counsel

January 16, 1998

Please draft:

X a bill for introduction in the 1997-98 session:

X backed ___ unbacked

___ amendments to _____

___ hostile amendments to _____

___ changes to this backed draft

Instructions:

If you have any questions, the contact person is Nathan Barankin at 445-6671.

Sincerely,

Joann Tsirelas

Joann Tsirelas

January 16, 1998

SCA 4 STOP-GAP IMPLEMENTING LEGISLATION

An act to amend Section 911 of, and to add Sections 46, 76, and 80 to, the Code of Civil Procedure, and to add Chapter 5.1 (commencing with Section 70200) to Title 8 of the Government Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

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

Code Civ. Proc. § 46 (added). Appellate jurisdiction of courts of appeal

SEC. 1. Section 46 is added to the Code of Civil Procedure, to read:

46. (a) Courts of appeal have appellate jurisdiction in the following causes:

(1) In a county in which the municipal and superior courts have not unified, causes within the original jurisdiction of the superior court.

(2) In a county in which the municipal and superior courts have unified, causes within the original jurisdiction of the superior court, excluding causes that would be within the original jurisdiction of the municipal court absent unification.

(b) Nothing in this section limits the appellate jurisdiction of the courts of appeal in causes of a type within their appellate jurisdiction on June 30, 1995, or in other causes prescribed by statute.

Code Civ. Proc. § 76 (added). Appellate division of superior court

SEC. 2. Section 76 is added to the Code of Civil Procedure, to read:

76. (a) A reference in any statute to the appellate department of the superior court means the appellate division of the superior court.

(b) Notwithstanding subdivision (e) of Section 77, the appellate division of the superior court has jurisdiction on appeal from the following courts, in all cases in which an appeal may be taken to the superior court as is now or may hereafter be provided by law, except appeals that require a retrial in the superior court:

(1) The municipal courts in the county.

(2) The superior court in a county in which the municipal and superior courts have unified in a cause that would be within the original jurisdiction of the municipal court absent unification.

Code Civ. Proc. § 80 (added). Conversion of statutory references to municipal court

SEC. 3. Section 80 is added to the Code of Civil Procedure, to read:

80. In a county in which the municipal and superior courts become unified:

(a) Causes that would be within the original jurisdiction of the municipal court absent unification. shall be within the original jurisdiction of the superior court.

(b) Statutes governing causes that would be within the original jurisdiction of the municipal court absent unification, including but not limited to statutes governing filing fees, publication of notices, reporting of proceedings, appeals, and other court procedures, shall be construed, to the extent practical and except

to the extent necessary to avoid injustice, to govern those causes in the superior court.

Code Civ. Proc. § 911 (amended). Transfer from appellate division to court of appeal

SEC. 4. Section 911 of the Code of Civil Procedure is amended to read:

911. A court of appeal may order any case on appeal ~~within the original jurisdiction of the municipal and justice courts~~ to the superior court in its district transferred to it for hearing and decision as provided by rules of the Judicial Council when the superior court certifies, or the court of appeal determines, that such transfer appears necessary to secure uniformity of decision or to settle important questions of law.

No case in which there is a right on appeal to a trial anew in the superior court shall be transferred pursuant to this section before a decision in such case becomes final therein.

A court to which any case is transferred pursuant to this section shall have similar power to review any matter and make orders and judgments as the appellate division of the superior court would have in such case, except that if the case was tried anew in the superior court, the ~~reviewing~~ court of appeal shall have similar power to review any matter and make orders and judgments as it has in a case ~~within the original jurisdiction of the superior court~~ appealed pursuant to Section 904.1.

Gov't Code §§ 70200-70216 (added). Unification of Municipal and Superior Courts

SEC. 5. Chapter 5.1 (commencing with Section 70200) is added to Title 8 of the Government Code, to read:

CHAPTER 5.1. UNIFICATION OF MUNICIPAL AND SUPERIOR COURTS

Article 1. Unification Voting Procedure

§ 70200. Unification voting procedure provided in this article

70200. (a) The municipal and superior courts in a county shall be unified on a majority vote of superior court judges and a majority vote of municipal court judges in the county, pursuant to the procedure provided in this article.

(b) The vote shall be conducted by the Judicial Council or, if authorized by the Judicial Council, the county's registrar of voters.

(c) The Judicial Council may adopt rules not inconsistent with this article for the conduct of the vote, including but not limited to rules governing the frequency of vote calls, manner of voting, duration of the voting period, and selection of the operative date of unification.

§ 70201. Conduct of vote

70201. (a) A vote of the judges in a county for unification shall be called by the Judicial Council on application of the presiding judge of the superior court or all

of the presiding judges of the municipal courts in the county, or on application of a majority of the superior court judges or a majority of the municipal court judges in the county.

(b) The vote shall be taken 30 days after it is called.

(c) A judge is eligible to vote if the judge is serving in the court pursuant to an election or appointment under Section 16 of Article VI of the California Constitution at the time the vote is taken.

(d) The ballot shall be in substantially the following form:

"Shall the municipal and superior courts in the County of [name county] be unified on [specify date]? [Yes] [No]"

(e) Notwithstanding subdivisions (a) and (b), the judges in a county may vote for unification by delivering to the Judicial Council a ballot endorsed in favor of unification by unanimous written consent of all judges in the county eligible to vote.

§ 70202. Certification of results

70202. (a) The Judicial Council or registrar of voters shall certify the results of a vote to unify the municipal courts and the superior courts in a county.

(b) Unification of the municipal and superior courts in a county requires an affirmative vote of a majority of all superior court judges in the county eligible to vote and a majority of all municipal court judges in the county eligible to vote.

(c) On certification, a vote in favor of unification of the municipal and superior courts in a county is final and may not be rescinded or revoked by a subsequent vote.

§ 70203. Operative date of unification

70203. Unification of the municipal and superior courts in a county shall occur on the earlier of the date specified in the unification vote or 180 days following certification of the vote for unification.

Article 2. Transitional Provisions for Unification

§ 70210. Transitional rules of court

70210. The Judicial Council shall adopt rules of court not inconsistent with statute for:

(a) The orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after the date the municipal and superior courts in a county are unified.

(b) Selection of persons to coordinate implementation activities for the unification of municipal courts with superior courts in a county, including:

(1) Selection of a presiding judge for the unified superior court.

(2) Selection of a court executive officer for the unified superior court.

(3) Appointment of court committees or working groups to assist the presiding judge and court executive officer in implementing unification.

(c) The authority of the presiding judge, in conjunction with the court executive officer and appropriate individuals or working groups of the unified superior court, to act on behalf of the court to implement unification.

(d) Preparation and submission of a written personnel plan to the judges of a unified superior court for adoption.

(e) Preparation of local court rules necessary to facilitate the orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after the date the municipal and superior courts in a county are unified. These rules shall, on the date the municipal and superior courts in a county are unified, be the rules of the unified superior court.

(f) Other necessary activities to facilitate the transition to a unified superior court.

§ 70211. Conversion of judgeships

70211. When the municipal and superior courts in a county are unified:

(a) The judgeships in each municipal court in that county are abolished and the previously selected municipal court judges become judges of the superior court in that county. Until revised by statute, the total number of judgeships in the unified superior court shall equal the previously authorized number of judgeships in the municipal court and superior court combined.

(b) The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court.

(c) The 10-year membership or service requirement of Section 15 of Article VI of the California Constitution does not apply to a previously selected municipal court judge.

§ 70212. Transitional provisions

70212. Except as provided by statute to the contrary, in a county in which the municipal and superior courts become unified, the following shall occur automatically in each preexisting municipal and superior court:

(a) Previously selected officers (including subordinate judicial officers), employees, and other personnel who serve the court become the officers and employees of the superior court.

(b) Preexisting court locations are retained as superior court locations.

(c) Preexisting court records become records of the superior court.

(d) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(e) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(f) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

(g) Subpoenas, summons of jurors, and other process issued by the court shall be enforceable by the superior court.

(h) The superior court and each judge of the superior court has all the powers and shall perform all of the acts that were by law conferred on or required of any court superseded by the superior court and any judge of the superseded court, and all laws applicable to the superseded court not inconsistent with the statutes governing unification of the municipal and superior courts, apply to the superior court and to each judge of the court.

§ 70213. Judicial Council forms and rules

70213. (a) In a county in which the municipal and superior courts become unified, until revised by the Judicial Council, forms for proceedings within the jurisdiction of municipal courts may be used as if the proceedings were in a municipal court.

(b) The Judicial Council may adopt rules resolving any problem that may arise in the conversion of statutory references from the municipal court to the superior court in a county in which the municipal and superior courts become unified.

§ 70214. Commissioners and referees

70214. When the municipal and superior courts in a county are unified:

(a) Until revised by statute, the total number of authorized court commissioners in the unified superior court shall equal the previously authorized number of court commissioners in the municipal court and superior court combined.

(b) Until revised by statute, the total number of authorized traffic referees or traffic trial commissioners in the unified superior court shall equal the previously authorized number of court traffic referees or traffic trial commissioners in the municipal court.

(c) The superior court or its judges may make appointments previously authorized to be made by a municipal court or its judges.

(d) Commissioners and referees of the unified superior court shall have all of the powers and authority of commissioners and referees of superior courts and of municipal courts.

§ 70215. County-specific legislation

70215. The provisions of this article and other statutes governing unification of the municipal and superior courts in a county shall prevail over inconsistent statutes otherwise applicable to the municipal or superior courts in the county,

including but not limited to statutes governing the number of judges, selection of a presiding judge, selection of a court executive officer, and employment of officers (including subordinate judicial officers), employees, and other personnel who serve the court.

§ 70216. Preclearance under Voting Rights Act

70216. The Attorney General shall, to the extent required by the preclearance provisions of the federal Voting Rights Act, 42 U.S.C. Section 1973 *et seq.*, seek to obtain preclearance of Section 16(b)(1) of Article VI of the California Constitution as it applies in a county in which the courts are unified pursuant to Section 5(e) of Article VI of the California Constitution.

§ 70217. Personnel issues

70217. On unification of the municipal and superior courts in a county, until adoption of a written personnel plan by the judges of the unified superior court and approval of the plan by the Legislature:

(a) Previously selected officers, employees, and other personnel who serve the courts become the officers, employees and other personnel of the unified superior court at their existing or equivalent classifications, salaries, and benefits.

(b) Permanent employees of the municipal and superior courts on the effective date of unification shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees on the effective date of unification shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(c) Employment seniority of an employee of the municipal or superior courts on the effective date of unification shall be counted toward seniority in the unified superior court, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

Operative date

SEC. 6. This bill shall become operative only upon the adoption by the voters of Senate Constitutional Amendment 4 of the 1995-96 Regular Session of the Legislature, in which event it shall become operative at the same time as Senate Constitutional Amendment 4.

Urgency clause

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Senate Constitutional Amendment 4 of the 1995-96 Regular Session of the Legislature, if approved by the voters, would change the appellate jurisdiction of the courts and would enable the municipal and superior courts in a county to

unify. It is necessary that implementing measures be taken immediately so that an orderly transition of the court system will occur.

AMENDED IN SENATE APRIL 2, 1998

SENATE BILL No. 2139

Introduced by Senator Lockyer

February 20, 1998

An act to amend Section 911 of, and to add Sections 46, 76, and 80 to, the Code of Civil Procedure, and to add Chapter 5.1 (commencing with Section 70200) to Title 8 of the Government Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2139, as amended, Lockyer. Courts: unification.

The California Constitution presently provides for the establishment of superior and municipal courts, as specified, in each county. SCA 4 of the 1995–96 Regular Session would provide for the abolition of municipal courts within a county, and for the establishment of a unified superior court for that county, upon a majority vote of superior court judges and a majority vote of municipal court judges within the county; provide for the qualification and election of the judges; and revise the number of jurors required in certain civil actions.

This bill would, contingent upon the approval of SCA 4 of the 1995–96 Regular Session, make various statutory changes to implement and conform to the unification of trial courts pursuant to the constitutional amendment.

The bill would state that it is to take effect immediately as an urgency statute.

Vote: $^{2}/_{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 46 is added to the Code of Civil Procedure, to read:

46. (a) Courts of appeal have appellate jurisdiction in the following causes:

(1) In a county in which the municipal and superior courts have not unified, causes within the original jurisdiction of the superior court.

(2) In a county in which the municipal and superior courts have unified, causes within the original jurisdiction of the superior court, excluding causes that would be within the original jurisdiction of the municipal court absent unification.

(b) Nothing in this section limits the appellate jurisdiction of the courts of appeal in causes of a type within their appellate jurisdiction on June 30, 1995, or in other causes prescribed by statute.

SEC. 2. Section 76 is added to the Code of Civil Procedure, to read:

76. (a) A reference in any statute to the appellate department of the superior court means the appellate division of the superior court.

(b) Notwithstanding subdivision (e) of Section 77, the appellate division of the superior court has jurisdiction on appeal from the following courts, in all cases in which an appeal may be taken to the superior court as is now or may hereafter be provided by law, except appeals that require a retrial in the superior court:

(1) The municipal courts in the county.

(2) The superior court in a county in which the municipal and superior courts have unified in a cause that would be within the original jurisdiction of the municipal court absent unification.

SEC. 3. Section 80 is added to Chapter 5 (commencing with Section 81) of Title 1 of Part 1 of the Code of Civil Procedure, to read:

80. In a county in which the municipal and superior courts are unified:

(a) Causes that would be within the original jurisdiction of the municipal court absent unification, shall be within the original jurisdiction of the superior court.

(b) Statutes governing causes that would be within the original jurisdiction of the municipal court absent unification, including, but not limited to, statutes governing filing fees, publication of notices, reporting of proceedings, appeals, and other court procedures, shall be construed, to the extent practical and except to the extent necessary to avoid injustice, to govern those causes in the superior court.

SEC. 4. Section 911 of the Code of Civil Procedure is amended to read:

911. A court of appeal may order any case on appeal to the superior court in its district transferred to it for hearing and decision as provided by rules of the Judicial Council when the superior court certifies, or the court of appeal determines, that such transfer appears necessary to secure uniformity of decision or to settle important questions of law.

No case in which there is a right on appeal to a trial anew in the superior court shall be transferred pursuant to this section before a decision in such case becomes final therein.

A court to which any case is transferred pursuant to this section shall have similar power to review any matter and make orders and judgments as the appellate division of the superior court would have in such case, except that if the case was tried anew in the superior court, the court of appeal shall have similar power to review any matter and make orders and judgments as it has in a case appealed pursuant to Section 904.1.

SEC. 5. Chapter 5.1 (commencing with Section 70200) is added to Title 8 of the Government Code, to read:

CHAPTER 5.1. UNIFICATION OF MUNICIPAL AND SUPERIOR COURTS

Article 1. Unification Voting Procedure

70200. (a) The municipal and superior courts in a county shall be unified on a majority vote of superior court judges and a majority vote of municipal court judges in the county, pursuant to the procedure provided in this article.

(b) The vote shall be conducted by the Judicial Council or, if authorized by the Judicial Council, the county's registrar of voters.

(c) The Judicial Council may adopt rules not inconsistent with this article for the conduct of the vote, including, but not limited to, rules governing the frequency of vote calls, manner of voting, duration of the voting period, and selection of the operative date of unification.

~~70201. (a) A vote of the judges in a county for unification shall be called by the Judicial Council on application of the presiding judge of the superior court or all of the presiding judges of the municipal courts in the county, or on application of a majority of the superior court judges or a majority of the municipal court judges in the county.~~

~~(b) The vote shall be taken 30 days after it is called.~~

~~(c) A judge is eligible to vote if the judge is serving in the court pursuant to an election or appointment under Section 16 of Article VI of the California Constitution at the time the vote is taken.~~

~~(d) The ballot shall be in substantially the following form:~~

~~"Shall the municipal and superior courts in the County of [name county] be unified on [specify date]? [Yes] [No]"~~

~~(e) Notwithstanding subdivisions (a) and (b), the judges in a county may vote for unification by delivering to the Judicial Council a ballot endorsed in favor of unification by unanimous written consent of all judges in the county eligible to vote.~~

70202. (a) The Judicial Council or registrar of voters shall certify the results of a vote to unify the municipal courts and the superior courts in a county.

(b) Unification of the municipal and superior courts in a county requires an affirmative vote of a majority of all superior court judges in the county eligible to vote and a majority of all municipal court judges in the county eligible to vote.

(c) On certification, a vote in favor of unification of the municipal and superior courts in a county is final and may not be rescinded or revoked by a subsequent vote.

70203. Unification of the municipal and superior courts in a county shall occur on the earlier of the date specified in the unification vote or 180 days following certification of the vote for unification.

Article 2. Transitional Provisions for Unification

70210. The Judicial Council shall adopt rules of court not inconsistent with statute for:

(a) The orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after the date the municipal and superior courts in a county are unified.

(b) Selection of persons to coordinate implementation activities for the unification of municipal courts with superior courts in a county, including:

(1) Selection of a presiding judge for the unified superior court.

(2) Selection of a court executive officer for the unified superior court.

(3) Appointment of court committees or working groups to assist the presiding judge and court executive officer in implementing unification.

(c) The authority of the presiding judge, in conjunction with the court executive officer and appropriate individuals or working groups of the unified superior court, to act on behalf of the court to implement unification.

(d) Preparation and submission of a written personnel plan to the judges of a unified superior court for adoption.

(e) Preparation of local court rules necessary to facilitate the orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after the date the municipal and superior courts in a county are unified. These rules shall, on the date the municipal and superior courts in a county are unified, be the rules of the unified superior court.

(f) Other necessary activities to facilitate the transition to a unified superior court.

70211. When the municipal and superior courts in a county are unified:

(a) The judgeships in each municipal court in that county are abolished and the previously selected municipal court judges become judges of the superior court in that county. Until revised by statute, the total number of judgeships in the unified superior court shall equal the previously authorized number of judgeships in the municipal court and superior court combined.

(b) The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court.

(c) The 10-year membership or service requirement of Section 15 of Article VI of the California Constitution does not apply to a previously selected municipal court judge.

70212. Except as provided by statute to the contrary, in a county in which the municipal and superior courts become unified, the following shall occur automatically in each preexisting municipal and superior court:

(a) Previously selected officers (including subordinate judicial officers), employees, and other personnel who serve the court become the officers and employees of the superior court.

(b) Preexisting court locations are retained as superior court locations.

(c) Preexisting court records become records of the superior court.

(d) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(e) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(f) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

(g) Subpoenas, summons of jurors, and other process issued by the court shall be enforceable by the superior court.

(h) The superior court and each judge of the superior court has all the powers and shall perform all of the acts that were by law conferred on or required of any court superseded by the superior court and any judge of the superseded court, and all laws applicable to the superseded court not inconsistent with the statutes governing unification of the municipal and superior courts, apply to the superior court and to each judge of the court.

70213. (a) In a county in which the municipal and superior courts become unified, until revised by the Judicial Council, forms for proceedings within the jurisdiction of municipal courts may be used as if the proceedings were in a municipal court.

(b) The Judicial Council may adopt rules resolving any problem that may arise in the conversion of statutory references from the municipal court to the superior court in a county in which the municipal and superior courts become unified.

70214. When the municipal and superior courts in a county are unified:

(a) Until revised by statute, the total number of authorized court commissioners in the unified superior court shall equal the previously authorized number of

court commissioners in the municipal court and superior court combined.

(b) Until revised by statute, the total number of authorized traffic referees or traffic trial commissioners in the unified superior court shall equal the previously authorized number of court traffic referees or traffic trial commissioners in the municipal court.

(c) The superior court or its judges may make appointments previously authorized to be made by a municipal court or its judges.

(d) Commissioners and referees of the unified superior court shall have all of the powers and authority of commissioners and referees of superior courts and of municipal courts.

70215. The provisions of this article and other statutes governing unification of the municipal and superior courts in a county shall prevail over inconsistent statutes otherwise applicable to the municipal or superior courts in the county, including, but not limited to, statutes governing the number of judges, selection of a presiding judge, selection of a court executive officer, and employment of officers (including subordinate judicial officers), employees, and other personnel who serve the court.

70216. The Attorney General shall, to the extent required by the preclearance provisions of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) seek to obtain preclearance of paragraph (1) of subdivision (b) of Section 16 of Article VI of the California Constitution as it applies in a county in which the courts are unified pursuant to subdivision (e) of Section 5 of Article VI of the California Constitution.

70217. On unification of the municipal and superior courts in a county, until adoption of a written personnel plan by the judges of the unified superior court and approval of the plan by the Legislature:

(a) Previously selected officers, employees, and other personnel who serve the courts become the officers, employees, and other personnel of the unified superior

court at their existing or equivalent classifications, salaries, and benefits.

(b) Permanent employees of the municipal and superior courts on the effective date of unification shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees on the effective date of unification shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(c) Employment seniority of an employee of the municipal or superior courts on the effective date of unification shall be counted toward seniority in the unified superior court, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

SEC. 6. This bill shall become operative only upon the adoption by the voters of Senate Constitutional Amendment 4 of the 1995–96 Regular Session of the Legislature, in which event it shall become operative at the same time as Senate Constitutional Amendment 4.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Senate Constitutional Amendment 4 of the 1995–96 Regular Session of the Legislature, if approved by the voters, would change the appellate jurisdiction of the courts and would enable the municipal and superior courts in a county to unify. It is necessary that implementing measures be taken immediately so that an orderly transition of the court system will occur.

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FACT SHEET

Judicial Council of California
Administrative Office of the Court

SCA 4: Voluntary Trial Court Unification

SCA 4 (Senate Constitutional Amendment 4) provides for the *voluntary*, not mandatory, unification of the superior and municipal courts of a California county. It permits a majority of the superior court judges and a majority of the municipal court judges within the county to vote to create a unified superior court.

The Legislature passed SCA 4, authored by Senator Bill Lockyer, in June 1996. Because it is a proposed constitutional amendment, the measure must appear on the statewide ballot and receive a majority vote to take effect.

Citizens will have the chance to vote on SCA 4 in the June 2, 1998, election. If SCA 4 passes, it would go into effect immediately, on June 3, 1998, as would amended legislation, California Rules of Court, and Judicial Council forms that implement the measures.

MAJOR PROVISIONS

In addition to providing a local option for the merger of the superior and municipal courts in each county, SCA 4:

- Establishes an appellate division in each unified superior court to hear matters currently within the appellate jurisdiction of the superior court;
- Requires any newly appointed judge of a unified superior court to be a member of the State Bar for at least 10 years immediately preceding selection; and
- Provides for the countywide election of the superior court judges of the unified courts, except as necessary to meet federal Voting Rights Act requirements.

Among other changes affecting judges and court administration if judges vote for unification are the following:

- Municipal court judgeships would be "abolished," and the existing municipal court judges would become judges of the superior court; the terms of these municipal court judges would not be affected by unification.
- Municipal court judges who become superior court judges would be exempt from the constitutional requirement that they serve 10 years as a member of the State Bar or as a judge before becoming a superior court judge.
- Municipal court officers, employees, facilities, records, and pending matters would become those of the unified superior court, unless otherwise provided by statute.

WIDE-RANGING EFFECTS

The purpose of SCA 4 is to make the administration of the trial courts in California more efficient and, as a result, increase the public's access to the justice system.

303 Second Street, South Tower • San Francisco, California 94107-1366 • 1-800-900-5980 • pubinfo@courtinfo.ca.gov • http://www.courtinfo.ca.gov

The *California Unification Study*, completed by the National Center for State Courts (NCSC) in February 1994,[1] drew some meaningful conclusions about the effects of unification on the trial courts.

Public Benefits

Among its findings, the NCSC determined that unification will:

- Provide a more efficient allocation of judicial officers, including subordinate judicial officers, based on experience with trial court coordination and declines in court filings;

- Give courts the flexibility to establish and provide appropriate but less expensive means of dispute resolution that will promote efficiency and improved public service;

- Provide more uniformity in rules, enhancing efficiency and consistency in court procedures;

- Improve caseflow management and disposition by, among other means, allowing pool judges to address the most pressing calendar problems, developing a common courtwide caseflow management policy, creating a common caseflow management information system, and reducing attorney scheduling conflicts;

- Lead to the integration of record and computer systems, improving the quality of information while effecting efficiencies and savings by, for example, ending the costly practice of having parallel, noninteractive, and overlapping computer systems within the county; and

- Provide greatly improved management of court resources through the establishment of a single budget for the courts within each county, efficiencies in purchasing, and a common statewide set of accounting and budget classifications that will facilitate policy-making decisions.

Administrative Changes

According to the NCSC study, court administration would experience the following changes with unification:

- Merged court management offices and supervisor staffs will produce small immediate savings by eliminating top management jobs and by reducing staff-supervisor ratios; in the process, one management policy-making structure will be created.

- Having one court personnel system will provide the means to cope with potential increased workload without staff increases, a major cost avoidance.

- The use of existing facilities will be maximized by adapting facilities to operational needs, such as consolidated criminal case processing at a location near detention facilities; permitting a phaseout of marginal and rented facilities (although traffic and topographical patterns will need to be considered); and encouraging more rational planning and financing for facility needs.

- Court-related agencies such as the prosecutor, public defender, and sheriff or marshal will have to cover fewer court sessions and locations. The immediate benefits will be most clearly felt in prisoner transportation costs.

[1] For the study, the NCSC staff collected data on and completed on-site visits to eight counties that represented a cross-section of the state: Alameda, Los Angeles, Riverside, Sacramento, San Diego, Solano, Ventura, and Yolo.

Fiscal Effects

Unification is expected to cause both increases and cuts in expenditures. An estimated $6 million increase in trial court funding costs is anticipated to raise municipal court judges' salaries to the level of superior court judges. However, under current trial court coordination, municipal court judges who are assigned to superior court work already receive the higher salary. Potentially significant state and local savings from the more efficient administration of court operations are foreseen.

Effects on Communities

◖ *Diversity:* Countywide elections of judges under the terms of SCA 4 are believed by some to have the potential to adversely affect California's judicial diversity, although gubernatorial appointments represent the primary means of determining the mix of judges. The NCSC study found less concern over the diversity issue among minority and women judges than among white male judges. The study reasoned that the Judicial Council already has several major programs in place that promote the quality of justice by attracting, educating, and retaining qualified jurists, including programs to develop education programs on access and fairness. These concrete efforts, as well as the work of the State Bar to promote and support judicial diversity through educational opportunity and training programs, offset the hypothetical threats to diversity, according to the NCSC study.

◖ *Judicial Qualifications:* Concerns have been voiced about the effect on the quality of justice when a large number of limited-jurisdiction judges are elevated to a court of general jurisdiction. For example, lower courts would no longer serve as a training ground, and, some say, the experience of municipal court judges does not equip them to hear some of the complex matters before the superior court. The NCSC found that experience in the municipal court does not differ dramatically from that in superior court. Municipal judges frequently sit on superior court matters by assignment, and variations in ability exist in all courts, including the superior court. In addition, there are structures to cope with differences in ability, such as the presiding judge's flexibility in making assignments, peremptory challenges, and judicial education.

BACKGROUND

The idea of trial court unification surfaced in December 1992, when Senator Bill Lockyer introduced SCA 3 (Senate Constitutional Amendment 3). The measure would have unified all existing superior and municipal courts into a single "district court" in each county. Senator Lockyer invited the Judicial Council to comment on the proposal. As part of the review, the Administrative Office of the Courts retained the National Center for State Courts to conduct a study of, among other factors, the likely financial and operational consequences of unifying the trial courts. Ultimately, SCA 3 did not receive sufficient votes in the Assembly and, as a result, was not placed on the November 1994 ballot.

Senator Lockyer introduced SCA 4 at the beginning of the 1995–96 Legislative Session. As introduced, SCA 4 was substantially similar to SCA 3. Discussions with the Judicial Council resulted in substantial amendments to SCA 4, including an amendment to authorize the superior and municipal courts of individual counties to decide locally whether to unify the courts in that county, rather than providing for immediate unification statewide. SCA 4 appropriately placed control with the courts to determine the best means of managing the court system on the basis of local circumstances and needs. As a result, SCA 4 will apply only in counties in which a majority of both municipal and superior court judges agree to unify.

LEGISLATION AND RULES TO IMPLEMENT SCA 4

The Legislature commissioned the California Law Revision Commission (CLRC) to review all statutes affected by SCA 4 and to identify needed revisions to implement it. Because SCA 4 allows voluntary unification, California statutes must provide for the operations of both unified and nonunified court systems. The implementing legislation attempts to preserve existing distinctions between superior and municipal court jurisdictions while providing for the existence of a single superior court in a county. The goal is to make nonsubstantive changes to the statutes to make SCA 4 workable. The Administrative Office of the Courts established the SCA 4 Implementation Working Group, chaired by Judge Philip A. Champlin of the Napa County Consolidated Courts, to assist the CLRC by reviewing and commenting on the proposals.

Under the CLRC implementing legislation, the Judicial Council is charged with developing California Rules of Court to assist in the transition to a unified court. The SCA 4 Implementation Working Group developed rules and two forms for voting and administrative transition procedures. These rules and forms, currently circulating for comment, will be presented to the Judicial Council for adoption. They would take effect immediately upon the adoption of SCA 4 by voters in the June 2, 1998, election.

Note: The proposed rules are posted at the Judicial Branch of California Web site at **www.courtinfo.ca.gov/invitationstocomment**. They also may be obtained from Council and Legal Services, Attention: Proposal Request, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, CA 94107, fax: 415-396-9358. Written comments may be mailed or faxed to Kady von Schoeler at the above address and fax. **The deadline for comment is 5:00 p.m., Friday, February 20, 1998.**

2/98

SENATE COMMITTEE ON JUDICIARY
SENATOR JOHN BURTON, CHAIRMAN

NB

BACKGROUND INFORMATION REQUEST

Measure: SB 2139

Author : Senator Lockyer

1. Origin of the bill:

   a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?
   LOCKYER.

   b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bi number and disposition of the bill.
   No.

   c. Has there been an interim committee report on the bill? If so, plea identify the report.

2. What is the problem or deficiency in the present law which the bill seek to remedy?
   The bill would make technical changes to CA law accomodating the ~~potentia~~ existence of unified & non-unified courts.

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committ staff.

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

5. If you plan substantive amendments to this bill prior to hearing, please explain briefly the substance of the amendments to be prepared.

6. List the witnesses you plan to have testify.
   Judicial Council
   Nat Sterling

RETURN THIS FORM TO: SENATE COMMITTEE ON JUDICIARY
Phone 445-5957

STAFF PERSON TO CONTACT: NATHAN BARANKIN 445.6671

SENATE JUDICIARY COMMITTEE
John L. Burton, Chairman
1997-98 Regular Session

SB 2139	S
Senator Lockyer	B
As Amended April 2, 1998	
Hearing Date: April 14, 1998	2
Civil Procedure/Government Codes	1
GWW:lgp	3
	9

SUBJECT

Trial Court Unification:
Comforming and Implementing Legislation

DESCRIPTION

This bill would, contingent upon the voter's approval of SCA 4 (Lockyer) of 1996, Proposition 220 on the June ballot, make various statutory changes to implement trial court unification in counties which so elect.

BACKGROUND

In 1996, this Legislature approved SCA 4 (Lockyer) which provides for the voluntary unification of the superior and municipal courts of a California county. If approved by the voters on June 2, 1998, on or after June 3, 1998, a majority vote of superior court judges and a majority vote of municipal court judges within the county may elect to abolish the municipal courts within a county and establish a unified superior court for that county.

SCA 4, if approved, would take effect on June 3, 1998. Urgency legislation is needed to implement necessary changes in the court rules and procedures in those counties which elect to operate a unified court system.

CHANGES TO EXISTING LAW

Existing law presently provides for the establishment of superior and municipal courts in each county. Court rules and various statutes reflect this bifurcated structure.

This bill would, contingent upon the approval of SCA 4 (Lockyer) of 1996, make various statutory changes to implement and conform to the unification of trial courts pursuant to the constitutional amendment. The changes would take effect immediately as an urgency measure.

(more)

COMMENT

1. Legislation and rules needed to implement SCA 4

Because SCA 4 allows voluntary unification, California statutes and court rules must be amended to provide for the operations of both unified and bifurcated court systems.

The Legislature has commissioned the California Law Revision Commission (CLRC) to review all affected statutes and to identify needed revisions. The Administrative Office of the Courts (AOC) has established the SCA 4 Implementation Working Group to assist the CLRC in its task.

These provisions of SB 2139 are the first of the recommended provisions. These provisions, worked out with Judicial Council, are necessarily consistent with and would implement the provisions of SCA 4. Many other necessary changes are still being prepared by the California Law Revision Commission. Committee staff is advised that those recommendations may not be finalized until May, too late for Senate policy committee's hearing deadlines to pass and report fiscal bills.

2. Proposed conforming legislation

Sections 1, 2 and 4 would specify the jurisdictional rules from handling appeals from a unified superior court. In general, cases within the original jurisdiction of the superior court, excluding those cases that are within the jurisdiction of the superior court because of unification, are appealable to the court of appeals. The other cases, those which would have been in the original jurisdiction of municipal court absent unification, would be heard by the appellate department of the superior court. As under existing law, the court of appeals for the district in which the superior court is located may transfer the case to itself for hearing when such transfer appears necessary to secure uniformity of decision or to settle important questions of law.

Section 3 would provide that statutes governing causes within the original jurisdiction of the municipal court absent unification, including, but not limited to, statutes governing filing fees, publication of notices, and reporting of proceedings, shall be construed to avoid injustice, to govern those causes in the superior court.

Section 5 would specify the voting procedure for unification. It would allow the Judicial Council to adopt rules for conducting the vote, including, but not limited to, rules governing the frequency of vote calls, manner of voting, duration of voting period, and selection of operative date of unification which shall be within 180 days following the unification vote. The section would

further provide that upon certification, a vote in favor of a unified superior courts is final and may not be rescinded by a subsequent vote.

3. Proposed transition provisions would:

- Require Judicial Council to adopt rules of court for: (a) the orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, including authorizing the preparation of local rules; (b) the selection of persons to coordinate implementation activities for the unification of municipal courts with superior courts in a county, including selection of a presiding judge and court executive officer for the unified superior court; (c) the authority of the presiding judge, in conjunction with the court executive officer and appropriate individuals or working groups of the unified superior court, to act on behalf of the court to implement unification; and (d) preparation and submission of a written personnel plan to the judges of a unified superior court for adoption.

- Specify that upon trial court unification, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges become judges of the superior court in that county. Until revised by statute, the total number of judgeships in the unified superior court shall equal the previously authorized number of judgeships in the municipal court and superior court combined.

- Specify that the term of office of a previously selected municipal court judge is not affected by taking office as a superior court judge. The State Constitution's 10 years of judicial experience or bar membership requirement for superior court judgeships would not apply to a previously selected municipal court judge.

- Specify that, except as provided otherwise by statute, in a county with a unified court, the following shall occur automatically in each pre-existing municipal and superior court: (a) Previously selected officers, employees, and other personnel who served the municipal court become the officers and employees of the superior court; (b) Pre-existing court locations are retained as superior court locations and pre-existing court records become records of the superior court; (c) Pending trials, proceedings, and other business of the court become pending in the superior court without a change in the procedures previously applicable to the matter; (e) Penal Code procedures that require superior court review of a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order; and (f) Subpoenas, summons of jurors, and other processes issued by the court shall be enforced by the superior court.

- Allow for the use of current Judicial Council forms in unified courts until those forms are revised by the Judicial Council, for proceedings that would be within the former jurisdiction of municipal courts.
- Authorize the Judicial Council to adopt rules resolving any problem that may arise in the conversion of statutory references from the municipal court to the superior court in a county with unified courts.

- Specify in unified courts that, until revised by statute, the total number of authorized court commissioners and traffic referees in the unified superior court shall equal the previously authorized number of commissioners and traffic referees in the municipal court and superior court combined. The commissioners and referees of the unified superior court shall have all of the powers and authority of commissioners and referees of superior courts and of municipal courts.

- Provide that the Attorney General shall, to the extent required by the preclearance provisions of the federal Voting Rights Act seek to obtain preclearance for the county-wide election of superior court judges for the unified court, for any county in which the courts are unified.

- Provide that upon trial court unification in a county, until adoption of a written personnel plan by the judges of the unified superior court and approval of the plan by the Legislature: (a) Previously selected officers, employees, and other personnel who serve the courts become the officers, employees, and other personnel of the unified superior court at their existing or equivalent classifications, salaries, and benefits; (b) Permanent employees of the municipal and superior courts on the effective date of unification shall be deemed qualified, and no other qualifications shall be required for employment or retention; (c) Probationary employees on the effective date of unification shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period; and (d) Employment seniority of an employee of the municipal or superior courts on the effective date of unification shall be counted toward seniority in the unified superior court.

Support: None Known

Opposition: None Known

HISTORY

Source: Author

Related Pending Legislation: None Known

Prior Legislation: SCA 4 (1996) - Pending Voter Approval as Proposition 220

SENATE HEALTH AND HUMAN SERVICES
COMMITTEE ANALYSIS
Senator Diane E. Watson, Chairperson

BILL NO: SB 2142
AUTHOR: WATSON
AMENDED: APRIL 17, 1996
HEARING DATE: APRIL 24, 1996
FISCAL: URGENCY/APPROPRIATIONS

CONSULTANT:
Robinson

SUBJECT

Medi-Cal: Los Angeles County

INTENT

This bill is intended to protect members of the governing body of the Los Angeles County Local Initiative from conflict of interest laws.

ABSTRACT

Under current law, the Board of Supervisors of Los Angeles County established a commission for governance of the county's managed care "local initiative" to provide Medi-Cal services. The commission is considered a public entity separate from the county.

Under current law, the 13-member Commission includes representatives from the County's Health Department, private hospitals with and without a disproportionate share of Medi-Cal and indigent patients, free and community clinics, federally qualified health centers, Medi-Cal patients and their advocates, and Knox-Keene licensed prepaid health plans.

This measure would:

1. Exempt members of the governing body of the Los Angeles County Local Initiative from conflict of interests laws as to not preclude the involvement of many board members in a number of major issues affecting the Local Initiative; and

2. Take effect immediately.

Continued---

FISCAL IMPACT

Undetermined.

BACKGROUND AND DISCUSSION

In 1993, the Department of Health Services adopted a two-plan Medi-Cal Managed Care program. The program required the twelve most populous counties (including Los Angeles County) to transfer AFDC beneficiaries into managed care plans through either a non-governmental "mainstream plan" or a public "local initiative plan." The transfer of AFDC patients was expected to affect 2.5 million beneficiaries over a period of two years.

Senate Bill 2092 (Watson), Chapter 632, Statutes of 1994 incorporated Los Angeles County's public, local initiative governance structure into statute. This measure placed governance of the Commission with a body of 13 members appointed by the Board of Supervisors. Four members shall be appointed by the supervisors (one supervisor and three health providers or administrators); and one representative of a disproportionate share private hospital, one private hospital, one free clinic, one qualified health center, one physician, one HMO insurer, one health care consumer, one consumer advocate, and one children's health provider.

The Los Angeles County Board of Supervisors sponsors SB 2142 and argue that the members of this Local Initiative governing board, especially the private health care representatives, have business relationships which connect them at least indirectly with significant portions of the health care industry. Because of this, existing conflict of interest laws could be interpreted to preclude the involvement of many board members in a number of major issues affecting the Local Initiative, even when the financial interest is remote.

Opponents agree that Medi-Cal beneficiaries as well as taxpayers generally deserve to be protected from conflicts of interest in the operation of Medi-Cal managed care plans no less than any other group to which the state's conflict of interest laws now afford protection. Indeed, the need for protection from conflicts of interest may even be greater in the implementation of the Two Plan Model in Los Angeles County given the vast numbers of people, mostly children, and millions of dollars involved in the transition to Medi-Cal managed care there as well as the infamous Medi-Cal managed care "scandals of the 70s." However, they oppose SB 2142, because it would permit board members managing or even having an ownership interest in a managed care entity to still vote on Local Initiative contracts when their own businesses have subcontracts with the entity to be awarded the contract.

POSITIONS

Support: County of Los Angeles

Oppose: Western Center on Law and Poverty, Inc.

-- END --

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ANALYSIS

Senator Diane E. Watson, Chairperson

BILL NO:	**SB 2139**
AUTHOR:	**Haynes**
AMENDED:	**April 22, 1996, in Senate**
HEARING DATE:	**April 24, 1996**
FISCAL:	**Non-fiscal**

CONSULTANT:
Miller

SUBJECT

San Diego Managed Care Pilot Program

INTENT

This bill seeks to provide cost-effective and quality medical services to public patients in San Diego County.

ABSTRACT

Current law authorizes San Diego County to operate a distinctive multi-plan managed care program in which the county selects managed provider systems for public patients.

This bill makes a number of technical and policy amendments to the San Diego plan:

1. Recasts the assurance of full benefits to Medi-Cal participants to those specified in the agreement with CMAC and approved by the department.

2. Authorizes entities other than the county to provide intake, assessment, and referral of beneficiaries.

3. Limits participation to Knox-Keene licensed health plans approved by the department. States that selection by the county does not guarantee a contract with the state, that designation standards shall not exceed those required of other Medi-Cal providers and that the term of contract shall determine designation. Specifies that the terms of contracts control termination.

4. Permits Indian Health clinics to contract directly with the county or to participate in any contracting network.

Continued---

5. Grants exemption to the public records act for the peer review and assessment records employed in selecting contractors.

FISCAL IMPACT

Undetermined. No substantial state cost anticipated.

BACKGROUND AND DISCUSSION

Within the transition of Medi-Cal to managed care, San Diego County sought and received a distinctive structure. The county designed, and the state accepted, a "multi-plan pilot project" model in which only a limited number of plans designated by the county would provide managed care services. This design (contained in Senator Peace's AB 2178, Chapter 631, 1994) employed elements of what is termed "Geographic Managed Care" where the state contracts directly with medical providers, and the "two plan model" where one commercial group and one public group of providers bid for services to Medi-Cal patients. In San Diego, the county acts as an umbrella organization assuring that within the limited plans, both traditional and commercial health systems participate. The design emphasizes assurance of quality of care in performance and outcome, as well as inclusion of historical providers and beneficiary choice.

The sponsor indicates that the content of SB 2139 is a follow-up to Senator Peace's legislation establishing geographic managed care in San Diego County, and is the product of extended debate between San Diego providers and the Department of Health Services.

In general terms, the amendments grant greater flexibility to the program; greater authority to the contracts negotiated with CMAC and stricter limits on participation (requiring Knox-Keene licensure).

POSITIONS

Support: San Diego County Health Services
San Diego Board of Supervisors
PROCARE

Oppose: None reported.

-- END --

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: April 2, 1998
POSITION: No position

BILL NUMBER: SB 2139
AUTHOR: B. Lockyer
RELATED BILLS: SCA 4

BILL SUMMARY: Courts: Unification

This bill, an urgency measure, would make conforming court unification changes in statute if the Senate Constitutional Amendment 4 of the 1995-96 Regular Session (Proposition 220) is approved by the electorate at the June 2, 1998.

FISCAL SUMMARY

While this bill would make only conforming technical changes in current law contingent upon passage of SCA 4, it would be part of the mechanism for converting superior and municipal courts into unified courts if the majority of the municipal court judges and a majority of the superior court judges in a county vote to unify the courts in that county.

The court unification authorized in SCA 4 could result in additional General Fund costs of up to $4.2 million in 1998-99, and up to $5.1 million in following years, to the trial courts to provide the superior court judges salary to municipal court judges (a difference of $9,320 per year). These costs would be in addition to the $2.1 million currently budgeted to provide this higher salary to municipal court judges in consolidated courts, which includes $944,000 for the first six months of 1998-99. However, these additional costs would only occur if courts in the county are unified. In addition, these additional costs would be offset by unknown savings from reduced administrative costs that would result from the unification of the courts.

COMMENTS

Current law provides for the establishment of superior and municipal courts in each county.

Proposition 220 would, if approved by the electorate, amend the California Constitution to provide for the unification of courts within a county if the majority of the municipal court judges and a majority of the superior court judges vote to unify the courts in that county. If the courts are unified, the municipal court would be abolished. Proposition 220 would also revise the provisions for the superior courts; the number of jurors required in certain civil actions; and the qualifications and election of judges. Effectively all trial courts would function as superior courts.

Analyst/Principal	Date	Program Budget Manager	Date
(0556) P. Reyes	4/30/98	Stan Cubanski by K.M. Stewart	5/1/98
Department Assistant Director			Date

Governor's Office:	By:	Date:	Position Noted
			Position Approved
			Position Disapproved

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED) **Form DF-43**

AUTHOR	AMENDMENT DATE	BILL NUMBER
B. Lockyer	April 2, 1998	SB 2139

The currently consolidated courts are expected to become unified courts upon passage of Proposition 220. In addition, court systems in another 20 counties are also expected to unify in 1998-99 as a result of Proposition 220.

This bill would make changes to conform current law to Proposition 220 if it is passed by the electorate. Among its changes this bill would provide:

- Appellate court jurisdiction and appellate power to transfer any cases in a unified court to maintain uniformity of decision or to settle important questions of law,
- Statutes governing causes shall be same for all cases in a unified court, and
- The voting procedure for a court unification which would be final and could not be rescinded by a later vote.

The Department of Finance does not have a position on this bill. This bill is contingent on the passage of Proposition 220 by the electorate on the June 2, 1998 ballot and would only implement the technical changes required if Proposition 220 were approved.

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) PROP 98	FC	1997-1998	FC	1998-1999	FC	1999-2000	Fund Code
0450/Trial Court	LA	No	---------- See Fiscal Summary ----------						0001

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: April 17, 1996
POSITION: Neutral fiscally; Defer to the Health & Welfare Agency on policy.
SPONSOR: Los Angeles County

BILL NUMBER: SB 2142
AUTHOR: D. Watson

DMS

1

BILL SUMMARY

SB 2142 would exempt members of the governing body or of the Los Angeles County Local Initiative (LI) from specified conflict of interest laws.

FISCAL SUMMARY

This bill should have no fiscal or programmatic impact to state programs. Presumably, the Department of Health Services (DHS) will continue to negotiate favorable Medi-Cal provider contracts/rates in Los Angeles County.

COMMENTS

DHS contracts with various types of managed health care plans to provide health care services to Medi-Cal beneficiaries. Under the two-plan model of expanding Medi-Cal managed care, DHS will contract with LIs (county run health plans) in twelve counties statewide, including Los Angeles County.

Chapter 632, Statutes of 1994 (SB 2092) provided for the formation of a local health authority by the Los Angeles Board of Supervisors for the purpose of providing health services to residents and provided limited exemption from state conflict of interest requirements for members of the governing board and advisory committee if appointed to represent the interest of various stakeholder groups.

DHS indicates that any further relaxation in the current limited exemption will only serve to compromise the integrity of the decision-making process. Furthermore, DHS is concerned that any weakening in the current conflict of interest standards and procedures for a LI board or advisory committee members would set a precedent encouraging other LIs and County Organized Health Systems to seek the same or similar exemptions.

Finance is unaware of instances where the language contained in the enabling statutes has posed problems or limitation on the ability of the Los Angeles LI to conduct its business or unduly restrict potential contractors from participating fairly and equitably in the contracting process. Nevertheless, Finance notes that this bill would have no fiscal and/or programmatic impact, therefore defers to the Health and Welfare agency on the policy merits of the bill.

Analyst/Principal	Date	Program Budget Manager	Date
(0542) R. Baker		Stan Cubanski	
R A Baker	5/2/96	John Vland for	5/2/96
Department Deputy Director			Date

Governor's Office: By: Date: Position Noted_____ Position Approved_____ Position Disapproved_____

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED) **Form DF-43**

AUTHOR	AMENDMENT DATE	BILL NUMBER
D. Watson	April 17, 1996	SB 2142

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 1995-1996	FC	1996-1997	FC	1997-1998	Fund Code
4260/Health Svcs/Medi-Cal	LA	NO	---------- No/Minor Fiscal Impact ----------						

Fund Code: Title

SENATE JUDICIARY COMMITTEE
John L. Burton, Chairman
1997-98 Regular Session

SB 2139
Senator Lockyer
As Amended April 2, 1998
Hearing Date: April 14, 1998
Civil Procedure/Government Codes
GWW:lgp

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SUBJECT

Trial Court Unification:
Comforming and Implementing Legislation

DESCRIPTION

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(more)

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- Specify that upon trial court unification, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges become judges of the superior court in that county. Until revised by statute, the total number of judgeships in the unified superior court shall equal the previously authorized number of judgeships in the municipal court and superior court combined.

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SENATE RULES COMMITTEE SB 2139
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: SB 2139
Author: Lockyer (D)
Amended: 4/2/98
Vote: 27 - Urgency

SENATE JUDICIARY COMMITTEE: 7-0, 4/14/98
AYES: Burton, Haynes, Leslie, O'Connell, Schiff, Sher, Wright
NOT VOTING: Calderon, Lockyer

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Trial court unification: conforming and implementing legislation

SOURCE: Author

DIGEST: This bill would, contingent upon the voter's approval of SCA 4 (Lockyer) of 1996, Proposition 220 on the June ballot, make various statutory changes to implement trial court unification in counties which so elect.

ANALYSIS: In 1996, the Legislature approved SCA 4 (Lockyer) which provides for the voluntary unification of the superior and municipal courts of a California county. If approved by the voters on June 2, 1998, on or after June 3, 1998, a majority vote of superior court judges and a majority vote of municipal court judges within the county may elect to abolish the municipal courts within a county and establish a unified superior court for that county.

CONTINUED

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   B. the selection of persons to coordinate implementation activities for the unification of municipal courts with superior courts in a county,

CONTINUED

including selection of a presiding judge and court executive officer for the unified superior court.

C. the authority of the presiding judge, in conjunction with the court executive officer and appropriate individuals or working groups of the unified superior court, to act on behalf of the court to implement unification.

D. Preparation and submission of a written personnel plan to the judges of a unified superior court for adoption.

2. Specify that upon trial court unification, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges become judges of the superior court in that county. Until revised by statute, the total number of judgeships in the unified superior court shall equal the previously authorized number of judgeships in the municipal court and superior court combined.

3. Specify that the term of office of a previously selected municipal court judge is not affected by taking office as a superior court judge. The State Constitution's 10 years of judicial experience or bar membership requirement for superior court judgeships would not apply to a previously selected municipal court judge.

4. Specify that, except as provided otherwise by statute, in a county with a unified court, the following shall occur automatically in each pre-existing municipal and superior court:

A. Previously selected officers, employees, and other personnel who served the municipal court become the officers and employees of the superior court.

B. Pre-existing court locations are retained as superior court locations and pre-existing court records become records of the superior court.

C. Pending trials, proceedings, and other business of the court become pending in the superior court without a change in the procedures previously applicable to the matter.

CONTINUED

D. Penal Code procedures that require superior court review of a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

E. Subpoenas, summons of jurors, and other processes issued by the court shall be enforced by the superior court.

5. Allow for the use of current Judicial Council forms in unified courts until those forms are revised by the Judicial Council, for proceedings that would be within the former jurisdiction of municipal courts.

6. Authorize the Judicial Council to adopt rules resolving any problem that may arise in the conversion of statutory references from the municipal court to the superior court in a county with unified courts.

7. Specify in unified courts that, until revised by statute, the total number of authorized court commissioners and traffic referees in the unified superior court shall equal the previously authorized number of commissioners and traffic referees in the municipal court and superior court combined. The commissioners and referees of the unified superior court shall have all of the powers and authority of commissioners and referees of superior courts and of municipal courts.

8. Provide that the Attorney General shall, to the extent required by the pre-clearance provisions of the federal Voting Rights Act seek to obtain pre-clearance for the county-wide election of superior court judges for the unified court, for any county in which the courts are unified.

9. Provide that upon trial court unification in a county, until adoption of a written personnel plan by the judges of the unified superior court and approval of the plan by the Legislature:

A. Previously selected officers, employees, and other personnel who serve the courts become the officers, employees, and other personnel of the unified superior court at their existing or equivalent classifications, salaries, and benefits.

CONTINUED

B. Permanent employees of the municipal and superior courts on the effective date of unification shall be deemed qualified, and no other qualifications shall be required for employment or retention.

C. Probationary employees on the effective date of unification shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

D. Employment seniority of an employee of the municipal or superior courts on the effective date of unification shall be counted toward seniority in the unified superior court.

Prior Legislation

SCA 4 (1996), Pending voter approval as Proposition 220.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Local: Yes

SUPPORT: (Verified 5/5/98)

American Federation of State, County & Municipal Employees, AFL-CIO
California State Association of Counties
California Peace Officers' Association
California Police Chiefs' Association

RJG:ctl/cm 5/5/98 Senate Floor Analyses
SUPPORT/OPPOSITION: NONE RECEIVED
**** END ****

NB

RM 2032

ASSEMBLY COMMITTEE ON JUDICIARY BACKGROUND INFORMATION WORKSHEET

Measure: SB 2149 **Author:** Lockyer

1. Who is the source of the bill? Are they the sponsor? What person, organization, or governmental entity requested introduction?
SENATOR LOCKYER.

2. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number, summary of bill's contents, and disposition of the bill. (Use attachments if necessary)
No.

3. Have there been any interim hearings on the subject matter of the bill?
No.

4. What is the problem or deficiency in the present law which the bill seeks to remedy?
Provides relevant clarification to existing statutes in order to accommodate the existence of unified & non-unified trial courts in CA.

5. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff which would be helpful to the analysis of the bill.
NAT STERLING, LAW REVISION COMMISSION — 650.494.1335

6. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

7. If you plan substantive amendments to this bill prior to hearing, please explain briefly the substance of the amendments to be prepared. **Please recall that all substantive amendments must be received by the committee in Legislative Counsel form the Tuesday prior to the committee hearing.**

8. List the witnesses you plan to have testify.
NAT STERLING — CLARK KELSO
RAY LEBOV

STAFF PERSON TO CONTACT: NATHAN BABANIN PHONE#: 445.6671

[redacted] AND RETURNED NO LATER THAN MAY 29, [redacted]

ASSEMBLY COMMITTEE ON JUDICIARY, RM. 3132

[redacted]

Consultant: Dan Pone – Ext. 2339

Date of Hearing: June 9, 1998

ASSEMBLY COMMITTEE ON JUDICIARY
Martha Escutia, Chair

SB 2139 (Lockyer) - As Proposed to be Amended

SUBJECT: TRIAL COURT UNIFICATION: TECHNICAL IMPLEMENTING LEGISLATION

KEY ISSUE: SHOULD VARIOUS TECHNICAL STATUTORY CHANGES BE ADOPTED TO IMPLEMENT NEEDED TRIAL COURT UNIFICATION PROCEDURES IN COUNTIES WHICH ELECT TO UNIFY FOLLOWING THE PASSAGE OF SCA 4?

SUMMARY: Makes various technical statutory changes needed to implement trial court unification in counties which so elect following the recent approval by the voters of SCA 4 by Senator Lockyer. Specifically, this bill consists largely of technical and terminological revisions to accommodate unification of the courts, including the following provisions:

1) The creation of a new classification of civil cases known as "limited civil cases." Limited civil cases are matters traditionally within municipal court jurisdiction. They receive the same procedural treatment, including filing fees, economic litigation procedures, and appeals, that municipal court cases currently receive.

2) The elimination of potential confusion by providing a statutory grant of jurisdiction to the court of appeal in all civil and criminal cases, with the exception of limited civil cases and misdemeanor and infraction cases.

3) The creation of an appellate division in the superior court, with jurisdiction of limited civil cases and misdemeanor and infraction cases to preserve the effect of jurisdiction of the former superior court appellate department over causes arising in municipal court.

4) The provision of a small claims appeal consisting of a de novo trial before a superior court judge other than the original trial judge, with the opportunity for representation by counsel.

5) The preservation of the status quo on employment in the unified court. Existing employees, officers, and personnel who serve the courts become employees, officers, and personnel of the unified court at their current salary, seniority, and benefit levels.

6) Clarification that no employees of the state's trial courts will be harmed by the unification of a county's trial courts, through non-controversial provisions ensuring that trial court employees may continue to be represented by employee organizations without causing any disruption to the operation of the courts and language ensuring that existing contracts with court employees are not rendered invalid due to the unification of a county's trial courts.

7) The establishment of a process for the selection of a single union to represent court employees of a similar class who are currently represented by different unions. The process is similar to that created in previous statutes which sought to consolidate government entities.

EXISTING LAW: Presently provides for the establishment of superior and municipal courts in each county. Court rules and various statutes reflect this bifurcated structure.

FISCAL EFFECT: Unknown

COMMENTS: This non-controversial bill makes a host of technical changes needed to implement Senator Lockyer's successful trial court unification constitutional amendment, SCA 4. This measure was recently soundly approved by the voters as Proposition 220 in the June 2, 1998, primary election.

Background. In 1996, the Legislature approved SCA 4 to provide for the voluntary unification of the superior and municipal courts of a county. Beginning June 3, 1998, a majority vote of superior court judges and a majority vote of municipal court judges within each of California's 58 counties may elect to abolish their municipal courts and establish a unified superior court for that county. This urgency legislation is needed to implement necessary changes in the court rules and procedures in those counties which elect to operate a unified court system. Since June 3, when the constitutional amendment became effective, a number of courts have already voted to unify. It is expected that by the end of this month, the courts in approximately 35 counties will have voted to unify.

In anticipation of the possible approval of SCA 4, the Legislature commissioned the California Law Revision Commission (CLRC) to review all affected statutes to identify needed revisions. The Administrative Office of the Courts (AOC) also established the "SCA 4 Implementation Working Group" to assist the CLRC in its task.

Basic Thrust of Legislation. The basic thrust of SB 2139 is to preserve the status quo through the unification process. Current municipal court employees become employees of the unified superior court. Procedures that apply to a case in municipal court continue to apply to a similar case in the unified superior court. The CLRC cites a number reasons for this basic approach, including, limited trial and appellate resources preclude applying superior court procedures to smaller cases, and there should not be any forum shopping or disparity of treatment, based on whether the courts in a particular county have elected to unify.

The CLRC recommends, and committee staff concur, that procedures and experience in unified courts should be reviewed in the next few years, with the objective of simplifying court procedures and taking full advantage of the efficiencies created by unification.

Prior Legislation: SCA 4 (1996) - Adopted by the voters as Proposition 220 on June 2, 1998, by a vote of 65%.

REGISTERED SUPPORT / OPPOSITION:

Support	Opposition
Judicial Council SEIU AFSCME	None of file

Analysis prepared by: Drew Liebert / ajud / (916) 319-2334

AMENDED IN ASSEMBLY JUNE 15, 1998

AMENDED IN SENATE APRIL 2, 1998

SENATE BILL No. 2139

Introduced by Senator Lockyer

February 20, 1998

~~An act to amend Section 911 of, and to add Sections 46, 76, and 80 to, the Code of Civil Procedure, and to add Chapter 5.1 (commencing with Section 70200) to Title 8 of the Government Code~~ *An act to amend Sections 470.3, 6152, 6301, 6302.5, 6321, 6322, 6341, 7028.2, 17209, 17536.5, and 25762 of the Business and Professions Code, to amend Sections 798.61, 1181, 1719, 1780, 1812.10, 2984.4, and 3342.5 of the Civil Code, to amend Sections 77, 82, 84, 86, 86.1, 91, 116.120, 116.210, 116.231, 116.250, 116.760, 116.770, 116.940, 116.950, 134, 166, 170.5, 170.6, 170.7, 179, 194, 195, 198.5, 200, 215, 217, 234, 269, 274a, 274c, 392, 393, 395, 396, 396a, 400, 402, 422.30, 425.10, 425.11, 489.220, 564, 575, 575.1, 580, 581d, 594, 628, 631, 632, 655, 668, 670, 685.030, 688.010, 697.310, 697.350, 697.540, 703.600, 706.105, 708.180, 720.160, 720.260, 720.420, 871.3, 904.1, 904.2, 904.5, 911, 912, 996.430, 1014, 1033, 1052, 1052.5, 1060, 1068, 1085, 1103, 1134, 1140, 1141.11, 1141.12, 1161.2, 1167.2, 1171, 1206, 1281.5, 1283.05, 1287.4, 1710.20, 1775.1, and 2015.3 of, to add Sections 32.5, 38, 395.9, 399.5, 402.5, and 582.5 to, to add Chapter 5.1 (commencing with Section 85) to Title 1 of Part 1 of, and to add a heading for Article 1 (commencing with Section 85) and Article 2 (commencing with Section 90) to Chapter 5.1 of Title 1 of Part 1 of, and to repeal Sections 83, 85, 87, 88, 89, and 422.20 of, and to repeal the headings of Article 1 (commencing with*

Section 81) and Article 2 (commencing with Section 90) of Chapter 5 of Title 1 of Part 1 of, the Code of Civil Procedure, to amend Sections 44944, 45312, 48294, 48295, 87675, 87679, and 88131 of the Education Code, to amend Sections 325, 327, 8203, 13107, 13109, and 13111 of the Elections Code, to amend Section 300 of the Evidence Code, to amend Section 400 of the Family Code, to amend Sections 1785, 1824, 1893, 3102, 16154, 17335, 18415.2, 18495, 31713, and 34113 of the Financial Code, to amend Sections 210, 309, 2357, 4341, 4755, 5934, 12150, and 12151 of the Fish and Game Code, to amend Sections 7581, 12647, 25564, 27601, 29733, 30801, 31503, 31621, 31622, 43039, 52514, 53564, and 59289 of the Food and Agricultural Code, to amend Sections 910, 945.3, 990.2, 1770, 3501.6, 6701, 11189, 11511, 12965, 12972, 12980, 15422, 18671, 23220, 23296, 23398, 23579, 24055, 24057, 25351.3, 25560.4, 26299.008, 26524, 26665, 26806, 26820, 26820.4, 26824, 26826, 26826.01, 26863, 27082, 27647, 27706, 28003, 29603, 29610, 31469, 41606, 50920, 53069.4, 53075.6, 53075.61, 53679, 68071, 68072, 68074.1, 68081, 68084, 68086, 68090.7, 68093, 68098, 68108, 68112, 68114, 68114.5, 68114.6, 68115, 68152, 68206.2, 68505, 68513, 68540, 68542, 68542.5, 68546, 68551, 68620, 68902, 69510, 69744.5, 69746.5, 69753, 69957, 70141, 71002, 71004, 71010, 71040, 71042.5, 71045, 71080, 71083, 71085, 71088, 71091, 71092, 71093, 71094, 71095, 71098, 71099, 71100, 71140, 71141, 71143, 71145, 71180.5, 71181, 71220, 71221, 71264, 71267, 71280, 71280.1, 71280.2, 71280.3, 71280.4, 71280.5, 71340, 71341, 71380, 71381, 71382, 71384, 71386, 72055, 72056, 72056.01, 72056.1, 72060, 72190, 72190.1, 72190.2, 72193, 72194.5, 72196, 72197, 72198, 72301, 72302, 72604, 75101, 75103, 75602, 77003, and 77007 of, to amend the headings of Chapter 6 (commencing with Section 71001) of Title 8 of, Article 7 (commencing with Section 71260) of Chapter 6 of Title 8 of, Article 10 (commencing with Section 71380) of Chapter 6 of Title 8 of, and Chapter 8 (commencing with Section 72000) of Title 8 of, to add Section 3075 to, and to repeal and add Chapter 5.1 (commencing with Section 70200) of Title 8 of, to repeal Sections 29605, 68078, 68202.5, 68541, 69741.7, 71080.5, 71080.6, 71080.7, 71084, 71087, 71091.1, 71096, 71097, 71180.3, 71180.4, 71181.1, and 72785 of, and to repeal Chapter 7 (commencing with Section 71600) of Title 8 of, the Government Code, to amend Sections 664 and 667 of the

Harbors and Navigation Code, to amend Sections 108580, 111880, 111895, 117070, and 117120 of the Health and Safety Code, to amend Section 12961 of the Insurance Code, to amend Sections 98, 98.2, 3352, 5710, and 6613 of the Labor Code, to amend Section 467 of the Military and Veterans Code, to amend Sections 190.9, 682, 691, 726, 737, 740, 804, 806, 808, 810, 813, 827, 829, 830.1, 832.4, 851.8, 859, 859a, 860, 869, 949, 977, 977.2, 977.4, 987.1, 987.2, 988, 990, 1000, 1007, 1009, 1010, 1016, 1038, 1050, 1130, 1150, 1187, 1191, 1203.1, 1203.1c, 1214, 1235, 1269, 1269b, 1278, 1281a, 1327, 1368.1, 1382, 1424, 1427, 1428, 1429, 1429.5, 1447, 1449, 1458, 1459, 1462, 1462.2, 1463, 1463.1, 1463.22, 1466, 1468, 1471, 1538.5, 2620, 2621, 2623, 3076, 4004, 4022, 4024.1, 4112, 13125, 13151, and 14154 of, to amend the headings of Title 9 (commencing with Section 1235) and Title 11 (commencing with Section 1427) of Part 2 of, Chapter 1 (commencing with Section 1427), Chapter 2 (commencing with Section 1466), and Chapter 3 (commencing with Section 1471) of, Title 11 of Part 2 of, to add Sections 859c and 1039 to, and to repeal Sections 97, 1309, and 1462.1 of, the Penal Code, to amend Sections 3357, 3769, and 5560 of the Public Resources Code, to amend Sections 1794, 5411.5, and 103100 of the Public Utilities Code, to amend Sections 6776, 6777, 19232, 19233, and 19280 of the Revenue and Taxation Code, to amend Sections 1785 and 1786 of the Unemployment Insurance Code, to amend Sections 2802.5, 9872.1, 10751, 11205, 14607.6, 27360, 40230, 40256, 40502, 40506.5, 40508.6, 42008, and 42203 of the Vehicle Code, to amend Sections 310 and 1100 of the Water Code, to amend Sections 245, 255, 601.4, 603.5, 656, 661, 742.16, 3050, 3051, 3200, and 11350.7 of the Welfare and Institutions Code, to amend Section 22 of Chapter 201 of the Statutes of 1895, and to amend Section 4 of Chapter 238 of the Statutes of 1903, relating to courts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2139, as amended, Lockyer. Courts: unification.

The California Constitution~~—presently~~ provides for the establishment of superior and municipal courts, as specified, in each county. SCA 4 of the 1995–96 Regular Session~~—would~~

~~provide~~*, as approved by the voters on June 2, 1998, provides* for the abolition of municipal courts within a county, and for the establishment of a unified superior court for that county, upon a majority vote of superior court judges and a majority vote of municipal court judges within the county;~~ provide~~ *provides* for the qualification and election of the judges; and ~~revise~~ *revises* the number of jurors required in certain civil actions.

This bill would~~, contingent upon the approval of SCA 4 of the 1995-96 Regular Session,~~ make various statutory changes to implement and conform to the unification of trial courts pursuant to the constitutional amendment.

The bill would state that it is to take effect immediately as an urgency statute.

Vote: $^{2}/_{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

~~SECTION 1. Section 46 is added to the Code of Civil~~

SECTION 1. Section 470.3 of the Business and Professions Code is amended to read:

470.3. (a) Except as provided in subdivision (b), a fee of not less than one dollar ($1) and not more than eight dollars ($8) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior~~,~~ *or* municipal~~, or justice~~ court, other than a small claims action.

(b) A fee of not less than one dollar ($1) and not more than three dollars ($3) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior~~,~~ *or* municipal~~, or justice~~ court, for those cases where the monetary damages do not exceed the sum of two thousand five hundred dollars ($2,500). To facilitate the computation of the correct fee pursuant to this section, the complaint shall contain a declaration under penalty of perjury executed by a party requesting a reduction in

branches of the law library. A branch is in all respects a part of the law library and is governed accordingly.

SEC. 8. Section 7028.2 of the Business and Professions Code is amended to read:

7028.2. A criminal complaint pursuant to this chapter may be brought by the Attorney General or by the district attorney or prosecuting attorney of any city, in ~~the municipal court of~~ any county in the state with jurisdiction over the contractor or employer, by reason of the contractor's or employer's act, or failure to act, within that jurisdiction. Any penalty assessed by the court shall be paid to the office of the prosecutor bringing the complaint.

SEC. 9. Section 17209 of the Business and Professions Code is amended to read:

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate ~~department~~ *division* of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 10. Section 17536.5 of the Business and Professions Code is amended to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate ~~department~~ *division* of a superior court, the person who commenced

and enables the municipal and superior courts in a county to unify. It is necessary that implementing measures be taken immediately so that an orderly transition of the court system will occur.

All matter omitted in this version of the bill appears in the bill as amended in the Senate, April 12, 1998 (JR11)

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Date of Hearing: June 19, 1996

ASSEMBLY COMMITTEE ON JUDICIARY
BILL Morrow, Chair

SCA 4 (Lockyer) - As Amended: February 7, 1996

SENATE VOTE: Floor: 34-2

SUMMARY: This constitutional amendment provides a local option for merger of the superior and municipal courts in each county. Specifically, this bill:

1) Permits municipal and superior courts to unify their operations upon majority votes by the municipal and the superior court judges in a particular county. Upon a vote to unify, except as a statute provides otherwise, the municipal courts of the county are abolished, and the judges, officers, and employees of the municipal courts become judges, officers and employees of the superior court; all actions pending in the municipal court and all records are transferred to the superior court; and existing municipal court locations become superior court locations.

2) Establishes an appellate division in each unified superior court to hear matters currently within the appellate jurisdiction of the superior court, and provides that matters of a type currently subject to rehearing by a superior court judge, together with criminal matters subject to review by a superior court judge shall be heard by a judge other than the one who heard the matter initially.

3) Requires any newly appointed judge of a unified superior court to have at least ten years of membership in the State Bar immediately preceding selection. This requirement does not apply to previously selected municipal court judges.

4) Provides for election of the judges of unified courts in their counties, except as necessary to meet federal Voting Rights Act requirements. In any county where unification results in a determination of non-compliance with the Voting Rights Act, the Legislature, with the advice of the affected judges and by a two-thirds vote in each house, may provide for retention elections in the affected court or make other arrangements. The term of office of a previously selected municipal court judge is not affected by taking office as a judge of a unified superior court.

5) Modifies Judicial Council and Commission on Judicial Performance membership to accommodate a decrease of municipal judges; increases the term of Judicial Council members from two years to three years; and adds specified nonvoting members.

FISCAL EFFECT: Unknown

EXISTING LAW:

1) Establishes the superior and municipal courts as the state's trial courts. (Cal. Const. Art. VI, Section 1.)

2) Provides that each county shall have one superior court with general jurisdiction to hear all cases except those specifically delegated by statute to other courts. Generally, superior courts have jurisdiction over civil actions involving $25,000 or more, family law, juvenile, probate, and felony matters. An appellate department of the superior court hears appeals of misdemeanor and civil cases from the municipal courts in the county.

3) Requires each county to be divided into one or more municipal court districts, as provided by statute. (Cal. Const. Art. VI, Sec. 5.) These courts have jurisdiction to handle misdemeanors and infractions, civil actions under $25,000, traffic violations and preliminary hearings for felonies.

4) Requires a superior court judge to have been a member of the State Bar or a judge of a court of record for at least ten years immediately preceding selection. A municipal court judge must have five years of Bar membership prior to selection. (Cal. Const. Art. VI, Sec. 15.)

5) Provides that all trial court judges shall be elected to six year terms. The Governor, however, may appoint judges to fill vacancies, generally after applicants for the position have been reviewed by the Commission on Judicial Evaluations of the State Bar. When a judicial election is uncontested, the judges' name does not appear on the ballot. The Constitution permits the legislature to apply the same retention election process to trial courts as is used for appellate judges.

6) Specifies the number of superior and municipal court judges that shall serve as members of the 21 member Judicial Council (Cal. Const. Art. VI, Section 6.) and the 11 member Commission on Judicial Performance. (Cal. Const. Art. VI, Sec. 8.)

7) Authorizes the Chief Justice to provide for the assignment of any judge to another court, but only with the judge's consent if the court is of lower jurisdiction. (Cal. Const. Art VI, Sec. 6.)

8) Directs trial courts to improve utilization of judicial resources by measures such as:

   a. Coordination of the municipal and superior court calendars.

   b. Use of blanket cross-assignments allowing judges of each court to hear matters within the jurisdiction of other courts in the county.

   c. Sharing court support staff, and assigning all types of cases regardless of jurisdictional boundaries to any available judicial officer. (Government Code Sec. 68112.)

BACKGROUND: California has 58 separate superior courts served by 789 judges and 90 separate municipal court districts served by 670 judges. Judges performing superior court duties are compensated at the rate of $107,390 per annum; municipal court judges who are not performing superior court duties are compensated at $98,070 per annum.

Court workload fluctuates from year to year, with superior courts sometimes more overburdened than municipal courts; in other years the municipal courts are more overburdened than the superior courts. To cope with such problems, the courts have used the assignment authority of the Chief Justice; and judges have been assigned temporarily from one court to another. Gradually, the practice of assigning judges for extended periods has developed into a process for coordinating the workload of all of the judges in a county or part of the county under the supervision of a single presiding judge. Currently, on an average day, about 10% of municipal court judges statewide are paid superior court salaries for serving on assignments to superior court. Other municipal judges serve on superior court assignments with no additional compensation.

The Legislature has considered a number of proposals to merge municipal and superior courts. In 1982, ACA 36 (Stirling), would have permitted court unification at county option. ACA 36 appeared on the November 1982 ballot as Proposition 10, but was rejected by the voters.

In 1991, AB 1297 (Isenberg), enacted the Trial Court Realignment and Efficiency Act. The Act required the courts in each county to prepare and implement coordination plans designed to achieve maximum use of resources and cost savings. Courts were to consider the use of various methods to improve efficiency and reduce costs, including: cross-assignments, joint development of automated accounting and case processing systems, "coordinated, joint use, sharing or merger of court staff," and unification of

the trial courts to the extent permitted under the California Constitution. Although several courts have consolidated and coordinated most functions, actual unification of trial courts is not possible without amending the California Constitution to give trial court judges equal status.

In 1994, SCA 3 (Lockyer) proposed to merge the superior, municipal and justice courts in each county into a single, county-wide district trial court. The bill failed passage in the Assembly, however SCA 7 (Dills) - 1994, which converted all justice courts to municipal courts was placed before the voters and approved.

ARGUMENTS IN SUPPORT: According to the author, the demands of accessibility, that once drove the creation of separate types of courts, now drive the effort to eliminate duplication of resources between the courts. Distinct jurisdictions among trial courts limit the type of cases a judge may hear, and lead to situations where the calendar of one judge may be overburdened while another judge waits for cases. This bill will remove constitutional impediments to unifying trial courts. It will facilitate the administration of justice and provide for cost savings, by eliminating historical divisions of the trial courts that are no longer justified.

The Judicial Council states this bill is responsive to the critical need to permit courts to employ different approaches as required in the diverse jurisdictions across the state. The bill will result in increased court efficiencies and, as has been demonstrated by ongoing trial court coordination activities, provides the opportunity to use scarce resources in the most effective way possible.

ARGUMENTS IN OPPOSITION: The Department of Finance states that, while it favors coordination of trial courts, it cannot support unification of municipal and superior courts. Unification may lower the standards of service and would raise costs to the extent judges are paid at superior court rates to perform municipal court work. Local options to merge municipal and superior courts could lead to inefficiencies due to procedural differences in adjacent counties.

A superior court judge argues that in the past there have been attempts to link trial court funding with merger of the municipal and superior courts, and such efforts would continue if this bill is enacted. In reality, unification would not be voluntary at all. Municipal court judges appointed by former governors and not elevated by their successors would preside over serious felony and death penalty cases, and large dollar civil cases. Elimination of district elections which now apply to municipal court judges is likely to implicate the Federal Voting Rights Act, which has been

held applicable to judicial elections. The historic relationship between local courts and communities would be adversely impacted. Centralization of power in a single county court reduces the autonomy of local courts. The traditional training ground for superior court, the municipal court, would be eleminated, and governors would no longer be able to test individuals in the municipal court before elevating them to superior court. Elevations of current municipal court judges to superior court would be accomplished without the appointment of any governor, or examination of the municipal court judges by the local or state bar.

California Attorneys for Criminal Justice contends that, because superior court judges are elected county-wide, unification of the trial courts may result in diluting the ability of minority communities in some parts of the state to elect judges who are representative of their respective cultures. Merging municipal court functions into superior courts may also result in de-emphasizing the importance of smaller cases.

COMMENTS: Many courts have outgrown the jurisdictional distinctions between the superior and municipal courts which were established at the end of World War II. Constant changes in the cases and controversies coming before judges have resulted in incremental adjustments of calendering and trial practices, and eventually to the establishment of specialized calendars in many courts. The significance of divorce, harassment, probate, eviction, and dependency matters have changed greatly over the past 25 years; three strikes legislation has recently impacted criminal calendars. Any transition to a new organization raises the following issues:

1) Quality of Service. Concerns about the quality of service to litigants in unified courts have been considered by court administrators, and require careful attention on an ongoing basis. There is always the possibility that merger of the municipal and superior courts could encourage judges to focus attention on the most significant and interesting cases, to the detriment of matters which are now considered by municipal court judges. However, similar issues now affect the municipal and superior courts and are usually resolved by good training and management activity.

2) Diversity of Judicial Appointees. Appropriate training and development practices for newly appointed judges could also alleviate concerns that a unified court forecloses opportunities for judicial candidates who have limited trial experiences. The Center for Judicial Education and Research conducts several one week training sessions and a two week "judicial college" each year to ease the transition for lawyers who are appointed to the bench. Additional training programs

are held throughout the year for judges moving from entry level assignments into positions which demand greater experience. Such programs may be adapted to meet the requirements of unified courts.

3) Qualifications of Appointees. There is some uncertainty about the standards to be observed by the Commission on Judicial Nominees Evaluation for the State Bar, because judges appointed to a unified court must have ten years of legal experience, but are likely to be assigned initially to entry level judicial duties. The author may wish to consider substituting a seven or eight year experience requirement for the ten year requirement in this bill as a means of signaling that judges appointed to a unified court will be expected to serve in a wider variety of positions.

4) Selection and Election of Judges. This bill has the effect of shifting a degree of control over judicial assignments from the voters and the governor to the courts and their presiding judges. Although many voters are only marginally aware of judicial elections, and many municipal court judges are regularly assigned to superior court duties, the state judicial authority is founded on the elective process. This bill proposes that the voters delegate to the judiciary the power to elevate judges from municipal to superior court status in each county without regard to the qualifications of a particular candidate. In a few instances, the Judicial Nominees Evaluation Commission, which advises the governor on judicial appointments may have specifically considered the qualifications of a municipal court judge who would be subject to elevation, and may have determined that he or she is not qualified for certain assignments in a court of general jurisdiction. Under this bill, it would be the responsibility of the presiding judge to assure that such a judge is assigned to duties for which he or she is qualified.

5) Electoral Constituencies. This bill provides that superior court judges shall be elected in their counties, except as otherwise necessary to meet the requirements of the federal Voting Rights Act. The United States Supreme Court has held that judicial elections are covered by the federal Voting Rights Act. Federal District Courts have held that when a judicial organization scheme dilutes minority votes, it violates the Voting Rights Act. If court unifications pursuant to this bill result in elections that dilute minority influence, those elections may be challenged under the federal law. The following are examples of the alternatives which might be considered in the event such a challenge was sustained by the federal courts:

a. Creation of several district courts within a county.

b. Establishment of electoral districts within a single judicial district, with judges of the county standing for election before a limited constituency.

c. Utilization of a retention election process similar to that used for the Courts of Appeal and the Supreme Court.

The bill does not appear to be in violation of federal law. Any challenge to elections in the unified superior courts would arise as a result of implementing legislation or activities.

6) Judicial Specialization. The merger of the municipal and superior courts in a county into a single trial court of general jurisdiction does not prevent specialization of caseloads. Courts now use the expertise of certain judges to handle specialized calendars, and these practices can continue in courts which are unified under this bill.

7) Appellate Divisions. The appellate divisions created by this bill are to operate in the same way as do the present appellate departments of superior courts. Although, the Committee on Appellate Courts of the State Bar has indicated this bill might accord the appellate division of the unified superior court concurrent jurisdiction with the court of appeal in the absence of statutory delineation, no further clarification is suggested. The committee also thinks it likely that the appellate decisions of un-unified superior courts would have precedential effect, whereas the decisions of appellate divisions of unified courts would not. Currently, the published opinions of superior court appellate departments are binding on inferior courts. This effect of establishing binding precedent known as "stare decisis" is a key element of the common law. In the absence of statute, published opinions of peers might have no precedential effect, because there would be no trial courts exercising inferior jurisdiction. The author may wish to consider legislation to give published opinions of the appellate division of a unified superior court the same binding effect as the opinion of an appellate department of an un-unified superior court.

8) Increased Compensation. This bill could result in across-the-board promotions for many municipal judges with no significant change in responsibility or scope of duties. The salary increase for promoted judges would be $9,320 per judge. Many counties have already implemented cross-assignment programs; in those jurisdictions, many municipal judges are already assigned to superior court duties, and are being compensated accordingly. For these judges, this bill merely formalizes and simplifies current compensation practices;

however, the author may wish to consider legislation which would prevent any windfall changes in salary.

9) Role of Board of Supervisors. San Diego County suggests that there should be a provision for the Board of Supervisors to have a role in the decision to merge municipal and superior courts. The county would like assurance that a commitment and plan is developed to achieve savings in costs.

10) Unwieldly Courts. It has been suggested that a court operates most smoothly and efficiently when the number of judges is more than six and less than 40. It is arduous for a presiding judge to oversee more than 40 courtrooms. Larger courts are unwieldly to administer, can stifle the introduction of innovative policy changes, and are difficult to operate with a judicial consensus. This bill could result in the creation of several very large unified superior courts. For example, if unified, the number of judges in a county-wide Los Angeles Superior Court would grow from 238 to 496; the Orange County Superior Court would grow from 59 to 116; San Diego from 71 to 127. While the duplicative bureaucracy serving the municipal and superior courts could be merged and reduced, the sheer magnitude of a court with over 100 judges might not produce the same streamline effect as in smaller counties. To allow for solutions to this problem, the author may wish to permit division of the superior court in each of the larger counties into two or more unified districts.

Suggested amendments: In order to give the legislature and the counties flexibility to deal with courts that are considered to be too large, the author may wish to consider several amendments:

On page 4 of the bill as amended February 7, 1996, at line 8, strike out "county." and insert:

"county, or in a county with a population over one million, within any superior court district."

On page 4, line 9, strike out "counties," and insert:

"counties or superior court districts,"

On page 9, at lines 27, 28, 30, 39 after the word "county" insert:

"or superior court district"

REGISTERED SUPPORT / OPPOSITION:

SUPPORT	OPPOSITION
Assoc. for L.A. Deputy Sheriffs	CA Attys. for Criminal Justice

Los Angeles County Bar AssociationDepartment of Finance
County of San Diego individual Los Angeles Superior
Court CA State Assn of Counties judges
Judicial Council
Municpal Court of L.A. Judicial Districts
Court Administrator's Advisory Committee
of the Judicial Council
Alpine County Superior Court
Consolidated Courts of Riverside County
San Francisco Superior Court
North Santa Barbara County Municipal Court
Tulare County Municipal Court District,
Visalia Division
San Berardino County Superior and Municpal Courts
Shasta County Superior amd Municipal Courts
Presiding Judges Advisory Committee of
the Judicial Council
14 Individual Judges and Court Administrators

Analysis prepared by: Stephen Birdlebough/Rick Gann / ajud /
(916) 445-4560

STATE OF CALIFORNIA
CALIFORNIA LAW REVISION COMMISSION
4000 MIDDLEFIELD ROAD, ROOM D-1
PALO ALTO, CA 94303-4739
650-494-1335

PETE WILSON, Governor

June 25, 1998

Hon. Martha Escutia
Chair, Assembly Judiciary Committee
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

JUN 29 1998

Re: SB 2139 (Lockyer) — June 30 hearing in Judiciary Committee

Dear Assembly Member Escutia:

SB 2139 (Lockyer) implements recommendations of the Law Revision Commission to revise the codes for unification of the trial courts. The recommendations are made pursuant to the Legislature's directive in 1997 Cal. Stat. res. ch. 102.

Under SCA 4 (Proposition 220), which was approved by the voters at the June 1998 primary election, the municipal and superior courts in a county may unify on a majority vote of the judges. Many courts have already voted to unify.

SB 2139 generally preserves the status quo through the unification process. Under the bill, municipal court employees become employees of the unified superior court. Procedures that apply to a case in municipal court continue to apply to a similar case in the unified superior court.

This approach ensures that court procedures will be consistent for similar cases in unified and nonunified courts, and that lower filing fees and simpler procedures will continue to apply to smaller cases in a unified superior court. The Law Revision Commission anticipates follow up studies and recommendations by the Commission and the Judicial Council to simplify court procedures and take full advantage of the opportunities for efficiency created by unification.

In addition to providing implementing statutes for trial court unification under SCA 4, the bill also fixes obsolete statutory references to the justice court. That court was abolished and merged with the municipal court in 1994.

The implementing legislation was drafted by the Law Revision Commission in cooperation with the Judicial Council and in consultation with a number of state bar committees and other interested organizations.

The details of the bill are explained in the Law Revision Commission's draft 300+ page report, copies of which have been provided to the Judiciary Committee staff. The draft report is also available on line at the Commission's

Fax: 650-494-1827 Website: http://www.clrc.ca.gov Email: storing@clrc.ca.gov

web site — www.clrc.ca.gov. Please call if you would like a hard copy of the draft report, or if you have any questions whatsoever about the bill.

Sincerely,

Nathaniel Sterling
Executive Secretary

File: SB 2139

SB 2139 (LOCKYER)
COURTS: UNIFICATION

Version: 6/15/98 As Proposed to be Amended
Vote: Majority
Support

Vice-Chair: Bill Morrow
Tax or Fee Increase: No

Makes necessary technical changes to maintain stability and uniformity in trial court procedures and jurisdictions as municipal courts unify with superior courts in approximately 35 counties during June of 1998.

Policy Question

Should various technical statutory changes be adopted to implement trial court procedures necessary for municipal and superior court unification in counties which elect to unify following the passage of SCA 4 (Lockyer)?

Summary

Makes various technical statutory changes necessary to implement trial court unification in counties that so elect to merge their municipal courts into their superior courts. These changes include: **(1)** The development of a new classification of civil cases known as "limited civil cases" that would traditionally fall within municipal court jurisdiction as to filing fees and economic litigation procedures; **(2)** The statutory grant of jurisdiction to the court of appeal in all civil and criminal cases, with exception of limited civil cases and misdemeanor and infraction cases; **(3)** The revision of the appellate division of superior court to clarify jurisdiction of limited civil cases and misdemeanor and infraction cases to preserve former superior court jurisdiction for appeals that drive from municipal court proceedings; **(4)** The provision of small claims appeal with a new trial before a superior court judge other than the original trial judge and opportunity for counsel representation; **(5)** The preservation of the statis quo on employment in the unified court as to salaries, seniority and benefit levels for municipal court employees merged into a superior court administration; **(6)** Clarification that trial court employees may continue to be represented by employee organizations without causing any disruption to the operation of the courts and the ensuring that existing contracts with court employees are not rendered invalid by a trial court unification; and **(7)** The establishment of a process for selection of a single union to represent court employees of a similar class who are currently represented by different unions, similar to processes in previous statutes where governmental entities consolidated.

Senate Republican Floor Votes (37-0) 5/14/98 PASS
Ayes: All Republicans Except
Noes: None
Abs. / NV: Craven, Hurtt

Assembly Republican Judiciary Votes (16-0) 6/30/98
Ayes: Morrow, Alby, Baugh, Kaloogian, Mc Clintock, Pacheco
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/98
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/98
Ayes: None
Noes: None
Abs. / NV: None

Support

Judicial Council; State Employees International Union (SEIU); American Federation of State, County, and Municipal Employees (AFSCME).

Opposition

None on file.

Arguments In Support of the Bill

1. The procedures set forth should maintain stability during such period of transition, particularly in handling the lesser civil matters that have not been previously heard as part of superior court jurisdictions.
2. The procedures establish for municipal court statis quo should avoid stretching the more limited resources of current superior courts.
3. The procedures established at such early stage will discourage an increase in disruptive forum shopping which could otherwise overload some counties with more cases than they would have resources to handle.
4. The immediate agreement in rules worked out between the two major unions should avoid substantial labor employment turf battles in who represent whom in various trial court employee matters and negotiations with courts and counties.

Arguments In Opposition to the Bill

Some efficiencies in unifying courts may not fully or immediately be realized by the establishment of general rules that hold back some other procedural and employment reforms that otherwise could proceed forward.

Fiscal Effect

No fiscal impact; provisions are technical and conforming. (Version: 7/1/98)

Comments

BACKGROUND. The Legislature approved SCA 4 (Lockyer) to provide for voluntary unification of superior and municipal courts within each county at the option of such trial courts. On June 2, 1998 SCA 4, as Proposition 220 was adopted by a vote of 65 percent. It is expected by the end of June of 1998, that the trial courts of approximately 35 of the 58 counties will vote to merge and this urgency legislation is allow for implementation of changes in court rules and procedures to accommodate such court unification actions. The California Law Revision Commission (CLRC) with the assistance of the Administrative Office of the Courts (AOC) has crafted revisions in procedures to preserve the statis quo in merging municipal court employees with superior court employees into new unified superior courts. Procedures that apply to a case in municipal court continue to apply to a similar case in the unified superior court. CRLC explains this approach as necessary in asserting that: (1) Limited trial and appellate resources otherwise preclude applying superior court procedures to smaller cases; (2) Discouraging of forum shopping and disparity of treatment would otherwise be difficult to impede if varied rules emerged as courts in individual counties proceeded to unify; and (3) Preserving current employment rights is necessary and that subsequent urgency legislation should address the providing of clear and uniform rules for unified courts. The CLRC recommends that procedures and experience in unified courts should be monitored and reviewed in the next few years to thereafter simplify court procedures and take advantage then of such subsequently-determined efficiencies arising from new unified court experiences.

Policy Consultant: Mark Redmond 6/28/98
Fiscal Consultant: Catherine Kennard 7/27/98

AMENDED IN ASSEMBLY JULY 1, 1998

AMENDED IN ASSEMBLY JUNE 15, 1998

AMENDED IN SENATE APRIL 2, 1998

SENATE BILL No. 2139

Introduced by Senator Lockyer

February 20, 1998

An act to amend Sections 470.3, 6152, 6301, 6302.5, 6321, 6322, 6341, 7028.2, 17209, 17536.5, and 25762 of the Business and Professions Code, to amend Sections 798.61, 1181, 1719, 1780, 1812.10, 2984.4, and 3342.5 of the Civil Code, to amend Sections 77, 82, 84, 86, 86.1, 91, 116.120, 116.210, 116.231, 116.250, 116.760, 116.770, 116.940, 116.950, 134, 166, 170.5, 170.6, 170.7, 179, 194, 195, 198.5, 200, 215, 217, 234, 269, 274a, 274c, 392, 393, 395, 396, 396a, 400, 402, 422.30, 425.10, 425.11, 489.220, 564, 575, 575.1, 580, 581d, 594, 628, 631, 632, 655, 668, 670, 685.030, 688.010, 697.310, 697.350, 697.540, 703.600, 706.105, 708.180, 720.160, 720.260, 720.420, 871.3, 904.1, 904.2, 904.5, 911, 912, 996.430, 1014, 1033, 1052, 1052.5, 1060, 1068, 1085, 1103, 1134, 1140, 1141.11, 1141.12, 1161.2, 1167.2, 1171, 1206, 1281.5, 1283.05, 1287.4, 1710.20, 1775.1, and 2015.3 of, *to amend the heading of Chapter 5 (commencing with Section 81) of Title 1 of Part 1 of,* to add Sections 32.5, 38, 395.9, 399.5, 402.5, and 582.5 to, to add Chapter 5.1 (commencing with Section 85) to Title 1 of Part 1 of, and to add a heading ~~for~~ *to* Article 1 (commencing with Section 85) and Article 2 (commencing with Section 90) to Chapter 5.1 of Title 1 of Part 1 of, and to repeal Sections 83, 85, 87, 88, 89, and 422.20 of, and to repeal the headings of Article 1 (commencing with Section 81) and Article 2

(commencing with Section 90) of Chapter 5 of Title 1 of Part 1 of, the Code of Civil Procedure, to amend Sections 44944, 45312, 48294, 48295, 87675, 87679, and 88131 of the Education Code, to amend Sections 325, 327, 8203, 13107, 13109, and 13111 of the Elections Code, to amend Section 300 of the Evidence Code, to amend Section 400 of the Family Code, to amend Sections 1785, 1824, 1893, 3102, 16154, 17335, 18415.2, 18495, 31713, and 34113 of the Financial Code, to amend Sections 210, 309, 2357, 4341, 4755, 5934, 12150, and 12151 of the Fish and Game Code, to amend Sections 7581, 12647, 25564, 27601, 29733, 30801, 31503, 31621, 31622, 43039, 52514, 53564, and 59289 of the Food and Agricultural Code, to amend Sections 910, 945.3, 990.2, 1770, 3501.6, 6701, 11189, 11511, 12965, 12972, 12980, 15422, 18671, 23220, 23296, 23398, 23579, 24055, 24057, 25351.3, 25560.4, 26299.008, 26524, 26665, 26806, 26820, 26820.4, 26824, 26826, 26826.01, 26863, 27082, 27647, 27706, 28003, 29603, 29610, 31469, 41606, 50920, 53069.4, 53075.6, 53075.61, 53679, 68071, 68072, 68074.1, 68081, 68084, 68086, 68090.7, 68093, 68098, 68108, 68112, 68114, 68114.5, 68114.6, 68115, 68152, 68206.2, 68505, 68513, 68540, 68542, 68542.5, 68546, 68551, 68620, 68902, 69510, 69744.5, 69746.5, 69753, 69957, 70141, 71002, 71004, 71010, 71040, 71042.5, 71045, 71080, 71083, 71085, 71088, 71091, 71092, 71093, 71094, 71095, 71098, 71099, 71100, 71140, 71141, 71143, 71145, 71180.5, 71181, 71220, 71221, 71264, 71267, 71280, 71280.1, 71280.2, 71280.3, 71280.4, 71280.5, 71340, 71341, 71380, 71381, 71382, 71384, 71386, 72055, 72056, 72056.01, 72056.1, 72060, 72190, 72190.1, 72190.2, 72193, 72194.5, 72196, 72197, 72198, 72301, 72302, 72604, 75101, 75103, 75602, 77003, and 77007 of, to amend the headings of Chapter 6 (commencing with Section 71001) of Title 8 of, Article 7 (commencing with Section 71260) of Chapter 6 of Title 8 of, Article 10 (commencing with Section 71380) of Chapter 6 of Title 8 of, and Chapter 8 (commencing with Section 72000) of Title 8 of, to add Section 3075 to, ~~and~~ to repeal and add Chapter 5.1 (commencing with Section 70200) of Title 8 of, to repeal Sections 29605, 68078, 68202.5, 68541, 69741.7, 71080.5, 71080.6, 71080.7, 71084, 71087, 71091.1, 71096, 71097, 71180.3, 71180.4, 71181.1, and 72785 of, and to repeal Chapter 7 (commencing with Section 71600) of Title 8 of, the Government Code, to amend Sections 664 and 667 of the Harbors and Navigation Code, to amend Sections

108580, 111880, 111895, 117070, and 117120 of the Health and Safety Code, to amend Section 12961 of the Insurance Code, to amend Sections 98, 98.2, 3352, 5710, and 6613 of the Labor Code, to amend Section 467 of the Military and Veterans Code, to amend Sections 190.9, 682, 691, 726, 737, 740, 804, 806, 808, 810, 813, 827, 829, 830.1, 832.4, 851.8, 859, 859a, 860, 869, 949, 977, 977.2, 977.4, 987.1, 987.2, 988, 990, 1000, 1007, 1009, 1010, 1016, 1038, 1050, 1130, 1150, 1187, 1191, 1203.1, 1203.1c, 1214, 1235, 1269, 1269b, 1278, 1281a, 1327, 1368.1, 1382, 1424, 1427, 1428, 1429, 1429.5, 1447, 1449, 1458, 1459, 1462, 1462.2, 1463, 1463.1, 1463.22, 1466, 1468, 1471, 1538.5, 2620, 2621, 2623, 3076, 4004, 4022, 4024.1, 4112, 13125, 13151, and 14154 of, to amend the headings of Title 9 (commencing with Section 1235) and Title 11 (commencing with Section 1427) of Part 2 of, Chapter 1 (commencing with Section 1427), Chapter 2 (commencing with Section 1466), and Chapter 3 (commencing with Section 1471) of, Title 11 of Part 2 of, to add Sections 859c and 1039 to, and to repeal Sections 97, 1309, and 1462.1 of, the Penal Code, to amend Sections 3357, 3769, and 5560 of the Public Resources Code, to amend Sections 1794, 5411.5, and 103100 of the Public Utilities Code, to amend Sections 6776, 6777, 19232, 19233, and 19280 of the Revenue and Taxation Code, to amend Sections 1785 and 1786 of the Unemployment Insurance Code, to amend Sections 2802.5, 9872.1, 10751, 11205, 14607.6, 27360, 40230, 40256, 40502, 40506.5, 40508.6, 42008, and 42203 of the Vehicle Code, to amend Sections 310 and 1100 of the Water Code, to amend Sections 245, 255, 601.4, 603.5, 656, 661, 742.16, 3050, 3051, 3200, and 11350.7 of the Welfare and Institutions Code, to amend Section 22 of Chapter 201 of the Statutes of 1895, and to amend Section 4 of Chapter 238 of the Statutes of 1903, relating to courts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2139, as amended, Lockyer. Courts: unification.

The California Constitution provides for the establishment of superior and municipal courts, as specified, in each county. SCA 4 of the 1995–96 Regular Session, as approved by the voters on June 2, 1998, provides for the abolition of municipal

courts within a county, and for the establishment of a unified superior court for that county, upon a majority vote of superior court judges and a majority vote of municipal court judges within the county; provides for the qualification and election of the judges; and revises the number of jurors required in certain civil actions.

This bill would make various statutory changes to implement and conform to the unification of trial courts pursuant to the constitutional amendment. *The bill would also incorporate changes to Sections 832.4, 1050, and 1424 of the Penal Code made by AB 1211, AB 1754, and AB 1858, respectively, which have been chaptered, to take effect January 1, 1999.*

The bill would state that it is to take effect immediately as an urgency statute.

Vote: $^{2}/_{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 470.3 of the Business and Professions Code is amended to read:

470.3. (a) Except as provided in subdivision (b), a fee of not less than one dollar ($1) and not more than eight dollars ($8) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior or municipal court, other than a small claims action.

(b) A fee of not less than one dollar ($1) and not more than three dollars ($3) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior or municipal court, for those cases where the monetary damages do not exceed the sum of two thousand five hundred dollars ($2,500). To facilitate the computation of the correct fee pursuant to this section, the complaint shall contain a declaration under penalty of perjury executed by a party requesting a reduction in fees that

attorney or prosecuting attorney of any city, in any county in the state with jurisdiction over the contractor or employer, by reason of the contractor's or employer's act, or failure to act, within that jurisdiction. Any penalty assessed by the court shall be paid to the office of the prosecutor bringing the complaint.

SEC. 9. Section 17209 of the Business and Professions Code is amended to read:

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 10. Section 17536.5 of the Business and Professions Code is amended to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the

order upon the minutes of the board of supervisors. The appeal shall be taken and heard in the same manner as other appeals to the appellate division of the superior court, except as herein otherwise provided. Upon the appeal, the superior court may make and enter its judgment affirming, modifying, or reversing the order appealed from. Within 10 days thereafter, the superior court must cause its remittitur to issue to the board of supervisors, and if said order of the board of supervisors is modified or reversed, the judgment of the superior court and its remittitur shall direct the board of supervisors what order it shall enter. Such remittitur shall be filed by the clerk of the board of supervisors, and at the first regular meeting of the board thereafter, it shall cause to be entered in its minutes the order as directed by the superior court. The appeal herein provided for shall be heard and determined within thirty days from the time of filing the notice of appeal.

SEC. 480.5. Sections 832.4, 1050, and 1424 of the Penal Code, as amended by Sections 366, 388, and 406, respectively, of this act shall remain operative only until January 1, 1999, at which time Sections 366.5, 388.5, and 406.5 of this act, which respectively further amend Sections 832.4, 1050, and 1424 of the Penal Code shall become operative.

SEC. 481. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Senate Constitutional Amendment 4 of the 1995–96 Regular Session of the Legislature, as approved by the voters, changes the appellate jurisdiction of the courts and enables the municipal and superior courts in a county to unify. It is necessary that implementing measures be taken immediately so that an orderly transition of the court system will occur.

O

Date of Hearing: August 5, 1998

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

SB 2139 (Lockyer) - As Amended: July 1, 1998

Policy Committee: Judiciary Vote: 16-0 (Consent)

Urgency: Yes State Mandated Local Program: No Reimbursable:

SUMMARY

This bill makes various technical changes necessary for the implementation of trial court unification in counties that so elect, relating to the following:

1. The creation of limited civil cases as a new classification of civil cases, and the provision of a small claims appeal, as specified.

2. Granting jurisdiction to the court of appeal in all civil and criminal cases, except limited civil cases and misdemeanor and infraction cases. An appellate division in the superior court would be established with jurisdiction over these latter cases.

3. Maintaining the status of current court employees and their right to representation by employee organizations under trial court unification, and establishing a process for the selection of a single employee organization to represent court employees of a similar class who are currently represented by different organizations.

FISCAL EFFECT

No direct state costs, since this bill only makes technical statutory changes.

BACKGROUND

Proposition 220, approved by 64.3% of the voters voting statewide in June 1998, provides a local option for the unification of the superior and municipal courts in each county. Under a unified court system, an appellate division would be established in each unified superior court to hear matters currently within the appellate jurisdiction of the superior court, and judges of unified courts would be elected in their counties, except as necessary to meet federal Voting Rights Act requirements. Unification of trial court operations within a county must be approved by a majority vote of the municipal court judges and a majority vote of the superior court judges within that county.

This bill enacts technical revisions to affected statutory provisions pursuant to the enactment of Proposition 220. These revisions were identified by the California Law Revision Commission, assisted by a task force established by the Administrative Office of the Courts.

Betty T. Yee
(916) 319-2081
AAPPRO

Date of Hearing: August 7, 1996

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Charles Poochigian, Chair

SB 2139 (Haynes) - As Amended: July 10, 1996

Policy Committee: Health Vote: 15-0

State Mandated Local Program: No Reimbursable: Urgency: No

SUMMARY

Makes various changes, primarily of a technical or clarifying nature, to authorizing statute for the San Diego County Geographic Managed Care (GMC) program to provide Medi-Cal services within the county.

Among other things, this bill:

1) Provides specific authorization to the Department of Health Services (DHS) to terminate existing managed care contracts within San Diego County, when GMC is implemented and with specified notice;

2) Specifies the types of health plans that may be awarded contracts for San Diego GMC, and places technical limiting conditions on award of contracts;

3) Permits Indian Health clinics to contract directly with San Diego County as fee-for-service Medi-Cal case management providers;

4) Exempts GMC advisory boards from the Brown Act and other public meeting requirements; and

5) States legislative intent that future dental managed care contracts in San Diego County be subject to the provisions that apply to other Medi-Cal managed care contracts in San Diego.

FISCAL EFFECT

This bill would have no practical fiscal effect, as it provides technical clean-up and clarification to Ch 631/94 (AB 2178, Peace), which originally established the authority for San Diego County to pursue the GMC model.

BACKGROUND

Medi-Cal Managed Care. Currently, the DHS is expanding managed care into 15 counties, under several different models of service provision. One model, the GMC, already is operating in Sacramento County, and is scheduled to be implemented in San Diego in early 1997. When fully implemented, San Diego GMC will provide Medi-Cal services to about 205,000 beneficiaries.

Sarah Olsen
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AAPPRO

SENATE THIRD READING
SB 2139 (Lockyer)
As Amended July 1, 1998
2/3 vote. Urgency

SENATE VOTE: 37-0

JUDICIARY	16-0	APPROPRIATIONS	21-0
Ayes:	Escutia, Morrow, Alby, Aroner, Baugh, Figueroa, Honda, Kaloogian, Keeley, Knox, Kuehl, Martinez, McClintock, Ortiz, Pacheco, Shelley	Ayes:	Migden, Ashburn, Ackerman, Aguiar, Baca, Brewer, Cardenas, Escutia, Granlund, Hertzberg, Kuehl, Machado, Olberg, Papan, Poochigian, Shelley, Strom-Martin, Sweeney, Thompson, Thomson, Washington

SUMMARY: Makes various technical statutory changes needed to implement trial court unification in counties which so elect following the recent approval by the voters of SCA 4 by Senator Lockyer. Specifically, this bill consists largely of technical and terminological revisions to accommodate unification of the courts, including the following provisions:

1) The creation of a new classification of civil cases known as "limited civil cases." Limited civil cases are matters traditionally within municipal court jurisdiction. They receive the same procedural treatment, including filing fees, economic litigation procedures, and appeals, that municipal court cases currently receive.

2) The elimination of potential confusion by providing a statutory grant of jurisdiction to the court of appeal in all civil and criminal cases, with the exception of limited civil cases and misdemeanor and infraction cases.

3) The creation of an appellate division in the superior court, with jurisdiction of limited civil cases and misdemeanor and infraction cases to preserve the effect of jurisdiction of the former superior court appellate department over causes arising in municipal court.

4) The provision of a small claims appeal consisting of a de novo trial before a superior court judge other than the original trial judge, with the opportunity for representation by counsel.

5) The preservation of the status quo on employment in the unified court. Existing employees, officers, and personnel who serve the courts become employees, officers, and personnel of the unified court at their current salary, seniority, and benefit levels.

6) Clarification that no employees of the state's trial courts will be harmed by the unification of a county's trial courts, through non-controversial provisions ensuring that trial court employees may continue to be represented by employee organizations without causing any disruption to the operation of the courts and language ensuring that existing contracts with court employees are not rendered invalid due to the unification of a county's trial courts.

7) The establishment of a process for the selection of a single union to represent court employees of a similar class who are currently represented

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

SB 2139

UNFINISHED BUSINESS

Bill No: SB 2139
Author: Lockyer (D)
Amended: ~~4/2/98~~ 7-1-98
Vote: 27 - Urgency

SENATE JUDICIARY COMMITTEE: 7-0, 4/14/98
AYES: Burton, Haynes, Leslie, O'Connell, Schiff, Sher, Wright
NOT VOTING: Calderon, Lockyer

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 37-0, 5/14/98
AYES: Alpert, Ayala, Brulte, Burton, Calderon, Costa, Dills, Greene, Hayden, Haynes, Hughes, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Kopp, Leslie, Lewis, Lockyer, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Peace, Polanco, Rainey, Rosenthal, Schiff, Sher, Solis, Thompson, Vasconcellos, Watson, Wright
NOT VOTING: Craven, Hurtt

ASSEMBLY FLOOR: 75-0, 8/13/98 (Passed on Consent) - See last page for vote

SUBJECT: Trial court unification: conforming and implementing legislation

SOURCE: Author

DIGEST: This bill would, contingent upon the voter's approval of SCA 4 (Lockyer) of 1996, Proposition 220 on the June ballot, make various

CONTINUED

by different unions. The process is similar to that created in previous statutes which sought to consolidate government entities.

EXISTING LAW: Provides for the establishment of superior and municipal courts in each county. Court rules and various statutes reflect this bifurcated structure.

FISCAL EFFECT: Unknown

COMMENTS:

1) This non-controversial bill makes a host of technical changes needed to implement Senator Lockyer's successful trial court unification constitutional amendment, SCA 4. This measure was recently soundly approved by the voters as Proposition 220 in the June 2, 1998, primary election.

2) In 1996, the Legislature approved SCA 4 to provide for the voluntary unification of the superior and municipal courts of a county. Beginning June 3, 1998, a majority vote of superior court judges and a majority vote of municipal court judges within each of California's 58 counties may elect to abolish their municipal courts and establish a unified superior court for that county. This urgency legislation is needed to implement necessary changes in the court rules and procedures in those counties which elect to operate a unified court system. Since June 3, when the constitutional amendment became effective, a number of courts have already voted to unify. It is expected that by the end of this month, the courts in approximately 35 counties will have voted to unify.

   In anticipation of the possible approval of SCA 4, the Legislature commissioned the California Law Revision Commission (CLRC) to review all affected statutes to identify needed revisions. The Administrative Office of the Courts also established the "SCA 4 Implementation Working Group" to assist CLRC in its task.

3) The basic thrust of this bill is to preserve the status quo through the unification process. Current municipal court employees become employees of the unified superior court. Procedures that apply to a case in municipal court continue to apply to a similar case in the unified superior court. CLRC cites a number reasons for this basic approach, including, limited trial and appellate resources preclude applying superior court procedures to smaller cases, and there should not be any forum shopping or disparity of treatment, based on whether the courts in a particular county have elected to unify.

   CLRC recommends, and committee staff concur, that procedures and experience in unified courts should be reviewed in the next few years, with the objective of simplifying court procedures and taking full advantage of the efficiencies created by unification.

Analysis prepared by: Drew Liebert / ajud / (916) 319-2334

FN 041954

SENATE RULES COMMITTEE
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SB 2139

UNFINISHED BUSINESS

Bill No: SB 2139
Author: Lockyer (D)
Amended: ~~4/2/98~~ 7-1-98
Vote: 27 - Urgency

SENATE JUDICIARY COMMITTEE: 7-0, 4/14/98
AYES: Burton, Haynes, Leslie, O'Connell, Schiff, Sher, Wright
NOT VOTING: Calderon, Lockyer

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 37-0, 5/14/98
AYES: Alpert, Ayala, Brulte, Burton, Calderon, Costa, Dills, Greene, Hayden, Haynes, Hughes, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Kopp, Leslie, Lewis, Lockyer, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Peace, Polanco, Rainey, Rosenthal, Schiff, Sher, Solis, Thompson, Vasconcellos, Watson, Wright
NOT VOTING: Craven, Hurtt

ASSEMBLY FLOOR: 75-0, 8/13/98 (Passed on Consent) - See last page for vote

SUBJECT: Trial court unification: conforming and implementing legislation

SOURCE: Author

DIGEST: This bill would, contingent upon the voter's approval of SCA 4 (Lockyer) of 1996, Proposition 220 on the June ballot, make various

by different unions. The process is similar to that created in previous statutes which sought to consolidate government entities.

EXISTING LAW: Provides for the establishment of superior and municipal courts in each county. Court rules and various statutes reflect this bifurcated structure.

FISCAL EFFECT: Unknown

COMMENTS:

1) This non-controversial bill makes a host of technical changes needed to implement Senator Lockyer's successful trial court unification constitutional amendment, SCA 4. This measure was recently soundly approved by the voters as Proposition 220 in the June 2, 1998, primary election.

2) In 1996, the Legislature approved SCA 4 to provide for the voluntary unification of the superior and municipal courts of a county. Beginning June 3, 1998, a majority vote of superior court judges and a majority vote of municipal court judges within each of California's 58 counties may elect to abolish their municipal courts and establish a unified superior court for that county. This urgency legislation is needed to implement necessary changes in the court rules and procedures in those counties which elect to operate a unified court system. Since June 3, when the constitutional amendment became effective, a number of courts have already voted to unify. It is expected that by the end of this month, the courts in approximately 35 counties will have voted to unify.

   In anticipation of the possible approval of SCA 4, the Legislature commissioned the California Law Revision Commission (CLRC) to review all affected statutes to identify needed revisions. The Administrative Office of the Courts also established the "SCA 4 Implementation Working Group" to assist CLRC in its task.

3) The basic thrust of this bill is to preserve the status quo through the unification process. Current municipal court employees become employees of the unified superior court. Procedures that apply to a case in municipal court continue to apply to a similar case in the unified superior court. CLRC cites a number reasons for this basic approach, including, limited trial and appellate resources preclude applying superior court procedures to smaller cases, and there should not be any forum shopping or disparity of treatment, based on whether the courts in a particular county have elected to unify.

   CLRC recommends, and committee staff concur, that procedures and experience in unified courts should be reviewed in the next few years, with the objective of simplifying court procedures and taking full advantage of the efficiencies created by unification.

Analysis prepared by: Drew Liebert / ajud / (916) 319-2334

FN 041954

statutory changes to implement trial court unification in counties which so elect.

Assembly Amendments add double-joining ~~and technical cross reference~~ language. to AB 1211 (Assem Public Safety Comm), Chapter 66, Statutes of 1998, AB 1754 (Wayne) Chapter 61, Statutes of 1998, and AB 1857 (Ackerman) Chapter 931, Statutes of 1998

ANALYSIS: In 1996, the Legislature approved SCA 4 (Lockyer) which provides for the voluntary unification of the superior and municipal courts of a California county. If approved by the voters on June 2, 1998, on or after June 3, 1998, a majority vote of superior court judges and a majority vote of municipal court judges within the county may elect to abolish the municipal courts within a county and establish a unified superior court for that county.

SCA 4, if approved, would take effect on June 3, 1998. Urgency legislation is needed to implement necessary changes in the court rules and procedures in those counties which elect to operate a unified court system.

Existing law presently provides for the establishment of superior and municipal courts in each county. Court rules and various statutes reflect this bifurcated structure.

This bill would, contingent upon the approval of SCA 4 (Lockyer) of 1996, make various statutory changes to implement and conform to the unification of trial courts pursuant to the constitutional amendment. The changes would take effect immediately as an urgency measure.

Because SCA 4 allows voluntary unification, California statutes and court rules must be amended to provide for the operations of both unified and bifurcated court systems.

The Legislature has commissioned the California Law Revision Commission (CLRC) to review all affected statutes and to identify needed revisions. The Administrative Office of the Courts (AOC) has established the SCA 4 Implementation Working Group to assist the CLRC in its task.

These provisions of SB 2139 are the first of the recommended provisions. These provisions, worked out with Judicial Council, are necessarily consistent with and would implement the provisions of SCA 4. Many other necessary changes are still being prepared by the CLRC. These recom-

mendations may not be finalized until May, too late for Senate policy committee's hearing deadlines to pass and report fiscal bills.

Proposed transition provisions would:

1. Require Judicial Council to adopt rules of court for:

   A. the orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, including authorizing the preparation of local rules.

   B. the selection of persons to coordinate implementation activities for the unification of municipal courts with superior courts in a county, including selection of a presiding judge and court executive officer for the unified superior court.

   C. the authority of the presiding judge, in conjunction with the court executive officer and appropriate individuals or working groups of the unified superior court, to act on behalf of the court to implement unification.

   D. Preparation and submission of a written personnel plan to the judges of a unified superior court for adoption.

2. Specify that upon trial court unification, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges become judges of the superior court in that county. Until revised by statute, the total number of judgeships in the unified superior court shall equal the previously authorized number of judgeships in the municipal court and superior court combined.

3. Specify that the term of office of a previously selected municipal court judge is not affected by taking office as a superior court judge. The State Constitution's 10 years of judicial experience or bar membership requirement for superior court judgeships would not apply to a previously selected municipal court judge.

4. Specify that, except as provided otherwise by statute, in a county with a unified court, the following shall occur automatically in each pre-existing municipal and superior court:

A. Previously selected officers, employees, and other personnel who served the municipal court become the officers and employees of the superior court.

B. Pre-existing court locations are retained as superior court locations and pre-existing court records become records of the superior court.

C. Pending trials, proceedings, and other business of the court become pending in the superior court without a change in the procedures previously applicable to the matter.

D. Penal Code procedures that require superior court review of a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

E. Subpoenas, summons of jurors, and other processes issued by the court shall be enforced by the superior court.

5. Allow for the use of current Judicial Council forms in unified courts until those forms are revised by the Judicial Council, for proceedings that would be within the former jurisdiction of municipal courts.

6. Authorize the Judicial Council to adopt rules resolving any problem that may arise in the conversion of statutory references from the municipal court to the superior court in a county with unified courts.

7. Specify in unified courts that, until revised by statute, the total number of authorized court commissioners and traffic referees in the unified superior court shall equal the previously authorized number of commissioners and traffic referees in the municipal court and superior court combined. The commissioners and referees of the unified superior court shall have all of the powers and authority of commissioners and referees of superior courts and of municipal courts.

8. Provide that the Attorney General shall, to the extent required by the pre-clearance provisions of the federal Voting Rights Act seek to obtain pre-clearance for the county-wide election of superior court judges for the unified court, for any county in which the courts are unified.

CONTINUED

9. Provide that upon trial court unification in a county, until adoption of a written personnel plan by the judges of the unified superior court and approval of the plan by the Legislature:

   A. Previously selected officers, employees, and other personnel who serve the courts become the officers, employees, and other personnel of the unified superior court at their existing or equivalent classifications, salaries, and benefits.

   B. Permanent employees of the municipal and superior courts on the effective date of unification shall be deemed qualified, and no other qualifications shall be required for employment or retention.

   C. Probationary employees on the effective date of unification shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

   D. Employment seniority of an employee of the municipal or superior courts on the effective date of unification shall be counted toward seniority in the unified superior court.

This bill is double-joined with AB 1211 (Assembly Public Safety Committee).

Prior Legislation

SCA 4 (1996), Pending voter approval as Proposition 220.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Local: Yes

SUPPORT: (Verified 8/13/98)

American Federation of State, County & Municipal Employees, AFL-CIO
California State Association of Counties
California Peace Officers' Association
California Police Chiefs' Association

CONTINUED

ASSEMBLY FLOOR:

AYES: Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Bowler, Brewer, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Margett, Martinez, Mazzoni, McClintock, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Richter, Runner, Scott, Shelley, Strom-Martin, Thomson, Torlakson, Vincent, Washington, Wayne, Wildman, Woods, Wright

NOT VOTING: Floyd, Sweeney, Takasugi, Thompson, Villaraigosa

RJG:ctl/cm 8/13/98 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

AMENDED IN ASSEMBLY AUGUST 24, 1998

AMENDED IN ASSEMBLY JULY 1, 1998

AMENDED IN ASSEMBLY JUNE 15, 1998

AMENDED IN SENATE APRIL 2, 1998

SENATE BILL No. 2139

Introduced by Senator Lockyer

February 20, 1998

An act to amend Sections 470.3, 6152, 6301, 6302.5, 6321, 6322, 6341, 7028.2, 17209, 17536.5, and 25762 of the Business and Professions Code, to amend Sections 798.61, 1181, 1719, 1780, 1812.10, 2984.4, and 3342.5 of the Civil Code, to amend Sections 77, 82, 84, 86, 86.1, 91, 116.120, 116.210, 116.231, 116.250, 116.760, 116.770, 116.940, 116.950, 134, 166, 170.5, ~~170.6,~~ 170.7, 179, 194, 195, 198.5, 200, 215, 217, 234, 269, 274a, 274c, 392, 393, 395, 396, 396a, 400, 402, 422.30, 425.10, 425.11, 489.220, 564, 575, 575.1, 580, 581d, 594, 628, 631, 632, 655, 668, 670, 685.030, 688.010, 697.310, 697.350, 697.540, 703.600, 706.105, 708.180, 720.160, 720.260, 720.420, 871.3, 904.1, 904.2, 904.5, 911, 912, 996.430, 1014, 1033, 1052, 1052.5, 1060, 1068, 1085, 1103, 1134, 1140, 1141.11, 1141.12, 1161.2, 1167.2, 1171, 1206, 1281.5, 1283.05, 1287.4, 1710.20, 1775.1, and 2015.3 of, to amend the heading of Chapter 5 (commencing with Section 81) of Title 1 of Part 1 of, to add Sections 32.5, 38, 395.9, 399.5, 402.5, and 582.5 to, to add Chapter 5.1 (commencing with Section 85) to Title 1 of Part 1 of, and to add a heading to Article 1 (commencing with Section 85) and Article 2 (commencing with Section 90) to Chapter 5.1 of Title 1 of Part 1 of, and to repeal Sections 83,

85, 87, 88, 89, and 422.20 of, and to repeal the headings of Article 1 (commencing with Section 81) and Article 2 (commencing with Section 90) of Chapter 5 of Title 1 of Part 1 of, the Code of Civil Procedure, to amend Sections 44944, 45312, 48294, 48295, 87675, 87679, and 88131 of the Education Code, to amend Sections 325, 327, 8203, 13107, 13109, and 13111 of the Elections Code, to amend Section 300 of the Evidence Code, to amend Section 400 of the Family Code, to amend Sections 1785, 1824, 1893, 3102, ~~16154,~~ 17335, 18415.2, 18495, 31713, and 34113 of*, and to amend and repeal Section 16154 of,* the Financial Code, to amend Sections 210, 309, 2357, 4341, 4755, 5934, 12150, and 12151 of the Fish and Game Code, to amend Sections 7581, 12647, 25564, 27601, 29733, 30801, 31503, 31621, 31622, 43039, 52514, 53564, and 59289 of the Food and Agricultural Code, to amend Sections 910, 945.3, 990.2, 1770, 3501.6, 6701, 11189, 11511, 12965, 12972, 12980, 15422, 18671, 23220, 23296, 23398, 23579, 24055, 24057, 25351.3, 25560.4, 26299.008, 26524, 26665, 26806, 26820, 26820.4, 26824, 26826, 26826.01, 26863, 27082, 27647, 27706, 28003, 29603, 29610, 31469, 41606, 50920, 53069.4, 53075.6, 53075.61, 53679, 68071, 68072, 68074.1, 68081, 68084, 68086, 68090.7, 68093, 68098, 68108, 68112, 68114, 68114.5, 68114.6, 68115, 68152, 68206.2, 68505, 68513, 68540, 68542, 68542.5, 68546, *68547,* 68551, 68620, 68902, 69510, 69744.5, 69746.5, 69753, 69957, 70141, 71002, 71004, 71010, 71040, 71042.5, 71045, 71080, 71083, 71085, 71088, 71091, 71092, 71093, 71094, 71095, 71098, 71099, 71100, 71140, 71141, 71143, 71145, 71180.5, 71181, 71220, 71221, 71264, 71267, 71280, 71280.1, 71280.2, 71280.3, 71280.4, 71280.5, 71340, 71341, 71380, 71381, 71382, 71384, 71386, 72055, 72056, 72056.01, 72056.1, 72060, 72190, 72190.1, 72190.2, 72193, 72194.5, 72196, 72197, 72198, 72301, 72302, 72604, 75101, 75103, 75602, 77003, and 77007 of, to amend the headings of Chapter 6 (commencing with Section 71001) of Title 8 of, Article 7 (commencing with Section 71260) of Chapter 6 of Title 8 of, Article 10 (commencing with Section 71380) of Chapter 6 of Title 8 of, and Chapter 8 (commencing with Section 72000) of Title 8 of, to add ~~Section 3075~~ *Sections 3075 and 70140* to, to repeal and add Chapter 5.1 (commencing with Section 70200) of Title 8 of, to repeal Sections 29605, 68078, 68202.5, 68541, 69741.7, 71080.5, 71080.6, 71080.7, 71084, 71087, 71091.1, 71096, 71097, 71180.3, 71180.4,

71181.1, and 72785 of, and to repeal Chapter 7 (commencing with Section 71600) of Title 8 of, the Government Code, to amend Sections 664 and 667 of the Harbors and Navigation Code, to amend Sections 108580, 111880, 111895, 117070, and 117120 of the Health and Safety Code, to amend Section 12961 of the Insurance Code, to amend Sections 98, 98.2, 3352, 5710, and 6613 of the Labor Code, to amend Section 467 of the Military and Veterans Code, to amend Sections 190.9, 682, 691, 726, 737, 740, 804, 806, 808, 810, 813, 827, 829, 830.1, 832.4, 851.8, 859, 859a, 860, 869, 949, 977, 977.2, 977.4, 987.1, 987.2, 988, 990, 1000, 1007, 1009, 1010, 1016, 1038, 1050, 1130, 1150, 1187, 1191, 1203.1, 1203.1c, 1214, 1235, 1269, 1269b, 1278, 1281a, 1327, 1368.1, 1382, 1424, 1427, 1428, 1429, 1429.5, 1447, 1449, 1458, 1459, 1462, 1462.2, 1463, 1463.1, 1463.22, 1466, 1468, 1471, 1538.5, 2620, 2621, 2623, 3076, 4004, 4022, 4024.1, 4112, 13125, 13151, and 14154 of, to amend the headings of Title 9 (commencing with Section 1235) and Title 11 (commencing with Section 1427) of Part 2 of, Chapter 1 (commencing with Section 1427), Chapter 2 (commencing with Section 1466), and Chapter 3 (commencing with Section 1471) of, Title 11 of Part 2 of, to add Sections 859c and 1039 to, and to repeal Sections 97, 1309, and 1462.1 of, the Penal Code, to amend Sections 3357, 3769, and 5560 of the Public Resources Code, to amend Sections 1794, 5411.5, and 103100 of the Public Utilities Code, to amend Sections 6776, 6777, 19232, 19233, and 19280 of the Revenue and Taxation Code, to amend Sections 1785 and 1786 of the Unemployment Insurance Code, to amend Sections 2802.5, 9872.1, 10751, 11205, 14607.6, 27360, 40230, 40256, 40502, 40506.5, 40508.6, 42008, and 42203 of the Vehicle Code, to amend Sections 310 and 1100 of the Water Code, to amend Sections 245, 255, 601.4, 603.5, 656, 661, 742.16, 3050, 3051, 3200, and 11350.7 of the Welfare and Institutions Code, to amend Section 22 of Chapter 201 of the Statutes of 1895, and to amend Section 4 of Chapter 238 of the Statutes of 1903, relating to courts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2139, as amended, Lockyer. Courts: unification.

The California Constitution provides for the establishment of superior and municipal courts, as specified, in each county. SCA 4 of the 1995–96 Regular Session, as approved by the voters on June 2, 1998, provides for the abolition of municipal courts within a county, and for the establishment of a unified superior court for that county, upon a majority vote of superior court judges and a majority vote of municipal court judges within the county; provides for the qualification and election of the judges; and revises the number of jurors required in certain civil actions.

This bill would make various statutory changes to implement and conform to the unification of trial courts pursuant to the constitutional amendment. ~~The bill would also incorporate changes to Sections 832.4, 1050, and 1424 of the Penal Code made by AB 1211, AB 1754, and AB 1858, respectively, which have been chaptered, to take effect January 1, 1999.~~ *The bill would also make changes to various provisions of the Code of Civil Procedure, Financial Code, Government Code, Penal Code, and Vehicle Code to conform to changes proposed by AB 310, AB 1094, AB 1211, AB 1590, AB 1754, AB 1858, AB 1927, AB 2070, AB 2134, AB 2551, SB 117, SB 752, SB 1452, SB 1558, SB 1608, SB 1638, SB 1768, SB 1850, and SB 2168, respectively, contingent upon their prior enactment.*

The bill would state that it is to take effect immediately as an urgency statute.

Vote: $^{2}/_{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 470.3 of the Business and Professions Code is amended to read:

470.3. (a) Except as provided in subdivision (b), a fee of not less than one dollar ($1) and not more than eight dollars ($8) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior or municipal court, other than a small claims action.

the county seat, any board of law library trustees may establish and maintain a branch of the law library at any location therein where four or more judges of the municipal court, or of the superior court in a county in which there is no municipal court, are designated to hold sessions more than 10 miles distant from the principal office of the court. In any city and county any board of law library trustees may establish and maintain branches of the law library. A branch is in all respects a part of the law library and is governed accordingly.

SEC. 8. Section 7028.2 of the Business and Professions Code is amended to read:

7028.2. A criminal complaint pursuant to this chapter may be brought by the Attorney General or by the district attorney or prosecuting attorney of any city, in any county in the state with jurisdiction over the contractor or employer, by reason of the contractor's or employer's act, or failure to act, within that jurisdiction. Any penalty assessed by the court shall be paid to the office of the prosecutor bringing the complaint.

SEC. 9. Section 17209 of the Business and Professions Code is amended to read:

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 10. Section 17536.5 of the Business and Professions Code is amended to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 11. Section 25762 of the Business and Professions Code is amended to read:

25762. All fines and forfeitures of bail imposed for a violation of this division and collected in any court other than a municipal court shall be paid to the county treasurer of the county in which the court is held.

All fines and forfeitures of bail imposed for violation of this division and collected upon conviction or upon forfeiture of bail, together with money deposited as bail, in any municipal court shall be deposited with the county treasurer of the county in which the court is situated and the money deposited shall be distributed and disposed of pursuant to Section 1463 of the Penal Code.

SEC. 12. Section 798.61 of the Civil Code is amended to read:

798.61. (a) (1) As used in this section, ''abandoned mobilehome'' means a mobilehome about which all of the following are true:

SEC. 507. Nothing in this act is intended to change the extent to which court reporter services or electronic reporting may be used in the courts. It is the intent of this act to provide for court reporter services and electronic reporting in a county in which there is no municipal court to the same extent as otherwise provided by law in a county in which there is a municipal court.

SEC. 508.

SEC. 481. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Senate Constitutional Amendment 4 of the 1995–96 Regular Session of the Legislature, as approved by the voters, changes the appellate jurisdiction of the courts and enables the municipal and superior courts in a county to unify. It is necessary that implementing measures be taken immediately so that an orderly transition of the court system will occur.

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AMENDED IN ASSEMBLY AUGUST 26, 1998

AMENDED IN ASSEMBLY AUGUST 24, 1998

AMENDED IN ASSEMBLY JULY 1, 1998

AMENDED IN ASSEMBLY JUNE 15, 1998

AMENDED IN SENATE APRIL 2, 1998

SENATE BILL No. 2139

Introduced by Senator Lockyer

February 20, 1998

An act to amend Sections 470.3, 6152, 6301, 6302.5, 6321, 6322, 6341, 7028.2, 17209, 17536.5, and 25762 of the Business and Professions Code, to amend Sections 798.61, 1181, 1719, 1780, 1812.10, 2984.4, and 3342.5 of the Civil Code, to amend Sections 77, 82, 84, 86, 86.1, 91, 116.120, 116.210, 116.231, 116.250, 116.760, 116.770, 116.940, 116.950, 134, 166, 170.5, 170.7, 179, 194, 195, 198.5, 200, 215, 217, 234, 269, 274a, 274c, 392, 393, 395, 396, 396a, 400, 402, 422.30, 425.10, 425.11, 489.220, 564, 575, 575.1, 580, 581d, 594, 628, 631, 632, 655, 668, 670, 685.030, 688.010, 697.310, 697.350, 697.540, 703.600, 706.105, 708.180, 720.160, 720.260, 720.420, 871.3, 904.1, 904.2, 904.5, 911, 912, 996.430, 1014, 1033, 1052, 1052.5, 1060, 1068, 1085, 1103, 1134, 1140, 1141.11, 1141.12, 1161.2, 1167.2, 1171, 1206, 1281.5, 1283.05, 1287.4, 1710.20, 1775.1, and 2015.3 of, to amend the heading of Chapter 5 (commencing with Section 81) of Title 1 of Part 1 of, to add Sections 32.5, 38, 395.9, 399.5, 402.5, and 582.5 to, to add Chapter 5.1 (commencing with Section 85) to Title 1 of Part 1 of, and to add a heading to Article 1 (commencing with Section 85) and Article 2 (commencing with Section 90) to

Chapter 5.1 of Title 1 of Part 1 of, and to repeal Sections 83, 85, 87, 88, 89, and 422.20 of, and to repeal the headings of Article 1 (commencing with Section 81) and Article 2 (commencing with Section 90) of Chapter 5 of Title 1 of Part 1 of, the Code of Civil Procedure, to amend Sections 44944, 45312, 48294, 48295, 87675, 87679, and 88131 of the Education Code, to amend Sections 325, 327, 8203, 13107, 13109, and 13111 of the Elections Code, to amend Section 300 of the Evidence Code, to amend Section 400 of the Family Code, to amend Sections 1785, 1824, 1893, 3102, 17335, 18415.2, 18495, 31713, and 34113 of, and to amend and repeal Section 16154 of, the Financial Code, to amend Sections 210, 309, 2357, 4341, 4755, 5934, 12150, and 12151 of the Fish and Game Code, to amend Sections 7581, 12647, 25564, 27601, 29733, 30801, 31503, 31621, 31622, 43039, 52514, 53564, and 59289 of the Food and Agricultural Code, to amend Sections 910, 945.3, 990.2, 1770, 3501.6, 6701, 11189, 11511, 12965, 12972, 12980, 15422, 18671, 23220, 23296, 23398, 23579, 24055, 24057, 25351.3, 25560.4, 26299.008, 26524, 26665, 26806, 26820, 26820.4, 26824, 26826, 26826.01, 26863, 27082, 27647, 27706, 28003, 29603, 29610, 31469, 41606, 50920, 53069.4, 53075.6, 53075.61, 53679, 68071, 68072, 68074.1, 68081, 68084, 68086, 68090.7, 68093, 68098, 68108, 68112, 68114, 68114.5, 68114.6, 68115, 68152, 68206.2, 68505, 68513, 68540, 68542, 68542.5, 68546, 68547, 68551, 68620, 68902, 69510, 69744.5, 69746.5, 69753, 69957, 70141, 71002, 71004, 71010, 71040, 71042.5, 71045, 71080, 71083, 71085, 71088, 71091, 71092, 71093, 71094, 71095, 71098, 71099, 71100, 71140, 71141, 71143, 71145, 71180.5, 71181, 71220, 71221, 71264, 71267, 71280, 71280.1, 71280.2, 71280.3, 71280.4, 71280.5, 71340, 71341, 71380, 71381, 71382, 71384, 71386, 72055, 72056, 72056.01, 72056.1, 72060, 72190, 72190.1, 72190.2, 72193, 72194.5, 72196, 72197, 72198, 72301, 72302, 72604, 75101, 75103, 75602, 77003, and 77007 of, to amend the headings of Chapter 6 (commencing with Section 71001) of Title 8 of, Article 7 (commencing with Section 71260) of Chapter 6 of Title 8 of, Article 10 (commencing with Section 71380) of Chapter 6 of Title 8 of, and Chapter 8 (commencing with Section 72000) of Title 8 of, to add Sections 3075 and 70140 to, to repeal and add Chapter 5.1 (commencing with Section 70200) of Title 8 of, to repeal Sections 29605, 68078, 68202.5, 68541, 69741.7, 71080.5, 71080.6,

71080.7, 71084, 71087, 71091.1, 71096, 71097, 71180.3, 71180.4, 71181.1, and 72785 of, and to repeal Chapter 7 (commencing with Section 71600) of Title 8 of, the Government Code, to amend Sections 664 and 667 of the Harbors and Navigation Code, to amend Sections 108580, 111880, 111895, 117070, and 117120 of the Health and Safety Code, to amend Section 12961 of the Insurance Code, to amend Sections 98, 98.2, 3352, 5710, and 6613 of the Labor Code, to amend Section 467 of the Military and Veterans Code, to amend Sections 190.9, 682, 691, 726, 737, 740, 804, 806, 808, 810, 813, 827, 829, 830.1, 832.4, 851.8, 859, 859a, 860, 869, 949, 977, 977.2, 977.4, 987.1, 987.2, 988, 990, 1000, 1007, 1009, 1010, 1016, 1038, 1050, 1130, 1150, 1187, 1191, 1203.1, 1203.1c, 1214, 1235, 1269, 1269b, 1278, 1281a, 1327, 1368.1, 1382, 1424, 1427, 1428, 1429, 1429.5, 1447, 1449, 1458, 1459, 1462, 1462.2, 1463, 1463.1, 1463.22, 1466, 1468, 1471, 1538.5, 2620, 2621, 2623, 3076, 4004, 4022, 4024.1, 4112, 13125, 13151, and 14154 of, to amend the headings of Title 9 (commencing with Section 1235) and Title 11 (commencing with Section 1427) of Part 2 of, Chapter 1 (commencing with Section 1427), Chapter 2 (commencing with Section 1466), and Chapter 3 (commencing with Section 1471) of, Title 11 of Part 2 of, to add Sections 859c and 1039 to, and to repeal Sections 97, 1309, and 1462.1 of, the Penal Code, to amend Sections 3357, 3769, and 5560 of the Public Resources Code, to amend Sections 1794, 5411.5, and 103100 of the Public Utilities Code, to amend Sections 6776, 6777, 19232, 19233, and 19280 of the Revenue and Taxation Code, to amend Sections 1785 and 1786 of the Unemployment Insurance Code, to amend Sections 2802.5, 9872.1, 10751, 11205, 14607.6, 27360, 40230, 40256, 40502, 40506.5, 40508.6, 42008, and 42203 of the Vehicle Code, to amend Sections 310 and 1100 of the Water Code, to amend Sections 245, 255, 601.4, 603.5, 656, 661, 742.16, 3050, 3051, 3200, and 11350.7 of the Welfare and Institutions Code, to amend Section 22 of Chapter 201 of the Statutes of 1895, and to amend Section 4 of Chapter 238 of the Statutes of 1903, relating to courts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2139, as amended, Lockyer. Courts: unification.

The California Constitution provides for the establishment of superior and municipal courts, as specified, in each county. SCA 4 of the 1995–96 Regular Session, as approved by the voters on June 2, 1998, provides for the abolition of municipal courts within a county, and for the establishment of a unified superior court for that county, upon a majority vote of superior court judges and a majority vote of municipal court judges within the county; provides for the qualification and election of the judges; and revises the number of jurors required in certain civil actions.

This bill would make various statutory changes to implement and conform to the unification of trial courts pursuant to the constitutional amendment. The bill would also make changes to various provisions of the Code of Civil Procedure, Financial Code, Government Code, Penal Code, and Vehicle Code to conform to changes proposed by AB 310, AB 1094, AB 1211, AB 1590, AB 1754, AB 1858, AB 1927, AB 2070, AB 2134, AB 2551, SB 117, SB 752, SB 1452, SB 1558, SB 1608, SB 1638, SB 1768, SB 1850, and SB 2168, respectively, contingent upon their prior enactment.

Existing law provides that, until January 1, 1999, a judge of a municipal court is deemed to have served under assignment in the superior court, under specified circumstances, for purposes of his or her compensation.

This bill would extend those provisions until January 1, 2000.

The bill would state that it is to take effect immediately as an urgency statute.

Vote: $^2/_3$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 470.3 of the Business and Professions Code is amended to read:

470.3. (a) Except as provided in subdivision (b), a fee of not less than one dollar ($1) and not more than eight dollars ($8) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090,

the superior court or of a municipal court is held, or in which a municipal court has been authorized by statute but has not yet begun to operate. In any city constituting the county seat, any board of law library trustees may establish and maintain a branch of the law library at any location therein where four or more judges of the municipal court, or of the superior court in a county in which there is no municipal court, are designated to hold sessions more than 10 miles distant from the principal office of the court. In any city and county any board of law library trustees may establish and maintain branches of the law library. A branch is in all respects a part of the law library and is governed accordingly.

SEC. 8. Section 7028.2 of the Business and Professions Code is amended to read:

7028.2. A criminal complaint pursuant to this chapter may be brought by the Attorney General or by the district attorney or prosecuting attorney of any city, in any county in the state with jurisdiction over the contractor or employer, by reason of the contractor's or employer's act, or failure to act, within that jurisdiction. Any penalty assessed by the court shall be paid to the office of the prosecutor bringing the complaint.

SEC. 9. Section 17209 of the Business and Professions Code is amended to read:

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No

judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 10. Section 17536.5 of the Business and Professions Code is amended to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 11. Section 25762 of the Business and Professions Code is amended to read:

25762. All fines and forfeitures of bail imposed for a violation of this division and collected in any court other than a municipal court shall be paid to the county treasurer of the county in which the court is held.

All fines and forfeitures of bail imposed for violation of this division and collected upon conviction or upon forfeiture of bail, together with money deposited as bail, in any municipal court shall be deposited with the county treasurer of the county in which the court is situated and the money deposited shall be distributed and disposed of pursuant to Section 1463 of the Penal Code.

SEC. 12. Section 798.61 of the Civil Code is amended to read:

SEC. 508.

SEC. 481. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Senate Constitutional Amendment 4 of the 1995–96 Regular Session of the Legislature, as approved by the voters, changes the appellate jurisdiction of the courts and enables the municipal and superior courts in a county to unify. It is necessary that implementing measures be taken immediately so that an orderly transition of the court system will occur.

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AMENDED IN ASSEMBLY AUGUST 28, 1998

AMENDED IN ASSEMBLY AUGUST 26, 1998

AMENDED IN ASSEMBLY AUGUST 24, 1998

AMENDED IN ASSEMBLY JULY 1, 1998

AMENDED IN ASSEMBLY JUNE 15, 1998

AMENDED IN SENATE APRIL 2, 1998

SENATE BILL No. 2139

Introduced by Senator Lockyer

February 20, 1998

An act to amend Sections 470.3, 6152, 6301, 6302.5, 6321, 6322, 6341, 7028.2, 17209, 17536.5, and 25762 of the Business and Professions Code, to amend Sections 798.61, 1181, 1719, 1780, 1812.10, 2984.4, and 3342.5 of the Civil Code, to amend Sections 77, 82, 84, 86, 86.1, 91, 116.120, 116.210, 116.231, 116.250, 116.760, 116.770, 116.940, 116.950, 134, 166, 170.5, 170.7, 179, 194, 195, 198.5, 200, 215, 217, 234, 269, 274a, 274c, 392, 393, 395, 396, 396a, 400, 402, 422.30, 425.10, 425.11, 489.220, 564, 575, 575.1, 580, 581d, 594, 628, 631, 632, 655, 668, 670, 685.030, 688.010, 697.310, 697.350, 697.540, 703.600, 706.105, 708.180, 720.160, 720.260, 720.420, 871.3, 904.1, 904.2, 904.5, 911, 912, 996.430, 1014, 1033, 1052, 1052.5, 1060, 1068, 1085, 1103, 1134, 1140, 1141.11, 1141.12, 1161.2, 1167.2, 1171, 1206, 1281.5, 1283.05, 1287.4, 1710.20, 1775.1, and 2015.3 of, to amend the heading of Chapter 5 (commencing with Section 81) of Title 1 of Part 1 of, to add Sections 32.5, 38, 395.9, 399.5, 402.5, and 582.5 to, to add Chapter 5.1 (commencing with Section 85) to Title 1 of Part

1 of, and to add a heading to Article 1 (commencing with Section 85) and Article 2 (commencing with Section 90) to Chapter 5.1 of Title 1 of Part 1 of, and to repeal Sections 83, 85, 87, 88, 89, and 422.20 of, and to repeal the headings of Article 1 (commencing with Section 81) and Article 2 (commencing with Section 90) of Chapter 5 of Title 1 of Part 1 of, the Code of Civil Procedure, to amend Sections 44944, 45312, 48294, 48295, 87675, 87679, and 88131 of the Education Code, to amend Sections 325, 327, 8203, 13107, 13109, and 13111 of the Elections Code, to amend Section 300 of the Evidence Code, to amend Section 400 of the Family Code, to amend Sections 1785, 1824, 1893, 3102, 17335, 18415.2, 18495, 31713, and 34113 of, and to amend and repeal Section 16154 of, the Financial Code, to amend Sections 210, 309, 2357, 4341, 4755, 5934, 12150, and 12151 of the Fish and Game Code, to amend Sections 7581, 12647, 25564, 27601, 29733, 30801, 31503, 31621, 31622, 43039, 52514, 53564, and 59289 of the Food and Agricultural Code, to amend Sections 910, 945.3, 990.2, 1770, 3501.6, 6701, 11189, 11511, 12965, 12972, 12980, 15422, 18671, 23220, 23296, 23398, 23579, 24055, 24057, 25351.3, 25560.4, 26299.008, 26524, 26665, 26806, 26820, 26820.4, 26824, 26826, 26826.01, 26863, 27082, 27647, 27706, 28003, 29603, 29610, 31469, 41606, 50920, 53069.4, 53075.6, 53075.61, 53679, 68071, 68072, 68074.1, 68081, 68084, 68086, 68090.7, 68093, 68098, 68108, 68112, 68114, 68114.5, 68114.6, 68115, 68152, 68206.2, 68505, 68513, 68540, 68542, 68542.5, 68546, 68547, 68551, 68620, 68902, 69510, 69744.5, 69746.5, 69753, 69957, 70141, 71002, 71004, 71010, 71040, 71042.5, 71045, 71080, 71083, 71085, 71088, 71091, 71092, 71093, 71094, 71095, 71098, 71099, 71100, 71140, 71141, 71143, 71145, 71180.5, 71181, 71220, 71221, 71264, 71267, 71280, 71280.1, 71280.2, 71280.3, 71280.4, 71280.5, 71340, 71341, 71380, 71381, 71382, 71384, 71386, 72055, 72056, 72056.01, 72056.1, 72060, 72190, 72190.1, 72190.2, 72193, 72194.5, 72196, 72197, 72198, 72301, 72302, 72604, 75101, 75103, 75602, 77003, and 77007 of, to amend the headings of Chapter 6 (commencing with Section 71001) of Title 8 of, Article 7 (commencing with Section 71260) of Chapter 6 of Title 8 of, Article 10 (commencing with Section 71380) of Chapter 6 of Title 8 of, and Chapter 8 (commencing with Section 72000) of Title 8 of, to add Sections 3075 and 70140 to, to repeal and add Chapter 5.1

(commencing with Section 70200) of Title 8 of, to repeal Sections 29605, 68078, 68202.5, 68541, 69741.7, 71080.5, 71080.6, 71080.7, 71084, 71087, 71091.1, 71096, 71097, 71180.3, 71180.4, 71181.1, and 72785 of, and to repeal Chapter 7 (commencing with Section 71600) of Title 8 of, the Government Code, to amend Sections 664 and 667 of the Harbors and Navigation Code, to amend Sections 108580, 111880, 111895, 117070, and 117120 of the Health and Safety Code, to amend Section 12961 of the Insurance Code, to amend Sections 98, 98.2, 3352, 5710, and 6613 of the Labor Code, to amend Section 467 of the Military and Veterans Code, to amend Sections 190.9, 682, 691, 726, 737, 740, 804, 806, 808, 810, 813, 827, 829, 830.1, 832.4, 851.8, 859, 859a, 860, 869, 949, 977, 977.2, 977.4, 987.1, 987.2, 988, 990, 1000, 1007, 1009, 1010, 1016, 1038, 1050, 1130, 1150, 1187, 1191, 1203.1, 1203.1c, 1214, 1235, 1269, 1269b, 1278, 1281a, 1327, 1368.1, 1382, 1424, 1427, 1428, 1429, 1429.5, 1447, 1449, 1458, 1459, 1462, 1462.2, 1463, 1463.1, 1463.22, 1466, 1468, 1471, 1538.5, 2620, 2621, 2623, 3076, 4004, 4022, 4024.1, 4112, 13125, 13151, and 14154 of, to amend the headings of Title 9 (commencing with Section 1235) and Title 11 (commencing with Section 1427) of Part 2 of, Chapter 1 (commencing with Section 1427), Chapter 2 (commencing with Section 1466), and Chapter 3 (commencing with Section 1471) of, Title 11 of Part 2 of, to add Sections 859c and 1039 to, and to repeal Sections 97, 1309, and 1462.1 of, the Penal Code, to amend Sections 3357, 3769, and 5560 of the Public Resources Code, to amend Sections 1794, 5411.5, and 103100 of the Public Utilities Code, to amend Sections 6776, 6777, 19232, 19233, and 19280 of the Revenue and Taxation Code, to amend Sections 1785 and 1786 of the Unemployment Insurance Code, to amend Sections 2802.5, 9872.1, 10751, 11205, 14607.6, 27360, 40230, 40256, 40502, 40506.5, 40508.6, 42008, and 42203 of the Vehicle Code, to amend Sections 310 and 1100 of the Water Code, to amend Sections 245, 255, 601.4, 603.5, 656, 661, 742.16, 3050, 3051, 3200, and 11350.7 of the Welfare and Institutions Code, to amend Section 22 of Chapter 201 of the Statutes of 1895, and to amend Section 4 of Chapter 238 of the Statutes of 1903, relating to courts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2139, as amended, Lockyer. Courts: unification.

The California Constitution provides for the establishment of superior and municipal courts, as specified, in each county. SCA 4 of the 1995–96 Regular Session, as approved by the voters on June 2, 1998, provides for the abolition of municipal courts within a county, and for the establishment of a unified superior court for that county, upon a majority vote of superior court judges and a majority vote of municipal court judges within the county; provides for the qualification and election of the judges; and revises the number of jurors required in certain civil actions.

This bill would make various statutory changes to implement and conform to the unification of trial courts pursuant to the constitutional amendment. The bill would also make changes to various provisions of the Code of Civil Procedure, Financial Code, Government Code, Penal Code, and Vehicle Code to conform to changes proposed by AB 310, AB 1094, AB 1211, AB 1590, AB 1754, AB 1858, AB 1927, AB 2070, AB 2134, AB 2551, SB 117, SB 752, SB 1452, SB 1558, SB 1608, SB 1638, SB 1768, SB 1850, and SB 2168, respectively, contingent upon their prior enactment.

Existing law provides that, until January 1, 1999, a judge of a municipal court is deemed to have served under assignment in the superior court, under specified circumstances, for purposes of his or her compensation.

This bill would extend those provisions until January 1, 2000.

The bill would state that it is to take effect immediately as an urgency statute.

Vote: $^{2}/_{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 470.3 of the Business and Professions Code is amended to read:

470.3. (a) Except as provided in subdivision (b), a fee of not less than one dollar ($1) and not more than eight dollars ($8) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090,

the superior court or of a municipal court is held, or in which a municipal court has been authorized by statute but has not yet begun to operate. In any city constituting the county seat, any board of law library trustees may establish and maintain a branch of the law library at any location therein where four or more judges of the municipal court, or of the superior court in a county in which there is no municipal court, are designated to hold sessions more than 10 miles distant from the principal office of the court. In any city and county any board of law library trustees may establish and maintain branches of the law library. A branch is in all respects a part of the law library and is governed accordingly.

SEC. 8. Section 7028.2 of the Business and Professions Code is amended to read:

7028.2. A criminal complaint pursuant to this chapter may be brought by the Attorney General or by the district attorney or prosecuting attorney of any city, in any county in the state with jurisdiction over the contractor or employer, by reason of the contractor's or employer's act, or failure to act, within that jurisdiction. Any penalty assessed by the court shall be paid to the office of the prosecutor bringing the complaint.

SEC. 9. Section 17209 of the Business and Professions Code is amended to read:

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No

judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 10. Section 17536.5 of the Business and Professions Code is amended to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 11. Section 25762 of the Business and Professions Code is amended to read:

25762. All fines and forfeitures of bail imposed for a violation of this division and collected in any court other than a municipal court shall be paid to the county treasurer of the county in which the court is held.

All fines and forfeitures of bail imposed for violation of this division and collected upon conviction or upon forfeiture of bail, together with money deposited as bail, in any municipal court shall be deposited with the county treasurer of the county in which the court is situated and the money deposited shall be distributed and disposed of pursuant to Section 1463 of the Penal Code.

SEC. 12. Section 798.61 of the Civil Code is amended to read:

SEC. 508.

SEC. 481. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Senate Constitutional Amendment 4 of the 1995–96 Regular Session of the Legislature, as approved by the voters, changes the appellate jurisdiction of the courts and enables the municipal and superior courts in a county to unify. It is necessary that implementing measures be taken immediately so that an orderly transition of the court system will occur.

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STATE CAPITOL, ROOM 2032
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(916) 445-6671

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(510) 582-8800

FROM FREMONT, NEWARK
AND UNION CITY
(510) 790-3605

FROM SANTA CLARA COUNTY
(408) 286-0329

California State Senate

SENATE COMM
JUDICIARY

BILL LOCKYER
TENTH SENATORIAL DISTRICT
COUNTIES OF ALAMEDA AND SANTA CLARA

September 4, 1998

Honorable Pete Wilson
Governor, State of California
California State Capitol
Sacramento, CA 95814

Dear Governor Wilson:

I am writing to respectfully request your signature on SB 2139.

This bill implements recommendations of the Law Revision Commission to revise the codes for unification of the trial courts. Under SCA 4 (Proposition 220), which was approved by the voters at the June 1998 primary election, the municipal and superior courts in a county may unify on a majority vote of the judges. At last count, 48 county trial courts have already voted to unify.

At my request, the Law Revision Commission's recommendations preserve the status quo through the unification process. Under the bill, municipal court employees become employees of the unified superior court and procedures that apply to a case in municipal court continue to apply in similar cases in the unified superior court. This approach ensures that court procedures will be consistent for similar cases in unified and non-unified courts, and that lower filing fees and simpler procedures will continue to apply to smaller cases in a unified superior court.

In addition to providing implementing statutes for trial court unification under SCA 4, the bill also fixes obsolete references to the justice court. That court was abolished and merged with the municipal court in 1994.

The Law Revision Commission worked with the Judicial Council and dozens of other interested organizations and individuals to develop the consensus product that is before you. SB 2139 has no known opposition and was a "consent" item throughout the Legislative process.

Due to the large number of code sections affected by SB 2139, there were a number of other measures which conflicted with this bill. With the assistance of the Legislative Counsel we were able to address the large majority of these conflicts in SB 2139. Unfortunately, there is one measure, SB 1768 (Kopp) which is also before you for your consideration, that conflicts with one code section within SB 2139 and is not addressed in my bill. Senator Kopp's bill does contain language which would enact the changes proposed by both SB 2139 and SB 1768 if his bill is signed after mine. For that reason, I would respectfully request that if you intend to sign both my measure and Senator Kopp's, that you sign SB 1768 after SB 2139.

Thank you for your favorable consideration of SB 2139.

Sincerely,

BILL LOCKYER
State Senator
10th District

BL:nrb:jt

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

SB 2139

AMENDMENT DATE: August 28, 1998
RECOMMENDATION: Sign

BILL NUMBER: SB 2139
AUTHOR: B. Lockyer
RELATED BILLS: SCA 4 and 15 other bills

ASSEMBLY: 76/1
SENATE: 38/0

BILL SUMMARY: Courts: Unification

This bill, an urgency measure, would make conforming changes to various statutes to reflect court unification approval as contained in Proposition 220 which was passed by the electorate in June this year.

FISCAL SUMMARY

Proposition 220 allows consolidation of superior and municipal courts. The authorized court unification could result in additional General Fund costs of up to $4.2 million in 1998-99, and up to $5.1 million every year thereafter, to provide a superior court judge salary to municipal court judges (a difference of $9,320 per year). These costs will be in addition to the $2.1 million currently budgeted to provide this higher salary to municipal court judges in consolidated courts, which includes $944,000 for the first six months of 1998-99. However, these additional costs will only occur if courts in the county are unified (and 37 local systems are currently certified for unification). In addition, these costs will be offset by unknown savings from reduced administrative costs that would result from unification of the courts. Immediate costs would also be seen in superior courts receiving what were formerly municipal court cases and appeals, those additional caseload costs being offset by a reduction of expenses associated with unification.

COMMENTS

The Department of Finance recommends that this bill be signed because it would make technical changes to various statutes conforming current law to reflect the passage of Proposition 220 on the June 1998 ballot.

Before the passage of Proposition 220, the state trial courts consisted of superior courts and municipal courts. Justice courts were phased out earlier. Current court rules and various statutes reflect the bifurcated structure between superior and municipal courts.

(continued)

Analyst/Principal (0556) P. Reyes — Date 9/10/98
Program Budget Manager Stan Cubanski — Date 9/11/98
Department Assistant Director Diane M. Cummins — Date 9/11/98

COMMENTS (continued)

Proposition 220, approved by the electorate, allows consolidation of superior and municipal courts in a county upon approval by a majority of superior and municipal court judges in that same trial court system. Once approved, this change provides the local superior court jurisdiction over all matters handled by its superior and municipal courts, thus promoting municipal court judges to superior court level and dissolving the local municipal courts altogether.

This bill would make the following conforming changes to statutes:

- Create limited civil cases to replace the traditional civil municipal court cases that are limited to $25,000 in claim amount. These would be traditional municipal cases handled by the unified superior court and labeled as "limited civil cases" to distinguish their former municipal nature from regular superior court caseload.
- Provide clarification via a statutory extension of jurisdiction to appellate courts over all civil and criminal cases, except "limited civil cases." Limited civil cases would be excluded from the appellate court review because they are traditional municipal cases in nature. As such, a superior court hearing would be the appropriate appellate forum.
- Create superior courts that would handle appeals of limited civil cases.
- Create an appeal procedure for small claims cases by a superior court judge other than the judge who originally heard the case.
- Provide for trial court employees to be part of the unified court system at their current salary and position level.

Related Legislation

AB 310, (Kuehl, et. al.), Enrolled, would make various amendments to the Fair Employment and Housing Act (FEHA), including: 1) expand the definition of medical condition to include "genetic characteristics"; 2) define the term "supervisor"; 3) provide protection to individuals who work pursuant to a contract for an employer, as specified; 4) require employers to provide reasonable accommodation for pregnancy; 5) authorize the courts to require than an employer found in violation of the FEHA to conduct training for all employees, supervisors, and management, as specified; and 6) authorize the Fair Employment and Housing Commission (FEHC) to award expert witness fees to the prevailing party. The Department of Finance will defer to the State and Consumer Services Agency on whether AB 310 should be signed or vetoed.

AB 1094 (Assembly Judiciary), Enrolled, has been characterized as the Omnibus Civil Law and Procedure bill and would amend a number of laws regarding civil law and procedure. The Department of Finance recommends that this bill be signed.

(continued)

Related Legislation (continued)

AB 1211 (Assembly Public Safety), Enrolled, would require each police chief, or any other person in charge of a local law enforcement agency who is appointed on or after January 1, 1999, as a condition of continued employment, to complete the basic training course certified by the Commission on Peace Officer Standards and Training (POST) and to obtain the basic training certificate, as specified. The Department of Finance recommends that this bill be signed.

AB 1590 (Thomson), Chapter 406, Statutes of 1998, is the local government relief and trial court trailer bill and provide $92 million in state assistance to local governments by reducing the counties' general fund contribution to trial courts beginning in fiscal year 1999-00 per a leadership agreement among other provisions of relief to local governments.

AB 1754 (Havice), Chapter 61, Statutes of 1998, adds murder, as defined, to the offenses considered in scheduling a trial date and those cases constituting good cause for a continuance.

AB 1858 (Ackerman), Chapter 51, Statutes of 1998, provides that an order recusing the district attorney may either be reviewed by extraordinary writ or may be appealed.

AB 1927 (Morrow), Enrolled, would require a district attorney's office to notify victims of specified felony sex offenses that they have the right to request and receive notification from the sheriff if the person convicted of the offense has been ordered to be placed on probation, and the proposed date upon which the person will be released from the custody of the sheriff. This bill would authorize the court to order as a condition of probation, upon conviction of any sex offense requiring the individual to register as a sex offender, that the individual stay away from the victim and the victim's residence or place of employment, and that the individual have no contact with the victim in person, by telephone or electronic means, or by mail. This bill would also declare a misdemeanor offense for the failure of a person required to register as a sex offender to provide specified proof of residence. The Department of Finance is deferring to the Office of Criminal Justice Planning as to whether AB 1927 should be signed.

AB 2134 (Escutia), Enrolled, would require local exchange telephone corporations to annually provide their residential customers with information regarding their privacy rights with respect to telephonic solicitations. In addition, the bill would allow a lawsuit to be filed in the county in which the purchase of goods or services is made by a buyer via telephone or electronic transmission in response to a previous solicitation by a seller. The Department of Finance is recommending that this bill be signed.

AB 2551 (Migden), Enrolled, would increase juror compensation by $5 per day and would create pilot project in three counties to provide daily childcare expense reimbursement for jurors. The Department of Finance recommends that this bill be vetoed.

(continued)

BILL ANALYSIS/ENROLL[illegible] BILL REPORT--(CONTINUED)		Form DF-43
AUTHOR	AMENDMENT DATE	BILL NUMBER
B. Lockyer	August 28, 1998	SB 2139

Related Legislation (continued)

SB 117 (Kelley), Enrolled, would require collateral repossession of a vehicle and its assignment to be in writing, and would provide that a photocopy, fax or electronic copy shall have the same force and effect as the original document. The bill would also require that the borrower or any other person liable on the loan reimburse the lender for actual and necessary fees paid in connection with the repossession of a vehicle to a licensed repossession agency. This bill would allow *any* legal owner of a vehicle, who is a licensed financial institution legally operating in California (or the agent of that owner) to take possession and conduct the sale, with notification as specified. The Department of Finance is recommending that this bill be signed.

SB 1439 (Brulte), Enrolled, would revise and recast certain provisions of the Financial Code and repeal the California Credit Unions Share Guaranty Corporation. The Department of Finance is recommending that this bill be signed.

SB 1452 (McPherson), Chapter 159, Statutes of 1998, defines the term "consolidated municipal public safety agency," and provides that the chief, director, or chief executive officer of such an agency is a peace officer, subject to the same requirements as, and possessing the same rights, responsibilities, and privileges of, a municipal chief of police.

SB 1558 (McPherson) Chapter 98, Statutes of 1998, requires the court to dismiss a criminal action when a defendant is not brought to trial in a superior court within 60 days of the defendant's arraignment in superior court.

SB 1608 (Ayala), Chapter 201, Statutes of 1998, requires that a restitution order is effective immediately upon issuance which would allow immediate enforcement of the order if the convicted defendant is on parole or released.

SB 1768 (Kopp), Enrolled, would make it easier for the courts to identify and for victims to collect from the financial assets of criminals who have harmed them. The Department of Finance is deferring to the State and Consumer Services Agency as to whether this bill should be signed.

SB 1850 (Schiff), Chapter 208, Statutes of 1998, makes technical and clarifying changes on appeals from a judgment or order of an inferior court with respect to felonies, misdemeanors, or infractions, and only in certain limited cases.

Chaptering Sequence

To prevent chaptering out problems, SB 2139 includes 26 sections that double-join specific sections of SB 2139 with other legislation that amends, adds, or repeals the specific codes also affected by this bill. Finance recommends that SB 2139 be signed last. If a bill that is double-joined were vetoed, the affected section of SB 2139 would not become operative.

BILL ANALYSIS/ENROLL[redacted]BILL REPORT–(CONTINUED)[redacted] **Form DF-43**

AUTHOR	AMENDMENT DATE	BILL NUMBER
B. Lockyer	August 28, 1998	SB 2139

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 1998-1999	FC	1999-2000	FC	2000-2001	Fund Code
0250/Judiciary	SO	No		See Fiscal Summary					0001
0450/Trial Court	LA	No		See Fiscal Summary					0001

Judicial Council of California
Administrative Office of the Courts

Office of Governmental Affairs
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Telephone 916-653-2362 ◆ Fax 916-653-5183 ◆ TDD 800-735-2929

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

DENNIS B. JONES
Chief Deputy Director

RAY LEBOV
Director
Office of Governmental Affairs

September 14, 1998

Honorable Pete Wilson
Governor of California
State Capitol
Sacramento, CA 95814

Subject: Senate Bill 2139 (Lockyer) – Request for Signature

Dear Governor Wilson:

The Judicial Council supports Senate Bill 2139 and urges your signature on this bill. SB 2139 makes the changes necessary to conform statutory law to changes in the Constitution contained in Proposition 220 approved by the voters on June 2, 1998 by nearly a two-to-one margin. Proposition 220 allows the municipal and superior courts in each county to unify into a single superior court upon a vote of the judges of each court.

SB 2139 enacts technical and non-controversial revisions to affected statutory provisions pursuant to the enactment of Proposition 220. The California Law Revision Commission, with assistance from the Judicial Council, recommended additions and revisions to the California codes that are necessary for the full implementation of Proposition 220.

To date 49 courts have unified pursuant to the provisions of Proposition 220. The Judicial Council believes that trial court unification will result in increased efficiencies and, as has already been demonstrated by trial court coordination, provides the opportunity to use scarce resources in the most effective way possible. SB 2139 addresses procedural and administrative issues that are necessary for the full implementation of Proposition 220. There has been no opposition to the bill.

For these reasons, the Judicial Council supports Senate Bill 2139, and respectfully requests your signature on this measure.

Sincerely,

Anthony C. Williams
Legislative Advocate

AW:mm
cc: Honorable Bill Lockyer
Member of the Senate
George Dunn, Chief of Staff
Office of the Governor
Jeanne Cain, Legislative Secretary
Office of the Governor

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

Enrolled Bill Report

Bill Number	*Author*	*As Amended*
SB 2139	LOCKYER	AUGUST 28, 1998

Subject

COURTS: UNIFICATION

SUMMARY

This bill would make technical revisions to existing statutes necessary to implement court unification in counties which elect to do so. URGENCY.

ANALYSIS

The California Constitution provides that the judicial power of the state rests with the Supreme Court, the courts of appeal, and trial courts. The Constitution establishes a bi-jurisdictional system of trial courts composed of superior and municipal courts. Each county contains a superior court with one or more judges. Superior courts have original jurisdiction in all causes, except those given by statute to other trial courts. Generally, superior courts have jurisdiction over felony matters, civil actions over $25,000, family law matters, juvenile law cases and probate proceedings.

In addition, each county is divided into one or more municipal court districts. Municipal courts generally have the jurisdiction to handle misdemeanors and infractions, civil actions under $25,000, traffic violations (other than administrative parking citations), and preliminary hearings for felonies.

However, the voters recently approved Proposition 220 to allow superior and municipal courts to consolidate into one entity.

SB 2139 would enact numerous technical revisions to the laws governing court procedures in order to reflect the unification of superior and municipal courts that was approved by the voters, as follows.

Civil Cases

Under court unification, all civil cases will be under the jurisdiction of the superior court. To distinguish between lesser cases that used to go to municipal court, SB 2139 will establish a new "limited civil case."

SB 2139 would provide that an action or proceeding shall be considered a limited civil case if the amount of the demand, recovery or value of property in dispute does not exceed $25,000 If the courts in a particular county are not unified, the municipal court shall have jurisdiction over these actions. If the courts are unified, the superior court shall have jurisdiction. SB 2139 would also revise numerous code sections to reflect this new limited civil case.

Recommendation

SIGN

By	*Date*
	SEPTEMBER 15, 1998

Title

PAUL F MINER
DIRECTOR

The sponsor indicates that this section would ensure that there is no disparity between a party who appears in a unified superior court and a party who appears in a municipal court.

Judicial Arbitration

Existing law requires judicial arbitration for cases of less than $50,000 and in superior courts with 10 or more judges. For superior courts with fewer than 10 judges, judicial arbitration is permissive.

SB 2139 would also require judicial arbitration in unified superior courts with 18 or more judges.

The sponsor indicates that because unification will increase the number of superior court judges in a county, this provision is necessary to ensure that the counties that use judicial arbitration will continue to be able to do so.

Small Claims Court - Night Sessions

Under current law, each small claims division of a municipal court with four or more judges, must hold at least one night session or Saturday session each month.

SB 2139 would also require superior courts with at least seven judges to also conduct at least one night or Saturday session each month.

The sponsor indicates that this section will preserve this flexible schedule for all small claims division, including those in unified courts.

Criminal Cases

Upon unification, all criminal causes, including felonies, misdemeanors and infractions will fall under the jurisdiction of the unified superior court. However, existing law does not recognize such causes of action as felonies, misdemeanors, etc., but rather addresses them as to what jurisdiction they fall under.

SB 2139 would revise existing statutes by replacing references to matters "under the jurisdiction of a superior or municipal court" with the terms "felony" "misdemeanor" or "infraction" for each action. This will ensure that actions are assigned to the proper courts, regardless of whether or not the court is unified.

Appeals

Prior to court unification, superior courts acted as appellate courts for matters in municipal court, and the courts of appeal acted as the appellate courts for superior court matters.

SB 2139 would grant statutory authority to the existing courts of appeal to have jurisdiction over all civil and criminal cases, with the exception of the newly defined limited civil cases.

The bill would then create a new appellate division in the Superior courts to oversee limited civil cases, misdemeanors and infractions.

The sponsor believes that this provision will preserve the existing process for appeals for both nonunified and unified courts.

Employee Matters

Court Employees

Last year, AB 233 (Escutia, Ch. 850) was enacted to provide comprehensive reform to state funding of trial courts. One provision of AB 233 established the Task Force on Trial Court Employees. This task force is required to review numerous court employee issues, including issues that may affect court employees when courts unify. The Constitution provides that issues for court employees remains at status quo until the Legislature adopts legislation changing matters for court employees. SB 2139 does not change the status quo.

For example, there are currently hundreds of statutes which govern each county's court employees. These statutes govern the salaries, benefits, and classifications of municipal and superior court employees. This bill would NOT revise these provisions.

The sponsor indicates that it would be more prudent to revise these provisions on a case-by-case basis as courts unify.

Other Provisions

The remaining provisions are technical revisions.

For example, justice courts were abolished by the voters a few years ago because they were obsolete. However, the statutes have never been amended to reflect that justice courts no longer exist.

SB 2139 would revise many sections to delete the obsolete references to justice courts. In fact, about 75-80% of the amendments in SB 2139 simply remove the term "justice court" from the code sections.

COST

No appropriation. This bill would not create a state-mandated local program, nor result in any direct state costs since this bill would only make technical statutory changes.

ECONOMIC IMPACT

This bill would not appear to adversely impact the state's economic or business climate.

LEGAL IMPACT

This bill would not appear to result in any increased liability for the state, nor conflict with any federal or state laws.

LEGISLATIVE HISTORY

This bill is sponsored by the California Law Revision Commission (CLRC).

In 1996, the Governor signed SCA 4 (Lockyer, Ch. 36) which placed a measure before the voters to authorize the unification of municipal and superior courts upon a majority vote of the superior and municipal court judges on a county-by-county basis. The measure received approval by the voters as Proposition 220 in the June 2, 1998, primary election. The measure includes a number of provisions that are self-executing, and other provisions that apply only on unification of the municipal and superior courts in a county. Both the self-executing provisions and the other provisions of SCA 4 require conforming or implementing legislation.

The California Law Revision Commission (CLRC) was commissioned to review existing law and identify statutes that would require revisions upon approval of SCA 4. In addition, the "SCA 4 Implementation Working Group" was established by the Administrative Office of the Courts to assist the CLRC in reviewing statutes affected by the passage of SCA 4.

SB 2139 would enact numerous minor revisions to conform the code sections with Proposition 220. The revisions are technical in nature and noncontroversial.

To date, courts in 52 counties have unified. This bill cleans up the codes to conform to the unification process.

Support & Opposition

This bill is supported by the American Federation of State, County & Municipal Employees (AFSCME), AFL-CIO, Judicial Council, Service Employees International Union (SEIU), California State Association of Counties, California Peace Officers' Association, and the California Police Chiefs' Association.

Proponents believe that this bill will ensure smooth transition when unifying courts.

There is no known opposition to this bill.

VOTE:

Senate - 14 May 1998	Assembly - 13 August 1998
Ayes - 37	Ayes - 75
Noes - 0	Noes - 0

Concurrence - 31 August 1998
Ayes - 38
Noes - 0

RECOMMENDATION

The Office of Planning and Research recommends the Governor SIGN SB 2139.

This bill would make technical revisions to existing statutes necessary to implement trial court unification in counties which elect to do so.

This bill would conform statute with SCA 4 to ensure a smooth transition for courts when unification occurs.

The urgency clause was added so that courts may utilize these new provisions as soon as possible.

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Sacramento, California
September 15, 1998

Honorable Pete Wilson
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

S.B. 1768 KOPP. Criminal restitution.

SUMMARY: See Legislative Counsel's Digest on the bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

CONFLICTS: (1) This bill and Senate Bill No. 1608, which has been chaptered (Ch. 201, Stats. 1998), both amend Section 1202.4 of the Penal Code.

This bill contains provisions that make all of the changes in Section 1202.4 proposed by both bills if this bill is chaptered last (Secs. 5.5, 6.5, and 12, this bill).

Thus, if this bill is chaptered, the changes in Section 1202.4 of the Penal Code proposed by each bill will be given effect (Sec. 9605, Gov. C.).

(2) This bill and Senate Bill No. [illegible] which is also before the Governor, would both amend Section 1214 of the Penal Code.

Each bill contains provisions that make all of the changes in Section 1214 proposed by both bills if

both bills are chaptered (Secs. 7.5, 8.5, and 13, this bill; Secs. 395.5 and 501, S.B. 2139).

Thus, if both bills are chaptered, the changes in Section 1214 of the Penal Code proposed by each bill will be given effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel

Sheila R. Mohan

By
Sheila R. Mohan
Deputy Legislative Counsel

SRM:sjm

Two copies to:

Honorable Quentin L. Kopp,
Honorable Ruben S. Ayala, and
Honorable Bill Lockyer,
pursuant to Joint Rule 34.

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Sacramento, California
September 17, 1998

Honorable Pete Wilson
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

A.B. 2551 MIGDEN. Jurors.

SUMMARY: See Legislative Counsel's Digest on the bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

CONFLICTS: (1) This bill and Senate Bill No. 2139, which is also before the Governor, would both amend Section 215 of the Code of Civil Procedure.

This bill makes all of the changes in Section 215 proposed by both bills (Sec. 1, this bill). S.B. 2139 makes all of the changes proposed by both bills if both bills are chaptered and S.B. 2139 is chaptered last (Secs. 54.5 and 483, S.B. 2139).

Thus, if S.B. 2139 is chaptered and this bill is not chaptered, only the changes to Section 215 of the Code of Civil Procedure proposed by S.B. 2139 will be given effect. However, if either this bill is chaptered and S.B. 2139 is not chaptered, or if both bills are chaptered, the changes in Section 215 of the Code of Civil Procedure proposed by each bill will be given effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

(2) This bill and Senate Bill No. 2139, which is also before the Governor, would both amend Section 631 of the Code of Civil Procedure.

Each bill contains provisions that make all of the changes in Section 631 proposed by both bills if both bills are chaptered (Secs. 3.5 and 5, this bill; Secs. 83.5 and 485, S.B. 2139).

Thus, if both bills are chaptered, the changes in Section 631 of the Code of Civil Procedure proposed by each bill will be given effect. However, because S.B. 2139 would take effect immediately, if this bill is chaptered last, the changes proposed by S.B. 2139 will take effect immediately and on January 1, 1999, the additional changes proposed by this bill will take effect (Sec. 8., Art. IV, Cal. Const.; Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel

Clinton J. deWitt

By
Clinton J. deWitt
Deputy Legislative Counsel

CdeW:sjm

Two copies to Honorable Carole Migden and
Honorable Bill Lockyer,
pursuant to Joint Rule 34.

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Legislative Counsel of California

BION M. GREGORY

2139

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Sacramento, California
September 21, 1998

Honorable Pete Wilson
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

A.B. 310 KUEHL. Discrimination.

SUMMARY: See Legislative Counsel's Digest on the bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

CONFLICTS: (1) This bill, Senate Bill No. 654, which has been chaptered (Ch. 99, Stats. 1998), and Senate Bill No. 235, which is also before the Governor, all amend Section 12926 of the Government Code.

This bill, in addition to other changes made in Section 12926 of the Government Code, includes all of the changes in that section made by S.B. 654.

In addition, this bill contains provisions that make all of the changes in Section 12926 proposed by S.B. 235 and this bill if both bills are chaptered and this bill is chaptered last (Secs. 1.1 and 8, this bill). S.B. 235 does not contain these provisions. On the other hand, S.B. 235 contains provisions that purport to make all of the changes in the section proposed by S.B. 235 and S.B. 654 if both of those bills are chaptered and S.B. 235 is chaptered last (Secs. 2 and 3, S.B. 235). However, these provisions of S.B. 235 do not actually include all of the changes in the section proposed by S.B. 654.

S.B. 654 amended Section 12926 to, among other things, define "genetic characteristics" to mean "any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, ... " (Sec. 1, S.B. 654; emphasis added). In contrast, the provisions of S.B. 235 that purport to make all of the changes in the section proposed by both S.B. 235 and S.B. 654 include this same definition except the phrase "combination or" (Sec. 2, S.B. 235).

Thus, if both this bill and S.B. 235 are chaptered and this bill is chaptered last, all of the changes in Section 12926 of the Government Code proposed by all three bills will be given effect. However, if S.B. 235 is chaptered last, only the changes proposed by that bill and S.B. 654 in that section, except the phrase proposed by S.B. 654 described in the previous paragraph, will be given effect (Sec. 9605, Gov. C.).

[redacted] is also before the Governor, would both amend Section 12965 of the Government Code.

Each bill contains provisions that make all of the changes in Section 12965 proposed by both bills if both bills are chaptered (Secs. 4.1 and 9, this bill; Secs. 183.5 and 488, S.B. 2139).

Thus, if both bills are chaptered, the changes in Section 12965 of the Government Code proposed by each bill will be given effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel

Richard B. Weisberg

By
Richard B. Weisberg
Deputy Legislative Counsel

RBW:syl

Two copies to:

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pursuant to Joint Rule 34.

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SB 2139
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Honorable Pete Wilson
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

A.B. 105 WAYNE. Crimes.

To take effect immediately, urgency statute.

SUMMARY: See Legislative Counsel's Digest on the bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

CONFLICTS: (1) This bill, Assembly Bill No. 880, and Senate Bill No. 1715, all of which are before the Governor, would amend Section 368 of the Penal Code.

This bill contains provisions that make all of the changes in Section 368 proposed by two or more of these bills if two or more of the bills are chaptered and this bill is chaptered last (Secs. 7.1, 7.3, 7.5, and 29, this bill). A.B. 880 and S.B. 1715 do not contain these provisions.

Thus, if two or more of these bills are chaptered and this bill is chaptered last, all of the changes in Section 368 of the Penal Code proposed by the chaptered bills will be given effect. However, because

this bill would take effect immediately as an urgency statute, if either A.B. 880 or S.B. 1715 is chaptered last, the changes proposed by this bill will take effect immediately and remain in effect only until January 1, 1999, on which date the changes proposed by the last chaptered bill will take effect (Sec. 8, Art. IV, Cal. Const.; Sec. 9605, Gov. C.).

(2) This bill and Assembly Bill No. 1999, which is also before the Governor, would both amend Section 422.75 of the Penal Code.

This bill contains provisions that make all of the changes in Section 422.75 of the Penal Code proposed by both this bill and A.B. 1999 if both bills are chaptered and this bill is chaptered last (Secs. 8.5 and 30, this bill). A.B. 1999 does not contain these provisions.

Thus, if both bills are chaptered and this bill is chaptered last, all of the changes in Section 422.75 of the Penal Code proposed by each bill will be given effect. However, because this bill would take effect immediately as an urgency statute, if A.B. 1999 is chaptered last, the changes proposed by this bill will take effect immediately and remain in effect only until January 1, 1999, on which date the changes proposed by A.B. 1999 will take effect (Sec. 8, Art. IV, Cal. Const.; Sec. 9605, Gov. C.).

(3) This bill and Senate Bill No. 334, which has been chaptered (Ch. 189, Stats. 1998), both amend Section 1170.11 of the Penal Code.

This bill contains provisions that make all of the changes in Section 1170.11 proposed by both bills if both bills are chaptered and this bill is chaptered last (Secs. 11.5 and 31, this bill).

Thus, if this bill is chaptered, the changes in Section 1170.11 of the Penal Code proposed by this bill will take effect immediately as an urgency statute and remain in effect until January 1, 1999, on which date the changes proposed by each bill will be given effect (Sec. 9605, Gov. C.).

(4) This bill and Assembly Bill No. 357, which is also before the Governor, would both amend Section 1192.7 of the Penal Code.

This bill contains provisions that make all of the changes in Section 1192.7 proposed by A.B. 357 and this bill if both bills are chaptered and this bill is chaptered last (Secs. 13.5 and 32, this bill). A.B. 357 does not contain these provisions.

Thus, if both bills are chaptered and this bill is chaptered last, all of the changes in Section 1192.7 of the Penal Code proposed by each bill will be given effect. However, because this bill would take effect immediately as an urgency statute, if A.B. 357 is chaptered last, the changes proposed by this bill will take effect immediately and remain in effect only until January 1, 1999, on which date the changes proposed by A.B. 357 will take effect (Sec. 8, Art. IV, Cal. Const.; Sec. 9605, Gov. C.).

(5) This bill and Senate Bill No. 2139, which is also before the Governor, would both amend Section 1269b of the Penal Code.

This bill contains provisions that make all of the changes in Section 1269b of the Penal Code proposed by both this bill and S.B. 2139 if both bills are chaptered and this bill is chaptered last (Secs. 14.5 and 33, this bill). S.B. 2139 does not contain these provisions.

Thus, if both bills are chaptered and this bill is chaptered last, all of the changes in Section 1269b of the Penal Code proposed by each bill will be given effect. However, because each of the bills would take effect immediately as an urgency statute, if S.B. 2139 is chaptered last, the changes proposed by this bill will take effect immediately and remain in effect only until the changes proposed by S.B. 2139 take effect upon the enactment of that bill (Sec. 8, Art. IV, Cal. Const.; Sec. 9605, Gov. C.).

(6) This bill and Assembly Bill No. 1646, which has been chaptered (Ch. 96, Stats. 1998), both amend Section 3003 of the Penal Code.

This bill contains provisions that make all of the changes in Section 3003 proposed by both bills if both bills are chaptered and this bill is chaptered last (Secs. 17.5 and 34, this bill).

Thus, if this bill is chaptered, the changes in Section 3003 of the Penal Code proposed by this bill will take effect immediately as an urgency statute and

remain in effect until January 1, 1999, on which date the changes proposed by each bill will be given effect (Sec. 9605, Gov. C.).

(7) This bill and Assembly Bill No. 1290, which is also before the Governor, would both amend Section 12022.53 of the Penal Code and Sections 676 and 707 of the Welfare and Institutions Code.

This bill contains provisions that make all of the changes in Section 12022.53 of the Penal Code and Sections 676 and 707 of the Welfare and Institutions Code proposed by both this bill and A.B. 1290 if both bills are chaptered and this bill is chaptered last (Secs. 19.5, 20.5, 21.5, 36, 37, and 38, this bill). A.B. 1290 does not contain these provisions.

Thus, if both bills are chaptered and this bill is chaptered last, all of the changes in Section 12022.53 of the Penal Code and Sections 676 and 707 of the Welfare and Institutions Code proposed by each bill will be given effect. However, because this bill would take effect immediately as an urgency statute, if A.B. 1290 is chaptered last, the changes to these sections proposed by this bill will take effect immediately and remain in effect only until January 1, 1999, on which date the changes proposed by A.B. 1290 will take effect (Sec. 8, Art. IV, Cal. Const.; Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel

By
Aubrey LaBrie
Deputy Legislative Counsel

ALB:edz

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pursuant to Joint Rule 34.

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SB 2139

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REPORT ON ENROLLED BILL

A.B. 1094 — COMMITTEE ON JUDICIARY. Civil actions and proceedings.

SUMMARY: See Legislative Counsel's Digest on the bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: See Comments.

TITLE: Approved. See Comments.

COMMENTS: (1) Assembly Bill No. 1094 would, among other things, revise the designation of a member of the board of law library trustees in San Diego County from an attorney member of the "San Diego Bar Association" to an attorney member of the "San Diego County Bar Association" (Sec. 1), exempt a registered professional photocopier from registering as a process server, if various requirements are met (Sec. 2), provide that the Chief Justice may designate any municipal court judge as a member of the appellate department of the superior court in specified circumstances (Sec. 11), authorize the investment of funds in the hands of a receiver in interest-bearing accounts with specified financial institutions without an order of the court or the consent of the parties (Sec. 16), require the moving and supporting papers served prior to a civil hearing to be copies of the papers filed with the court (Sec. 18), add a clinical social worker to the definition of a

health practitioner for purposes of the Child Abuse and Neglect Reporting Act (Sec. 41), and require an appropriate local public agency to maintain a record of injuries from in-line skating on public property (Sec. 39).

The relating clause of A.B. 1094 is "civil actions and proceedings."

In this regard, Section 9 of Article IV of the California Constitution (hereafter the single subject rule) requires a statute to embrace only one subject, which is required to be expressed in the title of the statute, and makes void any part of the statute that embraces a subject that is not expressed in the title.

In Harbor v. Deukmejian (1987) 43 Cal.3d 1078, 1100 (hereafter Harbor), the California Supreme Court held, among other things, that Senate Bill No. 1379 of the 1983-84 Regular Session (hereafter S.B. 1379; Ch. 268, Stats. 1984), a bill "relating to fiscal affairs and making an appropriation therefor," which amended, repealed, or added approximately 150 sections contained in more than 20 California codes and legislative acts, was invalid as a violation of the single subject provision of Section 9 of Article IV of the California Constitution (Harbor, supra, at pp. 1095-1101).

In response to the contention that a statute with multiple subjects complies with Section 9 of Article IV of the California Constitution even if it includes numerous unrelated subjects, the court in Harbor asserted that the two aspects of Section 9 of Article IV of the California Constitution relating to the subject of an act and its title are independent provisions that serve separate purposes (Harbor, supra, at p. 1096). The court stated that a statute must comply with both the requirement that it be confined to one subject and with the command that this one subject be expressed in its title (Ibid.).

The court discussed various of its prior decisions that have applied the single subject rule. The court indicated that Evans v. Superior Court (1932) 215 Cal. 58 (hereafter Evans), although decided more than half a century ago, remains the leading authority on the construction of Section 9 of Article IV of the California Constitution (Harbor, supra, at p. 1097). One of the issues in Evans, supra, involved the adoption by the Legislature of the entire Probate Code in one enactment with a title declaring that it was an "act to

revise and consolidate the law relating to probate ... to repeal certain provisions of law therein revised and consolidated and therein specified; and to establish a Probate Code." The court in Evans, supra, held that the act contained only one subject, and that subject was expressed in its title (Id., at p. 63). In discussing that case, the court in Harbor, supra, made the following statements at pages 1097-1098:

> "The opinion, like those before and after it, confirms the liberal construction to be accorded the single subject rule. It states the following principles as the basis of its holding: 'Numerous provisions, having one general object, if fairly indicated in the title, may be united in one act. Provisions governing projects so related and interdependent as to constitute a single scheme may be properly included within a single act. [Citation omitted.] The legislature may insert in a single act all legislation germane to the general subject as expressed in its title and within the field of legislation suggested thereby. [Citation omitted.] Provisions which are logically germane to the title of the act and are included within its scope may be united. The general purpose of a statute being declared, the details provided for its accomplishment will be regarded as necessary incidents. [Citations omitted.] . . . A provision which conduces to the act, or which is auxiliary to and promotive of its main purpose, or has a necessary and natural connection with such purpose is germane within the rule.'"

In summarizing the holdings of the prior cases involving the single subject rule, the court in Harbor stated that a measure complies with the single subject rule if its provisions are either functionally related to one another or are reasonably germane to one another or the objects of the enactment (Harbor, supra, at p. 1100). In concluding that S.B. 1379 complied with neither of these standards, the court held that a bill that encompasses matters of excessive generality violates the purpose and intent of the single subject rule, and that "fiscal affairs" as the subject of the bill and "statutory adjustments" to the budget bill as its object suffers from that same defect (Ibid.).

Thus, in order for a statute to comply with the single subject rule, the provisions of the statute must be either functionally related to one another or reasonably germane to one another or the objects of the enactment.

In our opinion, not all of the provisions of A.B. 1094 relate to the title of the bill or are reasonably germane to one another in that they all relate to civil actions and proceedings. Accordingly, we conclude that A.B. 1094 would not embrace only one subject for purposes of the single subject rule (see Harbor, supra; Metropolitan Water Dist. v. Marquardt (1963) 59 Cal.2d 159, 173-174).

Therefore, it is our opinion that, if enacted, A.B. 1094 would violate Section 9 of Article IV of the California Constitution.

(2) The title of this bill indicates that Section 484.70 of the Code of Civil Procedure is amended. Section 14 of the bill, however, properly indicates that Section 484.070 of the Code of Civil Procedure is amended.

This error in the title will not affect the validity of the bill if it is chaptered, because the title need only indicate the subject matter of the bill (see Sec. 9, Art. IV, Cal. Const.; Metropolitan Water Dist. v. Marquardt, supra; Lawton v. Board of Medical Examiners (1956) 143 Cal.App.2d 256, 263; People v. Hess (1951) 107 Cal.App.2d 407, 423).

CONFLICTS: (1) This bill and Senate Bill No. 2139, which is also before the Governor and would take effect immediately as an urgency statute, would both affect various sections of various codes, as follows:

(a) This bill and S.B. 2139 would both amend Section 77 of the Code of Civil Procedure.

Each bill contains provisions that make all of the changes in Section 77 proposed by both bills if both bills are chaptered (Secs. 11.5 and 43, this bill; Secs. 21.5 and 481, S.B. 2139).

Thus, if both bills are chaptered, the changes in Section 77 of the Code of Civil Procedure proposed by each bill will be given effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

(b) This bill and S.B. 2139 would both amend Section 200 of the Code of Civil Procedure.

Each bill contains provisions that make all of the changes in Section 200 proposed by both bills if both bills are chaptered (Secs. 13.5 and 44, this bill; Secs. 53.5 and 482, S.B. 2139).

Thus, if both bills are chaptered, the changes in Section 200 of the Code of Civil Procedure proposed by each bill will be given effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

(c) This bill and S.B. 2139 would both amend Section 400 of the Family Code.

This bill contains provisions that make all of the changes in Section 400 proposed by S.B. 2139 and this bill if both bills are chaptered and this bill is chaptered last (Secs. 31.5 and 46, this bill). S.B. 2139 does not contain these provisions.

Thus, if both bills are chaptered and S.B. 2139 is chaptered last, only the changes in Section 400 of the Family Code proposed by S.B. 2139 will be given effect. However, because S.B. 2139 would take effect immediately, if this bill is chaptered last, the changes proposed by S.B. 2139 in that section will take effect immediately and remain in effect until January 1, 1999, on which date the changes proposed by both bills will take effect (Sec. 8, Art. IV, Cal. Const.; Sec. 9605, Gov. C.).

(d) This bill and S.B. 2139 would both amend Section 68152 of the Government Code.

Each bill contains provisions that make all of the changes in Section 68152 proposed by both bills if both bills are chaptered (Secs. 34.5 and 47, this bill; Secs. 236.5 and 492, S.B. 2139).

Thus, if both bills are chaptered, the changes in Section 68152 of the Government Code proposed by each bill will be given effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

(2) This bill, and Assembly Bill No. 2150 and Senate Bill No. 2145, which are also before the Governor, would all amend Section 2025 of the Code of Civil Procedure.

This bill and A.B. 2150 contain provisions that make all of the changes in Section 2025 proposed by A.B. 2150, S.B. 2145, and this bill if all three bills are chaptered (Secs. 2, 3, 4, and 5, A.B. 2150; Secs. 22.1, 22.2, 22.3, and 45, this bill). S.B. 2145 does not contain these provisions; however, S.B. 2145 includes most of the changes made by this bill.

Thus, if two or more bills are chaptered and this bill or A.B. 2150 is chaptered last, the changes in Section 2035 of the Code of Civil Procedure made by each bill will be given effect regardless of the order of chaptering (Sec. 9605, Gov. C.). However, if S.B. 2145 is chaptered last, only the changes proposed by that bill in Section 2025 will be given effect (Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel

By
Jack G. Zorman
Deputy Legislative Counsel

JGZ:edz

Two copies to:

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Committee on Judiciary,
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Honorable Bill Lockyer, and
Honorable Ken Maddy,
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Sacramento, California
September 28, 1998

Honorable Pete Wilson
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

S.B. 2139 LOCKYER. Courts: unification.

To take effect immediately, urgency statute.

SUMMARY: See Legislative Counsel's Digest on the bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

CONFLICTS: (1) This bill and Assembly Bill No. 310, which is also before the Governor, would both amend Section 12965 of the Government Code.

Each bill contains provisions that make all of the changes in Section 12965 proposed by both bills if both bills are chaptered and A.B. 310 is chaptered last (Secs. 183.5 and 488, this bill; Secs. 4.1 and 9, A.B. 310).

Thus, if both bills are chaptered, the changes in Section 12965 of the Government Code proposed by each bill will be given effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

(2) This bill and Assembly Bill No. 1094, which is also before the Governor, would both affect various sections of various codes, as follows:

(a) This bill and Assembly Bill No. 1094, which is also before the Governor, would both amend Section 77 of the Code of Civil Procedure.

Each bill contains provisions that make all of the changes in Section 77 proposed by both bills if both bills are chaptered (Secs. 21.5 and 481, this bill; Secs. 11.5 and 43, A.B. 1094).

Thus, if both bills are chaptered, the changes in Section 77 of the Code of Civil Procedure proposed by each bill will be given effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

(b) This bill and A.B. 1094, which is also before the Governor, would both amend Section 200 of the Code of Civil Procedure.

Each bill contains provisions that make all of the changes in Section 200 proposed by both bills if both bills are chaptered (Secs. 53.5 and 482, this bill; Secs. 13.5 and 44, A.B. 1094).

Thus, if both bills are chaptered, the changes in Section 200 of the Code of Civil Procedure proposed by each bill will be given effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

(c) This bill and A.B. 1094, which is also before the Governor, would both amend Section 400 of the Family Code.

A.B. 1094 contains provisions that make all of the changes in Section 400 proposed by A.B. 1094 and this bill if both bills are chaptered and A.B. 1094 is chaptered last (Secs. 31.5 and 46, A.B. 1094). This bill does not contain these provisions.

Thus, if both bills are chaptered and this bill is chaptered last, only the changes in Section 400 of the Family Code proposed by this bill will be given effect. However, because this bill would take effect immediately, if A.B. 1094 is chaptered last the changes proposed by this bill in that section will take effect immediately and remain in effect only until January 1, 1999, on which date the changes proposed by both bills

will take effect (Sec. 8, Art. IV, Cal. Const.; Sec. 9605, Gov. C.).

(d) This bill and Assembly Bill No. 1094, which is also before the Governor, would both amend Section 68152 of the Government Code.

Each bill contains provisions that make all of the changes in Section 68152 proposed by both bills if both bills are chaptered (Secs. 236.5 and 492, this bill; Secs. 34.5 and 47, A.B. 1094).

Thus, if both bills are chaptered, the changes in Section 68152 of the Government Code proposed by each bill will be given effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

(3) This bill and Assembly Bill No. 1211, which has been chaptered (Ch. 66, Stats. 1998), both amend Section 832.4 of the Penal Code.

This bill contains provisions that make all of the changes in Section 832.4 proposed by both bills if this bill is chaptered last (Secs. 366.5 and 496, this bill).

Thus, if this bill is chaptered, the changes in Section 832.4 of the Penal Code proposed by each bill will be given effect (Sec. 9605, Gov. C.).

(4) This bill and Assembly Bill No. 1590, an urgency statute, which has been chaptered (Ch. 406, Stats. 1998) would both amend sections of the Government Code, as follows:

(a) This bill and A.B. 1590 both amend Section 26863 of the Government Code.

The changes in Section 26863 proposed by each bill are different. This bill does not contain provisions that would make all of the changes in the section proposed by both bills if both bills are chaptered.

This bill would amend Section 26863 to delete references to justice courts with respect to court recordkeeping and document storage.

S.B. 1590 amended the section to change references in that section to automating the county clerk and municipal and justice court recordkeeping and

document storage to refer, instead, to automating trial court recordkeeping and document storage.

Thus, if this bill is chaptered, on the effective date of this bill, only the changes in that section proposed by this bill will be given effect (Sec. 9605, Gov. C.).

(b) This bill and A.B. 1590 both amend Section 68090.7 of the Government Code.

This bill contains provisions that make all of the changes in Section 68090.7 proposed by both bills if this bill is chaptered last (Secs. 227.5 and 491, this bill).

Thus, if this bill is chaptered, the changes in Section 68090.7 of the Government Code proposed by each bill will be given effect (Sec. 9605, Gov. C.).

(5) This bill and Assembly Bill No. 1754, which has been chaptered (Ch. 61, Stats. 1998), both amend Section 1050 of the Penal Code.

This bill contains provisions that make all of the changes in Section 1050 proposed by both bills if this bill is chaptered last (Secs. 388.5 and 497, this bill).

Thus, if this bill is chaptered, the changes in Section 1050 of the Penal Code proposed by each bill will be given effect (Sec. 9605, Gov. C.).

(6) This bill and Assembly Bill No. 1858, which has been chaptered (Ch. 51, Stats. 1998), both amend Section 1424 of the Penal Code.

This bill contains provisions that make all of the changes in Section 1424 proposed by both bills if this bill is chaptered last (Secs. 406.5 and 504, this bill).

Thus, if this bill is chaptered, the changes in Section 1424 of the Penal Code proposed by each bill will be given effect (Sec. 9605, Gov. C.).

(7) This bill, Senate Bill No. 1608, which has been chaptered (Ch. 201, Stats. 1998), and Assembly Bill No. 1927, which is also before the Governor, would all amend Section 1203.1 of the Penal Code.

This bill contains provisions that make all of the changes in Section 1203.1 proposed by S.B. 1608, A.B. 1927, and this bill if all three bills or any combination thereof are chaptered and this bill is chaptered last (Secs. 393.4, 393.5, 499, and 500, this bill). A.B. 1927 does not contain these provisions, but does incorporate the changes in Section 1203.1 made by S.B. 1608 (Sec. 4, S.B. 1608).

Thus, if both this bill and A.B. 1927 are chaptered and this bill is chaptered last, the changes in Section 1203.1 proposed by all three bills will take effect (Sec. 8, Art. IV, Cal. Const.; Sec. 9605, Gov. C). However, if A.B. 1927 is chaptered last, only the changes in Section 1203.1 proposed by that bill and S.B. 1608 will be given effect (Sec. 9605, Gov. C.).

(8) This bill and Assembly Bill No. 2134, which has been chaptered (Ch. 473, Stats. 1998), both amend Section 395 of the Code of Civil Procedure.

This bill contains provisions that make all of the changes in Section 395 proposed by both bills if this bill is chaptered last (Secs. 62.5 and 484, this bill).

Thus, if this bill is chaptered, the changes in Section 395 of the Code of Civil Procedure proposed by each bill will be given effect (Sec. 9605, Gov. C.).

(9) This bill and Assembly Bill No. 2551, which is also before the Governor, would both amend sections of the Government Code, as follows:

(a) This bill and A.B. 2551 would both amend Section 215 of the Code of Civil Procedure.

This bill contains provisions that make all of the changes in Section 215 proposed by A.B. 2551 and this bill if both bills are chaptered and this bill is chaptered last (Secs. 54.5 and 483, this bill). A.B. 2551 makes all of the changes in Section 215 proposed by both bills (Sec. 1, A.B. 2551).

Thus, if this bill is chaptered and A.B. 2551 is not chaptered, only the changes to Section 215 of the Code of Civil Procedure proposed by this bill will be given effect. However, if either A.B. 2551 is chaptered and this bill is not chaptered, or if both bills are chaptered, the changes in Section 215 of the Code of Civil Procedure proposed by each bill will be given

effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

(b) This bill and Assembly Bill No. 2551, which is also before the Governor, would both amend Section 631 of the Code of Civil Procedure.

Each bill contains provisions that make all of the changes in Section 631 proposed by both bills if both bills are chaptered (Secs. 485 and 831.5, this bill; Secs. 3.5 and 5, A.B. 2551).

Thus, if both bills are chaptered, the changes in Section 631 of the Code of Civil Procedure proposed by each bill will be given effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

(10) This bill and Senate Bill No. 117, which is also before the Governor, would both amend Section 14607.6 of the Vehicle Code.

This bill contains provisions that make all of the changes in Section 14607.6 proposed by S.B. 117 and this bill if both bills are chaptered and this bill is chaptered last (Secs. 457.5 and 506, this bill).[1] S.B. 117 does not contain these provisions.

Thus, if both bills are chaptered and this bill is chaptered last, all of the changes in Section 14607.6 of the Vehicle Code proposed by each bill will be given effect. However, because this bill would take effect immediately, if S.B. 117 is chaptered last, the changes proposed by this bill will take effect immediately and remain in effect only until January 1, 1999, on which date the changes proposed by S.B. 117 in that section will be given effect (Sec. 8, Art. IV, Cal. Const.; Sec. 9605, Gov. C.).

(11) This bill and Senate Bill No. 1452, which has been chaptered (Ch. 159, Stats. 1998), both amend Section 830.1 of the Penal Code.

This bill contains provisions that make all of the changes in Section 830.1 proposed by both bills if

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[1] Although Section 506 of this bill refers to Section 14607.5 of the Vehicle Code rather than Section 14607.6, no Section 14607.5 of the Vehicle Code exists, and it is clear from the context that Section 506 of this bill is intended to refer to Section 14706.6 of the Vehicle Code (see Sec. 457.5, this bill).

this bill is chaptered last (Secs. 365.5 and 495, this bill).

Thus, if this bill is chaptered, the changes in Section 830.1 of the Penal Code proposed by each bill will be given effect (Sec. 9605, Gov. C.).

(12) This bill and Senate Bill No. 1558, which has been chaptered (Ch. 98, Stats. 1998), both amend Section 1382 of the Penal Code.

This bill contains provisions that make all of the changes in Section 1382 proposed by both bills if this bill is chaptered last (Secs. 405.5 and 503, this bill).

Thus, if this bill is chaptered, the changes in Section 1382 of the Penal Code proposed by each bill will be given effect (Sec. 9605, Gov. C.).

(13) This bill and Senate Bill No. 1768, which is also before the Governor, would both amend Section 1214 of the Penal Code.

Each bill contains provisions that make all of the changes in Section 1214 proposed by both bills if both bills are chaptered (Secs. 395.5 and 501, this bill; Secs. 7.5, 8.5, and 13, S.B. 1768).

Thus, if both bills are chaptered, the changes in Section 1214 of the Penal Code proposed by each bill will be given effect without regard to the order of chaptering (Sec. 9605, Gov. C.).

(14) This bill and Senate Bill No. 1850, which has been chaptered (Ch. 208, Stats. 1998), both amend Section 1466 of the Penal Code.

This bill contains provisions that make all of the changes in Section 1466 proposed by both bills if this bill is chaptered last (Secs. 424.5 and 505, this bill).

Thus, if this bill is chaptered, the changes in Section 1466 of the Penal Code proposed by each bill will be given effect (Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel

By
Clinton J. deWitt
Deputy Legislative Counsel

CdeW:cob

Two copies to:

Honorable Bill Lockyer,
Honorable Dick Ackerman,
Honorable Ruben S. Ayala,
Honorable Martha M. Escutia (Chair),
Committee on Judiciary,
Honorable Sally M. Havice,
Honorable David G. Kelley,
Honorable Quentin L. Kopp,
Honorable Sheila James Kuehl,
Honorable Bruce McPherson,
Honorable Carole Migden,
Honorable Bill Morrow,
Honorable Don Perata (Chair),
Committee on Public Safety,
Honorable Adam Schiff, and
Honorable Helen Thomson,
pursuant to Joint Rule 34.

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 1171
AUTHOR : Johnson
TOPIC : Public accommodations.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

BILL HISTORY
1999
Sept. 7 Chaptered by Secretary of State. Chapter 354, Statutes of 1999.
Sept. 7 Approved by Governor.
Aug. 26 Enrolled. To Governor at 2 p.m.
Aug. 24 Senate concurs in Assembly amendments. (Ayes 40. Noes 0. Page 2616.) To enrollment.
Aug. 23 To Special Consent Calendar.
Aug. 19 In Senate. To unfinished business.
Aug. 19 Read third time. Passed. (Ayes 76. Noes 0. Page 3312.) To Senate.
July 15 Read second time. To Consent Calendar.
July 14 From committee: Do pass. To Consent Calendar. (Ayes 15. Noes 0.)
June 30 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
June 17 To Com. on JUD.
May 24 In Assembly. Read first time. Held at Desk.
May 24 Read third time. Passed. (Ayes 39. Noes 0. Page 1310.) To Assembly.
May 19 Read second time. Amended. To third reading. (Corrected May 28.) To Special Consent Calendar.
May 18 From committee: Do pass as amended. (Ayes 7. Noes 0. Page 1127.)
May 6 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
Apr. 21 Set for hearing May 11.
Apr. 12 Hearing postponed by committee. Set for hearing April 20.
Apr. 12 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
Mar. 25 Set for hearing April 13.
Mar. 18 To Com. on JUD.
Mar. 1 Read first time.
Feb. 28 From print. May be acted upon on or after March 30.
Feb. 26 Introduced. To Com. on RLS. for assignment. To print.

SENATE BILL No. 1171

Introduced by Senator Johnson

February 26, 1999

An act to amend Section 1863 of the Civil Code, and to amend Section 365 of the Penal Code, relating to public accommodations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1171, as introduced, Johnson. Public accommodations.

Existing law requires every keeper of a hotel, inn, boardinghouse, or lodginghouse to post, as specified, a printed copy of the rate or range of rates by the day for lodging, as well as a printed copy of these provisions of existing law.

This bill would extend the applicability of this provision to every similar transient lodging establishment.

Existing law makes it a misdemeanor for a person, and every agent or officer of any corporation, carrying on business as an innkeeper, or as a common carrier of passengers to refuse, without just cause, to receive and entertain any guest, or to receive and carry any passenger.

This bill would extend the applicability of this provision to every other business entity and agent or officer of the business entity carrying on business as an innkeeper, or as a common carrier of passengers. By expanding the definition of a crime, this bill would impose a state-mandated local program.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 1863 of the Civil Code is amended to read:

1863. (a) Every keeper of a hotel, inn, boardinghouse ~~or~~, lodginghouse, *or similar transient lodging establishment,* shall post in a conspicuous place in the office or public room, and in every bedroom of ~~said hotel, boardinghouse, inn, or lodginghouse~~ *the transient lodging establishment*, a printed copy of this section, and a statement of *the* rate or range of rates by the day for lodging.

(b) No charge or sum shall be collected or received for any greater sum than is specified in subdivision (a). For any violation of this subdivision, the offender shall forfeit to the injured party one hundred dollars ($100) or three times the amount of the sum charged in excess of what ~~he~~ *the keeper* is entitled to, whichever is greater. There shall be no forfeiture under this subdivision unless notice be given of the overcharge to ~~such~~ *the* keeper within 30 days after payment of ~~such~~ *the* charges and ~~such~~ *the* keeper shall fail or refuse to make proper adjustment of ~~such~~ *the* overcharge.

SEC. 2. Section 365 of the Penal Code is amended to read:

365. Every person, *including a corporation or other entity,* and every agent or officer ~~of any corporation~~ *thereof,* carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and ~~entertain~~ *accommodate* any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred

by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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AMENDED IN SENATE APRIL 12, 1999

SENATE BILL No. 1171

Introduced by Senator Johnson

February 26, 1999

~~An act to amend Section 1863 of the Civil Code, and to~~ *An act to add Section 17052 to the Business and Professions Code, to add Section 1865 to the Civil Code, and to* amend Section 365 of the Penal Code, relating to public accommodations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1171, as amended, Johnson. Public accommodations.

Existing law ~~requires every keeper~~ *regulates the operations* of a hotel, inn, boardinghouse, or lodginghouse ~~to post~~, as specified~~, a printed copy of the rate or range of rates by the day for lodging, as well as a printed copy of these provisions of existing law~~.

This bill would ~~extend the applicability of this provision to every similar transient lodging establishment~~ *authorize an innkeeper to evict a guest who stays beyond the contractual period, as specified. This bill would also authorize a hotel, as defined, to prohibit the distribution of handbills on the premises, as specified, and would make a prohibited distribution of handbills on the premises punishable by a civil penalty of not more than $2,500*.

Existing law makes it a misdemeanor for a person, and every agent or officer of any corporation, carrying on business as an innkeeper~~, or as a common carrier of passengers~~ to refuse, without just cause, to receive and entertain any guest~~, or to receive and carry any passenger~~.

This bill would ~~extend the applicability of this provision to every other business entity and agent or officer of the business entity carrying on business as an innkeeper, or as a common carrier of passengers. By expanding the definition of a crime, this bill would impose a state-mandated local program~~ *make certain exceptions with respect to guests who are minors, as specified.*

~~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.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: ~~yes~~ *no*.

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

~~SECTION 1. Section 1863 of the Civil Code is amended to read:~~

~~1863. (a) Every keeper of a hotel, inn, boardinghouse , lodginghouse, or similar transient lodging establishment, shall post in a conspicuous place in the office or public room, and in every bedroom of the transient lodging establishment, a printed copy of this section, and a statement of the rate or range of rates by the day for lodging.~~

~~(b) No charge or sum shall be collected or received for any greater sum than is specified in subdivision (a). For any violation of this subdivision, the offender shall forfeit to the injured party one hundred dollars ($100) or three times the amount of the sum charged in excess of what the keeper is entitled to, whichever is greater. There shall be no forfeiture under this subdivision unless notice be given of the overcharge to the keeper within 30 days after payment of the charges and the keeper shall fail or refuse to make proper adjustment of the overcharge.~~

~~SEC. 2. Section 365 of the Penal Code is amended to read:~~

~~365. Every person, including a corporation or other entity, and every agent or officer thereof, carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and accommodate any guest, or to receive and carry any passenger, is guilty of a misdemeanor.~~

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

SECTION 1. Section 17052 is added to the Business and Professions Code, to read:

17052. (a) For purposes of this section, "hotel" means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment as to which the predominant relationship between the owner or operator and the occupants thereof is that of innkeeper and guest. For these purposes, the existence of other relationships between the owner or operator thereof and some of its occupants shall be irrelevant.

(b) Every person (hereinafter "distributor") who deposits, places, throws, scatters, casts, or otherwise distributes any handbill to any individual guest rooms in any hotel, including, but not limited to, placing, throwing, leaving, or attaching any handbill adjacent to, upon, or underneath any guest room door, doorknob, or guest room entryway, where either the owner, manager, or person in charge or control of the hotel has expressed objection to such handbill distribution, either orally to the distributor or by the posting of a sign or other notice in a conspicuous place within the lobby area and at all points of access from the exterior of the premises to guest room areas indicating that handbill distribution is prohibited, or the distributor has received written notice pursuant to

subdivision (d) that the owner, manager, or person in charge or control of the hotel has expressed objection to the distribution of handbills to guest rooms in the hotel, is punishable by a civil penalty of not more than two thousand five hundred dollars ($2,500).

(c) Every person (hereinafter "contractor") who causes or directs any other person, firm, business, or entity to distribute, or cause the distribution of, any handbill to any individual guest rooms in any hotel in violation of subdivision (b) where such contractor has received written notice from the owner, manager, or person in charge or control of the hotel objecting to the distribution of handbills to individual guest rooms in the hotel, is punishable by a civil penalty of not more than two thousand five hundred dollars ($2,500).

(d) Every contractor who causes or directs any distributor, to distribute, or cause the distribution of, any handbills to any individual guest rooms in any hotel, where the contractor has received written notice from the owner, manager, or person in charge or control of the hotel, or from any other contractor or intermediary, objecting to the distribution of handbills to individual guest rooms in the hotel and has failed to provide a written copy of such notice to each distributor prior to the commencement of distribution by the distributor or by any person hired or retained by the distributor for that purpose, or within 24 hours following the receipt of such notice by the contractor if received after the commencement of distribution, and has failed to instruct and demand any distributor to not distribute, or to cease the distribution of, the handbills to individual guest rooms in any hotel for which such a notice has been received, is punishable by a civil penalty of not more than two thousand five hundred dollars ($2,500).

(e) Any written notice given, or caused to be given, by the owner, manager, or person in charge or control of any hotel pursuant to or required by this section shall be deemed to be in full force and effect until such time as the notice is revoked in writing.

(f) Nothing in this section shall be deemed to prohibit the distribution of a handbill to guest rooms in any hotel where the distribution has been requested or approved in writing by the owner, manager, or person in charge or control of the hotel, or to any individual guest room when the occupant thereof has affirmatively requested or approved the distribution of the handbill during the duration of the guest's occupancy.

(g) Section 17100 shall not apply to this section.

SEC. 2. Section 1865 is added to the Civil Code, to read:

1865. (a) In addition to, and not in derogation of, any other provision of law, every person, and every agent or officer of any corporation or other business entity carrying on business as an innkeeper shall have the right to evict a guest if the guest refuses or otherwise fails to fully depart the premises at or before the innkeeper's posted check-out time on the date agreed to by the guest at the time that he or she was provided accommodations by the innkeeper, and the innkeeper needs that guest's room to accommodate an arriving person with a contractual right thereto.

(b) In such a case, the innkeeper may enter the guest's guest room, take possession of the guest's property, rekey the door to the guest room, and make the guest room available to a new guest. The evicted guest shall be entitled to immediate possession of his or her property upon request therefor, subject to the rights of the innkeeper pursuant to Sections 1861 to 1861.28, inclusive. Nothing in this subdivision shall be deemed to abrogate or diminish in any manner whatsoever the respective rights and liabilities of the innkeeper and any such guest pursuant to Section 1859 or 1860 with respect to the guest's property.

SEC. 3. Section 365 of the Penal Code is amended to read:

365. ~~Every person, and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to~~

~~receive and carry any passenger, is guilty of a misdemeanor.~~ *(a) Every person, and every agent or officer of any corporation or other business entity carrying on business as a common carrier of passengers who refuses, without just cause or excuse, to receive and carry any passenger is guilty of a misdemeanor.*

(b) Except as provided in subdivision (c), every person, and every agent or officer of any corporation or other business entity carrying on business as an innkeeper who refuses, without just cause or excuse, to receive and accommodate any guest is guilty of a misdemeanor.

(c) As pertains to a guest who is a minor, the rights of an innkeeper include, but are not limited to, the following:

(1) Where a minor unaccompanied by an adult seeks accommodations, the innkeeper may require a parent or guardian of the minor, or another responsible adult, to assume, in writing or in a manner otherwise reasonably acceptable to the innkeeper, full liability for any and all proper charges and other obligations incurred by the minor for accommodations, food and beverages, and other services provided by or through the innkeeper, as well as for any and all injuries or damage caused by the minor to any person or property.

(2) Where a minor 12 years of age or younger is accompanied by an adult, the innkeeper may require the adult to agree, in writing or in a manner otherwise reasonably acceptable to the innkeeper, not to leave the minor unattended on the innkeeper's premises at any time during their stay, and to monitor and control the minor's behavior so as to preserve the peace and quiet of the innkeeper's other quests and to prevent any injury to any person and damage to any property.

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Heim, Noack, Kelly & Spahnn
GOVERNMENTAL RELATIONS

1121 L Street, Suite 100
Sacramento, CA 95814
Tel. (916) 442-4584
Fax (916) 441-4925

April 15, 1999

TO: **Members, Senate Committee on Judiciary**

FROM: **Ralph Heim, Russell Noack, Anne Kelly, Les Spahnn and John Caldwell**

RE: **Senate Bill 1171 (Johnson) - S U P P O R T**
Set for Hearing 4/20/99

On behalf of our client, the California Hotel & Motel Association, we respectfully urge your favorable consideration of Senate Bill 1171, by Senator Ross Johnson, that will be considered by the Committee on April 20th.

Senate Bill 1171, which is sponsored by the California Hotel & Motel Association, addresses three specific issues related to lodging establishments. Each of these issues are summarized below.

The first issue addressed in Senate Bill 1171 relates to the problem associated with guests that refuse or otherwise fail to fully depart their guest room at or before the lodging establishment's posted check-out time. This is a serious problem for lodging establishments that need such rooms to accommodate an arriving person with a contractual right thereto.

To respond to this problem, SB 1171 permits an innkeeper to enter the guest's room, take possession of the guest's property, re-key the guest room door, and make the room available to a new guest. The evicted guest would be entitled to take immediate possession of their property.

The second issue addressed in SB 1171 relates to problems associated with minors seeking lodging accommodations when unaccompanied by an adult. The bill permits an innkeeper to require a parent, guardian or another responsible adult, to assume, in writing, full liability for any and all proper charges and other obligations incurred by the minor, including, but not limited to, accommodations, food and beverage, and other services provided by or through the innkeeper, as well as for any and all injuries or damages caused by the minor to any person or property.

Additionally, where a minor is accompanied by an adult, the innkeeper may require the adult to agree in writing not to leave the minor unattended on the innkeeper's premises at any time during their stay, and to monitor and control the minor's behavior so as to preserve the peace and quiet of the other guests and to prevent any injury to any person and damage to any property.

Finally, SB 1171 addresses a serious and growing problem associated with unauthorized persons entering lodging establishments for the purpose of distributing handbills to individual guest rooms.

SB 1171 sets forth a process wherein a lodging establishment may instruct the distributors of such handbills to cease the distribution of handbills to guest rooms, unless otherwise so authorized by the lodging establishment.

In closing, on behalf of the California Hotel & Motel Association, we, again, respectfully request your favorable consideration of Senate Bill 1171 when it is considered by the Committee on April 20th.

Michael J. Arnold and Associates, Inc.
Legislative Advocates and Consultants

April 21, 1999

The Honorable Ross Johnson
California State Senate
State Capitol
Sacramento, CA 95814

SUBJECT: **SB 1171 -- Notice of Support**

Dear Senator:

We write on behalf of the City of Anaheim to let you know that the City is in strong support of SB 1171. The provisions of your bill to allow additional controls on the distribution of hand bills will make important and needed changes to existing law.

We look forward to supporting SB 1171 as it is considered by the Legislature.

Sincerely,

Michael J. Arnold
Legislative Advocate

Sincerely,

Kristian E. Foy
Legal Counsel

cc: Consultants, Senate Judiciary Committee
Ralph Heim, Hotel/Motel Association
Kris Thalman/Phil Tsunoda, City of Anaheim

1127 Eleventh Street, Suite 820, Sacramento, California 95814 • (916) 446-2646 • FAX (916) 446-6095

Heim, Noack, Kelly & Spahnn
GOVERNMENTAL RELATIONS

1121 L Street, Suite 100
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Tel. (916) 442-4584
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May 6, 1999

TO: **Members, Senate Committee on Judiciary**

FROM: **Ralph Heim, Russell Noack, Anne Kelly, Les Spahnn and John Caldwell**

RE: **Senate Bill 1171 (Johnson) - S U P P O R T**
Set for Hearing 5/11/99

On behalf of our client, the California Hotel & Motel Association, we respectfully urge your favorable consideration of Senate Bill 1171, by Senator Ross Johnson, that will be considered by the Committee on May 11th.

Senate Bill 1171, which is sponsored by the California Hotel & Motel Association, addresses three specific issues related to lodging establishments. Each of these issues are summarized below.

The first issue addressed in Senate Bill 1171 relates to the problem associated with guests that refuse or otherwise fail to fully depart their guest room at or before the lodging establishment's posted check-out time. This is a serious problem for lodging establishments that need such rooms to accommodate an arriving person with a contractual right thereto.

To respond to this problem, SB 1171 permits an innkeeper to enter the guest's room, take possession of the guest's property, re-key the guest room door, and make the room available to a new guest. The evicted guest would be entitled to take immediate possession of their property.

The second issue addressed in SB 1171 relates to problems associated with minors seeking lodging accommodations when unaccompanied by an adult. The bill permits an innkeeper to require a parent, guardian or another responsible adult, to assume, in writing, full liability for any and all proper charges and other obligations incurred by the minor, including, but not limited to, accommodations, food and beverage, and other services provided by or through the innkeeper, as well as for any and all injuries or damages caused by the minor to any person or property.

Additionally, where a minor is accompanied by an adult, the innkeeper may require the adult to agree in writing not to leave the minor unattended on the innkeeper's premises at any time during their stay, and to monitor and control the minor's behavior so as to preserve the peace and quiet of the other guests and to prevent any injury to any person and damage to any property.

Finally, SB 1171 addresses a serious and growing problem associated with unauthorized persons entering lodging establishments for the purpose of distributing handbills to individual guest rooms.

SB 1171 sets forth a process wherein a lodging establishment may instruct the distributors of such handbills to cease the distribution of handbills to guest rooms, unless otherwise so authorized by the lodging establishment.

In closing, on behalf of the California Hotel & Motel Association, we, again, respectfully request your favorable consideration of Senate Bill 1171 when it is considered by the Committee on May 11th.

AMENDED IN SENATE MAY 6, 1999

AMENDED IN SENATE APRIL 12, 1999

SENATE BILL No. 1171

Introduced by Senator Johnson

February 26, 1999

An act to add Section ~~17052~~ *17210* to the Business and Professions Code, to add Section 1865 to the Civil Code, and to amend Section 365 of the Penal Code, relating to public accommodations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1171, as amended, Johnson. Public accommodations.

Existing law regulates the operations of a hotel, inn, boardinghouse, or lodginghouse, as specified. *Existing law also prohibits unfair competition, as specified.*

This bill would authorize an innkeeper to evict a guest who stays beyond the contractual period, as specified. This bill would also authorize a hotel, as defined, to prohibit the distribution of handbills on the premises, as specified, and would make a prohibited distribution of handbills on the premises punishable by a civil penalty ~~of not more than $2,500~~ *as unfair competition under existing law.*

Existing law makes it a misdemeanor for a person, and every agent or officer of any corporation, carrying on business as an innkeeper to refuse, without just cause, to receive and entertain any guest.

This bill would make certain exceptions with respect to guests who are minors, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

~~SECTION 1. Section 17052 is added to the Business~~

SECTION 1. Section 17210 is added to the Business and Professions Code, to read:

17210. (a) For purposes of this section, "hotel" means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment, but it does not include any residential hotel as defined in Section 50519 of the Health and Safety Code. "Innkeeper" means the owner or operator of a hotel, or the duly authorized agent or employee of the owner or operator.

(b) For purposes of this section, "handbill" means, and is specifically limited to, any tangible commercial solicitation to guests of the hotel urging that they patronize any commercial enterprise.

(c) Every person (hereinafter "distributor") engages in unfair competition for purposes of this chapter who deposits, places, throws, scatters, casts, or otherwise distributes any handbill to any individual guest rooms in any hotel, including, but not limited to, placing, throwing, leaving, or attaching any handbill adjacent to, upon, or underneath any guest room door, doorknob, or guest room entryway, where either the innkeeper has expressed objection to handbill distribution, either orally to the distributor or by the posting of a sign or other notice in a conspicuous place within the lobby area and at all points of access from the exterior of the premises to guest room areas indicating that handbill distribution is prohibited, or the distributor has received written notice pursuant to subdivision (e) that the innkeeper has expressed objection to the distribution of handbills to guest rooms in the hotel.

(d) Every person (hereinafter "contractor") engages in unfair competition for purposes of this chapter who causes or directs any other person, firm, business, or entity to distribute, or cause the distribution of, any

handbill to any individual guest rooms in any hotel in violation of subdivision (c) of this section, if the contractor has received written notice from the innkeeper objecting to the distribution of handbills to individual guest rooms in the hotel.

(e) Every contractor who causes or directs any distributor to distribute, or cause the distribution of, any handbills to any individual guest rooms in any hotel, if the contractor has received written notice from the innkeeper or from any other contractor or intermediary pursuant to this subdivision, objecting to the distribution of handbills to individual guest rooms in the hotel has failed to provide a written copy of that notice to each distributor prior to the commencement of distribution of handbills by the distributor or by any person hired or retained by the distributor for that purpose, or, within 24 hours following the receipt of the notice by the contractor if received after the commencement of distribution, and has failed to instruct and demand any distributor to not distribute, or to cease the distribution of, the handbills to individual guest rooms in any hotel for which such a notice has been received is in violation of this section.

(f) Any written notice given, or caused to be given, by the innkeeper pursuant to or required by any provision of this section shall be deemed to be in full force and effect until such time as the notice is revoked in writing.

(g) Nothing in this section shall be deemed to prohibit the distribution of a handbill to guest rooms in any hotel where the distribution has been requested or approved in writing by the innkeeper, or to any individual guest room when the occupant thereof has affirmatively requested or approved the distribution of the handbill during the duration of the guest's occupancy.

SEC. 2. Section 1865 is added to the Civil Code, to read:

1865. (a) For purposes of this section, "hotel" means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment, but it shall not include any residential hotel as defined in Section 50519 of the Health and Safety Code. "Innkeeper" means the owner

or operator of a hotel, or the duly authorized agent or employee of such owner or operator.

(b) For purposes of this section, "guest" means, and is specifically limited to, an occupant of a hotel whose occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(c) In addition to, and not in derogation of, any other provision of law, every innkeeper shall have the right to evict a guest in the manner specified in this subdivision if the guest refuses or otherwise fails to fully depart the premises at or before the innkeeper's posted check-out time on the date agreed to by the guest, but only if all of the following conditions are met:

(1) If the guest is provided written notice, at the time that he or she was received and provided accommodations by the innkeeper, that the innkeeper needs that guest's room to accommodate an arriving person with a contractual right thereto, and that if the guest fails to fully depart at the time agreed to the innkeeper may enter the guest's guest room, take possession of the guest's property, re-key the door to the guest room, and make the guest room available to a new guest. The written notice shall be signed by the guest.

(2) At the time that the innkeeper actually undertakes to evict the guest as specified in this subdivision, the innkeeper in fact has a contractural obligation to provide the guest room to an arriving person.

(3) The eviction is not undertaken until the latter of the posted check-out time and two hours prior to the time when the new guest is due to arrive.

In the above cases, the innkeeper may enter the guest's guest room, take possession of the guest's property, re-key the door to the guest room, and make the guest room available to a new guest. The evicted guest shall be entitled to immediate possession of his or her property upon request therefor, subject to the rights of the innkeeper pursuant to Sections 1861 to 1861.28, inclusive.

(d) As pertains to a minor, the rights of an innkeeper include, but are not limited to, the following:

(1) Where a minor unaccompanied by an adult seeks accommodations, the innkeeper may require a parent or guardian of the minor, or another responsible adult, to assume, in writing and in a manner otherwise reasonably acceptable to the innkeeper, full liability for any and all proper charges and other obligations incurred by the minor for accommodations, food and beverages, and other services provided by or through the innkeeper, as well as for any and all injuries or damage caused by the minor to any person or property.

(2) Where a minor is accompanied by an adult, the innkeeper may require the adult to agree, in writing and in a manner otherwise reasonably acceptable to the innkeeper, not to any minor 12 years of age or younger unattended on the innkeeper's premises at any time during their stay, and to monitor and control the minor's behavior so as to preserve the peace and quiet of the innkeeper's other guests and to prevent any injury to any person and damage to any property.

SEC. 3. Section 365 of the Penal Code is amended to read:

365. Every person, and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor. *However, an innkeeper who has proceeded as authorized by Section 1865 of the Civil Code shall be rebuttably presumed to have acted with just cause or excuse for purposes of this section.*

All matter omitted in this version of the bill appears in the bill as amended in the Senate, April 12, 1999 (JR 11)

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AMENDED IN SENATE MAY 19, 1999

AMENDED IN SENATE MAY 6, 1999

AMENDED IN SENATE APRIL 12, 1999

SENATE BILL No. 1171

Introduced by Senator Johnson

February 26, 1999

An act to add Section 17210 to the Business and Professions Code, to add Section 1865 to the Civil Code, and to amend Section 365 of the Penal Code, relating to public accommodations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1171, as amended, Johnson. Public accommodations.

Existing law regulates the operations of a hotel, inn, boardinghouse, or lodginghouse, as specified. Existing law also prohibits unfair competition, as specified.

This bill would authorize an innkeeper to evict a guest who stays beyond the contractual period, as specified. This bill would also authorize a hotel, as defined, to prohibit the distribution of handbills on the premises, as specified, and would make a prohibited distribution of handbills on the premises punishable by a civil penalty as unfair competition under existing law.

Existing law makes it a misdemeanor for a person, and every agent or officer of any corporation, carrying on business as an innkeeper to refuse, without just cause, to receive and entertain any guest.

This bill would make certain exceptions with respect to guests who are minors, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17210 is added to the Business and Professions Code, to read:

17210. (a) For purposes of this section, ‘‘hotel’’ means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment, but it does not include any residential hotel as defined in Section 50519 of the Health and Safety Code. ‘‘Innkeeper’’ means the owner or operator of a hotel, or the duly authorized agent or employee of the owner or operator.

(b) For purposes of this section, ‘‘handbill’’ means, and is specifically limited to, any tangible commercial solicitation to guests of the hotel urging that they patronize any commercial enterprise.

(c) Every person (hereinafter ‘‘distributor’’) engages in unfair competition for purposes of this chapter who deposits, places, throws, scatters, casts, or otherwise distributes any handbill to any individual guest rooms in any hotel, including, but not limited to, placing, throwing, leaving, or attaching any handbill adjacent to, upon, or underneath any guest room door, doorknob, or guest room entryway, where either the innkeeper has expressed objection to handbill distribution, either orally to the distributor or by the posting of a sign or other notice in a conspicuous place within the lobby area and at all points of access from the exterior of the premises to guest room areas indicating that handbill distribution is prohibited, or the distributor has received written notice pursuant to subdivision (e) that the innkeeper has expressed objection to the distribution of handbills to guest rooms in the hotel.

(d) Every person (hereinafter ‘‘contractor’’) engages in unfair competition for purposes of this chapter who causes or directs any other person, firm, business, or

entity to distribute, or cause the distribution of, any handbill to any individual guest rooms in any hotel in violation of subdivision (c) of this section, if the contractor has received written notice from the innkeeper objecting to the distribution of handbills to individual guest rooms in the hotel.

(e) Every contractor who causes or directs any distributor to distribute, or cause the distribution of, any handbills to any individual guest rooms in any hotel, if the contractor has received written notice from the innkeeper or from any other contractor or intermediary pursuant to this subdivision, objecting to the distribution of handbills to individual guest rooms in the hotel has failed to provide a written copy of that notice to each distributor prior to the commencement of distribution of handbills by the distributor or by any person hired or retained by the distributor for that purpose, or, within 24 hours following the receipt of the notice by the contractor if received after the commencement of distribution, and has failed to instruct and demand any distributor to not distribute, or to cease the distribution of, the handbills to individual guest rooms in any hotel for which such a notice has been received is in violation of this section.

(f) Any written notice given, or caused to be given, by the innkeeper pursuant to or required by any provision of this section shall be deemed to be in full force and effect until such time as the notice is revoked in writing.

(g) Nothing in this section shall be deemed to prohibit the distribution of a handbill to guest rooms in any hotel where the distribution has been requested or approved in writing by the innkeeper, or to any individual guest room when the occupant thereof has affirmatively requested or approved the distribution of the handbill during the duration of the guest's occupancy.

SEC. 2. Section 1865 is added to the Civil Code, to read:

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Health and Safety Code. ‘‘Innkeeper’’ means the owner or operator of a hotel, or the duly authorized agent or employee of such owner or operator.

(b) For purposes of this section, ‘‘guest’’ means, and is specifically limited to, an occupant of a hotel whose occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(c) In addition to, and not in derogation of, any other provision of law, every innkeeper shall have the right to evict a guest in the manner specified in this subdivision if the guest refuses or otherwise fails to fully depart the ~~premises~~ *guest room* at or before the innkeeper’s posted checkout time on the date agreed to by the guest, but only if all of the following conditions are met:

(1) If the guest is provided written notice, at the time that he or she was received and provided accommodations by the innkeeper, that the innkeeper needs that guest’s room to accommodate an arriving person with a contractual right thereto, and that if the guest fails to fully depart at the time agreed to the innkeeper may enter the guest’s guest room, take possession of the guest’s property, re-key the door to the guest room, and make the guest room available to a new guest. The written notice shall be signed by the guest.

(2) At the time that the innkeeper actually undertakes to evict the guest as specified in this subdivision, the innkeeper in fact has a contractural obligation to provide the guest room to an arriving person.

(3) The eviction is not undertaken until the ~~latter~~ *later* of the posted checkout time ~~and~~ *or* two hours prior to the time when the new guest is due to arrive.

In the above cases, the innkeeper may enter the guest’s guest room, take possession of the guest’s property, re-key the door to the guest room, and make the guest room available to a new guest. The evicted guest shall be entitled to immediate possession of his or her property upon request therefor, subject to the rights of the innkeeper pursuant to Sections 1861 to 1861.28, inclusive.

(d) As pertains to a minor, the rights of an innkeeper include, but are not limited to, the following:

(1) Where a minor unaccompanied by an adult seeks accommodations, the innkeeper may require a parent or guardian of the minor, or another responsible adult, to assume, in writing ~~and in a manner otherwise reasonably acceptable to the innkeeper~~, full liability for any and all proper charges and other obligations incurred by the minor for accommodations, food and beverages, and other services provided by or through the innkeeper, as well as for any and all injuries or damage caused by the minor to any person or property.

(2) Where a minor is accompanied by an adult, the innkeeper may require the adult to agree, in writing ~~and in a manner otherwise reasonably acceptable to the innkeeper~~, not to *leave* any minor 12 years of age or younger unattended on the innkeeper's premises at any time during their stay, and to ~~monitor and~~ control the minor's behavior *during their stay* so as to preserve the peace and quiet of the innkeeper's other guests and to prevent any injury to any person and damage to any property.

SEC. 3. Section 365 of the Penal Code is amended to read:

365. Every person, and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor. However, an innkeeper who has proceeded as authorized by Section 1865 of the Civil Code shall be rebuttably presumed to have acted with just cause or excuse for purposes of this section.

CORRECTIONS

Text — Pages 4 and 5.

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JUN 25 1999

ASSEMBLY JUDICIARY COMMITTEE'S BACKGROUND

INFORMATION WORKSHEET

Measure: SB 1171 **Author:** Johnson

1. Who is the source of the bill? Are they the sponsor? What person, organization, or governmental entity requested introduction?
Sponsor: Calif Hotel & Motel Association
Ralph Heim 442-4584

2. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number, summary of bill's contents, and disposition of the bill. (Use attachments if necessary)
No.

3. Have there been any interim hearings on the subject matter of the bill? If so, when?
No

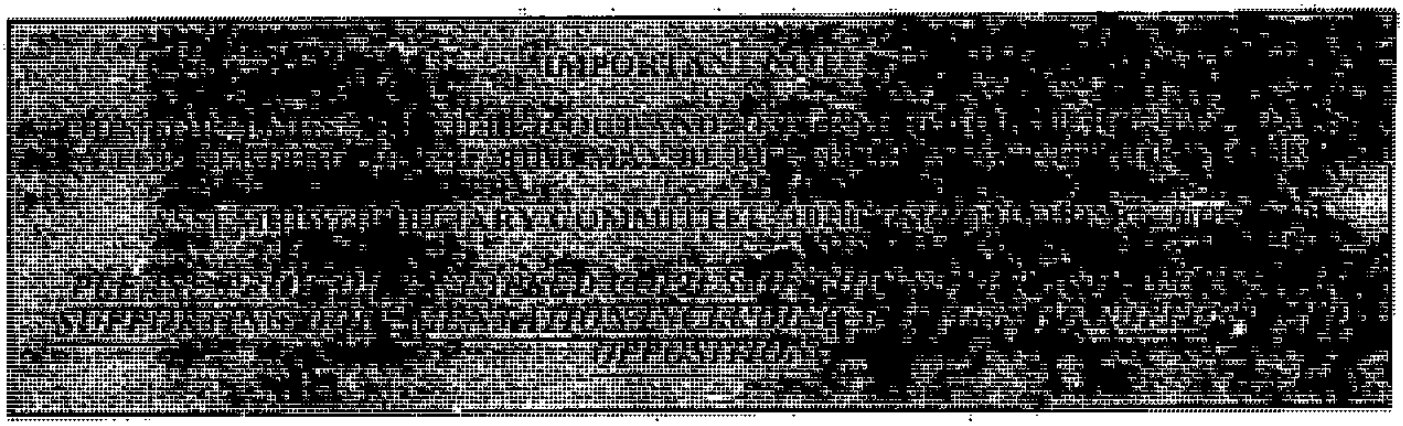
4. **Please attach a sheet explaining in detail the problem or deficiency in the present law which the bill seeks to remedy and how the bill resolves the problem. Please also list all witnesses you plan to have testify.**

5. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff which would be helpful to the analysis of the bill.

6. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

7. If you plan substantive amendments to this bill prior to hearing, please attach a detailed explanation of the substance of the amendments to be prepared. **Please recall that all substantive amendments must be received by the committee in Legislative Counsel form the Tuesday prior to the committee hearing.**

STAFF PERSON TO CONTACT: LINDA BROWN PHONE#: 445-4961



Judiciary Committee Counsel Contact: Syrus Devers (ext. 2334)

Heim, Noack, Kelly & Spahnn
GOVERNMENTAL RELATIONS

Ralph A. Heim
Russell W. Noack
Anne Kelly
Leslie S. Spahnn
John Caldv

Background Information Worksheet
Assembly Judiciary Committee
for
Senate Bill 1171
Introduced by Senator Ross Johnson

Senate Bill 1171 proposes to remedy three specific on-going problems faced by the lodging industry. The first relates to guests that refuse or otherwise fail to check-out at the posted check-out time and fail to make arrangements to stay beyond the posted check-out time. This situation creates significant problems for lodging establishments when an arriving guest, with a contractual right to the room, is unable to take occupancy due to the guest that has failed to vacate the room.

The provisions of SB 1171 that address this issue are contained in Section 1865, page 3, lines 37-40 and page 4, lines 1-40. Please note that lines 31-33 on page 4 will be amended out of the bill prior to hearing.

The second issue addressed in SB 1171 relates to minors and permits an innkeeper to require the minor's parent, guardian or other responsible adult, to assume full liability for any and all proper charges incurred by the minor, as well as for any and all injuries or damage caused by the minor to any property or person.

Additionally, SB 1171 permits innkeepers to require adults to maintain control of minors 12 years of age or younger during their stay at a lodging establishment.

The provisions in the bill addressing the above issues are contained on page 5, lines 1-22.

Finally, there is a growing problem with unauthorized persons entering non-public areas of lodging establishments for the purpose of distributing handbills to guest rooms and other non-public areas. The most common type of handbills are for fast-food, such as pizza, outlets.

This unauthorized entry to non-public areas of lodging establishments for the purposes of distributing these handbills creates a serious security problem for the innkeeper and their guests.

1121 L Street, Suite 100
Sacramento, CA 95814
Tel. (916) 442-4584
Fax (916) 441-4925
Email: general@hnks.com

The provisions in SB 1171 that address this issue are contained on page 2, lines 10-33 and page 3, lines 1-34.

The following witnesses will testify in support of SB 1171:

1. Mr. James O. Abrams, Executive Vice President, California Hotel & Motel Association.
2. A representative from the California Lodging Industry Association.
3. A representative for the City of Anaheim.

For additional information or questions, please contact:

1. Mr. James O. Abrams – (916) 444-5780.
2. Mr. Ralph A. Heim, Heim, Noack, Kelly & Spahnn – (916) 442-4584.

AMENDED IN ASSEMBLY JUNE 30, 1999

AMENDED IN SENATE MAY 19, 1999

AMENDED IN SENATE MAY 6, 1999

AMENDED IN SENATE APRIL 12, 1999

SENATE BILL No. 1171

Introduced by Senator Johnson

February 26, 1999

An act to add Section 17210 to the Business and Professions Code, to add Section 1865 to the Civil Code, and to amend Section 365 of the Penal Code, relating to public accommodations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1171, as amended, Johnson. Public accommodations.

Existing law regulates the operations of a hotel, inn, boardinghouse, or lodginghouse, as specified. Existing law also prohibits unfair competition, as specified.

This bill would authorize an innkeeper to evict a guest who stays beyond the contractual period, as specified. This bill would also authorize a hotel, as defined, to prohibit the distribution of handbills on the premises, as specified, and would make a prohibited distribution of handbills on the premises punishable by a civil penalty as unfair competition under existing law.

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innkeeper to refuse, without just cause, to receive and entertain any guest.

This bill would make certain exceptions with respect to guests who are minors, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17210 is added to the Business and Professions Code, to read:

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(b) For purposes of this section, ‘‘handbill’’ means, and is specifically limited to, any tangible commercial solicitation to guests of the hotel urging that they patronize any commercial enterprise.

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(c) In addition to, and not in derogation of, any other provision of law, every innkeeper shall have the right to evict a guest in the manner specified in this subdivision if the guest refuses or otherwise fails to fully depart the guest room at or before the innkeeper’s posted checkout time on the date agreed to by the guest, but only if ~~all~~ *both* of the following conditions are met:

(1) If the guest is provided written notice, at the time that he or she was received and provided accommodations by the innkeeper, that the innkeeper needs that guest’s room to accommodate an arriving person with a contractual right thereto, and that if the guest fails to fully depart at the time agreed to the innkeeper may enter the guest’s guest room, take possession of the guest’s property, re-key the door to the guest room, and make the guest room available to a new guest. The written notice shall be signed by the guest.

(2) At the time that the innkeeper actually undertakes to evict the guest as specified in this subdivision, the innkeeper in fact has a contractural obligation to provide the guest room to an arriving person.

~~(3) The eviction is not undertaken until the later of the posted checkout time or two hours prior to the time when the new guest is due to arrive.~~

In the above cases, the innkeeper may enter the guest’s guest room, take possession of the guest’s property, re-key the door to the guest room, and make the guest room

available to a new guest. The evicted guest shall be entitled to immediate possession of his or her property upon request therefor, subject to the rights of the innkeeper pursuant to Sections 1861 to 1861.28, inclusive.

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(2) Where a minor is accompanied by an adult, the innkeeper may require the adult to agree, in writing, not to leave any minor 12 years of age or younger unattended on the innkeeper's premises at any time during their stay, and to control the minor's behavior during their stay so as to preserve the peace and quiet of the innkeeper's other guests and to prevent any injury to any person and damage to any property.

SEC. 3. Section 365 of the Penal Code is amended to read:

365. Every person, and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor. However, an innkeeper who has proceeded as authorized by Section 1865 of the Civil Code shall be rebuttably presumed to have acted with just cause or excuse for purposes of this section.

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SB 1171 (JOHNSON)
PUBLIC ACCOMMODATIONS.

Version: 6/30/99 Last Amended
Vote: Majority
Support

Vice-Chair: Rod Pacheco
Tax or Fee Increase: No

Addresses three issues faced by innkeepers of non-residential public accommodations: responsibility for minor guests, eviction of guests, and preventing the distribution of commercial handbills to guests.

Policy Question

Whether the state should attempt to alleviate the disruptive influences affecting innkeepers of non-residential public accommodations.

Summary

As amended 6/30/99, this bill would:

1. Allow an innkeeper to enter into a guest's room and take possession of the guest's property, rekey the door, and make the room available for the next guest, if (a) the guest signed an agreement acknowledging the innkeeper's right to re-take possession on a date certain (b) the guest fails to or refuses to depart the premises by the innkeeper's posted check-out time on the date agreed, and (c) the innkeeper needs that room to accommodate an arriving person with a contractual right thereto.
2. Where an unaccompanied minor seeks accommodations, the innkeeper may require a parent or guardian or other responsible adult to assume in writing full liability for any and all proper charges incurred by the minor.
3. Where a minor, 12 years of age or younger, is accompanied by an adult, the innkeeper may require the adult to agree in writing not to leave the minor unattended on the innkeeper's premises at any time during their stay and to monitor and control the minor's behavior during their stay.
4. Make it an unfair business practice to distribute or direct another person to distribute any commercial handbill soliciting patronage of a business to an individual guest room in any hotel, where the owner, manager, or person in charge or control of the hotel has expressed objection to such handbill distribution.
5. The bill expressly excludes residential and single room occupancy hotels.

Support

California Hotel & Motel Association
City of Anaheim

Opposition

None on file.

Arguments In Support of the Bill

This bill addresses three issues (identified above) that have created difficulties for innkeepers in protecting their property and the property of their guests, and in providing their guests with safe, clean facilities.

Arguments In Opposition to the Bill

None articulated to date.

Fiscal Effect

Unknown.

Comments

Existing law provides that innkeepers may not recover possession of a guest's room unless pursuant to a writ of possession. Existing law provides that every person, and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

Senate Republican Floor Votes (39-0) 5/24/99
Ayes: All Republicans, Except
Noes: None
Abs./NV: Haynes

Assembly Republican Judiciary Votes (0-0) 1/1/99
Ayes: None
Noes: None
Abs./NV: None

Assembly Republican **Votes** (0-0) 1/1/99
Ayes: None
Noes: None
Abs., NV: None

Assembly Republican **Votes** (0-0) 1/1/99
Ayes: None
Noes: None
Abs., NV: None

Policy Consultant: Richard Fisher 7/10/99
Fiscal Consultant:

FILE COPY

Date of Hearing: July 13, 1999

ASSEMBLY COMMITTEE ON JUDICIARY
Sheila James Kuehl, Chair
SB 1171 (Johnson) – As Amended: June 30, 1999

SUBJECT: PUBLIC ACCOMMODATIONS

KEY ISSUES:

1) SHOULD AN INNKEEPER HAVE THE AUTHORITY TO EVICT A GUEST WHO STAYS BEYOND THE CONTRACTUAL PERIOD?

2) SHOULD AN INNKEEPER BE ALLOWED TO PROHIBIT THE DISTRIBUTION OF HANDBILLS ON THE PREMISES OF THE INN?

3) SHOULD AN INNKEEPER BE ALLOWED TO REQUIRE A RESPONSIBLE ADULT TO ASSUME LIABILITY FOR DAMAGE CAUSED OR CHARGES INCURRED BY AN UNACCOMPANIED MINOR WHO IS A GUEST OF THE INN?

4) SHOULD AN INNKEEPER BE ALLOWED TO REQUIRE THAT A MINOR UNDER 12 YEARS OLD NOT BE LEFT UNATTENDED ON THE PREMISES?

SUMMARY: Makes various unrelated changes to the law regarding the rights and conduct of innkeepers. Specifically, this bill:

1) Allows innkeepers to evict guest who refuse or fail to leave by the posted check-out time.

2) Allows an innkeeper to prohibit handbill distribution on the premises.

3) Allows an innkeeper to require a responsible adult to assume liability for damage caused by an unaccompanied minor staying at the inn.

4) Allows the innkeeper to require a signed agreement that a minor under the age of 12 will not be left unattended on the premises.

EXISTING LAW:

1) Regulates the conduct and establishes the legal rights of innkeepers and guests. (Civil Code sections 1859 et seq.)

2) Allows innkeepers to place a lien on the possession of their guests to ensure payment of proper charges. (Civil Code section 1861.)

3) Makes refusing to receive and entertain any guest without just cause or excuse a misdemeanor. (Penal Code section 365.)

FISCAL EFFECT: Unknown

COMMENTS: The author introduced this bill to address three specific issues relating to lodging establishments. Current law allows innkeepers to charge guests for staying beyond the contractual period, but does not allow for eviction. The result is that the innkeeper has no ability to ensure that arriving guests with contractual rights to the room can be accommodated. The bill also deals with minors who are guests of the inn. Current law may leave the innkeeper without a meaningful remedy for charges or damage caused by a minor who is unaccompanied by a legally responsible adult. Furthermore, the innkeeper may have no permissible means of dealing with an unattended minor who is disturbing the other guests or causing damage.

This bill addresses these issues by permitting the innkeeper to refuse service to an unaccompanied minor unless a responsible adult assumes, in writing, full responsibility for all proper charges incurred or damage caused by the minor. This bill also permits innkeepers to require an adult accompanying a minor under 12 years old to sign a written agreement not to leave the child unattended on the premises. Finally, the bill permits innkeepers to prohibit the growing practice of distributing unsolicited handbills to the guests while on the premises. This practice may disturb the innkeeper's guests and potentially interfere with the services offered by the innkeeper.

REGISTERED SUPPORT / OPPOSITION:

Support

California Hotel and Motel Association (sponsor)
City of Anaheim

Opposition

None on file

Analysis Prepared by: Syrus Devers / JUD. / (916) 319-2334

California State Senate

~Current Session Legislation~

Measure Analysis

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916)
327-4478

SB 1171

UNFINISHED BUSINESS

Bill No: SB 1171
Author: Johnson (R)
Amended: 6/30/99
Vote: 21

SENATE JUDICIARY COMMITTEE : 7-0, 5/11/99
AYES: Burton, Haynes, Morrow, O'Connell, Peace, Wright, Schiff
NOT VOTING: Escutia, Sher

SENATE FLOOR : 39-0, 5/24/99 (Consent)
AYES: Alarcon, Alpert, Baca, Bowen, Brulte, Burton, Chesbro, Costa, Dunn, Escutia, Figueroa, Hayden, Hughes, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Leslie, Lewis, McPherson, Monteith, Morrow, Mountjoy, Murray, O'Connell, Ortiz, Peace, Perata, Polanco, Poochigian, Rainey, Schiff, Sher, Solis, Speier, Vasconcellos, Wright
NOT VOTING: Haynes

ASSEMBLY FLOOR : 76-0, 8/19/99 (Passed on Consent) - See last page for vote

SUBJECT : Public accommodations: minors and authorized access

SOURCE : California Hotel and Motel Association

DIGEST : This bill addresses three separate issues relative to non-residential public accommodations: responsibility for minors who are guests; eviction of guests who stay

CONTINUED

beyond the designated check-out time; and prohibiting distribution of commercial handbills to guest rooms over the objection of the innkeeper. Specifically the bill would:

1. Allow an innkeeper to enter into a guest's room and take possession of the guest's property, rekey the door, and make the room available for the next guest, if: (a) the guest signed an agreement acknowledging the innkeeper's right to re-take possession on a date certain (b) the guest fails to or refuses to depart the premises by the innkeeper's posted check-out time on the date agreed, and (c) the innkeeper needs that room to accommodate an arriving person with a contractual right thereto.

2. Where an unaccompanied minor seeks accommodations, the innkeeper may require a parent or guardian or other responsible adult to assume in writing full liability for any and all proper charges incurred by the minor.

3. Where a minor, 12 years of age or young[illegible] is accompanied by an adult, the innkeeper may require the adult to agree in writing not to leave the minor unattended on the innkeeper's premises at any time during their stay and to monitor and control the minor's behavior during their stay.

4. Make it an unfair business practice to distribute or direct another person to distribute any commercial handbill soliciting patronage of a business to an individual guest room in any hotel, where the owner, manager, or person in charge or control of the hotel has expressed objection to such handbill distribution.

5. The bill expressly excludes residential and single room occupancy hotels.

Assembly Amendments deleted provision to check-out two hours prior to the arrival of a new guest (contained in No. 1 above).

ANALYSIS : Existing law provides that innkeepers may not recover possession of a guest's room unless pursuant to a writ of possession.

This bill would:

Provide that the innkeeper may evict the guest from the guest room, take possession of the guest's property, rekey the door, and make the room available for the next guest if:

1. a guest stays beyond the contractural check-out time.

2. the innkeeper needs that guest's room to accommodate an arriving person with a contractual right thereto, and;

3. the guest was presented, and signed, a written notice at the time of arrival that the innkeeper will need the room to accommodate an arriving person, and may evict the guest on that date if the guest does not fully depart as agreed.

Require the innkeeper to make the guest's belongings immediately available to the guest upon request, subject to any applicable innkeeper's lien rights.

Existing law provides that every person, and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

This bill would provide, that as it pertains to a guest who is a minor, the rights of an innkeeper include, but are not limited to, the following:

Where an unaccompanied minor seeks accommodations, the innkeeper may require a parent or guardian or other responsible adult to assume, in writing, full liability for any and all proper charges incurred by the minor.

Where a minor, 12 years of age or younger, is accompanied by an adult, the innkeeper may require the adult to agree in writing not to leave the minor unattended on the innkeeper's premises during their stay and to monitor and control the minor's behavior.

This bill would further provide that an innkeeper who has proceeded as authorized by the above (either in an eviction authorized under 1 above, or denial of accommodations if the rental involves a minor as authorized in 2 above) shall be rebuttably presumed to have acted with just cause or excuse for purposes of this section.

Existing law does not regulate distribution of literature on hotel property.

This bill would make it an unfair business practice to distribute or cause or direct any other person to distribute any handbill to any individual guest rooms in any hotel, ? where the owner, manager, or person in charge or control of the hotel has exp[illegible] objection to such handbill distribution, either orally to the distributor or by the posting of a sign or other notice in a conspicuous place within the lobby area and at all points of access from the exterior of the premises?.

The bill defines handbill as being specifically limited to any tangible commercial solicitation to guests of the hotel urging that they patronize any commercial enterprise.

No provision of this bill would apply to any residential hotel, as defined in Health and Safety Code section 50519.

Hotel definition clarified; bill does not apply to SROs

The Western Center on Law and Poverty expressed opposition to the bill, based upon concern that the language would be read to apply to residential hotels or single room occupancy hotels (SRO), which provide much needed housing for low-income individuals. The sponsor states that it is not their intention to cover these types of transient lodging. He has amended the bill to test[illegible] its application by defining "hotel" for purposes of this section to exclude residential hotel as defined in Health and Safety Code section 50519.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

SUPPORT : (Verified 8/19/99)

California Hotel and Motel Association (source)
City of Anaheim

ARGUMENTS IN SUPPORT : The author writes in support of this measure to say, "This bill addresses three issues that

have created difficulties for innkeepers in protecting their property and the property of their guests, and in providing their guests with safe, clean facilities. SB 1171 would permit innkeepers to require an adult guest to maintain control of his or her children under 12 during their stay, and would allow innkeepers to seek reimbursement from a minor's parents for damaged property. The bill contains a provision strengthening the ability of innkeepers to prevent unauthorized persons from entering areas that are reserved specifically for guests, and would also allow the innkeeper to clear and re-key a room when a guest refuses to vacate at the agreed date and time. These changes are designed to enhance the innkeepers' ability to make their lodging establishment safe, clean and suitable for their guests."

Handbills defined: Commercial solicitation

According to the sponsor, "Lodging establishments throughout California are experiencing a growing problem with unauthorized persons entering guest room areas for the purpose of distributing handbills. The problem is particularly acute for lodging establishments located near airports and/or major tourist attractions. In one such location, the City of Anaheim has adopted an ordinance prohibiting the unauthorized distribution of handbills, which are typically from pizza restaurants or other food establishments offering delivery to the guest room.

"Unauthorized persons wandering through guest room areas distributing handbills creates a potentially serious security problem for the lodging establishment and their guests. Additionally, the handbills create a litter problem in the guest room areas."

Treatment of guests who are minors

Requiring parental liability

The sponsor of the bill explains that, "This bill would permit places of public accommodation to require parents to assume responsibility for charges incurred by their minor children. Requiring a minor's parent, guardian or other responsible adult to assume full liability for all proper charges and injuries or damage caused by the minor, responds to numerous examples from innkeeper's throughout California?where for example minors staying at their establishments during prom or graduation night celebrations have caused damage to the innkeeper's property and/or charged food and other services to their room for which payment was not received."

The sponsor further asserts that "The process to recover these charges and expenses is, time-consuming and costly, particularly for smaller lodging establishments. Requiring the minor's parent, guardian or other responsible adult to assume full liability for the minor's charges and actions will, we believe, eliminate the need for costly, time-consuming litigation.

In determination of whether discrimination against minors as contracting agent [illegible], consideration should be given to the Civil Code, which allows minors to walk away from any contracts they enter. In addition, there are many areas of commerce where children are not deemed competent to contract based upon a minor's incompetence to be legally bound. While other forms of action, such as tort, may be available to an innkeeper for an [illegible] property, it seems reasonable to ask for assurance of compliance from a responsible party before giving a room to a minor.

ASSEMBLY FLOOR :
AYES: Ackerman, Alquist, Aroner, Ashburn, Baldwin, Bates, Battin, Baugh, Bock, Briggs, Calderon, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Floyd, Frusetta, Gallegos, Granlund, Havice, Hertzberg, Honda, House, Jackson, Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox,

Maldonado, Margett, Mazzoni, McClintock, Migden, Nakano, Olberg, Oller, Robert Pacheco, Rod Pacheco, Papan, Pescetti, Reyes, Romero, Runner, Scott, Shelley, Soto, Steinberg, Strickland, Strom-Martin, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel, Villaraigosa
NOT VOTING: Aanestad, Brewer, Campbell, Thompson

RJG:jk 9/20/99 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
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SB 1171

UNFINISHED BUSINESS

Bill No: SB 1171
Author: Johnson (R)
Amended: 6/30/99
Vote: 21

SENATE JUDICIARY COMMITTEE: 7-0, 5/11/99
AYES: Burton, Haynes, Morrow, O'Connell, Peace, Wright, Schiff
NOT VOTING: Escutia, Sher

SENATE FLOOR: 39-0, 5/24/99 (Consent)
AYES: Alarcon, Alpert, Baca, Bowen, Brulte, Burton, Chesbro, Costa, Dunn, Escutia, Figueroa, Hayden, Hughes, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Leslie, Lewis, McPherson, Monteith, Morrow, Mountjoy, Murray, O'Connell, Ortiz, Peace, Perata, Polanco, Poochigian, Rainey, Schiff, Sher, Solis, Speier, Vasconcellos, Wright
NOT VOTING: Haynes

ASSEMBLY FLOOR: 76-0, 8/19/99 (Passed on Consent) - See last page for vote

SUBJECT: Public accommodations: minors and authorized access

SOURCE: California Hotel and Motel Association

DIGEST: This bill addresses three separate issues relative to non-residential public accommodations: responsibility for minors who are guests; eviction of guests who stay beyond the designated check-out time; and prohibiting distribution of commercial handbills to guest rooms over the objection of the innkeeper. Specifically the bill would:

CONTINUED

1. Allow an innkeeper to enter into a guest's room and take possession of the guest's property, rekey the door, and make the room available for the next guest, if: (a) the guest signed an agreement acknowledging the innkeeper's right to re-take possession on a date certain (b) the guest fails to or refuses to depart the premises by the innkeeper's posted check-out time on the date agreed, and (c) the innkeeper needs that room to accommodate an arriving person with a contractual right thereto.

2. Where an unaccompanied minor seeks accommodations, the innkeeper may require a parent or guardian or other responsible adult to assume in writing full liability for any and all proper charges incurred by the minor.

3. Where a minor, 12 years of age or younger, is accompanied by an adult, the innkeeper may require the adult to agree in writing not to leave the minor unattended on the innkeeper's premises at any time during their stay and to monitor and control the minor's behavior during their stay.

4. Make it an unfair business practice to distribute or direct another person to distribute any commercial handbill soliciting patronage of a business to an individual guest room in any hotel, where the owner, manager, or person in charge or control of the hotel has expressed objection to such handbill distribution.

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2. the innkeeper needs that guest's room to accommodate an arriving person with a contractual right thereto, and;

CONTINUED

3. the guest was presented, and signed, a written notice at the time of arrival that the innkeeper will need the room to accommodate an arriving person, and may evict the guest on that date if the guest does not fully depart as agreed.

Require the innkeeper to make the guest's belongings immediately available to the guest upon request, subject to any applicable innkeeper's lien rights.

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CONTINUED

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FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/19/99)

California Hotel and Motel Association (source)
City of Anaheim

ARGUMENTS IN SUPPORT: The author writes in support of this measure to say, "This bill addresses three issues that have created difficulties for innkeepers in protecting their property and the property of their guests, and in providing their guests with safe, clean facilities. SB 1171 would permit innkeepers to require an adult guest to maintain control of his or her children under 12 during their stay, and would allow innkeepers to seek reimbursement from a minor's parents for damaged property. The bill contains a provision strengthening the ability of innkeepers to prevent unauthorized persons from entering areas that are reserved specifically for guests, and would also allow the innkeeper to clear and re-key a room when a guest refuses to vacate at the agreed date and time. These changes are designed to enhance the innkeepers' ability to make their lodging establishment safe, clean and suitable for their guests."

CONTINUED

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The sponsor of the bill explains that, "This bill would permit places of public accommodation to require parents to assume responsibility for charges incurred by their minor children. Requiring a minor's parent, guardian or other responsible adult to assume full liability for all proper charges and injuries or damage caused by the minor, responds to numerous examples from innkeeper's throughout California...where for example minors staying at their establishments during prom or graduation night celebrations have caused damage to the innkeeper's property and/or charged food and other services to their room for which payment was not received."

The sponsor further asserts that "The process to recover these charges and expenses is, time-consuming and costly, particularly for smaller lodging establishments. Requiring the minor's parent, guardian or other responsible adult to assume full liability for the minor's charges and actions will, we believe, eliminate the need for costly, time-consuming litigation.

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CONTINUED

contract based upon a minor's incompetence to be legally bound. While other forms of action, such as tort, may be available to an innkeeper for any damaged property, it seems reasonable to ask for assurance of compliance from a responsible party before giving a room to a minor.

ASSEMBLY FLOOR:

AYES: Ackerman, Alquist, Aroner, Ashburn, Baldwin, Bates, Battin, Baugh, Bock, Briggs, Calderon, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Floyd, Frusetta, Gallegos, Granlund, Havice, Hertzberg, Honda, House, Jackson, Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox, Maldonado, Margett, Mazzoni, McClintock, Migden, Nakano, Olberg, Oller, Robert Pacheco, Rod Pacheco, Papan, Pescetti, Reyes, Romero, Runner, Scott, Shelley, Soto, Steinberg, Strickland, Strom-Martin, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel, Villaraigosa

NOT VOTING: Aanestad, Brewer, Campbell, Thompson

RJG:jk 8/20/99 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

****** END ******

Legislative Counsel of California

BION M. GREGORY

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(916) 445-3057
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Sacramento, California
August 27, 1999

Honorable Gray Davis
Governor of California
Sacramento, CA 95814

Senate Bill No. 1171

Dear Governor Davis:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Johnson and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By
Marguerite Roth
Principal Deputy

MRR:kea

Two copies to Honorable Ross Johnson, pursuant to Joint Rule 34.

California State Senate

~Current Session Legislation~

Measure Vote

Measure: SB 1171
Author: Johnson
Topic: Public accommodations.
Date: 08/19/99
Location: ASM. FLOOR
Motion: CONSENT CALENDAR SECOND DAY
(AYES 76. NOES 0.) (PASS)

AYES
****

Ackerman Alquist Aroner Ashburn Baldwin Bates Battin Baugh Bock Briggs Calderon Cardenas Cardoza Cedillo Corbett Correa Cox Cunneen Davis Dickerson Ducheny Dutra Firebaugh Florez Floyd Frusetta Gallegos Granlund Havice Hertzberg Honda House Jackson Kaloogian Keeley Knox Kuehl Leach Lempert Leonard Longville Lowenthal Machado Maddox Maldonado Margett Mazzoni McClintock Migden Nakano Olberg Oller Robert Pacheco Rod Pacheco Papan Pescetti Reyes Romero Runner Scott Shelley Soto Steinberg Strickland Strom-Martin Thomson Torlakson Vincent Washington Wayne Wesson Wiggins Wildman Wright Zettel Villaraigosa

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
****

Aanestad Brewer Campbell Thompson

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DEPARTMENT OF FINANCE ENROLLED BILL REPORT

Chap 354

AMENDMENT DATE: June 30, 1999
RECOMMENDATION: Sign

BILL NUMBER: SB 1171
AUTHOR: R. Johnson

ASSEMBLY: 76/0
SENATE: 40/0

BILL SUMMARY

This bill regulates the operations of a hotel, inn, boardinghouse, or lodginghouse. Specifically, this bill would:

- authorize an innkeeper to evict a guest who stays beyond the contractual period, as specified;
- authorize a hotel to prohibit the distribution of handbills on the premises, and would make this distribution punishable by a civil penalty as unfair competition under existing law;
- provide that, where an unaccompanied minor seeks accommodations, an innkeeper can require written assumption of liability from a parent or guardian;
- provide that, where a minor is accompanied by an adult, an innkeeper can require, in writing, the assurance of a parent or guardian not to leave a minor (12 or younger) unattended.

FISCAL SUMMARY

This bill would not have a fiscal impact on any state agencies or departments.

COMMENTS

The provisions in this bill would enhance the ability of an innkeeper to make his/her lodging establishment safe, clean, and suitable for guests. Finance has no fiscal concerns with this bill, and we recommend signature.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 1999-2000	FC	2000-2001	FC	2001-2002	Fund Code
9990/Var Depts	SO	No		No/Minor Fiscal Impact					0001

Analyst/Principal (0223) M. Carlton — Date 8/27/99
M. Carlton

Program Budget Manager S. Calvin Smith — Date 8-27-99
J. W. Mills

Department Deputy Director — Date 8/30/99

ENROLLED BILL REPORT — Form DF-43 (Rev 03/95 Pink)

CG:SB1171-9304.doc 08/27/99 9:01 AM

STATE AND CONSUMER SERVICES AGENCY		ENROLLED BILL REPORT
DEPARTMENT Consumer Affairs	AUTHOR Kuehl Johnson	BILL NUMBER SB 1171
SPONSOR California Motel and Hotel Association	RELATED BILLS	
SUBJECT Public Accommodations		

BILL SUMMARY:

This bill would consider it unfair competition for any person to distribute handbills (solicitations) at a hotel under specified conditions. This bill would also allow an innkeeper to evict a guest if the guest refuses or fails to leave the guestroom at the posted checkout time. Lastly, this bill requires a minor's parent, guardian or other responsible adult to assume full liability for the minor's charges and actions at a hotel

LEGISLATIVE HISTORY:

Existing law:

- Establishes regulations regarding the legal rights of innkeepers and guests.
- Prohibits an innkeeper from refusing to entertain any guest without just cause.
- Allows innkeepers to place a lien on the possession of their guests to ensure payment of proper charges.

PROGRAM HISTORY: N/A

SPECIFIC FINDINGS:

According to the sponsor, "Lodging establishments throughout California are experiencing a growing problem with unauthorized persons entering guest room areas for the purpose of distributing handbills (solicitations)." The City of Anaheim recently adopted an ordinance prohibiting the unauthorized distribution of handbills, which are typically solicitations from pizza restaurants or other food establishments offering delivery to the guestroom. The sponsor notes that unauthorized persons wandering through guest room areas distributing handbills creates a potentially serious security problem for the lodging establishment and their guests, as well as creating a litter problem in the guest room areas. This bill seeks to prevent this problem by allowing innkeepers to prohibit handbill distribution on their hotel premises.

According to the sponsor, innkeepers have numerous problems with minors who stay on the innkeeper's premises. Specifically, minors who stay at hotels during prom or graduation night celebrations have caused damage to the innkeeper's property and/or charged food and other services to their room for which payment was not received. The sponsor notes that it is time consuming and expensive for smaller lodging establishments to recover these costs. This bill

VOTE: Assembly		VOTE: Senate	
Floor:	Aye 76 No 0	Floor:	Aye 40 No 0
Policy Committee:	Aye 15 No 0	Policy Committee:	Aye 7 No 0
Fiscal Committee:	Aye ____ No ____	Fiscal Committee:	Aye ____ No ____

RECOMMENDATION TO GOVERNOR:	SIGN xx VETO ____	DEFER TO OTHER AGENCY
DEPARTMENT DIRECTOR	DATE	AGENCY SECRETARY
Patrick Hamett	8-30-99	8/30/99

seeks to prevent this problem by requiring the minor's parent, guardian or other responsible adult to assume full liability for the minor's charges and actions.

Lastly, the sponsor notes that innkeepers have problems with guests who choose to stay past their checkout time. If a guest chooses to stay past his or her checkout time and the innkeeper has reserved the room for another customer, the innkeeper cannot accommodate the arriving customer. Although existing law provides that an innkeeper can charge the guest for staying longer, nothing can be done to help the customer who loses out on his or her reservation. This bill seeks to prevent this problem by allowing an innkeeper to evict a guest who stays past his or her checkout time.

REGULATIONS: N/A

LEGISLATIVELY MANDATED REPORTS: N/A

COMMISSIONS AND BOARDS: N/A

FISCAL IMPACT:

There would be no fiscal impact on the Department of Consumer Affairs.

PRO AND CON ARGUMENTS:

Arguments in Support of the Bill:

Proponents argue that this bill would help protect innkeepers from losing guests because of bothersome solicitors by prohibiting the distribution of handbills (solicitations) under specified conditions. Proponents also argue that this bill will prevent innkeepers from unnecessary and time-consuming litigation by requiring a minor's parent, guardian or other responsible adult to assume full liability for the minor's charges and actions. Lastly, this bill will help innkeepers guarantee that arriving guests with contractual rights will be accommodated by allowing an innkeeper to evict a guest who stays past his or her checkout time.

Arguments in Opposition to the Bill:

There is no known opposition to this bill.

PROPONENTS/OPPONENTS:

Sponsor:

California Hotel and Motel Association

Support:

California Motel and Hotel Association
City of Anaheim

Opposition:

None known.

SIGNIFICANT VOTE COUNT:

There were no "NO" votes.

RECOMMENDATION:

SIGN

Tara Powers
Department Analyst
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Home: 747-5450

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Assistant Deputy Director
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Deputy Secretary, Legislation
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Cellular: 213-9261
Home: 443-1386

SACRAMENTO OFFICE
STATE CAPITOL
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California State Senate

SENATOR
ROSS JOHNSON
SENATE REPUBLICAN LEADER
THIRTY-FIFTH SENATORIAL DISTRICT

COMMITTEES
APPROPRIATIONS
FINANCE, INVESTMENT AND INTERNATIONAL TRADE
GOVERNMENTAL ORGANIZATION
INSURANCE
JOINT COMMITTEE ON RULES

August 31, 1999

The Honorable Gray Davis
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Dear Governor Davis:

I write to request your signature on my SB 1171, which passed both houses of the Legislature with unanimous support. SB 1171 addresses a few troublesome situations that impact the thousands of hotels, motels and inns which make up California's large and diverse lodging industry.

The first problem the bill deals with is the unsolicited distribution of flyers in private areas reserved for guests. Hotels and motels – especially those near airports and major tourist attractions -- have long experienced significant difficulties in getting local pizza parlors and similar businesses to stop coming onto the hotel/motel property and distributing advertisements under guest room doors, on car windshields and elsewhere. In some cases, management and staff who have tried to stop this unwelcome practice have been threatened with physical violence. A number of local jurisdictions have tried various measures to deal with this practice.

Using an ordinance adopted by the city of Anaheim as a model for addressing this problem, SB 1171 makes it an unfair business practice to distribute commercial handbills in private areas of a hotel or motel over the objections of the innkeeper. The bill would permit innkeepers to seek an injunction, penalties and attorney fees for violations of this statute. This provision was carefully crafted to avoid impinging on activities such as union-employee communications that are non-commercial in nature.

SB 1171 also addresses issues relating to the accommodation of minors As you know, the California Supreme Court has held that the Unruh Civil Rights Act prohibits businesses from adopting a blanket policy against admitting minors. California Penal Code §365 additionally makes it a crime for an innkeeper to refuse accommodations without "just cause." As a consequence, innkeepers find it very difficult to refuse

accommodations to minors on the occasion of proms, graduation nights, "spring breaks" and similar events. Some innkeepers have had to call in the police to deal with rowdy or drunk minors. SB 1171 endeavors to address this issue responsibly by providing that, when dealing with a person under 18, an innkeeper has the right to secure a written promise from the minor's parent or guardian to pay for the minor's charges and any damage caused by the minor, as a condition of providing an accommodation. When adult guests are accompanied by children, SB 1171 further allows innkeepers to secure the guests' written agreement to exercise control over their children during their stay.

The final issue in the bill relates to the problem of "hold-over" guests. On occasion, a guest who agreed to check out on a specified date refuses to vacate his or her room when the appointed time arrives. If there are vacancies, of course this guest can be accommodated, but at times the property is full and an incoming guest has a guaranteed reservation for that room. In such cases, SB 1171 allows the innkeeper to make the room available for the arriving guest, but imposes a number of safeguards to insure that this remedy is used sensibly. Most importantly, the innkeeper can only use this remedy if the current guest had agreed to that condition. Moreover, the innkeeper is obligated to safeguard the current guest's property and return it upon request.

I introduced SB 1171 at the request of the California Hotel and Motel Association. The content of the bill was written with the cooperation and input of the city of Anaheim, the California Labor Federation, the Western Center for Law & Poverty, California Rural Legal Assistance, the ACLU and others. Residential and single room occupancy hotels are expressly excluded from the bill.

Given the importance of travel and tourism to California's economy, and particularly to the thousands of smaller, independently owned and operated lodging establishments in the state, the solutions provided by SB 1171 are much in need. This legislation will go a long way toward reducing the all too frequent confusion and conflicts which arise in these situations. I encourage your approval of this measure to help California's travel and tourism industry.

Respectfully,

Ross Johnson

ROSS JOHNSON
Senate Republican Leader

RJ:lco

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL NO: SB 1171 **AUTHOR:** Johnson **DATE:** 09/01/99

SENATE: 40-0 (Consent)

ASSEMBLY: 76-0 (Consent)

This bill would consider it unfair competition for any person to distribute handbills (solicitations) at a hotel under specified conditions. This bill would also allow an innkeeper to evict a guest if the guest refuses or fails to leave the guestroom at the posted checkout time. Lastly, this bill requires a minor's parent, guardian or other responsible adult to assume full liability for the minor's charges and actions at a hotel.

SPONSOR: California Hotel & Motel Association

SUPPORT: State and Consumer Services Agency
Department of Consumer Affairs
California Hotel & Motel Association

OPPOSITION: No expressed opposition.

STATE FISCAL IMPACT: No State fiscal impact.

ARGUMENTS IN SUPPORT: Proponents argue that this bill would help protect innkeepers from losing guests because of bothersome solicitors by prohibiting the distribution of handbills (solicitations). Proponents also argue that this bill will prevent innkeepers from unnecessary and time-consuming litigation by requiring a minor's parents, guardian or other responsible adult to assume full liability for the minor's charges and actions. Lastly, this bill will help innkeepers guarantee that arriving guests with contractual rights will be accommodated by allowing an innkeeper to evict a guest who stays past his or her checkout time.

ARGUMENTS IN OPPOSITION: No substantive opposition argument.

BACKGROUND INFORMATION: The City of Anaheim recently adopted an ordinance prohibiting the unauthorized distribution of handbills, which are typically solicitations from pizza restaurants or other food establishments offering delivery to the guestroom. The sponsor notes that unauthorized persons wandering through guest room areas distributing handbills creates a potentially serious security problem for the lodging establishment and their guests, as well as creating a litter problem in the guest room areas. This bill seeks to prevent this problem by allowing innkeepers to prohibit handbill distribution on their hotel premises.

According to the sponsor, innkeepers have numerous problems with minors, specifically, minors who stay at hotels during prom or graduation night celebrations. They have caused damage to the innkeeper's property and/or charged food and other services to their room for which payment

was not received. The sponsor notes that it is time consuming and expensive for smaller lodging establishments to recover these costs. This bill seeks to prevent this problem by requiring the minor's parent, guardian or other responsible adult to assume full liability for the minor's charges and actions.

Lastly, the sponsor notes that innkeepers have problems with guests who choose to stay past their checkout time. If a guest chooses to ... past his or her checkout time and the innkeeper has reserved the room for another customer, the innkeeper cannot accommodate the arriving customer. Although existing laws provides that an innkeeper can charge the guest for staying longer, nothing can be done to help the customer who loses out on his or her reservation.

Recommendation:	Deputy:	Legislative Secretary:
APPROVE		

Chapt. 354

California
HOTEL & MOTEL ASSOCIATION

October 14, 1999

The Honorable Gray Davis
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

Re: Senate Bill 1171 (Johnson)

Dear Governor Davis:

As you know, Senate Bill 1171, which was authored by Senator Ross Johnson, was drafted and sponsored by the California Hotel & Motel Association (CH&MA). This effort was initiated by CH&MA to remedy a number of significant problems which have been plaguing California innkeepers for years.

CH&MA's board of directors met recently at the association's annual conference, and it was informed at that time of your supportive action regarding SB 1171. Needless to say, the association's leadership was extremely pleased and grateful when it learned that you had signed this important bill into law.

It is our pleasure, as CH&MA's Chairman and President, respectively, to inform you that the board voted unanimously at that time to direct us to write and express to you the sincere appreciation of CH&MA's officers, directors, staff, and members for your support of and assistance to California's thousands of innkeepers – large and small – who will enjoy substantial benefits as a result of your signing SB 1171.

We hope that your administration will not hesitate to call on either of us or the California Hotel & Motel Association if we can ever be of assistance.

Thank you again for your supportive action on this legislation!

Respectfully,

H. Joel Biggs, CHA
Chairman of the Board

Tim Bridwell, CHA
President

P.O. Box 160405
414-29TH Street
Sacramento, California
95816-0405

(916) 444-5780
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chmadrewes@sprintmail.com
www.chma.com

No. 231

CALIFORNIA LEGISLATURE

AT SACRAMENTO

2003–04 REGULAR SESSION

ASSEMBLY WEEKLY HISTORY

COMMENCING WITH AB 1 AND ENDING WITH AB 3118

FRIDAY, OCTOBER 22, 2004

Assembly Convened December 2, 2002

HON. FABIAN NUÑEZ
Speaker

HON. LELAND YEE
Speaker pro Tempore

HON. DARIO FROMMER
Majority Floor Leader

HON. SALLY LIEBER
Assistant Speaker pro Tempore

HON. KEVIN McCARTHY
Minority Floor Leader

Compiled Under the Direction of
E. DOTSON WILSON
Chief Clerk

AMY LEACH
History Clerk

NEVA PARKER
Assistant History Clerk

(Please Report Any Omissions or Errors to History Clerk Phone 319-2363)

A.B. No. 1711—Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)

An act to amend Sections 6028, 6140.7, 17209, and 17536.5 of, and to add Section 5466 to, the Business and Professions Code, relating to legal proceedings.

2003

Feb. 26—Read first time. To print.
Feb. 27—From printer. May be heard in committee March 29.

2004

Jan. 15—Referred to Com. on JUD. From committee chair, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended.
Jan. 16—Re-referred to Com. on JUD.
Jan. 21—From committee: Do pass. To Consent Calendar. (January 20).
Jan. 22—Read second time. To Consent Calendar.
Jan. 29—Read third time, passed, and to Senate. (Ayes 79. Noes 0. Page 4390.)
Jan. 29—In Senate. Read first time. To Com. on RLS. for assignment.
Feb. 17—Referred to Com. on RLS.
Mar. 11—Withdrawn from committee. Re-referred to Com. on JUD.
June 14—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
June 17—In committee: Hearing postponed by committee.
June 28—From committee: Amend, and do pass as amended, and re-refer to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 6. Noes 0.)
June 29—Read second time, amended, and re-referred to Com. on APPR.
July 7—In committee: Hearing postponed by committee.
July 13—From committee: Be placed on second reading file pursuant to Senate Rule 28.8 and be amended.
July 14—Read second time, amended, and to third reading.
Aug. 19—Read third time, amended. To second reading.
Aug. 23—Read second time. To third reading.
Aug. 25—Read third time, passed, and to Assembly. (Ayes 39. Noes 0. Page 5349.)
Aug. 25—In Assembly. Concurrence in Senate amendments pending. May be considered on or after August 27 pursuant to Assembly Rule 77.
Aug. 26—Assembly Rule 77 suspended. (Page 7802.) Senate amendments concurred in. To enrollment. (Ayes 78. Noes 0. Page 7877.)
Sept. 10—Enrolled and to the Governor at 3:45 p.m.
Sept. 15—Approved by the Governor.
Sept. 15—Chaptered by Secretary of State - Chapter 529, Statutes of 2004.

A.B. No. 1712—Committee on Judiciary—(Chaptered – Chapter 449.)

A.B. No. 1713—Committee on Judiciary—(Died on File.)

ASSEMBLY BILL No. 1711

Introduced by Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)

February 26, 2003

An act to amend Section 6000 of the Business and Professions Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

AB 1711, as introduced, Assembly Committee on Judiciary. Attorneys: State Bar Act.

Existing law, the State Bar Act, provides for the licensing and regulation of attorneys.

This bill would change the name of the State Bar Act to the State Bar Act of California.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 6000 of the Business and Professions Code is amended to read:

6000. This chapter of the Business and Professions Code constitutes the chapter on attorneys. It may be cited as the State Bar Act *of California.*

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AMENDED IN ASSEMBLY JANUARY 15, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL No. 1711

Introduced by Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)

February 26, 2003

An act to amend ~~Section 6000~~ *Sections 6028 and 6140.7* of the Business and Professions Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

AB 1711, as amended, Assembly Committee on Judiciary. Attorneys: State Bar Act.

Existing law, the State Bar Act, provides for the licensing and regulation of attorneys *by the State Bar of California, and for the determination of disciplinary and reinstatement proceedings by the State Bar Court. Existing law also provides that a member who is suspended, disbarred, or resigns with disciplinary charges pending pay discipline costs as a condition of reinstatement of, or return to, active membership.*

This bill would ~~change the name of the State Bar Act to the State Bar Act of California~~ *delete obsolete provisions*.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

~~SECTION 1. Section 6000 of the Business and Professions~~

SECTION 1. Section 6028 of the Business and Professions Code is amended to read:

6028. (a) The board may make appropriations and disbursements from the funds of the State Bar to pay all necessary expenses for effectuating the purposes of this chapter.

(b) Except as provided in subdivision (c), no member of the board shall receive any other compensation than his or her necessary expenses connected with the performance of his or her duties as a member of the board.

(c) Public members of the board appointed pursuant to the provisions of Section 6013.5~~,~~ *and* public members of the examining committee appointed pursuant to Section 6046.5~~, and public members of the State Bar Court appointed pursuant to Section 6086.6~~ shall receive, out of funds appropriated by the board for this purpose, fifty dollars ($50) per day for each day actually spent in the discharge of official duties, but in no event shall this payment exceed five hundred dollars ($500) per month. In addition, these public members shall receive, out of funds appropriated by the board, necessary expenses connected with the performance of their duties.

SEC. 2. Section 6140.7 of the Business and Professions Code is amended to read:

6140.7. Costs assessed against a member publicly reproved or suspended, where suspension is stayed and the member is not actually suspended, shall be added to and become a part of the membership fee of the member, for the next calendar year. Unless time for payment of discipline costs is extended pursuant to subdivision (c) of Section ~~6085.10~~ *6086.10*, costs assessed against a member who resigns with disciplinary charges pending or by a member who is actually suspended or disbarred shall be paid as a condition of reinstatement of or return to active membership.

~~Code is amended to read:~~

~~6000. This chapter of the Business and Professions Code constitutes the chapter on attorneys. It may be cited as the State Bar Act of California.~~

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FILE COPY

Date of Hearing: January 20, 2004

ASSEMBLY COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair
AB 1711 (Judiciary) – As Amended: January 15, 2004

PROPOSED CONSENT

SUBJECT: STATE BAR ACT

KEY ISSUE: SHOULD TWO NON-CONTROVERSIAL TECHNICAL CORRECTIONS BE MADE TO THE STATE BAR ACT?

SUMMARY: Makes two non-controversial technical corrections to the State Bar Act. Specifically, this bill deletes a reference to a code section repealed in 1989 and corrects an inaccurate cross-reference.

EXISTING LAW provides for compensation for public members of the State Bar's Board of Governors appointed pursuant to a code section which was repealed in 1989 (Business and Professions Code section 6028) and contains an incorrect cross-reference relating to costs assessed against a lawyer who either resigns with disciplinary charges pending or is suspended or disbarred (Business and Professions Code section 6140.7).

FISCAL EFFECT: The bill as currently in print is keyed non-fiscal.

COMMENTS: This non-controversial bill, supported by the State Bar of California, makes two necessary technical corrections to the State Bar Act. First, the bill deletes a reference to a code section repealed by the Legislature in 1989 and, second, the bill corrects an inaccurate cross-reference relating to costs assessed against a lawyer who either resigns with disciplinary charges pending or is suspended or disbarred.

REGISTERED SUPPORT / OPPOSITION:

Support

State Bar of California

Opposition

None on file

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

AB 1711 (JUDICIARY)
ATTORNEYS: STATE BAR ACT.

Version: 1/15/04 Last Amended
Vote: Majority
Support

Vice-Chair: Tom Harman
Tax or Fee Increase: No

Makes two technical corrections to update the State Bar Act by deleting a reference to a code section repealed in 1989; and by correcting an inaccurrate cross-reference.

Policy Question

Should two non-controversial technical corrections be made to the State Bar Act?

Summary

Makes two technical corrections to update the State Bar Act by deleting a reference to a code section repealed in 1989; and by correcting an inaccurate cross-reference.

Support

State Bar of California.

Opposition

None on file.

Arguments In Support of the Bill

This bill makes two technical corrections in the State Bar Act. The first correction deletes a reference to a code section pertaining to compensation that the Legislature repealed in 1989. The second revision corrects an inaccurate cross-reference relating to costs assessed against an attorney who either resigns with disciplinary charges pending or is suspended or disbarred.

Arguments In Opposition to the Bill

No significant argument in opposition.

Fiscal Effect

Unknown.

Comments

This bill deletes from Business and Professions Code Section 6028 the receipt of compensation, as further specified, that would otherwise go to public members of the State Bar Court in conformance with a change in law made in 1989 to repeal such provision.

Policy Consultant: Mark Redmond 1/15/04
Fiscal Consultant:

Assembly Republican Judiciary Votes (0-0) 1/20/04
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/03
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/03
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/03
Ayes: None
Noes: None
Abs. / NV: None

SENATE COMMITTEE ON JUDICIARY
Martha Escutia, Chair

BACKGROUND INFORMATION REQUEST

Measure: AB 1711

Author : Judiciary

1. Origin of the bill:

a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?

State Bar of California (Sections 1&2)
Attorney General's Office (Section 3)

b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.

None known

c. Has there been an interim committee report on the bill? If so, please identify the report.

None known

2. What is the problem or deficiency in the present law which this bill seeks to remedy?

Re: Sections 1 & 2: This non-controversial bill, supported by the State Bar of California, makes two necessary technical corrections to the State Bar Act. First, the bill deletes a reference to a code section repealed by the Legislature in 1989 and, second, the bill corrects an inaccurate cross-reference relating to costs assessed against a lawyer who either resigns with disciplinary charges pending or is suspended or disbarred.

Re: Section 3: Seeks to remedy the problem created by the repeal of Rule of Court 15 (e) (2) which required service of "each brief" on the Attorney General in cases governed by B & P 17209. In its place, new Rule 15 (c) 3 requires that "a copy of each brief must be served on a public officer or agency when required by Rule 44.5." Rule 44.5 merely refers to statutes requiring service. Since B & P 17209 and 17536.6 only require service of the opening brief, the court rules now only reflect that statutory requirement.

Current law does not support the efforts of the Attorney General to fully monitor and evaluate issues raised by 17200/17500 appellate litigation. This proposal will assure

proper notice to the Attorney General.

3. **Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.**

Please see attached.

4. **Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.**

5. **If you plan substantive amendments to this bill prior to the hearing, please explain briefly the substance of the amendments to be prepared.**

Attached are amendments adding Section 3 to the bill. No further amendments are planned.

6. **List the witnesses you plan to have testify.**

Steve Gevercer, Office of the Attorney General

RETURN THIS FORM TO: SENATE COMMITTEE ON JUDICIARY
Phone (916) 445-5957

STAFF PERSON TO CONTACT: Saskia Kim 319-2334

AMENDED IN SENATE JUNE 14, 2004

AMENDED IN ASSEMBLY JANUARY 15, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL No. 1711

Introduced by Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)

February 26, 2003

An act to amend Sections 6028 ~~and 6140.7~~, *6140.7, and 17536.5* of the Business and Professions Code, relating to ~~attorneys~~ *legal proceedings*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1711, as amended, Assembly Committee on Judiciary. Attorneys: ~~State Bar Act~~ *false advertising*.

Existing law, the State Bar Act, provides for the licensing and regulation of attorneys by the State Bar of California, and for the determination of disciplinary and reinstatement proceedings by the State Bar Court. Existing law also provides that a member who is suspended, disbarred, or resigns with disciplinary charges pending pay discipline costs as a condition of reinstatement of, or return to, active membership.

This bill would delete obsolete provisions.

Existing law prohibits acts of false and misleading advertising, and specifies the methods for service for any proceeding alleging a violation, including requiring the person who commenced the proceeding to file notice with the Attorney General.

This bill would revise those provisions to require each person filing any paper with the court to serve a copy of that paper on the Attorney General.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes.* State-mandated local program: no.

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

SECTION 1. Section 6028 of the Business and Professions Code is amended to read:

6028. (a) The board may make appropriations and disbursements from the funds of the State Bar to pay all necessary expenses for effectuating the purposes of this chapter.

(b) Except as provided in subdivision (c), no member of the board shall receive any other compensation than his or her necessary expenses connected with the performance of his or her duties as a member of the board.

(c) Public members of the board appointed pursuant to the provisions of Section 6013.5 and public members of the examining committee appointed pursuant to Section 6046.5 shall receive, out of funds appropriated by the board for this purpose, fifty dollars ($50) per day for each day actually spent in the discharge of official duties, but in no event shall this payment exceed five hundred dollars ($500) per month. In addition, these public members shall receive, out of funds appropriated by the board, necessary expenses connected with the performance of their duties.

SEC. 2. Section 6140.7 of the Business and Professions Code is amended to read:

6140.7. Costs assessed against a member publicly reproved or suspended, where suspension is stayed and the member is not actually suspended, shall be added to and become a part of the membership fee of the member, for the next calendar year. Unless time for payment of discipline costs is extended pursuant to subdivision (c) of Section 6086.10, costs assessed against a member who resigns with disciplinary charges pending or by a member who is actually suspended or disbarred shall be paid as a condition of reinstatement of or return to active membership.

SEC. 3. Section 17536.5 of the Business and Professions Code is amended to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, ~~the person who commenced~~ *each person filing any paper with the court in* that proceeding shall serve ~~notice thereof, including a copy of the person's brief or petition and brief~~, *within three days of filing with the court, a copy of that paper, including all petitions and briefs,* on the Attorney General, directed to the attention of the Consumer Law Section *at a service address designated on the Attorney General's official Web site for service of papers under this section or, if no service address is designated, at the Attorney General's office in San Francisco, California*, and on the district attorney of the county in which the lower court action or proceeding was originally filed. ~~The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that~~ *Timely compliance with the three-day time period is a jurisdictional prerequisite to the entry of any judgement, order, decision, or opinion construing or applying this chapter by the court, provided that if an extension of time is sought within that three-day period,* the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. ~~No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.~~

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SENATE JUDICIARY COMMITTEE
Martha M. Escutia, Chair
2003-2004 Regular Session

AB 1711	A
Assembly Judiciary Committee	B
As Amended June 14, 2004	
Hearing Date: June 22, 2004	1
Business and Professions Code	7
GWW:cjt	1
	1

SUBJECT

State Bar Act and Unfair Competition Law

DESCRIPTION

The bill would require each person filing any paper in an unfair competition or unfair advertising claim before an appellate body to serve a copy of that paper, including all petitions and briefs, on the Attorney General and on the district attorney of the county in which the case was first brought. Service would be required within three days of the court filing.

This bill would also delete obsolete provisions in the State Bar Act.

(This analysis reflects author's amendments to be offered in Committee.)

BACKGROUND

A change in the California Rules of Court (adopted by the Judicial Council) at the beginning of the year has operated to deprive the Attorney General's office of its ability to monitor appellate litigation involving unfair competition claims. The bill would enact into law a former mandate under the California Rules of Court that required each party filing a brief in any appellate litigation involving an unfair competition claim, to serve a copy of the briefs on the Attorney General.

The Attorney General's office has been unable to determine the reasons for the Judicial Council rule change. However, it has observed the deleterious effects.

The other provisions in the bill make purely technical corrections.

(more)

CHANGES TO EXISTING LAW

1. Existing law requires any person who files a paper in an appellate proceeding involving the unfair competition law to serve notice thereof, including a copy of the person's brief or petition and brief upon the Attorney General and the district attorney of the county in which the case originated. The notice, including the petition or the brief and petition, must be served within three days after commencement of the proceeding, provided that the time may be extended by the presiding appellate judge for good cause. Existing law provides that no judgment or relief, temporary or permanent, shall be granted until proof of service of the notice is filed with the court. (Business and Professions Code Section 17536.5.)

   This bill would instead require each person filing any paper with the appellate court to serve a copy of that paper on the Attorney General and on the district attorney of the county in which the case originally arose, within three days of the court filing.

2. Existing law, the State Bar Act, provides for the determination of disciplinary proceedings brought against attorneys by the State Bar Court.

   This bill would delete an obsolete provision in Section 6028 of the State Bar Act which provides for the appointment of a public member to the State Bar Court.

3. Existing law provides that disciplinary costs must be paid by a member as a condition of reinstatement or return to active State Bar membership when the member who has been suspended or disbarred, or who resigned with pending disciplinary charges seeks reinstatement or return to active membership. (Business and Professions Code Section 6140.7.)

   This bill would correct an incorrect cross-reference in that provision.

COMMENT

1. Restoration of requirement to serve appellate briefs in unfair competition claims to the Attorney General

   The Attorney General's Office writes in support of its provision:

   > This bill seeks to remedy the problem created by the repeal of Rule 15(e)(2) [of the California Rules of Court], as of 1/1/04, which required service of "each brief" on the AG in cases governed by B & P 17209. In its place, new Rule 15(c)(3) requires that "a copy of each brief must be served

on a public officer or agency when required by Rule 44.5" Rule 44.5 merely refers to statutes requiring service. Since B & P 17209 and 17536.6 only require service of the opening brief, the court rules now only reflect that statutory intent.

Thus, current law only requires service of the initial brief on the Office of the A.G. In order to fully monitor and evaluate issues raised by 17200/17500 appellate litigation, my office must be provided with all briefing. Our office will face increased burdens in chasing down respondent's and reply briefs. Our office has experienced some difficulty in obtaining the initial briefs until we point out the court rule requiring service.

This proposal will ensure proper notice to the AG.

Since the local district attorney is part of the existing statute which AB 1711 amends, the local district attorney will also be served copies of each paper and briefing filed in 17200/17500 appellate litigation.

According to the sponsor, this proposal has been circulated with the plaintiffs attorneys group, the defense bar, and the Civil Justice Association of California without anyone raising any objection.

2. Author's amendments to be offered in Committee

Author's amendments will delete new language (on page 3, line 17) that provides "[t]imely compliance with the three-day time period is a jurisdictional prerequisite to the entry of any judgment, order, decision, or opinion construing or applying this chapter by the court, provided that if an extension of time is sought within that three-day period, the time may be extended by the Chief Justice or presiding justice or judge for good cause shown."

Committee staff had concerns about making timely compliance with the notice and service requirements jurisdictional, when the former court rules did not provide that same effect. Although the Attorney General's office asserted that service of notice and papers to the Attorney General was jurisdictional under the False Claims Act, Committee staff noted that in False Claims Act cases, the Attorney General has the right and opportunity to take over a filed case. No similar right exists in unfair competition claims.

In light of the foregoing, the Attorney General's office has agreed to delete the strict "timely compliance" jurisdictional language. Instead, like existing law, no judgment or relief, temporary or permanent, shall be granted until proof of service of the notice and papers is filed with the court.

3. The changes to the State Bar Act

This bill would make two technical corrections to the State Bar Act. First, the bill would delete an obsolete reference in the law "to public members of the State Bar Court appointed pursuant to Section 6086.6." That provision was repealed long ago. Further, all members of the State Bar Court are now lawyers. Second, the bill would correct an inaccurate cross-reference in Section 6160.7, which relates to the assessment of disciplinary costs against a lawyer who either resigns with disciplinary charges pending or is suspended or disbarred, and who seeks reinstatement or return to active membership.

Support: None Known

Opposition: None Known

HISTORY

Source: State Bar of California; Attorney General's Office

Related Pending Legislation: None Known

Prior Legislation: None Known

Prior Vote: (On State Bar provisions only. Other provisions added in Senate)
Assembly Floor: (79 - 0)
Assembly Judiciary Committee: (11 - 0)

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AMENDED IN SENATE JUNE 29, 2004

AMENDED IN SENATE JUNE 14, 2004

AMENDED IN ASSEMBLY JANUARY 15, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL No. 1711

Introduced by Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)

February 26, 2003

An act to amend Sections 6028, 6140.7, and 17536.5 of the Business and Professions Code, relating to legal proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1711, as amended, Assembly Committee on Judiciary. Attorneys: false advertising.

Existing law, the State Bar Act, provides for the licensing and regulation of attorneys by the State Bar of California, and for the determination of disciplinary and reinstatement proceedings by the State Bar Court. Existing law also ~~provides that~~ *requires* a member who is suspended, disbarred, or resigns with disciplinary charges pending *to* pay discipline costs as a condition of reinstatement of, or return to, active membership.

This bill would delete obsolete provisions.

Existing law prohibits acts of false and misleading advertising, and specifies the methods for service for any proceeding alleging a violation, including requiring the person who commenced the proceeding to file notice with the Attorney General.

This bill would revise those provisions to require each person filing any paper with the court *in the proceedings* to serve a copy of that paper on the Attorney General.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 6028 of the Business and Professions Code is amended to read:

6028. (a) The board may make appropriations and disbursements from the funds of the State Bar to pay all necessary expenses for effectuating the purposes of this chapter.

(b) Except as provided in subdivision (c), no member of the board shall receive any other compensation than his or her necessary expenses connected with the performance of his or her duties as a member of the board.

(c) Public members of the board appointed pursuant to the provisions of Section 6013.5 and public members of the examining committee appointed pursuant to Section 6046.5 shall receive, out of funds appropriated by the board for this purpose, fifty dollars ($50) per day for each day actually spent in the discharge of official duties, but in no event shall this payment exceed five hundred dollars ($500) per month. In addition, these public members shall receive, out of funds appropriated by the board, necessary expenses connected with the performance of their duties.

SEC. 2. Section 6140.7 of the Business and Professions Code is amended to read:

6140.7. Costs assessed against a member publicly reproved or suspended, where suspension is stayed and the member is not actually suspended, shall be added to and become a part of the membership fee of the member, for the next calendar year. Unless time for payment of discipline costs is extended pursuant to subdivision (c) of Section 6086.10, costs assessed against a member who resigns with disciplinary charges pending or by a member who is actually suspended or disbarred shall be paid as a condition of reinstatement of or return to active membership.

SEC. 3. Section 17536.5 of the Business and Professions Code is amended to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, each person filing any paper with the court in that proceeding shall serve, within three days of filing with the court, a copy of that paper, including all petitions and briefs, on the Attorney General, directed to the attention of the Consumer Law Section at a service address designated on the Attorney General's official Web site for service of papers under this section or, if no service address is designated, at the Attorney General's office in San Francisco, California, and on the district attorney of the county in which the lower court action or proceeding was originally filed. ~~Timely compliance with the three-day time period is a jurisdictional prerequisite to the entry of any judgement, order, decision, or opinion construing or applying this chapter by the court, provided that if an extension of time is sought within that three-day period, the time may be~~ *The time for service may be* extended by the Chief Justice or presiding justice or judge for good cause shown. *No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.*

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AMENDED IN SENATE JULY 14, 2004

AMENDED IN SENATE JUNE 29, 2004

AMENDED IN SENATE JUNE 14, 2004

AMENDED IN ASSEMBLY JANUARY 15, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL No. 1711

Introduced by Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)

February 26, 2003

An act to amend Sections 6028, 6140.7, *17209,* and 17536.5 of the Business and Professions Code, relating to legal proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1711, as amended, Assembly Committee on Judiciary. Attorneys: false advertising.

Existing law, the State Bar Act, ~~provides for~~ *requires* the licensing and regulation of attorneys by the State Bar of California, and *provides* for the determination of disciplinary and reinstatement proceedings by the State Bar Court. Existing law also requires a member who is suspended, disbarred, or resigns with disciplinary charges pending to pay discipline costs as a condition of reinstatement of, or return to, active membership.

This bill would delete obsolete provisions.

Existing law prohibits acts of *unfair competition and acts of* false and misleading advertising, and specifies the methods for service for any

proceeding alleging a violation, including requiring the person who commenced the proceeding to file notice with the Attorney General.

This bill would revise those provisions to require each person filing any paper with the court in the proceedings to serve a copy of that paper on the Attorney General.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 6028 of the Business and Professions Code is amended to read:

6028. (a) The board may make appropriations and disbursements from the funds of the State Bar to pay all necessary expenses for effectuating the purposes of this chapter.

(b) Except as provided in subdivision (c), no member of the board shall receive any other compensation than his or her necessary expenses connected with the performance of his or her duties as a member of the board.

(c) Public members of the board appointed pursuant to the provisions of Section 6013.5 and public members of the examining committee appointed pursuant to Section 6046.5 shall receive, out of funds appropriated by the board for this purpose, fifty dollars ($50) per day for each day actually spent in the discharge of official duties, but in no event shall this payment exceed five hundred dollars ($500) per month. In addition, these public members shall receive, out of funds appropriated by the board, necessary expenses connected with the performance of their duties.

SEC. 2. Section 6140.7 of the Business and Professions Code is amended to read:

6140.7. Costs assessed against a member publicly reproved or suspended, where suspension is stayed and the member is not actually suspended, shall be added to and become a part of the membership fee of the member, for the next calendar year. Unless time for payment of discipline costs is extended pursuant to subdivision (c) of Section 6086.10, costs assessed against a member who resigns with disciplinary charges pending or by a member who is actually suspended or disbarred shall be paid as a condition of reinstatement of or return to active membership.

SEC. 3. *Section 17209 of the Business and Professions Code is amended to read:*

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, ~~the person who commenced that proceeding~~ *each person filing any paper with the court in that proceeding* shall serve ~~notice thereof, including a copy of the person's brief or petition and brief~~*; within three days of filing with the court, a copy of that paper, including all petitions and briefs*, on the Attorney General, directed to the attention of the Consumer Law Section *at a service address designated on the Attorney General's official Web site for service of papers under this section or, if no service address is designated, at the Attorney General's office in San Francisco, California*, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The ~~notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the~~ time *for service* may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 4. Section 17536.5 of the Business and Professions Code is amended to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, each person filing any paper with the court in that proceeding shall serve, within three days of filing with the court, a copy of that paper, including all petitions and briefs, on the Attorney General, directed to the attention of the Consumer Law Section at a service address designated on the Attorney General's official Web site for service of papers under this section or, if no service address is designated, at the Attorney General's office in San Francisco, California, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The time for service may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary

or permanent, shall be granted until proof of service of this notice is filed with the court.

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BILL ANALYSIS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 Fax: (916) 327-4478	AB 1711

THIRD READING

Bill No: AB 1711
Author: Assembly Judiciary Committee
Amended: 7/14/04 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE : 6-0, 6/22/04
AYES: Escutia, Morrow, Cedillo, Ducheny, Kuehl, Sher
NO VOTE RECORDED: Ackerman

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 79-0, 1/29/04 (Passed on Consent) - See last page for vote

SUBJECT : State Bar Act and Unfair Competition Law

SOURCE : State Bar of California
Office of the State Attorney General

DIGEST : This bill requires each person filing any paper in an unfair competition or unfair advertising claim before an appellate body to serve a copy of that paper, including all petitions and briefs, on the State Attorney General and on the district attorney of the county in which the case was first brought. Service will be required within three days of the court filing. The bill also deletes obsolete provisions in the State Bar Act.

ANALYSIS : Existing law requires any person who files a paper in an appellate proceeding involving the unfair competition law to serve notice thereof, including a copy

CONTINUED

of the person's brief or petition and brief upon the State Attorney General (AG) and the district attorney (DA) of the county in which the case originated. The notice, including the petition or the brief and petition, must be served within three days after commencement of the proceeding, provided that the time may be extended by the presiding appellate judge for good cause.

Existing law provides that no judgment or relief, temporary or permanent, shall be granted until proof of service of the notice is filed with the court. [Section 17536.5 of the Business and Professions Code (B&PC)]

This bill instead requires each person filing any paper with the appellate court to serve a copy of that paper on the AG and on the DA of the county in which the case originally arose, within three days of the court filing.

Existing law, the State Bar Act, provides for the determination of disciplinary proceedings brought against attorneys by the State Bar Court.

This bill deletes an obsolete provision in Section 6028 of the State Bar Act which provides for the appointment of a public member to the State Bar Court.

Existing law provides that disciplinary costs must be paid by a member as a condition of reinstatement or return to active State Bar membership when the member who has been suspended or disbarred, or who resigned with pending disciplinary charges seeks reinstatement or return to active membership. [Section 6140.7 of the B&PC]

This bill corrects an incorrect cross-reference in that provision.

This bill also corrects a cross-reference in Section 17209 of the B&PC as it relates to Section 17536.5 of the B&PC.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT : (Verified 7/14/04)

State Bar of California (co-source)
Office of the State Attorney General (co-source)

ARGUMENTS IN SUPPORT : The AG's Office writes in support of its provision:

"This bill seeks to remedy the problem created by the repeal of Rule 15(e)(2) [of the California Rules of Court], as of 1/1/04, which required service of 'each brief" on the AG in cases governed by B & P 17209. In its place, new Rule 15(c)(3) requires that "a copy of each brief must be served on a public officer or agency when required by Rule 44.5' Rule 44.5 merely refers to statutes requiring service. Since B & P 17209 and 17536.6 only require service of the opening brief, the court rules now only reflect that statutory intent.

"Thus, current law only requires service of the initial brief on the Office of the A.G. In order to fully monitor and evaluate issues raised by 17200/17500 appellate litigation, my office must be provided with all briefing. Our office will face increased burdens in chasing down respondent's and reply briefs. Our office has experienced some difficulty in obtaining the initial briefs until we point out the court rule requiring service.

"This proposal will ensure proper notice to the AG."

ASSEMBLY FLOOR :
AYES: Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wiggins, Wolk, Wyland, Yee

NO VOTE RECORDED: Wesson

RJG:mel 7/14/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

AMENDED IN SENATE AUGUST 19, 2004

AMENDED IN SENATE JULY 14, 2004

AMENDED IN SENATE JUNE 29, 2004

AMENDED IN SENATE JUNE 14, 2004

AMENDED IN ASSEMBLY JANUARY 15, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL No. 1711

Introduced by Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)

February 26, 2003

An act to amend Sections 6028, 6140.7, 17209, and 17536.5 of, *and to add Section 5466 to,* the Business and Professions Code, relating to legal proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1711, as amended, ~~Assembly~~ Committee on Judiciary. ~~Attorneys: false advertising~~ *Regulation of legal proceedings.*

(1) Existing law, the State Bar Act, ~~requires~~ *provides for* the licensing and regulation of attorneys by the State Bar of California~~;~~ and ~~provides~~ for the determination of disciplinary and reinstatement proceedings by the State Bar Court. Existing law ~~also~~ requires a member who is suspended, disbarred, or resigns with disciplinary

charges pending to pay discipline costs as a condition of reinstatement of, or return to, active membership.

This bill would delete obsolete provisions.

(2) Existing law prohibits acts of unfair competition and acts of false and misleading advertising, and specifies the methods for service for any proceeding alleging a violation, including requiring the person who commenced the proceeding to file notice with the Attorney General *and district attorney.*

This bill would ~~revise those provisions to~~ *instead* require each person filing any ~~paper~~ *brief or petition* with the court in ~~the~~ *those* proceedings to serve a copy of that ~~paper~~ *brief or petition, and upon request, any other document,* on the Attorney General *and district attorney.*

(3) Existing law, the Outdoor Advertising Act, provides for the regulation of advertising displays, as defined, and makes the violation of the act's provisions unlawful and a public nuisance.

This bill would prohibit a private party from bringing a cause of action against an advertising display in place as of August 12, 2004, that has been in continuous existence at its current location for 5 years. The exemption would not apply to an illegal modification of the display if the cause of action is filed within 5 years of the modification.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. *Section 5466 is added to the Business and Professions Code, to read:*

5466. (a) Notwithstanding any other provision of law, as to an advertising display in place as of August 12, 2004, a cause of action for the erection or maintenance of an advertising display that violates this chapter or the laws of a local governmental entity shall not be brought by a private party against an advertising display that has been in continuous existence in its current location for a period of five years. However, if the advertising display has been illegally modified, the cause of action for the illegal modification may be brought by a private party if it is filed within five years of the date the modification was made.

(b) This section shall not apply to a cause of action brought by a governmental entity that is based on the erection or maintenance

of an advertising display that violates this chapter or the laws of the governmental entity.

SEC. 2. Section 6028 of the Business and Professions Code is amended to read:

6028. (a) The board may make appropriations and disbursements from the funds of the State Bar to pay all necessary expenses for effectuating the purposes of this chapter.

(b) Except as provided in subdivision (c), no member of the board shall receive any other compensation than his or her necessary expenses connected with the performance of his or her duties as a member of the board.

(c) Public members of the board appointed pursuant to the provisions of Section 6013.5 and public members of the examining committee appointed pursuant to Section 6046.5 shall receive, out of funds appropriated by the board for this purpose, fifty dollars ($50) per day for each day actually spent in the discharge of official duties, but in no event shall this payment exceed five hundred dollars ($500) per month. In addition, these public members shall receive, out of funds appropriated by the board, necessary expenses connected with the performance of their duties.

~~SEC. 2.~~

SEC. 3. Section 6140.7 of the Business and Professions Code is amended to read:

6140.7. Costs assessed against a member publicly reproved or suspended, where suspension is stayed and the member is not actually suspended, shall be added to and become a part of the membership fee of the member, for the next calendar year. Unless time for payment of discipline costs is extended pursuant to subdivision (c) of Section 6086.10, costs assessed against a member who resigns with disciplinary charges pending or by a member who is actually suspended or disbarred shall be paid as a condition of reinstatement of or return to active membership.

~~SEC. 3.~~

SEC. 4. Section 17209 of the Business and Professions Code is amended to read:

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, each person

filing any ~~paper~~ *brief or petition* with the court in that proceeding shall serve~~;~~, within three days of filing with the court, a copy of that ~~paper, including all petitions and briefs,~~ *brief or petition* on the Attorney General, directed to the attention of the Consumer Law Section at a service address designated on the Attorney General's official Web site for service of papers under this section or, if no service address is designated, at the Attorney General's office in San Francisco, California, and on the district attorney of the county in which the lower court action or proceeding was originally filed. *Upon the Attorney General's or district attorney's request, each person who has filed any other document, including all or a portion of the appellate record, with the court in addition to a brief or petition shall provide a copy of that document without charge to the Attorney General or the district attorney within five days of the request.* The time for service may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted *or opinion issued* until proof of service of ~~this notice~~ *the brief or petition on the Attorney General and district attorney* is filed with the court.

~~SEC. 4.~~

SEC. 5. Section 17536.5 of the Business and Professions Code is amended to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, each person filing any ~~paper~~ *brief or petition* with the court in that proceeding shall serve, within three days of filing with the court, a copy of that ~~paper, including all petitions and briefs,~~ *brief or petition* on the Attorney General, directed to the attention of the Consumer Law Section at a service address designated on the Attorney General's official Web site for service of papers under this section or, if no service address is designated, at the Attorney General's office in San Francisco, California, and on the district attorney of the county in which the lower court action or proceeding was originally filed. *Upon the Attorney General's or district attorney's request, each person who has filed any other document, including all or a portion of the appellate record, with the court in addition to a brief or petition shall provide a copy of that document without*

charge to the Attorney General or the district attorney within five days of the request. The time for service may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted *or opinion issued* until proof of service of ~~this notice~~ *the petition or brief on the Attorney General and district attorney* is filed with the court.

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AB 1711 (JUDICIARY)
REGULATION OF LEGAL PROCEEDINGS.

Version: 8/19/04 Last Amended
Vote: Majority
Concur

Vice-Chair: Tom Harman
Tax or Fee Increase: No

(1)Requires persons serving petitions and briefs under the Unfair Competition Law or False Advertising Act on the Attorney General and the District Attorney (D.A.) to also serve any additional legal papers pertaining to such lawsuits on the Attorney General and D.A. upon their request. (2) Requires, except as specified, that a private party be prohibited from bringing a cause of action against an outdoor advertising display, in place as of August 12, 2004, that has been in continuous existence at its current location. (3) Makes two technical corrections to update the State Bar Act by deleting a reference to a code section repealed in 1989; and by correcting an inaccurate cross-reference.

Although the recommendation is "Concur", it would be appropriate to re-refer this bill to Assembly Judiciary Committee pursuant to Rule 77.2 to review the outdoor advertising provision that was not heard in policy committee in the Assembly.

Policy Question

1. Should two non-controversial technical corrections be made to the State Bar Act?
2. Should persons serving petitions and briefs under the Unfair Competition Law or False Advertising Act on the Attorney General and the appropriate District Attorney (D.A.) also serve any additional legal papers pertaining to such lawsuit on the Attorney General and D.A. upon their request?
3. Should a private party be prohibited from bringing a cause of action against an outdoor advertising display in place as of August 12, 2004, that has been in continuous existence at its current location, unless it has otherwise been illegally modified and the action is filed within five years of the modification?

Assembly Republican Judiciary Votes (13-0) 1/20/04
Ayes: Pacheco, Bates, Leslie, Spitzer
Noes: None
Abs. / NV: None

Assembly Republican Floor Votes (79-0) 1/29/04
Ayes: All Republicans
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/03
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/03
Ayes: None
Noes: None
Abs. / NV: None

Summary

Makes two technical corrections to update the State Bar Act by deleting a reference to a code section repealed in 1989; and by correcting an inaccurate cross-reference.

Senate Amendments:

1) Adds to the filing of legal papers requirement of persons filing lawsuits pertaining to the Unfair Competition Law or False Advertising Act to further file with the Attorney General or the appropriate local district attorney, upon their request, any other document beyond the required filing of the brief and petition pertaining to the lawsuit.
2) Clarify that a private party would not be authorized to bring a cause of action against an advertising display under the Outdoor Advertising Act as to an advertising display in place as of August 12, 2004, that has been in continuous existence at its current location for five years. The exemption would not apply to an illegal modification of the display if the cause of action is filed within five years of the modification.

Support

State Bar of California.

Opposition

None on file.

Arguments In Support of the Bill

1. Providing the Attorney General or the appropriate local district attorney with copies of additional documents in connection with currently-required documents of such lawsuits

concerning Unfair Competition Law or False Advertising Act violations could expedite such cases and weed out inappropriately alleged causes of action against small businesses.

2. The bill provides a reasonable exemption to business entities from private actions on outdoor advertising displays by limiting the exemption to such displays that have been in continuous existence for five years without subsequent legal modifications.
3. This bill makes two technical corrections in the State Bar Act. The first correction deletes a reference to a code section pertaining to compensation that the Legislature repealed in 1989. The second revision corrects an inaccurate cross-reference relating to costs assessed against an attorney who either resigns with disciplinary charges pending or is suspended or disbarred.

Arguments In Opposition to the Bill

No significant argument in opposition.

Fiscal Effect

NO STATE COSTS. The Office of the Attorney General indicates there would be no fiscal impact associated with this measure.

Comments

EXISTING LAW.

Notice to Attorney General & D.A. of Unfair Competition & False Advertising Lawsuits.

The person who commences a lawsuit for a violation of the Unfair Competition Law or False Advertising Act [Business & Professions Code Sections 17200 or 17500] in superior court or appellate court shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer law Section, and on the district attorney of the county in which the lower court action was originally filed. [Business & Professions Code Sections 17209 and 17365.5].

Outdoor Advertising.

All advertising displays which are placed or exist in violation of the Outdoor Advertising Act [Business 7 Professions Code Section 5200 et seq.] are public nuisances and may be removed by any public employee as specified [Business & Professions Code Section 5461].

The State Department of Transportation director may revoke any license or permit for advertising displays for failure to comply with the Outdoor Advertising Act and may remove and destroy any advertising display placed or maintained in violation of the law after 30 days' written notice is forwarded by mail to the permitholder at his or her last known address [Business & Professions Code Section 5463].

Obsolete State Bar Provision.

This bill deletes from Business and Professions Code Section 6028 the receipt of compensation, as further specified, that would otherwise go to public members of the State Bar Court in conformance with a change in law made in 1989 to repeal such provision.

Policy Consultant: Mark Redmond 8/24/04
Fiscal Consultant: Christopher Ryan 8/24/04

CONCURRENCE IN SENATE AMENDMENTS
AB 1711 (Judiciary Committee)
As Amended August 19, 2004
Majority vote

ASSEMBLY: 79-0 (January 29, 2004) SENATE: 39-0 (August 25, 2004)

Original Committee Reference: JUD.

SUMMARY: Requires each person filing any brief or petition in an unfair competition or unfair advertising claim before an appellate body to serve a copy of that brief or petition, and, upon request, any other document, on the Attorney General (AG) and on the district attorney of the county in which the case was first brought, clarifies the statute of limitations applicable to private party claims challenging advertising displays and deletes obsolete provisions in the State Bar Act.

The Senate amendments add the provisions regarding service of briefs or petitions in unfair competition and unfair advertising actions and clarifying the statute of limitations period as noted above.

EXISTING LAW requires any person who files a paper in an appellate proceeding involving the unfair competition law to serve notice thereof, including a copy of the person's brief or petition and brief upon the AG and the district attorney of the county in which the case originated, provides for the regulation of advertising displays under the Outdoor Advertising Act, provides for compensation for public members of the State Bar's Board of Governors appointed pursuant to a code section which was repealed in 1989 and contains an incorrect cross-reference relating to costs assessed against a lawyer who either resigns with disciplinary charges pending or is suspended or disbarred.

AS PASSED BY THE ASSEMBLY, this bill contained the provisions relating to the State Bar Act.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS: This non-controversial bill, supported by the AG's Office and the State Bar of California, makes several non-controversial changes to existing law. The AG's Office writes in support that the bill "seeks to remedy the problem created by the repeal of Rule 15(e)(2) [of the California Rules of Court], as of 1/1/04, which required service of 'each brief' on the AG in cases governed by B & P 17209. In its place, new Rule 15(c)(3) requires that 'a copy of each brief must be served on a public officer or agency when required by Rule 44.5'. Rule 44.5 merely refers to statutes requiring service. Since B & P 17209 and 17536.6 only require service of the opening brief, the court rules now only reflect that statutory intent. Thus, current law only requires service of the initial brief on the Office of the AG. In order to fully monitor and evaluate issues raised by 17200/17500 appellate litigation, my office must be provided with all briefing. Our office will face increased burdens in chasing down respondent's and reply briefs.

Our office has experienced some difficulty in obtaining the initial briefs until we point out the court rule requiring service. This proposal will ensure proper notice to the AG."
This bill also contains a non-controversial provision clarifying the statute of limitations as it relates to claims by private parties for violations of the Outdoor Advertising Act. This provision applies only to an advertising display in place as of August 12, 2004 that has been in continuous existence in its current location for a period of five years. This language seeks to address specific advertising display and permitting cases brought in recent years in which the original permitting is unavailable or the local governmental entity no longer has the original permits on file. The provision does not affect cases brought alleging personal injury or wrongful death.

The bill also makes two necessary technical corrections to the State Bar Act. First, this bill deletes a reference to a code section repealed by the Legislature in 1989 and, second, the bill corrects an inaccurate cross-reference relating to costs assessed against a lawyer who either resigns with disciplinary charges pending or is suspended or disbarred.

Analysis Prepared by: Saskia Kim / JUD. / (916) 319-2334

FN: 0008758

State of California

SECRETARY OF STATE

May 14, 2004

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS (CCROV 04162)

Pursuant to Section 9033 of the Elections Code, I hereby certify that on May 14, 2004, the certificates received from the County Clerks or Registrars of Voters by the Secretary of State established that the Initiative Statute, LIMITATIONS ON ENFORCEMENT OF UNFAIR BUSINESS COMPETITION LAWS., has been signed by the requisite number of qualified electors needed to declare the petition sufficient. LIMITATIONS ON ENFORCEMENT OF UNFAIR BUSINESS COMPETITION LAWS. INITIATIVE STATUTE. is, therefore, qualified for the November 2, 2004, General Election.

LIMITATIONS ON ENFORCEMENT OF UNFAIR BUSINESS COMPETITION LAWS. INITIATIVE STATUTE. Amends unfair business competition laws to: limit individual's right to sue by allowing private enforcement only if that individual has been actually injured by, and suffered financial/property loss because of an unfair business practice; require representative claims to comply with procedural requirements applicable to class action lawsuits; authorize only California Attorney General or local public officials to sue on behalf of general public to enforce unfair business competition laws. Penalties recovered by Attorney General or local prosecutors to be used only for enforcement of consumer protection laws. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Unknown fiscal impact on the state depending on whether the measure increases or decreases court workload related to unfair competition lawsuits; unknown potential costs to local governments, depending on the extent to which diverted funds are replaced.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of California this 14th day of May, 2004.

Kevin Shelley

KEVIN SHELLEY
Secretary of State

97 35704

SECRETARY OF STATE
KEVIN SHELLEY
STATE OF CALIFORNIA

December 15, 2003

TO: ALL REGISTRARS OF VOTERS OR COUNTY CLERKS AND PROPONENTS (03380)

FROM: Brianna Lierman
BRIANNA LIERMAN
ELECTIONS ANALYST

SUBJECT: **Initiative #1016**

Pursuant to Elections Code section 9002, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

Limitations on Enforcement of Unfair Business Competition Laws. Initiative Statute.

The proponents of the above-named measure are:

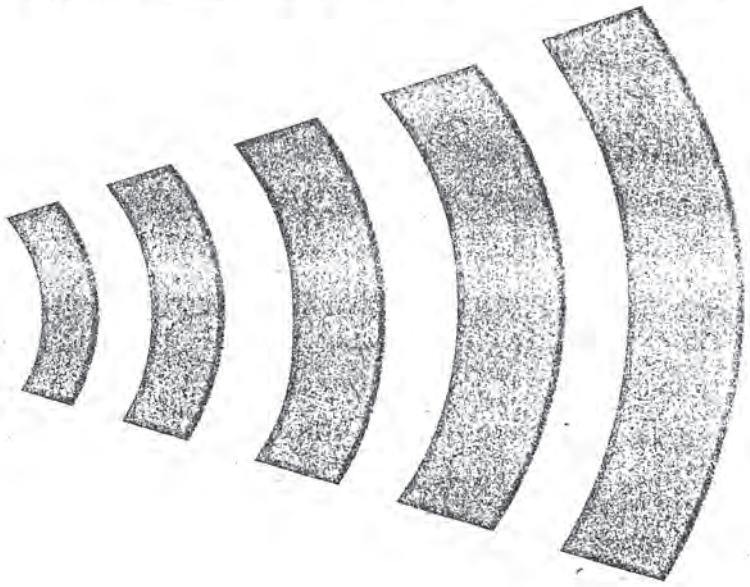
Allan S. Zaremberg
John H. Sullivan

c/o Richard D. Martland
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP
1415 L Street, Suite 1200
Sacramento, CA 95814
(916) 446-6752

OFFICIAL VOTER INFORMATION GUIDE

CALIFORNIA GENERAL ELECTION — NOVEMBER 2, 2004

MAKE YOUR VOICE HEARD



REGISTER LEARN VOTE

- **MAKE YOUR VOTE COUNT**
  Register as a Permanent Absentee Voter
  To receive your ballot in the mail each election, sign up at **www.MyVoteCounts.org.**

- **MAKE AN INFORMED CHOICE**
  Read inside about the statewide issues on the ballot.

- **MAKE YOUR VOICE HEARD**
  Vote on Tuesday, November 2, 2004
  The polls are open from 7 a.m. to 8 p.m. on Election Day.

CERTIFICATE OF CORRECTNESS

I, Kevin Shelley, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the General Election to be held throughout the State on November 2, 2004, and that this guide has been correctly prepared in accordance with the law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 9th day of August, 2004.

Kevin Shelley

Kevin Shelley

THE GREAT SEAL OF THE STATE OF CALIFORNIA

SECRETARY OF STATE

Dear Fellow Voter,

On November 2, 2004, we will have the right and the privilege to choose our next President of the United States and make many other important decisions about the future of California.

This will be one of the most significant elections in many years. And your vote could make the difference. We all know that many recent elections have been decided by just a handful of votes. Please make sure your voice is heard by voting on or even before November 2nd.

We understand that getting to the polls on Election Day is not always easy. One of the easiest ways to have your voice heard is to **vote by mail!**

This year, you can also become a Permanent Absentee Voter for any reason. That way you will be able to vote by mail automatically in every election. You can apply for an absentee ballot right now by visiting our website at **www.MyVoteCounts.org** or by contacting your local elections officials.

This year's Voter Information Guide also has a new section devoted to election technologies. This guide explains the voting system that will be used in your county. Please take a moment to learn about the voting system in your area—as it could have changed since the last election. You can also find more information on voting systems at **www.MyVoteCounts.org**.

This year, make your voice heard. Vote by mail, or vote on November 2nd, but please make sure your vote is cast.

myVOTE counts

TABLE OF CONTENTS

BALLOT MEASURE SUMMARY

PROP 63 — Mental Health Services Expansion, Funding. Tax on Personal Incomes Above $1 Million. Initiative Statute.

Summary

Establishes 1% tax on taxable personal income above $1 million to fund expanded health services for mentally ill children, adults, seniors. Fiscal Impact: Additional state revenues of about $800 million annually by 2006–07, with comparable annual increases in total state and county expenditures for expansion of mental health programs. Unknown partially offsetting savings to state and local agencies.

What Your Vote Means

Yes

A **YES** vote on this measure means: A surcharge on state personal income taxes would be enacted for taxpayers with annual taxable incomes of more than $1 million to finance an expansion of county mental health programs.

No

A **NO** vote on this measure means: Funding for county mental health programs would largely be dependent upon actions by the Legislature and Governor.

Arguments

Pro

Proposition 63 expands mental health care for children and adults, using programs proven to be effective. Paid for by 1% tax on taxable personal income *over $1 million.* Requires strict financial accountability. Supported by nurses, mental health professionals, law enforcement, educators. Let's stop neglecting mental illness. Vote YES on Proposition 63.

Con

Prop. 63 is a false promise. It doesn't treat the mentally ill, but is a *shortsighted substitute* for long-term solutions. Built on a shaky funding scheme, 63 drives away *the very taxpayers it needs,* destroying its own funding source. Don't jeopardize the health of thousands with a feel-good plan.

For Additional Information

For

Rusty Selix
Campaign for Mental Health
1127 11th Street, #925
Sacramento, CA 95814
916-557-1166
info@YESon63.org
www.YESon63.org

Against

Citizens for a Healthy California
400 Capitol Mall, Suite 1560
Sacramento, CA 95814
916-491-1726
www.HealthyCalifornia.org

PROP 64 — Limits on Private Enforcement of Unfair Business Competition Laws. Initiative Statute.

Summary

Allows individual or class action "unfair business" lawsuits only if actual loss suffered; only government officials may enforce these laws on public's behalf. Fiscal Impact: Unknown state fiscal impact depending on whether the measure increases or decreases court workload and the extent to which diverted funds are replaced. Unknown potential costs to local governments, depending on the extent to which diverted funds are replaced.

What Your Vote Means

Yes

A **YES** vote on this measure means: Except for the Attorney General and local public prosecutors, no person could bring a lawsuit for unfair competition unless the person has suffered injury and lost money or property. Also, except for the Attorney General and local public prosecutors, a person pursuing such claims on behalf of others would have to meet the additional requirements of class action lawsuits.

No

A **NO** vote on this measure means: A person could bring a lawsuit under the unfair competition law without having suffered injury or lost money or property. Also, a person could bring such a lawsuit without meeting the additional requirements of class action lawsuits.

Arguments

Pro

Proposition 64 closes a loophole allowing lawyers to file frivolous shakedown lawsuits against small businesses. Proposition 64 stops lawyers from pocketing most of the settlements from these bogus lawsuits. Don't be mislead by the trial lawyers' smokescreen: 64 doesn't change any of California's consumer or environmental laws! Yes on 64.

Con

Newspaper headlines warn: *"Consumers lose if initiative succeeds."* The LA Times reports Proposition 64 *"would weaken a state law that allows private groups and government prosecutors to sue businesses for polluting the environment and for engaging in misleading advertising and other unfair business practices . . . the current law would be drastically curtailed."*

For Additional Information

For

Yes on 64—Californians to Stop Shakedown Lawsuits
3001 Douglas Blvd., Suite 225
Roseville, CA 95661
916-766-5595
info@yeson64.org
www.yeson64.org

Against

Consumer Watchdog
1750 Ocean Park Blvd., Suite 200
Santa Monica, CA 90405
310-392-0708
NoOnProp64@consumerwatchdog.org
www.NoOnProp64.org

PROPOSITION

64

LIMITS ON PRIVATE ENFORCEMENT OF UNFAIR BUSINESS COMPETITION LAWS. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Limits on Private Enforcement of Unfair Business Competition Laws. Initiative Statute.

- Limits individual's right to sue by allowing private enforcement of unfair business competition laws only if that individual was actually injured by, and suffered financial/property loss because of, an unfair business practice.
- Requires private representative claims to comply with procedural requirements applicable to class action lawsuits.
- Authorizes only the California Attorney General or local government prosecutors to sue on behalf of general public to enforce unfair business competition laws.
- Limits use of monetary penalties recovered by Attorney General or local government prosecutors to enforcement of consumer protection laws.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Unknown state costs or savings depending on whether the measure significantly increases or decreases court workload related to unfair competition lawsuits and the extent to which funds diverted by this measure are replaced.
- Unknown potential costs to local governments depending on the extent to which funds diverted by this measure are replaced.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

California's unfair competition law prohibits any person from engaging in any unlawful or fraudulent business act. This law may be enforced in court by the Attorney General, local public prosecutors, or a person acting in the interest of itself, its members, or the public. Examples of this type of lawsuit include cases involving deceptive or misleading advertising or violations of state law intended to protect the public well-being, such as health and safety requirements.

Currently, a person initiating a lawsuit under the unfair competition law is not required to show that he/she suffered injury or lost money or property. Also, the Attorney General and local public prosecutors can bring an unfair competition lawsuit without demonstrating an injury or the loss of money or property of a claimant.

Currently, persons initiating unfair competition lawsuits do not have to meet the requirements for class action lawsuits. Requirements for a class action lawsuit include (1) certification by the court of a group of individuals as a class of persons with a common interest, (2) demonstration that there is a benefit to the parties of the lawsuit and the court from having a single case, and (3) notification of all potential members of the class.

In cases brought by the Attorney General or local public prosecutors, violators of the unfair competition law may be required to pay civil penalties up to $2,500 per violation. Currently, state and local governments may use the revenue from such civil penalties for general purposes.

PROPOSAL

This measure makes the following changes to the current unfair competition law:

- ***Restricts Who Can Bring Unfair Competition Lawsuits.*** This measure prohibits any person, other than the Attorney General and local public prosecutors, from bringing a lawsuit for unfair competition unless the person has suffered injury and lost money or property.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

- *Requires Lawsuits Brought on Behalf of Others to Be Class Actions.* This measure requires that unfair competition lawsuits initiated by any person, other than the Attorney General and local public prosecutors, on behalf of others, meet the additional requirements of class action lawsuits.
- *Restricts the Use of Civil Penalty Revenues.* This measure requires that civil penalty revenues received by state and local governments from the violation of unfair competition law be used only by the Attorney General and local public prosecutors for the enforcement of consumer protection laws.

FISCAL EFFECTS

State Government

Trial Courts. This measure would have an unknown fiscal impact on state support for local trial courts. This effect would depend primarily on whether the measure increases or decreases the overall level of court workload dedicated to unfair competition cases. If the level of court workload significantly decreases because of the proposed restrictions on unfair competition lawsuits, there could be state savings. Alternatively, this measure could increase court workload, and therefore state costs, to the extent there is an increase in class action lawsuits and their related requirements. The number of cases that would be affected by this measure and the corresponding state costs or savings for support of local trial courts is unknown.

Revenues. This measure requires that certain state civil penalty revenue be diverted from general state purposes to the Attorney General for enforcement of consumer protection laws. To the extent that this diverted revenue is replaced by the General Fund, there would be a state cost. However, there is no provision in the measure requiring such replacement.

Local Government

The measure requires that local government civil penalty revenue be diverted from general local purposes to local public prosecutors for enforcement of consumer protection laws. To the extent that this diverted revenue is replaced by local general fund monies, there would be a cost to local government. However, there is no provision in the measure requiring the replacement of diverted revenues.

Other Effects on State and Local Government Costs

The measure could result in other less direct, unknown fiscal effects on the state and localities. For example, this measure could result in increased workload and costs to the Attorney General and local public prosecutors to the extent that they pursue certain unfair competition cases that other persons are precluded from bringing under this measure. These costs would be offset to some unknown extent by civil penalty revenue earmarked by the measure for the enforcement of consumer protection laws.

Also, to the extent the measure reduces business costs associated with unfair competition lawsuits, it may improve firms' profitability and eventually encourage additional economic activity, thereby increasing state and local revenues. Alternatively, there could be increased state and local government costs. This could occur to the extent that future lawsuits that would have been brought under current law by a person on behalf of others involving, for example, violations of health and safety requirements, are not brought by the Attorney General or a public prosecutor. In this instance, to the extent that violations of health and safety requirements are not corrected, government could potentially incur increased costs in health-related programs.

PROP 64

LIMITS ON PRIVATE ENFORCEMENT OF UNFAIR BUSINESS COMPETITION LAWS. INITIATIVE STATUTE.

ARGUMENT in Favor of Proposition 64

PROTECT SMALL BUSINESSES FROM FRIVOLOUS LAWSUITS—CLOSE THE SHAKEDOWN LOOPHOLE

There's a LOOPHOLE IN CALIFORNIA LAW that allows private lawyers to file frivolous lawsuits against small businesses even though they have no client or evidence that anyone was damaged or misled. Shakedown lawyers "appoint" themselves to act like the Attorney General and file lawsuits on behalf of the people of the State of California, demanding thousands of dollars from small businesses that can't afford to fight in court.

Here's the little secret these lawyers don't want you to know: *MOST OF THE TIME, THE LAWYERS OR THEIR FRONT GROUPS KEEP ALL THE MONEY!*

No other state allows this. It's time California voters stopped it. For years, Sacramento politicians, flush with special interest trial lawyer money, have protected the lawyers at the expense of California consumers, taxpayers, and small businesses.

Yes on Proposition 64 will stop thousands of frivolous shakedown lawsuits like these:

- Hundreds of travel agents have been shaken down for not including their license number on their website.
- Local homebuilders have been sued for using 'APR' in advertisements instead of spelling out 'Annual Percentage Rate.'

HERE'S WHAT ACTUALLY HAPPENED TO ONE SMALL BUSINESS VICTIM:

"My family came to this country to pursue the American Dream. We work hard to make sure our customers like the job we do. One day I got a letter from a law firm demanding $2,500. The letter didn't claim we broke the law, just that we might have and if we wanted to stop the lawsuit, we needed to send them $2,500. I called a lawyer who said it would cost even more to fight, so we sent money even though we'd done nothing wrong. It's just not right."

Humberto Galvez, Santa Ana

Here's why "YES" on Proposition 64 makes sense:

- *Stops these shakedown lawsuits.*
- *Protects your right to file a lawsuit if you've been damaged.*
- *Allows only the Attorney General, district attorneys, and other public officials to file lawsuits on behalf of the People of the State of California* to enforce California's unfair competition law.
- *Settlement money goes to the public, not the pockets of unscrupulous trial lawyers.*

"Public Prosecutors have a long, distinguished history of protecting consumers and honest businesses. Proposition 64 *will give those officials the resources they need to increase enforcement of consumer protection laws* by designating penalties from their lawsuits to supplement additional enforcement efforts, above their normal budgets."

Michael D. Bradbury, Former President
California District Attorneys Association
Vote Yes on Proposition 64: Help California's Economy Recover

"Frivolous shakedown lawsuits cost consumers and businesses millions of dollars each year. They make businesses want to move to other states where lawyers don't have a legal extortion loophole. When businesses leave, taxpayers who remain pick up the burden. Proposition 64 closes this loophole and helps improve California's business climate and overall economic health."

Larry McCarthy, President
California Taxpayers Association
Vote Yes on Proposition 64. Close the frivolous shakedown lawsuit loophole.

RAY DURAZO, *Chairman*
Latin Business Association
MARTYN HOPPER, *State Director*
National Federation of Independent Business
MARYANN MALONEY
Citizens Against Lawsuit Abuse

REBUTTAL to Argument in Favor of Proposition 64

Small business???

The Associated Press reported:

"Here are some of the companies that have made donations to the campaign to pass Proposition 64 and some of the lawsuits that have been filed against them under California's unfair competition law:

—Blue Cross of California. Donation: $250,000. Unfair competition suits have accused the health care company of . . . discriminating against non-company emergency room doctors and underpaying hospitals.

—Bank of America. Donation: $100,000. A jury found the bank misrepresented to customers that it had the right to take Social Security and disability funds from their accounts to pay overdraft charges and other fees.

—Microsoft. Donation: $100,000. Suit . . . accuses the computer giant of failing to alert customers to security flaws that allow hackers to break into its computer systems by gaining some personal information.

—Kaiser Foundation Health Plan. Donation: $100,000. One suit accused the health care provider of false advertising for claiming that only doctors, not administrators, made decisions about care . . .

—State Farm. Donation: $100,000. A group of victims of the 1994 Northridge earthquake accused the company of reducing their quake coverage without adequate notice. State Farm reportedly was forced to pay $100 million to policyholders."

Quoting the Attorney General's senior consumer attorney in the Department of Justice, the *Los Angeles Times* reports: "The initiative 'goes unbelievably far,' . . . 'Throwing the baby out with the bathwater is not the best thing' . . . the (current) law has been used successfully to protect the public from polluters, unscrupulous financing schemes and religious discrimination."

ELIZABETH M. IMHOLZ, *Director*
Consumers Union, West Coast Office
SUSAN SMARTT, *Executive Director*
California League of Conservation Voters
DEBORAH BURGER, RN, *President*
California Nurses Association

LIMITS ON PRIVATE ENFORCEMENT OF UNFAIR BUSINESS COMPETITION LAWS. INITIATIVE STATUTE.

PROP 64

ARGUMENT Against Proposition 64

Proposition 64 LIMITS THE RIGHTS OF CALIFORNIANS TO ENFORCE ENVIRONMENTAL, PUBLIC HEALTH, PRIVACY, AND CONSUMER PROTECTION LAWS.

The Attorney General's Official Title for the Proposition 64 petition read: "LIMITATIONS on Enforcement of Unfair Business Competition Laws."

Across California headlines warn the public about this special interest initiative. San Francisco Chronicle: *"Measure would limit public interest suits"*; Ventura County Star: *"Consumers lose if initiative succeeds"*; Orange County Register: *"Consumer lawsuits targeted"*; San Francisco Examiner: *"Bank of America's shakedown: Unfair-competition law under fire from businesses."*

Look who is supporting Proposition 64. Consider why they want to limit California's 71-year-old Unfair Business Competition law.

Chemical companies support Proposition 64. They want to stop environmental organizations from enforcing laws against polluting streams, rivers, lakes, and our coast.

Oil companies support Proposition 64. They want to stop community organizations from suing them for polluting drinking water supplies with cancer-causing MTBE.

Credit card companies support Proposition 64. They want to stop consumer groups from enforcing privacy laws protecting our financial information.

IF A CORPORATION PROFITS FROM INTENTIONALLY POLLUTING OUR AIR AND WATER, OR INVADING OUR PRIVACY, WE SHOULD BE ABLE TO STOP IT.

The Los Angeles Times reports: *"The measure would weaken a state law that allows private groups and government prosecutors to sue businesses for polluting the environment and for engaging in misleading advertising and other unfair business practices . . . If voters approve the measure, the current law would be drastically curtailed."*

Tobacco companies support Proposition 64. They want to block health organizations from enforcing the laws against selling tobacco to children.

Banks support Proposition 64. They want to stop elderly and disabled people who sued them for confiscating Social Security funds.

Insurance companies and HMOs support Proposition 64. They don't want to be held accountable for fraudulent marketing or denying medically necessary treatment to patients.

Energy companies support Proposition 64. They ripped off California during the "energy crisis" and want to block ratepayers from attacking energy company fraud.

Since 1933, the Unfair Business Competition Laws have protected Californians from pollution, invasions of privacy, and consumer fraud. Here are examples of cases successfully brought under this law:

- Supermarkets had to stop changing the expiration date on old meat and reselling it.
- HMOs had to stop misrepresenting their services to patients.
- Bottled water companies had to stop selling water that hadn't been tested for dangerous levels of bacteria, arsenic, and other chemicals.

The Los Angeles Times editorialized: *"(Proposition 64) would make it very difficult for citizens, businesses, and consumer groups to file justified lawsuits."*

Proposition 64 is strongly opposed by:

- AARP
- California Nurses Association
- California League of Conservation Voters
- Consumers Union
- Sierra Club California
- Congress of California Seniors
- Center for Environmental Health
- California Advocates for Nursing Home Reform
- Foundation for Taxpayer and Consumer Rights

Please join us in voting NO on Proposition 64. Don't let them limit your right to enforce the laws that protect us all.

ELIZABETH M. IMHOLZ, *Director*
Consumers Union, West Coast Office
SUSAN SMARTT, *Executive Director*
California League of Conservation Voters
DEBORAH BURGER, RN, *President*
California Nurses Association

REBUTTAL to Argument Against Proposition 64

The argument against Proposition 64 is a trial lawyer smokescreen: Read the official title and the law yourself.

- *Nowhere is Environment, Public Health, or Privacy mentioned!*
- *California has dozens of strong laws to protect the environment, public health, and privacy, including Proposition 65, passed by voters in 1986, the California Environmental Quality Act and the California Financial Information Privacy Act.*
- *Proposition 64 doesn't change any of these laws.*
- *Proposition 64 would permit ALL the suits cited by its opponents.*

". . . the trial attorneys who benefit from the current system are going bonkers, and misrepresenting what (Prop. 64) will do. They claim that (Prop. 64) . . . will somehow undermine the state's environmental laws. That's patently untrue."
Orange County Register

Here's what 64 really does:

- *Stops Abusive Shakedown Lawsuits*
- Stops fee-seeking trial lawyers from exploiting a loophole in California law—*A LOOPHOLE NO OTHER STATE HAS*—that lets them "appoint" themselves Attorney General and file lawsuits on behalf of the People of the State of California.
- *Stops trial lawyers from pocketing FEE AND SETTLEMENT MONEY that belongs to the public.*
- *Protects your right to file suit if you've been harmed.*
- *Permits only real public officials like the Attorney General or District Attorneys to file lawsuits on behalf of the People of the State of California.*

Join 700+ groups, small businesses, and shakedown victims, including:

California Taxpayers Association
California Black Chamber of Commerce
California Mexican American Chamber of Commerce
Vote YES on 64—www.yeson64.org

JOHN KEHOE, *Founding Director*
Senior Action Network
ALLAN ZAREMBERG, *President*
California Chamber of Commerce
CHRISTOPHER M. GEORGE, *Chairman of the Board of Governors*
Small Business Action Committee

Proposition 64

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends sections of the Business and Professions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Findings and Declarations of Purpose

The people of the State of California find and declare that:

(a) This state's unfair competition laws set forth in Sections 17200 and 17500 of the Business and Professions Code are intended to protect California businesses and consumers from unlawful, unfair, and fraudulent business practices.

(b) These unfair competition laws are being misused by some private attorneys who:

(1) File frivolous lawsuits as a means of generating attorney's fees without creating a corresponding public benefit.

(2) File lawsuits where no client has been injured in fact.

(3) File lawsuits for clients who have not used the defendant's product or service, viewed the defendant's advertising, or had any other business dealing with the defendant.

(4) File lawsuits on behalf of the general public without any accountability to the public and without adequate court supervision.

(c) Frivolous unfair competition lawsuits clog our courts and cost taxpayers. Such lawsuits cost California jobs and economic prosperity, threatening the survival of small businesses and forcing businesses to raise their prices or to lay off employees to pay lawsuit settlement costs or to relocate to states that do not permit such lawsuits.

(d) It is the intent of California voters in enacting this act to eliminate frivolous unfair competition lawsuits while protecting the right of individuals to retain an attorney and file an action for relief pursuant to Chapter 5 (commencing with Section 17200) of Division 7 of the Business and Professions Code.

(e) It is the intent of the California voters in enacting this act to prohibit private attorneys from filing lawsuits for unfair competition where they have no client who has been injured in fact under the standing requirements of the United States Constitution.

(f) It is the intent of California voters in enacting this act that only the California Attorney General and local public officials be authorized to file and prosecute actions on behalf of the general public.

(g) It is the intent of California voters in enacting this act that the Attorney General, district attorneys, county counsels, and city attorneys maintain their public protection authority and capability under the unfair competition laws.

(h) It is the intent of California voters in enacting this act to require that civil penalty payments be used by the Attorney General, district attorneys, county counsels, and city attorneys to strengthen the enforcement of California's unfair competition and consumer protection laws.

SEC. 2. Section 17203 of the Business and Professions Code is amended to read:

17203. *Injunctive Relief—Court Orders*

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. *Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.*

SEC. 3. Section 17204 of the Business and Professions Code is amended to read:

17204. *Actions for Injunctions by Attorney General, District Attorney, County Counsel, and City Attorneys*

Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person ~~acting for the interests of itself, its members or the general public~~ *who has suffered injury in fact and has lost money or property as a result of such unfair competition.*

SEC. 4. Section 17206 of the Business and Professions Code is amended to read:

17206. *Civil Penalty for Violation of Chapter*

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city, or city and county, having a population in excess of 750,000, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. *The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.*

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the state Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the state Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(e) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered *for the exclusive use by the city attorney for the enforcement of consumer protection laws.* However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 5. Section 17535 of the Business and Professions Code is amended to read:

17535. *Obtaining Injunctive Relief*

Proposition 64 *(cont.)*

Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person ~~acting for the interests of itself, its members or the general public~~ *who has suffered injury in fact and has lost money or property as a result of a violation of this chapter. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of this section and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.*

SEC. 6. Section 17536 of the Business and Professions Code is amended to read:

17536. *Penalty for Violations of Chapter; Proceedings; Disposition of Proceeds*

(a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer.

If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city. *The aforementioned funds shall be for the exclusive use by the Attorney General, district attorney, county counsel, and city attorney for the enforcement of consumer protection laws.*

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(e) As applied to the penalties for acts in violation of Section 17530, the remedies provided by this section and Section 17534 are mutually exclusive.

SEC. 7. In the event that between July 1, 2003, and the effective date of this measure, legislation is enacted that is inconsistent with this measure, said legislation is void and repealed irrespective of the code in which it appears.

SEC. 8. In the event that this measure and another measure or measures relating to unfair competition law shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure relating to unfair competition law shall be null and void.

SEC. 9. If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

Proposition 65

Pursuant to statute, Proposition 65 will appear in a Supplemental Voter Information Guide.

Proposition 66

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends sections of the Penal Code and amends a section of the Welfare and Institutions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

THE THREE STRIKES AND CHILD PROTECTION ACT OF 2004

SECTION 1. Title

This initiative shall be known and may be cited as the Three Strikes and Child Protection Act of 2004.

SEC. 2. Findings and Declarations

The people of the State of California do hereby find and declare that:

(a) Proposition 184 (the "Three Strikes" law) was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences of repeat offenders who commit serious and/or violent felonies;

(b) Proposition 184 did not set reasonable limits to determine what criminal acts to prosecute as a second and/or third strike; and

(c) Since its enactment, Proposition 184 has been used to enhance the sentences of more than 35,000 persons who did not commit a serious and/or violent crime against another person, at a cost to taxpayers of more than eight hundred million dollars ($800,000,000) per year.

SEC. 3. Purposes

The people do hereby enact this measure to:

(a) Continue to protect the people from criminals who commit serious and/or violent crimes;

(b) Ensure greater punishment and longer prison sentences for those who have been previously convicted of serious and/or violent felonies, and who commit another serious and/or violent felony;

(c) Require that no more than one strike be prosecuted for each criminal act and to conform the burglary and arson statutes; and

(d) Protect children from dangerous sex offenders and reduce the cost to taxpayers for warehousing offenders who commit crimes that do not qualify for increased punishment according to this act.

STATE OF CALIFORNIA

PETE WILSON, Governor

CALIFORNIA LAW REVISION COMMISSION
4000 MIDDLEFIELD ROAD, ROOM D-1
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April 3, 1997

Hon. Quentin Kopp
Attn: Dan Friedlander
State Capitol, Room 2057
Sacramento, CA 95814

Re: SB 143 (Kopp) — April 8 Hearing in Judiciary Committee

Dear Senator Kopp:

Senate Bill 143 is authored by Senator Quentin Kopp and sponsored by the California Law Revision Commission.

The bill adds procedural provisions concerning unfair competition actions by private plaintiffs *on behalf of the general public* pursuant to Business and Professions Code Section 17200 *et seq.* The bill limits the potential for abuse by providing minimal standards to help ensure that the interests of the general public are fairly and adequately represented. The bill adopts a set of simple notice and hearing rules that should avoid repetitive claims on behalf of the general public, improve the settlement process, and enhance the finality of representative actions. The procedural formalities should inhibit the improper use of claims on behalf of the general public to increase leverage in disputes between business entities and strain out unfounded and harassing representative actions.

Under the proposed revisions:

- A private plaintiff could not represent the general public if he or she has a conflict of interest that could compromise the good faith representation of the general public.
- The plaintiff's attorney would have to be an adequate legal representative of the interests of the general public pled in the action.
- Notice of commencement of a private representative action, and notice of proposed terms of a judgment, would be given to the Attorney General and local district attorney. Notice of the proposed terms of the judgment would also be given to parties in other similar cases against the defendant and other persons ordered by the court.
- A fairness hearing would be held to make sure that the judgment in a private representative action is "fair, reasonable, and adequate" to protect the interests of the general public. The court may permit interested persons to appear and comment on the proposed terms.
- Prosecutors would be given a degree of procedural priority over private plaintiffs in representing the public.

SB 143 is supported by the California District Attorneys Association and Consumers Union. Several groups have taken an "oppose unless amended" position, including Consumer Attorneys of California.

The bill as introduced is explained in the attached Commission recommendation on *Unfair Competition Litigation* (November 1996), which includes a background study prepared by Prof. Robert C. Fellmeth. Since the original recommendation was submitted, the bill has been amended to satisfy some concerns of different interest groups. Commission Comments have been adjusted for these changes, as set out in the attached *Report*.

If you have any questions about the bill, please feel free to call. I will also be available to respond to questions at the hearing.

Sincerely,

Stan Ulrich

Stan Ulrich
Assistant Executive Secretary

File: SB 143
Enc. Unfair Competition Rec.; Report

DM

THE STATE BAR OF CALIFORNIA

OFFICE OF GOVERNMENTAL AFFAIRS

915 L STREET, SUITE 1260, SACRAMENTO, CALIFORNIA 95814 TELEPHONE: (916) 444-2762 FAX: (916) 443-0562

RECEIVED

APR 09 1997

April 7, 1997

The Honorable Quentin Kopp
Member of the Senate, 8th District
State Capitol, Room 2057
Sacramento, CA 95814

SB 143, as amended 4/2/97: TECHNICAL COMMENTS
Legal Services Section

Dear Senator Kopp,

The Legal Services Section of the State Bar of California, composed of attorneys specializing in the delivery of legal services to the poor and middle income, consumers, juveniles, crime victims, the aged, persons with disabilities, and others who are traditionally underrepresented in the legal system, respectfully submits the attached comments on your SB 143 for your consideration. The Legal Services Section takes no official position on the measure, but hopes the comments made in its report will add to the dialogue surrounding the bill's consideration. If you would like more information, please contact the author of the attached report.

THIS POSITION IS ONLY THAT OF THE LEGAL SERVICES SECTION OF THE STATE BAR. IT HAS NOT BEEN APPROVED BY THE STATE BAR'S BOARD OF GOVERNORS OR OVERALL MEMBERSHIP, AND IS NOT TO BE CONSTRUED AS REPRESENTING THE POSITION OF THE STATE BAR OF CALIFORNIA. MEMBERSHIP IN THE LEGAL SERVICES SECTION OF THE STATE BAR IS VOLUNTARY. THE SECTION IS COMPOSED OF 673 MEMBERS FROM AMONG THE MORE THAN 120,000 ACTIVE MEMBERS OF THE STATE BAR OF CALIFORNIA.

It is the policy of the State Bar to refer legislative proposals affecting specific legal questions or the practice of law to the appropriate State Bar Committee or Section for review and comment. If you wish to discuss this position further, please feel free to contact me.

Best Regards,

Larry Doyle
Chief Legislative Counsel

Enclosure

cc: Senate Committee on Judiciary
Kevin E. Smith, Republican Committee Counsel
Stan Ulrich, California Law Revision Commission
Francisco Lobaco, Section Legislative Chair
Kathleen A. Michon, Member, Consumer Advocacy Committee
Joseph Bell, Section BCCL Liaison
Diane C. Yu, General Counsel, State Bar of California
David Long, Director, State Bar Office of Research
Susan Mattox, Section Administrator

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Unfair Competition Litigation

November 1996

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

Cite this report as *Unfair Competition Litigation,* 26 Cal. L. Revision Comm'n Reports 191 (1996).

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STATE OF CALIFORNIA PETE WILSON, Governor

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November 15, 1996

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This recommendation proposes revisions in the unfair competition law (Business and Professions Code Section 17200 *et seq.*) to limit the potential for abuse and to help ensure that the interests of the general public are adequately represented. The proposed law focuses on the need to provide a degree of finality in representative actions to avoid repetitive claims on behalf of the general public and improve the settlement process. The proposed law also imposes certain formalities that should inhibit the use of claims on behalf of the general public to increase leverage in disputes between business entities.

Under the proposed revisions:

- A plaintiff seeking to represent the general public would have to be an adequate representative of the interest of the general public pled and meet basic conflict of interest standards.
- The plaintiff's attorney would have to be an adequate legal representative of the interests of the general public pled in the action.
- Notice of commencement of a private representative action, and notice of proposed terms of a judgment, would be given to the Attorney General and district attorney. Notice of the proposed terms of the judgment would also

be given to parties in other similar cases against the defendant.

- A fairness hearing would be held to make sure that the judgment in a private representative action is "fair, reasonable, and adequate" to protect the interests of the general public. Interested persons would be permitted to appear and comment on the proposed terms.
- The determination of a private representative claim on behalf of the general public would bar any further private representative claims on that cause of action. Any right to sue for individual claims would not be affected by this rule.
- Prosecutors would be given a degree of procedural priority over private plaintiffs in representing the public. The right of the private plaintiff to attorney's fees is recognized in cases where a private plaintiff contributes to a prosecutor's action.

This recommendation is submitted pursuant to Resolution Chapter 38 of the Statutes of 1996.

Respectfully submitted,

Allan L. Fink
Chairperson

ACKNOWLEDGMENTS

A large number of individuals and organizations have participated in the Commission's work on this recommendation. The Commission would like to acknowledge the assistance provided by those who have supported all or part of the proposal as well as those who have expressed objections to one or more aspects. The participation of a broad spectrum of experts aids the Commission in preparing a better proposed law, and the Commission benefits greatly from the public service performed by these individuals and organizations.

The Commission is indebted to its consultant, Prof. Robert C. Fellmeth, who prepared a background study (reprinted *infra* pp. 227-76) that provided the starting point for this recommendation and who attended meetings and commented on materials as the project progressed. The Commission appreciates the substantial amount of time devoted by many of those who wrote lengthy commentaries on proposed drafts and who attended Commission meetings. Particularly noteworthy has been the assistance provided by Thomas A. Papageorge (Los Angeles District Attorney's Office and California District Attorneys Association Consumer Protection Committee), representatives of Consumers Union (Harry Snyder, Gail Hillebrand, and Earl Lui); Kenneth W. Babcock (representing Public Counsel, and the State Bar Legal Services Section), Alan M. Mansfield (Milberg, Weiss, Bershad, Hynes & Lerach), and James C. Sturdevant (The Sturdevant Law Firm, and Consumer Attorneys of California).

Inclusion of the name of an individual or organization should not be taken as an indication of the individual's opinion or the organization's position on any part of the proposed law. The Commission regrets any errors or omissions that may have been made in compiling these acknowledgments.

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UNFAIR COMPETITION LITIGATION

California law provides broad remedies for unfair business practices. Actions may be brought by public prosecutors and by private individuals or groups suing on their own behalf or on behalf of the general public. The open-ended standing provision has the potential for abuse and overlapping actions. This recommendation proposes several procedural improvements to ensure the fair and competent representation of the interests of the general public, promote finality, and resolve some potential conflicts among plaintiffs.

BACKGROUND

Scope of Statute

California law prohibits any "unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."[1] Originally a business tort remedy between disputing commercial entities, the unfair competition

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1. Bus. & Prof. Code § 17200 (defining "unfair competition"). This definition also includes "any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code" which contains general prohibitions on false advertising (Section 17500) and a host of special statutes applicable to charitable solicitations, telephonic sellers, products made by the blind, travel promoters, travel sellers, motel rate signs, American Indian-made articles, vending machines, water treatment devices, and environmental representations. The false advertising provisions in Section 17500 *et seq.* are subject to their own remedial provisions (Section 17535-17536.5), but are also swept up in the definition of unfair competition in Section 17200.

Parts of this discussion are drawn from the background study prepared by the Commission's consultant, Professor Robert C. Fellmeth. See Fellmeth, *California's Unfair Competition Act: Conundrums and Confusions*, 26 Cal. L. Revision Comm'n Reports 227 (1996). See also Fellmeth, *Unfair Competition Act Enforcement by Agencies, Prosecutors, and Private Litigants: Who's on First?*, Cal. Reg. L. Rep., Winter 1995, at 1.

All further statutory references are to the Business and Professions Code, unless otherwise indicated.

law[2] is now a primary tool for vindicating consumer or public market abuses by business entities in a variety of situations.[3] As it has been developed through years of court interpretation and legislative amendment, the California unfair competition law has become probably the broadest such statute in the country.[4] Use of the unfair competition law as a remedy for specific harms to consumers should not obscure the role the statute plays in shaping the marketplace by restraining business practices that would otherwise drive the market to its lowest common denominator.[5] To the extent that unfair practices confer a competitive advantage on an enterprise, competing businesses will find themselves at a disadvantage if they do not adopt similar measures.

The remedies provided in the unfair competition law have extensive application as a cumulative remedy with other statutes.[6] The unfair competition law applies whenever a business act or practice violates any statute,[7] not just specifi-

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2. As used in this text, "unfair competition law" refers generally to the prohibitions and remedies provided in Section 17200 *et seq.* and Section 17500 *et seq.*, with particular reference to the remedies provided in Sections 17204 and 17535. Unfair competition should be taken to include the false advertising statutes in Section 17500 *et seq.* unless the context indicates otherwise.

3. See *Fellmeth Study, supra* note 1, at 232-35. For additional background on the history of these statutes, see Note, *Former Civil Code Section 3369: A Study in Judicial Interpretation,* 30 Hastings L.J. 705 (1979). Business and Professions Code Sections 17200-17208 are the successors of Civil Code Section 3369.

4. See overview of federal and other states' law in *Fellmeth Study, supra* note 1, at 236-49.

5. See *Fellmeth Study, supra* note 1, at 249-52.

6. See Sections 17205, 17534.5.

7. See, e.g., People v. McKale, 25 Cal. 3d 626, 631-32, 602 P.2d 731, 159 Cal. Rptr. 811 (1979); Barquis v. Merchants Collection Ass'n, 7 Cal. 3d 94, 111-13, 496 P.2d 817, 101 Cal. Rptr. 745 (1972). If conduct is expressly permitted, however, the unfair competition law does not provide a remedy. Hobby Industry Ass'n of America v. Younger, 101 Cal. App. 3d 358, 369, 161 Cal. Rptr. 601, 608 (1980).

cally-referenced statutes in the Business and Professions Code. Moreover, the unfair competition law applies to acts and practices of unfair competition that are not in violation of any specific statute — the plaintiff need only show that members of the public are likely to be deceived.[8]

Standing

The broad scope of the unfair competition law is matched by its standing rules. Relief may be sought by a large number of public officials:[9] (1) the Attorney General, (2) all district attorneys, (3) county counsels authorized by agreement with the district attorney in cases involving violation of a county ordinance, (4) city attorneys of cities with a population over 750,000,[10] and (5) with the consent of the district attorney, city prosecutors in cities with full-time city prosecutors. The unfair competition law may permit enforcement by a public prosecutor even where the underlying statute provides different enforcement authority.[11]

In addition, actions may be brought by private parties acting for themselves or in the interests of the general public.[12] As in

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8. See Sections 17200, 17203; Committee on Children's Television, Inc. v. General Foods Corp., 35 Cal. 3d 197, 211, 673 P.2d 660, 197 Cal. Rptr. 783 (1983); Chern v. Bank of America, 15 Cal. 3d 866, 875-76, 544 P.2d 1310, 127 Cal. Rptr. 110 (1976). The scope of this rule is not unlimited. *See* Rubin v. Green, 4 Cal. 4th 1187, 1203-04, 847 P.2d 1044, 17 Cal. Rptr. 2d 828 (1993) (broad scope of unfair competition law does not override litigation privilege).

9. Section 17204. The false advertising statute does not contain all of the limitations on authority of county counsels and city attorneys provided in the unfair competition statute. *Compare* Section 17204 *with* Section 17535. The rules applicable to city attorneys generally apply to the city attorney for the City and County of San Francisco. But see Section 17206(e).

10. Sections 17204.5 and 17206.5 provide a special rule applicable to the San Jose city attorney that is now obsolete because the city's population exceeds 750,000.

11. People v. McKale, 25 Cal. 3d 626, 631-32, 602 P.2d 731, 159 Cal. Rptr. 811 (1979).

12. The specific language of Sections 17204 and 17535 is: "upon the complaint of any board, officer, person, corporation or association or by any person

the case of public prosecutors, the unfair competition law provides private plaintiffs a right to sue on behalf of the general public even where the statute allegedly violated by the defendant provides no right of action.[13]

Relief

Both private and public plaintiffs may seek injunctive relief, including restitution of money or property that may have been acquired through the unfair practice.[14] Public officials may also seek civil penalties, varying from $2500 to $6000 per violation.[15] The statute sets forth a number of considerations for determining the appropriate amount of civil penalties,[16]

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acting for the interests of itself, its members or the general public." While in context, this language is susceptible of a different meaning (that the private plaintiff may only complain to the appropriate public prosecutor), it is well-settled that private plaintiffs may sue for themselves or in a representative capacity. *E.g.*, Barquis v. Merchants Collection Ass'n, 7 Cal. 3d 94, 110-11, 496 P.2d 817, 101 Cal. Rptr. 745 (1972).

13. Committee on Children's Television, Inc. v. General Foods Corp., 35 Cal. 3d 197, 210-11, 673 P.2d 660, 197 Cal. Rptr. 783 (1983).

14. Sections 17203, 17535; see also Sections 17510.87 (charitable solicitations), 17511.12(a) (telephone sales), 17522 (labeling of products made by blind).

15. Sections 17206 (civil penalties generally), 17206.1 (additional $2500 civil penalty for violations involving senior citizens or disabled persons), 17207 ($6000 civil penalty for intentional violation of injunction), 17535.5 ($6000 civil penalty for violation of false advertising injunction).

If the action is brought by the Attorney General, the penalties are split between the state treasury and the county where the judgment is entered; if brought by a district attorney or county counsel, the entire penalty goes to the county treasury; if brought by a city attorney or prosecutor, the penalties are split between the city and the county treasuries. Sections 17206(c)(general rule), 17207(c) (injunction violation), 17535.5(c) (false advertising injunction violation), 17536(c) (false advertising). The statutes also provide a special rule where the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency. See Sections 17206(d), 17207(d), 17535.5(d), 17536(d).

The general false advertising statute also declares that a violation is a misdemeanor. Section 17500.

16. Sections 17206(b) & 17536 (nature, seriousness, and willfulness of defendant's misconduct, number of violations, persistence and duration of mis-

and in some cases, provides that an award of restitution is preferred over a civil penalty.[17] Damages at law, including punitive damages, are not available under the unfair competition law to either public or private plaintiffs.[18]

The limitation on the type of recovery available under the unfair competition law probably acts as only a minor restraint on litigation. Substantial restitution may be available in an action on behalf of the general public, either as traditionally determined or through the more modern techniques of fluid recovery or cy pres relief.[19] A prevailing plaintiff who vindicates a public right may be entitled to substantial attorney's fees.[20] Even in an essentially private dispute between business competitors, more in line with the historical origins of the statute, an unfair competition cause of action on behalf of the general public may be added to a complaint because it facilitates liberal discovery and adds settlement leverage.[21]

Thus, the unfair competition law provides a "broad but shallow scheme of relief" — broad in substantive scope and standing, but shallow in terms of available relief, because

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conduct, defendant's assets, liabilities, and net worth). Additional factors apply in cases involving senior citizens and disabled persons (Section 17206.1(c)) or where an injunction has been violated (Sections 17207(a), 17535.5(a)).

17. Section 17206.1(d) (violations against senior citizens and disabled persons).

18. Bank of the West v. Superior Court, 2 Cal. 4th 1254, 1272, 833 P.2d 545, 10 Cal. Rptr. 2d 538 (1992); Dean Witter Reynolds, Inc. v. Superior Court, 211 Cal. App. 3d 758, 774, 259 Cal. Rptr 789 (1989); Industrial Indem. Co. v. Superior Court, 209 Cal. App. 3d 1093, 1096, 257 Cal. Rptr. 655 (1989).

19. See *Fellmeth Study, supra* note 1, at 256-57; McCall, Sturdevant, Kaplan & Hillebrand, *Greater Representation for California Consumers — Fluid Recovery, Consumer Trust Funds, and Representative Actions,* 46 Hastings L.J. 797, 798, 833-35 (1995).

20. See Code Civ. Proc. § 1021.5 (private attorney general); Serrano v. Priest (Serrano III), 20 Cal. 3d 25, 35-38, 569 P.2d 1303, 141 Cal. Rptr. 315 (1977) (common fund doctrine).

21. See *Fellmeth Study, supra* note 1, at 254.

monetary awards are limited to restitution and attorney's fees are uncertain even if the plaintiff prevails.[22]

ISSUES AND PROBLEMS

Strategic Considerations:

Representative Actions and Class Actions

From the perspective of plaintiffs with a genuine interest in vindicating the public interest, representative actions under the unfair competition law offer several distinct advantages over class actions.[23] Under the unfair competition law, a plaintiff can plead a cause of action for restitution on behalf of the general public without the complications and expenses of a class action.[24] The plaintiff does not have to seek certification of the class and thus avoids having to show that the action meets the standards of numerosity, commonality, adequacy, typicality, and manageability.[25] No type of formal cer-

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22. See *Fellmeth Study*, *supra* note 1, at 253.

23. Code of Civil Procedure Section 382 provides very general authorization for class actions. The courts have developed the body of class action law, with particular reference to Rule 23 of the Federal Rules of Civil Procedure. However, California courts are not bound by federal rules that are not of constitutional dimension and the courts have been directed to be procedurally innovative. Southern California Edison Co. v. Superior Court, 7 Cal. 3d 832, 839-43, 500 P.2d 621, 103 Cal. Rptr. 709 (1972); Vasquez v. Superior Court, 4 Cal. 3d 800, 808, 484 P.2d 964, 94 Cal. Rptr. 796 (1971); Cartt v. Superior Court, 50 Cal. App. 3d 960, 124 Cal. Rptr. 376 (1975). See generally 4 B. Witkin, California Procedure *Pleading* §§ 193-237, at 225-94 (3d ed. 1985 & Supp. 1996).

24. See McCall et al., *supra* note 19, at 839-43.

25. These requirements are set forth in Rule 23 of the Federal Rules of Civil Procedure:

> (a) One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

tification of the representative action is required under the unfair competition law. Perhaps the single most significant practical factor is that the plaintiff does not have to give notice to the proposed class members, thus avoiding substantial costs. In the arena of consumer actions and public interest law, the representative action under the unfair competition law is a simpler and cheaper alternative than a class action.[26]

Standing and Binding Effect of Representative Actions [27]

The unfair competition law provides unusually broad, and perhaps unique, standing for private parties. They may sue on behalf of others (the "general public") without the need to show any personal damage arising from the unfair business practice. Those suing on behalf of the general public can range from plaintiffs having a narrow dispute with a defendant in a business context, who tack on the representative claim for discovery and settlement advantages, to plaintiffs serving a true private attorney general function, who seek to vindicate larger interests. The unfair competition law does not provide any mechanism to distinguish among these types of plaintiffs. There is a potential for abuse where a claim on behalf of the general public is added to a complaint for tactical advantage.

While the law is not settled, it appears under class action principles that where the primary purpose of the action is to obtain an injunction against an unfair business practice, a

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The manageability requirement is contained in Rule 23(b)(3)(D).

26. McCall et al., *supra* note 19, at 839-43. See also Chilton & Stern, *California's Unfair Business Practices Statutes: Settling the "Nonclass Class" Action and Fighting the "Two-Front War."* 12 CEB Civil Litigation Rep. 95 (1990). In fact, the existence of the representative cause of action under the unfair competition law may preclude a class action in circumstances where the class action is not the demonstrably superior procedure. *See* Dean Witter Reynolds, Inc. v. Superior Court 211 Cal. App. 3d 758, 772-73, 259 Cal. Rptr. 789 (1989).

27. See generally *Fellmeth Study, supra* note 1, at 229-30, 270-71.

lower due process standard applies. Thus, where the plaintiff satisfies class action concepts of adequacy, it is not necessary to give the sort of notice and opt-out opportunities that are applicable in class actions seeking damages.[28] However, the lack of any adequacy requirement applicable to the plaintiff or the plaintiff's attorney under the unfair competition law may very well preclude application of this body of law where the plaintiff sues in a representative capacity.

Settlement

The opportunity to sue on behalf of the general public, but without binding effect, complicates the settlement process:

> A plaintiff, permitted to assert claims of absent persons, may be tempted to settle those claims by taking a larger payment for himself or herself and a lower payment for the absent persons. This invites "blackmail" suits, a prospect worsened by the fact that lawyers can sue without the need for an injured client, eliminating even that modest restraint....
>
> Defendants, too, may see an opportunity to settle the absent persons' claims cheaply by paying the individual plaintiff a premium and the absent persons little or nothing.[29]

Even where the plaintiff, such as a public prosecutor or bona fide public interest group, legitimately desires to achieve finality and binding effect in a settlement with the defendant, the parties are unable to do so under the unfair competition law.[30] Hence, the legitimate goals of the unfair competition law are thwarted by its lax standing rules in combination with

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28. See Fed. R. Civ. P. 23(b)(2); Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985); Vasquez v. Superior Court, 4 Cal. 3d 800, 821, 484 P.2d 964, 94 Cal. Rptr. 796, 809 (1971); Frazier v. City of Richmond, 184 Cal. App. 3d 1491, 1500, 228 Cal. Rptr 376, 381 (1986).

29. Chilton & Stern, *supra* note 26, at 96.

30. *Fellmeth Study, supra* note 1, at 230, 257-58.

constitutional limitations on the binding effect of representative actions on absent parties.

Conflicting and Repetitive Actions

The potential for a multiplicity of actions under the unfair competition law and overlapping or parallel proceedings is troublesome. Some commentators have termed this prospect the "two-front war."[31] This situation can result because there is no limitation on multiple plaintiffs seeking relief for the same injury to the general public. The multiplicity may involve public and private plaintiffs in a variety of situations. Cases may overlap and conflict where they are proceeding contemporaneously, where different geographical jurisdictions are involved, or where another action on the same underlying claim is brought after settlement or judgment in a prior action.

Public-private overlap. A private plaintiff may hold up a public prosecutor's attempt to settle a dispute.[32] Such a conflict might reflect an important concern over the appropriate allocation of relief between civil penalties, fluid recovery, or direct restitution, or it might be a case of a hold-up for attorney's fees. On the other hand, an intervening public prosecutor's claim for injunction and penalties may disrupt a broader claim for restitution and other relief by a private plaintiff.

Public prosecutor overlap. There also may be coordination problems in actions brought by public prosecutors.[33] The district attorneys and the Attorney General have created a voluntary system for coordinating investigations and actions by public prosecutors. But the law is still unclear on the effect of local or regional actions by public prosecutors.

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31. Chilton & Stern, *supra* note 26, at 95.

32. See the discussion of the Cox Cable cases in San Diego County in *Fellmeth Study, supra* note 1, at 259-61 & nn. 112-13.

33. See People v. Hy-Lond Enterprises, Inc., 93 Cal. App. 3d 734, 155 Cal. Rptr. 880 (1979); *Fellmeth Study, supra* note 1, at 258-60.

Repetitive actions. In the absence of binding effect on non-litigants, a defendant theoretically faces the prospect of an open-ended series of claims for restitution under the unfair competition law. This does not yet appear to be a substantial problem in practice, perhaps because of a natural disincentive for plaintiffs' lawyers to attempt to dip into the same pocket. If the public interest has been vindicated in a suit by a public prosecutor, later potential plaintiffs would naturally be expected to face major hurdles in convincing a court to reexamine the public interest determinations in the earlier case. The potential for repetitive actions injects a capricious factor into the settlement process.

COMMISSION RECOMMENDATIONS

The Commission recommends a set of minimal procedural revisions designed to put litigation under the unfair competition law on a sound footing. The proposed statute would be added to the Business and Professions Code as a separate chapter dealing with representative actions, commencing with Section 17300.[34]

These recommended revisions are narrowly focused to address the standards applicable to determining who may represent the interests of the general public and to rationalize the settlement process by providing minimal notice, adequacy, and fairness standards. These revisions are proposed with the conscious intent of avoiding disruption of the overall balance among the potential litigants.

Form of Pleadings

A complaint under Business and Professions Code Section 17204 or 17535 on behalf of the general public should be separately stated in the pleadings and should specifically state that the action is brought "on behalf of the general public."

34. See "Proposed Legislation" *infra* pp. 217-26.

This detail facilitates appropriate treatment under the statute and should help to focus the attention of the parties on the crucial element of the interests of the general public.

Adequacy of Plaintiff and Plaintiff's Counsel

The open-ended standing rules of existing law should be revised to provide minimum protections. The Commission has declined to recommend the application of full-blown class action standards to representative actions under the unfair competition law, but some aspects of class action law are appropriate for protection of the interests of the general public in unfair competition litigation.

A private plaintiff should not be able to proceed in a representative action on behalf of the general public unless the plaintiff can adequately represent the interests of the general public pled. The proposed law requires that the plaintiff be an adequate representative, but does not go so far as to require the plaintiff to show that he or she has suffered an injury by the defendant's challenged practice. By analogy with class action law, the plaintiff would have to vigorously prosecute the action on behalf of the general public.[35]

The representative action should not proceed if the plaintiff has a conflict of interest that reasonably could compromise the good faith representation of the interests of the general public pled. The plaintiff who acts as a representative of the general public serves in a fiduciary capacity. Courts will need to consider whether it is appropriate for a plaintiff to pursue individual claims for damages or other relief while at the same time trying to represent the interests of the general public.

In addition, the plaintiff's attorney must be an adequate legal representative of the public interest pled.

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35. See, e.g., Opiela v. Bruck, 139 F.R.D. 257, 261 (D. Mass. 1990); *In re* Alcoholic Beverages Litigation, 95 F.R.D. 321, 325-26 (E.D.N.Y. 1982).

These adequacy and conflict of interest issues will be determined by the court on its own motion, or on the motion of a party to the action. In the interest of efficiency and to avoid unnecessary expense, discovery is not allowed on these issues unless the court otherwise orders.

If the private plaintiff and plaintiff's counsel do not meet the statutory requirements, the representative cause of action would be stricken from the complaint. Regardless of whether the issues are addressed early in the case, before judgment is entered, the court must determine that the adequacy and conflict of interests standards have been met. These standards should provide some guarantee that the action is maintained in good faith, without the need to satisfy stricter class certification rules.

Notice of Filing

At the time of filing a representative action on behalf of the general public, a private plaintiff would be required to give notice to the Attorney General and to the district attorney in the county where the action is pending. This notice would be for informational purposes and would not impose any duty on the Attorney General or district attorney to investigate or intervene in the private action. Notice to the Attorney General would also have the effect of informing prosecutors throughout the state of relevant private actions through their existing voluntary notice system.

Defendant's Disclosure of Other Cases

The defendant should disclose any other private representative actions, prosecutor's enforcement actions, or class actions pending in California based on substantially similar facts and theories of liability that are known to the defendant. This is a continuing duty, so that if a potentially overlapping action is filed while a private representative action or prosecutor's enforcement action is pending, the defendant would be

required to give notice to the plaintiff and the court of the later actions. The disclosure requirement is intended to help the court to determine which plaintiff is best suited to move forward or to make other appropriate orders, such as for consolidation or abatement.

Notice of Proposed Settlement in Private Representative Action

The proposed law requires 45 days' notice of the terms of a proposed judgment in a private representative action to other parties with cases pending against the defendant based on substantially similar facts and theories of liability, to the Attorney General and district attorney, to persons who have filed a request for notice, and to other persons, as ordered by the court. Since the interests of the general public are being determined in a representative action, any interested person would have the opportunity to apply for leave to be heard when the court considers entry of judgment. Although this procedure is quite different from that applicable to class actions, the intent is to afford a broader scope of participation by potentially interested persons than is generally available under the existing unfair competition law.

Court Review and Approval of Settlements

The proposed law requires the court to review a proposed settlement of a claim on behalf of the general public in a private representative action under the unfair competition law. The court must affirmatively find that the procedural requirements of the statute have been satisfied, that the proposed terms are fair, adequate, and reasonable,[36] that the plaintiff

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36. The "fair, adequate, and reasonable" standard is drawn from class action law. See, e.g., *In re* General Motors Corp. Pick-up Truck Fuel Tank Prod. Liab. Litig., 55 F.3d 768, 785, 805 (3d Cir. 1995), *cert. denied,* 116 S. Ct. 88 (1995); Malchman v. Davis, 706 F.2d 426, 433 (2d Cir. 1983); *In re* Chicken Antitrust Litig. Am. Poultry, 669 F.2d 228, 238-40 (5th Cir. 1982); Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975); Grunin v. International House of Pancakes, 513 F.2d 114, 123 (8th Cir. 1975), *cert. denied,* 423 U.S. 864 (1975); City of Detroit

and the plaintiff's attorney meet the applicable adequacy and conflict of interest standards, and that any attorney's fees meet statutory and other requirements.

Formalizing the settlement process will help ensure that judgments in representative actions are actually in the public interest. These rules should limit the temptation for a defendant to attempt to select a weak or collusive plaintiff with whom to settle and for a plaintiff to sell out the absent members of the general public whose interests are at stake.

Binding Effect of Representative Actions

The proposed law fills a critical gap in the unfair competition law by giving the determination of a private representative cause of action a limited binding effect on nonparties. If the proposed statutory requirements of notice, adequacy, and court review and approval have been followed, the judgment as to claims on behalf of the general public bars further private representative actions under the unfair competition law. In other words, a judgment in a representative action brought by a private plaintiff on behalf of the general public under the unfair competition law is entitled to res judicata effect as to the interests of the general public pled. The proposed law does not otherwise affect whatever judicial doctrines of res judicata, mootness, or equitable estoppel may apply under general principles.

A nonparty individual's claim for restitution or damages for injury suffered by the individual that arises out of the same facts would not necessarily be barred, but the plaintiff would not be able to assert a claim on behalf of the general public. Giving binding effect as to the right to bring *representative*

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v. Grinnell Corp., 495 F.2d 448, 462-63 (2d Cir. 1974). See also La Sala v. American Savings & Loan Ass'n, 5 Cal. 3d 864, 871-72, 489 P.2d 1113, 97 Cal. Rptr. 849 (1971) (plaintiff as fiduciary for class); Rebney v. Wells Fargo Bank, 220 Cal. App. 3d 1117, 1138, 269 Cal. Rptr. 844, 857 (1990) (broad trial court powers to determine fairness of proposed class action settlement).

actions does not affect the due process rights of any person who has a *personal* claim for relief.

The proposed law thus restricts an individual's statutory ability to bring a *repetitive* representative action on behalf of the general public under the unfair competition law. The individual's constitutional right not to have a cause of action in the individual's own right determined without due process is not impaired. But the individual has no constitutional right to bring a representative action,[37] and the right to bring representative actions, which is granted by statute, can be limited by statute or repealed.

Priority Between Public and Private Plaintiffs [38]

Where both private plaintiffs and public prosecutors have commenced actions on behalf of the public against the same defendant based on substantially similar facts and theories of liability, the proposed law gives the prosecutor's action a degree of preference by recognizing that the court may stay the private action until completion of the prosecutor's action may consolidate or coordinate it with the public action, or may make any other order in the interest of justice. The appropriate response is left to judicial discretion in the interests of justice and the statute does not provide any preference

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37. *Cf.* Fletcher v. Security Pacific Nat'l Bank, 23 Cal. 3d 442, 454, 591 P.2d 51, 153 Cal. Rptr. 28 (1979); Bronco Wine Co. v. Frank A. Logoluso Farms, 214 Cal. App. 3d 699, 718-20, 262 Cal. Rptr. 899 (1989).

38. The proposed law does not deal with potential conflicts between public prosecutors, on the assumption that the informal system currently in place for coordinating public prosecutors' activities, managed by the California District Attorneys Association and the Attorney General, is sufficient protection. See *Fellmeth Study, supra* note 1, at 253-54. Thus, the Commission is assured that the situation in People v. Hy-Lond Enterprises, Inc., 93 Cal. App. 3d 734, 155 Cal. Rptr. 880 (1979), would not occur today and there is no need to impose additional rules by statute. Prof. Fellmeth notes, however, that there is "surprisingly little law covering the extraterritorial jurisdiction of a district attorney in public civil filings." *Fellmeth Study, supra* note 1, at 258-59 n.111. See also Chilton & Stern, *supra* note 26, at 100 (referring to informal understanding among Bay Area prosecutors to avoid overlapping actions).

among available orders. The proposed law does not give private plaintiffs any right to displace or stay the public action, and to this extent views public prosecutors as the best representatives of the public.[39]

Attorney's Fees

The proposed law recognizes that a private plaintiff whose representative action on behalf of the general public is stayed or consolidated with a prosecutor's enforcement action may have a right to attorney's fees in an appropriate case under general principles.[40] This rule is intended to encourage private plaintiffs to work with public prosecutors rather than competing with them and seeking a separate settlement.

Optional Application to Pending Cases

The proposed law generally applies only to actions filed after its operative date. However, where the parties in a private representative action filed before the operative date substantially comply with the new procedural rules, the new law may be applied in the case, unless the court determines that to do so would interfere with the effective conduct of the action or the rights of parties or other persons.

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39. This rule is generally consistent with the spirit of People v. Pacific Land Research Co., 20 Cal. 3d 10, 18, 569 P.2d 125, 141 Cal. Rptr. 20, 24 (1977), where the Supreme Court noted that a public prosecutor's "role as a protector of the public may be inconsistent with the welfare of the class so that he could not adequately protect their interests." See also People v. Superior Court (Good), 17 Cal. 3d 732, 552 P.2d 760, 131 Cal. Rptr. 800 (1976) (intervention in district attorney's unfair competition law action by private plaintiffs).

40. See e.g., Ciani v. San Diego Trust and Savings Bank, 25 Cal. App. 4th 563, 572-73, 30 Cal. Rptr. 2d 581 (1994); Committee To Defend Reprod. Rights v. A Free Pregnancy Ctr., 229 Cal. App. 3d 633, 642-44, 280 Cal. Rptr. 329 (1991).

PROPOSED LEGISLATION

Bus. & Prof. Code §§ 17300-17311 (added). Representative actions

SECTION 1. Chapter 6 (commencing with Section 17300) is added to Part 2 of Division 7 of the Business and Professions Code, to read:

CHAPTER 6. REPRESENTATIVE ACTIONS ON BEHALF OF PUBLIC

§ 17300. Definitions

17300. As used in this chapter:

(a) "Enforcement action" means an action by a prosecutor under Chapter 5 (commencing with Section 17200) or Part 3 (commencing with Section 17500).

(b) "Prosecutor" means the Attorney General or appropriate district attorney, county counsel, city attorney, or city prosecutor.

(c) "Representative cause of action" means a cause of action asserted by a private plaintiff on behalf of the general public under Section 17204 or 17535.

Comment. Section 17300 defines terms used in this chapter. For rules concerning prosecutors empowered to bring actions for unfair competition or false advertising, see, e.g., Sections 17204, 17204.5, 17206.5, 17207, 17535, 17536.

§ 17301. Requirements for pleading representative cause of action

17301. (a) A private plaintiff may plead a representative cause of action on behalf of the general public under Section 17204 or 17535 only if the requirements of this chapter are satisfied.

(b) The private plaintiff shall separately state the representative cause of action in the pleadings, and shall designate it as being brought "on behalf of the general public" under Section 17204 or 17535, as applicable.

Comment. Subdivision (a) of Section 17301 limits the scope of this chapter insofar as it applies to private actions. This chapter does not apply to private actions for unfair competition that are not representative actions.

Subdivision (b) provides a technical rule on the form of pleadings that include a representative cause of action.

See Section 17300(c) ("representative cause of action" defined).

§ 17302. Adequacy of plaintiff and plaintiff's attorney

17302. (a) A private plaintiff in a representative action must be an adequate representative of the interests of the general public plead and may not have a conflict of interest that reasonably could compromise the good faith representation of the interests of the general public pled. The private plaintiff is not required to have sustained any injury by the defendant.

(b) The attorney for a private plaintiff in a representative action must be an adequate legal representative of the interests of the general public pled.

(c) On noticed motion of a party or on the court's own motion, the court shall determine by order whether the requirements of subdivisions (a) and (b) are satisfied. The determination may be based on the pleadings. The court may inquire into the matters in its discretion or may permit discovery. In making its determination, the court shall consider standards applied in class actions. If the court determines that the requirements of subdivisions (a) and (b) are not satisfied, the representative cause of action shall be stricken from the complaint.

(d) An order under this subdivision may be conditional, and may be modified before judgment in the action.

(e) This section does not preclude the court from granting appropriate preliminary relief before a determination is made under subdivision (c).

Comment. Section 17302 sets forth the prerequisites in a representative action for unfair competition or false advertising of (a) the plaintiff's adequacy to represent the general public and absence of a conflict of

interest and (b) adequacy of counsel to represent the general public. Section 17302 does not require the private plaintiff to have suffered an injury from the defendant's practice challenged in the complaint, but, by analogy with class action principles, the plaintiff must be of such character as to ensure vigorous prosecution of the action so that interests of the general public are certain to be protected. See, e.g., Opiela v. Bruck, 139 F.R.D. 257, 261 (D. Mass. 1990); *In re* Alcoholic Beverages Litigation, 95 F.R.D. 321, 325-26 (E.D.N.Y. 1982). Under subdivision (a), if a plaintiff is pursuing a cause of action as an individual and at the same time is seeking to represent the interests of the general public, it would be appropriate for the court to consider whether the plaintiff can adequately perform this dual role and represent the interests of the general public in good faith. This section does not provide a specific conflict of interest standard applicable to the plaintiff's attorney in the representative action; but lack of conflict of interest is an element of the overall adequacy of counsel standard by analogy with class action law. See, e.g., 7A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 1769.1, at 383-84 (1986) & Supp. at 37 (1996).

Subdivision (c) provides the procedure for determining that the requirements of subdivisions (a) and (b) are met. The court is given broad discretion in making its determination, including the power to investigate any issues that arise, and may make an order permitting discovery. The plaintiff cannot obtain a ruling on the merits of the complaint without first satisfying this section. See Section 17307(b)(3)-(4) (findings required for entry of judgment).

Subdivisions (c) and (d) are drawn in part from Rule 23(c)(1) of the Federal Rules of Civil Procedure, applicable to class actions.

See also Section 17300(c) ("representative cause of action" defined).

§ 17303. Notice of commencement of representative action to Attorney General and district attorney

17303. Within 10 days after commencement of a representative action, the private plaintiff shall give notice of the action and of any application for preliminary relief, together with a copy of the complaint, to the Attorney General and to the district attorney of the county where the action is pending. Notice of an application for preliminary relief shall be given in the same manner as notice is given to the defendant.

Comment. Section 17303 requires a private plaintiff to give prompt notice of the filing of a representative action to the Attorney General and

the local district attorney. The notice and copy of the complaint required by this section are given for informational purposes only, as recognized in Section 17310 (effect on prosecutors).

See also Section 17300(c) ("representative cause of action" defined).

§ 17304. Disclosure of similar cases against defendant

17304. (a) Promptly after summons is served on the defendant in an enforcement action or representative action, the defendant shall notify the plaintiff and the court of any other enforcement actions, representative actions, or class actions pending in this state against the defendant that are based on substantially similar facts and theories of liability and that are known to the defendant.

(b) Promptly after summons is served on the defendant in an enforcement action, representative action, or class action in this state, the defendant shall give notice of the filing to the plaintiff and the court in all pending enforcement actions and representative actions in this state against the defendant that are based on substantially similar facts and theories of liability and that are known to the defendant.

Comment. Section 17304 requires the defendant to disclose similar cases pending or later filed in California. This section applies as to actions brought by prosecutors or private plaintiffs. See Sections 17300(a) ("enforcement action" defined), 17300(b) ("prosecutor" defined), 17300(c) ("representative cause of action" defined).

§ 17305. Notice of terms of judgment in representative action

17305. (a) With respect to a representative cause of action, at least 45 days before entry of a judgment, or any modification of a judgment, which is a final determination of the representative cause of action, the private plaintiff shall give notice of the proposed terms of the judgment or modification, including all stipulations and associated agreements between the parties, together with notice of the time and place set for a hearing on entry of the judgment or modification, to all of the following:

(1) The Attorney General.

(2) The district attorney of the county where the action is pending.

(3) Other parties with cases pending against the defendant based on substantially similar facts and theories of liability known to the plaintiff.

(4) Each person who has filed with the court a request for notice of the terms of judgment.

(5) Other persons as ordered by the court.

(b) A person given notice under subdivision (a) or any other interested person may apply to the court for leave to intervene in the hearing provided by Section 17306. Nothing in this subdivision limits any other right a person may have to intervene in the action.

(c) On motion of a party or on the court's own motion, the court for good cause may shorten or lengthen the time for giving notice under subdivision (a).

Comment. Subdivision (a) of Section 17305 requires notice of the terms of any proposed disposition of the representative action to other interested parties. The 45-day notice period is subject to variation on court order pursuant to subdivision (c). The notice of the proposed terms of the judgment under this section may be given at the same time as the notice of commencement of the representative action is given under Section 17303, so long as other requirements are satisfied.

Under subdivision (b), a court may permit intervention in the hearing for approval of the terms of the judgment provided by Section 17306.

As to the effect of notice given to the Attorney General or a district attorney under this section, see Section 17310. See also Sections 17300(b) ("prosecutor" defined), 17300(c) ("representative cause of action" defined).

§ 17306. Findings required for entry of judgment

17306. (a) With respect to a representative cause of action, before entry of a judgment, or any modification of a judgment, which is a final determination of the representative cause of action, a hearing shall be held to determine whether the requirements of this chapter have been satisfied.

(b) At the hearing, the court shall consider the showing made by the parties and any other persons permitted to appear and shall order entry of judgment only if the court finds that all of the following requirements have been satisfied:

(1) The proposed judgment and any stipulations and associated agreements are fair, reasonable, and adequate to protect the interests of the general public pled.

(2) Any award of attorney's fees included in the judgment or in any stipulation or associated agreement complies with applicable law.

(3) The private plaintiff satisfies the requirements of subdivision (a) of Section 17302.

(4) The attorney for the private plaintiff satisfies the requirements of subdivision (b) of Section 17302.

(5) All other requirements of this chapter have been satisfied.

Comment. Section 17306 provides for a hearing as a prerequisite to entry of judgment in a representative action brought by a private plaintiff on behalf of the general public for unfair competition or false advertising, and provides standards that must be satisfied. This section does not apply to enforcement actions brought by prosecutors.

The "fair, reasonable, and adequate" standard in subdivision (b)(1) is drawn from the case law on class actions and is intended to be applied consistent with that law. See, e.g., *In re* General Motors Corp. Pick-up Truck Fuel Tank Products Liability Litigation, 55 F.3d 768, 785, 805 (3d Cir. 1995); Malchman v. Davis, 706 F.2d 426, 433 (2d Cir. 1983); *In re* Chicken Antitrust Litigation American Poultry, 669 F.2d 228, 238-40 (5th Cir. 1982); Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975); Grunin v. International House of Pancakes, 513 F.2d 114, 123 (8th Cir. 1975), *cert. denied,* 423 U.S. 864 (1975); City of Detroit v. Grinnell Corp., 495 F.2d 448, 462-63 (2d Cir. 1974). See also La Sala v. American Savings & Loan Ass'n, 5 Cal. 3d 864, 871-71, 489 P.2d 1113, 97 Cal. Rptr. 849 (1971) (plaintiff as fiduciary for class); Rebney v. Wells Fargo Bank, 220 Cal. App. 3d 1117, 1138, 269 Cal. Rptr. 844, 857 (1990) (broad trial court powers to determine fairness of proposed class action settlement). If a private plaintiff representing the interests of the general public in a representative cause of action has maintained an individual cause of action, whether for unfair competition or some other cause, in the representative action or in a contemporaneous action against

the same defendant, the court should examine the proposed judgment and any stipulations and associated agreements to ensure that pursuit or settlement of the plaintiff's individual claim has not impaired the interests of the general public.

With regard to an award of attorney's fees under subdivision (b)(2), see Section 17309(c). As to the effect of this section on the Attorney General or a district attorney, see Section 17310.

See also Section 17300(c) ("representative cause of action" defined).

§ 17307. Dismissal, settlement, compromise

17307. A representative cause of action may not be dismissed, settled, or compromised without the approval of the court and a determination that the disposition of the representative cause of action is fair, reasonable, and adequate to protect the interests of the general public pled. The court, in its discretion, may set the matter for hearing on notice to persons who would receive notice under Section 17306.

Comment. Section 17307 is drawn from Rule 23(e) of the Federal Rules of Civil Procedure relating to class actions and Civil Code Section 1781(f) (Consumers Legal Remedies Act). See also Section 17300(c) ("representative cause of action" defined).

§ 17308. Binding effect of judgment in representative action

17308. The determination of a representative cause of action brought by a private plaintiff in a judgment approved by the court pursuant to Section 17306 is conclusive and bars any further actions on representative causes of action brought by private plaintiffs against the same defendant based on substantially similar facts and theories of liability.

Comment. Section 17308 governs the binding effect of a private representative action under this chapter on later private representative actions. Under this section, a final determination of the representative cause of action (i.e., the cause of action asserted by a private plaintiff on behalf of the general public under Section 17204 or 17535, as provided in Section 17306) is res judicata. In other words, the determination of the cause of action on behalf of the general public has been made and other private plaintiffs are precluded from reasserting the representative cause of action. See also Code Civ. Proc. § 1908 (binding effect of judgments generally). This effect applies to any relief granted the general public,

whether by way of injunction or restitution or otherwise. The scope of this rule is limited: a person who claims to have suffered damage as an individual is not necessarily precluded from bringing an action on that claim, even though the question of the harm to the general public has been determined conclusively. However, in any later action, the plaintiff's recovery in the prior action should be set off against any potential recovery in the later action in the interests of equity.

Additionally, if this chapter has not been complied with, this section does not apply, and any binding effect will be determined by application of general principles. Of course, if a judgment is obtained through extrinsic fraud, it may be attacked, either by a motion in the same action or by an independent action in a court of equity jurisdiction. Estate of Sanders, 40 Cal. 3d 607, 613-15, 710 P.2d 232, 221 Cal. Rptr. 432 (1986); Rohrbasser v. Lederer, 179 Cal. App. 3d 290, 297, 224 Cal. Rptr. 791 (1986); *see also* 8 B. Witkin, California Procedure *Attack on Judgment in Trial Court* §§ 195-222, at 595-627 (3d ed. 1985). The court may set aside the judgment or grant other appropriate relief. Caldwell v. Taylor, 218 Cal. 471, 475, 23 P.2d 758 (1933); B. Witkin, *supra*, at 595. Similarly, the judgment should be vulnerable to attack if there have been material omissions or misleading statements to the court.

This section is not intended to affect any other application of the doctrine of res judicata or to limit or expand other judicial doctrines such as equitable estoppel, mootness, or judicial estoppel. Whether these doctrines or any others should be applied in a particular case is not affected by this section and is governed by the otherwise applicable law. Nor does this section have any application to situations involving enforcement actions brought by public prosecutors under the unfair competition statutes.

See also Section 17300(c) ("representative cause of action" defined).

§ 17309. Priority between prosecutor and private plaintiff

17309. (a) If a private plaintiff has commenced an action that includes a representative cause of action and a prosecutor has commenced an enforcement action against the same defendant based on substantially similar facts and theories of liability, the court in which either action is pending, on motion of a party or on the court's own motion, may stay the private plaintiff's representative cause of action until completion of the prosecutor's enforcement action, may make

an order for consolidation or coordination of the actions, or may make any other order, in the interest of justice.

(b) The determination under subdivision (a) may be made at any time during the proceedings and regardless of the order in which the actions were commenced.

(c) Nothing in this section affects any right the plaintiff may have to costs and attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure or other applicable law.

Comment. Section 17309 provides a limited degree of priority to public prosecutor enforcement actions over conflicting private representative actions. Under subdivision (a), the court may make any appropriate order in the interest of justice. The subdivision does not provide any preference among the various orders that the court may make. If the enforcement action and representative action are consolidated, the court may give the prosecutor responsibility on the injunctive and civil penalty phases of the case and let the private plaintiff press the restitutionary claims.

Subdivision (c) recognizes that a private plaintiff may have a right to an attorney's fee award under general principles when the private representative action is stayed or consolidated pursuant to this section. This rule is intended to be applied consistent with case law. See, e.g., Ciani v. San Diego Trust and Savings Bank, 25 Cal. App. 4th 563, 572-73, 30 Cal. Rptr. 2d 581 (1994); Committee To Defend Reproductive Rights v. A Free Pregnancy Center, 229 Cal. App. 3d 633, 642-44, 280 Cal. Rptr. 329 (1991).

See also Sections 17300(a) ("enforcement action" defined), 17300(b) ("prosecutor" defined), 17300(c) ("representative cause of action" defined).

§ 17310. Effect on prosecutors

17310. Notice provided to the Attorney General or a district attorney under Section 17303 or 17305 does not impose any duty on the Attorney General or district attorney. The Attorney General or district attorney is not precluded from taking any future action as a consequence of not taking action in response to notice or any determination made under Section 17306.

Comment. Section 17310 makes clear that notice of filing under Section 17303 and notice of terms of judgment under Section 17305 are given for informational purposes only. The notice provisions do not

imply any duty on the Attorney General or district attorney. In addition, prosecutors may submit comments for the hearing under Section 17306 without intervening. The court's consideration of an objection posed by a prosecutor is not conditioned on the prosecutor's assumption of the litigation. Nor are any future actions by prosecutors affected by whether or not comments or objections were submitted to the court under Section 17306.

§ 17311. Application of chapter to pending cases

17311. (a) Except as provided in subdivision (b), this chapter does not apply to actions pending on its operative date.

(b) If the parties to a representative action commenced before the operative date of this chapter substantially comply with the provisions of this chapter, the substantive rules provided in this chapter apply in the action unless the court determines that application of a particular provision of this chapter would substantially interfere with the effective conduct of the action or the rights of the parties or other interested persons. For the purpose of this subdivision, Sections 17301 and 17302 are not applicable and the duty to give notice under Section 17303 is satisfied if the notice is given promptly after the operative date of this chapter.

Comment. Subdivision (a) of Section 17311 provides the general rule that this chapter applies only prospectively, i.e., to actions filed on or after its operative date (January 1, 1998). However, as provided in subdivision (b), the parties in private representative actions commenced before the operative date may take advantage of the new procedures by substantially complying with the new law. Subdivision (b) makes clear that Sections 17301 (requirements for pleading representative cause of action) and 17302 (absence of conflict of interest and adequate legal representation) do not apply to actions pending on the operative date of this chapter. Subdivision (b) does not apply to enforcement actions brought by public prosecutors before the operative date.

See also Section 17300(c) ("representative cause of action" defined).

CALIFORNIA'S UNFAIR COMPETITION ACT: CONUNDRUMS AND CONFUSIONS*

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January 1995

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CALIFORNIA'S UNFAIR COMPETITION ACT: CONUNDRUMS AND CONFUSIONS

Introduction and Summary

California's Unfair Competition Act (Business and Professions Code § 17200 *et seq.*) prohibits "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."[1] Such unfair competition is unlawful as to any person "who engages, has engaged, or proposes to engage" in it.[2] The statute's breadth is matched by its liberal and perhaps unique standing provisions. Fifty eight offices of district attorney, the Attorney General, and city attorneys in multiple cities may bring an action for injunctive relief and for civil penalties. Moreover, any private party may bring an action for injunctive relief acting "for the interests of itself, its members or the general public."[3]

While coextensive access to the courts from a variety of sources is not unusual, several factors have coalesced to cause confusion given this law's unusual license for plaintiff representation of the general public. One such factor is an increase in cases where alleged business overcharges may give rise to substantial restitution to the public (either directly or through fluid recovery or *cy pres* relief). That equitable remedy is part of the injunctive relief available to all plaintiffs under the Act. Another factor has been the substantial attorney's fees available to plaintiff's counsel in cases creating a beneficial fund or vindicating interests beyond the named plaintiff.

Private plaintiffs representing the "general public" pose a particular problem under Unfair Competition Act terms. These plaintiffs need not meet the extensive requirements of state or federal class

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1. Bus. & Prof. Code § 17200. All further statutory references are to the Business and Professions Code, unless otherwise indicated.

2. Section 17203.

3. Sections 17204, 17204.5.

action procedure: e.g., certification as a class with demonstrated common questions and adequacy of representation, notice, manageability, a showing of superiority of the class mechanism to resolve the dispute, et al. Rather, the statute provides that any person who files is a party allowed to represent the injunctive or restitutionary interests of all who may be injured — historically or prospectively. If the litigation which then ensues bars others who might have been victims and are due restitution, serious due process issues arise. I.e., many "unfair competition" cases are brought by plaintiffs based on their own narrow dispute with a defendant; alleging public injury warranting restitution beyond their individual interest, may expand discovery scope and increase leverage — a leverage they may sacrifice for their own gain. The statute provides no check to such an abuse short of *res judicata* denial.[4]

On the other hand, the denial of *res judicata* effect means that where public or private plaintiffs do, in fact, serve a *bona fide* attorney general function and vindicate larger interests, they may be unable to offer a final resolution.[5] Defendants, who understandably need finality, may be frustrated by duplicate filings, uncertain exposure, and legal fees to litigate identical issues against different plaintiffs, none able to offer a universally binding resolution.[6]

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4. Note that the doctrine of *res judicata* is implicated more than the related concept of collateral estoppel. A judgment in a Section 17200 case may well bar the instant plaintiff from relitigating the same matter — that party is collaterally estopped. But other plaintiffs may file identical causes of action, even claiming the same injury by the same defendants to the same members of the general public over the same time period.

5. A *res judicata* plea to bar an action requires: (1) identity of issues; (2) a final judgment on the merits; and (3) identity or privity of parties. The problem in the instant case rests primarily with the third requirement. See Teitelbaum Furs, Inc. v. Dominion Ins. Co. Ltd., 58 Cal. 2d 601, 604 (1962); see also Hone v. Climatrol Indus., Inc., 59 Cal. App. 3d 513, 529 (1976).

6. At least in theory, where there has been a judgment and restitution rendered and accepted, further litigation to recover duplicate relief for the same wrong would appear to be barred in a court of equity. However, the issue is not that simple. As discussed *infra*, such an arrangement means that the first party to obtain judgment then determines the resolution — an outcome which may be substantially within the control of the defendant. Moreover, a defendant has his own conundrum to settle: he cannot be assured that the settlement he makes will

The survey of cases and practitioners involved in Unfair Competition Act litigation indicates that the statute's dilemma is no longer theoretical, it is currently functioning in a number of cases to frustrate the just and expeditious resolution of disputes. In this article, the author sets forth the basis for the current problem, surveys analogous federal and state statutes in other jurisdictions, outlines illustrative examples, and proposes eight amendments to current law. The legislative recommendations are drawn narrowly to address the most egregious problems which have arisen. The intent of the changes suggested is to rationalize and order the jurisdictional and standing status of public and private parties to prevent the representation of the general public by those with conflicts of interest, inhibit duplicative litigation, and achieve finality consistent with due process standards.

I. The Origin and History of Section 17200[7]

California's "Unfair Competition" statute originated as part of the state's Civil Code in 1872.[8] In its early form, it simply prohibited "unfair" practices in competition. The law was initially used as an exception to the traditional admonition that "equity will not enjoin a public offense," and to allow a statutory basis for many of the traditional "business torts," such as commercial disparagement, trade secret theft, tradename infringement, et al.[9] The statute has evolved over the past century through amendment and developing case law, both influenced by the existence of a similarly worded

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stand until summary judgment proceedings, or perhaps full-fledged litigation, establishes that the settlement he has already made satisfies all of those who might benefit from subsequent filings. As explained below, such a posture impedes meritorious and willing settlements.

7. For additional detail, see Papageorge, *The Unfair Competition Statute: California's Sleeping Giant Awakens*, 4 Whittier L. Rev. 561 (1982).

8. See Note, *Former Civil Code Section 3369: A Study in Judicial Interpretation*, 30 Hastings L.J. 705 (1979).

9. Section 17202. Notwithstanding Civil Code Section 3369, the statute makes available "specific or preventive relief" to enforce a "penalty, forfeiture, or penal law in a case of unfair competition."

federal statute (the Federal Trade Commission Act, enacted in 1914 and amended significantly in 1938 and 1975).[10]

Much of the early case law interpreting the statute occurred while the law was located at Section 3369 of the Civil Code. In 1977, the law was moved to Section 17200 *et seq.* of the Business and Professions Code, a move not intended to alter it substantively nor to affect the applicability of pre-existing interpretive case law.[11] The law is now sandwiched between the similarly titled "Unfair Practices Act" beginning at Section 17000, which is roughly analogous to the federal Clayton Act (e.g. prohibiting predatory below cost and price discrimination offenses) and Section 17500 of the Business and Professions Code, which prohibits deceptive advertising.[12]

As the Unfair Competition Act evolved, it became far more than a vehicle for business tort remedy between disputing commercial entities. Rather, it became a means to vindicate consumer or public market abuses by business entities in a variety of contexts, a statute directed at preserving general marketplace fairness and legality. Major alterations of the statute substantively over the past several decades in that direction include:

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10. 15 U.S.C. § 45.

11. The provision was moved at the suggestion of the analyst for the Senate Judiciary Committee during the course of amendments proposed by the California Association of District Attorneys and eventually enacted.

12. Note that the provisions of Section 17500 *et seq.* are also implicitly or explicitly included within Section 17200, creating a certain amount of confusion. The former section is confined to deceptive advertising and lacks the breadth of Section 17200. Section 17500 *et seq.* focuses on enumerating many practices which are deceptive as a matter of law and applying to specific types of problem sales: charity solicitations, phone sales, et al. It also allows prosecutors (and the Director of the Department of Consumer Affairs) to serve what amounts to a prefiling interrogatory, asking an advertiser for the factual basis of a claim and allows the propounder to hold the respondent to his answer (see Section 17508). Unlike Section 17200, Section 17500 includes a criminal misdemeanor remedy. However, Sections 17535 and 17536 interpose for deceptive advertising the same private and public injunctive and public civil penalty remedies applicable to Section 17200, including the same broad standing grant discussed *infra*. Accordingly, Recommendation 8 is to replicate each of the suggested seven reforms applicable to Section 17200 to Section 17500. See *infra* p. 274.

1. Amendment to prohibit "unlawful" as well as "unfair" competition;[13]
2. Case law broadly applying the statute to a wide variety of alleged unlawful[14] or unfair practices,[15] including violations of federal law, restraints of trade,[16] sale of endangered whale meat, purveying obscene material, mobile home park regulation violations, abuse of the legal process, nursing home abuses,[17] and many others;
3. Coverage to include practices originating from out-of-state but affecting California consumers;[18]

Perhaps more significant, numerous structural and procedural changes have been engrafted upon the statute over the years to create a mix of remedies and additional actors able to invoke them. Major changes include:

1. The addition of a "civil penalty" of $2,500 per violation available to the Attorney General and the state's district attorneys for violations;[19]

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13. The word "unlawful" was added in 1963; 3 Sen. J. (1963 Reg. Sess.) pp. 4441-42; 3 Assem. J. (1963 Reg. Sess.) p. 4999.

14. An "unlawful business practice" includes anything that can properly be called a business practice and that is at the same time forbidden by law. See People v. McKale, 25 Cal. 2d 626 (1979).

15. Although California v. Texaco, Inc., 46 Cal. 3d 1147 (1988), defined "practice" to require a repeated or customary action, habitual performance, or a pattern of behavior precluding the single act of an unlawful merger to qualify, that decision has been legislative reversed by SB 1586 (1992 Cal. Stat. ch. 430, § 2), effective in 1993, to cover an "act" as well as a "practice." The amendment conforms California law to the Federal Trade Commission Act (15 U.S.C. § 45).

16. See People v. National Ass'n of Realtors, 120 Cal. App. 3d 459 (1981).

17. See People v. E.W.A.P., Inc. 106 Cal. App. 3d 315 (1980); People v. McKale, 25 Cal. 3d 626 (1979); Barquis v. Merchants Collection Ass'n, 7 Cal. 3d 94 (1972); People v. Casablanca Convalescent Homes, Inc., 159 Cal. App. 3d 509 (1984).

18. See removal of "within this state" from Section 17203 by SB 1586 (1992 Cal. Stat. ch. 430, § 3).

19. See Section 17207.

2. Additional civil penalties of $2,500 per violation where senior citizens or the disabled are victims;[20]
3. The inclusion of an enhanced civil penalty of $6,000 per violation where there is an intentional violation of an outstanding injunction under the Act;[21]
4. Interpretation of separate "violations" which can be multiplied times the maximum penalty of $2,500 (or $6,000) based on the number of victims affected by them;[22]
5. Pre-filing discovery powers available to public prosecutors;[23]
6. Expansion of the public offices able to bring injunctive and penalty actions to include certain offices of city attorney, and then further expansion in 1991 to include — where the county district attorney consents — any county counsel enforcing a county ordinance, or any full time city attorney.[24]

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20. Section 17206.1.

21. *Id.*

22. See People v. Superior Court (Jayhill), 9 Cal. 3d 283 (1973); see also People v. Superior Court Orange County, 96 Cal. App. 3d 181 (1980); People v. Bestline Prods. Inc., 61 Cal. App. 3d 879 (1976). See also references to this case law in Section 6 of SB 1586 (1992 Cal. Stat. ch. 430). The lodestar of "victims" for maximum calculation is not dispositively defined: prosecutors contend that it includes potential victims (e.g. may be based on the circulation of a publication with a misleading advertisement) and defendants contend that it includes only actual victims injured. Note also that this calculation creates a maximum possible penalty, the actual penalty to be imposed under this ceiling is guided by Section 17206(b) and includes "the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth."

23. Prosecutors may invoke the Government Code pre-filing discovery (generally available to the Attorney General, see Gov't Code § 11180 *et seq.*) where they "reasonably believe" that a violation of antitrust law, or of Section 17200, has occurred. See Section 16759.

24. Sections 17204 grants generic authority to enforce the injunctive and civil penalty provisions of the statute to any city attorney of a city with a population

7. Injunctive relief broadly defined to include restitution under equitable principles, and an injunction is warranted based on "past actions" even if no current violations are occurring;[25]

8. As noted above, liberal standing to bring actions for injunctive relief and which allows "any person" to sue for himself or "for the general public."[26] Such standing may be assumed by one who is not himself or herself a victim of the practice complained of.[27]

And the statute makes clear that its remedies are cumulative of other remedies provided for in specific statutes, including those laws claimed as being violated to give rise to an "unlawful" claim, criminal offenses, torts, and regulatory jurisdiction in the normal course.[28]

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of over 750,000; Section 17204.5 added in the city attorney of San Jose — not yet at that population. Sections 17204 and 17206 also allow the district attorney to authorize the county counsel to bring injunctive and civil penalty actions where violations of county ordinances are involved. And finally, as of 1992, the district attorney may authorize any "full time" city prosecutor to bring an action.

25. See Section 17203 as amended by SB 1586 (1992 Cal. Stat. ch. 430, § 3). This amendment reverses the dubious holding of Mangini v. Aerojet-General Corp., 230 Cal. App. 3d 1125 (1991), that injunctive relief under the Unfair Competition Act was available only to remedy "ongoing" conduct, not past conduct.

26. Section 17204; note that this section is poorly worded and could yield the grammatical interpretation that only public prosecutors have standing and that private parties are to complain to *them*. Further, the definition of "person" has been held to exclude cities, while including virtually every other possible actor. Given the involvement of cities in business practices, this exclusion appears to be an anomaly. Both of these problems may warrant correction.

27. *See, e.g.*, Consumers Union of U.S., Inc. v. Fisher Development, Inc., 208 Cal. App. 3d 1433 (1989). Note that under Federal Rule of Civil Procedure 23, a class representative must be a member of the aggrieved class, see La Mar v. H&B Novelty & Loan Co., 489 F.2d 461 (9th Cir. 1973).

28. Section 17205, see also People v. Los Angeles Palm, Inc., 121 Cal. App. 3d 25, 33 (1981). Note that a regulatory scheme may foreclose Section 17200 in the extraordinary case where it "occupies the field" or is legislatively intended to foreclose alternative remedies.

A. Comparison to Section 5 of the Federal Trade Commission Act

Although called California's "Little FTC Act," the Unfair Competition statute takes a very different enforcement approach from its federal counterpart, Section 5 of the Federal Trade Commission Act. The federal Section 5 is roughly comparable in its substantive and generic prohibition of "unfair acts" in competition.[29] And federal case law has interpreted Section 5 broadly to include restraints of trade, and a wide variety of unfair business practices and types of misleading advertising.[30] The substantive breadth of the federal "unfair" prohibition, recognizing the variety and imagination of entrepreneurs, is relevant to state unfair competition statutes. The latter, including California, generally hold federal cases to be "more than ordinarily persuasive" in interpreting state counterparts.[31] One premise of the federal statute is to address unfair business practices which might confer a competitive advantage leading others to reciprocate. The resulting downward spiral (the "lowest common denominator" problem discussed *infra*) is a common concern of federal law and its state counterparts.

However, the federal statute has a very different enforcement regime than do 15 of the 16 states with "Little FTC Acts." The Federal Trade Commission (FTC) directly and exclusively enforces the federal Act.[32] The traditional remedy of the FTC has

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29. 15 U.S.C. § 45.

30. *See, e.g.*, FTC v. Colgate-Palmolive Co., 380 U.S. 374 (1964) (television ad appearing to shave sandpaper was misleading because the paper was soaked unseen for a time prior to the shaving); see also Feil v. FTC, 285 F.2d 879 (9th Cir. 1960) (representation, although literally true, must present explanatory facts if relevant to health); Exposition Press v. FTC, 295 F.2d 869 (2d Cir. 1961) (lead-in which misleads, even if corrected or clarified prior to purchase, violates Section 5).

31. See People v. National Research Co., 201 Cal. App. 2d 765 (1962).

32. See Holloway v. Bristol-Myers Group, 485 F.2d 986 (D.C. Cir. 1973), which rejected the notion of a private cause of action under the FTC Act. Hence, only the FTC may initiate cease and desist orders or trade regulation rules, and is solely empowered to seek civil penalties for their violation. However, note that there are many specific statutes within the general scope of Section 5 which have their own criminal, public civil, and private civil remedy schemes. And note that any existing FTC cease and desist order or trade regulation rule violation would

been the filing of an administrative complaint, proceedings, and the entry of a "cease and desist order" against a person or entity committing unfair acts in competition. Where contested, such an order may be appealed by the respondent in federal court. The advantage to a single administrative agency adjudicating such orders rests with the notice and prospective clarity it may afford actors in a marketplace. Where addressing a concept as nebulous as "deceptive advertising," for example, knowing with some certainty where the lines are between selling a product through permissible puffery, and unlawfully misleading consumers may be assisted by a system of advance guidance and warning.

However, prior to the 1970's, the only punitive sanction possible against a violator was a $5,000 per day violation civil penalty — assessed only against those who violated a pre-existing cease and desist order. One study calculated that it took the FTC, on average, 4.17 years to finalize a contested cease and desist order.[33] Since most ad campaigns run for less than one year, the efficacy of the agency's most severe sanction was problematical. In fact, from the perspective of the rational advertiser, it would pay to gain market advantage through deception until a cease and desist order were entered. Literally, no sanction from the agency (aside from possible adverse publicity) could be forthcoming until such an order were in place. Hence, some critics contended that the scheme was quite literally a license to mislead, or a system of assured "free bites."[34] The FTC Act has been amended procedurally periodically over the past twenty years, with major changes in the 1970's and 1980's allowing the FTC to serve an established cease and desist order on an entity other than the entity against whom it was entered

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arguably be an "unfair or unlawful act" in competition violating California's Unfair Competition Act and giving rise to its civil penalty remedies in state court.

33. See *The Nader Report on the Federal Trade Commission*, in Schulz, Fellmeth & Cox (Baron, 1968) at Chapter III.

34. *Id.* Note that the critique of the 1968 *Nader Report on the Federal Trade Commission* was substantially repeated by a subsequent Report of the American Bar Association undertaken by request of then President Richard Nixon, see American Bar Association, *Report on the Federal Trade Commission* (1969).

and to assess civil penalties if it is violated, and to assess direct civil penalties where a properly adopted and more general "trade regulation rule" was in place when the act complained of occurred. Notwithstanding these adjustments, unless such an order or rule applies to a practice, and existing orders and rules cover a minuscule portion of potentially violative business practice, there remains no deterrent producing sanction. Only if a specific practice is already subject to one of the enumerated orders or rules prohibiting it may a monetary sanction under the Federal Trade Commission Act occur.

State "little FTC Acts," including California's, generally use a different approach. They allow an immediate sanction to be imposed without warning, accomplishing a theoretically deterrent producing disincentive to engage in "unfair or unlawful" acts in competition. They generally allow certain public agencies and sometimes private parties to assess a punitive damage, treble damage, or civil penalty sanction.

The use of a multitude of sources to bring to the courts possible violations carries with it some clear enforcement advantages. Early detection and action, and more likely response, are important elements in an effective system of disincentives. However, there are some costs which can attend a system of multitudinous and coextensive response, e.g., lack of advance knowledge except through the relatively expensive process of litigation, possible multiple representation of similar interests, possible confusion and conflicts in adjudications, possible estoppel or foreclosure based on prior suits by those who did not and could not adequately represent the interests purportedly involved. As discussed *infra*, these costs to the Unfair Competition Act's current format in California, which is substantially different than the mechanisms of other states, have been evident in recent years.

B. Comparison to Similar Statutes in Other Jurisdictions

Sixteen other states have statutes roughly comparable to California's Unfair Competition Act: Alaska,[35] Connecticut,[36] Florida,[37] Hawaii,[38] Illinois,[39] Louisiana,[40] Maine,[41] Massachusetts,[42] Montana,[43] Nebraska,[44] North Carolina,[45] South Carolina,[46] Utah,[47] Vermont,[48] Washington,[49] and Wisconsin.[50]

Alaska does not have a broad standing in equity provision equivalent to California's in its Unfair Competition Act; it allows private class actions beyond the interests of the plaintiff (for others similarly situated) only if they are "approved (in advance) by the Attorney General."[51] Unlike the California statute, equitable reme-

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35. Alaska Stat. § 45.50.471.

36. Conn. Gen. Stat. Ann. § 42-110b.

37. Fla. Stat. Ann. § 501.204.

38. Haw. Rev. Stat. § 480-2.

39. Ill. Ann. Stat. ch. 121 1/2 § 262.

40. La. Rev. Stat. Ann. art. 51 § 1405.

41. Me. Rev. Stat. Ann. tit. 5, § 207.

42. Mass. Gen. Laws Ann. ch. 93A, § 2.

43. Mont. Code Ann. § 30-14-103.

44. Neb. Rev. Stat. § 59-1602.

45. N.C. Gen. Stat. § 75-1.1.

46. S.C. Code Ann. § 39-5-20.

47. Utah Code Ann. § 13-5-2.5.

48. Vt. Stat. Ann. tit. 9 § 2453.

49. Wash. Rev. Code Ann. § 19.86.020.

50. Wisc. Stat. Ann. § 100.20. Note that Professor Ralph Folsom has reproduced and commented upon all of the restraint of trade related statutes of the respective fifty states. See R. Folsom, State Antitrust Law and Practice (Prentice Hall 1988).

51. See Alaska Stat. § 45.50.531(b):

> A person entitled to bring an action under this section may, after investigation by and approval of the attorney general, if the unlawful act or practice has caused similar injury to numerous other persons similarly situated and he adequately represents the similarly situated persons, bring an action on behalf of himself and other similarly injured and situated

dies are attached as an additional remedy available to the court for actions at law brought under Alaska's Act.[52] Further, the plaintiff must demonstrate that he or she "adequately represents" the interests of those who are similarly situated and will be bound by the judgment. The statute gives finality to adjudicated awards under the above two conditions.

Connecticut's Unfair Competition Act allows for punitive damages, attorney's fees to prevailing plaintiffs, and class action suits. Unlike the California statute, actions are brought at law for damages and all of the requirements for class action certification, including common questions, adequate representation, notice, et al. fully apply.[53] The Attorney General must be notified of any action under the Act upon its commencement, and must receive any judgment obtained.

Florida's Little FTC Act parallels its federal counterpart substantively, and gives "great weight" to FTC interpretations. Procedurally, the statute allows for direct private civil suit for damages and attorney's fees by a plaintiff who is "aggrieved by a violation."[54] The Florida Department of Legal Affairs and states' attorneys are empowered to bring actions for declaratory relief, to appoint a receiver, and for injunctive relief. These public agencies may also bring class actions for damages on behalf of all injured Florida consumers. Such a suit may be commenced only after an investigation with an opportunity for the defendant to respond to the alleged violations.[55] And finally, patterned somewhat after the FTC's administrative authority, Florida's Department of Legal Affairs may issue a complaint and order noticing a hearing for the possible administrative entry of a cease and desist order, which

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persons .... A person planning to bring an action under this subsection shall first submit to the attorney general a copy of his proposed complaint, and he may not file the complaint in court without the attorney general's approval.

52. *Id.*

53. Conn. Gen. Stat. Ann. § 42-110g(b).

54. Fla. Stat. Ann. §§ 501.204, 501.210, 501.211.

55. *Id.* § 501.207.

may be judicially reviewed. The violation of such an order gives rise to civil penalties of $5,000 per violation in a court action which may be brought by the Department. This remedy is entirely cumulative to the other remedies afforded by law.[56]

Hawaii's Unfair Methods of Competition statute also replicates the substance of Section 5 of the FTC Act, prohibiting "unfair methods of competition and unfair or deceptive acts or practices ...."[57] Procedurally, the statute allows a private civil action for damages, treble damages, injunctive relief, and attorney's fees by "any person who is injured in his business or property." Treble damages for unfair competition consisting of deceptive advertising requires a finding that the suit is "in the public interest."[58] The attorney general is solely authorized to bring a class action for indirect purchasers (e.g. usually consumers) and may recover damages and attorney's fees.[59]

Louisiana has a typical substantive prohibition of "unfair methods of competition and unfair or deceptive acts or practices." but an unusual enforcement scheme. The "Director of the Governor's Consumer Protection Division" operates in a manner similar to the FTC federally — it may "make rules and regulations" interpreting the statute which it then submits to the attorney general for approval and then possible adoption following administrative proceedings. The rule or its application may be challenged by a declaratory relief action in parish district court.[60] A direct private civil remedy for damages (trebled if knowingly violated after put on notice by the attorney general or Director), injunction, and attorney's fees are available to "any person who suffers any ascertainable loss of money or movable property, corporeal or incorporeal ...." Private suit in a "representative capacity" is expressly prohibited. And the plaintiff's counsel must send a copy of the

56. *Id.* §§ 501.2075, 501.208.

57. Haw. Rev. Stat. § 480-2.

58. *Id.* § 480-13(a)-(b).

59. *Id.* § 480-14.

60. La. Rev. Stat. art. 51 § 1405.

pleadings and any judgment or decree to the attorney general and Consumer Protection Division Director.[61]

Public civil actions may be brought by the Director, who is empowered to "instruct" the attorney general to file for injunctive relief, including possible restitution, and for civil penalties where an outstanding injunction is violated.[62]

Maine's Unfair Competition statute has the typical FTC Section 5 broad prohibition and reference to FTC decisions as guide for Maine's Act. The attorney general of the state here "may make rules and regulations interpreting this section."[63] The private civil remedy provided is suit for injunction and restitution by any person ... who suffers any loss of money or property, real or personal ...." Interestingly, although sitting presumably in equity, there is a trial by jury. The clerk of the court is here required to transmit to the attorney general a copy of any initial pleading or final judgment.[64] The public civil remedy rests with the attorney general and takes the form of injunctive or restitutionary relief in the name of the State, and civil penalties where an injunction is violated. The attorney general is required to issue an "intent to sue" letter to the defendant at least ten days prior to filing to allow for a pre-filing conference (unless a delay would cause irreparable harm).[65]

Massachusetts has the standard FTC Section 5 prohibition in its Unfair Competition statute, with the declaration that FTC interpretations guide its application. As with Maine, the Massachusetts attorney general may make "rules or regulations interpreting" the law.[66] A private civil action may be brought for damages and injunctive relief by any person "who suffers any loss of money or property, real or personal ...." In addition, double damages are normally awarded and a maximum award of treble damages is

61. *Id.* § 1409.

62. *Id.* § 1411.

63. Maine Rev. Stat. Ann. tit. 5 § 207.

64. *Id.* § 213.

65. *Id.* § 209.

66. Mass. Gen. Laws 93A § 2.

available where the court finds that an unfair method of competition was engaged in "knowingly." However, if the defendant offers in settlement more than the measure of damages as found, then only single damages may be awarded. Interestingly, the Massachusetts statute specifically authorizes the bringing of actions by persons in a representative capacity — anticipating class action enforcement. The law specifically provides that such an action may be pursued by those "engaged in commerce" on behalf of others similarly situated, but only after: "the court finds in a preliminary hearing that he [the petitioner] adequately and fairly represents such other persons ... and the court shall require that notice of such action be given to unnamed petitioners in the most effective, practicable manner. Such action shall not be dismissed, settled or compromised without the approval of the court, and notice of any proposed dismissal, settlement or compromise shall be given to all members of the class of petitioners in such a manner as the court directs."[67] In another and complex provision, persons "not engaged in commerce" (e.g. consumers) may similarly bring class actions for damages, injunctive relief and attorney's fees to all consumers injured, with the same double damages to treble damages provision described above. The damage multiplier and attorney fee provisions vary depending upon settlement offer amounts *vis-a-vis* damages as found in order to provide incentives to settle (including a thirty day period prior to filing a damages action of intent to file during which the defendant may tender offers which may impact later damage multipliers and attorney fee awards if refused and actual damages are found at a lower level). No person may be obliged to exhaust administrative remedies prior to filing but the statute includes complicated procedures for coordinating civil cases with any possible pending regulatory discipline by an applicable agency.[68] Public civil actions may be brought by the attorney general for injunctive relief, public forfeiture of corporate rights, and for civil penalties where the defendant "should have known" his acts constituted unlawful unfair competi-

67. *Id.* § 11.

68. *Id.* § 9.

tion. A higher civil penalty is authorized for violations of outstanding injunctions.[69]

Montana's "Unfair Trade Practices and Consumer Protection Act" in typical fashion prohibits "unfair methods of competition and unfair or deceptive acts or practices ...," and requires "due consideration" to cites FTC Act interpretations.[70] The first part of the statute covers "consumer protection" and includes the general unfair competition prohibition. Here the statute authorizes a private civil action by consumers for actual damages suffered by the plaintiff, or for injunctive relief, and for attorney's fees. Further, the court may treble the damages "in its discretion." Note that attorney's fees may be awarded under the Montana Act to the prevailing party in the discretion of the court. Class action status is specifically barred. Copies of initial pleadings and final judgments must be sent by the clerk of the court to the appropriate county attorney.[71] The statute addresses those injured in their business (e.g. competitors or retailers) in the separate part II of the statute "Unfair Trade Practices," and with a similar private civil remedy scheme except without the prohibition on class action representation. However, the list of offenses available to those injured in their business does *not* include generic "unfair competition," but rather a substantial listing of restraint of trade offenses, including predation, rebates, price discrimination, and an unusual listing of unlawful agreements.[72] Public civil enforcement is handled by the Montana Department of Business Regulation which may bring injunctive actions against respondents, petitions to revoke corporate rights, and civil penalties. Penalties are available where a violation is "willful" (should have known it violated the law), and a larger penalty for violations of outstanding injunctions.[73]

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69. *Id.* § 4.
70. Montana Rev. Code §§ 30-14-103, 30-14-104.
71. *Id.* § 30-14-133.
72. See *id.* §§ 30-14-205 to 30-14-218, 30-14-222.
73. *Id.* § 30-14-142.

Nebraska's "Consumer Protection Act" is phrased in terms of "unfair methods of competition," and most of its use appears to focus on exclusive dealing, tying, and anticompetitive mergers, all of which are not included in the state's "Junkin Act" covering other antitrust concepts (e.g. traditional combinations in restraint of trade). Procedurally, the statute creates an action at law for damages and requires injury to the plaintiff in his business or property.[74] The Attorney General is authorized to bring public civil actions for injunctive relief, including restitution, and for attorney's fees and civil penalties.[75]

North Carolina has a typically broad unfair competition prohibition: "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful."[76] Procedurally, the statute authorizes an action at law for treble damages similar to the traditional antitrust offense, and requires business injury to sue. The prevailing party (plaintiff or defense) may be awarded attorney's fees in the discretion of the court.[77] The Attorney General may bring a public civil action for injunctive relief and for civil penalties.[78]

South Carolina has an Unfair Competition statute phrased similarly to the FTC Act's Section 5. Private enforcement is limited to those who "suffer ascertainable loss," in an action at law, and specifically excludes plaintiffs from suing "in a representative capacity." Willful violations give rise to treble damages.[79] The state Attorney General is empowered to bring a public civil action for injunctive relief, and for civil penalties for willful violations or corporate forfeiture for violations of outstanding injunctions. The

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74. See Neb. Rev. Stat. § 59-1609.

75. *Id.* § 59-1608.

76. N.C. Gen. Stat. § 75-1.1. Note that the law includes a "learned profession" exemption excluding legal and medical unfair practices, and confers qualified immunity to publishers and broadcasters regarding dissemination of allegedly deceptive advertising.

77. *Id.* § 75-16.1.

78. *Id.* § 75-15.1, 15.2.

79. S.C. Code Ann. § 39-5-140.

law requires the Attorney General to notify the defendant of his intention to sue at least three days prior to filing to allow reasons to be presented why suit should not be brought.[80]

Utah appears to be one of the few states with an enforcement system similar in structure to the Federal Trade Commission. The Utah Division of Consumer Protection is empowered to issue "cease and desist orders" where it has cause to believe that an unfair method of competition in commerce is occurring. It may seek court enforcement of those orders itself, or may request court enforcement by the attorney general or county attorneys.[81]

Vermont's "Consumer Fraud Act" prohibits "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce."[82] Consumers (not businesses) may obtain equitable relief, damages, and treble damages for "false or fraudulent representations or practices." The scope of private consumer actions under the statute are so limited and consumer representation of interests aside from his own appear to require an action at law and class representation status for a plaintiff, including certification, commonality, adequacy, and notice.[83] The attorney general or any state's attorney (the equivalent of district attorneys in many jurisdictions) may bring an action under a broader definition of "unfair competition" for injunctive relief, civil penalties, and forfeiture of corporate rights.[84]

Washington's "Consumer Protection Act," although worded similarly to the FTC Act's broad prohibition, has been interpreted more narrowly.[85] The remedy for "unfair methods of competition" is combined with the scheme applicable to the state's antitrust baby "Sherman" and "Clayton" Acts. A private cause of action lies for

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80. *Id.* § 39-5-50.

81. Note that the Unfair Competition Act was added in Utah in 1983, see Utah Code Ann. § 13-5-2.5.

82. Vt. Stat. Ann. tit. 9 § 2453.

83. *Id.* § 2461(b).

84. *Id.* §§ 2458-2461.

85. See State v. Black, 100 Wash. 2d 793, 676 P.2d 963 (1984).

business injury to the plaintiff — injunctive relief, treble damages, and attorney's fees are available.[86] The attorney general may bring a public civil action for injunctive relief, restitution, civil penalties (limited to violations of outstanding injunctions), and forfeiture of corporate rights. Local jurisdictions may bring actions for damages and treble damages; the state is curiously limited to actual damages.[87]

Wisconsin's Unfair Competition Act prohibits: "unfair methods of competition in business and unfair trade practices ...."[88] Structured somewhat similarly to the FTC Act, a state agency, after public hearing, is empowered to issue "general orders" forbidding unfair methods of competition or a "special order" applicable to a named person. Curiously, the administrative department with jurisdiction over the statute is the Wisconsin Department of Agriculture. The state Attorney General may file complaints with the Department and may seek judicial review of Department decisions. Outstanding orders of the Department are enforced by it in court by way of injunction and restitutionary petition. And, unlike the federal statute, there is also a private civil remedy available to "any person suffering pecuniary loss" where an outstanding order has been violated. The private enforcement of outstanding orders is buttressed by an automatic doubling of any damages proved, and attorney's fees to a prevailing plaintiff.[89]

In summary, most of the 16 states with Unfair Competition statutes similar in substantive terms to California's use the broad language of the Federal Trade Commission Act and specifically give FTC decisions at least "guidance" status. Most allow actions at law to recover damages (a broader concept than the injunction and restitution allowed by California) and most also allow either punitive or treble damages. But plaintiffs must suffer actual business or personal injury. And where class actions are allowed, such

86. Wash. Rev. Code Ann. § 19.86.090.

87. *Id.* §§ 19.86.080, 19.86.090, 19.86.150.

88. Wisc. Stat. Ann. § 100.20.

89. *Id.*

a qualified plaintiff is permitted to file for others similarly situated only where meeting some of all of the traditional requirements of class action certification (including in particular: (1) adequate representation of absent class members, and (2) notice to absent class members). Some of the statutes spell out these safeguards (e.g. see Massachusetts *supra*) while most provide them as part of their generic class action civil procedures. Most allow public civil actions by a state attorney general or other official and tend to include injunctive, forfeiture of corporate rights, and civil penalty relief.[90]

None of the 16 other state jurisdictions with their own versions of California's Unfair Competition Act gives private attorney general status to any person without qualification. Rather, persons must be injured to obtain redress for themselves, and must undertake a variety of different steps if they are to represent others who are similarly situated. These steps assure adequacy of representation, and *res judicata* finality, and inhibit a multiplicity of remedies for the same alleged offense.

Exacerbating the problem for California defendants are several additional features which distinguish the California legal environment from the other 16 states with Unfair Competition Acts. None of the other states has the population, wealth, economic variety, or active plaintiff and local public prosecutor bars of California. None, except perhaps Illinois and Florida, approaches the scale or complexity of California's business and legal economy.[91] None appears to have a comparable volume of pled unfair competition causes of action.[92] California also has the possibility of attorney's

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90. Although not discussed *supra*, most also give the state attorney general or other public enforcement official substantial pre-filing discovery powers similar in concept to the federal civil investigative demand and the California prefiling discovery provisions noted *supra*.

91. California has 58 counties, and other public actors authorized to bring civil actions under the Act, together with an active and well organized plaintiff's bar.

92. Note that the breadth of Section 17200 makes it a natural cause of action to append to many civil complaints involving business or consumer disputes. It is commonly pled as a final cause of action, incorporating within it all of the common law and statutory allegations in preceding causes of action, and alleg-

fees under common fund doctrine or under Section 1021.5 of California's Code of Civil Procedure. Ironically, the structure of Section 1021.5 favors attorney's fees for counsel representing interests without any appreciable financial stake in the matter adjudicated, since it is the vindication of rights substantially beyond those of the client which gives rise to fee recompense, including the possibility of a "multiplier" beyond market value billing.[93]

II. Current Purpose and Justification

Before outlining the current problems attending the unusual structure of California's Unfair Competition Act, it is prudent to review the fundamental purposes it is intended to serve. By keeping those purposes in mind, alterations to cure real or anticipated abuses may be limited and refined to preserve what may be necessary to accomplish its purposes.

One basic common purpose to the federal and counterpart state FTC Acts is to address the "lowest common denominator" problem of certain types of abusive competitive business practices. That is, many unfair or unlawful acts by a given competitor may confer on

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ing other "unfair acts." As noted above, such a broad cause of action facilitates liberal discovery for plaintiff, and may leverage the possibility of a restitutionary award covering similar practices applicable to many others — without having to certify or notify an applicable class (see standing problems and discussion *infra*). The possible sanction of broader relief which may be required to others may apply pressure on a defendant to the benefit of the plaintiff. A defendant may be more willing to pay a plaintiff capable of reducing exposure to others by dismissing or settling the Section 17200 action.

93. The incentive balance in the California arrangement may over-stimulate the bringing of cases where restitution is due from past overcharges; counsel may use any person as a named plaintiff, and the substantial fund of moneys potentially owed other persons can serve as the basis for substantial fees. However, there may be an underincentive to bring private actions where the damage is prospective or does not qualify as "restitution." Hence, where consequential damages have occurred, or where harm is prospective, or there is otherwise no past overcharge to collect for restitutionary purposes, there may be minimal incentive for private attorney enforcement of the Act. In these circumstances, the public prosecution remedies must be relied upon, or private enforcement for damages by entities directly injured under other statutory provisions or tort causes of action which may apply.

the offender a competitive advantage. Such a competitive advantage may require other competitors to respond with more extensive abuse in order to preserve market share, which in turn leads the initiator to further abuse. Unless there is a counterforce imposed from some marketplace or public source, certain types of business behavior may spiral naturally down to a lowest common denominator. One common area of such abuse involves what economists call "information imperfections," consumer prosecutors term "deceptive or misleading advertising," and the average citizen calls "lying."

For some products or services, such as those requiring repeat business and where the consumer can judge performance, misleading representations may be assuaged through the marketplace alone. But where massive advertising campaigns can be mounted for one time depredations, there may not be a traditional marketplace response capable of adequate remedy.

In extreme cases, criminal sanctions may well suffice. But beyond criminally enforced standards at the *mens rea* end of the spectrum, a great deal of clearly inaccurate information about products and services may cause consumer purchases contrary to actual consumer preference — the consumer sovereignty standard of a free and effective marketplace. Moreover, tolerance up to the point of extreme cases invoking criminal intervention tends to lead to a bending of the truth by competitors, and the counterstroke exaggeration or material omission by the original offender, leading to further information degradation. Perhaps an extreme example of useless information may be found in the one forum where there are no standards or public intervention: political advertising.

One end result of the degeneration of accurate information about products is a loss in credibility suffered by all advertisers. One public price paid is a barrier to entry to one who has, in fact, a product or service many would greatly desire — if they could believe claims made about it. The story of the boy who cried "wolf" we are all told about as youngsters may apply to cause us to discount advertising to such an extent that it loses much of its informational value. To be sure, the state is ill equipped to be an arbiter and enforcer of absolute truth in advertising, but the other

end of the spectrum involves a momentous price; where a society tolerates misleading claims as a matter of course, truthful messages may not be heard.

There may be significant counterforces to competitive degradation from misleading advertising, or from the many other varieties of unfair or unlawful competition, among them: consumer education and gradual decline in demand, private civil suits by competitors, possible consumer class action response in some circumstances, criminal prosecutions, or regulatory intervention. However, each of these mechanisms has serious limitations. Consumer education may not be feasible or forthcoming. Competitors may choose to join the practice rather than adhere to higher standards — knowing that a private remedy may involve protracted and expensive litigation during which the initiator continues to gain market advantage. Consumer class actions must surmount the considerable class certification and notice barriers — and in the context of uncertain attorney's fees; moreover, fees and incentives to litigate occur generally only on the basis of damages — after they have occurred. The criminal option may be limited to defined categories of fraud or similar extreme offenses reserved for limited types of transgressions.

The notion of an "unfair competition" statute to superimpose over existing mechanisms is philosophically based on the following premises:

1. Many business practices, not amenable to specific description or definition, impose external costs on others,[94] endanger effective marketplace prerequi-

94. The market flaw of "external cost" occurs where a producer or merchant is able to impose external costs on others through the sale or use of his product and the price of the product does not reflect that cost. A paradigmatic example would be pollution; factory A pollutes a stream during the production of its product, passing costs onto wildlife or other health and environmental interests of future generations. Factory B does not pollute and thereby incurs 10% higher costs. Competition will drive Factory B out of business or force it to similarly pollute unless the costs of pollution are somehow "internalized" or added to respective production costs, or unless there are minimum standards applicable to all. The means to internalize costs or to establish minimal standards can involve

sites,[95] or risk irreparable harm.

2. A substantial number of these practices confer a competitive advantage to those engaged in them.
3. Other available remedies do not accomplish the disgorgement of unjust enrichment from unfair or unlawful practices, and do not otherwise provide an effective deterrent to their continuation and likely replication by others.

Hence, the characteristics of the statute reflecting its contextual purpose include:

1. A statute wide in substantive scope, encompassing any "unfair" or "unlawful" practice which may be characterized as a "business" practice or act;[96]
2. An action "lying in equity" for expeditious decision, and allowing the court flexibility in fashioning remedies, including restitutionary relief to disgorge unlawfully obtained moneys;
3. *De minimis* standing requirements for private litigants, combined with injunctive or corrective remedies, and civil penalties reserved to certain public agencies.

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regulatory options, criminal enforcement, rules of liability under existing tort law mechanisms, direct assessment or taxation, or other strategies.

95. In addition to the problem of "external costs," the American model of the marketplace rests on assumptions. Two of the most important such assumptions relevant to the Unfair Competition Act are: a sufficient number of competitors independently acting and pricing to provide "effective competition," and accurate information about the respective characteristics of competing products available to consumers choosing between them. The maintenance of these two prerequisites helps to assure the "consumer sovereignty" underlying goal of the marketplace.

96. Hence, wrongful business activity is enjoinable under the Act in whatever context it might appear. See People v. McKale, 25 Cal. 3d 626 (1979). Note that this includes abuse of legal process to the extent it involves using the courts to augment an essentially business practice; see e.g., the leading case of Barquis v. Merchants Collection Ass'n, 7 Cal. 3d 94, 108-14 (1972); *contrast with* O'Connor v. Superior Court (Wyman), 177 Cal. App. 3d 1013 (1986) (refusing to apply Act to political candidate or consulting firm for unfair and misleading statements during course of political campaign).

This broad charter to address judicially unfair acts in competition is ameliorated in the Act by limited remedies, creating — in essence — a broad but shallow scheme of relief. The idea is: a lot of actors can sue, so the courts will get the cases. But excessive, spurious, and duplicative cases will not be generated because the remedies are substantially prospective and there is no (or uncertain) allowance for attorney's fees, even if the plaintiff prevails.

III. Confusions and Conundrums

From 1972, when the leading *Barquis*[97] case ushered in the broad application of Section 17200, until the late 1980s, there had been little conflict between the many potential litigants able to invoke the terms of the statute. Public prosecutors in some of the larger counties have used Section 17200 consistently over the years.[98] But common use of the remedy did not spread to small or rural counties. Further, district attorneys and the Attorney General have entered into an arrangement to coordinate such filings, beginning with initial investigations. The Attorney General maintains a computer file and offices of district attorney "register" the name of any prospective defendant under investigation for Section 17200 offenses. Hence, district attorneys are put on notice of possible action by another public jurisdiction, and the Attorney General is able to monitor investigations and filings in order to intervene if needed. The status of the Attorney General in this regard as the "chief law enforcement officer of the state" allows that office to intervene and to assume jurisdiction over any filing by a district attorney where there is a conflict warranting it.

However, the unusual standing license of the Unfair Competition Act, in combination with the lack of class action qualification, certification, and notice requirements applicable, added to two other dynamics active in the late 1980's to create public-private and private-private civil action conflicts.

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97. Barquis v. Merchants Collection Ass'n, 7 Cal. 3d 94 (1972).

98. The district attorneys of San Diego and Los Angeles Counties, and the city attorneys of both cities, have been particularly active in civil use of Section 17200.

The first such new development has been the increasing use of Section 17200 as a general allegation in complaints. The use of the Act as a cause of action facilitates broad discovery. Moreover, where applicable to a private dispute between two business entities, it may allow the plaintiff to create possible exposure from overcharges applicable to consumers, enhancing a pre-existing plaintiff's bargaining power. At the same time, such "add-on" use of the Act by such private plaintiffs raises serious due process questions; one using an allegation for bargaining purposes may be willing to settle out those claims in order to collect on a proprietary cause of action.[99] On the other hand, if settlements by those seeking to represent "the general public" under the statute do not bind any other person, than the statute is unable to assure finality to any defendant subject to suit. Both of the above alternatives are unacceptable features in any statutory remedy.

The second new development has been an increase in attorney fee availability and in attorneys (and professional plaintiff firms) specializing in mass tort or class action cases. Where injunctive relief may involve restitution (a common element to an injunctive remedy, and where there is a practice applied *en masse* to a large marketplace (also common), attorney's fees may be available for prevailing counsel. Moreover, Code of Civil Procedure Section 1021.5 allows for a "private attorney general" attorney fee where a litigant prevails and vindicates rights which extend substantially beyond his or her own proprietary stake. And those fees may involve a "multiplier" substantially enhancing market level billing.[100]

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99. A plaintiff serving as a "class representative" in a traditional class action may be impeded from exercising such a conflict because of the fiduciary duty obligations of the class representative (and counsel) to the class, certification as one able to "adequately represent" absent class members, and the fact of required notice. Where an Unfair Competition Act settlement, lacking those safeguards, may bar others who might seek relief for the same wrong, a clear due process denial may occur: one cannot secretly litigate away the rights of another.

100. See Serrano v. Priest, 20 Cal. 3d 25 (1972).

To recapitulate, the combination of the following features of the Unfair Competition Act and related events, have created actual and potential confusion:

1. The breadth of the Act allows its inclusion as a cause of action in many business and consumer civil actions (private and public) brought on other bases. It may be invoked for any business practice which is unlawful, or unfair.
2. Fifty-eight county district attorneys, five city attorneys, and the state Attorney General may bring an action for injunction and for civil penalties — a portion of the latter accruing to the general fund of the jurisdiction filing.
3. As of 1992, and with the consent of the district attorney, any full time city attorney may bring an action for injunction and civil penalties under Section 17200 (California has over 400 cities); and a county counsel may similarly sue for Section 17200 injunction and civil penalties for violations of county ordinances.[101]
4. Private parties may also file suit; critically, the Act allows any person to bring an action for injunctive relief, "acting in the interests of itself, its members *or the general public.*[102]
5. Injunctive relief, available to all of the potential plaintiffs enumerated above, encompasses "such orders or judgments, including the appointment of a receiver, as may be necessary to prevent ... unfair competition, ... or may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired [through] ... unfair competition.[103]

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101. Section 17204.

102. *Id.*

103. Section 17203; in other words, any one of the possible plaintiffs listed above can file for prospective injunctive relief, to appoint a receiver, for any equitable order necessary to provide restitution to all those who may have been overcharged or lost money from unfair competition.

6. The Act is attractive as an add-on cause of action in pre-existing cases because it facilitates liberal discovery and adds settlement leverage by exposing the defendant to restitution beyond the instant plaintiff.[104]
7. The private standing conferral to vindicate unfair practices for "the general public" is akin to "private attorney general" status and does not require the numerosity, commonality, adequacy, typicality, manageability, or other requirements of class actions under California Code of Civil Procedure Section 382 or Federal Rule of Civil Procedure 23, nor does it require formal certification, nor notice to those affected.
8. Where damages have accrued because of overcharges or where restitution otherwise may involve a substantial fund of moneys in dispute, the case may adjudicate a dispute comparable in substance to a standard class action,[105] with attendant problems of collateral estoppel, duplication, adequacy of representation, and due process notice and opt-out requirements.[106]
9. Where there is a common fund, or where a large benefit has been conferred on a large number of persons other than the named plaintiff, attorney's fees may be available; whether from a common fund or as "private attorney general" under Code of Civil Procedure Section

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104. Note that although Section 17200 appears to be an action in equity, an older line of cases holds that insofar as it encompasses standard business torts for damages, one injured by such torts may recover damages therefrom; see Western Electro-Plating Co. v. Henness, 196 Cal. App. 2d 564, 570 (1961) (discussing Civ. Code § 3369).

105. Note that in many consumer class actions at law, the measure of damages is equivalent to restitution in equity. Where the gravamen of the complaint is an overcharge, the two concepts may be equivalent.

106. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812 (1985) (affirming minimal the due process requirements to bind an absent plaintiff, including primarily the rights of notice, opportunity to opt out, and "adequate representation").

1021.5, such an award may be substantially more than the fair market value of services proffered.[107]

10. Restitution to large numbers of persons overcharged a small sum each is often impractical via direct delivery of checks, and is accomplished through "fluid recovery" where future prices are lowered for the same group allegedly overcharged, or through *cy pres* relief (where a fund is established to disgorge unjust gain and is granted for charitable purposes to generally benefit the persons injured).[108] Hence, potential victims (members of the public being "represented" by a party plaintiff) may not be aware that they have benefited. Notwithstanding the payment of substantial restitution, a defendant may not be able to bar further suit by victims, even those who are the beneficiaries of such restitution.[109]

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107. See Consumers Lobby Against Monopolies v. PUC, 25 Cal. 3d 891 (1979), for discussion of the alternative bases for private attorney general or common fund recompense for attorneys; see also Code Civ. Proc. § 1021.5 (setting forth the requirements for private attorney general recompense for counsel whose client prevails in an action and vindicates a right substantially beyond the direct financial interest of his client). Note that the statute allows a "multiplier" to be applied to fair market value billing based on the risk of the case, skill of counsel, and other factors. See Serrano v. Unruh, 32 Cal. 3d 621 (1982). Note that most Section 1021.5 awards have been assessed against public agencies, however, the statute does not distinguish between types of defendants and private defendants are vulnerable to fee assessment. See, e.g., Consumers Union of U.S., Inc. v. Alta-Dena Certified Dairy, 4 Cal. App. 4th 963, 977 (1992).

108. For a leading example of fluid recovery, see Daar v. Yellow Cab, 67 Cal. 2d 695 (1967); for a leading example of *cy pres* relief, see State v. Levi Strauss & Co., 41 Cal. 3d 460 (1986).

109. Theoretically, the receipt of a benefit by a victim would appear to estop that person from seeking duplicative relief from the same defendant for the same alleged wrong — particularly where the court sits in equity. However, in the context of fluid recovery or *cy pres* relief, there is no advance notice to the victim nor any opportunity to opt out, and he or she may not individually receive an actual benefit. Hence, *res judicata* foreclosing access to the courts raises understandable due process concerns. See Eisen v. Carlisle & Jacquelin, 370 F.2d 119 (2d Cir. 1966), *cert. denied*, 386 U.S. 1035 (1967).

The confluence of these factors poses a serious dilemma for public prosecutors and *bona fide* public interest attorneys attempting to resolve unfair competition cases; they cannot confer assured finality. And the dilemma is particularly frustrating for defendants who are unable to end a dispute they are willing to resolve.

The following examples highlight more precisely the dilemmas implicit in the statute's current procedural posture:

1. A private party files a Section 17200 case against a pyramid sales scheme on behalf of all victims; the local district attorney files a similar case and it settles first — taking all of the assets of the defendant as civil penalties (half of which go to the county general fund); none are assigned for restitution. The private action cannot compel intervention or consolidation in the public civil action to compel a coordinated resolution.[110]

2. A county district attorney settles a Section 17200 case, collecting $40,000 in civil penalties for his county treasury and no restitution for victims; the defendant is a nursing home with facilities in 11 other (generally more populous) counties whose victims receive no restitution and whose counties receive no compensation. The district attorney petitioner filed and settled for "the People of the State of California" and the defendant contends the matter is final statewide. Moreover, the judgment provides that the local district attorney is "the exclusive governmental agency that may enforce the provisions of this injunction." Are the district attorneys in those other counties and the attorney general subject to *res judicata* bar? If not, is it fair to a defendant who settled with a public prosecutor and paid penalties? Subsequently, the Department of Health Services began administrative proceedings against the facility, within its regulatory purview. Is it barred from imposing licensure sanctions for the offenses purportedly litigated?[111]

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110. See People v. Pacific Land Research, 20 Cal. 3d 10 (1977).

111. See People v. Hy-Lond Enterprises, Inc., 93 Cal. App. 3d 734 (1979). Note that there is surprisingly little law covering the extraterritorial jurisdiction of a district attorney in public civil filings. The *Hy-Lond* court acknowledged:

> [I]n order to avoid confusion, parties dealing with the state must be able to negotiate with confidence with the agent authorized to bring the suit,

3. A county district attorney files a Section 17200 case against a defendant primarily operating within his county, but the defendant understandably wants a statewide settlement which will estop all other public and private actions, and is willing to pay full restitution; can the district attorney give the defendant that assurance? Can the district attorney do so if joined by the Attorney General? If they cannot do so, does that impede a final resolution beneficial to all concerned?

4. A county district attorney investigates a local cable company for excessive late charges, serving pre-filing subpoenas, consulting experts and arriving at a prefiling settlement after an eighteen month investigation which will give restitution amounting to the entire alleged overcharge, including both direct payments to subscribers and a requirement to provide *cy pres* relief in the form of direct interactive wiring of all classrooms within the service area for educational enhancement. In addition to complete restitution, the final judgment provides for substantial civil penalties, plus costs. One week before the filing of a district attorney's complaint and settlement, a plaintiff firm which had learned of the investigation, files a Section 17200 action for the same practices against the same defendant. The defendant is assured by the district attorney that full restitution will preclude a private action on behalf of persons already satisfied. The defendant believes the district attorney. Then the defendant's demurrer to the private action is overruled by a superior court judge, opining that the public and private civil actions are different because the former are not "in privity" with the consumer victims, and hence there is no *res judicata* effect.[112]

> and without the fear that another agency or other state entity might overturn any agreement reached ... to avoid being caught in the midst of a power struggle among various state agencies and other entities.

Id. at 752. But the court held that the defendant deliberately manipulated a district attorney into concessions to "limit the powers of other state agents or entities, which he knows are involved and are not parties to the action, the argument does not survive scrutiny." *Id.*

112. Plaintiff Vincent Ross argued that the public civil action by public prosecutors served a separate law enforcement function from a private civil action, citing People v. Pacific Land Research, 20 Cal. 3d 10 (1977), and leapt to the *non sequitur* that both could proceed and claim full (i.e. double) restitution

The district attorney, although joined by the Attorney General in the action, and negotiating a case providing for penalties and complete restitution, is unable to provide a final resolution.[113]

5. In the investigation and settlement described above, another cable company is also investigated for a similar violation and is about to similarly agree to settlement with the district attorney joined by the Attorney General. It is also filed against, except by two private named plaintiffs and law firms in separate actions.

6. In the investigation and settlement described above, a third cable firm refuses to settle the district attorney case unless the district attorney can obtain the sign off of the Attorney General and all private litigants who have filed or who may file. As matters currently stand, the district attorney and Attorney General cannot

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against the same defendants for the same wrong. See "Plaintiff's Memorandum of Points and Authorities in Opposition to the Cox Defendants' Motion for Judgment on the Pleadings," Ross v. Cox Cable Communications, Inc., San Diego County Superior Court, No. 678526 (Aug. 24, 1994), at 6-8. The question in *Pacific Land* concerned whether a trial court could be compelled to consolidate a private and public civil action into the same case. Many private actions involve other causes of action sounding at law and involving use of a jury. The public civil action is in equity with only a court hearing it, and with many of the private defenses unavailable. Giving the court discretion to keep the two proceedings separate is a far cry from concluding that a court sitting in equity should entertain duplicative restitution awards to the same beneficiaries from the same defendant for the same alleged wrongs. Nevertheless, private plaintiffs are correct that there is no established way to ascertain who is representing who for what, who is bound by what, and how "members of the public" receive notice or otherwise knows that someone has filed for relief to benefit them.

113. See People v. Cox Cable Inc., San Diego County Superior Court, No. 679554 (Aug. 5, 1994), recently filed and final judgment entered and joined by the Attorney General; *compare to* Preisendorfer v. Cox Cable San Diego, Inc., San Diego County Superior Court, No. 678198 (Nov. 8, 1994); and *compare to* Ross v. Cox Cable Communications, Inc., San Diego County Superior Court, No. 67825, filed during the same period. The latter two cases remain pending at this writing covering the same allegations of the complaint filed by the district attorney and Attorney General, and are now pending in San Diego County. The last case lists four separate law firms representing the named plaintiff. Note that the author has been retained to consult for the Office of District Attorney in the investigation of the cable industry in San Diego County with regard to possible restraint of trade and consumer law violations.

provide such an assurance. The defendant rather reasonably protests that where he is willing to pay full restitution plus penalties he should be able to achieve a final resolution and avoid duplicate liability for the same alleged wrong.[114]

7. A competitor who is injured in a tradename infringement case files suit for damages in tort, and alleges a violation of Section 17200, seeking derivative damages thereunder. In order to increase his leverage against the defendant, he also seeks to collect restitution "on behalf of the general public" for the confusion and erroneous purchases which occurred. The plaintiff settles the case for substantial damages for the tort and token restitution for the class. The token restitution is in the form of *cy pres* grants to the economics department of plaintiff counsel's alma mater. There is no notice and a consumer law attorney whose clients have been victimized learns of the settlement after it has been entered.

8. A plaintiff files a meritorious unfair competition case against a mobile home park, and the defendant countersues, also alleging violation of Section 17200 against the plaintiff and counsel. Both plaintiff and defendant sue for themselves and the general public. The defendant may be willing to settle if the case is a wash, i.e., the plaintiff contends that the Section 17200 countersuit is a SLAPP type of action designed to discourage the plaintiff, and the defendant has no affirmative motivation to prosecute. If the plaintiff gives up his claims, the defendant may well agree to settle the case, perhaps by straight dismissal, perhaps with token remedies intended to bind others. Can such a countersuit be brought by a defendant on behalf of the general public? Is such an advocate an adequate representative of the interests he purports to represent? Should the result be *res judicata* as to others?[115]

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114. *Id.*

115. See Rubin v. Green, 4 Cal. 4th 1187 (1993). The Court here acknowledged the scope of the Unfair Competition Act, and the standing of defendants to counterclaim under it. However, the narrow holding of the case precluded this *particular* Section 17200 cause of action because it involved alleged solicitation by plaintiff's counsel which was categorically subject to the litigation communication privilege under Civil Code Section 47(b). However, three justices contended that injunctive relief did lie through Section 17200. Moreover, the factual

Certainly the law is unclear as to when an action by a public or private litigant purporting to represent all consumers has *res judicata* effect.[116] But as discussed *supra*, the underlying problem is unresolved under either alternative. If the action does bar others from an identical suit, there is no mechanism to assure that the remedy legitimately satisfies the claims at issue or represents the "general public" interests being litigated. But if it is not *res judicata*, than the defendant is subject to an unlimited number of lawsuits from future litigants over the same alleged practice.

The procedural problem of Section 17200 arises from the multiple tracks available for court hearing or resolution. The public and private litigants with standing to sue for themselves and others assure us of more likely response when there are unfair and unlawful acts in competition. Such enhanced response has important positive advantages. But the current arrangement of "let everyone in" without criteria or limitation does not provide a structure for finality. The perceived lack of finality by defendants leads them to delay or avoid publicly advantageous settlements. And if finality were to be achieved under current procedures, it might be based on who reaches the courthouse door the first, or more likely, based on who the defendant settles with first — effectively giving the "private attorney general" selection to the defendant, not the ideal party to make such a decision.[117]

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setting of the case indicates the collateral use of statutes for leverage purposes by both plaintiffs and defendants. For a candid description of the opportunities Section 17200 may avail the defense side, see Stern, *With Some Help from 17200, the Empire Can Strike Back,* L.A. Daily J., July 29, 1992.

116. *See, e.g.*, Bronco Wine Co. v. Frank A. Logoluso Farms, 214 Cal. App. 3d 699, 715-21 (1989) (judgments in actions brought on behalf of general public are "not binding" as to absent class members) *But see* Fletcher v. Security Pac. Nat'l Bank, 23 Cal. 3d 442 (1979); Dean Witter Reynolds, Inc. v. Superior Court (Abascal), 211 Cal. App. 3d 758 (1989).

117. If there is *res judicata* effect based solely on the "first judgment filed" resolving a Section 17200 cause of action, the defendant is in a position to bargain with alternative public and private plaintiffs to reduce restitution or injunctive terms. E.g., where a public and two private litigants have filed suits under Section 17200, the defendant could approach one of the private litigants, offer substantial fees to counsel and token restitution, and perhaps file a stipulated

IV. Proposed Amendments

The areas of confusion in current Unfair Competition Act procedure involve the coextensive jurisdictional conflicts of public agencies vs. public agencies; public agencies vs. private litigants; and private litigants vs. private litigants. Each has separate problems and different possible solutions.

In general, there are strategies drawn from other statutes and procedures which may allow us to maintain the benefit of multiple access to the courts to assure a fair and lawful system of competition, without the confusion, duplication, and possible abuse of process harms now occurring. Several relatively minor alterations in procedure may accomplish substantial reform: ordering priorities in representation of the general public, requiring notice where appropriate, and interposing just those elements of class action law representation necessary to inhibit the use of the Unfair Competition Act for collateral and improper advantage. Although more extensive surgery might be suggested, several changes addressing the specific abuses now clearly evident are appropriately considered immediately. The prudent course argues for monitoring their impact before imposing more draconian limitations.

The purpose of the proposed eight amendments is to address narrowly the conflicts and problems which have arisen and are likely to arise, without changing the basic structure of the statute. Hence, the changes preserve both public and private causes of action and allow coextensive access to the courts. However, some rules: notice, prioritization, and "adequacy of representation" safeguards are imposed to enhance finality.

This study proposes eight amendments to the current Unfair Competition Act. Rather than presenting purported final language, they are roughly paraphrased as follows:[118]

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final judgment. Courts understandably tend to sign judgments proffered to them by apparently adverse parties.

118. The discussion paraphrases possible statutory language and explains the rationale for each suggested change *seriatim*. Precise statutory language will be developed by the Law Revision Commission in the course of preparing a bill to implement any recommendation it may make to the Legislature. See *Unfair Competition Litigation*, 26 Cal. L. Revision Comm'n Reports 191, 217-26.

1. Attorney General Registry; Notice; Consent; Public Prosecution Priority

> The Attorney General shall keep a registry of all investigations and filings undertaken by any local public prosecutors pursuant to Section 17200. Any local public prosecutor undertaking any such investigation shall notify the Attorney General in a timely fashion for inclusion in the registry. The Attorney General shall inform any local prosecutor upon registration or inquiry of any entry in the registry (or pending matter of which he is aware) which may conflict with or relate to a Section 17200 investigation or case that the local prosecutor is considering or pursuing. Where there is wasteful duplication by multiple local jurisdictions investigating the same defendant for the same acts or practices, and those practices extend substantially beyond the territorial jurisdiction of any one prosecutor, the Attorney General may either assume control of the case, or designate one local prosecutor to handle the case, or direct more than one to handle the case in a coordinated manner, including possible joint filing by local prosecutors or with the Attorney General. Where a city attorney or county counsel with authority to bring an action under Section 17200 commences an investigation he or she shall also notify the office of district attorney in his or her county. The district attorney may direct one city attorney to investigate and/or prosecute an action, direct more than one to do so in coordination, or assume investigation and/or prosecution of the case. The Attorney General may consent to sign any proposed settlement or final judgment in any case filed by a local prosecutor, which shall confer statewide *res judicata* application.

Rationale: The number of public prosecutors able to bring Section 17200 actions may well exceed 300 if all cities with full time city attorneys (who may receive district attorney consent to file Section 17200 cases) are included. Given the *Hy-Lond* case discussed *supra*, and the fact that many alleged practices cross county

lines — sometimes many county lines, there is a clear need to rationalize and order possible filings. To its credit, the basic terms of this proposed section are now being followed informally due to an arrangement worked out between the Office of Attorney General and the California District Attorneys' Association. The proposed amendment codifies current practice. It also places it in statute where it will not depend on individual perpetuation. And in at least some cases, the failure to have a provision clarifying the role of the Attorney General and the reach of district attorney judgments, causes defendants to hesitate in settling a case, apparently uncertain precisely what they are settling.

2. Private Party Advance Notice to the AG and DA; Public Civil Prosecution Assumption or Declination

> Private litigants purporting to represent the "interests of the general public" under Section 17200 must so state specifically in their complaint or other pleadings. Such an interest is involved wherever the plaintiff seeks to represent or bind any interest beyond the direct pecuniary and beneficial stake of the plaintiff. If the representation of such a larger interest is so pled, the plaintiff must first submit its proposed civil complaint to the district attorney of the county where it is to be filed, and to the Attorney General. The Attorney General shall transmit civil complaints to any regulatory agency where allegations are relevant to persons it licenses or regulates. If the district attorney includes a city attorney with Section 17200 authority, the district attorney shall transmit a copy of the complaint with that city attorney. The public authorities shall have sixty days to decide to take the case.[119] If any public prosecutor decides to pursue the matter it must include all of the reasonable

119. The priority for assumption of the case for representation of the interests of the general public should be: Attorney General, District Attorney, County Counsel as to county ordinances with district attorney consent, eligible city attorney. The first entity in this list assumes the representation of the interests of the general public where it so decides, but if it declines, the next entity on the list and agreeing to do so assumes the case, etc.

costs and fees incurred by the private plaintiff and counsel on behalf of the general public as a cost bill in any settlement or final judgment where it prevails, subject to court review and approval. Where such an assumption occurs, the plaintiff may continue an action on behalf of his or her own direct interests, which will be noticed as a related case. Where preliminary relief is warranted for the protection of the general public, the public prosecutor may permit private preliminary motions within the sixty day period, or may prosecute such preliminary motions himself or herself, or may do so in conjunction with those private parties.

Rationale: This procedure does not preclude the private plaintiff who has been injured from seeking preliminary relief for himself within the initial sixty days; the plaintiff would merely exclude "general public" allegations until after the sixty day period and amend accordingly.

The rationale for the notice requirement rests in the judgment that, all other things being equal, the publicly elected prosecutor or official is a superior representative of the interests of the general public than is a single individual or a group of persons represented by private counsel. "Superiority" of the class action remedy has become a requirement to maintain such an action at law and the public civil action by an official has the following advantages: (1) an elected official is politically accountable to the public whose interests are being represented; (2) agencies often have expertise in consumer law matters, including in-house forensic and investigative resources; (3) the agency plaintiff will not extract attorney's fees based on a restitution fund, and the fees will usually be substantially lower, leaving more restitution for victims; (4) the attorney general and district attorneys have substantial prefiling discovery authority; (5) a public official has a continuing and institutionalized presence for the monitoring of outstanding orders.

On the other hand, to confine all injunctive relief to certain public officials, or to civil suit by those with a large proprietary stake, will exclude thousands of historically meritorious cases. Public prosecutors are able to pursue only a small fraction of potentially

meritorious cases, including those which impact on large numbers of consumers. Each public official with authority has other, and more primary, responsibilities — and limited resources. In fact, most of the significant consumer abuses over the past two decades have been detected and litigated by private counsel, including the three leading cases under the Unfair Competition Act.[120] None of those cases would likely have generated public civil suit by any of the agencies currently empowered to file. Nor could they reasonably produce a competitor or single consumer with a sufficient individual stake to make suit feasible. But modern marketing allows substantial damage and unjust enrichment through the mass application of deception or unfair competition, and as argued *supra*, society has a strong stake in an inherently fair marketplace, and in effective means to draw and enforce lines of behavior.

It is anticipated that only a small fraction of those cases submitted will be taken over by public prosecutors, but those which will be taken will include those cases where prosecutors are already in the course of investigation — perhaps ready to file, or cases where pre-existing expertise or concern make it the superior plaintiff on behalf of larger interests. Nor is the fear of prosecutors opting for civil penalties over restitution well placed. In fact, it well behooves a local district attorney to favor restitution, which goes to the public. The examples of abuse which exist in that direction, such as *Hy-Lond, supra*, involve the much more likely conflict of a prosecutor for county "x" attempting to capture the assets of a violator doing business in counties "y" and "z" for restitution to his residents and penalties to his treasury. This more serious problem is addressed in Recommendation 1 *supra*.

A similar notice procedure to the one here proposed is used in the taxpayer waste *qui tam* actions authorized under both federal[121]

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120. See Daar v. Yellow Cab Co., 67 Cal. 2d 695 (1967); Vasquez v. Superior Court, 4 Cal. 3d 800 (1971); Barquis v. Merchants Collection Ass'n, 7 Cal. 3d 94 (1972).

121. See 31 U.S.C. § 3729 *et seq.*

and California law,[122] and in the enforcement system for Proposition 65.[123] Both remedies involve a filing under seal in court and contemporaneous submission to the attorney general. The Attorney General may take over the case or decline to do so. If he declines, the private litigant may pursue the matter. A similar system is also used in federal employment discrimination civil rights complaints.

The recommendation would allow recovery by private litigants of reasonable costs and fees when their case is taken over. Both the taxpayer waste and Proposition 65 statutes allow the private party to collect a portion of moneys collected as a reward for finding or initiating a suit, such a reward may be substantial, and has amounted to millions of dollars. The instant proposal is far short of that proffered incentive. There, a high reward may be warranted because "discovery" of the violation is often both difficult and risky or expensive. Unfair methods of competition are somewhat more visible and detectable. Further, unlike the financial gains from taxpayer waste, an Unfair Competition Act case may proceed

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122. See Gov't Code § 12650 *et seq.* Note that under the citizen filing procedure, a case is filed in superior court under seal for up to sixty days, it is not served; the Attorney General is also served and must notify the court that it either intends to proceed with the action itself, or that it declines, in which case the seal is lifted and the private *qui tam* plaintiff may proceed. If there are local losses, the Attorney General must submit the matter to the district attorney within 15 days, and the latter has 45 days to decide to prosecute the case. The *qui tam* plaintiff receives 15%-33% of the judgment or settlement proceeds if a prosecutor takes the action, and 25%-50% if he prosecutes it himself. See Section 12652. The federal statute is similar.

123. See Health & Safety Code § 25249.5 *et seq.*; see esp. Section 25249.7 which provides:

> (c) Actions pursuant to this section may be brought by the Attorney General in the name of the People ... or by any district attorney or by any city attorney of a city having a population in excess of 750,000 or with the consent of the district attorney by a [full time] city prosecutor ....
>
> (d) Actions pursuant to this section may be brought by any person in the public interest if (1) the action is commenced more than sixty days after the person has given notice of the violation ... to the Attorney General and the district attorney and any city attorney ... and to the alleged violator, and (2) neither the Attorney General nor any district attorney nor any city attorney or prosecutor has commenced and is diligently prosecuting an action against such violation.

independent of monetary restitution. There is no assured fund from which to gauge the value of the case or to assess for the initiator.

On the other hand, there is justification to allow private litigants at least their costs and reasonable fees in working up what may be a socially valuable case. They collect only if the case is meritorious enough to be taken by the public agency, *and* the agency settles or prevails on the merits. No possible recovery would give counsel an incentive to send out pleadings to the attorney general or district attorney prematurely, and incur investigative and legal expense only after the case is not taken, without the preliminary inquiry appropriate to limit spurious actions. Giving recompense for actual work which eventually contributes to a beneficial result is likely to have a number of beneficial consequences: (1) attorneys may be somewhat more likely to look into and investigate Unfair Competition cases affecting the general population which appear to have merit (they will at least not be out-of-pocket); (2) an incentive to look a bit harder may limit the number of "trial balloon" or problematical submissions to the attorney general and district attorneys, allowing those offices to pay greater attention to those they receive; (3) there is somewhat less of a tendency to couch a matter to the attorney general or district attorney in a way to stimulate artificially a rejection.

The experience with the Proposition 65 scheme indicates that prior submission and either public prosecution or deferral to private suit is workable. A survey of filings under Proposition 65 indicates that the notice and assumption or declination procedure works well. Of the 46 cases filed from 1988 to July of 1994, 29 have been taken over by public prosecutors and 17 have been pursued privately. Almost all of the cases have ended in stipulated judgments beneficial to the public and relatively expeditious for the parties. In each case, all parties knew who was enforcing the statute and the plaintiff could and did confer *res judicata* as part of the resolution. The defendant has prevailed in one fully litigated

case against a private plaintiff where public prosecution was declined. Six cases are pending.[124]

3. Private Party Qualification: Adequate Representation

> In a private case purporting to represent the interests of the general public, and where there has been a public agency declination, the class action certification requirements of Code of Civil Procedure Section 382 do not apply, except for the requirement that the plaintiff affirmatively demonstrate, and the court certify, that the plaintiff and his counsel "adequately represent" the interests of the general public allegedly involved.

Rationale: Code of Civil Procedure Section 382 authorizes traditional class actions at law "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them before the court." The party seeking certification must establish the existence of an ascertainable class and a well-defined community of interest. The community of interest requirement in turn involves three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class."[125] Traditionally, the first two of these requirements involve establishing: numerosity, commonality, and typicality.[126] These three requirements are understandably absent in the context of a statute applying to a business practice and a cause of action by definition seeking remedy for the "general public." Structurally, a described "unfair or unlawful" act in competition binds the case and constitutes factual and legal commonality. And Section 17200 cases

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124. See *Special Report: Proposition 65 Enforcement,* California Environmental Insider, Oct. 31, 1994, at 3-11.

125. *See* Caro v. Procter & Gamble Co., 18 Cal. App. 4th 644, 654 (1993), *citing* Richmond v. Dart Indus., 29 Cal. 3d 462, 470 (1981),

126. *See, e.g.,* Fed. R. Civ. P. 23(a).

involving relief sought for the general public generally fall within the rubric of traditional class action cases.[127]

But the adequacy of representation requirements remain valid where one wishes to confer the advantageous finality of *res judicata*. The advantages of such a conferral are substantial: defendants buy peace, duplicative litigation is avoided, and there is finality. In return for that finality, given the foreclosure of suit to those who might seek remedy, fulfillment of the requirement of "adequate representation" (and some notice prior to final judgment, discussed below) are properly imposed. Their current absence creates a conundrum for all concerned: finality is impossible without potential conflicts of interest by those purporting to represent the general public, but possibly with their own substantial financial stake — a stake which may often be enhanced by sacrificing the interests of a larger population.

4. Notice, Review, and Publication of Final Judgments

> In a private case purporting to represent the interests of the general public under Section 17200 (where the public agencies have declined), a proposed judgment and including all stipulations and proposed agreements, shall be submitted in advance to the same public agencies listed in Recommendation 3 above for their review and possible comment to the court in advance of final entry; final judgments where secured from both public and private plaintiffs so representing the interests of the general public shall be noticed to the general public by publication for comment to the court prior to final entry. All proposed final judgments applicable to persons regulated by a California regulatory agency shall be submitted in advance to that agency for possible comment to the court. Notice shall include time and place for a scheduled hearing during which those who wish to opt out may appear for that purpose, and during which the court may, in its discretion, take testimony or evidence relevant to objections to a proposed judgment.

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127. *See, e.g.*, Vasquez v. Superior Court, 4 Cal. 3d 800 (1971).

Rationale: A finding that a plaintiff is an "adequate representative" of members of the public affected by an injunctive or restitutionary order is useful as a matter of qualification. However, standing alone it is insufficient to provide assurance that the result is appropriate for *res judicata* status. The recommendation is to require workable notice by publication and only prior to final judgment, not for purposes of certification. That notice requirement applies to both private and public plaintiffs.[128] Its purpose is to assist the court in assuring himself or herself that the settlement is appropriate for *res judicata* effect and finality as to absent plaintiffs. Invitation to comment is a good policy where an order under review is undertaken by a court sitting in equity, and where it will apply to "the general public" as a party in the case. Moreover, the fact of notice may well be required in order to confer a binding judgment on those not before the court.[129]

5. Affirmative Court Inquiry into Settlement Adequacy

> Where a judgment or dismissal is proposed by stipulation, the trial court shall have an affirmative obligation to inquire into the adequacy of representation, the nature and adequacy of the remedy, including restitution. Where a case is settled by agreement of the parties, the court shall refuse to enter judgment, or may withhold *res judicata* effect, unless

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128. Note that public agencies may also be subject to inappropriate conflicts, either to divert restitution into civil penalties for the local treasury to buttress office budget arguments with a Board of Supervisors, or to intrude into the jurisdiction of other agencies. See the *Pacific Land Research* and *Hy-Lond* cases, *supra.*

129. Note the constitutional basis for notice in the leading federal case of Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974). Note also that Code of Civil Procedure Section 1908(b) provides that a non-party who controls an action is bound by an adjudication as if he were a party where he has a financial interest in the outcome; if the other party has notice of his participation, the other party is equally bound. The California Supreme Court has held: "In the context of collateral estoppel, due process requires that ... the circumstances must be ... such that the party to be estopped should reasonably have expected to be bound by the prior adjudication." Clemmer v. Hartford Ins. Co., 22 Cal. 3d 865, 875 (1978). The changes proposed are designed to provide the elements necessary to accomplish binding effect under these and related standards.

> he or she finds that, given the facts adduced, substantial recovery is received by or on behalf of the interests aggrieved. The court shall not permit the expansion or alteration of a complaint for purposes of settlement unless clearly in the interests of justice, not likely to prejudice non-named-party persons affected but absent from the case, and properly noticed prior to entry. The court shall also review any attorney fee award, including actual hours expended, and shall not approve any agreed settlement which does not award substantially more in restitutionary or injunctive value to the general public than to counsel representing those interests.

Rationale: Defendants have a right to finality. However, those persons whose rights are being adjudicated in their absence may have no advocate before the court. There are many scenarios where the parties to an action can find common ground to the detriment of absent persons affected and bound by the result. Indeed, the negotiation process tends to lead to such resolutions. The actor most capable of providing a check on such abuse is the court. The recommendation is to address directly the three most troublesome indicias of conflict of interest: (1) the case where there is no restitution awarded to absent interests, but injunctive or indirect benefits to the named private plaintiff dominate the settlement; (2) the expansion of the allegations of the complaint to bar other pending or prospective plaintiffs, accomplishing a grant of immunity to a defendant in return for a settlement which may not benefit those whose rights have been foreclosed; (3) the case where counsel controls a named private plaintiff and extracts most of the proceeds for attorney's fees.

Having noted the *caveat* of needed judicial scrutiny, it is also clear that many settlements are not exercises in precision. The suggested amendment is not intended to require 100% restitution based on allegations made, nor is it intended to bind parties or the court to a particular pre-set scheme of relief, e.g. direct or by fluid recovery or by *cy pres* means. The precise nature of injunctive or restitutionary relief turns on too many variables to predict in

advance. And there are cases where appropriate restitution will not be complete restitution. There may be many reasons for partial restitution: a case may involve untested or close issues which the parties are reasonably compromising; some of the victims may have a measure of complicity (e.g. pyramid scheme cases); the assets remaining may be limited; et al. The "substantial recovery" test is suggested as a requirement that there be more than token recovery for finality to be conferred, recognizing that the factors such as those enumerated above may moderate it. The purpose of court review is not to accomplish a perfect result, but to inhibit abuses at the extremes.

6. Notice of Related Cases; Referral to Common Court; Consolidation

> Where a party, plaintiff or defendant, knows of another case with similar allegations in any jurisdiction, whether pled as a class action at law, or pursuant to Section 17200 or 17500, or as a person not seeking relief for any other person, and against the same defendant, that party shall file a notice of related case. The court shall refer related cases to one court where practicable and may consolidate such related cases on its own motion in the interests of justice or for judicial economy. Where similar allegations are made against one defendant in different jurisdictions, the matter should be subject to coordination under Judicial Council procedures. Where more than one private party or counsel purports to represent the "general public" in similar Unfair Competition Act allegations against the same defendant(s), the court may, after hearing, choose one to pursue such allegations or may compel plaintiffs and counsel to share responsibility.

Rationale: As of yet, there have not been many reported cases of conflicts between contending private plaintiffs to represent the general public under the Unfair Competition Act. However, in the currently pending cable late-charge case in San Diego, at least two different private plaintiff and law firm combinations have filed

cases against cable firms who were in the process of settling a two year long investigation brought by the office of district attorney. Both sets of plaintiffs and firms have pressed their claims to maintain and pursue their cases despite a settlement agreed to by defendants with the district attorney which included substantial civil penalties and restitutionary amounts allegedly representing 100% of the overcharge over the period of the statute of limitations. Although private party participation in such proceedings may be beneficial, and serve as an additional check as provided for in Recommendation 3, there must be a means to rationalize and choose appropriate litigants in the unusual cases where more than one appears to vindicate the same wrong against the same defendant on behalf of the same general public interests.

The requirement to file a related party notice includes defendants. While a plaintiff may not know of other filings, particularly if in another county, the defendant should be well aware of them.

The requirement includes notice of cases whether pled on behalf of the general public under Section 17200 or 17500, or as a class action at law, or as an individual plaintiff seeking individual damages. The reason for this breadth lies in the possible *res judicata* effect the amendments would confer; they might estop any of the above plaintiffs and their existence should be flagged.

7. *Res Judicata* Status

> Given the elements added *supra* and their compliance by applicable parties, a litigated or stipulated judgment as to the general public shall be *res judicata* as to any other person seeking to represent the general public interest under the Unfair Competition Act, and shall bar any other person from any injunctive or restitutionary remedy for the alleged violation of the Act against those defendants bound by that judgment.

Rationale: Only *res judicata* status will allow binding settlements to resolve disputes with the finality all parties deserve and the system requires. It is the purpose of the changes enumerated above to create a constitutional and practical basis for that finality.

8. Application to Section 17500

The changes enumerated above should also apply in identical fashion to Section 17500 *et seq.*

Rationale: Sections 17535 and 17536 replicate the wording and problems of Sections 17204 and 17206 addressed herein, including the same actors able to bring public civil actions for injunctive relief and civil penalties (calculated in the same way), and the exact same private standing grant to "any person acting for the interests of itself, its members or the general public." See Section 17535. The breadth of Section 17500 *et seq.* is substantial, subsuming virtually all deceptive practices in sales, is often associated with Section 17200 cases, and any alteration should include both statutes in a similar manner.

THE LEGAL SERVICES SECTION
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TO: California Law Revision Commission

FROM: Kenneth W. Babcock, Chair
Legal Services Section

DATE: August 29, 1996

RE: Comments re California Law Revision Commission's Tentative Recommendation re Unfair Competition Litigation (May 1996), No. B-700

The Legal Services Section of the State Bar of California (hereinafter "LSS") respectfully submits the following comment to the California Law Revision Commission concerning its Tentative Recommendation regarding Unfair Competition Litigation.

INTRODUCTION

By way of background, the LSS is a voluntary membership body within the State Bar. It consists of approximately 800 members. This comment has been prepared for the LSS by its Executive Committee and its Standing Committee on Consumer Advocacy. We anticipate that other Sections of the State Bar will submit their own comments as well. The LSS Executive Committee is generally charged with the oversight and management of the LSS' business as well as the business of its standing committees. The LSS' Consumer Advocacy Committee consists of attorneys and advocates with considerable experience in litigating unfair competition cases under Business & Professions Code § 17200. The Consumer Advocacy Committee contains representatives of both public prosecutors' offices who have experience litigating what the Tentative Recommendation's Proposed Legislation calls "enforcement actions" and non-profit public interest and legal services organizations who have experience litigating what the Proposed Legislation refers to as a "representative cause of action".[1] Finally, we note that several

[1] As the Commission is aware, the Proposed Legislation draws a distinction between enforcement actions and representative causes of action. This distinction has caused a difference of opinion between the Consumer Advocacy Committee's public prosecutor members and its non-profit, public interest/legal services members with respect to one of the proposed provisions, Section 17310, which we note in our comment.

members of the LSS, acting in their individual capacities, have attended various of the meetings held by the Commission over the course of the last year concerning the unfair competition litigation study.

GENERAL COMMENTS

While our comment focuses on the language in the Proposed Legislation portion of the Tentative Recommendation, we begin with a general observation concerning the Tentative Recommendation. Simply put, we do not believe the "problem" identified by the Commission is so great as to warrant the drastic changes to unfair competition law the Commission proposes. To the extent there are abuses with respect to unfair competition litigation, we believe it to be a problem involving few lawyers and a small handful of cases. Based on a few anecdotal instances of so called abuse, the Commission has proposed a system which will overly complicate unfair competition litigation and which will make it more difficult for public interest and legal services organizations as well as private practitioners to seek redress for genuine instances of unfair competition. To the extent there are abuses in unfair competition litigation, individual courts presently have the power to address them. The Proposed Legislation will not put an end to so called "abuses" and will significantly hamper those who sue under the unfair competition law for the public good.

COMMENTS TO SPECIFIC PROPOSED SECTIONS

The following are the LSS's comments with respect to specific sections in the Proposed Legislation:

Section 17301

The LSS does not oppose the requirement in proposed subdivision (b) that a representative cause of action be separately pleaded and specifically designated as being brought on behalf of the general public.

Section 17302

The LSS views this provision as extremely problematic. The entire concept behind this section is based on the erroneous assumption that preventing a plaintiff in a representative action from having an interest in the action will ensure the bona fides of that plaintiff's desire to benefit the general public. We believe the exact opposite will be the result.

The purpose of the proposed section appears to be the elimination of the practice of including an unfair competition cause of action for the general public in a lawsuit involving a private dispute without a sincere motivation to benefit the general public. To be sure, adding such a cause of action for the sole purpose of expanding discovery or increasing settlement pressure to gain an advantage in a purely private dispute would be improper. But in addressing this potential for abuse, proposed Section 17302 would open the door wide for the very kind of unmeritorious unfair competition cases the Commission seeks to preclude. This section would not prevent the filing of "phoney" unfair competition litigation. In fact, such suits could well

become the norm as legitimate public interest, legal services and private practitioners will be effectively precluded from bringing representative actions since they would typically act only on behalf of an injured client.

There simply is no basis for the assumption that a plaintiff who alleges both individual and representative causes of action in the same lawsuit will not seek to protect the interests of the general public. A number of reported appellate decisions provide examples of how private plaintiffs who have suffered individual harm have sued on their and the general public's behalf and properly represented both interests. For example, in Hernandez v. Stabach (1983) 145 Cal. App. 3d 309, 193 Cal. Rptr. 350, the Court of Appeal affirmed a lower court's issuance of a preliminary injunction in an action brought by low income renters in a run down slum apartment who sought to prevent their landlord from, among other things, violating applicable building or health and safety codes. The tenants had sought to end the uninhabitable, dangerous and unhealthful conditions in which they lived only to face a series of improper eviction actions by the landlord. Through their unfair competition action, the renters were able to obtain an appropriate injunction to benefit themselves and other similarly situated tenants from the landlord's abusive practices.

Examples of the many other cases in which injured individuals have brought actions both on their own and the general public's behalf include Fletcher v. Security Pacific Nat'l Bank (1979) 23 Cal. 3d 442, 591 P.2d 51, 153 Cal. Rptr. 28 (Supreme Court remanded to trial court for determination of remedy in action brought by bank customer seeking restitution for himself and the general public for unfair calculation of interest); Barquis v. Merchants Collection Ass'n of Oakland (1972) 7 Cal. 3d 94, 496 P. 2d 817, 101 Cal. Rptr. 745 (Supreme Court reversed lower court order denying injunctive relief in action brought by individuals on their and the general public's behalf against collection agency which engaged in unfair business practice by routinely filing debt collection actions in counties of improper venue with the intent and effect of having their adversaries default); and Cisneros v. U.D. Registry, Inc. (1995) 39 Cal. App. 4th 548, 46 Cal. Rptr. 2d 233 (Court of Appeal reversed lower court's sustaining of demurrer without leave to amend in action brought by low income renters on behalf of themselves and the general public seeking injunctive relief under § 17200, as well as damages under a variety of other statutory rights of action, against a business which was violating fair credit reporting statutes by gathering information concerning residential renters and selling it to landlords).

If Section 17302 were the law, the likelihood is that none of the above noted cases would have been brought. It is unrealistic to think that a completely uninjured party would file a representative action -- acting as a "white knight" to come to the aid of the general public. Instead it is those who have suffered injury who are interested enough in the particular unfair business practice to be likely to sue. Proposed Section 17302 would require those persons to forgo their individual claims in favor of the representative action. Moreover, it would put counsel for plaintiffs in such actions in a real dilemma exposing them to potential malpractice claims for failing to pursue meritorious claims. The practical result is that few, if any, of those injured parties who could bring a representative cause of action will do so.

In fact, frivolous Section 17200 claims are just as likely, or even more likely, in lawsuits brought by uninjured plaintiffs, such as attorneys who file Section 17200 actions on behalf of themselves, other uninjured members of their law offices or for fictitious "consumer rights"

organizations, for the sole purpose of coercing settlements and obtaining attorneys' fees from defendants. See, Bell v. American Title Ins. Co. (1991) 226 Cal. App. 3d 1589, 1600, 277 Cal. Rptr. 583, 588 (Court notes trial court findings concerning non bona fide consumer organization's activities in unfair competition litigation). The proposed section would serve to sanction and encourage these abusive lawsuits.

Section 17303

While the LSS supports the general principal that an attorney representing a plaintiff in a representative action be an adequate representative of the general public's interest, the language in proposed Section 17303 does not achieve that purpose. The standards for the adequacy of representation hearing are not defined. While the staff comment states that determination of whether the plaintiff's attorney has a conflict of interest should be determined by analogy to class action principles, it provides no other guidance for a court in determining whether the plaintiff's attorney is an adequate representative. Moreover, it would be extremely easy for an attorney to satisfy the undefined standard in this section and make it appear that he or she is an adequate representative when in fact they are not. Indeed, because the court's hearing is based on the pleadings, a lawyer could simply plead around the adequacy requirement. To the extent that any abuses in the area of unfair competition litigation have occurred, it is through the filing of frivolous lawsuits -- not because of the inexperience of counsel. There is no reason to believe that a junior legal aid or public interest attorney, who the court might find to be an inadequate representative, would in fact be an inappropriate representative of the general public's interest. By the same token, an experienced attorney who has abused Section 17200 in the past could be found to be an adequate representative under the proposed standard.

We note that the language in the proposed section also leaves it unclear as to whether a plaintiff in a representative action could obtain preliminary relief, such as a temporary restraining order or a preliminary injunction, prior to the adequacy of representation hearing. The language in the section should make clear that a court may not deny such a request for preliminary relief on the grounds that the hearing contemplated by the Section has not been held.

Section 17304

The LSS does not oppose the concept of providing notice to law enforcement of the pendency of a representative action. We believe, however, that a notice period which ran for 30 days from the date the action was filed would be more appropriate -- particularly if the Commission were to eliminate the early adequacy of representation hearing in Section 17303.

Section 17305

The LSS supports the concept in proposed Section 17305. We note, however, that there does not appear to be any remedy against a defendant who does not comply with the proposed section's disclosure requirement. We suggest that appropriate remedies for non-disclosure would include discovery type sanctions and the exclusion of undisclosed cases from the set-off provision of proposed Section 17309.

Section 17306

The language in proposed Section 17306 raises several concerns. As to the general concept of prenotification, we believe that, as structured in the proposed section, it is essentially meaningless. The proposal does not prevent sweetheart deals or collusive settlements because the protection mechanism is ineffective. Those who would receive the notice would have little time to review and evaluate the proposed settlement, decide whether to intervene and prepare an application for intervention for filing sufficiently in advance of the hearing anticipated by proposed Section 17307. As a result, those entities and individuals who could object will rarely, if ever, have the practical ability to object to proposed settlements. Given the limited resources of most public prosecutors' offices, it is questionable how many, if any, public prosecutors will ever seek to intervene. Moreover, it is extremely unlikely that a court would be willing to entertain objections from intervenors at the eleventh hour, right before the court is about to enter judgment. Finally, we do not believe it is realistic to apply the 45 day prejudgment notification period to cases that go to trial. If a judge has heard all the evidence in a case and is ready to rule, it is unclear why the court should have to wait 45 days to enter judgment.

Section 17307

The hearing called for by proposed Section 17307 leaves the door open for "rubber stamp" approvals of settlements. To ensure that the court actually determines the sufficiency of the settlement, the court should be required to make written findings concerning the adequacy of the settlement. We suggest that those findings include specific findings concerning the nature of the practice at issue, the type and amount of harm involved, the difficulty in determining the number of the members of the general public affected and the difficulty or ease in returning money to individual victims. Moreover, under proposed subdivision (b)(1) the court would determine at the hearing whether the settlement is "fair, reasonable and adequate to protect the interests of the general public pled." The standard should be further defined in the section to require that the court look to whether the settlement is sufficient, in terms of the injunctive and restitutionary relief obtained, to justify a court in any subsequent action concluding that the general public should be precluded from further action (where, as we discuss below, we believe the determination of the binding effect of the resolution should be made).

Section 17308

The LSS sees a number of problems with this proposed section. There are no standards in the proposed section for determining when a case should be dismissed. The proposal seems to assume that all dismissals, settlements and compromises will result in a judgment. That is not the case – indeed it is much more common that cases are settled without entry of a judgment. It is unclear from the proposed section whether those dismissals, settlements and compromises which do not result in a judgment are subject to the provisions of the chapter. Moreover, it is unclear what the term "substantial compliance" means. A court could interpret the "substantial compliance" requirement in such a way as to apply only to certain settlements and compromises, thereby allowing for the same type of collusive or abusive behavior that the Commission seeks to address. The Commission should spell out for courts how to deal with dispositions which do not result in a judgment since the hearing under proposed Section 17307 only seems to apply to judgments.

Section 17309

The LSS views this proposed section as one of the more problematic in the Tentative Recommendation. We believe that the determination of the binding effect of the resolution of a representative action, if any, should be made in any subsequent action -- not by the court in the original representative action. A court in any subsequent action is in the best position to determine, on a case by case basis, whether the facts support the conclusion that the resolution of the first action should have binding effect. Existing doctrines such as equitable estoppel and mootness are available to serve as the basis for the court in a second action to determine whether that second action is truly duplicative.

Allowing the court in a subsequent action a "second look" at the resolution of the earlier action serves several important purposes, under both current law or under the new procedures contemplated by the Tentative Recommendation. First, it can correct inequities resulting from inadequate settlements that were "rubber stamped" by the court in the initial action. As discussed above, even with court review and notice of the terms of the settlement, a stipulated judgment is still likely to be a nonadversarial proceeding. Second, if res judicata is afforded the first judgment, the parties in the initial action have less incentive to "get the settlement right" precisely because of the low level of scrutiny by the court in the first action and the lack of review by a court in a subsequent action. Rather than placing the full responsibility on the court of ensuring that the interests of justice are furthered by a proposed settlement, the possibility of a "second look" actually puts more responsibility on the parties, where it belongs.

The LSS is mindful, however, of the desire of a defendant in a subsequent action, having previously settled an unfair competition claim brought on behalf of the general public, to avoid protracted litigation in that subsequent suit. Accordingly, we believe it appropriate that the issue be addressed early in any subsequent suit. The issue should be raised by way of a motion to dismiss at which the court would consider evidence as to the binding effect issue. Defendants could raise the issue of the binding effect of the prior action in their responsive pleading, which under Code of Civil Procedure Sections 412.20 and 430.40 would be made within 30 days of service of the summons and complaint. Failure to do so would result in a waiver of the defendant's ability to argue that the result in the earlier suit had binding effect on the claims of the general public raised in the subsequent suit. Rather than have a conclusive, irrebuttable presumption of binding effect in the first action, we believe there should be a rebuttable presumption in the subsequent action that the resolution of the prior action so sufficiently protected the interests of the general public that it be given binding effect. As such, the plaintiff would have the burden of showing that the prior resolution did not sufficiently protect the general public's interests. In its discretion the court in the subsequent action could allow limited discovery on the issue of the fairness and adequacy of the earlier resolution as it affects the subsequent case. By adopting such a procedure for early determination of the binding effect in subsequent actions, we believe the interests of plaintiffs, defendants and the general public can be protected.

The LSS also believes that proposed subdivision (b) contains a number of problems. The proposed language allows for a set off of restitution due to the person. A set off should only be allowed, however, for restitution paid by the defendant to the person. Defendants should be

encouraged to satisfy any outstanding judgment -- they should not be given credit for recovery amounts they have not paid.

The reference in the subdivision to the pro rata share of indirect restitutionary relief is even more troubling. We believe this figure will be impossible to determine. To arrive at this figure, the court will have to engage in a quantitative and a qualitative analysis of any prior indirect restitutionary recovery. Without knowing the number of total victims, either because they are unknown, there are no records or at the stage of the case that the prior action was settled there had not been significant discovery, a court could not possibly determine, other than by simply guessing, the pro rata set off amount. Moreover, the court would be required to determine the extent to which indirect recovery, such as through cy pres distributions, benefited a particular individual. It is difficult to see how a cy pres distribution to an organization or entity that would have a localized effect would be of sufficient benefit to an individual in another part of the state sufficient to warrant a set off. Finally, there is no good policy reason why a defendant should be entitled to a set off until the defendant has disgorged all of the ill gotten gain it has received by way of the unfair practice, which typically would not have happened if the prior action was settled. For these reasons, we believe a defendant's set off should be limited just to those amounts actually received by the individual plaintiff in the subsequent action.

Section 17310

With respect to proposed Section 17310, the LSS's Consumer Advocacy Committee is of two minds. Those public prosecutors on the Committee support the principal of a stay of any representative action pending resolution of the enforcement action. Indeed, those members of the Committee would have the Commission go further and impose a stay regardless of whether the enforcement action was filed before or after the representative action.

Those members who represent public interest or legal services organizations or who are private practitioners prefer that the issue be left up to the court and that the court have a range of options available, including stays, consolidation, coordination and "low numbering." These members also note that subdivision (a) requires that the court stay the representative action unless, in the interests of justice, the court believes an order of consolidation is more appropriate. Under subdivision (b), however, the court may not order consolidation, regardless of the interests of justice, if the enforcement action was filed first and it seeks substantial restitution. As a practical matter, this means a stay will be required in virtually all instances in which the enforcement action was filed first since prosecutors typically seek substantial restitution. Whether the enforcement action actually results in substantial restitution is another story. Given the no intervention provision in subdivision (b), the plaintiff in the representative action, who is the person most likely to bring to the court's attention the inadequacy of the restitutionary relief in the enforcement action, is precluded from doing so. Accordingly, the no intervention provision should be eliminated, leaving the issue of intervention in the court's discretion.

Section 17311

The LSS supports the provisions in this proposed section.

Section 17319

The LSS opposes the application of this chapter to existing cases. There has been no showing that the "problem" with respect to unfair competition litigation is so drastic as to justify the tremendous burden on litigants and the courts which retroactive application would cause. The chapter should operate prospectively only, if at all.

SB 143 — Unfair Competition Litigation

In this bill, the Law Revision Commission recommends modest procedural reforms in the Unfair Competition Law: (1) to limit the potential for abuse by private plaintiffs who claim to represent the general public and (2) to improve the standing of settlements and judgments as a way to enhance finality.

Under existing law (Business & Professions Code § 17200 *et seq.*):

- Anyone can claim to represent the general public — no qualifications
- Class action standards of injury, typicality, & adequacy don't apply
- Existing law invites speculative claims that may be settled for nuisance value — results in conflicting and repetitive claims
- Judgments & court-approved settlements are not binding on general public, which has not had notice or opportunity to opt out

SB 143 addresses problems by providing that:

- Filing a claim on behalf of general public under § 17200 invokes a set of procedural rules designed to protect the public interest
- Once a representative claim is filed, it cannot be settled or dismissed without court approval
- Since the public interest is at issue, notice of filing goes to DAs and the AG — and notice of proposed settlement goes to DAs, the AG, and other interested persons ordered by court
- Plaintiff & plaintiff's lawyer must satisfy conflict of interest standard
- Plaintiff's lawyer must also be adequate legal representative of general public interests
- A fairness hearing is required, where court must determine whether the proposed terms, including all stipulations and associated agreements (e.g., attorney's fees), are "fair, reasonable, and adequate" to protect general public
- Where private representative actions and prosecutor enforcement actions are in conflict, bill recognizes court's power to stay private action or coordinate or consolidate actions in interest of justice

Close:

- Bill proposes practical reforms to limit abuse, rationalize the settlement process, protect the public interest, and improve prospects for finality
- LRC worked with all interest groups to fashion a limited, centrist reform that should not threaten any legitimate consumer or business interests

[Stan Ulrich from the LRC staff, and Prof. Robert Fellmeth, the

SB 143 — Unfair Competition Litigation — Issue Rebuttal Points

Plaintiffs Bar Issues

1. No need for bill. No problems. "It ain't broke, don't fix it."	• Business groups vociferously disagree • Claims increasing; remedy being promoted • Commonsense analysis shows existing law is defective: lacks due process, notice, hearing, protection of public • Lawmakers should anticipate problems, not just react to bad situations once they occur
2. SB 143 "goes too far" "burdensome rules are inadequate to discourage alleged abuses"	• Bill is modest reform aimed at some specific problems; drafted to achieve limited goals without uprooting fundamental consumer protection law • Fully "adequate" rules (class actions?) would be seen as drastically burdensome by plaintiffs bar • Rules address issues of routine tack-on claims, inappropriate use as leverage, minimal qualification to represent general public, ability to sell out public to settle private claim or for fees
3. Defendant's duty to give notice of similar actions should provide penalty for noncompliance	Courts have ability to enforce notice duties — not necessary to provide special rules every time a duty is set out in statute.
4. Fairness hearing in § 17306 will not prevent sweetheart deals.	• Bill requires court to make findings that statutory standards have been satisfied — this is a great improvement on the current law with no protections • Plaintiffs bar representatives who make this argument seem to be agreeing with those who say class action rules should be applied
5. Notice and hearing rules should apply to prosecutor actions (CAOC)	• Separate issue; maybe it should be studied. But procedure in bill doesn't fit unique nature of DA & AG actions, with prefiling discovery powers, statewide coordination practices, different recovery available (civil penalties), law enforcement duties • Applying new rules to DAs doesn't do anything to eliminate CAOC objections to what is in the bill • CAOC is free to put in their own bill.
6. Statutory provision for res judicata would encourage sweetheart deals preventing legitimate plaintiff actions	• § 17308, the explicit res judicata rule, has been amended out of bill • But there are ways to attack a sweetheart deal — if we put § 17308 back in bill, it could be subject to additional conditions and review standards
7. Provision for staying private action in § 17309 is unfair, will result in stale discovery	• Section is not mandatory; makes clear that court can stay private action, or consolidate or coordinate • Court can make any other order needed to protect rights of private plaintiff
8. Real protection against abuse of 17200 is in 1021.5 private attorney general attorney fee statute	• Fees included in settlements are not directly governed by 1021.5 now • Doubt that there is any agreement outside plaintiffs bar that attorney fees are under control by 1021.5 in litigation

SB 143 — Unfair Competition Litigation — Issue Rebuttal Points

Defense Bar & Business Issues

1.	SB 143 "doesn't go far enough" [general statement the includes several of the following points]	LRC aims for modest reform acceptable to all reasonable interest groups — the "art of the possible" — those wanting more can support other bills without opposing SB 143
2.	Should apply full class action rules	• This is another way of saying that right of private action under 17200 should be repealed • Class action rules are too expensive & cumbersome, particularly since damages are not available
3.	Should require traditional standing — plaintiff should have suffered injury from challenged practice	Generally, this would be a good reform, but public interest groups (eg Consumers Union, Public Counsel) say this would limit ability to bring actions on behalf of poor and disadvantaged citizens
4.	Plaintiff should be adequate representative, typical of class	• Too close to class action rules; remedy limited to injunction & restitution, so class action type protections and rules are overkill • "General public" is broader concept than injured class in class actions. Inappropriate as applied here
5.	Defense notice of other similar actions is burdensome & section is unnecessary	• Limited rule: § 17304 requires notice of actions pending in California that are known to defendant • Since this information is available now through discovery, there is really no new burden
6.	Notice and hearing rules will invite collusion and hinder or prevent settlement. Invites "piling on"	• It is impossible to achieve any binding effect without notice and hearing • LRC judged the limited notice and fairness hearing to be the minimum essential to permit binding effect constitutionally • Bill doesn't prevent prefiling settlement
7.	Statute should provide for res judicata — should bar all claims	• § 17308 in bill as introduced would have barred later private representative actions — the farthest the statute can constitutionally go — yet, no business groups supported this limited statutory rule • Unconstitutional to bar damage claims without class action type broad notice and opt out • Statutes almost never provide binding effect — it is a judicial doctrine determined case-by-case • Courts will find res judicata where appropriate; statute can't impose res judicata where it is inappropriate

SENATE JUDICIARY COMMITTEE
John L. Burton, Chairman
1997-98 Regular Session

SB 143 S
Senator Kopp B
As Amended April 2, 1997
Hearing Date: May 13, 1997 1
Business and Professions Code 4
DLM:lgh 3

SUBJECT

Private unfair business practices claims brought under Business & Professions Code §17200, on behalf of the general public

DESCRIPTION

This bill would limit a private plaintiffs' ability to bring suit on behalf of the public against unfair trade and competition, by requiring that a plaintiff could not have a conflict of interest with the general public, and that their attorney must be able to adequately protect the public's interests. Public prosecutors would have priority over private claims in bringing enforcement actions on behalf of the public, with the court able to stay private actions until the public prosecution is completed. This bill would also demand closer court scrutiny of all phases of litigation by providing that any resolution of a private representative suit would have to be certified by the court at a final hearing.

In addition, this bill would request the exchange of information as follows: within 10 days of commencing an action, the plaintiff would notify the Attorney General and District Attorney of the filing of a representative suit; after being served, the defendant would "promptly" notify the plaintiff and court of any similar actions pending against them; finally, at least 45 days before entry of judgment, the plaintiff would give notice of the proposed terms of settlement to the Attorney General, the District Attorney, other known parties with cases against that defendant, and other persons as requested by the court.

BACKGROUND

Existing law, Business & Professions Code §17200, provides that "any person" may bring suit under this Act. Public prosecutors, private litigants who have been harmed by an unfair business practice, and private litigants representing the interests of the general public, all have standing to sue. Only public prosecutors may recover civil

penalties. The statutory remedies for private actions brought on behalf of the public are injunction and restitution. There are no attorneys' fees provided in this section.

Examples of recent §17200 litigation include computer monitors which were advertised as having a larger screen size than the actual screens measured, vocational technical schools which failed to provide students with adequate training, and a bank's practice of unilaterally imposing alternative dispute resolution on its customers.

CHANGES TO EXISTING LAW

The provisions of this bill apply to representative actions, defined as private unfair business practices claims brought on behalf of the general public.

1. Existing law does not require a court determination that the plaintiff has no conflicts of interest which reasonably could compromise the good faith representation of the public, in order to bring a claim on behalf of the general public.

   This bill would require a court determination that the plaintiff has no conflicts of interest which reasonably could compromise the good faith representation of the public. This bill would not change existing law to require the representative plaintiff be personally harmed in order to bring a claim.

2. Existing law does not require any notification, joinder, or public input, in order to bring, try, or settle a case brought on behalf of the public.

   This bill would require plaintiffs to give the Attorney General and District Attorney notice of the filing of a representative cause of action. Interested parties would be noticed, as well as the D.A. and A.G., of any proposed outcome of a representative cause of action.

3. Existing law does not require the defendant to disclose pending litigation based upon similar facts and/or legal theories.

   This bill would require the defendant to give notice to plaintiffs and the court of any other pending action(s) based upon substantially similar facts and/or theories of liability.

4. Existing law allows courts to consolidate cases upon motion of either the court, the defendant or plaintiff, if there exists the same rights to relief, arising from the same transaction, or series of transactions, against the same defendant. The court may also coordinate cases which share a common question of fact or law. The court may stay the cases for which coordination is sought until it determines whether or not to coordinate the cases.

This bill would allow the court to consolidate, coordinate, or stay, duplicative cases. If a public prosecutor has a claim against the same defendant, based on substantially similar facts and theories, the private suit may be stayed pending completion of the prosecutor's action.

5. Existing law does not require a formal hearing or certification of disposition in unfair business practices suits.

   This bill would require a hearing and court certification of final disposition for suits brought by private plaintiffs on behalf of the general public.

COMMENT

1. Stated purpose for bill

   According to the California Law Revision Commission, this section of consumer law is ripe for abuse due to its broad standing requirements. The Commission believes that this section is used by some attorneys for "fishing expeditions" in discovery practice, and to pump up attorneys' fees billed. The misuse of this section is largely unrecorded, the Commission says, as most §17200 cases are settled out of court.

   In addition, the inability of defendants to settle all cases based upon the same conduct subjects defendants to burdensome multiple suits. According to the Commission, defendants cannot settle all claims on behalf of the general public in a single action, because constitutional due process requirements of adequate notice to all potential parties are not part of the §17200 scheme. Without adequate notice, there can be no binding of parties to an outcome.

   This bill addresses these concerns, the Commission asserts, by requiring plaintiffs and their attorneys be adequate representatives of the public's interests. This bill also requires notice be given to the district attorney and attorney general, as well as all parties expressing interest, at all phases of the litigation. Finally, there will be close court scrutiny of representative actions. These protections are intended to allow parties more finality when they settle cases, by providing a firm due process base for a court's declaring such settlements res judicata as against further private suits on behalf of the public.

   Similar legislation has been introduced on behalf of the Governor by Senator Mountjoy, SB 1309. That bill would provide a much more dramatic change in the Unfair Competition Act (UCA) than proposed herein. In particular, it would mandate class action standing for most private plaintiffs, and would require court supervision and acquiescence of process and outcome. In addition, SB 1309 would

declare all certified outcomes to be a ban on future claims based upon similar facts and theories against the same defendant.

2. Opponents say there is no evidence that §17200, et seq., has been widely abused

The Legal Services Section of the State Bar of California, wrote the Commission regarding the proposed legislation and offered, "(T)o the extent there are abuses in unfair competition litigation, individual courts have the power to address them. The proposed legislation will not put an end to so called 'abuses' and will significantly hamper those who sue under the unfair competition law for the public good." Similar criticism is raised by Public Counsel, and Consumer Attorneys of California (CAOC), who ask, "(W)hy are we changing this law, where is the problem?" "The Commissions' primary concern is for the 'potential' for abuse of lawsuits under §17200, and while that potential may have been realized in a handful of cases in the twenty years that the statutory scheme has been in existence, there is no demonstrated proof of widespread problems. In our view the Commission's recommendations will create substantial additional problems and will do little to address the handful of reported 'abuses."

The Commission responds that a problem does exist. However, the nature of the problem is one which masks the severity, e.g., nuisance cases are brought and settled quietly, leaving no judicial record to offer as evidence of the true numbers of §17200 cases.

IS AN ADDITIONAL LEGISLATIVE RESPONSE NECESSARY WHEN THERE ARE CURRENTLY REMEDIES AVAILABLE TO PUNISH VEXATIOUS LITIGANTS AND THOSE WHO BRING FRIVOLOUS SUITS?

3. Other identified concerns with the bill

a) Problems with notice requirement

While the bill purports to mandate notice to interested parties and those involved in similar ongoing litigation, there is no sanction for failing to exchange the various notices contained in the bill. Consumer Attorneys of California believe that there should be some sanction for failure to comply.

Also, the bill fails to include notice to those parties affected who have yet to realize a claim, and/or file a claim. Without adequate notice, it is doubtful the res judicata protections this bill aspires to, will meet due process standards. By way of comparison, notice to the affected class is mandatory under federal and state class action suit procedure. In that context, notice is a considered such an

important component that it is ordered by the court immediately following determination of the class.

b) Hearing provision

The concern here is that the protection afforded by this new procedure is illusory, and in practice courts will rubber-stamp any settlement presented, including collusive settlements. With court calendars as crowded as they are, it would be unlikely that a court would upset an uncontested settlement. Further, it would be rare for a court to undo a deal, based upon an eleventh hour concern raised by an outside party.

A second area of concern is the limited application of court oversight, restricted to representative suits. The CAOC, and others, suggest it would be better to expand this oversight to all cases brought under §17200, pubic, private, and representative.

IS IT ADVISABLE, GIVEN CROWDED COURT DOCKETS, TO REQUIRE A COURT TO CONDUCT A HEARING TO CERTIFY FREELY NEGOTIATED UNCONTESTED SETTLEMENTS?

c) Public prosecutors priority/stay provision

Three areas of concern are raised regarding this provision. First, a fear exists that public prosecutors may interlope into ongoing litigation, and reap the benefits of a private plaintiffs' work product for themselves. Secondly, if a stay were to be put in place on an ongoing or pending, representative suit, the discovery--indeed all evidence-- would grow stale, rendering the private action pointless once the stay was lifted. Third, the Personal Insurance Federation raises a concern that the limited stay provision in the bill would cause confusion as to the court's ability to defer to a regulatory body, at least in insurance cases.

In addition, courts have held that the remedies available to public and private plaintiffs are distinct, and therefore resolution of one type of claim does not preclude commencement of the other.

IS IT ADVISABLE PUBLIC POLICY TO ALLOW THIS PROPOSED STAY PROVISION, WHICH COULD RESULT IN THE MOOTING OF PRIVATE CLAIMS, WHEN THE RIGHTS VINDICATED BY PUBLIC OFFICIALS AND DAMAGES WHICH PUBLIC OFFICIALS MAY COLLECT ARE DISTINCT AND DO NOT BAR PRIVATE CLAIMS AND REMEDIES UNDER THE UCA?

d) Business community issues

Various representatives of California's business community have written this Committee to express their opinion that the bill does not go far enough in altering §17200. For example, the Association for California Tort Reform wishes the bill mandated res judicata. The Dial Corporation wishes the bill required any plaintiff bringing a representative suit to have suffered individual harm. Finally, the Toy Manufacturers of America wish that there were penalties for plaintiffs who file frivolous unfair competition suits contained in the bill.

Support: California District Attorneys Association; Consumers Union; California Manufacturers Association.

Opposition: Consumer Attorneys of California; California Retailers Association; State Farm Insurance Co.; California Rural Legal Assistance Foundation; Personal Insurance Federation; Public Counsel; Association for California Tort Reform; The Dial Corporation; Toy Manufacturers of America; Worksafe!

HISTORY

Source: California Law Revision Commission

Related Pending Legislation: SB 1309 (Mountjoy)

****

OFFICE OF GOVERNOR PETE WILSON

FACT SHEET

GOVERNOR'S TORT REFORM PROPOSAL

Governor Wilson's Civil Justice Reform package for the 1997-98 legislative session seeks to accomplish the following:

- Reduce the prospects for arbitrary or unpredictable awards by providing clearer standards for the jury and judge.
- Make it easier to dismiss meritless suits and defenses.
- Reduce the costs of litigation.

Specific details of the Governor's proposal cover:

PUNITIVE DAMAGES: The Penalty Without Limits or Standards

Punitive damages may be the only penalty sanctioned under our law which has few, if any, guidelines for assessing them – and no upper limit. A jury, which has no experience in assessing fines, is given little in the way of guidelines by which to assess punitive damages and thus acts as legislator and judge, without the training, experience or guidance of either.

- The average punitive damage award in California grew more than sixfold from an average of less than $1 million in 1984 to $6.6 million in 1994, according to a 1995 Pacific Research Institute report.
- Despite the startling increase, the same report found that there was no consistency between the punitive and compensatory damages in the same case and yet more than 9 out of 10 punitive damage awards survived post-trial motions and appeals without being reduced.

The Governor's proposal, to be carried by Assemblyman Morrow, establishes standards for calculating punitive damages in a way which will provide more predictability and permit appellate review. At the same time, the reform will not restrict the amount which can be justly awarded.

- The judge, not the jury, would determine the amount of punitive damages, as is the case with any other fine.
- The judge would adhere to specific criteria in assessing the amount, including:
  - * The reprehensibility of the defendant's conduct;
  - * The amount of profits arising from the misconduct (or failing any profits, the compensatory damages awarded); and
  - * The duration of the misconduct.
- The judge would have to place his or her rationale for the amount of the punitive damage fine in a written opinion, encouraging careful deliberation and better promoting appellate review.

Punitive Damages (cont'd)

- The court would reduce the amount of the punitive damage award to the extent that it would "unfairly duplicate" a punitive damage award previously paid by the same defendant based on the same act or course of conduct.

WRONGFUL TERMINATION: The Double Recovery for the Unknown Contract

Under current law, a person who claims he or she was wrongfully terminated from a position can seek lifetime lost pay and receive a salary from a new job at the same time, thereby getting a double recovery. Further, the right to sue for wrongful termination is often based on an "implied" contract that neither party knows exists until the court has decided the matter.

- The uncertainty of whether an implied contract exists, whether the employee can be terminated, and the amount of recovery has ironically resulted in a reduction in hiring because of the uncertainties in the right to terminate an employee once hired.
- In 1992, the Rand Corporation concluded that states with liberal employment laws, such as California's, have reduced employment by four to five percent, or roughly 650,000 jobs.

The Governor's wrongful termination proposal works as follows:

- ***It would allow wrongful termination suits to be brought where the employer has breached an express contract for a specified term or violated the employer's personnel policies or where the termination was in violation of public policy. But it would not allow suits based on the unpredictable "implied" contracts.***
- ***It would prevent speculative future lost pay awards that result in double recoveries by providing that future lost pay may not exceed the amount of wages and benefits which the employee might reasonably have been expected to earn from the employer for a five-year period following the termination.***

SHAREHOLDER SUITS: Stopping the "Strike" Suits

State law allows shareholders to sue not only in their own name for injuries sustained, but in the name of the corporation for injuries which it has suffered. However, when a shareholder seeks to sue in the corporation's name the shareholder is required to make a demand on a corporation and allow the board of directors to determine whether to bring the suit. The directors, after all, were elected by the shareholders to run the corporation. Only where the board of directors unjustifiably rejects the shareholder's demand can the shareholder bring suit in the corporation's name. Unfortunately, this obligation on the part of the shareholder is rarely followed.

In most instances, the shareholder contends that he or she does not have to make the demand. The practice has turned into a scam. Suits are brought, often by shareholders who have only a single share, seeking huge amounts against the corporation's directors for injuries allegedly suffered not by the shareholder, but the corporation.

- Ironically, in most instances, the suits are often settled with the payment of a large attorneys' fee to the plaintiff's lawyer and a payment by the corporation's own insurance company to the corporation itself – the shareholder gets nothing; the corporation is paid by its own insurer; the insurer bills the corporation for premiums. The only person who benefits is the attorney for the shareholder.

Shareholder Suits (cont'd)

The Governor's proposal would conform California's law to the well-developed law of Delaware, and codify a California appellate decision which requires that before bringing suit in the name of a corporation, the shareholder must either make a demand on the corporation's directors or allege, with specific facts, that each director could not fairly evaluate the shareholder's demand. As provided in Delaware, suing all directors of the corporation would not in and of itself be sufficient to excuse the shareholder from making a demand on the board of directors.

UNFAIR COMPETITION ACT: Where Lawyers Don't Need Clients

Under our system of jurisprudence, in civil disputes, an injured party seeks compensation against a wrongdoer or seeks to enjoin threat of harm to himself or herself from the wrongdoer. However, under California's Unfair Competition Act, which prohibits any "unlawful, unfair or fraudulent business act or practice," anyone is allowed to sue against such a practice on behalf of the general public, even if they have never suffered any harm or even been exposed to the practice. Moreover, that person can "represent" the general public without a court finding that the person is an adequate representative of the general public.

- In one case, a male plaintiff brought suit against the manufacturers, distributors, and retailers of vaginal suppositories, although he could never be injured by those products. ***(Combe, Inc. v. Sampson)***
- In another, an organization sued over an occupancy limitation imposed by Westwood Apartments, though no members of the organization could be shown to live in Westwood Apartments. *(Midpeninsula Citizens for Fair Housing v. Westwood Investors)*

To end this absurd practice, the Governor proposes a balanced and modest change that would simply require the following:

- ***That attorneys bringing these suits have a real client – namely one who has been harmed or threatened with harm by the acts or practices prohibited under California's Unfair Competition Act;***
- ***That a person who brings an action on behalf of the general public be an adequate representative of the general public, must have retained an attorney who will adequately represent their interests, and must have claims typical of the claims of the general public; and,***
- ***That any action brought on behalf of the general public may not be dismissed or settled without the approval of the court.***

SUMMARY JUDGMENT REFORM

Many meritless cases get to trial, increasing costs for all parties and congesting busy courthouses. California's current summary judgment standard allows a party to go to trial even when there is insufficient evidence for a jury to return a verdict in its favor with respect to its claims or defenses.

The Governor's proposal would conform California's summary judgment law to the standard used in the federal courts, providing that summary judgment must be granted when "no reasonable jury could return a verdict for the [opposing] party on the matter that is the subject of the motion for summary judgment."

By conforming California law, meritless suits and defenses will not be allowed to get to trial. And by eliminating meritless cases and defense before trial, rather than requiring a trial, courtrooms will be made available for cases with merit, saving parties the expense of a trial, and more speedy decisions will be issued.

L97:003

GOVERNOR'S OFFICE

WILSON UNVEILS HIS 1997 TORT REFORM PROPOSALS

FOR IMMEDIATE RELEASE
Thursday, February 27, 1997

CONTACT: Sean Walsh
Ron Low
Lisa Kalustian
(916) 445-4571

SACRAMENTO – Continuing his agenda to keep the California business climate attractive for investment and job-creation, Governor Pete Wilson today introduced his 1997 civil justice reform proposals.

"As we approach the new millennium, the challenge no longer is to restore our economic health – we've done that," Wilson said. "The tens of thousands of new jobs we create each month, our growth in overseas trade, and the investment we're making in better schools and safer streets, they all reflect the strength of this California Comeback."

"Now, we face a new challenge – to pass the kinds of reforms that will keep our Comeback rolling, and will make California even more competitive as we stand up to the rigors of the global marketplace," Wilson continued. "Legal reform is one of the simplest, most sensible steps we can take this year to maintain the state's economic vigor. It is the loudest message this Legislature can send that Sacramento is dead-serious about making California more attractive for jobs and investment."

Wilson's five proposals seek to achieve three goals: reducing the prospects for arbitrary or unpredictable awards by providing standards for the jury and judge; making it easier to dismiss meritless suits and defenses; and reducing the costs of litigation.

The California Business Roundtable's Seventh Annual Business Climate Survey found 85 percent of the state's business leaders identified the state's liability laws as the issue having the most negative impact on California's economy.

Surging liability insurance costs, huge legal bills, large settlements, and unpredictable jury verdicts impose a heavy tort tax on every business and taxpayer in the state. Small businesses are usually forced to settle out of court rather than engage in a brutally expensive legal defense.

According to a recent study from the RAND Corporation, the costs associated with litigation arising out of liberal employment laws resulted in as much as a five percent reduction in employment. In California, this means a loss of nearly 650,000 jobs.

"But there's more than jobs at stake – justice is at stake," Wilson added. "The current system issues arbitrary awards and allows parties to spend thousands of dollars fighting meritless suits. This isn't just and it certainly is not fair. It must end now."

Wilson's civil justice reform legislative package includes:

- **PUNITIVE DAMAGES** – Punitive damage awards may be the only penalty sanctioned under the law which has few, if any, guidelines for assessing them – and no upper limit. As a result of this standardless discretion, the average punitive damage in California grew more than six-fold from an average of less than $1 million in 1984 to $6.6 million in 1994, according to a study by the Pacific Research Institute. The Governor's proposal to reform punitive damages establishes standards for calculating punitive damages in a way which will provide more predictability and more effective appellate review. At the same time, the reform will not restrict the amount which can be justly awarded.

- **WRONGFUL TERMINATION** – Under our wrongful termination laws, a person who claims he or she is wrongfully terminated from a position can seek lifetime lost pay and receive a salary from a new job offered after the trial, thereby getting a double recovery. In addition, the legal basis for a wrongful termination suit is often unpredictable. Wrongful termination suits are often based on breach of an implied contract, the existence of which the courts determine, on the basis of a variety of factors, including the employee's longevity of service, the substance of communications between the employer and the employee, the employer's personnel policies or practices, and the practices of the industry. The Governor's wrongful termination reform proposal would allow wrongful termination suits to be brought where the employer has breached an express contract for a specified term or breached the employer's personnel polices, or where the termination was in violation of public policy, but it would eliminate the uncertain "implied" contract and reduce the risk of speculative future lost pay awards that result in double recoveries by providing that future lost pay may not exceed the amount of wages and benefits which the employee might reasonably earn for a five-year period following termination. A fully compensated five year period is deemed ample time to find another job. All discrimination suits would be left entirely unaffected by this reform.

- **SHAREHOLDER DERIVATIVE ACTIONS** – State law allows dissident shareholders to sue not only in their own name for injuries they have suffered, but in the name of the corporation for injuries which the corporation has suffered. Suits are brought by dissident shareholders seeking huge amounts against the corporation's directors for injuries allegedly suffered not by the shareholder, but by the corporation. The suits are often settled with the payment of large attorneys' fees to the shareholder's lawyer and a payment by the corporation's own insurance company to the corporation. The shareholder gets nothing. The Governor's proposal would conform California's rarely followed law in this area with that of Delaware and codify a California Court of Appeal decision, *Shields v. Singleton*, 15 Cal.App.4th 1611 (1993), which requires that before bringing suit in the name of a corporation, the shareholder must either make a demand on the corporation's directors or allege, with specificity, facts specific to each director which show that the majority of directors could not fairly evaluate the shareholder's demand.

-MORE-

- **UNFAIR COMPETITION ACT** – Under our system of jurisprudence, in civil disputes, an injured party seeks compensation against a wrongdoer or seeks to enjoin the wrongdoer from threatening harm to himself or herself. However, California's Unfair Competition Act, which prohibits any "unlawful, unfair or fraudulent business act or practice," allows anyone to sue against such a business practice on behalf of the general public, even if they have never suffered any harm or even been exposed to the practice. The Governor's proposal would simply require that attorneys bringing these suits have a real client, namely, one who has been harmed or threatened with harm by the acts or practices prohibited under California's Unfair Competition Act and would require that a person who brings an action on behalf of the general public be an adequate representative of the general public, must have retained an attorney who will adequately represent their interests, and must have claims typical of the claims of the general public.

- **SUMMARY JUDGMENT REFORM** – Many meritless cases go to trial, increasing costs for all parties and congesting busy courthouses. The Governor's proposal would conform California's summary judgment law to the standard used in the federal courts. Under this standard, summary judgment must be granted "unless there is sufficient evidence favoring the [opposing] party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); accord, *Celotex Corp, v. Catrett*, 477 U.S. 317 (1986).

"Last November, the voters of California shouted a ringing 'no' to frivolous lawsuits when they voted overwhelmingly to scuttle Proposition 211," Wilson concluded. "It would be a travesty of justice for this Legislature to turn deaf ears to that chorus."

"Thirty other states have enacted legal reform over the past two years. This is a question of whether California is going to swim or sink vis-à-vis the competition. The longer we delay legal reform – the longer we swim with the legal sharks – the further we'll sink beneath those states with the courage to reform their judicial systems."

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- ***ATTACHED IS A FACT SHEET ON THE GOVERNOR'S TORT REFORM PROPOSALS***

February 24, 2005

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative (File No. SA2005RF0037), known as the Cheaper Prescription Drugs for California Act.

Background

Pharmacy Assistance Programs. California and a number of other states have established pharmacy assistance programs to help consumers purchase prescription drugs at reduced prices. Current California law, for example, requires retail pharmacies to sell prescription drugs to persons enrolled in the federal Medicare Program at a discount. The program assists elderly and disabled health care consumers.

Medi-Cal and Healthy Families Programs. The Department of Health Services (DHS) administers the Medi-Cal Program, which provides a wide range of health care services for poor children and adults, including coverage for prescription drugs. Federal law mandates that drug makers sell their products to Medicaid programs, such as Medi-Cal, at a relatively low price compared to the prices paid by most private purchasers.

In addition, the state negotiates for supplemental rebates from drug makers in trade for giving the drugs made by those companies preferred status in the Medi-Cal Program. That preferred status means that doctors may prescribe that particular drug without receiving prior authorization from the state, which tends to increase the frequency of Medi-Cal prescriptions. The practical effect of the supplemental rebates is to lower further the net costs for drugs paid by the state for the Medi-Cal Program by an estimated $280 million General Fund in 2004-05.

Healthy Families. The state Managed Risk Medical Insurance Board administers the Healthy Families Program, which provides health care coverage, including prescription

drug coverage, for children in low-income and moderate-income families who do not qualify for Medi-Cal.

Unfair Competition Law. California's unfair competition law prohibits any person from engaging in any unlawful or fraudulent business act. Proposition 64, enacted by the voters in November 2004, prohibits any person, other than the Attorney General or local public prosecutors, from bringing a lawsuit for unfair competition unless the person has suffered injury and lost money or property. The measure also imposes other restrictions on unfair competition cases.

Initiative Proposal

This initiative proposal would establish a new state program aimed at reducing the costs that certain low- and middle-income residents of the state would pay for prescription drugs purchased at pharmacies. Some major components of the proposal are outlined below.

Discount Card Program. Under the new pharmacy assistance program, which would be administered by DHS, eligible consumers would be able to apply for and subsequently obtain a card which, when presented at a pharmacy, would qualify them for discounts on their drug purchases. Participation in the program would be open to California residents in a family with an income up to 400 percent of the federal poverty level—up to about $37,000 a year for an individual or $75,000 for a family of four. The measure specifies that the discount cards would also be available to persons in families with higher incomes with unreimbursed medical expenses that exceed 5 percent of their family's income. Participants could be enrolled in Medicare but not in the Medi-Cal or Healthy Families programs.

Participants would enroll in the program by paying a $10 annual fee to pharmacies. The DHS would review applications and mail the cards to eligible participants.

Two types of discounts would result in lower prices for eligible consumers. Pharmacies that voluntarily chose to participate in the program would agree to sell prescription drugs at an agreed-upon discount negotiated in advance with the state. In addition, the state would receive rebates from drug makers that would be passed through to the consumers.

Pricing Provisions. This initiative states that DHS may not enter into a new contract or extend an existing contract with a drug maker for the Medi-Cal Program (including the contracts by which the state obtains supplemental rebates in trade for giving those drugs preferred status) if the drug maker did not sell its drugs at a significantly discounted price to the new pharmacy assistance program.

In particular, the measure specifies that DHS shall seek to contract for rebates from drug makers that would result in a net price for the new pharmacy assistance program that is equal to, or less than, the price required under federal law for drugs purchased for federally supported programs, such as Medi-Cal. If a drug maker did not agree to such a contract, its drugs could be subject to prior authorization in the Medi-Cal Program. The initiative directs DHS to seek federal approval for these provisions and specifies that these pricing provisions would be implemented consistent with federal law. It further specifies that these pricing provisions would not apply for drugs for which there was no therapeutic equivalent.

Coordination With Private Assistance Programs. The initiative directs DHS to implement agreements with pharmacy assistance programs operated by drug makers and other private groups so that the discount cards would automatically provide consumers with access to the best discount available to them for a particular drug purchase.

New State Advisory Board. The initiative would create a new nine-member Prescription Drug Advisory Board to review access to, and the pricing of, prescription drugs for state residents and to provide advice and regular reports on drug pricing issues to state officials.

Outreach Efforts. The measure directs DHS to conduct an outreach program to inform state residents of their opportunity to participate in the new pharmacy assistance program. The outreach activities are to be coordinated with the California Department of Aging (CDA), other state agencies, local agencies, and nonprofit organizations that serve residents who might be eligible for the program.

Business Assistance. This initiative directs DHS to establish a pharmacy assistance program to assist businesses, small employer purchasing pools, so-called Taft-Hartley health and welfare funds operated under collective bargaining agreements with labor organizations, and certain other entities that purchase health coverage for employees and their dependents. The DHS is directed under this measure to arrange for qualifying businesses and entities to get the same pharmacy discounts and rebates from drug makers to reduce their drug costs.

Anti-Profiteering Law. This initiative would make it a violation of state law for a drug maker to engage in illegal profiteering from the sale of prescription drugs. The definition of profiteering includes demanding "an unconscionable price" for a drug or demanding "prices or terms that lead to any unjust and unreasonable profit." Profiteering on drugs would be deemed a civil violation subject to prosecution by the Attorney General or by any person acting in the interests of itself, its members, or the

general public. Violations could be penalized in the amount of $100,000 or triple the amount of damages, whichever was greater, plus legal costs.

Fiscal Effect

State Costs for Administration and Outreach Activities. The DHS, CDA, and the newly created Prescription Drug Advisory Board would, in combination, incur significant startup costs as well as ongoing costs to implement the new pharmacy assistance program authorized under this initiative.

This would include administrative costs associated with establishing the new program, including any necessary new information technology systems that would be needed for its operation, operation of an Internet Web site and a call center to receive applications; processing of applications for drug discount cards; negotiation and collection of rebates from drug manufacturers; processing of prescription drug claims and payments of rebates; and monthly reporting of data related to the program. Additional administrative costs would result from the companion programs established under this measure to assist small businesses in obtaining drug discounts and to coordinate the state's drug pharmacy assistance program with other private programs. To the extent that additional prior authorizations of drugs are required as a result of this measure, DHS would incur additional administrative costs to process these prior authorization requests. The state would also incur costs for the proposed outreach program.

In the aggregate, these administrative and outreach costs would probably amount to the millions to low tens of millions of dollars annually. The exact fiscal effect would depend primarily on the extent of the outreach and enforcement activities that were undertaken under this measure and the number of consumers who chose to participate in the pharmacy assistance program.

These state costs could be partly offset, under the terms of the measure, by (1) up to a 5 percent share of the rebates collected from drug makers, (2) any private donations received by the state for the support of outreach efforts, and (3) any civil penalties recovered by the state from enforcement of the anti-profiteering provisions. Our analysis indicates that the rebate funding alone is unlikely to offset these state costs. The amount of donations that the state would receive for outreach or that it would recover from anti-profiteering prosecutions is unknown. However, it appears likely at this time that a significant share of program costs would be borne by the state General Fund.

One-Time Costs for "Float." This initiative would require that drug manufacturers pay rebates to the state on at least a quarterly basis. However, the initiative also requires that the state reimburse pharmacies for rebates within two weeks after a claim has been filed by a pharmacy because of a consumer's drug purchase. In other words, the state

will, in many cases, be obligated to pay out rebates to pharmacies before it actually collects the rebate funds from a drug maker. Moreover, any disputes that will likely arise over the actual amounts owed for rebates could further slow payments of rebate funds from drug makers to the state.

This funding gap between the time the rebate money comes to the state and when the state has to pay pharmacies is referred to as float costs. The amount of the largely one-time cost of the float are unknown, but could amount to the low tens of millions of dollars, depending on the level of participation in the new state pharmacy assistance program. These costs could be partly offset, under the terms of the measure, by any rebate funds that were collected in advance through agreements for this purpose with drug manufacturers. The amount of funding that the state would receive through such advance payments is unknown. Any float costs that were incurred in excess of these advance rebate payments would be borne by the state General Fund.

Unknown Costs and Savings From Pricing Provisions. The provisions in this measure that link the prices of drugs sold for the new pharmacy assistance program to the Medi-Cal Program, and thus potentially affect the state's receipt of supplemental rebates, could have several fiscal effects that would depend primarily upon whether the federal government approves of this linkage and upon how drug makers and prescribing doctors responded to these provisions. The net fiscal effect on the Medi-Cal Program is unknown but could be significant.

Potential Savings on State and County Health Program Costs. The pharmacy assistance program established under this initiative could provide some fiscal benefits to the state and to counties by reducing costs for health programs.

Absent the discounts available under such a pharmacy assistance program, some poorer uninsured individuals might forego the purchase of their prescribed drugs. Such individuals might eventually become disabled or require hospitalization as a result of their untreated medical conditions and thus add to Medi-Cal Program costs. Other individuals might "spend down" their financial assets on expensive drug purchases absent such discounts and become eligible for Medi-Cal. The exact fiscal benefit to the Medi-Cal Program from a pharmacy assistance program is unknown, but could be significant if the program enrolled a large number of consumers.

Similarly, the availability of such a pharmacy assistance program could also reduce costs for county indigent care by decreasing out-of-pocket drug expenses for poor persons who require medications, thereby making them less likely to rely on county hospitals or clinics for assistance. The extent of these potential savings are unknown.

Fiscal Effects of Anti-Profiteering Provision. This measure would have an unknown fiscal impact on state support for local trial courts, depending primarily on whether the measure increases the overall level of court workload. The number of civil cases that would result from this measure is unknown. The measure could result in some additional costs for the Attorney General to prosecute profiteering cases. However, these costs are estimated by the Department of Justice to be less than $1 million annually. However, these costs could be offset to the extent that the state collected civil penalties in cases where civil prosecutions were successful.

Summary

- One-time and ongoing state costs, potentially in the millions to low tens of millions of dollars annually, for administration and outreach activities for a new drug discount program. A significant share of these costs would probably be borne by the state General Fund.
- A largely one-time state cost, potentially in the low tens of millions of dollars, to cover the funding gap between the time when drug rebates are collected by the state and when the state pays funds to pharmacies for drug discounts provided to consumers. Any such costs not covered through advance rebate payments from drug makers would be borne by the state General Fund.
- Unknown costs and savings as a result of provisions linking drug prices for the new drug discount program to Medi-Cal prices, including the potential effect on the state's receipt of supplemental rebates; unknown savings on state and county health program costs due to the availability of drug discounts; and unknown costs and offsetting revenues from the anti-profiteering provisions.

Sincerely,

_____

Elizabeth G. Hill
Legislative Analyst

_____

Tom Campbell
Director of Finance

No. 114

CALIFORNIA LEGISLATURE

AT SACRAMENTO

2005–06 REGULAR SESSION

ASSEMBLY WEEKLY HISTORY

COMMENCING WITH AB 1 AND ENDING WITH AB 1913

THURSDAY, JANUARY 26, 2006

Assembly Convened December 6, 2004

HON. FABIAN NUÑEZ
Speaker

HON. LELAND YEE
Speaker pro Tempore

HON. DARIO FROMMER
Majority Floor Leader

HON. SALLY LIEBER
Assistant Speaker pro Tempore

HON. KEVIN McCARTHY
Minority Floor Leader

Compiled Under the Direction of
E. DOTSON WILSON
Chief Clerk

AMY LEACH
History Clerk
(Please Report Any Omissions or Errors to History Clerk Phone 319-2363)

A.B. No. 139—Committee on Budget (Laird (Chair), Arambula, Bermudez, Chan, Coto, De La Torre, Dymally, Evans, Goldberg, Hancock, Montanez, Mullin, Nava, Parra, Pavley, and Wolk).

An act to amend Sections 1721.5, 2154.4, 2499, 2529.5, 2534, 2568, 2687, 2894, 2981, 3455, 3520, 3771, 4974, 4984.6, 4994, 5683, 6980.81, 6980.82, 7599.71, 7599.74, 7886, 9872, and 17206 of the Business and Professions Code, to amend Section 1789.30 of the Civil Code, to repeal Article 13 (commencing with Section 14095) of Chapter 1 of part 5 of Division 3 of Title 1 of the Corporations Code, to add Section 4101.3 to the Food and Agricultural Code, to amend Sections 7076, 11011, 11044, 11260, 14612.2, 14670, 15849.6, 15863, 16427, 22877, 68085, 68085.5, 69926.5, and 71386 of, to amend and repeal Sections 11139.8 and 14840 of, and to add Sections 9147.5, 11544, 12587.1, 14982, 15849.7, 68085.6, 68085.7, and 68085.8 to, the Government Code, to amend Sections 50517.10, 50601, 50603, 50710.1, and 53533 of the Health and Safety Code, to amend Section 96.7 of the Labor Code, to amend Section 1401 of, to amend and repeal Section 999.7 of, and to add Sections 1402 and 1403 to, the military and Veterans Code, to amend Section 1214.1 of the Penal Code, to amend Section 6611 of, to amend and repeal Sections 10115.5, 10116, and 10359 of, and to add Section 10111 to, the Public Contract Code, to add Section 42102 to the Public Resources Code, to amend Section 5003.2 of the Public Utilities Code, to amend Sections 97.76, 6479.3, 19183, and 19701 of, and to add Sections 18631.7 and 19523.5 to, the Revenue and Taxation Code, to add Section 9619 to the unemployment Insurance Code, to add Chapter 3.2 (commencing with Section 18220) to part 6 of Division 9 of the Welfare and Institutions Code, and to amend Section 16 of Chapter 876 of the Statutes of 2003, relating to state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

2005

Jan. 13—Read first time. To print.
Jan. 14—From printer. May be heard in committee February 13.
Jan. 24—Referred to Com. on BUDGET.
May 3—From committee: Do pass. (Ayes 14. Noes 0.) (April 28).
May 4—Read second time. To third reading.
May 5—Read third time, passed, and to Senate. (Ayes 45. Noes 0. Page 1382.)
May 5—In Senate. Read first time. To Com. on RLS. for assignment.
May 19—Referred to Com. on RLS.
June 13—Withdrawn from committee. Ordered placed on second reading file.
June 14—Read second time. To third reading.
July 6—Read third time, amended, and returned to third reading.
July 7—Senate Rule 29.3 suspended. Read third time. Urgency clause adopted. Passed and to Assembly. (Ayes 27. Noes 10. Page 1889.)
July 7—In Assembly. Concurrence in Senate amendments pending. May be considered on or after pursuant to Assembly Rule 77. Assembly Rule 77 suspended. (Page 2579.) Urgency clause adopted. Senate amendments concurred in. To enrollment. (Ayes 59. Noes 19. Page 2579.)
July 11—Enrolled and to the Governor at 1:45 p.m.
July 19—Approved by the Governor.
July 19—Chaptered by Secretary of State - Chapter 74, Statutes of 2005.

ASSEMBLY BILL No. 139

Introduced by Committee on Budget (Laird (Chair), Arambula, Bermudez, Chan, Coto, De La Torre, Dymally, Evans, Goldberg, Hancock, Montanez, Mullin, Nava, Parra, Pavley, and Wolk)

January 13, 2005

An act relating to the Budget Act of 2005.

LEGISLATIVE COUNSEL'S DIGEST

AB 139, as introduced, Committee on Budget. Budget Act of 2005.

This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2005.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2005.

O

Budget Committee **None**

139 (BUDGET)

BUDGET ACT OF 2005

Version: 1/13/05

Vote:

Rick Keene

Tax or Fee Increase:

Legislation intended to make statutory changes needed to implement the ultimate budget agreement for 2005-06.

2005-06 Budget Trailer Bill.

Budget Votes (14-0) 4/28/05

Ayes: None

Noes: None

Abs. / NV: Keene, Benoit, Blakeslee, Cogdill, Daucher, De Vore, Niello, Plescia, Villines sm - 05/04/2005 2:51:28 PM

Floor Votes (45-0) 5/5/05

Ayes: Houston

Noes: All Other Republicans

Abs. / NV: None js - 06/23/2005 12:48:58 PM

Votes (0-0) 1/1/05

Ayes: None

Noes: None

Abs. / NV: None

Votes (0-0) 1/1/05

Ayes: None

Noes: None

Abs. / NV: None

Policy Question

Should the Legislature enact statutory changes consistent with the spending plan that will be included in the 2005-06 Budget Act?

Summary

This is a 2005-06 budget trailer bill for any statutory changes needed to implement the 2005-06 budget. In its current form, this bill is an intent statement.

Support

None.

Opposition

None.

Arguments In Support of the Bill

Would provide a vehicle for statutory changes necessary to implement the budget.

Arguments In Opposition to the Bill

None.

Fiscal Effect

NO STATE COSTS.

Comments

This bill is one of 27 bills that are being moved through the fiscal committee to the Floor, so that they can be used as "trailer vehicles" for implementing the 2005-06 budget.

Fiscal Consultant: Peter Schaafsma 4/15/05

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: AB 139
Author: Assembly Budget Committee
Amended: 6/15/05 in Senate
Vote: 27 - Urgency

WITHOUT REFERENCE TO COMMITTEE

ASSEMBLY FLOOR: Not relevant

SUBJECT: An act relating to the Budget Act of 2005

SOURCE: Author

DIGEST: This bill provides the necessary statutory changes in the area of general government in order to enact the 2005 Budget Act.

ANALYSIS: This is the omnibus general government trailer bill for the Budget Act of 2005. Major changes are as follows:

1. Public Works Board Bond Authority. Revises statute to clarify existing State Public Works Board (PWB) authority to issue bonds for any phase of a lease-revenue bond funded project. This change was necessitated by a recent Attorney General's finding that appropriations previously provided for certain University of California projects did not specifically authorize the PWB to issue bonds for the design and equipment phases.

2. Electronic Remittance Thresholds. Revises the threshold for individuals required to make electronic sales tax payments to the Board of Equalization from $20,000 to $10,000 per month.

CONTINUED

3. Prescription Drug Procurement Reforms. Amends statute to generate savings from prescription drug procurements by: requiring collaboration among state drug purchasers; directing the University of California and Department of General Services (DGS) to identify consolidated drug purchasing activities; requiring DGS to develop an annual work plan for purchasing drugs; and requiring DGS to participate in drug reviews. This Legislative direction will strengthen the state's ability to find and negotiate lower prescription drug prices and is estimated to save the state several million dollars.

4. Property Acquisition Law Account. Creates the Property Acquisition Law Account to facilitate the Department of General Services' management of the state's real property assets. Additionally, revenues generated from the sale of real property assets will be applied to the repayment of the Economic Recovery Bond, authorized by the state's voters in March 2004, until that debt is repaid. Thereafter, those revenues will be transferred to the Special Fund for Economic Uncertainties.

5. Procurement Reporting. Revises and updates the requirements for departments to report on contract activity and sunsets the sections of code superseded by these revisions.

6. Tax Gap Enforcement Programs. Amends statute to implement the Governor's "tax gap" budget proposal (estimated to generate more than $32 million in new revenues) and address specific areas of the underground economy and tax noncompliance. Specifically, the amendments would require check cashers to report specific information for unusual cash transactions and make federal conforming changes to statute related to penalties for tax practitioners who commit fraud.

7. Misdemeanor Program. Restricts the authority of the Franchise Tax Board to pursue misdemeanor prosecution of tax scofflaws by revising statute to confine prosecutions to a higher level of debt, an extended period of nonresponsiveness, and stipulation that the taxpayer not suffer from a mental illness that would hinder their comprehension of their debt owed to the state.

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8. Rural Health Care Equity Program. Continuously appropriates General Funds, not to exceed expenditures of $15.3 million, to support secondary claims in the Rural Health Care Equity Program. This same amount is reverted to the General Fund by the 2005 Budget Act, because future claims are not anticipated at the level needed to liquidate the existing balance. The continuous appropriation was proposed to allow the reversion of funds, without violating any contractual obligations with employee bargaining units.

9. Proposition 46 Farmworker Housing Funds. Allows an additional $5.2 million in Proposition 46 bond funds to be used for Office of Migrant Services facility rehabilitation. Revises the Migrant Farmworker Housing Grant Program requirements to encourage additional applications, allow for-profit entities to apply, and extend the current program deadline by one year.

10. Proposition 46 Preservation Housing Funds. Requires that all money received from the repayment of loans made under the Preservation Opportunity Program be deposited into the Housing Rehabilitation Loan Fund, except for $5.0 million. The Governor had requested all Preservation Opportunity Program funds be transferred to the Housing Rehabilitation Loan Fund as part of his proposed Homeless Initiative. The Legislature revised the language to retain $5.0 million in the Preservation Opportunity Program, which still provides sufficient resources for the Homeless Initiative.

11. State-Funded Migrant Housing Rents. Restricts rents at state-funded migrant housing such that rents cannot exceed 30 percent of the average farmworker household income without specific legislative authorization.

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15. Medically Underserved Account Appropriation. Modifies the existing continuous appropriation for the Medically Underserved Account to allow expenditure of $3 million transferred to the Account from the Managed Risk Medical Insurance Program. The Medically Underserved Account was created to repay student loans for physicians who have committed to work in underserved areas, as per agreement made under the terms of the Steven M. Thompson Physicians Corps Loan Repayment Program.

16. Northern California Veterans' Cemetery. Adds language that specifies the Northern California Veterans' Cemetery may accept donations of personal property, including cash or other gifts, to be used for the maintenance or beautification of the cemetery.

17. Industrial Relations Unpaid Wage Fund. Updates the required fund reserve for the Unpaid Wage Fund from $200,000 to a reserve that equals six-months of expenditures. The language maintains the requirement that funds exceeding the reserve be transferred to the General Fund.

18. Regional Nursing Simulation Laboratories. Adds language that grants authority to the Employment Development Department to award grants to regional collaboratives for the creation of regional nursing simulation laboratories. Limits each grant to a maximum of $250,000 and specifies that funds appropriated by the 2005 Budget Act shall be used for the creation of regional nursing simulation laboratories that serve rural areas.

19. California Science Center Phase II Construction. Adds language to allow the California Science Center to enter into a site lease with the California Science Center Foundation, a California Nonprofit Corporation, for the purpose of constructing the project known as Phase II of the California Science Center. The language has the effect of shifting responsibility for any cost overruns from the state to the Foundation.

20. Chrome Plating Pollution Prevention. Transfers funds in the Hazardous Waste Reduction Loan Account to the newly-created Chrome Plating Pollution Fund. Specifies that the language shall only become operative if legislation is enacted and becomes operative before July 1, 2006, that requires the funds transferred to be expended for environmental control technologies for chrome and metal plating related activities.

21. Court Security Fee Sunset Extension. Extends the court security surcharge fee of $20 on court filing fees that sunset on June 30, 2005. The extension would be in effect for an additional year expiring June 30, 2006, or until the enactment of legislation establishing a uniform civil filing fee, whichever occurs first.

22. Undesignated Fees from Counties. Realigns the distribution of undesignated court fees between the courts and the counties. Undesignated fees are fees that were not specifically allocated to either the counties or the courts under the Trial Court Funding Act of 1997. Existing law requires the counties to remit $31 million to the courts related to undesignated fees. These amendments would reduce the county obligation as specified below over five years. The amount of the fees going to the courts would be as follows: $20 million in 2005-06; $15 million in 2006-07; $10 million in 2007-08; $5 million in 2008-09; zero in 2009-10 and subsequent years.

    Increases the maximum civil assessment that a court could impose against a criminal defendant from $250 to $300. The revenue from the increase, in combination with improved enforcement of the fee collection process, is expected to offset the decrease in the undesignated fees going to the courts.

23. Allocation of Juvenile Probation Funding. Specifies the allocation of funding to county probation departments to provide services for children who are runaways, habitual truants, at risk of being wards of the juvenile court, or are under juvenile court supervision or supervision of the probation department, consistent with current practice.

24. Annual Reports on Homeland Security Expenditures. Requires the Director of Homeland Security, in collaboration with the Department of Health Services to report annually to the Legislature on the expenditure of federal homeland security and bioterrorism funds.

25. Corporate Responsibility Unit Funding Authority. Existing law requires the investigation and enforcement of certain securities and commodities laws by the Attorney General and the Commissioner of Corporations be accomplished without duplication of effort. Existing law further provides that to the extent that the Attorney General exercises this authority it shall be done within existing resources. These amendments would revise those provisions to provide that no General Fund augmentations be made for this purpose.

26. Establish Registry of Charitable Trusts Fund. Establishes a Registry of Charitable Trusts Fund in the State Treasury and require that moneys in the fund, upon appropriation by the Legislature, can only be used to operate and maintain the Attorney General's Registry of Charitable Trusts and to provide public access via the internet to reports filed with the Attorney General.

27. Establish Unfair Competition Law Fund. Creates the Unfair Competition Law Fund and would require that the civil penalty recovered by the Attorney General in unfair competition and unfair business practice actions be deposited into the fund and expended, upon appropriation by the Legislature, for investigation and prosecution of these types of actions.

28. Establish the Legal Services Revolving Fund. Creates the Legal Services Revolving Fund and require state agency payments for legal services performed by the Attorney General to be deposited into the new fund. Authorizes the Attorney General to expend money in the fund for litigation activities, upon appropriation by the Legislature. Further provides that revenues transferred to the Legal Services Revolving Fund from the Litigation Deposit Fund may be expended only if approved by the Department of Finance.

29. Household Goods Carrier Fee. Increases the maximum fee the California Public Utilities Commission can charge household goods carriers for regulation of the household goods carrier industry. This fee increase would raise approximately $500,000 for deposit in the Transportation Rate Fund.

CONTINUED

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

JJA:do 6/15/05 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

****** END ******

SENATE FLOOR AMENDMENTS COMMITTEE ANALYSIS

Bill No: AB 139
Author: Committee on Budget and Fiscal Review
RN: 0515569
Set: 1
Submitted by: Chesbro

SUBJECT OF BILL: An act relating to the Budget Act of 2005

Subject of Amendments: Budget Trailer Bill Related to General Government

Amendments are: Technical / Substantive / Re-write Bill / New Bill

Were these amendments discussed in committee? No
If yes, were they defeated?

Likely opposition to amendments? Unknown
If yes, from whom?

Purpose of Amendments: These amendments provide the necessary statutory changes in the area of general government in order to enact the 2005 Budget Act.

Urgency:
This bill has an urgency clause for immediate implementation.

ANALYSIS: This is the omnibus general government trailer bill for the Budget Act of 2005. Major changes are as follows:

1. **Public Works Board Bond Authority**. Revises statute to clarify existing State Public Works Board (PWB) authority to issue bonds for any phase of a lease-revenue bond funded project. This change was necessitated by a recent Attorney General's finding that appropriations previously provided for certain University of California projects did not specifically authorize the PWB to issue bonds for the design and equipment phases.

2. **Electronic Remittance Thresholds.** Revises the threshold for individuals required to make electronic sales tax payments to the Board of Equalization from $20,000 to $10,000 per month.

3. **Prescription Drug Procurement Reforms**. Amends statute to generate savings from prescription drug procurements by: requiring collaboration among state drug purchasers; directing the University of California and Department of General Services (DGS) to identify consolidated drug purchasing activities; requiring DGS to develop an annual work plan for purchasing drugs; and requiring DGS to participate in drug reviews. This Legislative direction will strengthen the state's ability to find and negotiate lower prescription drug prices and is estimated to save the state several million dollars.

4. **Property Acquisition Law Account.** Creates the Property Acquisition Law Account to facilitate the Department of General Services' management of the state's real property assets. Additionally, revenues generated from the sale of real property assets will be applied to the repayment of the Economic Recovery Bond, authorized by the state's voters in March 2004, until that debt is repaid. Thereafter, those revenues will be transferred to the Special Fund for Economic Uncertainties.

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6. **Tax Gap Enforcement Programs.** Amends statute to implement the Governor's "tax gap" budget proposal (estimated to generate more than $32 million in new revenues) and address specific areas of the underground economy and tax noncompliance. Specifically, the amendments would require check cashers to report specific information for unusual cash transactions and make federal conforming changes to statute related to penalties for tax practitioners who commit fraud.

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8. **Rural Health Care Equity Program.** Continuously appropriates General Funds, not to exceed expenditures of $15.3 million, to support secondary claims in the Rural Health Care Equity Program. This same amount is reverted to the General Fund by the 2005 Budget Act, because future claims are not anticipated at the level needed to liquidate the existing balance. The continuous appropriation was proposed to

allow the reversion of funds, without violating any contractual obligations with employee bargaining units.

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By: Senate Budget and Fiscal Review--(Brian Annis, Keely Martin Bosler, Alex MacBain, Dave O'Toole)

Date: June 15, 2005

**** END ****

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: AB 139
Author: Assembly Budget Committee
Amended: 6/30/05 in Senate
Vote: 27 - Urgency

WITHOUT REFERENCE TO COMMITTEE

ASSEMBLY FLOOR: Not relevant

SUBJECT: An act relating to the Budget Act of 2005

SOURCE: Author

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8. ReadyReturn Program. Limits the ReadyReturn taxpayer filing program to the same level and manner as the program operated in the 2004-05 fiscal year. The ReadyReturn program will expire at the close

CONTINUED

of the 2005-06 fiscal year unless subsequent legislation authorizes its continuation.

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30. Household Goods Carrier Fee. Increases the maximum fee the California Public Utilities Commission can charge household goods carriers for regulation of the household goods carrier industry. This fee increase would raise approximately $500,000 for deposit in the Transportation Rate Fund.

CONTINUED

31. Homicide Trials. Specifies that Stanislaus County be eligible for 100 percent of any extraordinary costs incurred for the People v. Peterson homicide trial.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

JJA:do 6/30/05 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

****** END ******

SENATE FLOOR AMENDMENTS COMMITTEE ANALYSIS

Bill No: AB 139
Author: Committee on Budget and Fiscal Review
RN: 0516783
Set: 1
Submitted by: Chesbro

SUBJECT OF BILL: An act relating to the Budget Act of 2005

Subject of Amendments: Budget Trailer Bill Related to General Government

Amendments are: Technical / Substantive / Re-write Bill / New Bill

Were these amendments discussed in committee? No
If yes, were they defeated?

Likely opposition to amendments? Unknown
If yes, from whom?

Purpose of Amendments: These amendments provide the necessary statutory changes in the area of general government in order to enact the 2005 Budget Act.

Urgency:
This bill has an urgency clause for immediate implementation.

ANALYSIS: This is the omnibus general government trailer bill for the Budget Act of 2005. Major changes are as follows:

1. **Public Works Board Bond Authority**. Revises statute to clarify existing State Public Works Board (PWB) authority to issue bonds for any phase of a lease-revenue bond funded project. This change was necessitated by a recent Attorney General's finding that appropriations previously provided for certain University of California projects did not specifically authorize the PWB to issue bonds for the design and equipment phases.

2. **Electronic Remittance Thresholds.** Revises the threshold for individuals required to make electronic sales tax paymentsto the Board of Equalization from $20,000 to $10,000 per month.

3. **Prescription Drug Procurement Reforms**. Amends statute to generate savings from prescription drug procurements by: requiring collaboration among state drug purchasers; directing the University of California and Department of General Services (DGS) to identify consolidated drug purchasing activities; requiring DGS to develop an annual work plan for purchasing drugs; and requiring DGS to participate in drug reviews. This Legislative direction will strengthen the state's ability to find and negotiate lower prescription drug prices and is estimated to save the state several million dollars.

4. **Property Acquisition Law Account.** Creates the Property Acquisition Law Account to facilitate the Department of General Services' management of the state's real property assets. Additionally, revenues generated from the sale of real property assets will be applied to the repayment of the Economic Recovery Bond, authorized by the state's voters in March 2004, until that debt is repaid. Thereafter, those revenues will be transferred to the Special Fund for Economic Uncertainties.

5. **Procurement Reporting**. Revises and updates the requirements for departments to report on contract activity and sunsets the sections of code superseded by these revisions.

6. **Tax Gap Enforcement Programs.** Amends statute to implement the Governor's "tax gap" budget proposal (estimated to generate more than $32 million in new revenues) and address specific areas of the underground economy and tax noncompliance. Specifically, the amendments would require check cashers to report specific information for unusual cash transactions and make federal conforming changes to statute related to penalties for tax practitioners who commit fraud.

7. **Misdemeanor Program.** Restricts the authority of the Franchise Tax Board to pursue misdemeanor prosecution of tax scofflaws by revising statute to confine prosecutions to a higher level of debt, an extended period of nonresponsiveness, and stipulation that the taxpayer not suffer from a mental illness that would hinder their comprehension of their debt owed to the state.

8. **ReadyReturn Program.** Limits the ReadyReturn taxpayer filing program to the same level and manner as the program operated in the 2004-05 fiscal year. The ReadyReturn program will expire at the close of the 2005-06 fiscal year unless subsequent legislation authorizes its continuation.

9. **Rural Health Care Equity Program.** Continuously appropriates General Funds, not to exceed expenditures of $15.3 million, to support secondary claims in the Rural Health Care Equity Program. This same amount is reverted to the General Fund by the 2005 Budget Act, because future claims are not anticipated at the level needed to liquidate the existing balance. The continuous appropriation was proposed to allow the reversion of funds, without violating any contractual obligations with employee bargaining units.

10. **Proposition 46 Farmworker Housing Funds.** Allows an additional $5.2 million in Proposition 46 bond funds to be used for Office of Migrant Services facility rehabilitation. Revises the Migrant Farmworker Housing Grant Program requirements to encourage additional applications, allow for-profit entities to apply, and extend the current program deadline by one year.

11. **Proposition 46 Preservation Housing Funds.** Requires that all money received from the repayment of loans made under the Preservation Opportunity Program be deposited into the Housing Rehabilitation Loan Fund, except for $5.0 million. The Governor had requested all Preservation Opportunity Program funds be transferred to the Housing Rehabilitation Loan Fund as part of his proposed Homeless Initiative. The Legislature revised the language to retain $5.0 million in the Preservation Opportunity Program, which still provides sufficient resources for the Homeless Initiative.

12. **State-Funded Migrant Housing Rents.** Restricts rents at state-funded migrant housing such that rents cannot exceed 30 percent of the average farmworker household income without specific legislative authorization.

13. **Economic Opportunity Zones.** Moves the sunset date for Enterprise Zone fees from July 1, 2006, to January 1, 2007.

14. **Department of Technology Services Appropriation.** Deletes the continuous appropriation authority for the Department of Technology Services (DTS). DTS is proposed to be created by the Governor's Reorganization Plan No. 2 of 2005.

15. **Department of Consumer Affairs Appropriations.** Deletes the continuous appropriation authority for various special finds that support boards and commissions in the Department of Consumer Affairs. These amendments are primarily technical in nature, since these boards and commissions have received Budget Act appropriations in recent years.

16. **Medically Underserved Account Appropriation.** Modifies the existing continuous appropriation for the Medically Underserved Account to allow expenditure of $3 million transferred to the Account from the Managed Risk Medical Insurance Program. The Medically Underserved Account was created to repay student loans for physicians who have committed to work in underserved areas, as per agreement made under the terms of the Steven M. Thompson Physicians Corps Loan Repayment Program.

17. **Northern California Veterans' Cemetery.** Adds language that specifies the Northern California Veterans' Cemetery may accept donations of personal property, including cash or other gifts, to be used for the maintenance or beautification of the cemetery.

18. **Industrial Relations Unpaid Wage Fund.** Updates the required fund reserve for the Unpaid Wage Fund from $200,000 to a reserve that equals six-months of expenditures. The language maintains the requirement that funds exceeding the reserve be transferred to the General Fund.

19. **Regional Nursing Simulation Laboratories.** Adds language that grants authority to the Employment Development Department to award grants to regional collaboratives for the creation of regional nursing simulation laboratories. Limits each grant to a maximum of $250,000 and specifies that funds appropriated by the 2005 Budget Act shall be used for the creation of regional nursing simulation laboratories that serve rural areas.

20. **California Science Center Phase II Construction.** Adds language to allow the California Science Center to enter into a site lease with the California Science Center Foundation, a California Nonprofit Corporation, for the purpose of constructing the project known as Phase II of the California Science Center. The language has the effect of shifting responsibility for any cost overruns from the state to the Foundation.

21. **Chrome Plating Pollution Prevention.** Transfers funds in the Hazardous Waste Reduction Loan Account to the newly-created Chrome Plating Pollution Fund. Specifies that the language shall only become operative if legislation is enacted and becomes operative before July 1, 2006, that requires the funds transferred to be expended for environmental control technologies for chrome and metal-plating related activities.

22. **Court Security Fee Sunset Extension.** Extends the court security surcharge fee of $20 on court filing fees that sunset on June 30, 2005. The extension would be in effect for an additional year expiring June 30, 2006, or until the enactment of legislation establishing a uniform civil filing fee – whichever occurs first.

23. **Undesignated Fees from Counties.** Realigns the distribution of undesignated court fees between the courts and the counties. Undesignated fees are fees that were not specifically allocated to either the counties or the courts under the Trial Court Funding Act of 1997. Existing law requires the counties to remit $31 million to the courts related to undesignated fees. These amendments would reduce the county obligation as specified below over five years. The amount of the fees going to the courts would be as follows: $20 million in 2005-06; $15 million in 2006-07; $10 million in 2007-08; $5 million in 2008-09; zero in 2009-10 and subsequent years.

    Increases the maximum civil assessment that a court could impose against a criminal defendant from $250 to $300. The revenue from the increase, in combination with improved enforcement of the fee collection process, is expected to offset the decrease in the undesignated fees going to the courts.

24. **Allocation of Juvenile Probation Funding.** Specifies the allocation of funding to county probation departments to provide services for children who are runaways, habitual truants, at risk of being wards of the juvenile court, or are under juvenile court supervision or supervision of the probation department, consistent with current practice.

25. **Annual Reports on Homeland Security Expenditures.** Requires the Director of Homeland Security, in collaboration with the Department of Health Services to report annually to the Legislature on the expenditure of federal homeland security and bioterrorism funds.

26. **Corporate Responsibility Unit Funding Authority.** Existing law requires the investigation and enforcement of certain securities and commodities laws by the Attorney General and the Commissioner of Corporations be accomplished without duplication of effort. Existing law further provides that to the extent that the Attorney General exercises this authority it shall be done within existing resources. These amendments would revise those provisions to provide that no General Fund augmentations be made for this purpose.

27. **Establish Registry of Charitable Trusts Fund.** Establishesa Registry of Charitable Trusts Fund in the State Treasury and require that moneys in the fund, upon appropriation by the Legislature, can only be used to operate and maintain the Attorney General's Registry of Charitable Trusts and to provide public access via the internet to reports filed with the Attorney General.

28. **Establish Unfair Competition Law Fund.** Creates the Unfair Competition Law Fund and would require that the civil penalty recovered by the Attorney General in unfair competition and unfair business practice actions be deposited into the fund and expended, upon appropriation by the Legislature, for investigation and prosecution of these types of actions.

29. **Establish the Legal Services Revolving Fund**. Creates the Legal Services Revolving Fund and require state agency payments for legal services performed by the Attorney General to be deposited into the new fund. Authorizes the Attorney General to expend money in the fund for litigation activities, upon appropriation by the Legislature. Further provides that revenues transferred to the Legal Services Revolving Fund from the Litigation Deposit Fund may be expended only if approved by the Department of Finance.

30. **Household Goods Carrier Fee.** Increases the maximum fee the California Public Utilities Commission can charge household goods carriers for regulation of the household goods carrier industry. This fee increase would raise approximately $500,000 for deposit in the Transportation Rate Fund.

31. **Homicide Trials.** Specifies that Stanislaus County be eligible for 100 percent of any extraordinary costs incurredfor the People v. Peterson homicide trial.

By: Senate Budget and Fiscal Review--(Brian Annis, Keely Martin Bosler, Alex MacBain, Dave O'Toole)

Date: June 30, 2005

**** END ****

AMENDED IN SENATE JULY 6, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL No. 139

Introduced by Committee on Budget (Laird (Chair), Arambula, Bermudez, Chan, Coto, De La Torre, Dymally, Evans, Goldberg, Hancock, Montanez, Mullin, Nava, Parra, Pavley, and Wolk)

January 13, 2005

~~An act relating to the Budget Act of 2005.~~ *An act to amend Sections 1721.5, 2154.4, 2499, 2529.5, 2534, 2568, 2687, 2894, 2981, 3455, 3520, 3771, 4974, 4984.6, 4994, 5683, 6980.81, 6980.82, 7599.71, 7599.74, 7886, 9872, and 17206 of the Business and Professions Code, to amend Section 1789.30 of the Civil Code, to repeal Article 13 (commencing with Section 14095) of Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations Code, to add Section 4101.3 to the Food and Agricultural Code, to amend Sections 7076, 11011, 11044, 11260, 14612.2, 14670, 15849.6, 15863, 16427, 22877, 68085, 68085.5, 69926.5, and 71386 of, to amend and repeal Sections 11139.8 and 14840 of, and to add Sections 9147.5, 11544, 12587.1, 14982, 15849.7, 68085.6, 68085.7, and 68085.8 to, the Government Code, to amend Sections 50517.10, 50601, 50603, 50710.1, and 53533 of the Health and Safety Code, to amend Section 96.7 of the Labor Code, to amend Section 1401 of, to amend and repeal Section 999.7 of, and to add Sections 1402 and 1403 to, the Military and Veterans Code, to amend Section 1214.1 of the Penal Code, to amend Section 6611 of, to amend and repeal Sections 10115.5, 10116, and 10359 of, and to add Section 10111 to, the Public Contract Code, to add Section 42102 to the Public Resources Code, to amend Section 5003.2 of the Public Utilities Code, to amend Sections 97.76, 6479.3, 19183, and 19701 of, and to add Sections 18631.7 and 19523.5 to, the*

Revenue and Taxation Code, to add Section 9619 to the Unemployment Insurance Code, to add Chapter 3.2 (commencing with Section 18220) to Part 6 of Division 9 of the Welfare and Institutions Code, and to amend Section 16 of Chapter 876 of the Statutes of 2003, relating to state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 139, as amended, Committee on Budget. ~~Budget Act of 2005.~~ *State government.*

(1) Existing law creates various boards and other entities under the jurisdiction of the Department of Consumer Affairs with certain licensing and regulatory functions relative to various professions and vocations. Existing law, with respect to the funds created for certain of these entities, provides that the money in those funds is continuously appropriated for particular purposes.

This bill would delete the continuous appropriations applicable to certain funds. The bill would make other related changes.

(2) Existing law, the Medical Practice Act, regulates the practice of medicine in this state. Existing law establishes the Medically Underserved Account in the Contingent Fund of the Medical Board of California. Under existing law, specified moneys in the account are continuously appropriated to repay loans per agreements with physicians who practice in underserved areas.

This bill would continuously appropriate all funds in the account for these purposes.

(3) Existing law authorizes the Attorney General and other public prosecutors to bring an action for relief from an act of unfair competition, as defined. Under existing law, a civil penalty may be assessed in the action that is designated for the exclusive use of a public prosecutor, including the Attorney General, for enforcing consumer protection laws.

This bill would create the Unfair Competition Law Fund and would require that the civil penalty recovered by the Attorney General in unfair competition and unfair business practice actions be deposited into the fund and expended, upon appropriation by the Legislature, for investigation and prosecution of these actions, and various other activities.

(4) Existing law regulates persons engaged in the business of making or negotiating deferred deposit transactions and requires every check casher to post a complete and detailed schedule of all fees for cashing checks, drafts, money orders, or other commercial paper, and the sale or issuance of money orders.

This bill would additionally require a check casher who cashes checks for the same person in an aggregate amount exceeding $10,000 within one calendar year, as provided, to file an informational return with the Franchise Tax Board, as specified. This bill would impose civil penalties on persons who fail to file these returns or fail to supply all of the information required by these returns. In the case of willful failures, this bill would make these failures a new criminal felony and would thereby impose a state-mandated local program.

(5) Existing law provides for the creation, maintenance, and authority of the Sixth District Agricultural Association, which is known as the California Science Center, and which is a tax-exempt organization and instrumentality of the state.

This bill would authorize the center to enter into a site lease and lease-purchase agreement with the California Science Center Foundation for the purpose of constructing and funding of the Phase II Project of the center, as specified.

(5.5) The Enterprise Zone Act requires the Department of Housing and Community Development to administer the act and to designate no more than 42 enterprise zones at any one time that may be proposed by a city, county, or city and county from applications selected on the basis of the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives in attracting private sector investment in the zone proposed. The act also requires the department to provide technical assistance to the enterprise zones and authorizes the department to establish, charge, and collect a fee as reimbursement for the costs of its administration of the act.

Existing law allows a credit against the net tax, as defined, to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year.

Existing law requires the Department of Housing and Community Development, until July 1, 2006, to assess an enterprise zone a fee of not more than $10 for each application it accepts for issuance of a tax credit certificate.

This bill would extend the assessment of this $10 fee until January 1, 2007.

(6) Existing law generally sets forth the duties of the Director of Homeland Security in overseeing homeland security activities in the state.

Existing law sets forth the duties of the State Department of Health Services in allocating specified federal funds for activities related to bioterrorism preparedness and response.

This bill would require the director, in collaboration with the department, to annually report to the chairperson of the Joint Legislative Budget Committee and the chairperson of the budget committee of each house of the Legislature, on their respective expenditures of federal homeland security and bioterrorism funds.

(7) Existing law requires generally that moneys received from the disposition of state property shall be paid into the General Fund.

This bill instead would require that the net proceeds, as defined, that are received from any state real property disposition shall be paid into the Deficit Recovery Bond Retirement Sinking Fund Account, a continuously appropriated fund, until the bonds issued pursuant to the Economic Recovery Bond Act are retired, thereby making an appropriation, and thereafter shall be deposited in the Special Fund for Economic Uncertainties. The bill would authorize the Director of Finance to approve loans from the General Fund to the Property Acquisition Law Money Account, which would be created by this bill and would be available for expenditure by the Department of General Services upon appropriation by the Legislature. The bill would provide that these changes are effective retroactively to November 3, 2004.

(8) Existing law authorizes the Director of General Services, with the consent of the state agency involved, to let for a period of not to exceed 5 years, any real or personal property that belongs to the state, subject to specified conditions. Any money received in connection with these leases is required to be deposited in the General Fund for appropriation to the department for specified purposes.

This bill instead would require that any money received in connection with these leases be deposited in the Property Acquisition Law Money Account and be available to the department upon appropriation by the Legislature.

(8.5) Existing law provides that no state agency is required to use the Office of State Publishing for its printing needs until the effective

date of the Budget Act of 2005 or July 1, 2005, whichever is later and this provision of existing law is repealed on January 1, 2006.

This bill would continue to provide that no state agency is required to use the Office of State Publishing for its printing needs until the effective date of the Budget Act of 2006 or July 1, 2006, whichever is later, and would repeal this provision on January 1, 2007.

(9) Existing law generally makes the Attorney General responsible for representing state agencies in litigation matters. Under existing law, revenues in the Litigation Deposits Fund are continuously appropriated to the Department of Justice for litigation purposes.

This bill would create the Legal Services Revolving Fund and require state agency payments for legal services rendered by the Attorney General to be deposited therein. The bill would authorize the Attorney General to expend the money in the fund, upon appropriation by the Legislature, for litigation activities. The bill would further provide that revenues transferred to the Legal Services Revolving Fund from the Litigation Deposits Fund may be expended by the Department of Justice only if approved by the Department of Finance.

(10) Existing law requires the Controller, after work is performed, services are rendered, or materials or equipment are furnished by one state agency to another state agency through the advancement or transfer of funds, to transfer the amount ordered by the Director of General Services and adjust the accounts relative to the advancements or transfers to credit the appropriate fund or appropriation.

This bill would require the Controller, instead, to process transfers from time to time as requested by the state agency that performed the work.

(11) Under existing law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act governs charitable corporations, unincorporated associations trustees, commercial fundraisers, fundraising counsel, commercial coventurers, and other legal entities who hold or solicit property for charitable purposes over which the Attorney General has enforcement and supervisory powers. Under the act, the Attorney General is also required to establish and maintain a register of charitable corporations, unincorporated associations, and trustees subject to the act and copies of specified financial reports required to be filed under the act.

This bill would establish the Registry of Charitable Trusts Fund in the State Treasury, as specified. The bill would require that moneys in the fund, upon appropriation by the Legislature, be used by the

Attorney General solely to operate and maintain the Attorney General's Registry of Charitable Trusts and provide public access via the Internet to reports filed with the Attorney General.

(12) Existing law authorizes the Department of General Services to procure prescription drugs on behalf of specified state agencies through bulk purchasing and to investigate and implement other strategies to achieve the greatest savings on prescription drugs with prescription drug manufacturers and wholesalers.

This bill would state the intent of the Legislature that the Department of General Services, University of California, and the Public Employees Retirement System regularly meet and share information regarding each agency's procurement of prescription drugs in an effort to identify and implement opportunities for cost savings in connection with this procurement. It would require the department to annually develop a work plan and to report, no later than January 10, 2006, and annually thereafter, to the chairperson of the Joint Legislative Budget Committee and the chairs of the fiscal committees of the Legislature on any joint activities of these agencies in connection with procurement of prescription drugs and any resulting cost savings.

(13) Existing law authorizes the State Public Works Board to issue bonds, notes, or other obligations to finance the acquisition or construction of a public building, facility, or equipment as authorized by the Legislature in the total amount authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing. The additional cost may include, among other things, interest during acquisition or construction of the public building, facility, or equipment.

This bill would additionally include interest prior to and for a period of 6 months after construction of the public building, facility, or equipment within the additional cost of financing that the board may authorize.

The bill would specify that notwithstanding any other provision of law, including, but not limited to, any specific grant of authority on or after June 30, 2001, the board may issue bonds, notes, or bond anticipation notes for any and all phases of specified types of capital outlay projects.

(14) Governor's Reorganization Plan No. 2, as submitted to the Legislature on May 9, 2005 (GRP 2), would create the Department of Technology Services Revolving Fund in the State Treasury and

continuously appropriate the fund for specified purposes with respect to the administration of a Department of Technology Services.

This bill would, as of the date that GRP 2 goes into effect, provide that these provisions would not be operative. The bill would, as of that date, instead create the fund in the State Treasury for these purposes, subject to appropriation by the Legislature.

(15) Existing law establishes the Trial Court Trust Fund, the proceeds of which are apportioned for the purposes of funding trial court operations. Existing law specifies certain fees that are to be collected in a special account in the county treasury and transmitted monthly to the Controller for deposit in the Trial Court Trust Fund.

This bill would expand the fees to which that provision applies, to include, among other things, court transfer filing fees, hearing date postponement filing fees, appeals filing fees, judgment debtor filing fees, court order violation fees, judgment creditor filing fees, and contempt of court fees.

The bill would also delete language contained in that provision crediting amounts transmitted from certain recording and indexing fees during a specified time frame against the total amount the county is required to pay to the state.

(16) Existing law specifies that money in the Trial Court Trust Fund is to be invested in the Surplus Money Investment Fund and all interest earned is to be allocated to the Trial Court Trust Fund semiannually.

This bill would instead require that interest earned to be allocated quarterly.

(17) Existing law provides that certain court fees and fines that are not subject to a local revenue sharing agreement or practice, as specified, except as to costs incurred by and services provided by the superior court which are transmitted monthly to the Controller for deposit in the Trial Court Trust Fund, are required to be deposited in a special account in the county treasury. Existing law provides, until July 1, 2005, for the distribution of the revenue from these fees and fines.

This bill would provide for the distribution of these fees and fines commencing July 1, 2005.

(18) Existing law provides, commencing January 1, 2004, for a county-by-county transfer to the Trial Court Trust Fund each fiscal year of the difference between $31,000,000 and the amount already

transmitted to the Trial Court Trust Fund for costs incurred by and services provided by the superior court as described in (1).

This bill would provide, commencing July 1, 2005, that the counties' obligation to remit to the Trial Court Trust Fund each fiscal year the amount described above shall expire. Instead, the counties would be obligated to remit reduced amounts, as specified, to the Trial Court Trust Fund each fiscal year through the 2008-09 fiscal year, in accordance with specified procedures.

The bill would impose new administrative duties on the Administrative Office of the Courts (AOC) and the California State Association of Counties (CSAC), including, among other things, determining the portion of these reduced amounts to be paid by each county. The AOC and the CSAC would be required, by December 31, 2005, to complete an initial review of the impact upon individual counties and courts of the above changes in revenue distribution and payment obligations for the purpose of correcting inequities, as specified, and, by June 30, 2006, to agree upon a methodology to determine whether a reduction in the counties' obligation should be recommended to the Legislature.

This bill would require counties that have not paid amounts billed for the 2003-04 or 2004-05 fiscal year to pay the amounts still owing to the Trial Court Trust Fund by September 1, 2005, and would provide for the calculation of penalties for late payments.

(19) Existing law requires, on or before January 1, 2005, the AOC and the CSAC to jointly propose to the Legislature a long-term revenue allocation schedule, to take effect on July 1, 2005, for specified fees and fines.

This bill would delete this provision.

(20) Under existing law, a court may impose a civil assessment of up to $250 against a criminal defendant who fails to appear in court, as specified.

This bill would increase the maximum amount that may be assessed under that provision to $300. The bill would also require each court and county to maintain the collection program that was in effect on July 1, 2005, unless otherwise agreed to by those entities. The bill would further require the court to deposit the money collected under that provision as soon as practicable into a bank account specified by the AOC, for transmission to the Controller for deposit in the Trial Court Trust Fund in accordance with specified procedures.

(21) Existing law requires, commencing in the 1999-2000 fiscal year, and each fiscal year thereafter, each county to remit specified amounts to the Trial Court Trust Fund, including an amount based upon the amount of fine and forfeiture revenue remitted to the state pursuant to specified provisions during the 1994-95 fiscal year.

This bill would, commencing July 1, 2005, reduce each county's annual fine and forfeiture remittance by the amount that the county received from the civil assessments described in (4), after deducting the cost of collecting those civil assessments, in the 2003-04 fiscal year. The bill would require the AOC and CSAC to determine the amount of this reduction for each county, as specified.

(22) Existing law imposes a surcharge of $20 for court security in addition to the total court fees collected pursuant to specified provisions and also authorizes the collection of an additional surcharge in certain cases filed from January 1, 2004, to June 30, 2005, inclusive.

This bill would extend that additional surcharge until June 30, 2006, as specified.

(23) Until January 1, 2008, or earlier, as specified, the Rural Health Care Equity Program, as administered by the Department of Personnel Administration, provides subsidies and reimbursements for certain health care premiums and health care costs incurred by state employees and annuitants in rural areas in which there is no board-approved health maintenance organization plan available for enrollment. Moneys in the program are disbursed to reimburse eligible employees for, among other things, a portion or all of his or her deductible, coinsurance, and other out-of-pocket health-related expenses that would otherwise be covered if the employee and his or her family members were enrolled in a board-approved health maintenance organization.

This bill would continuously appropriate an unspecified sum from the General Fund to reimburse those eligible employees for a portion or all of his or her out-of-pocket health-related expenses in excess of $1,500 per fiscal year, not to exceed a total of $15,336,000 for all fiscal years combined.

(24) Existing law, the Housing and Emergency Shelter Trust Fund Act of 2002, transfers $910,000,000 from the money deposited in the Housing and Emergency Shelter Trust Fund from the sale of bonds to the Multifamily Housing Program, with certain exceptions, including that $45,000,000 of that amount is required to be transferred to the

Preservation Opportunity Fund and is continuously appropriated for the preservation of at-risk housing pursuant to the Preservation Opportunity Program, a short-term capital loan program established to ensure that the supply of affordable housing is not depleted by the conversion of existing government-assisted rental housing to market-rate housing. Existing law requires that money received in repayment of loans from the Preservation Opportunity Fund, including interest from that money, be deposited in the Preservation Opportunity Fund. Any funds not encumbered for the Preservation Opportunity Program within 30 months of their transfer to the Preservation Opportunity Fund revert to the Housing Rehabilitation Loan Fund.

This bill would, instead, require that all money received in repayment of loans made under the Preservation Opportunity Program be deposited into the Housing Rehabilitation Loan Fund for use in the Multifamily Housing Program, except for $5,000,000. By adding a new source of revenue for deposit into this continuously appropriated fund, the bill would make an appropriation. The $5,000,000 remaining in the Preservation Opportunity Fund and subsequent interest payments on loans made from this amount is required to be made available for the purposes of the Preservation Opportunity Program through at least December 31, 2008, at which time the California Housing Finance Agency may, based on an analysis of need, either continue to make the funds available for the Preservation Opportunity Program or transfer the funds to the Housing Rehabilitation Loan Fund for use in the Multifamily Housing Program, thereby constituting an appropriation.

(25) Existing law requires the Department of Housing and Community Development to make matching grants and loans from the Joe Serna, Jr. Farmworker Housing Grant Fund, for specified purposes, and authorizes matching grants and loans to be made from the fund for other purposes.

Existing law, the Housing and Emergency Shelter Trust Fund Act of 2002, authorizes, for purposes of financing various existing housing and code enforcement programs, the issuance of bonds in the amount of $2,100,000,000 pursuant to the State General Obligation Bond Law. Existing law provides that $25,000,000 of these funds be used for projects that serve migratory farmworkers and specifically authorizes the department to receive $5,500,000 of these funds for the purpose of reconstructing migrant centers operated through the Office

of Migrant Services that would otherwise be scheduled for closure due to health or safety considerations or are in need of significant repairs to ensure the health and safety of the residents.

This bill would increase the amount of the $25,000,000 appropriation that the department may use from $5,300,000 to $15,000,000 and would require the department to make at least $8,159,000 of that amount available for flexible loans and grants for projects that serve migratory agricultural workers under a program provided for under the Joe Serna, Jr. Farmworker Housing Grant Program that uses innovative, cost-effective mechanisms to provide migrant farmworkers with affordable, durable, low-maintenance housing options, as specified. By requiring the department to use these funds for a new purpose, the bill would make an appropriation. The bill would declare that the changes made by this act are consistent with the Housing and Emergency Trust Fund Act of 2002 and the Joe Serna, Jr. Farmworker Housing Grant Fund.

(26) Existing law authorizes the Department of Housing and Community Development to increase rents for a migrant farm labor center assisted by the Office of Migrant Services above those charged at other such centers under specified circumstances.

This bill would prohibit a rent increase above 30% of the average annualized household incomes of residents of any such facility without legislative authorization.

(27) Existing law requires the Labor Commissioner to, after investigation and determination that wages or benefits are due to an unpaid worker, collect such wages or benefits on behalf of the worker, as specified. Existing law requires that whenever the balance in the Industrial Relations Unpaid Wage Fund is in excess of $200,000 the Labor Commissioner transmit the excess to the Controller for deposit in the General Fund.

This bill would instead require the Controller, at the end of each fiscal year, to transfer to the General Fund the unencumbered balance of the fund, less 6 months of expenditures as determined by the Director of Finance.

(28) Existing law requires the Department of Veterans Affairs, in voluntary cooperation with the Shasta County Board of Supervisors and the boards of supervisors of specified northern California counties, to design, develop, and construct the Northern California Veterans Cemetery. Existing law requires that all moneys received for the design, development, and construction of the cemetery are to be

placed in the Northern California Veterans Cemetery Master Development Fund, a continuously appropriated fund. Existing law provides that specified moneys received for the maintenance of the cemetery are to be deposited to the credit of the Northern California Veterans Cemetery Perpetual Maintenance Fund for expenditure, upon appropriation by the Legislature.

This bill would authorize the administrator of the Northern California Veterans Cemetery to accept donations for the maintenance and beautification of the cemetery, as provided, and would provide that these donations are to be deposited to the credit of the Northern California Veterans Cemetery Perpetual Maintenance Fund. This bill would require that all donations deposited to that fund for the maintenance and beautification of the cemetery be continuously appropriated to the department.

This bill would also provide that any proposal for the construction, placement, or donation of monuments or memorials to the cemetery are to be reviewed by an advisory committee, as specified, and that all proposals are subject to the approval of the director of the department.

(29) Existing law provides that expenditures for the maintenance of the Northern California Veterans Cemetery may not exceed $600,000 per calendar year.

This bill would instead provide that the total expenditures for both the operations and the maintenance of the cemetery should not exceed $600,000 per fiscal year, as appropriated in the annual Budget Act.

(30) Existing law requires each state department or agency awarding a contract or procuring goods or services, and each local agency receiving state funds, to report annually to the Governor and Legislature on the level of participation by specified business enterprises in contract and procurement activities. Existing law requires the Department of General Services to submit an annual report to the Legislature with respect to, among other things, procurement categories, construction contract categories, and contracts awarded to specified business enterprises. Existing law requires the Department of Veteran's Affairs to make an annual report to the Governor and Legislature regarding the participation by specified business enterprises in contracts with the department, requires awarding departments to identify steps to meet goals of contracting, and requires the Department of General Services to prepare a summary regarding those goals. Existing law authorizes the

Department of General Services, relative to certain contracts, to use a negotiation process if certain conditions exist.

This bill would repeal all of those provisions as of January 1, 2007. This bill would, commencing January 1, 2007, require the department, as defined, to make available a report on contracting activity containing specified information, as provided.

(31) Existing law requires the money in the Hazardous Waste Reduction Loan Account to be expended by the Business, Transportation and Housing Agency to make loans for equipment, projects, or facilities for the reduction of hazardous waste.

This bill would repeal the provisions authorizing that account and would transfer the amount remaining in the Hazardous Waste Reduction Loan Account on January 1, 2006, to the Chrome Plating Pollution Prevention Fund, which this bill would create in the State Treasury, and would require the money in the account be expended by the agency, upon appropriation by the Legislature.

The bill would require any amounts paid to the state for a loan issued pursuant to those former provisions to be transferred to the fund.

The repeal of that account and transfer the money to the fund would become operative only if legislation is enacted and becomes operative on or after June 1, 2005, but before July 1, 2006, that requires the funds so transferred to be expended for environmental control technologies for chrome and metal plating related activities.

(32) Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law directs the Public Utilities Commission to require specified highway carriers for whom the commission does not establish minimum or maximum rates to pay specified reduced fees, and authorizes the commission to increase the fees on other carriers whose minimum or maximum rates are established by the commission, up to a maximum of ½% of reported gross operating revenue, if necessary, to maintain adequate financing for the purposes of the Transportation Rate Fund. The fees are deposited in the Transportation Rate Fund and are continuously appropriated to the commission for specified regulatory purposes.

This bill would permit the commission to increase these fees on carriers for whom the commission establishes minimum or maximum rates, up to a maximum of 0.7%, thereby making an appropriation.

(33) The Sales and Use Tax Law requires any person whose estimated tax liability averages $20,000 or more per month to remit amounts due by electronic funds transfer, as provided. That law imposes specified penalties with respect to payment by electronic funds transfer. That law also imposes specified penalties with respect to nonpayment of taxes in general.

This bill would require any person whose estimated monthly tax liability averages $10,000 or more to remit amounts due by electronic funds transfer, as provided.

(34) Existing income and corporation tax laws impose a penalty of not more than $5,000 on any person that, among other things, fails to file a return or to supply any information required, or make, render, sign, or verify any false or fraudulent return or statement, or supply any false or fraudulent information.

This bill would impose the penalty only if those violations occur repeatedly over a period of 2 years or more and result in an estimated delinquent tax liability of at least $15,000.

(35) Existing income and corporation tax laws provide, in the case of willful failure to pay estimated taxes, that the person is guilty of a misdemeanor and subject to a fine or imprisonment, as provided.

This bill would provide that the misdemeanor, fine, or imprisonment provisions do not apply to any person who is mentally incompetent or suffers from dementia, Alzheimer's disease, or a similar condition.

(36) Existing tax laws impose various taxes and fees, and authorize the Franchise Tax Board to administer the assessment, audit, and collection of various taxes and fees.

This bill would require the Franchise Tax Board to suspend or disbar a person from practice, as defined, before the Franchise Tax Board, as provided, if that person has been suspended or disbarred from practice, as defined, before the United States Department of the Treasury, and would require a person who practices before the Franchise Tax Board and is suspended or disbarred from practice before the United States Department of the Treasury to notify the Franchise Tax Board of the suspension or disbarment in writing within 45 days of the issuance of the final order by that department.

(37) Existing property tax law requires the county auditor, in each fiscal year, to allocate property tax revenue to local jurisdictions in accordance with specified formulas and procedures, and generally requires that each jurisdiction be allocated an amount equal to the total of the amount of revenue allocated to that jurisdiction in the

prior fiscal year, subject to certain modifications, and that jurisdiction's portion of the annual tax increment, as defined. Existing law also provides, commencing with the 2004-05 fiscal year, for allocations of ad valorem property tax revenue to each city, county, and city and county in the form of a "vehicle license fee adjustment amount," calculated by the Controller in accordance with statute. Existing law requires the Controller to determine the "vehicle license fee adjustment amount" for each city, county, and city and county for the 2005-06 fiscal year by September 1, 2005.

This bill would instead require the Controller to calculate the "vehicle license fee adjustment amount" for each city, county, and city and county by October 15, 2005, in consultation with the Bureau of State Audits.

(38) Existing law imposes various duties upon the Employment Development Department, including the implementation of various programs with respect to workforce training and development.

This bill would, to the extent that funds are appropriated for this purpose in the annual Budget Act, authorize the Employment Development Department to award grants to regional collaboratives for the creation of regional nursing simulation laboratories, as provided, that will provide additional nursing students with access to clinical education facilities. This bill would limit the amount of any grant so made to $250,000.

(39) Existing law authorizes, upon adoption by the board of supervisors, a county to establish an At-Risk Youth Early Intervention Program designed to assess and serve families with children who have chronic behavioral problems that place the child at risk of becoming a ward of the juvenile court.

This bill would establish a schedule for the allocation of funds to county probation departments from funds appropriated by the Legislature to provide services for children who are habitual truants, runaways, at risk of being wards of the juvenile court, or under juvenile court supervision or the supervision of the probation department, and would require the Department of Corrections and Rehabilitation to administer the funding allocations.

(40) Existing law requires that the investigation and enforcement of the certain provisions of law by the Attorney General and the Commissioner of Corporations be accomplished without duplication of effort. Existing law further provides that to the extent that the Attorney General exercises that authority, it shall be done using

existing resources, and no future budget augmentations be made for that purpose.

This bill would revise those provisions to provide that to the extent the Attorney General exercises that authority, no General Fund budget augmentations would be made for that purpose.

(40.5) Under existing law, the Franchise Tax Board is authorized to prescribe all rules and regulations necessary for the enforcement of the Personal Income Tax Law and the Corporation Tax Law.

This bill would authorize the board to continue to implement the ReadyReturn pilot program, available to specified taxpayers, for the 2005-06 fiscal year and would require the pilot program to be operated in the same manner it was operated during the 2004-05 fiscal year.

(40.7) The Budget Act of 2005 appropriates specified amounts from the General Fund for local assistance to be paid by the State Controller to local governments for the costs of homicide trials, with specified limitations on these reimbursements.

This bill would specify that these funds shall be available for 100% of any extraordinary costs incurred by the County of Stanislaus related to a specified homicide trial.

(40.8) Existing property tax law authorizes grants, under the State-County Property Tax Administration Grant Program, to provide funding for the local administration of property taxes for those counties that elect to receive the grants.

This bill would suspend those grants for the 2006-07 fiscal year.

(41) 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.

(42) This bill would declare that it is to take effect immediately as an urgency statute.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2005.~~

Vote: ~~majority~~ *2/3*. Appropriation: ~~no~~ *yes*. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

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

~~SECTION 1. It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2005.~~

SECTION 1. Section 1721.5 of the Business and Professions Code is amended to read:

1721.5. All funds received by the State Treasurer under the authority of this chapter which relate to dental auxiliaries shall be placed in the State Dental Auxiliary Fund~~, which fund is continuously appropriated~~ for the purposes of administering this chapter as it relates to dental auxiliaries.

SEC. 2. Section 2154.4 of the Business and Professions Code is amended to read:

2154.4. (a) The Medically Underserved Account is hereby created in the Contingent Fund of the Medical Board of California.

(b) The sum of three million four hundred fifty thousand dollars ($3,450,000) is hereby authorized to be expended from the Contingent Fund of the Medical Board of California on this program. These moneys are appropriated as follows:

(1) One million one hundred fifty thousand dollars ($1,150,000) shall be transferred from the Contingent Fund of the Medical Board of California to the Medically Underserved Account on July 1, 2003. Of this amount, one hundred fifty thousand dollars ($150,000) shall be used by the Medical Board of California in the 2003–04 fiscal year for operating expenses necessary to manage this program.

(2) One million one hundred fifty thousand dollars ($1,150,000) shall be transferred from the Contingent Fund of the Medical Board of California to the Medically Underserved Account on July 1, 2004. Of this amount, one hundred fifty thousand dollars ($150,000) shall be used by the Medical Board of California in the 2004–05 fiscal year for operating expenses necessary to manage this program.

(3) One million one hundred fifty thousand dollars ($1,150,000) shall be transferred from the Contingent Fund of the Medical Board of California to the Medically Underserved Account on July 1, 2005. Of this amount, one hundred fifty thousand dollars ($150,000) shall be used by the Medical Board

SEC. 19. Section 7599.71 of the Business and Professions Code is amended to read:

7599.71. The director shall furnish one copy of any issue or edition of the licensing law, rules and regulations, manuals, or guides to any applicant or licensee without charge. The director shall charge and collect a fee equivalent to the cost of producing such laws, rules and regulations, manuals, or guides, plus sales tax for each additional copy which may be furnished on request to any applicant or licensee, and for each copy furnished on request to any other person. All moneys derived, pursuant to this section except for any sales tax collected~~, are hereby continuously appropriated to the bureau~~ *shall be used* to cover the costs of producing copies of such laws, rules and regulations, manuals or guides. All moneys collected for sales tax shall be remitted to the *State* Board of Equalization.

SEC. 20. Section 7599.74 of the Business and Professions Code is amended to read:

7599.74. All money derived from Section 7591.9 ~~is hereby continuously appropriated to the bureau~~ *shall be used* to support the bureau's enforcement program.

SEC. 21. Section 7886 of the Business and Professions Code is amended to read:

7886. The money paid into the Geology and Geophysics Fund ~~is continuously appropriated to~~ *shall be used by* the board to carry out the provisions of this chapter.

SEC. 22. Section 9872 of the Business and Professions Code is amended to read:

9872. The money in the Electronic and Appliance Repair Fund necessary for the administration of this chapter ~~is hereby continuously appropriated~~ *shall be used* for such purposes. ~~Money in excess of a year and a half's operating cost shall be transferred to the General Fund from the Electronic and Appliance Repair Fund.~~

SEC. 23. Section 17206 of the Business and Professions Code is amended to read:

17206. Civil Penalty for Violation of Chapter

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action

brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city, or city and county, having a population in excess of 750,000, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the ~~State~~ General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision ~~(d)~~ *(e)*, if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) *The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the*

Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3.

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the ~~state~~ Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the ~~state~~ Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

~~(c)~~

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 24. Section 1789.30 of the Civil Code is amended to read:

1789.30. (a) *(1)* Every check casher, as applicable to the services provided, shall post a complete, detailed, and unambiguous schedule of all fees for ~~(1)~~ *(A)* cashing checks,

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: AB 139
Author: Assembly Budget Committee
Amended: 7/6/05 in Senate
Vote: 27 - Urgency

WITHOUT REFERENCE TO COMMITTEE

ASSEMBLY FLOOR: Not relevant

SUBJECT: Budget trailer bill: general government

SOURCE: Author

DIGEST: This bill provides the necessary statutory changes in the area of general government in order to enact the 2005 Budget Act.

ANALYSIS: This is the omnibus general government trailer bill for the Budget Act of 2005. Major changes are as follows:

1. Public Works Board Bond Authority. Revises statute to clarify existing State Public Works Board (PWB) authority to issue bonds for any phase of a lease-revenue bond funded project. This change was necessitated by a recent Attorney General's finding that appropriations previously provided for certain University of California projects did not specifically authorize the PWB to issue bonds for the design and equipment phases.

2. Electronic Remittance Thresholds. Revises the threshold for individuals required to make electronic sales tax payments to the Board of Equalization from $20,000 to $10,000 per month.

CONTINUED

3. Prescription Drug Procurement Reforms. Amends statute to generate savings from prescription drug procurements by: requiring collaboration among state drug purchasers; directing the University of California and Department of General Services (DGS) to identify consolidated drug purchasing activities; requiring DGS to develop an annual work plan for purchasing drugs; and requiring DGS to participate in drug reviews. This Legislative direction will strengthen the state's ability to find and negotiate lower prescription drug prices and is estimated to save the state several million dollars.

4. Property Acquisition Law Account. Creates the Property Acquisition Law Account to facilitate the Department of General Services' management of the state's real property assets. Additionally, revenues generated from the sale of real property assets will be applied to the repayment of the Economic Recovery Bond, authorized by the state's voters in March 2004, until that debt is repaid. Thereafter, those revenues will be transferred to the Special Fund for Economic Uncertainties.

5. Procurement Reporting. Revises and updates the requirements for departments to report on contract activity and sunsets the sections of code superseded by these revisions.

6. Tax Gap Enforcement Programs. Amends statute to implement the Governor's "tax gap" budget proposal (estimated to generate more than $32 million in new revenues) and address specific areas of the underground economy and tax noncompliance. Requires check cashers to report specific information for unusual cash transactions and make federal conforming changes to statute related to penalties for tax practitioners who commit fraud.

7. Misdemeanor Program. Restricts the authority of the Franchise Tax Board to pursue misdemeanor prosecution of tax scofflaws by revising statute to confine prosecutions to a higher level of debt, an extended period of nonresponsiveness, and stipulation that the taxpayer not suffer from a mental illness that would hinder their comprehension of their debt owed to the state.

8. ReadyReturn Program. Limits the ReadyReturn taxpayer filing program to the same level and manner as the program operated in the 2004-05 fiscal year. The ReadyReturn program will expire at the close of the

CONTINUED

2005-06 fiscal year unless subsequent legislation authorizes its continuation.

9. Rural Health Care Equity Program. Continuously appropriates General Funds, not to exceed expenditures of $15.3 million, to support secondary claims in the Rural Health Care Equity Program. This same amount is reverted to the General Fund by the 2005 Budget Act, because future claims are not anticipated at the level needed to liquidate the existing balance. The continuous appropriation was proposed to allow the reversion of funds, without violating any contractual obligations with employee bargaining units.

10. Office of State Publishing. Existing law repeals on January 1, 2006, provisions authorizing state contracting out of printing services and the Office of State Publishing to offer printing services to non-state agencies. This bill extends those provisions through January 1, 2007.

11. Proposition 46 Farmworker Housing Funds. Allows an additional $5.2 million in Proposition 46 bond funds to be used for Office of Migrant Services facility rehabilitation. Revises the Migrant Farmworker Housing Grant Program requirements to encourage additional applications, allow for-profit entities to apply, and extend the current program deadline by one year.

12. Proposition 46 Preservation Housing Funds. Requires that all money received from the repayment of loans made under the Preservation Opportunity Program be deposited into the Housing Rehabilitation Loan Fund, except for $5.0 million. The Governor had requested all Preservation Opportunity Program funds be transferred to the Housing Rehabilitation Loan Fund as part of his proposed Homeless Initiative. The Legislature revised the language to retain $5.0 million in the Preservation Opportunity Program, which still provides sufficient resources for the Homeless Initiative.

13. State-Funded Migrant Housing Rents. Restricts rents at state-funded migrant housing such that rents cannot exceed 30 percent of the average farmworker household income without specific legislative authorization.

14. Economic Opportunity Zones. Moves the sunset date for Enterprise Zone fees from July 1, 2006, to January 1, 2007.

CONTINUED

15. Department of Technology Services Appropriation. Deletes the continuous appropriation authority for the Department of Technology Services (DTS). DTS is proposed to be created by the Governor's Reorganization Plan No. 2 of 2005.

16. Department of Consumer Affairs Appropriations. Deletes the continuous appropriation authority for various special funds that support boards and commissions in the Department of Consumer Affairs. Primarily technical in nature, since these boards and commissions have received Budget Act appropriations in recent years.

17. Medically Underserved Account Appropriation. Modifies the existing continuous appropriation for the Medically Underserved Account to allow expenditure of $3 million transferred to the Account from the Managed Risk Medical Insurance Program. The Medically Underserved Account was created to repay student loans for physicians who have committed to work in underserved areas, as per agreement made under the terms of the Steven M. Thompson Physicians Corps Loan Repayment Program.

18. Northern California Veterans' Cemetery. Adds language that specifies the Northern California Veterans' Cemetery may accept donations of personal property, including cash or other gifts, to be used for the maintenance or beautification of the cemetery.

19. Industrial Relations Unpaid Wage Fund. Updates the required fund reserve for the Unpaid Wage Fund from $200,000 to a reserve that equals six-months of expenditures. The language maintains the requirement that funds exceeding the reserve be transferred to the General Fund.

20. Regional Nursing Simulation Laboratories. Adds language that grants authority to the Employment Development Department to award grants to regional collaboratives for the creation of regional nursing simulation laboratories. Limits each grant to a maximum of $250,000 and specifies that funds appropriated by the 2005 Budget Act shall be used for the creation of regional nursing simulation laboratories that serve rural areas.

21. California Science Center Phase II Construction. Adds language to allow the California Science Center to enter into a site lease with the

CONTINUED

California Science Center Foundation, a California Nonprofit Corporation, for the purpose of constructing the project known as Phase II of the California Science Center. The language has the effect of shifting responsibility for any cost overruns from the state to the Foundation.

22. Chrome Plating Pollution Prevention. Transfers funds in the Hazardous Waste Reduction Loan Account to the newly-created Chrome Plating Pollution Fund. Specifies that the language shall only become operative if legislation is enacted and becomes operative before July 1, 2006, that requires the funds transferred to be expended for environmental control technologies for chrome and metal-plating related activities.

23. Court Security Fee Sunset Extension. Extends the court security surcharge fee of $20 on court filing fees that sunset on June 30, 2005. The extension will be in effect for an additional year expiring June 30, 2006, or until the enactment of legislation establishing a uniform civil filing fee – whichever occurs first.

24. Undesignated Fees from Counties. Realigns the distribution of undesignated court fees between the courts and the counties. Undesignated fees are fees that were not specifically allocated to either the counties or the courts under the Trial Court Funding Act of 1997. Existing law requires the counties to remit $31 million to the courts related to undesignated fees. These amendments would reduce the county obligation as specified below over five years. The amount of the fees going to the courts would be as follows: $20 million in 2005-06; $15 million in 2006-07; $10 million in 2007-08; $5 million in 2008-09; zero in 2009-10 and subsequent years.

    Increases the maximum civil assessment that a court could impose against a criminal defendant from $250 to $300. The revenue from the increase, in combination with improved enforcement of the fee collection process, is expected to offset the decrease in the undesignated fees going to the courts.

25. Allocation of Juvenile Probation Funding. Specifies the allocation of funding to county probation departments to provide services for children who are runaways, habitual truants, at risk of being wards of the juvenile court, or are under juvenile court supervision or supervision of the probation department, consistent with current practice.

CONTINUED

26. Annual Reports on Homeland Security Expenditures. Requires the Director of Homeland Security, in collaboration with the Department of Health Services, to report annually to the Legislature on the expenditure of federal homeland security and bioterrorism funds.

27. Corporate Responsibility Unit Funding Authority. Existing law requires the investigation and enforcement of certain securities and commodities laws by the Attorney General and the Commissioner of Corporations be accomplished without duplication of effort. Existing law further provides that to the extent that the Attorney General exercises this authority it shall be done within existing resources. This bill revises those provisions to provide that no General Fund augmentations be made for this purpose.

28. Establish Registry of Charitable Trusts Fund. Establishes a Registry of Charitable Trusts Fund in the State Treasury and require that moneys in the fund, upon appropriation by the Legislature, can only be used to operate and maintain the Attorney General's Registry of Charitable Trusts and to provide public access via the internet to reports filed with the Attorney General.

29. Establish Unfair Competition Law Fund. Creates the Unfair Competition Law Fund and would require that the civil penalty recovered by the Attorney General in unfair competition and unfair business practice actions be deposited into the fund and expended, upon appropriation by the Legislature, for investigation and prosecution of these types of actions.

30. Establish the Legal Services Revolving Fund. Creates the Legal Services Revolving Fund and require state agency payments for legal services performed by the Attorney General to be deposited into the new fund. Authorizes the Attorney General to expend money in the fund for litigation activities, upon appropriation by the Legislature. Further provides that revenues transferred to the Legal Services Revolving Fund from the Litigation Deposit Fund may be expended only if approved by the Department of Finance.

31. Household Goods Carrier Fee. Increases the maximum fee the California Public Utilities Commission can charge household goods carriers for regulation of the household goods carrier industry. This fee

CONTINUED

increase would raise approximately $500,000 for deposit in the Transportation Rate Fund.

32. Homicide Trials. Specifies that Stanislaus County be eligible for 100 percent of any extraordinary costs incurred for the People v. Peterson homicide trial.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

DLW:cm 7/6/05 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

****** END ******

CONCURRENCE IN SENATE AMENDMENTS
AB 139 (Budget Committee)
As Amended July 6, 2005
2/3 vote. Urgency

ASSEMBLY:	(May 5, 2005)	SENATE:	(July 7, 2005)
	(vote not relevant)		(vote not available)

Original Committee Reference: BUDGET

SUMMARY: Enacts legislation necessary to implement the 2005-06 Budget agreement regarding the operations of state government.

The Senate amendments delete the Assembly version of this bill, and instead:

1) Extend the court security surcharge fee of $20 for an additional year expiring June 30, 2006, or until the enactment of a uniform civil filing fee. This fee generates $16.8 million for support of the trial courts, resulting in an offsetting savings assumed in the Governor's Budget.

2) Realign the division of undesignated court fees between the courts and the counties. These fees were not specifically allocated to either the counties or the courts under the Trial Court Funding Act of 1997. Under this plan, a decreasing amount of the fees would go to the counties while an increased civil assessment fee would increase from $250 to $300. The increased fee in combination with improved enforcement of the fee collection process is expected to offset the decrease in the undesignated fee going to the courts. The courts would receive the following amounts of fees by year:

   a) $20 million in 2005-06;

   b) $15 million in 2006-07;

   c) $10 million in 2007-08;

   d) $ 5 million in 2008-09;

   e) $0 in 2009-10 and subsequent years; and,

   f) Undesignated fees collected in 2005-06 would be transferred to the Trial Court Trust Fund in two equal installments on February 15, 2006 and May 15, 2006. Remittances in future years would be on a quarterly basis due on October 1, January 1, April 1, and May 1.

3) Appropriate, continuously, funds in the Rural Health Care Equity Program. These funds were previously held in individual appropriations to be re-appropriated. Expenditures for this program would be limited to $15.3 million.

4) Specify the allocation of funds for county probation camps from the $201.4 million appropriated in the Budget Bill from the General Fund for this purpose. Under this program,

a fixed amount is appropriated to each county. A second portion is allocated to counties depending upon the number of available beds at each facility. Available beds over the number approved by the Board of Corrections are not eligible for inclusion in the calculation that allocates these funds.

5) Direct the Director of Homeland Security to report on:

   a) Grant expenditures and coordination activities that occurred at the state and local level;

   b) How the state's activities met their strategic goals and objectives;

   c) Amount awarded to the state and local agencies;

   d) Funding levels by grant year that have been expended, encumbered and unexpended;

   e) Challenges that hinder the expenditure of funds; and,

   f) Areas of focus in the next fiscal year.

6) Clarify existing law that directs the Attorney General (AG) to coordinate its investigative and enforcement efforts with regards to securities and commodities law.

7) Establish the Registry of Charitable Trusts Fund in the State Treasury and require that these funds only be used to operate and maintain the AG's Registry of Charitable Trusts and provide public access to reports filed with the AG.

8) Establish the Unfair Competition Fund and would direct related civil penalties resulting from successful litigation in unfair competition and unfair business practice actions by the state be deposited in this fund.

9) Establish the Legal Services Revolving Fund in support of legal work performed by the AG. Payment for legal services performed by the office would be deposited in this fund. Revenues transferred to this fund from the Litigation Deposit Fund could only be expended if approved by the Department of Finance (DOF).

10) Require check-cashing businesses that cash checks totaling more than $10,000 annually for any individual to file an information return with the Franchise Tax Board (FTB), as proposed in the Governor's Budget.

11) Limit the Ready Return program during 2005-06 to continued operation on a pilot basis in the same manner as the program operated in 2004-05. Under this program, the Franchise Tax Board (FTB) prepares suggested tax returns for taxpayers that it believes have simple tax situations.

12) Extend the authority for the Department of Housing and Community Development (HCD) to charge fees to process applications for Enterprise Zone tax benefits by six months, until January 1, 2006. These fees are capped at $10.

13) Make the following changes in the allocation of Proposition 46 Housing Bond funds:

a) Shift repayments of housing preservation loans to the Multifamily Housing Fund, where they could be used to assist in financing projects to house mentally ill and other chronically homeless persons. However, $5 million of loan repayments would remain available for preservation projects through at least 2008, when the California Housing Finance Agency would determine whether there is a continuing need for preservation funding; and,

b) Increase the statutory limit on the amount of bond funds from the $25-million migrant housing set-aside that HCD may use for projects at state migrant housing centers from $5.5 million to $15 million. $5.2 million of the increase will be immediately available. The remaining $4.3 million plus uncommitted funds of $3.9 million (a total of $8.2 million) are designated for a revised migrant farmworker housing program that includes partially forgivable loans to agricultural employers and loans or grants to nonprofits, local agencies or joint ventures between them and agricultural employers. Any of the $8.2 million that remains unspent by September 1, 2006, (up to $4.3 million) then would become available to HCD for projects at the state migrant centers through 2006-07.

14) Prohibit HCD from increasing rents at state migrant housing centers above 30% of the average annual income of residents. This limitation was in existing law, but was inadvertently chaptered out last year.

15) Increase the cap on fees charged to household goods carriers from 0.5% to 0.7% of gross operating revenue, as proposed in the Governor's Budget.

16) Reduce the threshold for mandatory electronic filing of sales and use tax by businesses from $20,000 to $10,000 of monthly tax liability.

17) Limit the application of misdemeanor penalties for failure to provide required information to the FTB to cases of repeated violation over a period of at least two years with an estimated tax liability of at least $15,000 and excludes situations in which the taxpayer is mentally incompetent or suffers from dementia. Alzheimer's disease or a similar condition.

18) Require FTB to suspend or disbar certain tax practitioners from practice before FTB if they have been suspended or disbarred by the federal Department of the Treasury.

19) Postpone from September 1 to October 15 the date by which the Controller must notify county auditors of the final Vehicle License Fee (VLF) Adjustment Amount for 2004-05. The VLF Adjustment Amount is the amount of property tax revenue shifted from K-14 education to cities and counties to replace VLF revenue. The 2004-05 final allocations become the permanent base for future property tax calculations by the county auditors. The delay provides time for the Bureau of State Audits (BSA) to audit the 2004-05 VLF revenues and allocations and for the State Controller to consult with BSA prior to determining the final adjustment amounts.

20) Authorize the Employment Development Department to create regional "simulators" to facilitate the training of Registered Nurses and limit grants for this purpose to $250,000 each.

21) Create the Chrome Plating Pollution Prevention Fund and transfers the remaining balance from the Hazardous Waste Reduction Loan Account ($2.2 million) to the fund. Provides that Chrome Plating Pollution Prevention fund be expended for environmental control technologies for chrome-plating and other metal plating related activities.

22) Authorize the California Science Center to enter into a site lease agreement with the California Science Center Foundation for the proposed Phase II of the California Science Center. This site lease agreement will be subject to the approval of the State and Consumer Services Agency, DOF, and the Department of General Services (DGS).

23) Eliminate continuous appropriation for various special funds within the Department of Consumer Affairs.

24) Provide that funds within the Medically Underserved Account are continuously appropriated for the repayment of loans per agreements made between the Medical Board of California and physicians.

25) Provide that net proceeds from the sale, lease, exchange or other transactions involving the state's real property shall be deposited into the into the Deficit Recovery Bond Retirement Sinking Fund Subaccount until the voter approved Economic Recovery bonds are retired. Thereafter, all net proceeds are to be deposited into the Special Fund for Economic Uncertainties. Provide that the Director of DOF may approve loans from the GF to the Property Acquisition Law Money Account (PAL) for the purpose of management of the state's real property assets. This provision is consistent with Proposition 60A, approved by the voters at the November, 2004 election.

26) Require DGS to work collaboratively with other state departments, develop a work plan, and require that DGS participate in drug reviews when procuring prescription pharmaceuticals.

27) Make technical changes necessary for the operation and maintenance of the Yountville Veterans' Home cemetery.

28) Establish a sunset date of January 1, 2007, for various reporting requirements for DGS related to the procurement of goods and services.

29) Authorize the State Controller to process transfers of funds for services provided between state agencies to address cash management issues within DGS.

30) Eliminate statutory authority for the transfers of funds from the Industrial Relations Unpaid Wage (IRUW) to the General Fund. This authority was replaced with budget bill language that authorizes an identical annual transfer.

31) Make technical clarifications to the Public Works Board's (PWB) statutory authority to capitalize interest and to issue lease-revenue bonds for any phase of a lease-revenue bond funded project

32) Provide that, notwithstanding current law, the appropriation for reimbursements to counties for the cost of homicide trials can be used to reimburse 100% of the extraordinary costs incurred by the County of Stanislaus related to the homicide trial People v Peterson.

33) Suspends the State-County Property Tax Administration Grant Program in the 2006-07 fiscal year.

34) Extends the sunset date to July 1, 2006, or the effective date of the 2006 Budget Act, whichever is later, for statute allowing state agencies to contract out for printing services under $5,000 so long as state agencies allow the Office of Statewide Publishing (OSP) to also bid on such services.

AS PASSED BY THE ASSEMBLY, this bill was a spot Budget trailer bill.

FISCAL EFFECT: The fiscal effects of the provisions of this bill are consistent with the 2005-06 Budget Conference Report as amended by AB 144.

COMMENTS: This bill was substantially amended in the Senate. The version that passed the Assembly was a spot Budget trailer bill.

Analysis Prepared by: Dan Rabovsky / BUDGET / (916) 319-2099

FN: 0011495

Proposition 64

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends sections of the Business and Professions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Findings and Declarations of Purpose.

The people of the State of California find and declare that:

(a) This state's unfair competition laws set forth in Sections 17200 and 17500 of the Business and Professions Code are intended to protect California businesses and consumers from unlawful, unfair, and fraudulent business practices.

(b) These unfair competition laws are being misused by some private attorneys who:

(1) File frivolous lawsuits as a means of generating attorney's fees without creating a corresponding public benefit.

(2) File lawsuits where no client has been injured in fact.

(3) File lawsuits for clients who have not used the defendant's product or service, viewed the defendant's advertising, or had any other business dealing with the defendant.

(4) File lawsuits on behalf of the general public without any accountability to the public and without adequate court supervision.

(c) Frivolous unfair competition lawsuits clog our courts and cost taxpayers. Such lawsuits cost California jobs and economic prosperity, threatening the survival of small businesses and forcing businesses to raise their prices or to lay off employees to pay lawsuit settlement costs or to relocate to states that do not permit such lawsuits.

(d) It is the intent of California voters in enacting this act to eliminate frivolous unfair competition lawsuits while protecting the right of individuals to retain an attorney and file an action for relief pursuant to Chapter 5 (commencing with Section 17200) of Division 7 of the Business and Professions Code.

(e) It is the intent of the California voters in enacting this act to prohibit private attorneys from filing lawsuits for unfair competition where they have no client who has been injured in fact under the standing requirements of the United States Constitution.

(f) It is the intent of California voters in enacting this act that only the California Attorney General and local public officials be authorized to file and prosecute actions on behalf of the general public.

(g) It is the intent of California voters in enacting this act that the Attorney General, district attorneys, county counsels, and city attorneys maintain their public protection authority and capability under the unfair competition laws.

(h) It is the intent of California voters in enacting this act to require that civil penalty payments be used by the Attorney General, district attorneys, county counsels, and city attorneys to strengthen the enforcement of California's unfair competition and consumer protection laws.

SEC. 2. Section 17203 of the Business and Professions Code is amended to read:

17203. *Injunctive Relief—Court Orders.*

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. *Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.*

SEC. 3. Section 17204 of the Business and Professions Code is amended to read:

17204. *Actions for Injunctions by Attorney General, District Attorney, County Counsel, and City Attorneys.*

Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or a district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or by a city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person ~~acting for the interests of itself, its members or the general public~~ *who has suffered injury in fact and has lost money or property as a result of such unfair competition.*

SEC. 4. Section 17206 of the Business and Professions Code is amended to read:

17206. *Civil Penalty for Violation of Chapter.*

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city, or city and county, having a population in excess of 750,000, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. *The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.*

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the state Treasurer for deposit in the special fund of the board designated in Section 205. If the board has no such special fund, the money shall be paid to the state Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(e) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered *for the exclusive use by the city attorney for the enforcement of consumer protection laws.* However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 731 of the Health and Safety Code or Article 3 (commencing with Section 17530) of Chapter 10 of Division 10 of the Health and Safety Code, one-half of the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, after deduction for division and approval, be paid for the purpose of remediating harm to or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 5. Section 17535 of the Business and Professions Code is amended to read:

17535. *Obtaining Injunctive Relief.*

Proposition 64 *(cont.)*

Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney, county counsel, city attorney, or city prosecutor in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person ~~acting for the interests of itself, its members or the general public~~ *who has suffered injury in fact and has lost money or property as a result of a violation of this chapter. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of this section and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.*

SEC. 6. Section 17536 of the Business and Professions Code is amended to read:

17536. *Penalty for Violations of Chapter; Proceedings, Disposition of Proceeds*

(a) Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer.

If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of that county and one-half to the city. *The aforementioned funds shall be for the exclusive use by the Attorney General, district attorney, county counsel, and city attorney for the enforcement of consumer protection laws.*

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of such reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the State Treasurer. The amount of such reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality which funds the local agency.

(e) As applied to the penalties for acts in violation of Section 17534, the remedies provided by this section and Section 17534 are mutually exclusive.

SEC. 7. In the event that between July 1, 2003, and the effective date of this measure, legislation is enacted that is inconsistent with this measure, said legislation is void and repealed irrespective of the code in which it appears.

SEC. 8. In the event that this measure and another measure or measures relating to unfair competition law shall appear on the same statewide election ballot, the provisions of the other measure shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure relating to unfair competition law shall be null and void.

SEC. 9. If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to that end the provisions of this act are severable.

Proposition 65

Pursuant to statute, Proposition 65 will appear in a Supplemental Voter Information Guide.

Proposition 66

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends sections of the Penal Code and amends a section of the Welfare and Institutions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

THE THREE STRIKES AND CHILD PROTECTION ACT OF 2004

SECTION 1. Title

This initiative shall be known and may be cited as the Three Strikes and Child Protection Act of 2004.

SEC. 2. Findings and Declarations

The people of the State of California do hereby find and declare that:

(a) Proposition 184 (the "Three Strikes" law) was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences of repeat offenders who commit serious and/or violent felonies;

(b) Proposition 184 did not set reasonable limits as to the number of criminal acts to prosecute as a second and/or third strike; and

(c) Since its enactment, Proposition 184 has been used to unnecessarily increase sentences of more than 35,000 persons who did not commit a serious and/or violent crime against another person at a cost to taxpayers of more than eight hundred million dollars ($800,000,000) per year.

SEC. 3. Purposes

The people do hereby enact this measure to:

(a) Continue to protect the people from criminals who commit serious and/or violent crimes;

(b) Ensure greater punishment and longer prison sentences for those who have been previously convicted of serious and/or violent felonies and who commit another serious and/or violent felony;

(c) Require that no more than one strike be imposed per each criminal act and to confirm the burglary and theft provisions; and

(d) Protect children from dangerous sex offenders and save billions to taxpayers by warehousing offenders who commit crimes that do not qualify for increased punishment according to this act.

CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY

ENROLLED BILL REPORT

CONFIDENTIAL-Government Code §6254(i)		
Department/Board: Health Services	**Author:** Committee on Budget	**Bill Number:** AB 139
Sponsor: ☐ **Admin Sponsored** **Proposal No.**	**Related Bill(s)** AB 131	**Chaptering Order (if known)** ☐ **Attachment**
Subject: State Government Budget Trailer Bill: Homeland Security and Bioterrorism Funding		

This Enrolled Bill Report contains only the section of AB 139 which impacts the Department of Health Services.

SUMMARY

Section 27 of AB 139 would require the Office of Homeland Security (OHS) in collaboration with the California Department of Health Services (CDHS) to annually report to the chairperson of the Joint Legislative Budget Committee and the chairperson of the Budget Committee of each house of the Legislature on their respective expenditures of federal homeland security and bioterrorism funds.

PURPOSE OF THE BILL

The intent of this section is to provide for the timely briefing of the Legislature with regard to expenditures, strategic direction, priorities, and goals for federal homeland security and bioterrorism funds.

RECOMMENDATION AND SUPPORTING ARGUMENTS SIGN

Section 27 of AB 139 would meet the request of the Legislature for more information on how California is using the federal anti-terrorism funds it receives. CDHS recognizes the importance of this information to the Legislature and will endeavor to provide the requested expenditure information in a timely manner. However, the content of the report mandated by

Departments That May Be Affected: Office of Homeland Security				
☐ New / Increased Fee	☐ Governor's Appointment	☐ Legislative Appointment	☒ State Mandate	☒ Urgency Clause
Dept/Board Position		**Agency Secretary Position**		
☒ Sign		☒ Sign		
☐ Veto		☐ Veto		
☐ Defer to:		☐ Defer to:		
Director /Chair Date: 7.7.05		Agency Secretary by Date: 7/8/05		

this legislation exceeds the standard expenditure report concept and would be time consuming to complete. The resources needed to prepare it would have to be redirected from preparedness functions.

ANALYSIS

Section 27 of this bill would require OHS and CDHS to jointly develop a report to the Legislature on expenditures of federal homeland security and bioterrorism funds. The report must relate expenditures to the state's strategic anti-terrorism goals and objectives. It must identify any challenges that hinder state and local abilities to spend the grant funds and areas of focus for federal expenditures in the coming grant year.

Although the Legislature requested an annual fiscal report on the use of federal anti-terrorism funds, the content of the report mandated by this legislation exceeds the standard expenditure report concept and will be time consuming to complete. In fulfilling these reporting requirements, CDHS and OHS will have to identify activities that occurred during the prior reporting period and those planned for the forthcoming year and link these activities to the strategic plan and to expenditures. The content required in this report is much more extensive than envisioned in a fiscal report and the workload involved in preparing this report will be redirected from preparedness functions.

This section would require the expenditure report be submitted to the Legislature by February 1 of each year. The grant year for the CDC and HRSA bioterrorism funds ends at the end of August and the CDC and HRSA final fiscal reports are due by November 30. The deadlines are usually extended to December 30 in order to respond to any questions the granting agencies may have. A due date of February 1 for the legislative report would allow just sufficient time to complete the federal final reports and then gather the additional information that is required by the legislative report.

LEGISLATIVE HISTORY

AB 131 (Committee on Budget) is the omnibus health budget trailer bill for 2005. It contains provisions to require CDHS to conduct audits of the cost reports of local health departments' bioterrorism activities and to coordinate its bioterrorism efforts with the Office of Binational Border Health.

PROGRAM BACKGROUND

Within CDHS, many programs are involved in responding to public health emergencies. CDHS receives federal bioterrorism grant funds from the CDC and HRSA.

The Emergency Preparedness Office (EPO) coordinates CDHS's response to emergencies and coordinates emergency preparedness activities with the Office of Emergency Services, Emergency Management Services Authority, Department of Mental Health, Department of Social Services, and State OHS, among others. EPO partners with local health departments through the California Conference of Local Health Officers and County Health Executives Association of California.

EPO is specifically responsible for statewide bioterrorism preparedness and manages the CDC and HRSA grant funds that support state and local bioterrorism preparedness. CDHS allocates approximately 70 percent of its bioterrorism grant funds to 58 local health departments. Local health departments submit local bioterrorism preparedness work plans, emergency response plans, and project reports. .

FISCAL IMPACT

The scope of the report required by this section would require considerable but undetermined staff time, which would have to be redirected from preparedness activities.

ARGUMENTS

Pro:

- Would provide for the timely briefing of the Legislature with regard to expenditures, strategic direction, priorities, and goals for federal homeland security and bioterrorism funds.
- Would meet the request of the Legislature for information on use of federal anti-terrorism grant funds.

Con:

- The scope of the report required by this section is extensive and the workload involved in preparing it is considerable.

VOTES

COMMITTEE/FLOOR	DATE	RESULT	TALLY
Assembly Floor	7/7/05	Pass	55-~~17~~9
Senate Floor	7/7/05	Pass	27-10

LEGISLATIVE STAFF CONTACT

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STATE AND CONSUMER SERVICES AGENCY

ENROLLED BILL REPORT

CONFIDENTIAL-Government Code §6254(l)		
Department: Board Consumer Affairs	Bill Number Author AB 139 Committee on Budget	
Sponsor: ☐ **Admin Sponsored** **Proposal No.**	**Related Bills:**	**Chaptering Order (if known)** ☐ **Attachment**
Subject: State Government: Budget Act		

SUMMARY:

This bill would, among other things:

- Delete the continuous appropriation language for various special funds that support boards and bureaus within the Department of Consumer Affairs (Department).
- Modify the existing continuous appropriation for the Medically Underserved Account (within the Medical Board).
- Take effect immediately.

This analysis will only comment on this bill as it relates to the Department.

PURPOSE OF THE BILL:

These statutory changes reflect both Administrative and Legislative changes required to reconcile the actions taken in the Budget bill.

RECOMMENDATION AND SUPPORTING ARGUMENTS:

SIGN. This budget trailer bill has adopted all Department recommendations proposed during the conference committee. Currently there is no pereceived reduction in revenue to our boards or impact to the Department.

ANALYSIS:

Existing law:

- Creates various boards and other entities under the jurisdiction of the Department of Consumer Affairs (Department) with certain licensing and regulatory functions relative to various professions and vocations.
- Provides that money in funds created for these certain entities is continuously appropriated

Departments That May Be Affected All				
☐ New / Increased Fee	☐ Governor's Appointment	☐ Legislative Appointment	☒ State Mandate	☒ Urgency Clause
Dept/Board Position ☒ Sign ☐ Veto ☐ Defer to:			Agency Secretary Position ☒ Sign ☐ Veto ☐ Defer to:	
Director/Chair Date 7-7-05			Agency Secretary Date 7-8-05	

for particular purposes.
- Establishes the Medically Underserved Account in the Contingent Fund of the Medical Board of California.
- Specifies money in the account is continuously appropriated to repay loans per agreements with physicians who practice in underserved areas.

This bill would, among other things:
- Delete continuously appropriated fund language relative to the Department's: Committee on Dental Auxiliaries; Board of Podiatric Medicine; Medical Board of California; Speech-Language Pathology and Audiology Board; Physical Therapy Board of California; Board of Vocational Nursing and Psychiatric Technicians; Board of Psychology; Hearing Aid Dispensers Bureau; Physician Assistant Committee; Respiratory Care Board; Acupuncture Board; Board of Behavioral Sciences; California Architects Board and Landscape Architects Technical Committee; Bureau of Security and Investigative Services; Board for Geologists and Geophysicists; Bureau of Electronic and Appliance Repair;
- Modify the continuous appropriation language for the Medical Board's Medically Underserved Account which is available for the repayment of loans.
- Become effective immediately.

PROGRAM BACKGROUND:
To promote and protect the interests of consumers, the Department licenses and regulates 2.3 million professionals in more than 230 different professions, including doctors, dentists, contractors, cosmetologists and auto-repair technicians. The Department includes 38 regulatory entities (nine bureaus, twenty-four boards, four committees, and one commission). These entities establish minimum qualifications and levels of competency for licensure. They also license, register, or certify practitioners, investigate complaints and discipline violators. The committees, commission and boards are semiautonomous bodies whose members are appointed by the Governor and the Legislature. The Department provides them administrative support.

OTHER STATES' INFORMATION: N/A
FISCAL IMPACT: N/A
ECONOMIC IMPACT: N/A
LEGAL IMPACT: N/A
APPOINTMENTS: N/A
SUPPORT/OPPOSITION: Unknown

ARGUMENTS:
Pro:
- This bill will delete outdated and unnecessary language.
- This bill will not have a fiscal impact on the Department.

VOTES:
Senate: 27-10 (7-7-05)
Assembly: 59-19 (7-7-05)

LEGISLATIVE STAFF CONTACT: Veronique Peterson, Legislative Analyst, 322-4293

STATE AND CONSUMER SERVICES AGENCY ● ENROLLED BILL REPORT

CONFIDENTIAL-Government Code §6254(l)		
Department:/Board: **GENERAL SERVICES**	Bill Number/Author: **AB 139/Assembly Budget Committee (LAV 07/07/05)**	
Sponsor: **Assembly Budget Committee** ☐ Admin Sponsored Proposal No.	Related Bills: **See Legislative History below**	Chaptering Order (if known) ☐ Attachment
Subject: **Omnibus Trailer Budget Bill**		

SUMMARY

This bill makes the statutory changes necessary for implementation of the Budget Act of 2005 relative to State government administration. This analysis only addresses the areas related to the Department of General Services (DGS), which are contained in Sections **28, 30, 31, 33.5, 34, 35, 36, 39, 55, 60, 61, 62, 63, and 64.** This bill contains an urgency clause.

PURPOSE OF THE BILL

To make the necessary statutory changes to implement the Budget Act of 2005.

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN

AB 139 is a budget trailer bill for general government and reflects actions taken by the Budget Conference Committee necessary to enact the Budget Act of 2005. Among other things, the provisions that relate to the DGS would: (1) clarify provisions related to Proposition 60A; (2) consolidate duplicative reporting requirements to the Legislature; (3) address a technical accounting issue, ensuring that the DGS and the State Controller's Office's (SCO) current practice for the handling of prepayments conforms to statutory requirements; (4) provide that no State agency is

Departments That May Be Affected				
☐ New / Increased Fee	☐ Governor's Appointment	☐ Legislative Appointment	☐ State Mandate	☐ Urgency Clause

Dept/Board Position	Agency Secretary Position
☒ Sign	☒ Sign
☐ Veto	☐ Veto
☐ Defer to:	☐ Defer to:
Director /Chair Date 7/8/05	Agency Secretary Date Fred Aguiar 7-8-05

required to use the services offered by the DGS' Office of State Publishing(OSP) for print projects; (5) require that the DGS, University of California (UC), and the Public Employees Retirement System (CalPERS) regularly meet and share information regarding each agency's procurement of prescription drugs in an effort to identify and implement opportunities for cost savings in connection with this procurement; and (6) repeal the sunset date for Public Contract Code (PCC) Section 6611 which allows the DGS to negotiate amendments to competitively awarded contracts when it is in the best interest of the State to do so.

For these reasons, we recommend that this bill be **SIGNED** into law.

ANALYSIS

The following sections of the bill affect the DGS:

Section 28: Proceeds from Sale of Surplus Property

This section makes changes to conform to the requirements of Proposition 60A, including a definition of "proceeds" for purposes of revenue distribution. While Prop 60A, as approved by the voters in November 2004, required that the proceeds from the sale of surplus property be used to pay off the Economic Recovery Bonds which were approved as Proposition 57 by the voters in March 2004, the Proposition did not identify an account for the collection of these proceeds to be deposited into. This language identifies the Deficit Recovery Bond Retirement Sinking Fund Subaccount as the account for holding these proceeds until the Economic Recovery Bonds are retired. After the bonds are retired, the net proceeds from the sale of surplus property shall be deposited in the Special Fund for Economic Uncertainties.

Sections 30, 35, 55, 61-64: DGS Legislative Report Consolidation

These sections would streamline the current reporting process by consolidating duplicative reports to the Legislature and making the DGS solely responsible for providing this information to the Legislature in one report rather than having each awarding agency report separately. These sections repeal the following code sections: Government Code (GC) Section 14840—Annual Statewide Small Business Participation; Military and Veterans Code Section 999.7—Annual Disabled Veterans Business Enterprise Participation; PCC Section 10115.5—DVBE Contract Goals; PCC Section 10116—Level of Participation of Business Enterprises; PCC Section 10359—Statewide Consulting Services Contracts; and GC Section 11139.8—Level of Participation by Minority, Women, and DVBEs.

Section 61 of the bill creates this new reporting requirement (PCC Section 10111) and requires the DGS, commencing on January 1, 2007, to provide a report on contracting activity that contains information on consulting services, small business and DVBE participation, including microbusinesses, along with the level of participation of business enterprises by race, ethnicity, and gender of owner to the extent that this information has been voluntarily reported to the DGS.

The DGS would accomplish this effort by requiring all contracts over $5,000 (this is already required by Management Memo 03-09) and all Cal-Card reports for all purchases under $5,000 to be entered into the State Contracting and Procurement Registration System (SCRPS).

Section 31: Service Prepayments

This provision addresses a technical accounting issue, ensuring that the DGS and the SCO's current practice for the handling of prepayments conforms to statutory requirements.

The DGS accepts prepayments from customer agencies in anticipation of services the DGS will provide to agencies in the forthcoming fiscal year. Upon Budget Act approval, prepayments are collected from the customer agencies based upon their level of business activity with DGS for a 12 month period (May through April). Prepayments allow the DGS to generate operating capital necessary to meet short-term financial obligations.

In the 1980s, DGS collected prepayments from customer agencies on an annual, semi-annual, or quarterly basis. As customer agencies used the DGS' services, the prepayments were drawn down. Unfortunately, this practice led to ongoing reconciliation issues between the SCO, the customer agencies, and the DGS. In the late 1980s, to alleviate the extra workload required to reconcile these issues on a monthly basis, the SCO made the decision to make all the prepayments annual. In addition, the SCO directed the DGS to bill the customer agencies monthly via the electronic funds transfer process and not draw down the prepayment amount. The DGS is fully accountable to the SCO, who retains full audit authority.

Prepayments are not permanent and the DGS routinely returns advances to the customer agencies as needed should they encounter cash flow difficulties during the fiscal year.

Section 33.5: Office of State Publishing (OSP)

This section provides that no State agency is required to use the OSP for print projects. State agencies, however, must solicit a bid from the OSP when they are soliciting bids from the private sector and the project is anticipated to cost more than $5,000. In addition, the OSP may offer its printing services to State and other public agencies, including cities, counties, special districts, community college districts, the California State University, the UC, and agencies of the United States government. This section shall remain operative only until the effective date of the Budget Act of 2006 or July 1, 2006, whichever is later, and as of January 1, 2007, is repealed.

This provision is simply an extension of last year's trailer bill language. Unless this language is included in subsequent trailer bill language, all State agencies will be mandated to use the OSP under all circumstances.

Section 34: Property Acquisition Law Money Account (PAL) Provisions

This section officially creates the Property Acquisition Law Money Account (PAL) for the purpose of supporting the management of the State's real property assets. This provision would now restructure the current process and direct revenues from leases executed by the DGS to this newly-created account.

Section 36: Procurement of Prescription Drugs

This section contains legislative intent language that the DGS, the UC, and the CalPERS regularly meet and share information regarding each agency's procurement of prescription drugs in an effort to

identify and implement opportunities for cost savings in connection with this procurement. The bill also provides that the UC and the CalPERS cooperate with the DGS in order to reduce each agency's costs for prescription drugs.

Further, the bill requires the DGS to do all of the following:

(1) Share information on a regular basis with the UC and the CalPERS regarding each agency's procurement of prescription drugs, including, but not limited to, prices paid for the same or similar drugs and information regarding drug effectiveness.

(2) Identify opportunities for the DGS, the UC, and the CalPERS to consolidate drug procurement or engage in other joint activities that will result in cost savings in the procurement of prescription drugs.

(3) Participate in at least one independent association that develops information on the relative effectiveness of prescription drugs.

(4) No later than January 1, 2006, and annually thereafter, develop a work plan that includes, but is not limited to, a description of the department's annual activities to reduce the State' s costs for prescription drugs and an estimate of cost savings.

(5) No later than January 10, 2006, and annually thereafter, report to the chairperson of the Joint Legislative Budget Committee and the chairs of the fiscal committees of the Legislature on any joint activities of the DGS, the UC, and the CalPERS in the last 12 months in connection with the procurement of prescription drugs and any resulting cost savings. This report shall include the work plan described in (4) above.

Nothing in this section shall be construed to require sharing of information that is prohibited by any other provision of law or contractual agreement, or the disclosure of information that may adversely affect potential drug procurement by any State agency. This language contains the appropriate confidentiality provisions in order to ensure that information on drug pricing is not compromised or disclosed to adversely affect potential drug procurements by any State agency.

These entities (DGS, UC, and CalPERS) could potentially benefit from collaboration regarding negotiating strategies, prescribing protocols, and other issues of common interest. The DGS Pharmacist currently participates in the California Mental Health Disease Management Program (Cal-Mend) along with representatives from the Departments of Health Services, Mental Health, Developmental Services, Corrections, UC, county mental health programs and other organizations. The goal is to develop an evidence-based approach to disease management of patients with schizophrenia, bipolar disorder and major depression. Participation in additional reviews is constrained by available resources.

The potential for savings by joint purchasing is dependant on what opportunities exist. Currently, the DGS has no data regarding what the UC or CalPERS purchases, nor what special pricing they may be receiving. If there are categories of drugs which the DGS, the UC, and CalPERS purchase in bulk with similar pricing models, the opportunity does exist to benefit from leveraging contracting and negotiations.

Section 39: PAL Provisions

This section also states that the net proceeds of any sale shall be deposited in the Deficit Recovery Bond Retirement Sinking Fund Subaccount until the time that the bonds issued pursuant to the

Economic Recovery Bond Act are retired. After the bonds are retired, the net proceeds from the sale of surplus property shall be deposited in the Special Fund for Economic Uncertainties. This section further specifies that all rents received by the DGS shall be deposited into the Property Acquisition Law Money Account, instead of the General Fund, and shall be available for expenditure by the DGS upon appropriation.

Section 60: Repeal of Sunset for Public Contract Code (PCC) Section 6611 (Ability to Negotiate Contracts)

This section repeals the sunset date for PCC Section 6611 which allows the DGS to negotiate amendments to competitively awarded contracts when it is in the best interest of the State to do so. The continued use of PCC Section 6611 is necessary for the State to continue to leverage its buying power to the maximum extent. Under this provision, the DGS has been successful in negotiating better terms on competitively-awarded procurements.

Chapter 757, Statutes of 2003 (AB 296—Oropeza), a budget trailer bill, authorized the DGS, under PCC Section 6611 to renegotiate existing contracts, when it is in the best interest of the State, as well as establish a negotiation process relative to contracts for goods, services, information technology (IT), or telecommunications for itself or on behalf of another State agency. These provisions will become inoperative on July 1, 2006.

As outlined in PCC Section 6611 (a), the DGS may, in the State's sole discretion, initiate negotiations if the DGS determines that specified conditions exist. Further, current law provides that when it is in the best interest of the State, the DGS may negotiate amendments to the terms and conditions, including scope of work, of existing contracts for goods, services, IT, and telecommunications, whether or not the original contract was the result of competition, on behalf of itself or another State agency.

Prior to entering negotiations, the DGS makes a specific finding that a condition exists and those findings are disclosed to the public in the evaluation and selection report.

Examples of Negotiated Contracts:

After the execution of the contract between the State and CGI-AMS to conduct strategic sourcing initiatives, both parties formed teams to meet the terms of the Agreement. As the procurement categories were being developed, questions were raised related to the infrastructure that was in place to accept orders and to assure payment under the terms of the Agreement. It was then determined that it was in the best interests of the State to open negotiations under the provisions of PCC Section 6611(b). Negotiations were conducted and the results were as follows:

- The term of the Agreement was extended from June 9, 2007, to June 30, 2007, to capture the full savings for FY 2007;
- A clarification that if savings accrue as a result of other work accomplished by the State or in the progress that is not in the scope of the services provided under the Agreement, that these savings will be excluded from the accrued savings upon which CGI-AMS' payments will be based; and
- Compensation to CGI-AMS based upon accrued savings, instead of 12 percent, would be paid at the following rates:

10.50%	$0-400 million;
9.75%	$400-600 million;
8.00%	$600-800 million;
5.00%	Greater than $800 million

Office Supplies
The DGS renegotiated a contract with Boise/OfficeMax, the State's incumbent office-supplies provider, with the use of PCC 6611. To date this renegotiation has resulted in $1.866 million in savings. This contract will expire in July 2006. The State successfully leveraged its buying power to achieve a reduction in the prices it pays today for the same goods.

Pursuit Vehicles
PCC Section 6611 has also been used for the purchase of 1,000 California Highway Patrol (CHP) pursuit vehicles, as well as an undetermined number of front-wheel drive vehicles, to meet the needs of local government agencies. The two-part process held by DGS included an online "reverse auction" using an interactive computer system to allow for real-time bidding. The second part of the process included negotiations with all of the dealers, which resulted in further price reductions. This resulted in the lowest price the State has paid for a CHP pursuit vehicle since 1997. To date, this has resulted in savings of $151,000.

Software
PCC 6611 was also used to negotiate a software maintenance agreement between the Teale Data Center and Software AG. This resulted in savings of $1.9 million over the five-year term of the contract.

LEGISLATIVE HISTORY

The California Constitution requires that the Governor annually submit to the Legislature a budget estimating State revenues and itemizing expenditures; the Legislature is then required to pass a budget bill by June 15. To implement the statutory changes mandated by the annual Budget Act, "trailer bills" are introduced which cover specific areas such as State administration, education, social services, etc. Prior year trailer budget bills that impacted the DGS were: AB 1586 (1997); AB 1589 (1998); AB 1105 (1999); AB 2866 (2000); SB 742 (2001); AB 3000 (2002); AB 1756 (2003); AB 1756 and AB 296 (2003); and SB 1102 (2004).

PROGRAM BACKGROUND

The DGS incorporates five operating divisions composed of 31 branches and offices that provide a broad range of business services to government. The DGS' functions include: procurement and contracting for goods and services; real estate and design services for State buildings; telecommunications; fleet management; information services; publishing services; architectural services; energy efficiency programs; legal services; and building maintenance.

OTHER STATES' INFORMATION N/A

FISCAL IMPACT

Repealing the sunset provision for PCC Section 6611 will allow the DGS to negotiate contracts in the State's best interest; however, we are unable to determine the fiscal impact for this vital tool to DGS as it continues to implement the California Strategic Sourcing Initiative.

This bill redefines the term "proceeds" as "net proceeds' from the sale of surplus property, which will allow the DGS to recover its costs in disposing of surplus properties.

To the extent that there are categories of drugs which the DGS, the UC, and the CalPERS purchase in bulk with similar pricing models, the opportunity does exist to benefit from leveraging contracting and negotiations.

ECONOMIC IMPACT N/A

LEGAL IMPACT N/A

APPOINTMENTS N/A

SUPPORT/OPPOSITION

Support: None on file at this time.

Opposition: None on file at this time.

ARGUMENTS

Pro:

- Repealing the sunset date for PCC Section 6611 allows the DGS to negotiate amendments to competitively-awarded contracts when it is in the best interest of the State to do so. The continued use of PCC Section 6611 is necessary for the State to continue to leverage its buying power to the maximum extent.
- The bill would allow the DGS to recoup its costs in disposing of surplus properties.
- To the extent that there are categories of drugs which the DGS, the UC, and the CalPERS purchase in bulk with similar pricing models, the opportunity does exist to benefit from leveraging contracting and negotiations.
- The bill would streamline the current reporting process by consolidating duplicative reports to the Legislature and making the DGS solely responsible for providing this information to the Legislature with one report versus having each awarding agency report separately to the Legislature.

Con: None.

VOTES

Assembly Floor:	05/05/05 – 45-0
Senate Floor:	07/07/05 – 27-10
Concurrence:	07/07/05 – 59-19

LEGISLATIVE STAFF CONTACT

Carol Ferreira
Legislative Coordinator
376.5045

ENROLLED BILL REPORT DEPARTMENT OF CORRECTIONS AND REHABILITATION

CONFIDENTIAL – Government Code §6254(l)

Department/Board:	Bill Number/Author:	
Corrections and Rehabilitation	**AB 139/Budget Committee**	
Sponsor:	**Related Bills:**	**Chaptering Order (if known)**
☐ Admin Sponsored Proposal No		☐ Attachment

Subject:
Juvenile Probation Funding

SUMMARY:

This bill would place responsibility with the California Department of Corrections and Rehabilitation (CDCR) for the administration of Juvenile Probation Funding, effective July 1, 2005. This bill also provides a funding allocation schedule for counties, describes the population to be served, and the services to be provided.

PURPOSE OF THE BILL:

The purpose of this bill is to establish administrative responsibility for this funding with the CDCR, as well as to provide the allocation schedule of funds to be provided to counties.

RECOMMENDATION AND SUPPORTING ARGUMENTS:

SIGN

This bill will provide for appropriate on-going administration of juvenile probation funding, and establishes allocations to county probation departments to provide services to at-risk youth and their families.

ANALYSIS:

State Juvenile Probation Funding (previously federally funded Temporary Assistance to Needy Families – TANF, through the Comprehensive Youth Services Act – CYSA) had

Departments That May Be Affected:
Department of Corrections and Rehabilitation, Corrections Standards Authority Division

☐ New/Increased Fee ☐ Governor's Appointment ☐ Legislative Appointment ☐ State Mandate ☐ Urgency Clause

Department Secretary Recommendation

☑ Sign
☐ Veto
☐ Defer to:

Department Secretary Date

in prior years been the responsibility of the Department of Social Services (DSS). In the 04-05 budget year, the CDCR (under its formerly named agency of the Board of Corrections) was charged with the responsibility for administering the initial one-time budget year General Fund appropriation for this program, expiring in June 2005. The DSS assisted with this responsibility through an inter-agency agreement with the Board of Corrections. This bill places ongoing responsibility for the administration of the program with CDCR. Program administration includes the establishment of agreements with all 58 county probation departments that receive funding, as well as the allocation of the funds.

This bill provides allocation amounts for each county. This includes both a base-funding amount per county totaling $168,713,000, as well as an additional $32,700,000 to be distributed among counties that operate juvenile camps and ranches. The latter distribution is based on the number of occupied beds within each jurisdiction.

The bill states funding may be used to service specified at-risk youth and their families, pursuant to a family service plan. Specific services are specified within the bill.

LEGISLATIVE HISTORY:

AB 1542 (Ducheny, et al.) Chapter 270, Statutes of 1997, California's Welfare-to-Work Act of 1997 created the Comprehensive Youth Services Act, along with CalWORKS, to replace funds previously provided to states as Title IV-A, Emergency Assistance and AFDC. The funding formula for the programs under The CYSA included federal funding for the probation services to youths and their families previously covered under Title IV-EA funding.

PROGRAM BACKGROUND:

Funds have been included in California's TANF block grant from the CYSA since 1997, allowing the county probation departments to provide services to youth and their families. Many of the services are available to youth in juvenile detention facilities and juvenile camps or ranches. It is estimated that these funds account for approximately 10 percent of the total funds for county probation departments.

FISCAL IMPACT:

The Corrections Standards Authority (CSA) (the division of CDCR that will implement the bill) will need approximately 4.0 positions and associated Operating Expenses and Equipment Funds to administer the CYSA/Juvenile Probation Funding program. The bill does not provide for these administrative costs which are estimated at $576,644.

SUPPORT/OPPOSITION

Support: N/A

Opposition: N/A

ARGUMENTS

Pro: This bill will provide a mechanism for the CSA to distribute State juvenile probation funding to the counties.

Con: CSA was not provided with the necessary administrative staff to administer the distribution of the block grant funds.

VOTES

LEGISLATIVE STAFF CONTACT:

Ron Jenkins, Legislative Coordinator
Corrections Standards Authority Division
(916) 323-8632

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: July 6, 2005
RECOMMENDATION: Sign

BILL NUMBER: AB 139
AUTHOR: Assembly Budget

ASSEMBLY: 59/19
SENATE: 27/10

BILL SUMMARY

This bill, an urgency statute, would make various statutory changes necessary to implement the 2005 Budget Act.

FISCAL SUMMARY

The fiscal impacts of the provisions of this bill are reflected in various appropriations in the 2005 Budget Act.

In addition, this bill would increase revenues to the Transportation Rate Fund by $716,000 annually (increased from $1.8 million to $2.5 million) by imposing a 40 percent fee increase on household goods carriers. This fee increase is necessary to support the augmentation included in the 2005 Budget Act.

This bill also would transfer $35 million in Proposition 46 Preservation Opportunity Funds to the Housing Rehabilitation Fund for the Homelessness Initiative. Approximately $18 million is available for immediate transfer; the remaining funds will be available for transfer as loans are repaid to the Preservation Opportunity Fund.

COMMENTS

Finance recommends this bill for signature because it allows for full implementation of the 2005 Budget Act. Additionally, the provisions of this bill represent the budget agreement between the Administration and the Legislature. **Both this bill and AB 145 amend sections of the Government Code related to a security surcharge for the Judicial Branch. To avoid chaptering problems, this bill must be signed before AB 145.**

The more significant policy changes include:

- **Homelessness Initiative:** As part of the Governor's Initiative to End Chronic Homelessness, the bill would transfer $35 million in Proposition 46 Preservation Opportunity Funds to the Housing Rehabilitation Fund for use in the Multifamily Housing Program. Funds would be used to develop housing with support services to address chronic homelessness.
- **Household Goods Carriers:** This bill would increase fees paid by household goods carriers by 40 percent to support and improve enforcement activities.
- **Office of State Publishing (OSP):** This bill would extend the sunset date on provisions that allow state departments to contract for printing services with outside vendors, providing that they obtain a bid from the OSP for print jobs estimated to cost more than $5,000. This language will provide flexibility for state departments and will reduce costs to the extent that private printing services are offered at a lower cost than OSP rates.

(Continued)

Analyst/Principal	Date	Program Budget Manager	Date
(0211) K. Gmeinder		James E. Tilton	7/8/05
Department Deputy Director			Date

COMMENTS (continued)

- **Reporting by Check Cashing Businesses:** The Administration is concerned about the reporting burden that this bill would impose on check cashing businesses and whether this bill appropriately balances the government's need for information with privacy concerns. Therefore, the Administration is committed to work with the Legislature to adopt legislation to address this issue.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 2005-2006	FC	2006-2007	FC	2007-2008	Fund Code
1206/Quartrly PUC	RV	No	P	$716	P	$716	P	$716	0412
2240/HCD	LA	No		See Fiscal Summary					6039
9901/Var Depts	SO	No		See Fiscal Summary					0001
9901/Var Depts	SO	No		See Fiscal Summary					0494
9901/Var Depts	SO	No		See Fiscal Summary					0988

Fund Code	Title
0001	General Fund
0412	Transportation Rate Fund
0494	Other Unallocated Special Funds
0988	Various Other Unallocated NGC Funds
6039	Preservation Opportunity Fund

DEPARTMENT OF CONSUMER AFFAIRS (Sections 1, 3-22)

BILL SUMMARY

This bill would delete the "continuous appropriation" language of specified special fund entities within the Department of Consumer Affairs.

FISCAL SUMMARY

The deletion of the language will not impact the fiscal operations of the various entities as these boards and bureaus have been and will continue to be subject to the annual budget process.

COMMENTS

Existing law contains continuous appropriation language for the specified boards and bureaus. This language is inconsistent with the legislative intent of the enacting statutes of these boards and bureaus, as the budgets of these entities have been subject to the administration's oversight and the approval of the legislature.

This bill would delete the "continuous appropriation" language of specified special fund entities within the Department of Consumer Affairs, aligning the language of the enacting statutes with the current budget process.

DEPARTMENT OF CONSUMER AFFAIRS (Section 2)

BILL SUMMARY

This bill would provide that all funds in the Medically Underserved Account (Account) are continuously appropriated for the repayment of educational loans.

FISCAL SUMMARY

There would be no fiscal impact to the Loan Repayment Program as funds transferred into the Account under the enacting statutes were continuously appropriated.

COMMENTS

Existing law provides that $1.15 million will be transferred from the California Medical Board's (Board) Contingent Fund to the Account in 2003-04, 2004-05, and 2005-06 to support the Steven M. Thompson Physician Corps Loan Repayment Program. Additionally, existing law authorizes the Board to seek and receive matching funds from foundations and private sources, and specifies that funds transferred from the Boards Contingent Fund and any matching funds will be continuously appropriated.

This bill would establish that all funds in the Account are continuously appropriated for the repayment of educational loans per agreements made between the Board and the physicians. The loan repayment program encourages recently licensed physicians to practice in underserved locations in California by authorizing a plan for repayment of their educational loans, up to $105,000, in exchange for their service in a designated underserved area for a minimum of three years.

DEPARTMENT OF JUSTICE (Section 23)

BILL SUMMARY

This bill would establish the Unfair Competition Law Fund in the State Treasury to be administered by the Department of Justice.

FISCAL SUMMARY

The 2005 Budget Act appropriates $3,213,000 from the Unfair Competition Law Fund to the Department of Justice.

COMMENTS

The Unfair Competition Law (Proposition 64) was passed by California voters on November 2, 2004. The Law authorizes the Attorney General or local prosecutors to bring a civil action against any person who engages, has engaged, or proposes to engage in unfair competition. Private parties may bring a civil action only if they can show personal damages caused by unfair competition. If the action is brought by the Attorney General, one-half of the penalty collected is to be paid to the General Fund, for use by the Attorney General in prosecuting unfair competition. This bill is necessary to allow the Department of Justice to deposit the portion of penalties paid to the State in the Unfair Competition Law Fund. This bill provides that moneys in the fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws.

The Legislative Counsel Bureau has indicated that this language is unconstitutional since the Constitution provides that an initiative may be amended by the Legislature only if expressly allowed by the initiative or if approved by the electorate. The Department of Justice and Department of Finance legal staff do not agree with the Legislative Counsel Bureau because the language does not materially change the initiative.

FRANCHISE TAX BOARD (Section 24)

BILL SUMMARY

This section implements a portion of the Administration's Tax Gap proposal. The section requires check cashiers who cash over $10,000 worth of checks for a single customer in the same calendar year to report those transactions to the Franchise Tax Board.

FISCAL SUMMARY

The FTB estimates General Fund revenues of $500,000 in 2006-07, increasing to $1.5 million in 2007-08 and $2.2 million in 2008-09.

COMMENTS

The purpose of this section is to ensure reportable income is tracked for income tax purposes. However, the Administration is concerned about the burden this will impose on check cashing businesses. Therefore, the Administration is committed to working with the Legislature to draft legislation to address this issue.

SECRETARY FOR BUSINESS, TRANSPORTATION AND HOUSING (Sections 25, 65, 80, 81)

BILL SUMMARY

This bill would create the Chrome Plating Pollution Prevention Fund (CPPPF) and require that all remaining funds, and future receipts of, the Hazardous Waste Reduction Loan Account (HWRLA) be deposited within the CPPPF for appropriation by the legislature. The bill would eliminate HWRLA. This measure also includes a contingency clause that the sections regarding the creation and operation of the CPPPF would not become operative unless legislation is enacted between June 1, 2005, and July 1 2006, that requires the funds expended by the CPPPF for environmental control technologies for chrome plating related activities.

FISCAL SUMMARY

The Legislature added a $2,000,000 appropriation to the Budget Act from the CPPPF but these funds cannot be accessed unless subsequent legislation is chaptered that requires funds to be expended by the CPPPF for environmental control technologies for chrome plating related activities.

If this appropriation is vetoed before enactment and this language were enacted, these sections would simply create the CPPPF and transfer monies from the HWRLA to the CPPPF. It should be noted that if SB 77 is enacted with the appropriation from the CPPPF intact, and no subsequent legislation is enacted that requires the funds expended by the CPPPF for environmental control technologies for chrome plating related activities, then the Budget Act of 2005 would include an appropriation from a non-existing fund because this measure requires that subsequent legislation be enacted in order for the CPPPF to be established.

The current $2.3 million balance in the fund consists of ongoing loan repayments to the fund and this balance will increase to an estimated $3.4 million by the end of 2006-07. Because no successor fund has been specified for the HWRLA, the balance of this fund would currently be transferred to the General Fund upon order of the State Controller, per Government Code Section 16346.

COMMENTS

This provision is related to AB 721 (Nunez), which would require the BT&H Agency to establish, until January 1, 2012, a loan program or loan guarantee program to provide financial assistance to small business owners of chrome plating facilities to help them comply with state and federal environmental standards and regulations designed to reduce pollution originating from these facilities. DOF has an approved oppose position on AB 721. The Governor vetoed similar legislation (AB 2657-Nunez) last year, because it would have singled out a particular industry for special assistance for failure to comply with environmental rules. A related Budget Act augmentation was also vetoed for similar reasons.

CALIFORNIA SCIENCE CENTER (Section 26)

BILL SUMMARY

This bill would authorize the California Science Center (the Science Center) to enter into a site lease and lease-purchase agreement with the California Science Center Foundation (the Foundation) for the purpose of constructing and funding the Phase II project of the California Science Center.

FISCAL SUMMARY

The cost will remain consistent with what was appropriated in the 2002 Budget Act (Ch. 379, Stats. of 2002). The original appropriation ($19,137,000) will revert, and the lease payments made by the state to the Foundation will not be more than $22,945,263 (the original appropriation plus legislatively allowable 19.9 percent augmentation) over the life of the lease.

COMMENTS

This bill is necessary to complete Phase II of the Science Center. The Foundation will develop the project consistent with the scope approved by the Legislature when the project was first appropriated. This solution assures the lowest fiscal responsibility for the state, allows the project to move forward, and allows the fundraising efforts of the Foundation to be utilized for its intended purpose.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (Section 26.5)

BILL SUMMARY

This bill would extend the date governing the Department of Housing and Community Development's (HCD) ability to assess fees for the issuance of employee tax credit certificates to qualified taxpayers operating within Enterprise Zones from July 1, 2006, to January 1, 2007.

FISCAL SUMMARY

This measure would extend the sunset date for administering fees to participants of the EZ program until January 1, 2007, thereby extending the anticipated annual revenues of $668,000 for issuance of certificates through this program.

COMMENTS

This measure would ensure a revenue source for the enterprise zone certification process through January 1, 2007, in the absence of General Fund support for this program. This funding structure would help protect the General Fund from fraudulent claims of tax credits, and require that those taxpayers receiving the tremendous benefits derived from these tax credit programs are paying for the costs to administer these programs. Currently the taxpayers receiving benefits from this program are eligible for up to $34,000 of income tax credits over a five year period. Presumably the $10 fee specified in statute that the HCD may charge for certification of these credits would not discourage participation in this program.

OFFICE OF HOMELAND SECURITY (Section 27)

BILL SUMMARY

This bill would require the Office of Homeland Security (OHS) to collaborate with the Department of Health Services (DHS) to report annually to the Legislature on expenditures of federal homeland security and bioterrorism funds.

FISCAL SUMMARY

Both OHS and DHS staff indicate reporting costs would be minor and absorbable, since they already track this information regularly.

COMMENTS

Existing law does not address federal homeland security and bioterrorism expenditure reporting to the Legislature. This bill would require the OHS to collaborate annually with the DHS and report to the Legislature by February 1 on expenditures of federal homeland security and bioterrorism funds. The report is to include (1) descriptions of the grant expenditures and coordination activities at the state and local level that have occurred over the past year, (2) how those activities met the state's strategic goals and objectives, (3) the funding amounts awarded to local jurisdictions and specific departments, (4) the funding levels by grant and grant year that have been expended, encumbered, and unencumbered, (5) any challenges that the departments or local jurisdictions encountered that hindered the expenditure of these funds, and (6) the areas of focus for the upcoming year.

Property Acquisition Law Account (Sections 28, 34, and 39)

BILL SUMMARY

This bill would create the Property Acquisition Law Money Account within the state treasury. This bill would make technical changes necessary to provide a source of funding for the state's asset management program operated by the Department of General Services (DGS), and would clarify operational issues in light of the passage of Proposition 60A.

FISCAL SUMMARY

This bill would direct revenues from the sale of surplus property to contribute to the retirement of the Economic Recovery Bonds pursuant to Proposition 60A. In addition, this bill would provide General Fund loans to DGS to manage the state's real property assets and would define "net proceeds" as gross proceeds less the costs of managing the state's real property assets (which includes preparing properties for sale).

COMMENTS

This bill would:

- Formally create the Property Acquisition Law Money Account within the state treasury (Fund 0002).
- Authorize General Fund loans for the purpose of supporting the Asset Planning and Enhancement program within the Department of General Services and require that these loans be repaid pursuant to GC 11011.
- Make substantive changes to GC 11011 and other related sections to conform with the passage of Proposition 60A including clarifying the definition of "net proceeds" by allowing the DGS to recover all costs associated with managing the state's real property assets.

Proposition 60A, passed by the electorate on November 2, 2004, requires that all proceeds from the sale of surplus property be used to repay the Economic Recovery Bonds (ERBs). This bill corrects two technical problems so that Proposition 60A can be implemented appropriately. This bill specifies that the "Deficit Recovery Bond Retirement Sinking Fund Subaccount," which had already been created to retire the bond debt, receive the proceeds from the sale of surplus property. This bill also defines "net proceeds" as gross proceeds less the costs of managing the state's real property assets.

DEPARTMENT OF JUSTICE (Sections 29 and 40)

BILL SUMMARY

This bill would establish the Legal Services Revolving Fund in the State Treasury to be administered by the Department of Justice.

This bill would also require the Department of Finance's approval prior to the Department of Justice transferring funds from the Litigation Deposit Fund to the Legal Services Revolving Fund.

FISCAL SUMMARY

No net fiscal effect. The 2005 Budget Act appropriates $85,730,000 to the Department of Justice from the Legal Services Revolving Fund, rather than from reimbursements.

COMMENTS

The Department of Justice provides legal services to all state agencies and charges non-General Fund agencies for costs of legal services rendered. Currently, agencies remit payments for these services as reimbursements. This bill provides that all payments made by state agencies would be deposited in the Legal Services Revolving Fund. This bill provides that moneys in the fund, upon appropriation by the Legislature, shall be used by the Attorney General for investigation and litigation activities taken on behalf of state agencies employing the legal services of the Department of Justice and for investigation and litigation activities funded through judgments or settlements.

Existing law authorizes the Department of Justice to transfer funds from the Litigation Deposit Fund to the Legal Services Revolving Fund and requires the Department of Justice to notify the Department of Finance no later than 15 days after funds have been transferred. This bill would require the Department of Justice to submit a written application to the Department of Finance to request approval for expenditure of these funds prior to making the transfer.

DEPARTMENT OF GENERAL SERVICES

Procurement Initiatives (Sections 30, 35, 55, 60-64)

BILL SUMMARY

This bill would consolidate various reporting requirements related to procurement activities and would eliminate the sunset date on language that provides the Department of General Services (DGS) with flexibility to utilize alternative procurement methodologies.

FISCAL SUMMARY

This bill could result in savings related to the continued utilization of alternative procurement methodologies. Additionally, this bill could result in minor savings to departments who will no longer be required to duplicate certain reports on procurement activities.

COMMENTS

This bill would eliminate procurement activities reports submitted by individual departments and would consolidate that function within the DGS. Currently, DGS is required to submit a statewide report and, in addition, each department separately reports the same information. This bill would eliminate duplicative requirements.

This bill would also eliminate the sunset date on language that provides DGS with flexibility to use alternative procurement strategies such as those implemented through the Strategic Sourcing initiative.

Office of State Publishing (Section 33.5)

BILL SUMMARY

This bill would extend the sunset date of current provisions that allow departments flexibility to contract out for small printing jobs.

FISCAL SUMMARY

This language would enable state departments to save money by obtaining printing services from outside vendors whose pricing is often lower than the rates charged by the Office of State Publishing (OSP). Without this language, departments would be mandated to use the OSP and it is likely that departmental printing costs would increase.

COMMENTS

Existing law allows departments to procure printing services from vendors other than the OSP, as long as the department obtains a bid from OSP for jobs costing more than $5,000. This bill would extend the sunset date of existing provisions by one year, until June 30, 2006. This language has been extended on an annual basis for several fiscal years.

Cash Management (Section 31)

BILL SUMMARY

This bill would codify current practice relating to the treatment of pre-payments from departmental clients to the Department of General Services.

FISCAL SUMMARY

This bill would have no fiscal impact on any state agency.

COMMENTS

Existing law requires the Controller to transfer the amount ordered by the Director of General Services after work is performed, services are rendered or materials or equipment are furnished. Existing law also requires the Controller to adjust the accounts relative to advances or transfers and to credit the appropriate fund or appropriation.

This bill would make transfers from a central service agency, such as the Department of General Services, periodic and would require that the agency performing the work request the transfer. This will codify current practice and will provide the Department of General Services with needed flexibility for cash management.

DEPARTMENT OF TECHNOLOGY SERVICES (Sections 32, 76, 77)

BILL SUMMARY

This bill would delete the continuous appropriation for the Department of Technology Services Revolving Fund.

FISCAL SUMMARY

This bill would not result in any fiscal impact to the Department of Technology Services.

COMMENTS

Governor's Reorganization Plan (GRP) Number 2 proposes to consolidate the Stephen P. Teale Data Center, the Health and Human Services Agency Data Center, and the Office of Network Services into the new Department of Technology Services (DTS). The GRP also proposes to abolish the revolving funds that each entity utilizes, transfer the proceeds into the new Department of Technology Services Revolving Fund, and continuously appropriate its funds. The original intent of the proposal was to have the DTS be completely off-budget, but the Legislature objected to that concept, so the Administration agreed to include a Budget Bill appropriation for the new entity and eliminate the continuous appropriation. Since the Legislature cannot modify a GRP once it is introduced, this measure replaces the provision in the GRP that contains the continuous appropriation with a similar section that omits it.

DEPARTMENT OF JUSTICE (Section 33)

BILL SUMMARY

This bill would establish the Registry of Charitable Trusts Fund in the State Treasury to be administered by the Department of Justice.

FISCAL SUMMARY

The 2005 Budget Act appropriates $2,104,000 from the Registry of Charitable Trusts Fund to the Department of Justice.

COMMENTS

Existing law authorizes the Department of Justice to oversee all charities and commercial fundraisers doing business in California. These charities and fundraisers are required to register, file financial reports, and pay fees on an annual basis. This bill is necessary to allow the Department of Justice to deposit all registration fees, registration renewal fees, late fees and other fees paid by charities and fundraisers in the Registry of Charitable Trusts Fund. This bill provides that moneys in the fund, upon appropriation by the Legislature, shall be used by the Attorney General solely to operate and maintain the Registry of Charitable Trusts and to provide public access via the Internet to reports filed with the Attorney General.

Prescription Drug Purchasing (Section 36)

BILL SUMMARY

This bill would state the intent of the Legislature that the various departments that procure prescription drugs meet and share information in order to identify and implement opportunities for cost savings. This bill would require the Department of General Services to coordinate and report on activities and cost savings related to drug purchasing.

FISCAL SUMMARY

It is our understanding that the Department of General Services already works with departments as much as possible to attempt to achieve cost savings related to drug purchasing. To the extent that this bill encourages additional participation by entities such as the University of California and the Public Employees Retirement System, it could result in additional savings to the state of an unknown amount.

COMMENTS

This bill would state that it is the intent of the Legislature that the Department of General Services (DGS), the University of California (UC), and the Public Employees Retirement System (PERS) meet regularly and share information regarding the procurement of prescription drugs and further states that it is the intent that the UC and PERS cooperate with the DGS in order to reduce costs related to drug purchasing.

This bill would require the DGS to share information, on a regular basis, with the UC and PERS, including prices paid for similar drugs and information regarding drug effectiveness. This bill would also require the DGS to identify opportunities to consolidate drug procurement or other joint activities with the UC and PERS that may result in cost savings. This bill would further require that DGS participate in at least one independent association that develops information on drug effectiveness. This bill would require DGS to develop a work plan annually that includes a description of the department's annual activities to reduce the state's drug purchasing costs and an estimate of the savings and requires reporting to the Legislature of this work plan and related information on an annual basis.

CAPITAL OUTLAY (STATEWIDE) (Section 37)

BILL SUMMARY

This provision would codify existing State Public Works Board (PWB) practice in financing various phases of a lease-revenue project by authorizing the PWB to capitalize interest for a period of up to six months beyond the completion of construction.

FISCAL SUMMARY

Since this is an existing practice, the provision would not create a fiscal impact.

COMMENTS

Currently, the PWB is authorized to issue bonds to finance the acquisition or construction of a public building, facility, or equipment as authorized by the Legislature, and any additional amounts to pay the cost of financing the project. The additional cost may include interest during acquisition or construction of the project. This provision would codify existing practice, thus permitting the PWB to capitalize interest for a period of up to six months beyond the completion of construction.

CAPITAL OUTLAY (STATEWIDE) (Section 38)

BILL SUMMARY

This provision would clarify existing State Public Works Board (PWB) authority to issue bonds for any phase of a lease-revenue bond funded project that is appropriated by the Legislature.

FISCAL SUMMARY

If not enacted, the State would be at risk for incurring millions of dollars in General Fund costs for capital outlay equipment and interim financing costs that would have to be absorbed in support budgets, pursuant to Section 4.80 of the Budget Act and corresponding resolutions that have been signed.

COMMENTS

During the 2004-05 Spring PWB Bond Sales, the Attorney General's staff concluded that the appropriations for the projects did not specifically authorize the PWB to issue bonds for all phases, specifically design and equipment phases, of certain University of California capital outlay projects, even though the Budget Act contained funding and clearly intended these phases to be funded from lease-revenue bonds. This provision would clarify existing PWB authority to issue bonds for any phase of a lease-revenue bond funded project that is appropriated by the Legislature.

CALPERS (Section 41)

BILL SUMMARY

This bill ensures the state's obligations under the Rural Health Care Equity Program are met by continuously appropriating an amount equal to the reversion of $15.3 million.

FISCAL SUMMARY

The Program provides up to $1,500 per year in reimbursement. Any unexpended appropriation is carried over to be available to provide for a secondary distribution to employees who have more than $1,500 in medical costs. The Budget Act of 2005 provides for a reversion to the General Fund of all appropriations prior to 2004-05.

COMMENTS

The Rural Health Care Equity Program was implemented in 2000 to provide for reimbursement of out-of-pocket medical costs for state employees residing in rural areas not served by CalPERS HMOs. It is not anticipated that there will be any claims against this appropriation.

JUDICIAL COUNCIL (Sections 42-46, 59)

BILL SUMMARY

This bill would phase out the undesignated filing fee revenue from the county and replace it with civil assessments and other revenue from services provided by the courts.

FISCAL SUMMARY

This bill would have a net zero fiscal impact. It would authorize an increase to civil assessments and a decrease, over five years, to undesignated fees remitted by the counties to the Trial Court Trust Fund. Without this language, the current undesignated fee revenue of $31 million would expire and there would not be sufficient revenue to support the costs of Trial Court operations.

COMMENTS

Existing law requires a jointly proposed long-term revenue allocation schedule to take effect on July 1, 2005 when the undesignated fees of $31 million from the counties to the Trial Court Trust Fund would expire.

This bill would phase out county obligations for undesignated fees payments, increase civil assessments, and hold the state harmless for any resulting revenue shortfall to the courts. The net effect of this action would be to continue the level of revenue to the courts currently derive from undesignated fees ($31 million annually), which would otherwise sunset on July 1, 2005.

JUDICIAL COUNCIL (Section 47)

BILL SUMMARY

This bill would extend the sunset date of the filing fee surcharge for one year to June 30, 2006.

FISCAL SUMMARY

This bill would authorize the continuation of currently authorized revenues of $16.2 million for 2005-06. Without this filing fee extension there would not be sufficient revenue for the costs of Trial Court operations.

COMMENTS

Existing law establishes a $10 or $20 filing fee surcharge to be added to the total filing fee in civil cases, as specified, that are filed between January 1, 2004, and June 30, 2005, inclusive. This bill would extend those filing fee surcharges until June 30, 2006, or until the enactment of a uniform filing fee, whichever is earlier.

We note that AB 145, another Budget Trailer Bill, would create a statewide uniform civil filing fee to become effective January 1, 2006. Therefore, the surcharge in AB 139 will be discontinued as of that date.

JUDICIAL COUNCIL (Section 48)

BILL SUMMARY

This bill would delete an obsolete reference to the municipal court and make other minor changes to wording. This bill would also clarify that if charges are imposed by a court for a returned check, the charges will be retained by either the county or court, depending on where the costs were incurred.

FISCAL SUMMARY

Judicial Council staff indicate that this bill has no fiscal impact.

COMMENTS

We were not aware of this issue, however, it is technical and we have no concerns with these changes.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT Office of Migrant Services Reconstruction Plan (Sections 49, 53, 78)

BILL SUMMARY

This bill would permit the HCD to utilize as much as $15.0 million of Proposition 46 Bond Funds set aside for the purposes of migrant farmworker housing with $10.7 million available between enactment of this measure and September 1, 2006, and an additional $4.3 million being available between September 1, 2006, and July 1, 2007. This measure specifies that $8.159 million be made available for no-interest, non-matching, 10 to 30 year deferred forgivable loans for migrant farmworker housing to local governments, non profits and agricultural employers according to the following criteria through July 1, 2007:

- The housing be made available on property that permits access to farmworkers,
- Consist of alternative housing types that meet state and federal building standards.
- Provide replacement housing for farmworkers who are displaced from existing housing due to health and safety issues.
- Consist of a migrant farmworker center that provides social services, or
- Consists of other types of farmworker housing or newly constructed migrant farmworker centers.

This measure would also permit the migrant farmworker facilities to be used for non-migrant farmworker purposes when not in use by the migrant farmworkers, permit the use of reserve accounts, allow funds to be used for all development and construction costs, and require that rents at the facilities not exceed limits imposed by the HCD.

FISCAL SUMMARY

This measure would immediately make an additional $5.2 million of Joe Serna Jr. Farmworker Housing Grants available to the HCD for use in repairing, renovating and constructing migrant farmworker housing operated by the Office of Migrant Services. This measure would also make as much as $4.3 million of additional funds available for the same purposes between September 1, 2006 and July 1, 2007 in an equal proportion to the underutilization of these funds by private applicants for migrant farmworker housing grants. These funds are Proposition 46 Bond funds that would be used for projects that would otherwise become significant General Fund costs in out-years. It should also be noted that the availability of these funds ensures the preservation and development of migrant farmworker housing in the event that General Funds would not become available for these purposes in out-years.

COMMENTS

This measure would immediately make an additional $5.2 million of Joe Serna Jr. Farmworker Housing Grants available to the HCD for use in repairing, renovating and constructing migrant farmworker housing operated by the Office of Migrant Services. This measure would also make as much as $4.3 million of additional funds available for the same purposes between September 1, 2006 and July 1, 2007 in an equal proportion to the underutilization of these funds by private applicants for migrant farmworker housing grants. These funds are Proposition 46 Bond funds that would be used for projects that would otherwise become significant General Fund costs in out-years. It should also be noted that the availability of these funds ensures the preservation and development of migrant farmworker housing in the event that General Funds would not become available for these purposes in out-years.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT Homeless Initiative (Sections 50, 51, 79)

BILL SUMMARY

This bill would require that all money received by the Department of Housing and Community Development (HCD) in repayment to loans made with funds from the Housing and Emergency Shelter Trust Fund of 2002 be deposited into the Housing Rehabilitation Loan Fund for use in the Multifamily Housing Program (MHP), with the exception of $5 million. This bill would require that the remaining $5 million be used in the Preservation Opportunity Program (POP), until December 31, 2008, after which time the HCD may use the money, as needed, in either the MHP or the POP.

FISCAL SUMMARY

This measure would make approximately $35 million in Proposition 46 bond funds available for use in addressing homelessness throughout the state. This measure would also retain $5 million for use in housing preservation at least until December 31, 2008.

COMMENTS

Existing law establishes the Preservation Opportunity Fund (POF) and specifies that loans made from this fund be repaid with interest into this same fund. Existing law includes the Housing and Emergency Shelter Trust Fund Act of 2002, passed by voters through Proposition 46, which specifies that $45 million in Proposition 46 bond funds be deposited into the POF for use in the POP, unless otherwise specified through a change in statute. This bill would redirect all funds received by the HCD in repayment to loans made with funds from the Housing and Emergency Shelter Trust Fund of 2002 for use in the POP be deposited into the Housing Rehabilitation Loan Fund for use in the MHP, with the exception of $5 million. This bill would require that the remaining $5 million be used in the POP, until December 31, 2008, after which time the HCD may use the money, as needed, in either the MHP or the POP.

The May Revision proposed to transfer $40 million in Proposition 46 Preservation Opportunity Funds to the Housing Rehabilitation Fund for use in the Multifamily Housing Program to address homelessness. This version represents the compromise as approved by the budget conference committee and agreed to by the Administration.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT Office of Migrant Services Rent Controls (Section 52)

BILL SUMMARY

This bill would require that rents charged by the Office of Migrant Services to tenants at the migrant farmworker housing centers operated by the Office to not exceed the 30 percent of the average monthly household income of the tenants.

FISCAL SUMMARY

This measure would not have a fiscal impact on the operations of the migrant centers operated by the Office of Migrant Services, as the Office currently maintains rents below 30 percent of the average monthly household income of its migrant tenants.

COMMENTS

The Budget Act of 2004 was followed by trailer bill language (SB 1102, Chapter 227, Statutes of 2004) that statutorily capped the rents at migrant centers at 30 percent of the annualized income of the tenants of these centers. However, this language was chaptered out as the Governor signed Chapter 671, Statutes of 2004 (AB 868, Parra) which allowed the centers to open for longer periods of time. In the signing message the Governor stated, "Unfortunately, [this bill] also chapters out provisions ...which I signed that would have prohibited rent increases for residents of an Office of Migrant Services Facility."

DEPARTMENT OF INDUSTRIAL RELATIONS (Section 54)

BILL SUMMARY

This bill would establish criteria for transfers from the Unpaid Wage Fund to the General Fund, and would allow for an evaluation of the fund's condition prior to any transfers.

FISCAL SUMMARY

This bill could increase transfers to the General Fund since it will increase oversight over the fund condition and set criteria for transfers from the Unpaid Wage Fund to the General Fund.

COMMENTS

Existing law requires the State Controller's Office (SCO) to transfer the balance of the Unpaid Wage Fund to the General Fund if the balance exceeds $200,000. This bill would instead require the SCO to transfer the balance on an annual basis, upon order of the Director of Finance, leaving a reserve in the fund equal to six months of expenditures.

DEPARTMENT OF VETERANS AFFAIRS (Sections 56, 57, and 58)

BILL SUMMARY

This bill would authorize the Department of Veterans Affairs to receive private donations for the maintenance or beautification of the Northern California Veterans Cemetery and would establish the continuously appropriated Northern California Veterans Cemetery Perpetual Maintenance Fund for the donations. Further. this bill would set forth the processes regarding the construction, placement, or donation of monuments and memorials in the cemetery.

FISCAL SUMMARY

This bill would not result in any added costs to the state. By authorizing the state to accept donations for the maintenance or beautification of the Northern California Veterans Cemetery, this bill could reduce future General Fund pressure.

COMMENTS

This bill would:

- Limit the total expenditures for the operation and maintenance of the cemetery to not exceed $600,000.
- Require proposals for the construction, placement, or donation of monuments and memorials in the cemetery to be reviewed by an advisory committee.
- Require the Department of Veterans Affairs adopt regulations for the policies and procedures to be followed regarding the design, placement, and approval of monuments in the cemetery.
- Authorize the Department of Veterans Affairs to accept donations for the maintenance or beautification of the cemetery.
- Create the continuously appropriated Northern California Veterans Cemetery Perpetual Maintenance Fund to receive donations for the maintenance or beautification of the cemetery.

PUBLIC UTILITIES COMMISSION (Section 66)

BILL SUMMARY

This bill would increase the fees paid by household goods carriers to expand investigative and enforcement actions against carriers that violate the law.

FISCAL SUMMARY

The 2005-06 Budget includes $521,000 Transportation Rate Fund and 5.5 positions to improve the effectiveness and efficiency of household goods carrier enforcement. This increase will be funded by a fee increase on carriers.

COMMENTS

Existing law requires the Public Utilities Commission (PUC) to regulate the household goods carrier industry (i.e., moving companies). The PUC is authorized to inspect carrier records, revoke permits, investigate consumer complaints, issue fines and take appropriate enforcement actions. Since 2000, the number of violations reported to the PUC has grown due to an increase in the number of consumers being victimized and an increase in unethical business practices. There have been increased instances of carriers "holding goods hostage", in which a carrier quotes a consumer a low price, and in the course of the move or upon its completion, demands payment of a higher amount. The carrier retains possession of the consumer's goods and threatens to dispose of them unless the consumer pays the inflated price. Adding additional investigative and enforcement staff will improve the effectiveness and efficiency of household goods carrier enforcement. The primary revenue source for the Transportation Rate Fund is quarterly fees levied on carriers. Quarterly fees are currently set at a statutory cap of one-half of one percent of gross operating revenues, which generated $1.791 million in revenues in 2003-04.

This bill would amend existing law to increase the statutory cap to seven-tenths of one percent of gross operating revenues. This increase would generate additional revenues of approximately $716,000, which would be sufficient to fund the augmentation.

STATE CONTROLLER'S OFFICE/BUREAU OF STATE AUDITS (Section 67)

BILL SUMMARY

This section provides the State Controller's Office with an additional 45 days in which to perform the Vehicle License Fee calculation for local governments. The section also requires the SCO to determine this amount in consultation with the Bureau of State Audits.

FISCAL SUMMARY

This section would have no fiscal impact.

COMMENTS

This section is intended to provide the state additional time to ensure local governments receive the correct Vehicle License Fee offset payment.

BOARD OF EQUALIZATION (Section 68)

BILL SUMMARY

This section implements a legislative proposal to decrease the threshold for mandatory electronic submission of sales and use tax (SUT) payments.

FISCAL SUMMARY

The BOE estimates the expedited receipt of SUT payments would increase General Fund interest earnings by approximately $192,000 per year.

COMMENTS

Currently, businesses with a monthly SUT liability of $20,000 per month are required to electronically submit their SUT payments. This section would decrease that threshold to $10,000 per month.

This section would result in minor General Fund revenue increases and it would not impose a significant hardship on businesses.

FRANCHISE TAX BOARD (Section 69)

BILL SUMMARY

This section implements a portion of the Administration's Tax Gap proposal. The section specifies the information that check cashiers must include in the reports that document transactions as specified in section 24 of the bill. It also specifies that willful failure to file the required reports is a felony punishable by (a) a fine of up to $25,000 for individual persons, and up to $100,000 for corporations and (b) imprisonment for up to one year.

FISCAL SUMMARY

No direct fiscal impact. Since the section creates a new crime, associated costs incurred by local governments are not reimbursable.

COMMENTS

This section is associated with section 24, which requires check cashiers who cash over $10,000 worth of checks for a single customer in the same calendar year to report those transactions to the Franchise Tax Board.

The Administration is concerned about the burden this new requirement will impose on check cashing businesses. Therefore, the Administration is committed to working with the Legislature to draft legislation to address this issue.

FRANCHISE TAX BOARD (Section 70)

BILL SUMMARY

This section implements a portion of the Administration's Tax Gap proposal. The section adds the reports required by section 24 of this bill to the list of reports that must be collected by the Franchise Tax Board

FISCAL SUMMARY

Minimal General Fund cost for increased FTB State Operations activities.

COMMENTS

This section is associated with section 24, which requires check cashiers who cash over $10,000 worth of checks for a single customer in the same calendar year to report those transactions to the Franchise Tax Board.

The Administration is concerned about the burden this new requirement will impose on check cashing businesses. Therefore, the Administration is committed to working with the Legislature to draft legislation to address this issue.

FRANCHISE TAX BOARD (Section 71)

BILL SUMMARY

This section implements a portion of the Administration's Tax Gap proposal. The section conforms state law to federal law by allowing the Franchise Tax Board to disbar tax preparers who have been disbarred by the federal government.

FISCAL SUMMARY

Minimal General Fund cost for increased FTB State Operations activities.

COMMENTS

Currently, the FTB may only suspend tax preparers who have been disbarred by the federal government. This section will ensure that tax preparers who have been found guilty of misconduct by the federal government are prevented from preparing state tax returns.

FRANCHISE TAX BOARD (Section 72)

BILL SUMMARY

This section conforms to a legislative proposal that adds $1.2 million General Fund to the FTB's budget to fund a Misdemeanor Program. Pursuant to the Program, the FTB would work with local prosecutors to pursue misdemeanor charges against taxpayers who repeatedly fail to file returns, and who have an outstanding tax liability of a least $15,000 but cannot be demonstrated to have knowingly underpaid which would subject them to felony penalties. The changes in this code section seek to ensure that persons who are mentally incompetent or suffer from dementia, Alzheimer's disease, or a similar condition would not be subject to prosecution.

FISCAL SUMMARY

Assuming 100 successful prosecutions per year, the FTB estimates General Fund revenues of $2.5 million in 2005-06. However, Finance does not believe these revenues will be realized, as it is unclear that local prosecutors will pursue these cases.

FTB state operations costs are estimated at $1.226 million General Fund per year.

COMMENTS

Notwithstanding the changes made by the Legislature to limit this program, many Legislators remained concerned that unintended and unknowing acts would still have a criminal penalty.

The Governor vetoed the funding for FTB to administer this program. He cited the fact that it was unclear that prosecutors will pursue these cases. Consequently, it was questionable whether this proposal would have generated significant revenues.

EMPLOYMENT DEVELOPMENT DEPARTMENT (Section 73)

BILL SUMMARY

This bill would allow the Employment Development Department, to the extent that funds are appropriated for this purpose, to administer and award grants of up to $250,000 to regional collaboratives for the creation of regional nursing simulators. This bill would restrict these grants to rural areas during 2005-06.

FISCAL SUMMARY

The 2005 Budget Bill contains $750,000 General Fund for three clinical simulators. This funding is one-time and would provide funds for three $250,000 grants.

COMMENTS

These grants will assist in the Administration's goal of increasing the number of nurses being trained in California.

DEPARTMENT OF CORRECTIONS AND REHABILITATION (Section 74)

BILL SUMMARY

This bill would establish the distribution methodology and allowable uses for juvenile probation funding provided to the counties by the Department of Corrections and Rehabilitation (DCR).

FISCAL SUMMARY

This bill reflects the Legislature's action to provide $201.4 million for county juvenile probation activities from the General Fund, rather than from federal Temporary Assistance for Needy Families (TANF) funds, as was proposed in the Governor's Budget.

This bill would result in increased costs to the state for administration of the funds allocated to the counties for juvenile probation activities. DCR estimates that in order to administer this program, approximately $577,000 General Fund and 4.0 positions would be needed. The trailer bill language requested by the Administration during the 2005 May Revision would have authorized DCR to use up to one-half of one percent of the funding for this program for administrative costs. This bill does not include this language and no budgetary augmentation was provided to DCR to perform the increased workload associated with administering this program. Therefore, any costs associated with the administration of this program will be redirected from other activities by DCR in the 2005-06 fiscal year.

In the past, when county juvenile probation activities were funded through federal TANF funds administered by the Department of Social Services (DSS), the DSS was able to recover administrative costs through the federal administrative overhead funding authorized for all TANF expenditures. Since the 2005-06 Budget Bill would shift the fund source for this program from federal TANF funds to the General Fund, there is no ability for DCR to recover their administrative costs without specific authorization or a budgetary augmentation.

COMMENTS

Existing law does not specify the distribution of funds provided to counties for juvenile probation activities. Previous law, which became inactive in October 2004, specified a schedule and formula for distribution of federal TANF funds provided for this purpose.

This bill establishes a schedule for distribution of the $201.4 million General Fund included in the 2005-06 Budget Bill for county probation activities. Under this bill, $168.7 million would be distributed to each county based on a county-by-county allocation schedule. This schedule is consistent with the amounts provided to counties in the past when TANF funding was used for the same purpose. The remaining $32.7 million would be allocated among counties that operate juvenile camps and ranches based on the number of occupied beds in each camp on a daily basis. This is also consistent with how TANF funds were provided in the past.

This bill specifies the types of services that counties can use these funds to provide, and the types of individuals who can benefit from these services. In the past, when this program was funded with federal TANF funds, the allowable uses and beneficiaries of these funds were specified by federal requirements. It is our understanding that the uses and beneficiaries included in this bill are consistent with the same federal requirements and uses that were allowed under the federal program.

While we note a concern that this program is being funded by General Fund rather than federal TANF funds, as proposed in the Governor's budget, on a programmatic basis the Administration supports the continuation of this program.

DEPARTMENT OF JUSTICE (Section 75)

BILL SUMMARY

This bill would remove the requirement that the Department of Justice investigate and enforce the State's securities and commodities laws within existing resources, but provide that no General Fund budget augmentations could be made for this purpose.

FISCAL SUMMARY

The 2005 Budget Act appropriates $4,681,000 from the Public Rights Division Law Enforcement Fund to the Department of Justice.

COMMENTS

Existing law authorizes the Department of Justice to investigate and enforce the Corporate Securities Law of 1968 and California Commodity Law of 1990 within existing resources, and prohibits budget augmentations for this purpose. This bill is necessary to allow for budget augmentations to support these activities, and ensure that no General Fund augmentations are provided for this purpose.

FRANCHISE TAX BOARD (Section 75.5)

BILL SUMMARY

This section would restrict the Franchise Tax Board's operation of the ReadyReturn pilot project to the same manner that it was operated in 2004-05.

FISCAL SUMMARY

This provision would have no fiscal impact.

COMMENTS

The Franchise Tax Board had voted to expand the ReadyReturn pilot project to all eligible individuals in 2005-06. This section of the bill will prevent that and limit the program to the same as it was in 2004-05.

HOMICIDE TRIALS (Section 78.5)

BILL SUMMARY

This section provides that 100 percent of the extraordinary costs of Stanislaus County for the Scott Peterson trial will be reimbursed by the state.

FISCAL SUMMARY

The costs that would be eligible for reimbursement are unknown at this time. Presumably, they could be reimbursed within the existing $4.3 million appropriation for state payments to counties for homicide trials.

COMMENTS

In the May Revision, the Administration proposed 100 percent reimbursement of the audited costs incurred by Stanislaus County for the Scott Peterson trial. Although this bill does not specify that the costs be audited, Finance intends that the claims for the Scott Peterson trial will be audited.

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL: AB 139 **AUTHOR:** Budget & Fiscal Review Committee **DATE:** 7/11/05 **DUE:** 7/25/05

ASSEMBLY: 45-0 **SENATE:** 27-10 **Concurrence:** 59-19

PRESENTED BY: Moira Topp **RECOMMEND:** **Sign** ☐ **Veto** ☐

SUMMARY

This bill provides the necessary statutory changes in the area of general government in order to enact the 2005 Budget Act. **(Urgency)**

SPONSOR: Author

SUPPORT: Health and Human Services Agency
Department of Health Services
State and Consumer Services Agency
Department of Consumer Affairs
Department of General Services
Department of Finance

OPPOSITION: None Received.

FISCAL IMPACT

The fiscal impacts of the provisions of this bill are reflected in various appropriations in the 2005 Budget Act. In addition, this bill would increase revenues to the Transportation Rate Fund by $716,000 annually (increased from $1.8 million to $2.5 million) by imposing a 40 percent fee increase on household goods carriers. This fee increase is necessary to support the augmentation included in the 2005 Budget Act.

This bill also would transfer $35 million in Proposition 46 Preservation Opportunity Funds to the Housing Rehabilitation Fund for the Homelessness Initiative. Approximately $18 million is available for immediate transfer; the remaining fund will be available for transfer as loans are repaid to the Preservation Opportunity Fund.

ARGUMENTS IN SUPPORT

This bill is necessary to fully implement the 2005 Budget Act. Additionally, the provisions of this bill represent the budget agreement between the Administration and the Legislature.

ARGUMENTS IN OPPOSITION

None received.

Prepared by: TF

CONFIDENTIAL – Government Code §6254(l)		
Department/Board: **Corrections and Rehabilitation**	Bill Number/Author: **AB 139/Budget Committee**	
Sponsor: ☐ Admin Sponsored Proposal No.	Related Bills:	Chaptering Order (if known) ☐ Attachment
Subject: Juvenile Probation Funding		

SUMMARY:

This bill would place responsibility with the California Department of Corrections and Rehabilitation (CDCR) for the administration of Juvenile Probation Funding, effective July 1, 2005. This bill also provides a funding allocation schedule for counties, describes the population to be served, and the services to be provided.

PURPOSE OF THE BILL:

The purpose of this bill is to establish administrative responsibility for this funding with the CDCR, as well as to provide the allocation schedule of funds to be provided to counties.

RECOMMENDATION AND SUPPORTING ARGUMENTS:

SIGN

This bill will provide for appropriate on-going administration of juvenile probation funding, and establishes allocations to county probation departments to provide services to at-risk youth and their families.

ANALYSIS:

State Juvenile Probation Funding (previously federally funded Temporary Assistance to Needy Families – TANF, through the Comprehensive Youth Services Act – CYSA) had

Departments That May Be Affected:
Department of Corrections and Rehabilitation, Corrections Standards Authority Division

☐ New/Increased Fee ☐ Governor's Appointment ☐ Legislative Appointment ☐ State Mandate ☐ Urgency Clause

Department Secretary Recommendation

■ Sign
☐ Veto
☐ Defer to:

Department Secretary [signature] Date 7-15-05

in prior years been the responsibility of the Department of Social Services (DSS). In the 04/05 budget year, the CDCR (under its formerly named agency of the Board of Corrections) was charged with the responsibility for administering the initial one-time budget year General Fund appropriation for this program, expiring in June 2005. The DSS assisted with this responsibility through an inter-agency agreement with the Board of Corrections. This bill places ongoing responsibility for the administration of the program with CDCR. Program administration includes the establishment of agreements with all 58 county probation departments that receive funding, as well as the allocation of the funds.

This bill provides allocation amounts for each county. This includes both a base-funding amount per county totaling $168,713,000, as well as an additional $32,700,000 to be distributed among counties that operate juvenile camps and ranches. The latter distribution is based on the number of occupied beds within each jurisdiction.

The bill states funding may be used to service specified at-risk youth and their families, pursuant to a family service plan. Specific services are specified within the bill.

LEGISLATIVE HISTORY:

AB 1542 (Ducheny, et al.) Chapter 270, Statutes of 1997, California's Welfare-to-Work Act of 1997 created the Comprehensive Youth Services Act, along with CalWORKS, to replace funds previously provided to states as Title IV-A, Emergency Assistance and AFDC. The funding formula for the programs under The CYSA included federal funding for the probation services to youths and their families previously covered under Title IV-EA funding.

PROGRAM BACKGROUND:

Funds have been included in California's TANF block grant from the CYSA since 1997, allowing the county probation departments to provide services to youth and their families. Many of the services are available to youth in juvenile detention facilities and juvenile camps or ranches. It is estimated that these funds account for approximately 10 percent of the total funds for county probation departments.

FISCAL IMPACT:

The Corrections Standards Authority (CSA) (the division of CDCR that will implement the bill) will need approximately 4.0 positions and associated Operating Expenses and Equipment Funds to administer the CYSA/Juvenile Probation Funding program. The bill does not provide for these administrative costs which are estimated at $576,644.

SUPPORT/OPPOSITION

Support: N/A

Opposition: N/A

ARGUMENTS

Pro: This bill will provide a mechanism for the CSA to distribute State juvenile probation funding to the counties.

Con: CSA was not provided with the necessary administrative staff to administer the distribution of the block grant funds.

VOTES

LEGISLATIVE STAFF CONTACT:

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Corrections Standards Authority Division
(916) 323-8632

Legislative Counsel
California

July 18, 2005

Honorable Arnold Schwarzenegger
Governor of California
Sacramento, CA 95814

REPORT ON ENROLLED BILL

AB 0139 2005

COMMITTEE ON BUDGET. STATE GOVERNMENT.
To take effect immediately, urgency statute.

SUMMARY:[1]

(1) Existing law creates various boards and other entities under the jurisdiction of the Department of Consumer Affairs with certain licensing and regulatory functions relative to various professions and vocations. Existing law, with respect to the funds created for certain of these entities, provides that the money in those funds is continuously appropriated for particular purposes.

This bill would delete the continuous appropriations applicable to certain funds. The bill would make other related changes.

(2) Existing law, the Medical Practice Act, regulates the practice of medicine in this state. Existing law establishes the Medically Underserved Account in the Contingent Fund of the Medical Board of California. Under existing law, specified moneys in the account are continuously appropriated to

[1] This is a corrected digest of the bill. The changes in the digest appearing on the printed bill as adopted are indicated in strikeout and italics.

repay loans per agreements with physicians who practice in underserved areas.

This bill would continuously appropriate all funds in the account for these purposes.

(3) Existing law authorizes the Attorney General and other public prosecutors to bring an action for relief from an act of unfair competition, as defined. Under existing law, a civil penalty may be assessed in the action that is designated for the exclusive use of a public prosecutor, including the Attorney General, for enforcing consumer protection laws.

This bill would create the Unfair Competition Law Fund and would require that the civil penalty recovered by the Attorney General in unfair competition and unfair business practice actions be deposited into the fund and expended, upon appropriation by the Legislature, for investigation and prosecution of these actions, and various other activities.

(4) Existing law regulates persons engaged in the business of making or negotiating deferred deposit transactions and requires every check casher to post a complete and detailed schedule of all fees for cashing checks, drafts, money orders, or other commercial paper, and the sale or issuance of money orders.

This bill would additionally require a check casher who cashes checks for the same person in an aggregate amount exceeding $10,000 within one calendar year, as provided, to file an informational return with the Franchise Tax Board, as specified. This bill would impose civil penalties on persons who fail to file these returns or fail to supply all of the information required by these returns. In the case of willful failures, this bill would make these failures a new criminal felony and would thereby impose a state-mandated local program.

(5) Existing law provides for the creation, maintenance, and authority of the Sixth District Agricultural Association, which is known as the California Science Center, and which is a tax-exempt organization and instrumentality of the state.

This bill would authorize the center to enter into a site lease and lease-purchase agreement with the California Science Center Foundation for the purpose of constructing and funding of the Phase II Project of the center, as specified.

(5.5) The Enterprise Zone Act requires the Department of Housing and Community Development to administer the act and to designate no more than 42 enterprise zones at any one time that may be proposed by a city, county, or city and county from applications selected on the basis of the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives in attracting private sector investment in the zone proposed. The act also requires the department to provide technical assistance to the enterprise zones and authorizes the department to establish, charge, and collect a fee as reimbursement for the costs of its administration of the act.

Existing law allows a credit against the net tax, as defined, to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year.

Existing law requires the Department of Housing and Community Development, until July 1, 2006, to assess an enterprise zone a fee of not more than $10 for each application it accepts for issuance of a tax credit certificate.

This bill would extend the assessment of this $10 fee until January 1, 2007.

(6) Existing law generally sets forth the duties of the Director of Homeland Security in overseeing homeland security activities in the state.

Existing law sets forth the duties of the State Department of Health Services in allocating specified federal funds for activities related to bioterrorism preparedness and response.

This bill would require the director, in collaboration with the department, to annually report to the chairperson of the Joint Legislative Budget Committee and the chairperson of the

budget committee of each house of the Legislature, on their respective expenditures of federal homeland security and bioterrorism funds.

(7) Existing law requires generally that moneys received from the disposition of state property ~~shall~~ be paid into the General Fund.

This bill instead would require that the net proceeds, as defined, that are received from any state real property disposition ~~shall~~ be paid into the Deficit Recovery Bond Retirement Sinking Fund ~~Account~~ *Subaccount*, a continuously appropriated fund, until the bonds issued pursuant to the Economic Recovery Bond Act are retired, thereby making an appropriation, and thereafter ~~shall~~ be deposited in the Special Fund for Economic Uncertainties. The bill would authorize the Director of Finance to approve loans from the General Fund to the Property Acquisition Law Money Account, which would be created by this bill and would be available for expenditure by the Department of General Services upon appropriation by the Legislature. The bill would provide that these changes are effective retroactively to November 3, 2004.

(8) Existing law authorizes the Director of General Services, with the consent of the state agency involved, to let for a period of not to exceed 5 years, any real or personal property that belongs to the state, subject to specified conditions. Any money received in connection with these leases is required to be deposited in the General Fund for appropriation to the department for specified purposes.

This bill instead would require that any money received in connection with these leases be deposited in the Property Acquisition Law Money Account and be available to the department upon appropriation by the Legislature.

(8.5) Existing law provides that no state agency is required to use the Office of State Publishing for its printing needs until the effective date of the Budget Act of 2005 or July 1, 2005, whichever is later and this provision of existing law is repealed on January 1, 2006.

This bill would continue to provide that no state agency is required to use the Office of State Publishing for its printing needs until the effective date of the Budget Act of 2006 or July 1, 2006, whichever is later, and would repeal this provision on January 1, 2007.

(9) Existing law generally makes the Attorney General responsible for representing state agencies in litigation matters. Under existing law, revenues in the Litigation Deposits Fund are continuously appropriated to the Department of Justice for litigation purposes.

This bill would create the Legal Services Revolving Fund and require state agency payments for legal services rendered by the Attorney General to be deposited ~~therein~~ *in that fund.* The bill would authorize the Attorney General to expend the money in the fund, upon appropriation by the Legislature, for litigation activities. The bill would further provide that revenues transferred to the Legal Services Revolving Fund from the Litigation Deposits Fund may be expended by the Department of Justice only if approved by the Department of Finance.

(10) Existing law requires the Controller, after work is performed, services are rendered, or materials or equipment are furnished by one state agency to another state agency through the advancement or transfer of funds, to transfer the amount ordered by the Director of General Services and adjust the accounts relative to the advancements or transfers to credit the appropriate fund or appropriation.

This bill would require the Controller, instead, to process transfers from time to time as requested by the state agency that performed the work.

(11) Under existing law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act governs charitable corporations, unincorporated associations trustees, commercial fundraisers, fundraising counsel, commercial coventurers, and other legal entities who hold or solicit property for charitable purposes over which the Attorney General has enforcement and supervisory powers. Under the

act, the Attorney General is also required to establish and maintain a register of charitable corporations, unincorporated associations, and trustees subject to the act and copies of specified financial reports required to be filed under the act.

This bill would establish the Registry of Charitable Trusts Fund in the State Treasury, as specified. The bill would require that moneys in the fund, upon appropriation by the Legislature, be used by the Attorney General solely to operate and maintain the Attorney General's Registry of Charitable Trusts and provide public access via the Internet to reports filed with the Attorney General.

(12) Existing law authorizes the Department of General Services to procure prescription drugs on behalf of specified state agencies through bulk purchasing and to investigate and implement other strategies to achieve the greatest savings on prescription drugs with prescription drug manufacturers and wholesalers.

This bill would state the intent of the Legislature that the Department of General Services, University of California, and the Public ~~Employees~~ *Employees'* Retirement System regularly meet and share information regarding each agency's procurement of prescription drugs in an effort to identify and implement opportunities for cost savings in connection with this procurement. It would require the department to annually develop a work plan and to report, no later than January 10, 2006, and annually thereafter, to the chairperson of the Joint Legislative Budget Committee and the chairs of the fiscal committees of the Legislature on any joint activities of these agencies in connection with procurement of prescription drugs and any resulting cost savings.

(13) Existing law authorizes the State Public Works Board to issue bonds, notes, or other obligations to finance the acquisition or construction of a public building, facility, or equipment as authorized by the Legislature in the total amount authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing. The additional cost may include, among other things, interest

during acquisition or construction of the public building, facility, or equipment.

This bill would additionally include interest prior to and for a period of 6 months after construction of the public building, facility, or equipment within the additional cost of financing that the board may authorize.

The bill would specify that notwithstanding any other provision of law, including, but not limited to, any specific grant of authority on or after June 30, 2001, the board may issue bonds, notes, or bond anticipation notes for any and all phases of specified types of capital outlay projects.

(14) Governor's Reorganization Plan No. 2, as submitted to the Legislature on May 9, 2005 (GRP 2), ~~would create~~ *created* the Department of Technology Services Revolving Fund in the State Treasury ~~and~~, *which is* continuously ~~appropriate the fund~~ *appropriated* for specified purposes with respect to the administration of a Department of Technology Services.

This bill would, as of the date that GRP 2 goes into effect, provide that these provisions would not be operative. The bill would, as of that date, instead create the fund in the State Treasury for these purposes, subject to appropriation by the Legislature.

(15) Existing law establishes the Trial Court Trust Fund, the proceeds of which are apportioned for the purposes of funding trial court operations. Existing law specifies certain fees that are to be collected in a special account in the county treasury and transmitted monthly to the Controller for deposit in the Trial Court Trust Fund.

This bill would expand the fees to which that provision applies, to include, among other things, court transfer filing fees, hearing date postponement filing fees, appeals filing fees, judgment debtor filing fees, court order violation fees, judgment creditor filing fees, and contempt of court fees.

The bill would also delete language contained in that provision crediting amounts transmitted from certain

recording and indexing fees during a specified time frame against the total amount the county is required to pay to the state.

(16) Existing law specifies that money in the Trial Court Trust Fund is to be invested in the Surplus Money Investment Fund and all interest earned is to be allocated to the Trial Court Trust Fund semiannually.

This bill would instead require that interest earned to be allocated quarterly.

(17) Existing law provides that certain court fees and fines that are not subject to a local revenue sharing agreement or practice, as specified, except as to costs incurred by and services provided by the superior court, which are transmitted monthly to the Controller for deposit in the Trial Court Trust Fund, are required to be deposited in a special account in the county treasury. Existing law provides, until July 1, 2005, for the distribution of the revenue from these fees and fines.

This bill would provide for the distribution of these fees and fines commencing July 1, 2005.

(18) Existing law provides, commencing January 1, 2004, for a county-by-county transfer to the Trial Court Trust Fund each fiscal year of the difference between $31,000,000 and the amount already transmitted to the Trial Court Trust Fund for costs incurred by and services provided by the superior court as described in ~~(1)~~ *(17)*.

This bill would provide, commencing July 1, 2005, that the counties' obligation to remit to the Trial Court Trust Fund each fiscal year the amount described above shall expire. Instead, the counties would be obligated to remit reduced amounts, as specified, to the Trial Court Trust Fund each fiscal year through the 2008-09 fiscal year, in accordance with specified procedures.

The bill would impose new administrative duties on the Administrative Office of the Courts (AOC) and the

California State Association of Counties (CSAC), including, among other things, determining the portion of these reduced amounts to be paid by each county. The AOC and the CSAC would be required, by December 31, 2005, to complete an initial review of the impact upon individual counties and courts of the above changes in revenue distribution and payment obligations for the purpose of correcting inequities, as specified, and, by June 30, 2006, to agree upon a methodology to determine whether a reduction in the counties' obligation should be recommended to the Legislature.

This bill would require counties that have not paid amounts billed for the 2003-04 or 2004-05 fiscal year to pay the amounts still owing to the Trial Court Trust Fund by September 1, 2005, and would provide for the calculation of penalties for late payments.

(19) Existing law requires, on or before January 1, 2005, the AOC and the CSAC to jointly propose to the Legislature a long-term revenue allocation schedule, to take effect on July 1, 2005, for specified fees and fines.

This bill would delete this provision.

(20) Under existing law, a court may impose a civil assessment of up to $250 against a criminal defendant who fails to appear in court, as specified.

This bill would increase the maximum amount that may be assessed under that provision to $300. The bill would also require each court and county to maintain the collection program that was in effect on July 1, 2005, unless otherwise agreed to by those entities. The bill would further require the court to deposit the money collected under that provision as soon as practicable into a bank account specified by the AOC, for transmission to the Controller for deposit in the Trial Court Trust Fund in accordance with specified procedures.

(21) Existing law requires, commencing in the 1999-2000 fiscal year, and each fiscal year thereafter, each county to

remit specified amounts to the Trial Court Trust Fund, including an amount based upon the amount of fine and forfeiture revenue remitted to the state pursuant to specified provisions during the 1994-95 fiscal year.

This bill would, commencing July 1, 2005, reduce each county's annual fine and forfeiture remittance by the amount that the county received from the civil assessments described in ~~(4)~~ (20), after deducting the cost of collecting those civil assessments, in the 2003-04 fiscal year. The bill would require the AOC and CSAC to determine the amount of this reduction for each county, as specified.

(22) Existing law imposes a surcharge of $20 for court security in addition to the total court fees collected pursuant to specified provisions and also authorizes the collection of an additional surcharge in certain cases filed from January 1, 2004, to June 30, 2005, inclusive.

This bill would extend that additional surcharge until June 30, 2006, as specified.

(23) Until January 1, 2008, or earlier, as specified, the Rural Health Care Equity Program, as administered by the Department of Personnel Administration, provides subsidies and reimbursements for certain health care premiums and health care costs incurred by state employees and annuitants in rural areas in which there is no board-approved health maintenance organization plan available for enrollment. Moneys in the program are disbursed to reimburse eligible employees for, among other things, a portion or all of his or her deductible, coinsurance, and other out-of-pocket health-related expenses that would otherwise be covered if the employee and his or her family members were enrolled in a board-approved health maintenance organization.

This bill would continuously appropriate an unspecified sum from the General Fund to reimburse those eligible employees for a portion or all of his or her out-of-pocket health-related expenses in excess of $1,500 per fiscal year, not to exceed a total of $15,336,000 for all fiscal years combined.

(24) Existing law, the Housing and Emergency Shelter Trust Fund Act of 2002, transfers $910,000,000 from the money deposited in the Housing and Emergency Shelter Trust Fund from the sale of bonds to the Multifamily Housing Program, with certain exceptions, including that $45,000,000 of that amount is required to be transferred to the Preservation Opportunity Fund and is continuously appropriated for the preservation of at-risk housing pursuant to the Preservation Opportunity Program, a short-term capital loan program established to ensure that the supply of affordable housing is not depleted by the conversion of existing government-assisted rental housing to market-rate housing. Existing law requires that money received in repayment of loans from the Preservation Opportunity Fund, including interest from that money, be deposited in the Preservation Opportunity Fund. Any funds not encumbered for the Preservation Opportunity Program within 30 months of their transfer to the Preservation Opportunity Fund revert to the Housing Rehabilitation Loan Fund.

This bill would, instead, require that all money received in repayment of loans made under the Preservation Opportunity Program be deposited into the Housing Rehabilitation Loan Fund for use in the Multifamily Housing Program, except for $5,000,000. By adding a new source of revenue for deposit into this continuously appropriated fund, the bill would make an appropriation. The $5,000,000 remaining in the Preservation Opportunity Fund and subsequent interest payments on loans made from this amount is required to be made available for the purposes of the Preservation Opportunity Program through at least December 31, 2008, at which time the California Housing Finance Agency may, based on an analysis of need, either continue to make the funds available for the Preservation Opportunity Program or transfer the funds to the Housing Rehabilitation Loan Fund for use in the Multifamily Housing Program, thereby constituting an appropriation.

(25) Existing law requires the Department of Housing and Community Development to make matching grants and loans from the Joe Serna, Jr. Farmworker Housing Grant

Fund, for specified purposes, and authorizes matching grants and loans to be made from the fund for other purposes.

Existing law, the Housing and Emergency Shelter Trust Fund Act of 2002, authorizes, for purposes of financing various existing housing and code enforcement programs, the issuance of bonds in the amount of $2,100,000,000 pursuant to the State General Obligation Bond Law. Existing law provides that $25,000,000 of these funds be used for projects that serve migratory farmworkers and specifically authorizes the department to receive $5,500,000 of these funds for the purpose of reconstructing migrant centers operated through the Office of Migrant Services that would otherwise be scheduled for closure due to health or safety considerations or are in need of significant repairs to ensure the health and safety of the residents.

This bill would increase the amount of the $25,000,000 appropriation that the department may use from $5,300,000 to $15,000,000 and would require the department to make at least $8,159,000 of that amount available for flexible loans and grants for projects that serve migratory agricultural workers under a program provided for under the Joe Serna, Jr. Farmworker Housing Grant Program that uses innovative, cost-effective mechanisms to provide migrant farmworkers with affordable, durable, low-maintenance housing options, as specified. By requiring the department to use these funds for a new purpose, the bill would make an appropriation. The bill would declare that the changes made by this act are consistent with the Housing and Emergency Trust Fund Act of 2002 and the Joe Serna, Jr. Farmworker Housing Grant Fund.

(26) Existing law authorizes the Department of Housing and Community Development to increase rents for a migrant farm labor center assisted by the Office of Migrant Services above those charged at other such centers under specified circumstances.

This bill would prohibit a rent increase above 30% of the average annualized household incomes of residents of any such facility without legislative authorization.

(27) Existing law requires the Labor Commissioner to, after investigation and determination that wages or benefits are due to an unpaid worker, collect ~~such~~ *the* wages or benefits on behalf of the worker, as specified. Existing law requires that whenever the balance in the Industrial Relations Unpaid Wage Fund is in excess of $200,000, the Labor Commissioner transmit the excess to the Controller for deposit in the General Fund.

This bill would instead require the Controller, at the end of each fiscal year, to transfer to the General Fund the unencumbered balance of the fund, less 6 months of expenditures as determined by the Director of Finance.

(28) Existing law requires the Department of Veterans Affairs, in voluntary cooperation with the Shasta County Board of Supervisors and the boards of supervisors of specified northern California counties, to design, develop, and construct the Northern California Veterans Cemetery. Existing law requires that all moneys received for the design, development, and construction of the cemetery are to be placed in the Northern California Veterans Cemetery Master Development Fund, a continuously appropriated fund. Existing law provides that specified moneys received for the maintenance of the cemetery are to be deposited to the credit of the Northern California Veterans Cemetery Perpetual Maintenance Fund for expenditure, upon appropriation by the Legislature.

This bill would authorize the administrator of the Northern California Veterans Cemetery to accept donations for the maintenance and beautification of the cemetery, as provided, and would provide that these donations are to be deposited to the credit of the Northern California Veterans Cemetery Perpetual Maintenance Fund. This bill would require that all donations deposited to that fund for the maintenance and beautification of the cemetery be continuously appropriated to the department.

This bill would also provide that any proposal for the construction, placement, or donation of monuments or

memorials to the cemetery are to be reviewed by an advisory committee, as specified, and that all proposals are subject to the approval of the director of the department.

(29) Existing law provides that expenditures for the maintenance of the Northern California Veterans Cemetery may not exceed $600,000 per calendar year.

This bill would instead provide that the total expenditures for both the operations and the maintenance of the cemetery should not exceed $600,000 per fiscal year, as appropriated in the annual Budget Act.

(30) Existing law requires each state department or agency awarding a contract or procuring goods or services, and each local agency receiving state funds, to report annually to the Governor and Legislature on the level of participation by specified business enterprises in contract and procurement activities. Existing law requires the Department of General Services to submit an annual report to the Legislature with respect to, among other things, procurement categories, construction contract categories, and contracts awarded to specified business enterprises. Existing law requires the Department of Veteran's Affairs to make an annual report to the Governor and Legislature regarding the participation by specified business enterprises in contracts with the department, requires awarding departments to identify steps to meet goals of contracting, and requires the Department of General Services to prepare a summary regarding those goals. Existing law authorizes the Department of General Services, relative to certain contracts, to use a negotiation process if certain conditions exist.

This bill would repeal all of those provisions as of January 1, 2007. This bill would, commencing January 1, 2007, require the department, as defined, to make available a report on contracting activity containing specified information, as provided.

(31) Existing law requires the money in the Hazardous Waste Reduction Loan Account to be expended by the Business, Transportation and Housing Agency to make loans

for equipment, projects, or facilities for the reduction of hazardous waste.

This bill would repeal the provisions authorizing that account and would transfer the amount remaining in the Hazardous Waste Reduction Loan Account on January 1, 2006, to the Chrome Plating Pollution Prevention Fund, which this bill would create in the State Treasury, and would require the money in the account be expended by the agency, upon appropriation by the Legislature.

The bill would require any amounts paid to the state for a loan issued pursuant to those former provisions to be transferred to the fund.

The repeal of that account and transfer the money to the fund would become operative only if legislation is enacted and becomes operative on or after June 1, 2005, but before July 1, 2006, that requires the funds so transferred to be expended for environmental control technologies for chrome and metal plating related activities.

(32) Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law directs the Public Utilities Commission to require specified highway carriers for whom the commission does not establish minimum or maximum rates to pay specified reduced fees, and authorizes the commission to increase the fees on other carriers whose minimum or maximum rates are established by the commission, up to a maximum of ½% of reported gross operating revenue, if necessary, to maintain adequate financing for the purposes of the Transportation Rate Fund. The fees are deposited in the Transportation Rate Fund and are continuously appropriated to the commission for specified regulatory purposes.

This bill would permit the commission to increase these fees on carriers for whom the commission establishes minimum or maximum rates, up to a maximum of 0.7%, thereby making an appropriation.

(33) The Sales and Use Tax Law requires any person whose estimated tax liability averages $20,000 or more per month to remit amounts due by electronic funds transfer, as provided. That law imposes specified penalties with respect to payment by electronic funds transfer. That law also imposes specified penalties with respect to nonpayment of taxes in general.

This bill would require any person whose estimated monthly tax liability averages $10,000 or more to remit amounts due by electronic funds transfer, as provided.

(34) Existing income and corporation tax laws impose a penalty of not more than $5,000 on any person that, among other things, fails to file a return or to supply any information required, or make, render, sign, or verify any false or fraudulent return or statement, or supply any false or fraudulent information.

This bill would impose the penalty only if those violations occur repeatedly over a period of 2 years or more and result in an estimated delinquent tax liability of at least $15,000.

(35) Existing income and corporation tax laws provide, in the case of willful failure to pay estimated taxes, that the person is guilty of a misdemeanor and subject to a fine or imprisonment, as provided.

This bill would provide that the misdemeanor, fine, or imprisonment provisions do not apply to any person who is mentally incompetent or suffers from dementia, Alzheimer's disease, or a similar condition.

(36) Existing tax laws impose various taxes and fees, and authorize the Franchise Tax Board to administer the assessment, audit, and collection of various taxes and fees.

This bill would require the Franchise Tax Board to suspend or disbar a person from practice, as defined, before the Franchise Tax Board, as provided, if that person has been suspended or disbarred from practice, as defined, before the United States Department of the Treasury, and would

require a person who practices before the Franchise Tax Board and is suspended or disbarred from practice before the United States Department of the Treasury to notify the Franchise Tax Board of the suspension or disbarment in writing within 45 days of the issuance of the final order by that department.

(37) Existing property tax law requires the county auditor, in each fiscal year, to allocate property tax revenue to local jurisdictions in accordance with specified formulas and procedures, and generally requires that each jurisdiction be allocated an amount equal to the total of the amount of revenue allocated to that jurisdiction in the prior fiscal year, subject to certain modifications, and that jurisdiction's portion of the annual tax increment, as defined. Existing law also provides, commencing with the 2004-05 fiscal year, for allocations of ad valorem property tax revenue to each city, county, and city and county in the form of a "vehicle license fee adjustment amount," calculated by the Controller in accordance with statute. Existing law requires the Controller to determine the "vehicle license fee adjustment amount" for each city, county, and city and county for the 2005-06 fiscal year by September 1, 2005.

This bill would instead require the Controller to calculate the "vehicle license fee adjustment amount" for each city, county, and city and county by October 15, 2005, in consultation with the Bureau of State Audits.

(38) Existing law imposes various duties upon the Employment Development Department, including the implementation of various programs with respect to workforce training and development.

This bill would, to the extent that funds are appropriated for this purpose in the annual Budget Act, authorize the Employment Development Department to award grants to regional collaboratives for the creation of regional nursing simulation laboratories, as provided, that will provide additional nursing students with access to clinical education facilities. This bill would limit the amount of any grant so made to $250,000.

(39) Existing law authorizes, upon adoption by the board of supervisors, a county to establish an At-Risk Youth Early Intervention Program, designed to assess and serve families with children who have chronic behavioral problems that place the child at risk of becoming a ward of the juvenile court.

This bill would establish a schedule for the allocation of funds to county probation departments from funds appropriated by the Legislature to provide services for children who are habitual truants, runaways, at risk of being wards of the juvenile court, or under juvenile court supervision or the supervision of the probation department, and would require the Department of Corrections and Rehabilitation to administer the funding allocations.

(40) Existing law requires that the investigation and enforcement of the certain provisions of law by the Attorney General and the Commissioner of Corporations be accomplished without duplication of effort. Existing law further provides that to the extent that the Attorney General exercises that authority, it shall be done using existing resources, and no future budget augmentations be made for that purpose.

This bill would revise those provisions to provide that to the extent the Attorney General exercises that authority, no General Fund budget augmentations would be made for that purpose.

(40.5) Under existing law, the Franchise Tax Board is authorized to prescribe all rules and regulations necessary for the enforcement of the Personal Income Tax Law and the Corporation Tax Law.

This bill would authorize the board to continue to implement the ReadyReturn pilot program, available to specified taxpayers, for the 2005-06 fiscal year and would require the pilot program to be operated in the same manner it was operated during the 2004-05 fiscal year.

(40.7) The Budget Act of 2005 appropriates specified amounts from the General Fund for local assistance to be paid by the State Controller to local governments for the costs of homicide trials, with specified limitations on these reimbursements.

This bill would specify that these funds shall be available for 100% of any extraordinary costs incurred by the County of Stanislaus related to a specified homicide trial.

(40.8) Existing property tax law authorizes grants, under the State-County Property Tax Administration Grant Program, to provide funding for the local administration of property taxes for those counties that elect to receive the grants.

This bill would suspend those grants for the 2006-07 fiscal year.

(41) 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.

(42) This bill would declare that it is to take effect immediately as an urgency statute.

FORM: Approved.

CONSTITUTIONALITY: This bill relates to, among other things, the funding of state boards and commissions, the establishment of the Unfair Competition Law Fund, the Legal Services Revolving Fund, the Registry of Charitable Trusts Fund, the California Science Center, housing, the Northern California Veterans Cemetery, disposition of state property, state agencies contracting out printing services, state procurement of prescription drugs, bioterrorism prevention and response,

unemployment insurance, court funding, and property taxation.

A question may be presented whether the bill, if chaptered, would violate the single subject rule contained in Section 9 of Article IV of the California Constitution, which requires that "... a statute shall embrace but one subject, which shall be expressed in its title." This rule requires that the provisions of a statute be either functionally related to one another or reasonably germane to one another or the objects of the enactment (see *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078; see also Planned Parenthood *Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187, 1195-1199; *Evans v. Superior Court* (1932) 215 Cal. 58, 63-64).

In addition, the bill would appropriate funds from the Medically Underserved Account in the Contingent Fund of the Medical Board of California, the Deficit Recovery Bond Retirement Sinking Fund Subaccount, the Housing Rehabilitation Loan Fund, specified migrant housing funds, the Transportation Rate Fund, and, for reimbursement of specified state employee health-related expenses, the General Fund.

A question may be presented whether the bill, if chaptered, would violate the prohibition against multiple appropriations contained in subdivision (d) of Section 12 of Article IV of the California Constitution, which provides that "[n]o bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose."

TITLE: Approved.

CONFLICTS: (1) This bill and Assembly Bill No. 145, an urgency measure which is also before the Governor, would both amend Section 68085 of the Government Code (Sec. 42, this bill; Sec. 101, A.B. 145).

The changes in Section 68085 proposed by each bill are different. Neither bill contains provisions that would make all of the changes in the section proposed by both bills if both bills are chaptered.

This bill would amend Section 68085 to provide that additional specified court fees be deposited in the Trial Court Trust Fund. This bill would also amend the section to delete an obsolete cross reference.

A.B. 145 would amend the section to provide that specified court fees, collected on or before December 31, 2005, and which are currently collected pursuant to the section, will continue to be deposited in the Trial Court Trust Fund. A.B. 145 would also amend the section to provide that additional specified court fees, collected on or before December 31, 2005, will be deposited in the Trial Court Trust Fund. A.B. 145 would further amend the section to provide that these fees, and certain other fees, that are collected on and after January 1, 2006, which are identified by cross-reference to subdivision (a) of Section 68085.1 of the Government Code, which A.B. 145 adds, would be deposited into a bank account established by the Administrative Office of the Courts, for subsequent distribution.

Thus, if this bill and A.B. 145 are chaptered, only the changes in that section proposed by the bill last chaptered will be given effect (Sec. 9605, Gov. C.).

Furthermore, because both this bill and A.B. 145 will take effect immediately, the changes made to the section by whichever bill is chaptered first will be in effect until the other bill is chaptered.

(2) This bill and Assembly Bill No. 145, an urgency measure which is also before the Governor, would both amend Section 69926.5 of the Government Code (Sec. 47, this bill; Sec. 115, A.B. 145).

The changes in Section 69926.5 proposed by each bill are different. Neither bill contains provisions that would make all of the changes in the section proposed by both bills if both bills are chaptered.

This bill would amend Section 69926.5 to extend the time within which an additional court security surcharge may be

collected from June 30, 2005, to June 30, 2006. This bill would amend the section to extend the operation of the additional surcharge provisions until July 1, 2006, or upon the enactment of a uniform filing fee, whichever is earlier.

A.B. 145 would amend the section to extend the time within which an additional court security surcharge may be collected from June 30, 2005, to December 31, 2005. A.B. 145 would amend the section to delete a provision that provides for the repeal of the additional surcharge provisions on July 1, 2005, or upon the enactment of a uniform filing fee, whichever is earlier, and would amend the section to provide for its repeal on January 1, 2006. A.B. 145 would enact the uniform filing fee to be effective on January 1, 2006 (Sec. 121, A.B. 145).

Thus, if this bill and A.B. 145 are chaptered, only the changes in that section proposed by the bill last chaptered will be given effect (Sec. 9605, Gov. C.). If this bill is chaptered last, there will be a lapse in the collection of the additional court security surcharge from the date this bill is chaptered, through December 31, 2005. If A.B. 145 is chaptered last, this lapse in collection of the surcharge will not occur.

Furthermore, because both this bill and A.B. 145 will take effect immediately, the changes to the section made by whichever bill is chaptered first will be in effect until the other bill is chaptered.

(3) This bill and Assembly Bill No. 145, an urgency measure which is also before the Governor, would both amend Section 71386 of the Government Code (Sec. 48, this bill; Sec. 123, A.B. 145).

The changes in Section 71386 proposed by each bill are different. Neither bill contains provisions that would make all of the changes in the section proposed by both bills if both bills are chaptered.

This bill would amend Section 71386 to distinguish between costs incurred by a court and costs incurred by a county for a returned check, and to specify how moneys from charges associated with these costs are to be distributed. The bill

would require that when those costs are incurred by the court, the charges be distributed to the court pursuant to a specified provision. This bill also makes various technical, nonsubstantive changes.

A.B. 145 would amend the section to require superior courts to adopt a written policy regarding acceptance of checks and money orders that is consistent with certain trial court financial policies and procedures authorized by the Judicial Council and deletes a requirement that a check be duly paid to constitute payment of an obligation. A.B. 145 also amends the section to distinguish between costs incurred by a court and costs incurred by a county for a returned check and specifies how moneys from charges associated with these costs are to be distributed. A.B. 145 would require that when those costs are incurred by the court, the charges be distributed to the court pursuant to a specified provision. A.B. 145 also makes various technical, nonsubstantive changes.

Thus, if this bill and A.B. 145 are chaptered, only the changes in that section proposed by the bill last chaptered will be given effect (Sec. 9605, Gov. C.). However, if A.B. 145 is chaptered last, the changes in Section 71386 proposed by both bills will be given effect.

Furthermore, because both this bill and A.B. 145 will take effect immediately, the changes made to the section by whichever bill is chaptered first will be in effect until the other bill is chaptered.

(4) Section 76 of this bill provides that Section 11544 of the Government Code, as added by Section 1 of Governor's Reorganization Plan No. 2, submitted to the Legislature on May 9, 2005, is not operative.

Section 77 of this bill provides that Sections 32 and 76 of this bill shall only become operative if Governor's Reorganization Plan No. 2 goes into effect.

Section 32 of this bill adds Section 11544 to the Government Code to create the Department of Technology Services

Revolving Fund within the State Treasury, and makes the moneys in the fund subject to appropriation by the Legislature.

Governor's Reorganization Plan No. 2, which became operative on July 9, 2005 (Sec. 12080.5, Gov. C.), adds Section 11544 to the Government Code to create the Department of Technology Services Revolving Fund within the State Treasury and specifically provides that it is continuously appropriated.

Therefore, if this bill is chaptered, Section 11544 of the Government Code, as added by this bill, will be given effect and Section 11544 as added by Governor's Reorganization Plan No. 2 shall become inoperative (Secs. 76 and 77, this bill).

Diane F. Boyer-Vine
Legislative Counsel

By

Paul Antilla
Deputy Legislative Counsel

PA:mev

Two copies to Honorable John Laird, pursuant to Joint Rule 34.

STATE BOARD OF EQUALIZATION
STAFF CHAPTERED BILL ANALYSIS

Date Enacted:	**July 19, 2005, Ch. 74**	Bill No:	**AB 139**
Tax:	**Sales and Use Tax**	Author:	**Assembly Budget Committee**
Related Bills:	**AB 1765**		

BILL SUMMARY

This budget trailer bill, among other things unrelated to the Board, requires taxpayers whose average monthly sales and use tax liabilities average $10,000 or more, to remit their tax payments electronically.

ANALYSIS

Current Law

Under existing law, Section 6479.3 of the Revenue and Taxation Code provides the statutory authority to require taxpayers with monthly tax liabilities averaging $20,000 or more to remit their tax payments via an electronic funds transfer (EFT). Under the law, taxpayers that meet the $20,000 threshold, are required to remit those funds under procedures prescribed by the Board. A person's failure to remit the funds under those procedures are subject to specified penalties.

Proposed Law

This bill amends Section 6479.3 to require taxpayers with sales and use tax liabilities averaging $10,000 or more per month to remit their tax payments via an EFT under procedures prescribed by the Board.

The bill became effective the day of enactment, July 19, 2005.

Background

Section 6479.3 was added to the Sales and Use Tax Law in 1991 (SB 467, Ch. 473) in order to provide a faster, more secure way of transferring funds and to also enable the Board to identify and start delinquent tax collection efforts earlier. Prior to the enactment of SB 467, tax payments were submitted by mail. SB 467 initially required only those taxpayers whose average monthly tax liabilities were $50,000 or more to remit by EFT. Additional provisions incorporated in SB 467 provided that, after two years (beginning January 1, 1995), those taxpayers whose monthly tax liabilities averaged $20,000 or more were additionally required to remit by EFT. This threshold has remained at $20,000 since January 1, 1995.

COMMENTS

1. **Sponsor and purpose.** This budget trailer bill is sponsored by the Assembly Budget Committee in order to implement the 2005-06 Budget agreement regarding the operations of state government.

2. **AB 1765 could chapter out these provisions.** AB 1765 is a Board-sponsored measure to also amend Section 6479.3. Under this statute, aside from the mandatory requirements for certain taxpayers to remit their payments via EFT, additional provisions are contained in the statute to allow other taxpayers to voluntary remit by EFT if they desired to do so. However, the law requires those who voluntarily opt to remit by EFT to continue to remit via EFT for a minimum of one year. The Board is sponsoring AB 1765 to delete the one-year minimum provision. The Board believes the one-year minimum requirement is no longer necessary, and could actually serve as a disincentive to sign up. If AB 1765 is signed, it appears the changes to Section 6479.3 enacted by this measure would be chaptered out.

3. **The bill is effective immediately.** The language of Section 6479.3 provides that the taxpayers who meet the $10,000 threshold are required to remit the amounts due by an EFT under procedures prescribed by the Board. Since the bill became effective on July 19, 2005, the Board has already begun developing procedures to accommodate the new taxpayer base and we expect that the procedures would be in place no later than January 1, 2006. Therefore, the new EFT taxpayers will make their first payment via EFT by January 31, 2006. This payment will represent the liability for the 4th Quarter 2005 reporting period, which is due on or before January 31, 2006.

4. **Operative date before January 1, 2006 would place a burden on taxpayers.** Board staff reviews taxpayer accounts each year and notifies taxpayers when they are required to pay by EFT. A packet is mailed to the taxpayer which includes a letter notifying the taxpayer of their requirement to pay taxes by EFT, instructions on EFT debit and credit payment methods, the Board's Publication 80, *Electronic Funds Transfer Information Guide – Sales and Use Taxes*, and the Board's Form BOE-555-EFT, *Authorization Agreement For Electronic Funds Transfer (EFT)*, including instructions on how to complete the authorization form, and a return envelope. The packet provides information on the payment methods, registration, filing tax returns, due dates, and more. To register for the EFT program, the taxpayer must do the following:

   - Read the letter of instruction for procedures and due dates;
   - Read the EFT Credit and Debit Instructions to determine which payment method they would prefer to use (i.e., Automated Clearing House (ACH) credit or debit method);
   - Read Publication 80, *Electronic Funds Transfer Information Guide,* for additional instructions on registering, making payments, and filing returns;
   - If the taxpayer selects the ACH Debit method, the taxpayer must contact the State's data collection service and provide them with payment information. The taxpayer can contact the data collection service by telephone (toll-free), PC software and modem, or over the Internet;

- If the taxpayer selects the ACH Credit method, the taxpayer must contact his or her financial institution directly and instruct them to transfer the payment to the Board's bank account. The taxpayer's financial institution may require forms to be completed to initiate the payment process;
- Complete BOE-555-EFT, *Authorization Agreement for Electronic Funds Transfer (EFT)*, and mail the authorization agreement to the Board in the enclosed return envelope. Taxpayers who select the ACH Debit method must include a voided check with the authorization form.

For many taxpayers, registering for the EFT program and understanding the steps involved to make that first EFT payment can be confusing. It can be very time-consuming reading through the materials and taxpayers often call the Board's EFT Help line with questions on registering and making payments. Consequently, adequate lead time is essential to having a successful electronic payment program.

5. **Operative date of January 1, 2006 is a reasonable timeframe.** The Board's current timeline for notifying and processing taxpayers EFT authorization forms is about six months. In June of each year, the Board reviews accounts to determine those accounts required to pay by EFT and those accounts that can be removed from the EFT program. The first notification letters are mailed to taxpayers on September 15th, and include all of the Board materials that are mentioned under Comment 4. Taxpayers are instructed to return the authorization form within 15 days. However, since **approximately two-thirds of taxpayers do not respond to the first notification letter,** a follow-up letter, including Board materials, is mailed to taxpayers on November 15th.

   When the Board receives the authorization form, it reviews the form for accuracy. If the form was not completed properly, the Board contacts the taxpayer to verify the correct information. In some cases, a new form must be completed by the taxpayer. For example, if a taxpayer requests to pay by ACH debit method, but signs on the signature line for ACH credit method, a new form must be completed and returned to the Board.

   Once the authorization form has been verified, the Board sends a confirmation letter with the taxpayer's EFT start date. If the taxpayer selected the ACH debit method, the Board provides the taxpayer with a temporary security code. The taxpayer then needs to contact the data collection service to create a permanent security code before the reporting of the first payment.

   Additionally, the Board conducts a "prenote" (prenotification) test on ACH debit payments to validate the taxpayer's bank account number. This test uses a zero-dollar amount and is made at least ten days prior to origination of the first ACH debit payment. Since the taxpayer does not provide a bank account for ACH credit payments, the Board does not perform a prenote test on these transactions. However, the Board advises taxpayers who select the ACH credit method to conduct a prenote test to validate the Board's routing number and bank account number.

   After all information is verified and tests have been conducted, the banking information is key-entered twice into the Board's computer system to ensure the

accuracy of the data.

While the EFT method has proven to be an efficient method of payment, many taxpayers initially experience problems in registering and in making their first payments. Taxpayers are resistant to change and initially find the payment method confusing to use. Board staff usually experiences numerous phone calls in answering taxpayer questions. For these reasons, it is important to have an adequate timeline that will allow the Board to register several thousand new accounts, in addition to assisting and educating taxpayers on this new payment method.

COST ESTIMATE

Costs would be incurred in identifying and notifying taxpayers that meet the new threshold who would be required to make tax payments by EFT. Additional costs would include reviewing the EFT authorization agreements, registering taxpayers, programming, revising publications, and answering numerous inquiries from the public. These costs would be offset by the additional interest revenues gained by the earlier receipt of tax revenues.

REVENUE ESTIMATE

Requiring those taxpayers that have a monthly sales and use tax liability of between $10,000 and $20,000 to remit their tax payments electronically would result in increased interest income of approximately $200,000 annually.

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mcc 0139-1ss

Assembly Bill No. 139

CHAPTER 74

An act to amend Sections 1721.5, 2154.4, 2499, 2529.5, 2534, 2568, 2687, 2894, 2981, 3455, 3520, 3771, 4974, 4984.6, 4994, 5683, 6980.81, 6980.82, 7599.71, 7599.74, 7886, 9872, and 17206 of the Business and Professions Code, to amend Section 1789.30 of the Civil Code, to repeal Article 13 (commencing with Section 14095) of Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations Code, to add Section 4101.3 to the Food and Agricultural Code, to amend Sections 7076, 11011, 11044, 11260, 14612.2, 14670, 15849.6, 15863, 16427, 22877, 68085, 68085.5, 69926.5, and 71386 of, to amend and repeal Sections 11139.8 and 14840 of, and to add Sections 9147.5, 11544, 12587.1, 14982, 15849.7, 68085.6, 68085.7, and 68085.8 to, the Government Code, to amend Sections 50517.10, 50601, 50603, 50710.1, and 53533 of the Health and Safety Code, to amend Section 96.7 of the Labor Code, to amend Section 1401 of, to amend and repeal Section 999.7 of, and to add Sections 1402 and 1403 to, the Military and Veterans Code, to amend Section 1214.1 of the Penal Code, to amend Section 6611 of, to amend and repeal Sections 10115.5, 10116, and 10359 of, and to add Section 10111 to, the Public Contract Code, to add Section 42102 to the Public Resources Code, to amend Section 5003.2 of the Public Utilities Code, to amend Sections 97.76, 6479.3, 19183, and 19701 of, and to add Sections 18631.7 and 19523.5 to, the Revenue and Taxation Code, to add Section 9619 to the Unemployment Insurance Code, to add Chapter 3.2 (commencing with Section 18220) to Part 6 of Division 9 of the Welfare and Institutions Code, and to amend Section 16 of Chapter 876 of the Statutes of 2003, relating to state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 19, 2005. Filed with Secretary of State July 19, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 139, Committee on Budget. State government.

(1) Existing law creates various boards and other entities under the jurisdiction of the Department of Consumer Affairs with certain licensing and regulatory functions relative to various professions and vocations. Existing law, with respect to the funds created for certain of these entities, provides that the money in those funds is continuously appropriated for particular purposes.

This bill would delete the continuous appropriations applicable to certain funds. The bill would make other related changes.

(2) Existing law, the Medical Practice Act, regulates the practice of medicine in this state. Existing law establishes the Medically Underserved

Account in the Contingent Fund of the Medical Board of California. Under existing law, specified moneys in the account are continuously appropriated to repay loans per agreements with physicians who practice in underserved areas.

This bill would continuously appropriate all funds in the account for these purposes.

(3) Existing law authorizes the Attorney General and other public prosecutors to bring an action for relief from an act of unfair competition, as defined. Under existing law, a civil penalty may be assessed in the action that is designated for the exclusive use of a public prosecutor, including the Attorney General, for enforcing consumer protection laws.

This bill would create the Unfair Competition Law Fund and would require that the civil penalty recovered by the Attorney General in unfair competition and unfair business practice actions be deposited into the fund and expended, upon appropriation by the Legislature, for investigation and prosecution of these actions, and various other activities.

(4) Existing law regulates persons engaged in the business of making or negotiating deferred deposit transactions and requires every check casher to post a complete and detailed schedule of all fees for cashing checks, drafts, money orders, or other commercial paper, and the sale or issuance of money orders.

This bill would additionally require a check casher who cashes checks for the same person in an aggregate amount exceeding $10,000 within one calendar year, as provided, to file an informational return with the Franchise Tax Board, as specified. This bill would impose civil penalties on persons who fail to file these returns or fail to supply all of the information required by these returns. In the case of willful failures, this bill would make these failures a new criminal felony and would thereby impose a state-mandated local program.

(5) Existing law provides for the creation, maintenance, and authority of the Sixth District Agricultural Association, which is known as the California Science Center, and which is a tax-exempt organization and instrumentality of the state.

This bill would authorize the center to enter into a site lease and lease-purchase agreement with the California Science Center Foundation for the purpose of constructing and funding of the Phase II Project of the center, as specified.

(5.5) The Enterprise Zone Act requires the Department of Housing and Community Development to administer the act and to designate no more than 42 enterprise zones at any one time that may be proposed by a city, county, or city and county from applications selected on the basis of the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives in attracting private sector investment in the zone proposed. The act also requires the department to provide technical assistance to the enterprise zones and authorizes the department to establish, charge, and collect a fee as reimbursement for the costs of its administration of the act.

Existing law allows a credit against the net tax, as defined, to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year.

Existing law requires the Department of Housing and Community Development, until July 1, 2006, to assess an enterprise zone a fee of not more than $10 for each application it accepts for issuance of a tax credit certificate.

This bill would extend the assessment of this $10 fee until January 1, 2007.

(6) Existing law generally sets forth the duties of the Director of Homeland Security in overseeing homeland security activities in the state.

Existing law sets forth the duties of the State Department of Health Services in allocating specified federal funds for activities related to bioterrorism preparedness and response.

This bill would require the director, in collaboration with the department, to annually report to the chairperson of the Joint Legislative Budget Committee and the chairperson of the budget committee of each house of the Legislature, on their respective expenditures of federal homeland security and bioterrorism funds.

(7) Existing law requires generally that moneys received from the disposition of state property shall be paid into the General Fund.

This bill instead would require that the net proceeds, as defined, that are received from any state real property disposition shall be paid into the Deficit Recovery Bond Retirement Sinking Fund Account, a continuously appropriated fund, until the bonds issued pursuant to the Economic Recovery Bond Act are retired, thereby making an appropriation, and thereafter shall be deposited in the Special Fund for Economic Uncertainties. The bill would authorize the Director of Finance to approve loans from the General Fund to the Property Acquisition Law Money Account, which would be created by this bill and would be available for expenditure by the Department of General Services upon appropriation by the Legislature. The bill would provide that these changes are effective retroactively to November 3, 2004.

(8) Existing law authorizes the Director of General Services, with the consent of the state agency involved, to let for a period of not to exceed 5 years, any real or personal property that belongs to the state, subject to specified conditions. Any money received in connection with these leases is required to be deposited in the General Fund for appropriation to the department for specified purposes.

This bill instead would require that any money received in connection with these leases be deposited in the Property Acquisition Law Money Account and be available to the department upon appropriation by the Legislature.

(8.5) Existing law provides that no state agency is required to use the Office of State Publishing for its printing needs until the effective date of the Budget Act of 2005 or July 1, 2005, whichever is later and this provision of existing law is repealed on January 1, 2006.

This bill would continue to provide that no state agency is required to use the Office of State Publishing for its printing needs until the effective date of the Budget Act of 2006 or July 1, 2006, whichever is later, and would repeal this provision on January 1, 2007.

(9) Existing law generally makes the Attorney General responsible for representing state agencies in litigation matters. Under existing law, revenues in the Litigation Deposits Fund are continuously appropriated to the Department of Justice for litigation purposes.

This bill would create the Legal Services Revolving Fund and require state agency payments for legal services rendered by the Attorney General to be deposited therein. The bill would authorize the Attorney General to expend the money in the fund, upon appropriation by the Legislature, for litigation activities. The bill would further provide that revenues transferred to the Legal Services Revolving Fund from the Litigation Deposits Fund may be expended by the Department of Justice only if approved by the Department of Finance.

(10) Existing law requires the Controller, after work is performed, services are rendered, or materials or equipment are furnished by one state agency to another state agency through the advancement or transfer of funds, to transfer the amount ordered by the Director of General Services and adjust the accounts relative to the advancements or transfers to credit the appropriate fund or appropriation.

This bill would require the Controller, instead, to process transfers from time to time as requested by the state agency that performed the work.

(11) Under existing law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act governs charitable corporations, unincorporated associations trustees, commercial fundraisers, fundraising counsel, commercial coventurers, and other legal entities who hold or solicit property for charitable purposes over which the Attorney General has enforcement and supervisory powers. Under the act, the Attorney General is also required to establish and maintain a register of charitable corporations, unincorporated associations, and trustees subject to the act and copies of specified financial reports required to be filed under the act.

This bill would establish the Registry of Charitable Trusts Fund in the State Treasury, as specified. The bill would require that moneys in the fund, upon appropriation by the Legislature, be used by the Attorney General solely to operate and maintain the Attorney General's Registry of Charitable Trusts and provide public access via the Internet to reports filed with the Attorney General.

(12) Existing law authorizes the Department of General Services to procure prescription drugs on behalf of specified state agencies through bulk purchasing and to investigate and implement other strategies to achieve the greatest savings on prescription drugs with prescription drug manufacturers and wholesalers.

This bill would state the intent of the Legislature that the Department of General Services, University of California, and the Public Employees Retirement System regularly meet and share information regarding each

agency's procurement of prescription drugs in an effort to identify and implement opportunities for cost savings in connection with this procurement. It would require the department to annually develop a work plan and to report, no later than January 10, 2006, and annually thereafter, to the chairperson of the Joint Legislative Budget Committee and the chairs of the fiscal committees of the Legislature on any joint activities of these agencies in connection with procurement of prescription drugs and any resulting cost savings.

(13) Existing law authorizes the State Public Works Board to issue bonds, notes, or other obligations to finance the acquisition or construction of a public building, facility, or equipment as authorized by the Legislature in the total amount authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing. The additional cost may include, among other things, interest during acquisition or construction of the public building, facility, or equipment.

This bill would additionally include interest prior to and for a period of 6 months after construction of the public building, facility, or equipment within the additional cost of financing that the board may authorize.

The bill would specify that notwithstanding any other provision of law, including, but not limited to, any specific grant of authority on or after June 30, 2001, the board may issue bonds, notes, or bond anticipation notes for any and all phases of specified types of capital outlay projects.

(14) Governor's Reorganization Plan No. 2, as submitted to the Legislature on May 9, 2005 (GRP 2), would create the Department of Technology Services Revolving Fund in the State Treasury and continuously appropriate the fund for specified purposes with respect to the administration of a Department of Technology Services.

This bill would, as of the date that GRP 2 goes into effect, provide that these provisions would not be operative. The bill would, as of that date, instead create the fund in the State Treasury for these purposes, subject to appropriation by the Legislature.

(15) Existing law establishes the Trial Court Trust Fund, the proceeds of which are apportioned for the purposes of funding trial court operations. Existing law specifies certain fees that are to be collected in a special account in the county treasury and transmitted monthly to the Controller for deposit in the Trial Court Trust Fund.

This bill would expand the fees to which that provision applies, to include, among other things, court transfer filing fees, hearing date postponement filing fees, appeals filing fees, judgment debtor filing fees, court order violation fees, judgment creditor filing fees, and contempt of court fees.

The bill would also delete language contained in that provision crediting amounts transmitted from certain recording and indexing fees during a specified time frame against the total amount the county is required to pay to the state.

(16) Existing law specifies that money in the Trial Court Trust Fund is to be invested in the Surplus Money Investment Fund and all interest earned is to be allocated to the Trial Court Trust Fund semiannually.

This bill would instead require that interest earned to be allocated quarterly.

(17) Existing law provides that certain court fees and fines that are not subject to a local revenue sharing agreement or practice, as specified, except as to costs incurred by and services provided by the superior court which are transmitted monthly to the Controller for deposit in the Trial Court Trust Fund, are required to be deposited in a special account in the county treasury. Existing law provides, until July 1, 2005, for the distribution of the revenue from these fees and fines.

This bill would provide for the distribution of these fees and fines commencing July 1, 2005.

(18) Existing law provides, commencing January 1, 2004, for a county-by-county transfer to the Trial Court Trust Fund each fiscal year of the difference between $31,000,000 and the amount already transmitted to the Trial Court Trust Fund for costs incurred by and services provided by the superior court as described in (1).

This bill would provide, commencing July 1, 2005, that the counties' obligation to remit to the Trial Court Trust Fund each fiscal year the amount described above shall expire. Instead, the counties would be obligated to remit reduced amounts, as specified, to the Trial Court Trust Fund each fiscal year through the 2008-09 fiscal year, in accordance with specified procedures.

The bill would impose new administrative duties on the Administrative Office of the Courts (AOC) and the California State Association of Counties (CSAC), including, among other things, determining the portion of these reduced amounts to be paid by each county. The AOC and the CSAC would be required, by December 31, 2005, to complete an initial review of the impact upon individual counties and courts of the above changes in revenue distribution and payment obligations for the purpose of correcting inequities, as specified, and, by June 30, 2006, to agree upon a methodology to determine whether a reduction in the counties' obligation should be recommended to the Legislature.

This bill would require counties that have not paid amounts billed for the 2003-04 or 2004-05 fiscal year to pay the amounts still owing to the Trial Court Trust Fund by September 1, 2005, and would provide for the calculation of penalties for late payments.

(19) Existing law requires, on or before January 1, 2005, the AOC and the CSAC to jointly propose to the Legislature a long-term revenue allocation schedule, to take effect on July 1, 2005, for specified fees and fines.

This bill would delete this provision.

(20) Under existing law, a court may impose a civil assessment of up to $250 against a criminal defendant who fails to appear in court, as specified.

This bill would increase the maximum amount that may be assessed under that provision to $300. The bill would also require each court and county to maintain the collection program that was in effect on July 1, 2005, unless otherwise agreed to by those entities. The bill would further require the court to deposit the money collected under that provision as soon as practicable into a bank account specified by the AOC, for transmission to the Controller for deposit in the Trial Court Trust Fund in accordance with specified procedures.

(21) Existing law requires, commencing in the 1999-2000 fiscal year, and each fiscal year thereafter, each county to remit specified amounts to the Trial Court Trust Fund, including an amount based upon the amount of fine and forfeiture revenue remitted to the state pursuant to specified provisions during the 1994-95 fiscal year.

This bill would, commencing July 1, 2005, reduce each county's annual fine and forfeiture remittance by the amount that the county received from the civil assessments described in (4), after deducting the cost of collecting those civil assessments, in the 2003-04 fiscal year. The bill would require the AOC and CSAC to determine the amount of this reduction for each county, as specified.

(22) Existing law imposes a surcharge of $20 for court security in addition to the total court fees collected pursuant to specified provisions and also authorizes the collection of an additional surcharge in certain cases filed from January 1, 2004, to June 30, 2005, inclusive.

This bill would extend that additional surcharge until June 30, 2006, as specified.

(23) Until January 1, 2008, or earlier, as specified, the Rural Health Care Equity Program, as administered by the Department of Personnel Administration, provides subsidies and reimbursements for certain health care premiums and health care costs incurred by state employees and annuitants in rural areas in which there is no board-approved health maintenance organization plan available for enrollment. Moneys in the program are disbursed to reimburse eligible employees for, among other things, a portion or all of his or her deductible, coinsurance, and other out-of-pocket health-related expenses that would otherwise be covered if the employee and his or her family members were enrolled in a board-approved health maintenance organization.

This bill would continuously appropriate an unspecified sum from the General Fund to reimburse those eligible employees for a portion or all of his or her out-of-pocket health-related expenses in excess of $1,500 per fiscal year, not to exceed a total of $15,336,000 for all fiscal years combined.

(24) Existing law, the Housing and Emergency Shelter Trust Fund Act of 2002, transfers $910,000,000 from the money deposited in the Housing and Emergency Shelter Trust Fund from the sale of bonds to the Multifamily Housing Program, with certain exceptions, including that $45,000,000 of that amount is required to be transferred to the Preservation Opportunity Fund and is continuously appropriated for the

preservation of at-risk housing pursuant to the Preservation Opportunity Program, a short-term capital loan program established to ensure that the supply of affordable housing is not depleted by the conversion of existing government-assisted rental housing to market-rate housing. Existing law requires that money received in repayment of loans from the Preservation Opportunity Fund, including interest from that money, be deposited in the Preservation Opportunity Fund. Any funds not encumbered for the Preservation Opportunity Program within 30 months of their transfer to the Preservation Opportunity Fund revert to the Housing Rehabilitation Loan Fund.

This bill would, instead, require that all money received in repayment of loans made under the Preservation Opportunity Program be deposited into the Housing Rehabilitation Loan Fund for use in the Multifamily Housing Program, except for $5,000,000. By adding a new source of revenue for deposit into this continuously appropriated fund, the bill would make an appropriation. The $5,000,000 remaining in the Preservation Opportunity Fund and subsequent interest payments on loans made from this amount is required to be made available for the purposes of the Preservation Opportunity Program through at least December 31, 2008, at which time the California Housing Finance Agency may, based on an analysis of need, either continue to make the funds available for the Preservation Opportunity Program or transfer the funds to the Housing Rehabilitation Loan Fund for use in the Multifamily Housing Program, thereby constituting an appropriation.

(25) Existing law requires the Department of Housing and Community Development to make matching grants and loans from the Joe Serna, Jr. Farmworker Housing Grant Fund, for specified purposes, and authorizes matching grants and loans to be made from the fund for other purposes.

Existing law, the Housing and Emergency Shelter Trust Fund Act of 2002, authorizes, for purposes of financing various existing housing and code enforcement programs, the issuance of bonds in the amount of $2,100,000,000 pursuant to the State General Obligation Bond Law. Existing law provides that $25,000,000 of these funds be used for projects that serve migratory farmworkers and specifically authorizes the department to receive $5,500,000 of these funds for the purpose of reconstructing migrant centers operated through the Office of Migrant Services that would otherwise be scheduled for closure due to health or safety considerations or are in need of significant repairs to ensure the health and safety of the residents.

This bill would increase the amount of the $25,000,000 appropriation that the department may use from $5,300,000 to $15,000,000 and would require the department to make at least $8,159,000 of that amount available for flexible loans and grants for projects that serve migratory agricultural workers under a program provided for under the Joe Serna, Jr. Farmworker Housing Grant Program that uses innovative, cost-effective mechanisms to provide migrant farmworkers with affordable, durable, low-maintenance housing options, as specified. By requiring the

department to use these funds for a new purpose, the bill would make an appropriation. The bill would declare that the changes made by this act are consistent with the Housing and Emergency Trust Fund Act of 2002 and the Joe Serna, Jr. Farmworker Housing Grant Fund.

(26) Existing law authorizes the Department of Housing and Community Development to increase rents for a migrant farm labor center assisted by the Office of Migrant Services above those charged at other such centers under specified circumstances.

This bill would prohibit a rent increase above 30% of the average annualized household incomes of residents of any such facility without legislative authorization.

(27) Existing law requires the Labor Commissioner to, after investigation and determination that wages or benefits are due to an unpaid worker, collect such wages or benefits on behalf of the worker, as specified. Existing law requires that whenever the balance in the Industrial Relations Unpaid Wage Fund is in excess of $200,000 the Labor Commissioner transmit the excess to the Controller for deposit in the General Fund.

This bill would instead require the Controller, at the end of each fiscal year, to transfer to the General Fund the unencumbered balance of the fund, less 6 months of expenditures as determined by the Director of Finance.

(28) Existing law requires the Department of Veterans Affairs, in voluntary cooperation with the Shasta County Board of Supervisors and the boards of supervisors of specified northern California counties, to design, develop, and construct the Northern California Veterans Cemetery. Existing law requires that all moneys received for the design, development, and construction of the cemetery are to be placed in the Northern California Veterans Cemetery Master Development Fund, a continuously appropriated fund. Existing law provides that specified moneys received for the maintenance of the cemetery are to be deposited to the credit of the Northern California Veterans Cemetery Perpetual Maintenance Fund for expenditure, upon appropriation by the Legislature.

This bill would authorize the administrator of the Northern California Veterans Cemetery to accept donations for the maintenance and beautification of the cemetery, as provided, and would provide that these donations are to be deposited to the credit of the Northern California Veterans Cemetery Perpetual Maintenance Fund. This bill would require that all donations deposited to that fund for the maintenance and beautification of the cemetery be continuously appropriated to the department.

This bill would also provide that any proposal for the construction, placement, or donation of monuments or memorials to the cemetery are to be reviewed by an advisory committee, as specified, and that all proposals are subject to the approval of the director of the department.

(29) Existing law provides that expenditures for the maintenance of the Northern California Veterans Cemetery may not exceed $600,000 per calendar year.

This bill would instead provide that the total expenditures for both the operations and the maintenance of the cemetery should not exceed $600,000 per fiscal year, as appropriated in the annual Budget Act.

(30) Existing law requires each state department or agency awarding a contract or procuring goods or services, and each local agency receiving state funds, to report annually to the Governor and Legislature on the level of participation by specified business enterprises in contract and procurement activities. Existing law requires the Department of General Services to submit an annual report to the Legislature with respect to, among other things, procurement categories, construction contract categories, and contracts awarded to specified business enterprises. Existing law requires the Department of Veteran's Affairs to make an annual report to the Governor and Legislature regarding the participation by specified business enterprises in contracts with the department, requires awarding departments to identify steps to meet goals of contracting, and requires the Department of General Services to prepare a summary regarding those goals. Existing law authorizes the Department of General Services, relative to certain contracts, to use a negotiation process if certain conditions exist.

This bill would repeal all of those provisions as of January 1, 2007. This bill would, commencing January 1, 2007, require the department, as defined, to make available a report on contracting activity containing specified information, as provided.

(31) Existing law requires the money in the Hazardous Waste Reduction Loan Account to be expended by the Business, Transportation and Housing Agency to make loans for equipment, projects, or facilities for the reduction of hazardous waste.

This bill would repeal the provisions authorizing that account and would transfer the amount remaining in the Hazardous Waste Reduction Loan Account on January 1, 2006, to the Chrome Plating Pollution Prevention Fund, which this bill would create in the State Treasury, and would require the money in the account be expended by the agency, upon appropriation by the Legislature.

The bill would require any amounts paid to the state for a loan issued pursuant to those former provisions to be transferred to the fund.

The repeal of that account and transfer the money to the fund would become operative only if legislation is enacted and becomes operative on or after June 1, 2005, but before July 1, 2006, that requires the funds so transferred to be expended for environmental control technologies for chrome and metal plating related activities.

(32) Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law directs the Public Utilities Commission to require

specified highway carriers for whom the commission does not establish minimum or maximum rates to pay specified reduced fees, and authorizes the commission to increase the fees on other carriers whose minimum or maximum rates are established by the commission, up to a maximum of ½% of reported gross operating revenue, if necessary, to maintain adequate financing for the purposes of the Transportation Rate Fund. The fees are deposited in the Transportation Rate Fund and are continuously appropriated to the commission for specified regulatory purposes.

This bill would permit the commission to increase these fees on carriers for whom the commission establishes minimum or maximum rates, up to a maximum of 0.7%, thereby making an appropriation.

(33) The Sales and Use Tax Law requires any person whose estimated tax liability averages $20,000 or more per month to remit amounts due by electronic funds transfer, as provided. That law imposes specified penalties with respect to payment by electronic funds transfer. That law also imposes specified penalties with respect to nonpayment of taxes in general.

This bill would require any person whose estimated monthly tax liability averages $10,000 or more to remit amounts due by electronic funds transfer, as provided.

(34) Existing income and corporation tax laws impose a penalty of not more than $5,000 on any person that, among other things, fails to file a return or to supply any information required, or make, render, sign, or verify any false or fraudulent return or statement, or supply any false or fraudulent information.

This bill would impose the penalty only if those violations occur repeatedly over a period of 2 years or more and result in an estimated delinquent tax liability of at least $15,000.

(35) Existing income and corporation tax laws provide, in the case of willful failure to pay estimated taxes, that the person is guilty of a misdemeanor and subject to a fine or imprisonment, as provided.

This bill would provide that the misdemeanor, fine, or imprisonment provisions do not apply to any person who is mentally incompetent or suffers from dementia, Alzheimer's disease, or a similar condition.

(36) Existing tax laws impose various taxes and fees, and authorize the Franchise Tax Board to administer the assessment, audit, and collection of various taxes and fees.

This bill would require the Franchise Tax Board to suspend or disbar a person from practice, as defined, before the Franchise Tax Board, as provided, if that person has been suspended or disbarred from practice, as defined, before the United States Department of the Treasury, and would require a person who practices before the Franchise Tax Board and is suspended or disbarred from practice before the United States Department of the Treasury to notify the Franchise Tax Board of the suspension or disbarment in writing within 45 days of the issuance of the final order by that department.

(37) Existing property tax law requires the county auditor, in each fiscal year, to allocate property tax revenue to local jurisdictions in accordance with specified formulas and procedures, and generally requires that each jurisdiction be allocated an amount equal to the total of the amount of revenue allocated to that jurisdiction in the prior fiscal year, subject to certain modifications, and that jurisdiction's portion of the annual tax increment, as defined. Existing law also provides, commencing with the 2004-05 fiscal year, for allocations of ad valorem property tax revenue to each city, county, and city and county in the form of a "vehicle license fee adjustment amount," calculated by the Controller in accordance with statute. Existing law requires the Controller to determine the "vehicle license fee adjustment amount" for each city, county, and city and county for the 2005-06 fiscal year by September 1, 2005.

This bill would instead require the Controller to calculate the "vehicle license fee adjustment amount" for each city, county, and city and county by October 15, 2005, in consultation with the Bureau of State Audits.

(38) Existing law imposes various duties upon the Employment Development Department, including the implementation of various programs with respect to workforce training and development.

This bill would, to the extent that funds are appropriated for this purpose in the annual Budget Act, authorize the Employment Development Department to award grants to regional collaboratives for the creation of regional nursing simulation laboratories, as provided, that will provide additional nursing students with access to clinical education facilities. This bill would limit the amount of any grant so made to $250,000.

(39) Existing law authorizes, upon adoption by the board of supervisors, a county to establish an At-Risk Youth Early Intervention Program designed to assess and serve families with children who have chronic behavioral problems that place the child at risk of becoming a ward of the juvenile court.

This bill would establish a schedule for the allocation of funds to county probation departments from funds appropriated by the Legislature to provide services for children who are habitual truants, runaways, at risk of being wards of the juvenile court, or under juvenile court supervision or the supervision of the probation department, and would require the Department of Corrections and Rehabilitation to administer the funding allocations.

(40) Existing law requires that the investigation and enforcement of the certain provisions of law by the Attorney General and the Commissioner of Corporations be accomplished without duplication of effort. Existing law further provides that to the extent that the Attorney General exercises that authority, it shall be done using existing resources, and no future budget augmentations be made for that purpose.

This bill would revise those provisions to provide that to the extent the Attorney General exercises that authority, no General Fund budget augmentations would be made for that purpose.

(40.5) Under existing law, the Franchise Tax Board is authorized to prescribe all rules and regulations necessary for the enforcement of the Personal Income Tax Law and the Corporation Tax Law.

This bill would authorize the board to continue to implement the ReadyReturn pilot program, available to specified taxpayers, for the 2005-06 fiscal year and would require the pilot program to be operated in the same manner it was operated during the 2004-05 fiscal year.

(40.7) The Budget Act of 2005 appropriates specified amounts from the General Fund for local assistance to be paid by the State Controller to local governments for the costs of homicide trials, with specified limitations on these reimbursements.

This bill would specify that these funds shall be available for 100% of any extraordinary costs incurred by the County of Stanislaus related to a specified homicide trial.

(40.8) Existing property tax law authorizes grants, under the State-County Property Tax Administration Grant Program, to provide funding for the local administration of property taxes for those counties that elect to receive the grants.

This bill would suspend those grants for the 2006-07 fiscal year.

(41) 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.

(42) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 1721.5 of the Business and Professions Code is amended to read:

1721.5. All funds received by the State Treasurer under the authority of this chapter which relate to dental auxiliaries shall be placed in the State Dental Auxiliary Fund for the purposes of administering this chapter as it relates to dental auxiliaries.

SEC. 2. Section 2154.4 of the Business and Professions Code is amended to read:

2154.4. (a) The Medically Underserved Account is hereby created in the Contingent Fund of the Medical Board of California.

(b) The sum of three million four hundred fifty thousand dollars ($3,450,000) is hereby authorized to be expended from the Contingent Fund of the Medical Board of California on this program. These moneys are appropriated as follows:

(1) One million one hundred fifty thousand dollars ($1,150,000) shall be transferred from the Contingent Fund of the Medical Board of

SEC. 21. Section 7886 of the Business and Professions Code is amended to read:

7886. The money paid into the Geology and Geophysics Fund shall be used by the board to carry out the provisions of this chapter.

SEC. 22. Section 9872 of the Business and Professions Code is amended to read:

9872. The money in the Electronic and Appliance Repair Fund necessary for the administration of this chapter shall be used for such purposes.

SEC. 23. Section 17206 of the Business and Professions Code is amended to read:

17206. Civil Penalty for Violation of Chapter

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city, or city and county, having a population in excess of 750,000, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered

by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3.

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 24. Section 1789.30 of the Civil Code is amended to read:

1789.30. (a) (1) Every check casher, as applicable to the services provided, shall post a complete, detailed, and unambiguous schedule of all fees for (A) cashing checks, drafts, money orders, or other commercial paper serving the same purpose, (B) the sale or issuance of money orders, and (C) the initial issuance of any identification card. Each check casher shall also post a list of valid identification which is acceptable in lieu of identification provided by the check casher. The information required by this section shall be clear, legible, and in letters not less than one-half inch in height. The information shall be posted in a conspicuous location in the unobstructed view of the public within the check casher's premises.

No. 248

CALIFORNIA LEGISLATURE

AT SACRAMENTO

2005–06 REGULAR SESSION

SENATE WEEKLY HISTORY

SHOWING ALL ACTIONS TAKEN ON ALL SENATE MEASURES
TO AND INCLUDING

FRIDAY, SEPTEMBER 8, 2006

PART 1 OF 3

SENATOR DON PERATA
President pro Tempore

SENATOR GLORIA ROMERO
Majority Floor Leader

SENATOR DICK ACKERMAN
Minority Floor Leader

Senate Convened December 6, 2004

DAYS IN SESSION 237

CALENDAR DAYS 642

Compiled Under the Direction of
GREGORY SCHMIDT
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk

S.B. No. 1851—Committee on Health (Senators Ortiz (Chair), Aanestad, Alquist, Chesbro, Cox, Figueroa, Kuehl, Maldonado, and Runner).

An act to amend Sections 109275, 109277, and 109280 of the Health and Safety Code, relating to public health.

2006

Mar. 27—Introduced. Read first time. To Com. on RLS. for assignment. To print.
Mar. 28—From print. May be acted upon on or after April 27.
Mar. 30—To Coms. on HEALTH and JUD.
April 24—Art. IV, Sec. 8(a), of Constitution dispensed with. Joint Rule 55 suspended.
April 24—Set for hearing April 26.
April 27—From committee: Do pass as amended, but first amend, and re-refer to Com. on JUD. with recommendation: To Consent Calendar. (Ayes 9. Noes 0. Page 3689.)
May 1—Read second time. Amended. Re-referred to Com. on JUD.
May 2—Withdrawn from committee. Re-referred to Com. on APPR.
May 9—Set for hearing May 15.
May 16—From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
May 17—Read second time. To third reading.
May 25—Read third time. Passed. (Ayes 36. Noes 0. Page 4016.) To Assembly.
May 25—In Assembly. Read first time. Held at Desk.
June 12—To Coms. on HEALTH and JUD.
June 21—From committee: Do pass, but first be re-referred to Com. on JUD. with recommendation: To Consent Calendar. (Ayes 13. Noes 0.) Re-referred to Com. on JUD.
June 27—From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 9. Noes 0.) Re-referred to Com. on APPR.
Aug. 10—From committee: Do pass. To Consent Calendar. (Ayes 18. Noes 0.)
Aug. 14—Read second time. To Consent Calendar.
Aug. 17—Read third time. Passed. (Ayes 77. Noes 0. Page 6625.) To Senate.
Aug. 21—In Senate. To enrollment.
Aug. 22—Enrolled. To Governor at 4:30 p.m.

S.B. No. 1852—Committee on Judiciary (Senators Dunn (Chair), Ackerman, Escutia, and Kuehl).

An act to amend Sections 690, 801, 809, 853, 2435.1, 2571, 3078, 4052, 4507, 6126.3, 6156, 6157, 7161, 7302, 7582.20, 7591.19, 7830.1, 9855.6, 11004.5, 12606.2, 14492, 17086, 17206.1, 17508, 17539.3, 18625, 18720, 18830, 19613.2, 21669.1, 22701, 22901, 22915, 23426.5, and 25660 of the Business and Professions Code; to amend Sections 43.97, 51.4, 54.6, 56.21, 799.2.5, 846.1, 1363.04, 1363.07, 1761, 1786.10, 1788.2, 1789.37, 1812.85, 1812.106, 1812.306, 1812.501, 1834.8, 2945.3, 2945.9, 2954.7, 3052.5, 3262, and 3415 of, and to amend and renumber Section 1812.97 of, the Civil Code, to amend Sections 77, 94, 338, 417.10, 425.11, 460.7, 1021.8, 1141.21, 1245.320, 1345, 1346, 1370, 1371, 1375, 1379, 1775.14, 1800, and 1985.6 of the Code of Civil Procedure, to amend Section 16101 of the Commercial Code, to amend Sections 118, 7312, 8724, 12663, 17104, and 25100.1 of the Corporations Code, to amend Sections 1753, 1762, 7002.5, 8275, 8363.5, 8484.75, 8498, 8669, 8825, 12117, 17625, 19980, 22121, 24618, 32255, 32255.1, 33551, 35105, 41500, 42238.4, 44210, 44929.23, 44944, 45127, 45168.5, 47610, 47610.5, 47660, 49030, 49434, 49561, 49565.2, 49565.4, 52052, 52055.57, 52055.605, 52055.625, 52124, 52165, 52295.35, 52740, 56441, 58407, 58520, 60200, 66070, 66406, 66609, 69539, 69640, 76234, 81383, 81450, 81645, 88167.5, 89241, 89503, 89750.5, 92300, 92611.7, 94985, 94990, 99156, and 100603 of the Education Code, to amend Sections 7154, 7854, 9086, 9096, 10225, and 15375 of the Elections Code, to amend Section 1560 of the Evidence Code, to amend Sections 274, 3046, 3121, 4905, 7605, and 9201 of the Family Code, to amend Sections 687, 1800, 5303, 6503, 7263, 7273, 7274, 7509, 7600, 12100, 14402, 18062, 18415.3, 21050, and 22304 of the Financial Code, to amend Sections 854, 1122, 2120, 2125, 2127, 2150.4, 2765, 4190, 5653, 8277, 8278, 8494, 8495, 8610.7, 8615, 8841, 9023, 13007, and 15512

of the Fish and Game Code, and to amend Sections 3955, 4054, 5774.5, 13127.92, 14978.2, 19314, 30801, 36805, 39901, 42684, 52295, 52891.1, 62069, 73053, 73202, 75022, 77373, 77375, 77554, and 77941 of the Food and Agriculture Code, to amend Sections 800, 850.6, 905.3, 920, 925, 926.19, 965.1, 997.1, 998.2, 1151, 3515.7, 3539.5, 3543.1, 3549.1, 3572, 5906, 6254, 6254.26, 6577, 7072, 7509, 7520, 7901, 7907, 8902, 8652, 8894.1, 11007.6, 11014, 11030.1, 11030.2, 11031, 11125.7, 11125.8, 11270, 11275, 12467, 12807.5, 12838.1, 13300, 13332.09, 13905, 13972, 13973, 13974, 13974.1, 14084, 14670.4, 14682, 15202, 15492, 15815, 15952, 16302.1, 16304.6, 16366.3, 16383, 16431, 16585, 17051.5, 17201, 17520, 17553, 17556, 18708, 19583.5, 19583.51, 19792.5, 19815.4, 19816, 19816.4, 19816.6, 19879.1, 19999.2, 20035.6, 20094, 20163, 20462, 20805, 20808, 21095, 21223, 21265, 21752, 22100, 26749, 29965, 31461.1, 31469, 31470.25, 31485.12, 31585.1, 31691, 31691.1, 45002, 54957.1, 54999.5, 65050, 65852.9, 65971, 65973, 65974, 65979, 66000, 66017, 67401, 68058, 68059.15, 68503, 68506, 68511.3, 68543, 68543.5, 68543.8, 68565, 70622, 75560.4, 77202, 87102.6, 89513, 92201, 92251, 92268, and 92309 of, and to repeal Section 87104 of, the Government Code, to amend Sections 72.4, 303, 444, 504, 508, 773.2, 1176, and 6037.4 of the Harbors and Navigation Code, to amend Sections 1250.3, 1267.19, 1276.8, 1312, 1357.09, 1399.811, 1418.8, 1451, 1531.1, 1558, 1568.09, 1568.092, 1569.58, 1596.816, 1596.847, 1596.8865, 1596.8897, 1765.145, 4730.8, 11162.1, 11502, 11571.1, 12701, 13052, 17021.6, 18080.5, 19161, 19165, 19982, 25159.12, 25200.6, 25205.1, 25208.2, 25208.8, 25208.17, 25215.4, 25283.1, 25370, 33080.7, 33320.4, 33333.6, 33334.2, 33334.22, 33446, 33476, 33492.78, 33492.86, 35816, 38012, 39941, 40440.2, 40717.6, 42840, 43200.1, 43812, 43867, 44037, 44090, 44366, 50660.5, 50896, 50896.1, 50896.2, 51504, 52020, 53533, 101630, 105195, 105215, 105280, 107040, 107065, 107080, 108310, 109350, 109360, 111080, 112025, 112030, 113844, 113955, 114400, 115040, 115061, 115255, 116050, 116660, 117100, 120425, 120830, 120875, 121110, 121270, 121275, 121520, 122070, 127575, 129890, and 150204 of, and to repeal Section 113843 of, the Health and Safety Code, to amend Sections 134, 481.5, 676.2, 750.4, 1063.145, 1140.5, 1734.5, 1735, 1763.2, 1781.7, 1802.5, 1842, 1874.2, 1903, 10123.141, 10133.56, 10136, 10203.4, 10203.5, 10203.8, 10209, 10350.2, 11580.1, 11872, 12640.02, 12698.50, 12698.54, and 15039 of the Insurance Code, to amend Sections 98, 142.4, 226.4, 243, 270.6, 1182.6, 1289, 1301, 1302, 2686, 2855, 3364, 4753.5, 5277, 5307.1, 5907, 6315.3, 7384, and 7994 of the Labor Code, to amend Section 340 of the Military and Veterans Code, to amend Sections 171d, 186.2, 273.7, 290, 290.6, 652, 987.9, 1037.1, 1191.2, 1203.066, 1524, 1557, 2786, 2800, 3003, 4017.1, 4900, 4901, 4902, 4904, 4905, 4906, 5001, 5009, 5071, 5076.1, 6024, 11163, 11172, 12021, 12280, 13603, 13810, 13826.7, 13835.2, and 14030 of, and to repeal Section 13300.1 of, the Penal Code, to amend Sections 6108, 10240.5, 10329, 12183, 20105, 20118.4, 20133, 20407, 20448, 20450, 20451, 20452, 20456, 20487, 20522, 20563, 20582, 20688.2, 20853, 20894, 21020.8, 21040, 21071, 21471, and 21601 of, and to repeal the heading of Article 3 (commencing with Section 9201) of Chapter 9 of Part 1 of Division 2 of, the Public Contract Code, to amend Sections 2776, 4116, 4144, 4516.6, 4602.6, 5006.48, 5080.06, 5080.36, 5096.514, 5141.1, 5366, 5671, 6314, 6925.2, 8710, 9084, 21080.24, 21151.1, 21167.1, 25135, 25302.5, 26032, 26569.5, 29305, 29735, 30118.5, 30166, 30170, 30171.2, 30222.5, 30315.1, 30608, 30610.4, 30610.6, 30716, 31163, 31258, 32103, 33201, 33207.5, 42463, 42888, 42891, 43500, 44820, 49161, and 71081 of the Public Resources Code, to amend Sections 95.2, 531.7, 862, 2188.5, 2700, 4676, 4703.3, 6067, 6201.2, 6376.1, 6902.3, 9270, 11317, 11923, 13153, 17052.6, 19191, 20621, 23060, 23202, 23305b, 32364, 32475, 41120, 41176, 45304, 45451, 45872, 46442, 50124, and 50145 of the Revenue and Taxation Code, to amend Sections 156.3, 188.6, 2117, 6491.5, and 30162 of the Streets and Highways Code, to amend Sections 1222, 1256.5, 1262, 1855, 3254.5, 4701, 9608, 10200, 13002, and 13021 of the Unemployment Insurance Code, to amend Sections 1671, 2423, 11713.1, 12509, 12811, 14602.6, 15242, 17155, 23109, 24011.3, 27360, 29008, 35106, 40512, and 42001 of the

Vehicle Code, to amend Sections 359, 5003, 8617.5, 10631, 12625, 12879.2, 12899.6, 12899.7, 12929.12, 13385.1, 13465, 13611, 13999.8, 20527.11, 23178, and 41027 of the Water Code, to amend Sections 241.1, 319, 1752.81, 1773, 1800, 1800.5, 2017, 3150, 3151, 4127, 4242, 4461, 4839, 5723.5, 7328, 7515, 10053, 11212, 11450.019, 11495.25, 14092.35, 14125.9, 14148.9, 14166.18, 14171.5, 14171.6, 14504, 15634, 15655.5, 16500.1, 16583, 16800.7, 17800, 18325.5, and 18906.5 of the Welfare and Institutions Code, and to amend Section 1 of Chapter 260 of the Statutes of 2004, Section 31.5 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933), Section 12 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951), Section 87 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), Sections 26.7, and 26.9 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), Section 8 of the San Mateo County Flood Control District Act (Chapter 2108 of the Statutes of 1959), Section 45 of the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), Section 510 of the Pajaro Valley Water Management Agency Act (Chapter 257 of the Statutes of 1984), Section 408 of Chapter 688 of, and Section 408 of Chapter 689 of, the Statutes of 1984, Section 602 of Chapter 1023 of the Statutes of 1982, Section 5.5 of the Santa Barbara County Floor Control and Water Conservation District Act (Chapter 1057 of the Statutes of 1955), and Sections 13 and 16of the Humboldt Bay Harbor, Recreation, and Conservation District Act (Chapter 1283 of the Statutes of 1970), relating to the maintenance of the codes.

2006

April 6—Introduced. Read first time. To Com. on RLS. for assignment. To print.
April 7—From print. May be acted upon on or after May 7.
April 20—To Com. on JUD.
April 26—Set for hearing May 9.
May 10—From committee: Do pass. To Consent Calendar. (Ayes 5. Noes 0. Page 3836.)
May 11—Read second time. To Consent Calendar.
May 18—Read third time. Passed. (Ayes 37. Noes 0. Page 3952.) To Assembly.
May 18—In Assembly. Read first time. Held at Desk.
May 30—To Com. on JUD.
June 20—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
June 27—From committee: Do pass. To Consent Calendar. (Ayes 9. Noes 0.)
June 28—Read second time. To Consent Calendar.
Aug. 7—Read third time. Passed. (Ayes 76. Noes 0. Page 6431.) To Senate.
Aug. 7—In Senate. To unfinished business.
Aug. 9—To Special Consent Calendar.
Aug. 10—Senate concurs in Assembly amendments. (Ayes 37. Noes 0. Page 4852.) To enrollment.

S.B. No. 1853—Cox.

An act to amend Section 41020 of the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

2006

April 27—Introduced. Read first time. To Com. on RLS. for assignment. To print.
May 1—From print. May be acted upon on or after May 28.
May 4—To Com. on ED.
June 1—Set for hearing June 14.
June 14—Set, first hearing. Hearing canceled at the request of author.

SENATE BILL **No. 1852**

Introduced by Committee on Judiciary (Senators Dunn (Chair), Ackerman, Escutia, and Kuehl)

April 6, 2006

An act to amend Sections 690, 801, 809, 853, 2435.1, 2571, 3078, 4052, 4507, 6126.3, 6156, 6157, 7161, 7302, 7582.20, 7591.19, 7830.1, 9855.6, 11004.5, 12606.2, 14492, 17086, 17206.1, 17508, 17539.3, 18625, 18720, 18830, 19613.2, 21669.1, 22701, 22901, 22915, 23426.5, and 25660 of the Business and Professions Code, to amend Sections 43.97, 51.4, 54.6, 56.21, 799.2.5, 846.1, 1363.04, 1363.07, 1761, 1786.10, 1788.2, 1789.37, 1812.85, 1812.106, 1812.306, 1812.501, 1834.8, 2945.3, 2945.9, 2954.7, 3052.5, 3262, and 3415 of, and to amend and renumber Section 1812.97 of, the Civil Code, to amend Sections 77, 94, 338, 417.10, 460.7, 1021.8, 1141.21, 1245.320, 1345, 1346, 1370, 1371, 1375, 1379, 1775.14, 1800, and 1985.6 of the Code of Civil Procedure, to amend Section 16101 of the Commercial Code, to amend Sections 118, 7312, 8724, 12663, 17104, and 25100.1 of the Corporations Code, to amend Sections 1753, 1762, 7002.5, 8275, 8363.5, 8484.75, 8498, 8669, 8825, 12117, 17625, 19980, 22121, 24618, 32255, 32255.1, 33551, 35105, 41500, 42238.4, 44210, 44929.23, 44944, 45127, 45168.5, 47610, 47610.5, 47660, 49030, 49434, 49561, 49565.2, 49565.4, 52052, 52055.57, 52055.605, 52055.625, 52124, 52165, 52295.35, 52740, 56441, 58407, 58520, 60200, 66070, 66406, 66609, 69539, 69640, 76234, 81383, 81450, 81645, 88167.5, 89241, 89503, 89750.5, 92300, 92611.7, 94985, 94990, 99156, and 100603 of the Education Code, to amend Sections 7154, 7854, 9086, 9096, 10225, and 15375 of the Elections Code, to amend Section 1560 of the Evidence Code, to amend Sections 274, 3046, 3121, 4905, 7605, and 9201 of the Family Code, to amend Sections 687, 1800, 5303, 6503, 7263, 7273, 7274, 7509, 7600, 12100, 14402, 18062, 18415.3, 21050, and 22304 of the Financial

Code, to amend Sections 854, 1122, 2120, 2125, 2127, 2150.4, 2765, 4190, 5653, 8277, 8278, 8494, 8495, 8610.7, 8615, 8841, 9023, 13007, and 15512 of the Fish and Game Code, and to amend Sections 3955, 4054, 5774.5, 13127.92, 14978.2, 19314, 30801, 36805, 39901, 42684, 52295, 52891.1, 62069, 73053, 73202, 75022, 77373, 77375, 77554, and 77941 of the Food and Agriculture Code, to amend Sections 800, 850.6, 905.3, 920, 925, 926.19, 965.1, 997.1, 998.2, 1151, 3515.7, 3539.5, 3543.1, 3549.1, 3572, 5906, 6254, 6254.26, 6577, 7072, 7509, 7520, 7901, 7907, 8902, 8652, 8894.1, 11007.6, 11014, 11030.1, 11030.2, 11031, 11125.7, 11125.8, 11270, 11275, 12467, 12807.5, 12838.1, 13300, 13332.09, 13905, 13972, 13973, 13974, 13974.1, 14084, 14670.4, 14682, 15202, 15492, 15815, 15952, 16302.1, 16304.6, 16366.3, 16383, 16431, 16585, 17051.5, 17201, 17520, 17553, 17556, 18708, 19583.5, 19583.51, 19792.5, 19815.4, 19816, 19816.4, 19816.6, 19879.1, 19999.2, 20035.6, 20094, 20163, 20462, 20805, 20808, 21095, 21223, 21265, 21752, 22100, 26749, 29965, 31461.1, 31469, 31470.25, 31485.12, 31585.1, 31691, 31691.1, 45002, 54957.1, 54999.5, 65050, 65852.9, 65971, 65973, 65974, 65979, 66000, 66017, 67401, 68058, 68059.15, 68503, 68506, 68511.3, 68543, 68543.5, 68543.8, 68565, 70622, 75560.4, 77202, 87102.6, 89513, 92201, 92251, 92268, and 92309 of, and to repeal Section 87104 of, the Government Code, to amend Sections 72.4, 303, 444, 504, 508, 773.2, 1176, and 6037.4 of the Harbors and Navigation Code, to amend Sections 1250.3, 1267.19, 1276.8, 1312, 1357.09, 1399.811, 1418.8, 1451, 1531.1, 1558, 1568.09, 1568.092, 1569.58, 1596.816, 1596.847, 1596.8865, 1596.8897, 1765.145, 4730.8, 11162.1, 11502, 11571.1, 12701, 13052, 17021.6, 18080.5, 19161, 19165, 19982, 25159.12, 25200.6, 25205.1, 25208.2, 25208.8, 25208.17, 25215.4, 25283.1, 25370, 33080.7, 33320.4, 33333.6, 33334.2, 33334.22, 33446, 33476, 33492.78, 33492.86, 35816, 38012, 39941, 40440.2, 40717.6, 42840, 43200.1, 43812, 43867, 44037, 44090, 44366, 50660.5, 50896, 50896.1, 50896.2, 51504, 52020, 53533, 101630, 105195, 105215, 105280, 107040, 107065, 107080, 108310, 109350, 109360, 111080, 112025, 112030, 113844, 113955, 114400, 115040, 115061, 115255, 116050, 116660, 117100, 120425, 120830, 120875, 121110, 121270, 121275, 121520, 122070, 127575, 129890, and 150204 of, and to repeal Section 113843 of, the Health and Safety Code, to amend Sections 134, 481.5, 676.2, 750.4, 1063.145, 1140.5, 1734.5, 1735, 1763.2, 1781.7, 1802.5, 1842, 1874.2, 1903, 10123.141, 10133.56, 10136, 10203.4, 10203.5,

10203.8, 10209, 10350.2, 11580.1, 11872, 12640.02, 12698.50, 12698.54, and 15039 of the Insurance Code, to amend Sections 98, 142.4, 226.4, 243, 270.6, 1182.6, 1289, 1301, 1302, 2686, 2855, 3364, 4753.5, 5277, 5307.1, 5907, 6315.3, 7384, and 7994 of the Labor Code, to amend Section 340 of the Military and Veterans Code, to amend Sections 171d, 186.2, 273.7, 290, 290.6, 652, 987.9, 1037.1, 1191.2, 1203.066, 1524, 1557, 2786, 2800, 3003, 4017.1, 4900, 4901, 4902, 4904, 4905, 4906, 5001, 5009, 5071, 5076.1, 6024, 11163, 11172, 12021, 12280, 13603, 13810, 13826.7, 13835.2, and 14030 of, and to repeal Section 13300.1 of, the Penal Code, to amend Sections 6108, 10240.5, 10329, 12183, 20105, 20118.4, 20133, 20407, 20448, 20450, 20451, 20452, 20456, 20487, 20522, 20563, 20582, 20688.2, 20853, 20894, 21020.8, 21040, 21071, 21471, and 21601 of, and to repeal the heading of Article 3 (commencing with Section 9201) of Chapter 9 of Part 1 of Division 2 of, the Public Contract Code, to amend Sections 2776, 4116, 4144, 4516.6, 4602.6, 5006.48, 5080.06, 5080.36, 5096.514, 5141.1, 5366, 5671, 6314, 6925.2, 8710, 9084, 21080.24, 21151.1, 21167.1, 25135, 25302.5, 26032, 26569.5, 29305, 29735, 30118.5, 30166, 30170, 30171.2, 30222.5, 30315.1, 30608, 30610.4, 30610.6, 30716, 31163, 31258, 32103, 33201, 33207.5, 42463, 42888, 42891, 43500, 44820, 49161, and 71081 of the Public Resources Code, to amend Sections 95.2, 531.7, 862, 2188.5, 2700, 4676, 4703.3, 6067, 6201.2, 6376.1, 6902.3, 9270, 11317, 11923, 13153, 17052.6, 19191, 20621, 23060, 23202, 23305b, 32364, 32475, 41120, 41176, 45304, 45451, 45872, 46442, 50124, and 50145 of the Revenue and Taxation Code, to amend Sections 156.3, 188.6, 2117, 6491.5, and 30162 of the Streets and Highways Code, to amend Sections 1222, 1256.5, 1262, 1855, 3254.5, 4701, 9608, 10200, 13002, and 13021 of the Unemployment Insurance Code, to amend Sections 1671, 2423, 11713.1, 12509, 12811, 14602.6, 15242, 17155, 23109, 24011.3, 27360, 29008, 35106, 40512, and 42001 of the Vehicle Code, to amend Sections 359, 5003, 8617.5, 10631, 12625, 12879.2, 12899.6, 12899.7, 12929.12, 13385.1, 13465, 13611, 13999.8, 20527.11, 23178, and 41027 of the Water Code, to amend Sections 241.1, 319, 1752.81, 1773, 1800, 1800.5, 2017, 3150, 3151, 4127, 4242, 4461, 4839, 5723.5, 7328, 7515, 10053, 11212, 11450.019, 11495.25, 14092.35, 14125.9, 14148.9, 14166.18, 14171.5, 14171.6, 14504, 15634, 15655.5, 16500.1, 16583, 16800.7, 17800, 18325.5, and 18906.5 of the Welfare and Institutions Code, and to amend Section 1 of Chapter 260 of the Statutes of 2004,

Section 31.5 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933), Section 12 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951), Section 87 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), Section 26.9 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), Section 8 of the San Mateo County Flood Control District Act (Chapter 2108 of the Statutes of 1959), Section 26.7 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), Section 45 of the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), Section 510 of the Pajaro Valley Water Management Agency Act (Chapter 257 of the Statutes of 1984), Section 408 of Chapter 688 of, and Section 408 of Chapter 689 of, the Statutes of 1984, Section 602 of Chapter 1023 of the Statutes of 1982, Section 87 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), Section 5.5 of the Santa Barbara County Floor Control and Water Conservation District Act (Chapter 1057 of the Statutes of 1955), and Sections 13 and 16 of the Humboldt Bay Harbor, Recreation, and Conservation District Act (Chapter 1283 of the Statutes of 1970), relating to the maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1852, as introduced, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make technical, nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 690 of the Business and Professions Code is amended to read:

basis for a misdemeanor or felony prosecution in any court of this ~~State~~ *state*.

SEC. 23. Section 17206.1 of the Business and Professions Code is amended to read:

17206.1. (a) *(1)* In addition to any liability for a civil penalty pursuant to Section 17206, any person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) "Senior citizen" means a person who is 65 years of age or older.

(2) "Disabled person" means any person who has a physical or mental impairment ~~which~~ *that* substantially limits one or more major life activities.

(A) As used in this subdivision, "physical or mental impairment" means any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; ~~muscoloskeletal~~ *musculoskeletal*; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. ~~The term "physical~~

"*Physical* or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

(B) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) Any court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as may be necessary to restore to any senior citizen or disabled person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over any civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

SEC. 24. Section 17508 of the Business and Professions Code is amended to read:

17508. (a) It shall be unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that

January 1, 2007, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2006 calendar year and takes effect on or before January 1, 2007, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

O

SENATE JUDICIARY COMMITTEE
Senator Joseph L. Dunn, Chair
2005-2006 Regular Session

SB 1852 S
Senate Committee on Judiciary B
As Introduced
Hearing Date: May 9, 2006 1
Various Codes 8
GWW:cjt 5
2

SUBJECT

Maintenance of the Codes

DESCRIPTION

This bill would make numerous technical changes in the California codes that have been recommended by the Legislative Counsel's Office. The proposed changes would not make any substantive change in the law.

BACKGROUND

Each year, Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing the wholesale corrections. For inclusion into the measure, the change must be technical only and may not affect or enact substantive law. Any proposed change which is identified as having a substantive change is automatically excised from the bill.

CHANGES TO EXISTING LAW

None

COMMENT

1. Commitment to delete any substantive provision

   A condition for inclusion in the annual code maintenance bill is that the change must be nonsubstantive. Consequently, any provision that is identified as making a substantive law change will be deleted without question by the Legislative Counsel's Office.

(more)

2. "All-purpose" yielding clause avoids chaptering problems

Proposed Section 735 on page 882 of the bill provides that any other bill enacted by the Legislature during the 2006 calendar year that amends, adds, repeals, or otherwise affects any section affected by this bill, shall prevail over the provisions of this bill. This "all-purpose" yielding clause avoids any chaptering problems that might otherwise occur and escape the notice of inattentive staff.

Support: None Known

Opposition: None Known

HISTORY

Source: Office of Legislative Counsel

Related Pending Legislation: None Known

Prior Legislation: None Known

****

File Item #
SB 1852 (Judiciary)
Support

Senate Judiciary: 5-0 (5/9/06)
(AYE: Morrow, Ackerman)
Vote Requirement: 21
Version Date: 4/6/06

Quick Summary
Makes grammatical and technical changes.

Analysis
Arguments in Support:
This is the annual maintenance of the codes bill, which is prepared by the Legislative Counsel to make nonsubstantive correcting changes in the codes.

Arguments in Opposition:
There are too many mistakes to correct.

Other Issues:
No further comments are warranted.

Digest
Makes grammatical and technical changes.

Background
Every year the Legislative Counsel requests the Legislature to make nonsubstantive correcting changes in the codes.

Support & Opposition Received
None.

Senate Republican Office of Policy/ *Mike Petersen*

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

SB 1852

CONSENT

Bill No: SB 1852
Author: Senate Judiciary Committee
Amended: As introduced
Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 5/9/06
AYES: Dunn, Morrow, Ackerman, Escutia, Kuehl

SUBJECT: Maintenance of the codes

SOURCE: Office of Legislative Counsel

DIGEST: This bill makes numerous technical changes in the California codes that have been recommended by the Legislative Counsel's Office. The proposed changes would not make any substantive change in the law.

ANALYSIS: Each year, Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing the wholesale corrections. For inclusion into the bill, the change must be technical only and may not affect or enact substantive law. Any proposed change which is identified as having a substantive change is automatically excised from the bill.

A condition for inclusion in the annual code maintenance bill is that the change must be nonsubstantive. Therefore, any provision that is identified as making a substantive law change will be deleted without question by the Legislative Counsel's Office.

Proposed Section 735 on page 882 of the bill provides that any other bill enacted by the Legislature during the 2006 calendar year that amends, adds,

CONTINUED

repeals, or otherwise affects any section affected by this bill, shall prevail over the provisions of this bill. This "all-purpose" yielding clause avoids any chaptering problems.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 5/11/06)

Office of Legislative Counsel (source)

RJG:nl 5/15/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

****** END ******

SENATE BILL No. 1852

Introduced by Committee on Judiciary (Senators Dunn (Chair), Ackerman, Escutia, and Kuehl)

April 6, 2006

An act to amend Sections 690, 801, 809, 853, 2435.1, 2571, 3078, 4052, 4507, 6126.3, 6156, 6157, 7161, 7302, 7582.20, 7591.19, 7830.1, 9855.6, 11004.5, 12606.2, 14492, 17086, 17206.1, 17508, 17539.3, 18625, 18720, 18830, 19613.2, 21669.1, 22701, 22901, 22915, 23426.5, and 25660 of the Business and Professions Code, to amend Sections 43.97, 51.4, 54.6, 56.21, 799.2.5, 846.1, 1363.04, 1363.07, 1761, 1786.10, 1788.2, 1789.37, 1812.85, 1812.106, 1812.306, 1812.501, 1834.8, 2945.3, 2945.9, 2954.7, 3052.5, 3262, and 3415 of, and to amend and renumber Section 1812.97 of, the Civil Code, to amend Sections 77, 94, 338, 417.10, 460.7, 1021.8, 1141.21, 1245.320, 1345, 1346, 1370, 1371, 1375, 1379, 1775.14, 1800, and 1985.6 of the Code of Civil Procedure, to amend Section 16101 of the Commercial Code, to amend Sections 118, 7312, 8724, 12663, 17104, and 25100.1 of the Corporations Code, to amend Sections 1753, 1762, 7002.5, 8275, 8363.5, 8484.75, 8498, 8669, 8825, 12117, 17625, 19980, 22121, 24618, 32255, 32255.1, 33551, 35105, 41500, 42238.4, 44210, 44929.23, 44944, 45127, 45168.5, 47610, 47610.5, 47660, 49030, 49434, 49561, 49565.2, 49565.4, 52052, 52055.57, 52055.605, 52055.625, 52124, 52165, 52295.35, 52740, 56441, 58407, 58520, 60200, 66070, 66406, 66609, 69539, 69640, 76234, 81383, 81450, 81645, 88167.5, 89241, 89503, 89750.5, 92300, 92611.7, 94985, 94990, 99156, and 100603 of the Education Code, to amend Sections 7154, 7854, 9086, 9096, 10225, and 15375 of the Elections Code, to amend Section 1560 of the Evidence Code, to amend Sections 274, 3046, 3121, 4905, 7605, and 9201 of the Family Code, to amend Sections 687, 1800, 5303, 6503, 7263, 7273, 7274, 7509, 7600, 12100, 14402, 18062, 18415.3, 21050, and 22304 of the Financial

Code, to amend Sections 854, 1122, 2120, 2125, 2127, 2150.4, 2765, 4190, 5653, 8277, 8278, 8494, 8495, 8610.7, 8615, 8841, 9023, 13007, and 15512 of the Fish and Game Code, and to amend Sections 3955, 4054, 5774.5, 13127.92, 14978.2, 19314, 30801, 36805, 39901, 42684, 52295, 52891.1, 62069, 73053, 73202, 75022, 77373, 77375, 77554, and 77941 of the Food and Agriculture Code, to amend Sections 800, 850.6, 905.3, 920, 925, 926.19, 965.1, 997.1, 998.2, 1151, 3515.7, 3539.5, 3543.1, 3549.1, 3572, 5906, 6254, 6254.26, 6577, 7072, 7509, 7520, 7901, 7907, 8902, 8652, 8894.1, 11007.6, 11014, 11030.1, 11030.2, 11031, 11125.7, 11125.8, 11270, 11275, 12467, 12807.5, 12838.1, 13300, 13332.09, 13905, 13972, 13973, 13974, 13974.1, 14084, 14670.4, 14682, 15202, 15492, 15815, 15952, 16302.1, 16304.6, 16366.3, 16383, 16431, 16585, 17051.5, 17201, 17520, 17553, 17556, 18708, 19583.5, 19583.51, 19792.5, 19815.4, 19816, 19816.4, 19816.6, 19879.1, 19999.2, 20035.6, 20094, 20163, 20462, 20805, 20808, 21095, 21223, 21265, 21752, 22100, 26749, 29965, 31461.1, 31469, 31470.25, 31485.12, 31585.1, 31691, 31691.1, 45002, 54957.1, 54999.5, 65050, 65852.9, 65971, 65973, 65974, 65979, 66000, 66017, 67401, 68058, 68059.15, 68503, 68506, 68511.3, 68543, 68543.5, 68543.8, 68565, 70622, 75560.4, 77202, 87102.6, 89513, 92201, 92251, 92268, and 92309 of, and to repeal Section 87104 of, the Government Code, to amend Sections 72.4, 303, 444, 504, 508, 773.2, 1176, and 6037.4 of the Harbors and Navigation Code, to amend Sections 1250.3, 1267.19, 1276.8, 1312, 1357.09, 1399.811, 1418.8, 1451, 1531.1, 1558, 1568.09, 1568.092, 1569.58, 1596.816, 1596.847, 1596.8865, 1596.8897, 1765.145, 4730.8, 11162.1, 11502, 11571.1, 12701, 13052, 17021.6, 18080.5, 19161, 19165, 19982, 25159.12, 25200.6, 25205.1, 25208.2, 25208.8, 25208.17, 25215.4, 25283.1, 25370, 33080.7, 33320.4, 33333.6, 33334.2, 33334.22, 33446, 33476, 33492.78, 33492.86, 35816, 38012, 39941, 40440.2, 40717.6, 42840, 43200.1, 43812, 43867, 44037, 44090, 44366, 50660.5, 50896, 50896.1, 50896.2, 51504, 52020, 53533, 101630, 105195, 105215, 105280, 107040, 107065, 107080, 108310, 109350, 109360, 111080, 112025, 112030, 113844, 113955, 114400, 115040, 115061, 115255, 116050, 116660, 117100, 120425, 120830, 120875, 121110, 121270, 121275, 121520, 122070, 127575, 129890, and 150204 of, and to repeal Section 113843 of, the Health and Safety Code, to amend Sections 134, 481.5, 676.2, 750.4, 1063.145, 1140.5, 1734.5, 1735, 1763.2, 1781.7, 1802.5, 1842, 1874.2, 1903, 10123.141, 10133.56, 10136, 10203.4, 10203.5,

10203.8, 10209, 10350.2, 11580.1, 11872, 12640.02, 12698.50, 12698.54, and 15039 of the Insurance Code, to amend Sections 98, 142.4, 226.4, 243, 270.6, 1182.6, 1289, 1301, 1302, 2686, 2855, 3364, 4753.5, 5277, 5307.1, 5907, 6315.3, 7384, and 7994 of the Labor Code, to amend Section 340 of the Military and Veterans Code, to amend Sections 171d, 186.2, 273.7, 290, 290.6, 652, 987.9, 1037.1, 1191.2, 1203.066, 1524, 1557, 2786, 2800, 3003, 4017.1, 4900, 4901, 4902, 4904, 4905, 4906, 5001, 5009, 5071, 5076.1, 6024, 11163, 11172, 12021, 12280, 13603, 13810, 13826.7, 13835.2, and 14030 of, and to repeal Section 13300.1 of, the Penal Code, to amend Sections 6108, 10240.5, 10329, 12183, 20105, 20118.4, 20133, 20407, 20448, 20450, 20451, 20452, 20456, 20487, 20522, 20563, 20582, 20688.2, 20853, 20894, 21020.8, 21040, 21071, 21471, and 21601 of, and to repeal the heading of Article 3 (commencing with Section 9201) of Chapter 9 of Part 1 of Division 2 of, the Public Contract Code, to amend Sections 2776, 4116, 4144, 4516.6, 4602.6, 5006.48, 5080.06, 5080.36, 5096.514, 5141.1, 5366, 5671, 6314, 6925.2, 8710, 9084, 21080.24, 21151.1, 21167.1, 25135, 25302.5, 26032, 26569.5, 29305, 29735, 30118.5, 30166, 30170, 30171.2, 30222.5, 30315.1, 30608, 30610.4, 30610.6, 30716, 31163, 31258, 32103, 33201, 33207.5, 42463, 42888, 42891, 43500, 44820, 49161, and 71081 of the Public Resources Code, to amend Sections 95.2, 531.7, 862, 2188.5, 2700, 4676, 4703.3, 6067, 6201.2, 6376.1, 6902.3, 9270, 11317, 11923, 13153, 17052.6, 19191, 20621, 23060, 23202, 23305b, 32364, 32475, 41120, 41176, 45304, 45451, 45872, 46442, 50124, and 50145 of the Revenue and Taxation Code, to amend Sections 156.3, 188.6, 2117, 6491.5, and 30162 of the Streets and Highways Code, to amend Sections 1222, 1256.5, 1262, 1855, 3254.5, 4701, 9608, 10200, 13002, and 13021 of the Unemployment Insurance Code, to amend Sections 1671, 2423, 11713.1, 12509, 12811, 14602.6, 15242, 17155, 23109, 24011.3, 27360, 29008, 35106, 40512, and 42001 of the Vehicle Code, to amend Sections 359, 5003, 8617.5, 10631, 12625, 12879.2, 12899.6, 12899.7, 12929.12, 13385.1, 13465, 13611, 13999.8, 20527.11, 23178, and 41027 of the Water Code, to amend Sections 241.1, 319, 1752.81, 1773, 1800, 1800.5, 2017, 3150, 3151, 4127, 4242, 4461, 4839, 5723.5, 7328, 7515, 10053, 11212, 11450.019, 11495.25, 14092.35, 14125.9, 14148.9, 14166.18, 14171.5, 14171.6, 14504, 15634, 15655.5, 16500.1, 16583, 16800.7, 17800, 18325.5, and 18906.5 of the Welfare and Institutions Code, and to amend Section 1 of Chapter 260 of the Statutes of 2004,

Section 31.5 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933), Section 12 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951), Section 87 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), Section 26.9 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), Section 8 of the San Mateo County Flood Control District Act (Chapter 2108 of the Statutes of 1959), Section 26.7 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), Section 45 of the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), Section 510 of the Pajaro Valley Water Management Agency Act (Chapter 257 of the Statutes of 1984), Section 408 of Chapter 688 of, and Section 408 of Chapter 689 of, the Statutes of 1984, Section 602 of Chapter 1023 of the Statutes of 1982, Section 87 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), Section 5.5 of the Santa Barbara County Floor Control and Water Conservation District Act (Chapter 1057 of the Statutes of 1955), and Sections 13 and 16 of the Humboldt Bay Harbor, Recreation, and Conservation District Act (Chapter 1283 of the Statutes of 1970), relating to the maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1852, as introduced, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make technical, nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 690 of the Business and Professions Code is amended to read:

of the Secretary of State, and the name of any organization that has complied with Chapter 5 (commencing with Section 17900) of Part 3 of Division 7, unless the name conflicts with a name duly registered in the Office of the Secretary of State prior to the compliance with those provisions, and any organization that has so first adopted and used the name is its original owner.

SEC. 22. Section 17086 of the Business and Professions Code is amended to read:

17086. No information obtained under this article, or under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure, may be used against any party, or any witness, as a basis for a misdemeanor or felony prosecution in any court of this state.

SEC. 23. Section 17206.1 of the Business and Professions Code is amended to read:

17206.1. (a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, any person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) “Senior citizen” means a person who is 65 years of age or older.

(2) “Disabled person” means any person who has a physical or mental impairment that substantially limits one or more major life activities.

(A) As used in this subdivision, “physical or mental impairment” means any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

(B) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) Any court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as may be necessary to restore to any senior citizen or disabled person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over

any civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

SEC. 24. Section 17508 of the Business and Professions Code is amended to read:

17508. (a) It shall be unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.

(b) Upon written request of the Director of Consumer Affairs, the Attorney General, any city attorney, or any district attorney, any person doing business in California and in whose behalf advertising claims are made to consumers in California, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact, shall provide to the department or official making the request evidence of the facts on which the advertising claims are based. The request shall be made within one year of the last day on which the advertising claims were made.

Any city attorney or district attorney who makes a request pursuant to this subdivision shall give prior notice of the request to the Attorney General.

(c) The Director of Consumer Affairs, Attorney General, any city attorney, or any district attorney may, upon failure of an advertiser to respond by adequately substantiating the claim within a reasonable time, or if the Director of Consumer Affairs, Attorney General, city attorney, or district attorney shall have reason to believe that the advertising claim is false or misleading, do either or both of the following:

(1) Seek an immediate termination or modification of the claim by the person in accordance with Section 17535.

amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

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SB 1852 (JUDICIARY)
MAINTENANCE OF THE CODES.

Version: 6/20/06 Last Amended
Vote: Majority
Support

Vice-Chair: Tom Harman
Tax or Fee Increase: No

Makes grammatical corrections and technical (non-substantive) changes in the statutory codes to remove unintended ambiguities..

Policy Question

Should grammatical corrections and technical changes be made in the codes to remove unintended ambiguities?

Summary

This bill makes grammatical corrections and technical (non-substantive) changes in the statutory codes.

Support

Legislative Counsel.

Opposition

None on file.

Arguments In Support of the Bill

These grammar corrections and non-substantive changes are made to remove any unintended ambiguity created from previous passage of legislation.

Arguments In Opposition to the Bill

No significant argument raised in opposition.

Fiscal Effect

Unknown.

Comments

This is the annual "maintenance of the codes" bill that Legislative Counsel offers to correct grammar and technical matters such as correct cross-references to other code sections. This bill is generally a Judiciary Committee bill that the Senate Judiciary Committee and the Assembly Judiciary Committee take alternate turns in authoring on an annual basis.

Policy Consultant: Mark Redmond 6/20/06
Fiscal Consultant:

Senate Republican Floor Votes (37-0) 5/18/06
Ayes: All Republicans Except
Noes: None
Abs. / NV: Hollingsworth

Assembly Republican Judiciary Votes (0-0) 6/27/06
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/05
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/05
Ayes: None
Noes: None
Abs. / NV: None

SB 1852 (JUDICIARY)
MAINTENANCE OF THE CODES.

Version: 6/20/06 Last Amended
Vote: Majority
Support

Vice-Chair: Tom Harman
Tax or Fee Increase: No

Makes grammatical corrections and technical (non-substantive) changes in the statutory codes to remove unintended ambiguities..

Policy Question

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Support

Legislative Counsel.

Opposition

None on file.

Arguments In Support of the Bill

These grammar corrections and non-substantive changes are made to remove any unintended ambiguity created from previous passage of legislation.

Arguments In Opposition to the Bill

No significant argument raised in opposition.

Fiscal Effect

Unknown.

Comments

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Policy Consultant: Mark Redmond 6/20/06
Fiscal Consultant:

Senate Republican Floor Votes (37-0) 5/18/06
Ayes: All Republicans Except
Noes: None
Abs. / NV: Hollingsworth

Assembly Republican Judiciary Votes (0-0) 6/27/06
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/05
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/05
Ayes: None
Noes: None
Abs. / NV: None

Date of Hearing: June 27, 2006

ASSEMBLY COMMITTEE ON JUDICIARY
Dave Jones, Chair
SB 1852 (Judiciary) – As Amended: June 20, 2006

PROPOSED CONSENT

SENATE VOTE: 37-0

SUBJECT: ANNUAL LEGISLATIVE COUNSEL "MAINTENANCE OF THE CODES" BILL

KEY ISSUE: SHOULD VARIOUS NON-SUBSTANTIVE, TECHNICAL CHANGES BE MADE VIA THE "MAINTENANCE OF THE CODES" BILL SPONSORED BY THE LEGISLATIVE COUNSEL'S OFFICE IN THIS ANNUAL TECHNICAL CLEAN-UP BILL?

SYNOPSIS

This non-controversial bill makes numerous technical changes in the California codes that are recommended this year by the Legislative Counsel's Office. The proposed changes are technical and non-controversial and make no substantive changes in the law.

SUMMARY: Makes non-substantive changes to the codes by recommendation of the Legislative Counsel's office. Specifically, this bill makes various grammatical and other technical changes suggested by the Office of Legislative Counsel in order to correct non-substantive errors that exist in the original bill text.

EXISTING LAW: Unaffected

FISCAL EFFECT: None

COMMENTS: Each year, Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing the wholesale corrections. For inclusion into the bill, the change must be technical only and may not affect or enact substantive law. Any proposed change which is identified as having a substantive change is automatically excised from the bill.

A condition for inclusion in the annual code maintenance bill is that the change must be non-substantive. Therefore, any provision that is identified as making a substantive law change will be deleted without question by the Legislative Counsel's Office.

Proposed Section 735 on page 882 of the bill provides that any other bill enacted by the Legislature during the 2006 calendar year that amends, adds, repeals, or otherwise affects any section affected by this bill, shall prevail over the provisions of this bill. This "all-purpose" yielding clause avoids any chaptering problems.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Drew Liebert / JUD. / (916) 319-2334

Franchise Tax Board

NO ANALYSIS REQUIRED

Author: Judiciary Committee Analyst: Darrine Distefano Bill Number: SB 1852

Related Bills: _____ Telephone: 845-4142 Amended Date: June 20, 2006

_____ Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Code Maintenance

_____ ANALYSIS NOT REQUIRED of this bill – Not within scope of responsibility of this department.

_____ TECHNICAL BILL – No program or fiscal changes to existing program.

_____ BILL AS AMENDED NO LONGER WITHIN SCOPE of responsibility or program of the department.

_____ TECHNICAL AMENDMENT – No change in previously submitted analysis required.

X Approved position of prior analysis is Pending.

_____ MINOR AMENDMENT – No change in previously submitted analysis required. Approved position of prior analysis is _____.

_____ MINOR AMENDMENT – No change in approved position of _____. See Comments below

X OTHER – See comments below.

COMMENTS:

This bill would make technical and nonsubstantive changes to various code sections, including the Revenue & Taxation Code.

The June 20, 2006, amendments add and delete several provisions relating to water districts throughout the state.

This bill does not impact the department's programs and operations or state income tax revenue.

Board Position:			Franchise Tax Board Staff	Date
_____ S	_____ NA	_____ NP		
_____ SA	_____ O	_____ NAR		
_____ N	_____ OUA	X PENDING	Darrine Distefano	7/5/06

LSB TEMPLATE (rev. 7-03)

State of California Department of Consumer Affairs

400 R STREET, Suite 3120
SACRAMENTO, CALIFORNIA 95814-6200

July 31, 2006

The Honorable Joseph Dunn, Chair
California State Senate Judiciary Committee
State Capitol, Room 2187
Sacramento, California 95814

RE: SB 1852 (Senate Judiciary Committee, 2006): NEUTRAL

Dear Senator Dunn:

The Department of Consumer Affairs has taken a **NEUTRAL** position on your bill, SB 1852 (as amended on June 20, 2006). This bill would make numerous technical changes in the California codes that have been recommended by the Office of Legislative Counsel.

Outdated, obsolete and ambiguous laws can cause confusion for licensees, applicants and consumers and sometimes impede the ability of boards to enforce their practice acts. SB 1852 would make non-controversial, clean-up changes to provisions in existing law, thereby enabling these regulatory programs to operate more efficiently and effectively.

Should you have any questions regarding our position, please contact me at (916) 574-7800.

Sincerely,

Laura Zuniga

LAURA ZUNIGA
Deputy Director
Division of Legislative and Regulatory Review

cc: Richard Costigan, Legislative Secretary, Office of the Governor
Happy Chastain, Deputy Secretary, Legislation, State and Consumer Services Agency

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

SB 1852

UNFINISHED BUSINESS

Bill No: SB 1852
Author: Senate Judiciary Committee
Amended: 6/20/06
Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 5/9/06
AYES: Dunn, Morrow, Ackerman, Escutia, Kuehl

SENATE FLOOR: 37-0, 5/18/06 (Consent)
AYES: Aanestad, Ackerman, Alarcon, Alquist, Ashburn, Battin, Bowen, Cedillo, Chesbro, Cox, Denham, Ducheny, Dutton, Escutia, Figueroa, Florez, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Morrow, Murray, Ortiz, Perata, Poochigian, Romero, Runner, Scott, Simitian, Soto, Speier, Torlakson, Vincent
NO VOTE RECORDED: Dunn, Hollingsworth, Vacancy

ASSEMBLY FLOOR: 76-0, 08/07/06 (Consent) - See last page for vote

SUBJECT: Maintenance of the codes

SOURCE: Office of Legislative Counsel

DIGEST: This bill makes numerous technical changes in the California codes that have been recommended by the Legislative Counsel's Office. The proposed changes would not make any substantive change in the law.

Assembly Amendments made technical changes.

ANALYSIS: Each year, Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the

CONTINUED

Codes" bill is the vehicle for implementing the wholesale corrections. For inclusion into the bill, the change must be technical only and may not affect or enact substantive law. Any proposed change which is identified as having a substantive change is automatically excised from the bill.

A condition for inclusion in the annual code maintenance bill is that the change must be nonsubstantive. Therefore, any provision that is identified as making a substantive law change will be deleted without question by the Legislative Counsel's Office.

Proposed Section 735 on page 882 of the bill provides that any other bill enacted by the Legislature during the 2006 calendar year that amends, adds, repeals, or otherwise affects any section affected by this bill, shall prevail over the provisions of this bill. This "all-purpose" yielding clause avoids any chaptering problems.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 5/11/06)

Office of Legislative Counsel (source)

ASSEMBLY FLOOR:
AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dymally, Emmerson, Evans, Frommer, Garcia, Goldberg, Hancock, Haynes, Jerome Horton, Shirley Horton, Huff, Jones, Karnette, Keene, Klehs, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Lieu, Liu, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nation, Nava, Negrete McLeod, Niello, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin, Saldana, Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez
NO VOTE RECORDED: Houston, Maze, Oropeza

RJG:nl 8/8/06 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
****** END ******

Senate Bill No. 1852

CHAPTER 538

An act to amend Sections 690, 801, 809, 853, 2435.1, 2571, 3078, 4052, 4507, 6126.3, 6156, 6157, 7161, 7302, 7582.20, 7591.19, 7830.1, 9855.6, 11004.5, 12606.2, 14492, 17086, 17206.1, 17508, 17539.3, 18625, 18720, 18830, 19613.2, 21669.1, 22701, 22901, 22915, 23426.5, and 25660 of the Business and Professions Code, to amend Sections 43.97, 51.4, 54.6, 56.21, 799.2.5, 846.1, 1363.04, 1363.07, 1761, 1786.10, 1788.2, 1789.37, 1812.85, 1812.106, 1812.306, 1812.501, 1834.8, 2945.3, 2945.9, 2954.7, 3052.5, 3262, and 3415 of, and to amend and renumber Section 1812.97 of, the Civil Code, to amend Sections 77, 94, 338, 417.10, 425.11, 460.7, 1021.8, 1141.21, 1245.320, 1345, 1346, 1370, 1371, 1375, 1379, 1775.14, 1800, and 1985.6 of the Code of Civil Procedure, to amend Section 16101 of the Commercial Code, to amend Sections 118, 7312, 8724, 12663, 17104, and 25100.1 of the Corporations Code, to amend Sections 1753, 1762, 7002.5, 8275, 8363.5, 8484.75, 8498, 8669, 8825, 12117, 17625, 19980, 22121, 24618, 32255, 32255.1, 33551, 35105, 41500, 42238.4, 44210, 44929.23, 44944, 45127, 45168.5, 47610, 47610.5, 47660, 49030, 49434, 49561, 49565.2, 49565.4, 52052, 52055.57, 52055.605, 52055.625, 52124, 52165, 52295.35, 52740, 56441, 58407, 58520, 60200, 66070, 66406, 66609, 69539, 69640, 76234, 81383, 81450, 81645, 88167.5, 89241, 89503, 89750.5, 92300, 92611.7, 94985, 94990, 99156, and 100603 of the Education Code, to amend Sections 7154, 7854, 9086, 9096, 10225, and 15375 of the Elections Code, to amend Section 1560 of the Evidence Code, to amend Sections 274, 3046, 3121, 4905, 7605, and 9201 of the Family Code, to amend Sections 687, 1800, 5303, 6503, 7263, 7273, 7274, 7509, 7600, 12100, 14402, 18062, 18415.3, 21050, and 22304 of the Financial Code, to amend Sections 854, 1122, 2120, 2125, 2127, 2150.4, 2765, 4190, 5653, 8277, 8278, 8494, 8495, 8610.7, 8615, 8841, 9023, 13007, and 15512 of the Fish and Game Code, and to amend Sections 3955, 4054, 5774.5, 13127.92, 14978.2, 19314, 30801, 36805, 39901, 42684, 52295, 52891.1, 62069, 73053, 73202, 75022, 77373, 77375, 77554, and 77941 of the Food and Agriculture Code, to amend Sections 800, 850.6, 905.3, 920, 925, 926.19, 965.1, 997.1, 998.2, 1151, 3515.7, 3539.5, 3543.1, 3549.1, 3572, 5906, 6254, 6254.26, 6577, 7072, 7509, 7520, 7901, 7907, 8902, 8652, 8894.1, 11007.6, 11014, 11030.1, 11030.2, 11031, 11125.7, 11125.8, 11270, 11275, 12467, 12807.5, 12838.1, 13300, 13332.09, 13905, 13972, 13973, 13974, 13974.1, 14084, 14670.4, 14682, 15202, 15492, 15815, 15952, 16302.1, 16304.6, 16366.3, 16383, 16431, 16585, 17051.5, 17201, 17520, 17553, 17556, 18708, 19583.5, 19583.51, 19792.5, 19815.4, 19816, 19816.4, 19816.6, 19879.1, 19999.2, 20035.6, 20094, 20163, 20462, 20805, 20808, 21095, 21223, 21265, 21752, 22100, 26749, 29965, 31461.1, 31469, 31470.25, 31485.12, 31585.1, 31691, 31691.1, 45002, 54957.1, 54999.5, 65050, 65852.9, 65971, 65973, 65974,

65979, 66000, 66017, 67401, 68058, 68059.15, 68503, 68506, 68511.3, 68543, 68543.5, 68543.8, 68565, 70622, 75560.4, 77202, 87102.6, 89513, 92201, 92251, 92268, and 92309 of, and to repeal Section 87104 of, the Government Code, to amend Sections 72.4, 303, 444, 504, 508, 773.2, 1176, and 6037.4 of the Harbors and Navigation Code, to amend Sections 1250.3, 1267.19, 1276.8, 1312, 1357.09, 1399.811, 1418.8, 1451, 1531.1, 1558, 1568.09, 1568.092, 1569.58, 1596.816, 1596.847, 1596.8865, 1596.8897, 1765.145, 4730.8, 11162.1, 11502, 11571.1, 12701, 13052, 17021.6, 18080.5, 19161, 19165, 19982, 25159.12, 25200.6, 25205.1, 25208.2, 25208.8, 25208.17, 25215.4, 25283.1, 25370, 33080.7, 33320.4, 33333.6, 33334.2, 33334.22, 33446, 33476, 33492.78, 33492.86, 35816, 38012, 39941, 40440.2, 40717.6, 42840, 43200.1, 43812, 43867, 44037, 44090, 44366, 50660.5, 50896, 50896.1, 50896.2, 51504, 52020, 53533, 101630, 105195, 105215, 105280, 107040, 107065, 107080, 108310, 109350, 109360, 111080, 112025, 112030, 113844, 113955, 114400, 115040, 115061, 115255, 116050, 116660, 117100, 120425, 120830, 120875, 121110, 121270, 121275, 121520, 122070, 127575, 129890, and 150204 of, and to repeal Section 113843 of, the Health and Safety Code, to amend Sections 134, 481.5, 676.2, 750.4, 1063.145, 1140.5, 1734.5, 1735, 1763.2, 1781.7, 1802.5, 1842, 1874.2, 1903, 10123.141, 10133.56, 10136, 10203.4, 10203.5, 10203.8, 10209, 10350.2, 11580.1, 11872, 12640.02, 12698.50, 12698.54, and 15039 of the Insurance Code, to amend Sections 98, 142.4, 226.4, 243, 270.6, 1182.6, 1289, 1301, 1302, 2686, 2855, 3364, 4753.5, 5277, 5307.1, 5907, 6315.3, 7384, and 7994 of the Labor Code, to amend Section 340 of the Military and Veterans Code, to amend Sections 171d, 186.2, 273.7, 290, 290.6, 652, 987.9, 1037.1, 1191.2, 1203.066, 1524, 1557, 2786, 2800, 3003, 4017.1, 4900, 4901, 4902, 4904, 4905, 4906, 5001, 5009, 5071, 5076.1, 6024, 11163, 11172, 12021, 12280, 13603, 13810, 13826.7, 13835.2, and 14030 of, and to repeal Section 13300.1 of, the Penal Code, to amend Sections 6108, 10240.5, 10329, 12183, 20105, 20118.4, 20133, 20407, 20448, 20450, 20451, 20452, 20456, 20487, 20522, 20563, 20582, 20688.2, 20853, 20894, 21020.8, 21040, 21071, 21471, and 21601 of, and to repeal the heading of Article 3 (commencing with Section 9201) of Chapter 9 of Part 1 of Division 2 of, the Public Contract Code, to amend Sections 2776, 4116, 4144, 4516.6, 4602.6, 5006.48, 5080.06, 5080.36, 5096.514, 5141.1, 5366, 5671, 6314, 6925.2, 8710, 9084, 21080.24, 21151.1, 21167.1, 25135, 25302.5, 26032, 26569.5, 29305, 29735, 30118.5, 30166, 30170, 30171.2, 30222.5, 30315.1, 30608, 30610.4, 30610.6, 30716, 31163, 31258, 32103, 33201, 33207.5, 42463, 42888, 42891, 43500, 44820, 49161, and 71081 of the Public Resources Code, to amend Sections 95.2, 531.7, 862, 2188.5, 2700, 4676, 4703.3, 6067, 6201.2, 6376.1, 6902.3, 9270, 11317, 11923, 13153, 17052.6, 19191, 20621, 23060, 23202, 23305b, 32364, 32475, 41120, 41176, 45304, 45451, 45872, 46442, 50124, and 50145 of the Revenue and Taxation Code, to amend Sections 156.3, 188.6, 2117, 6491.5, and 30162 of the Streets and Highways Code, to amend Sections 1222, 1256.5, 1262, 1855, 3254.5, 4701, 9608, 10200,

13002, and 13021 of the Unemployment Insurance Code, to amend Sections 1671, 2423, 11713.1, 12509, 12811, 14602.6, 15242, 17155, 23109, 24011.3, 27360, 29008, 35106, 40512, and 42001 of the Vehicle Code, to amend Sections 359, 5003, 8617.5, 10631, 12625, 12879.2, 12899.6, 12899.7, 12929.12, 13385.1, 13465, 13611, 13999.8, 20527.11, 23178, and 41027 of the Water Code, to amend Sections 241.1, 319, 1752.81, 1773, 1800, 1800.5, 2017, 3150, 3151, 4127, 4242, 4461, 4839, 5723.5, 7328, 7515, 10053, 11212, 11450.019, 11495.25, 14092.35, 14125.9, 14148.9, 14166.18, 14171.5, 14171.6, 14504, 15634, 15655.5, 16500.1, 16583, 16800.7, 17800, 18325.5, and 18906.5 of the Welfare and Institutions Code, and to amend Section 1 of Chapter 260 of the Statutes of 2004, Section 31.5 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933), Section 12 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951), Section 87 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), Sections 26.7 and 26.9 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), Section 8 of the San Mateo County Flood Control District Act (Chapter 2108 of the Statutes of 1959), Section 45 of the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), Section 510 of the Pajaro Valley Water Management Agency Act (Chapter 257 of the Statutes of 1984), Section 408 of Chapter 688 of, and Section 408 of Chapter 689 of, the Statutes of 1984, Section 602 of Chapter 1023 of the Statutes of 1982, Section 5.5 of the Santa Barbara County Floor Control and Water Conservation District Act (Chapter 1057 of the Statutes of 1955), and Sections 13 and 16 of the Humboldt Bay Harbor, Recreation, and Conservation District Act (Chapter 1283 of the Statutes of 1970), relating to the maintenance of the codes.

[Approved by Governor September 28, 2006. Filed with Secretary of State September 28, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1852, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make technical, nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

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

SECTION 1. Section 690 of the Business and Professions Code is amended to read:

SEC. 22. Section 17086 of the Business and Professions Code is amended to read:

17086. No information obtained under this article, or under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure, may be used against any party, or any witness, as a basis for a misdemeanor or felony prosecution in any court of this state.

SEC. 23. Section 17206.1 of the Business and Professions Code is amended to read:

17206.1. (a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, any person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) "Senior citizen" means a person who is 65 years of age or older.

(2) "Disabled person" means any person who has a physical or mental impairment that substantially limits one or more major life activities.

(A) As used in this subdivision, "physical or mental impairment" means any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

(B) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence,

principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) Any court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as may be necessary to restore to any senior citizen or disabled person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over any civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

SEC. 24. Section 17508 of the Business and Professions Code is amended to read:

17508. (a) It shall be unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.

(b) Upon written request of the Director of Consumer Affairs, the Attorney General, any city attorney, or any district attorney, any person doing business in California and in whose behalf advertising claims are made to consumers in California, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact, shall provide to the department or official making the request evidence of the facts on which the advertising claims are based. The request shall be made within one year of the last day on which the advertising claims were made.

Any city attorney or district attorney who makes a request pursuant to this subdivision shall give prior notice of the request to the Attorney General.

(c) The Director of Consumer Affairs, Attorney General, any city attorney, or any district attorney may, upon failure of an advertiser to respond by adequately substantiating the claim within a reasonable time,

section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2006 calendar year and takes effect on or before January 1, 2007, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

O

Office of the Legislative Counsel

Forty-sixth Report on

LEGISLATION NECESSARY TO MAINTAIN THE CODES

December 15, 2006

Diane F. Boyer-Vine
Legislative Counsel

FORTY-SIXTH REPORT ON LEGISLATION NECESSARY TO MAINTAIN THE CODES

INTRODUCTION

The Legislative Counsel is required, by Section 10242 of the Government Code, to advise the Legislature from time to time as to legislation necessary to maintain the codes and legislation necessary to codify those statutes that are enacted subsequent to the enactment of the codes. This report is submitted to the Legislature in compliance with that requirement.

The present report includes recommendations only for nonsubstantive changes in the statutes, and continues without change the policies first stated in the March 1, 1954, Report on Legislation Necessary to Maintain the Codes.

This report reflects the changes proposed in Senate Bill No. 1852 of the 2005-06 Regular Session.

PART I

ACTS RECOMMENDED FOR CODIFICATION IN 2006

Since the publication in 2005 of the Forty-fifth Report, no statutes have been proposed for codification.

PART II

CORRECTIVE LEGISLATION TO MAINTAIN THE CODES

Recommendations for Correction in 2006

The suggestions for corrective legislation necessary to maintain the codes in 2006 are set forth in the appendix to this report. These suggestions represent an accumulation of matters that have come to the attention of the Office of the Legislative Counsel since the 2005 report, through correspondence and the suggestions of public officials and members of the public.

Further, with regard to any code provision that is a subject of this report, any reference to any individual, or class of individuals, by sex, or by any term that ordinarily refers only to one sex, has been revised to refer to both sexes or to a neutral class, except where the context of the provision otherwise requires.

In any code provision that is a subject of this report, the word "said" or "such," when it is used as a grammatical article in place of "the," "those," or any other term appropriately used in that context, has been deleted and replaced with a more appropriate word or phrase, to conform to code style. Furthermore, the phrase "the provisions of," when referring to an entire code or an otherwise designated body of law (for example, "pursuant to the provisions of the Civil Code" or "under the provisions of this chapter"), has been deleted to conform to code style.

No substantive change is involved in the proposed recommendations for correction in 2006.

Summary of Action on Prior Recommendations for Corrective Legislation

Senate Bill No. 1108 was introduced in 2005 at the 2005-06 Regular Session for the correction of those errors in the codes listed in the appendix of the Forty-fifth Report on Legislation Necessary to Maintain the Codes. The bill was enacted as Chapter 22 of the Statutes of 2005.

CONCLUSION

The Legislative Counsel recommends to the Legislature that the subject of this report be referred to the appropriate committees of the Senate and the Assembly for the purpose of ascertaining the propriety of the correction or repeal of those statutes listed in the appendix of this report, and of holding any hearings thereon that may appear desirable to those committees.

Appendix

CORRECTIVE LEGISLATION NECESSARY

TO MAINTAIN THE CODES

§ 1786.10 *(Item 06-45)* In this section, changes should be made to correct an error in spelling and to conform to code style and organization.

§ 1788.2 *(Item 06-46)* In this section, changes should be made to correct errors in grammar and punctuation, and to conform to code style and organization.

§ 1789.37 *(Item 06-47)* In this section, changes should be made to correct errors in punctuation and to conform to code style. In addition, the reference in paragraph (2) of subdivision (i) to "State Board of Control" should be changed to "California Victim Compensation and Government Claims Board" to update an obsolete reference.

§ 1812.85 *(Item 06-48)* In this section, changes should be made to conform to code style. In addition, the reference in paragraph (6) of subdivision (d) to "the act adding this paragraph" should be changed to "Section 3 of Chapter 439 of the Statutes of 2005" to update an outdated cross-reference.

§ 1812.97, as added by Section 6 of Chapter 439 of the Statutes of 2005

(Item 06-49) This section should be renumbered as Section 1812.98 of the Civil Code to conform to code organization.

§ 1812.106 *(Item 06-50)* In this section, changes should be made to correct errors in grammar and punctuation, and to conform to code style.

§ 1812.306 *(Item 06-51)* In this section, changes should be made to correct errors in spelling and to conform to code style.

§ 1812.501 *(Item 06-52)* In this section, changes should be made to correct errors in punctuation and to conform to code style and organization.

§ 1834.8 *(Item 06-53)* In this section, a change should be made to correct an error in punctuation. In addition, a duplicate word should be deleted to correct an error.

§ 2945.3 *(Item 06-54)* In this section, changes should be made to correct an error in punctuation and to conform to code style.

Volume 7

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Legislature of the State of California

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HON. FABIAN NUÑEZ
Speaker

HON. SALLY J. LIEBER
Speaker pro Tempore

HON. KAREN BASS
Majority Floor Leader

HON. GEORGE PLESCIA
Minority Floor Leader

E. DOTSON WILSON
Chief Clerk of the Assembly

SUE PARKER
Minute Clerk

S.B. No.

1846 In Assembly, read first time, 5533; to committee, 5690; from committee, re-referred, 6140; from committee, 6273; read second time, to Consent Calendar, 6294; read third time, passed, to Senate, 6499

1847 In Assembly, read first time, 5419; to committee, 6040; from committee, author's amendments, read second time, amended, re-referred, 6043; from committee, re-referred, 6270; from committee, author's amendments, read second time, amended, re-referred, 6319, 6374; from committee, 6477; read second time, to Consent Calendar, 6532; read third time, urgency clause adopted, passed, to Senate, 6625; Assembly amendments concurred in, 7312

1848 In Assembly, read first time, 5635; to committee, 6012; from committee, re-referred, 6139; from committee, author's amendments, read second time, amended, re-referred, 6224; re-referred, 6287; from committee, without action, returned to Senate, 7800

1849 In Assembly, read first time, 5533; to committee, 5690; from committee, author's amendments, read second time, amended, re-referred, 6042; from committee, 6173; read second time, amended, re-referred, 6195; from committee, author's amendments, read second time, amended, re-referred, 6371; from committee, 6477; read second time, to third reading, 6529; read third time, amended, returned to third reading, 6807; read third time, passed, to Senate, 6899; Assembly amendments concurred in, 7312

1850 In Assembly, read first time, 5533; to committee, 6089; from committee, author's amendments, read second time, amended, re-referred, 6094; from committee, re-referred, 6155; from committee, 6273; read second time, to Consent Calendar, 6294; read third time, passed, to Senate, 6499; Assembly amendments concurred in, 6590

1851 In Assembly, read first time, 5635; to committee(s), 6040; from committee, re-referred, 6155, 6228; from committee, 6477; read second time, to Consent Calendar, 6532; read third time, passed, to Senate, 6625

1852 In Assembly, read first time, 5534; to committee, 5690; from committee, author's amendments, read second time, amended, re-referred, 6130; from committee, 6228; read second time, to Consent Calendar, 6278; read third time, passed, to Senate, 6428; Assembly amendments concurred in, 6514

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 376
AUTHOR : Migden
TOPIC : Unfair competition: actions by city attorneys.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

BILL HISTORY
2007
June 28 Chaptered by Secretary of State. Chapter 17, Statutes of 2007.
June 28 Approved by Governor.
June 25 Enrolled. To Governor at 3 p.m.
June 21 In Senate. To enrollment.
June 21 Read third time. Passed. (Ayes 44. Noes 33. Page 2223.) To Senate.
June 20 Read second time. To third reading.
June 19 From committee: Do pass. (Ayes 7. Noes 3.)
June 6 Hearing postponed by committee.
May 17 To Com. on JUD.
May 7 In Assembly. Read first time. Held at Desk.
May 7 Read third time. Passed. (Ayes 22. Noes 15. Page 866.) To Assembly.
Apr. 24 Read second time. Amended. To third reading.
Apr. 23 From committee: Do pass as amended. (Ayes 3. Noes 2. Page 621.)
Apr. 9 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on JUD. Set for hearing April 17.
Feb. 28 To Com. on JUD.
Feb. 22 From print. May be acted upon on or after March 24.
Feb. 21 Introduced. Read first time. To Com. on RLS. for assignment. To print.

SENATE BILL No. 376

Introduced by Senator Migden

February 21, 2007

An act to amend Sections 17204 and 17206 of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 376, as introduced, Migden. Unfair competition: actions by city attorneys.

Existing law authorizes specified governmental agencies to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. Under existing law, a city attorney for a city or city and county with a population in excess of 750,000 or for a city and county if the district attorney has consented may bring an unfair competition action and recover a civil penalty.

This bill would revise the authorization with regard to a city attorney of a city and county to allow an unfair competition action to be brought and to allow recovery of a civil penalty by a city attorney for a city and county with a population in excess of 500,000 without the consent of the district attorney. The bill would also allow a city attorney of any size city to proceed with an action with the consent of the district attorney and recover a civil penalty.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for Injunctions by Attorney General, District Attorney, County Counsel, and City Attorneys

Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by ~~the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by~~ any person who has suffered injury in fact and has lost money or property as a result of such unfair competition *or in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, or corporation, or association by any of the following:*

(a) The Attorney General.

(b) A district attorney.

(c) A county counsel authorized by agreement with the district attorney in an action involving the violation of a county ordinance.

(d) A city attorney of a city having a population in excess of 750,000.

(e) A city attorney of a city and county having a population in excess of 500,000.

(f) A city attorney, with the consent of the district attorney.

(g) A city prosecutor, in a city having a full-time city prosecutor, with the consent of the district attorney.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. Civil Penalty for Violation of Chapter

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by ~~the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving~~

~~violation of a county ordinance, by any city attorney of a city, or city and county, having a population in excess of 750,000, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, or, with the consent of the district attorney, by a city attorney in any city and county~~ *any of the parties described in subdivisions (a) to (g), inclusive, of Section 17204*, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other

activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3.

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

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SENATE COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair

BACKGROUND INFORMATION REQUEST

This bill has been referred to the Senate Judiciary Committee. Please forward the following information to the Committee, Room 2187 in the Capitol, **AS SOON AS POSSIBLE** (by e-mail, fax, or hand delivery). Your bill will not be set for a hearing until the Committee has received the background information. Use additional pages as necessary. Please call the Committee Assistant at 651-4113 if you have any questions about this request.

Measure: SB 376

Author : Senator Migden

Staff person to contact (phone number, cell number, after hours contact number and email address): *Eric Potashner, office (916) 651-4545* [redacted] *email eric.potashner@sen.ca.gov*

1. Origin of the bill:

   a. Who is the source of the bill? What person, organization, or governmental entity requested introduction? Please provide contact information.
   Office of San Francisco City Attorney Dennis Herrera
   Owen Clements (415) 554-3944

   b. Has a similar bill been introduced this legislative session? If so, please identify the author, bill number and disposition of the bill.
   No similar bill has been introduced this session.

   c. Has a similar bill been introduced in a previous legislative session? If so, please identify the session, author, bill number and disposition of the bill.
   In 2006, AB 759(Leiber) would have ensured that the City Attorney of San Francisco would maintain its standing to bring actions under California's Unfair Competition Law (UCL) The bill was later amended to deal with another unrelated matter.

   d. Has there been an interim committee report or informational hearing on the bill? If so, please identify the report or informational hearing and attach any information related to the report or informational hearing.
   There has been no interim committee report or informational hearing on this bill.

2. Describe in detail existing law on this issue.
   Existing law authorizes specified governmental agencies to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. Under existing law, a city attorney of a city or a city and county with a population in excess of 750,000 or of a city and county if the district attorney has consented may bring an unfair competition action and recover a civil penalty.

3. What does your bill do? Describe in detail.
SB 376 would revise existing law and would allow a city attorney of a city and county with a population in excess of 500,000 to bring an action for unfair competition without the consent of the district attorney.

4. What is the problem or deficiency in the present law which this bill seeks to remedy? Describe in detail.
The San Francisco' City Attorney's office has a long and distinguished history of bringing actions under the unfair competition law. Recent federal census estimates put San Francisco's population under 750,000. Defendants in UCL actions have unsuccessfully argued that San Francisco no longer has standing to bring a UCL action. This law would clarify and solidify

5. Please summarize any studies, reports, statistics or other evidence showing that the problem exists and that the bill will address the problem.
No such reports were found.

6. As to Questions 2, 4 and 5, please attach copies of any relevant supplemental or additional background materials.

7. Please identify and summarize all similar or related pending federal legislation (see http://thomas.loc.gov/home/thomas2.html) and any bills or existing laws you are aware of in other states.
N/A

8. Please summarize and show the results (by citation) of a computer search regarding all existing California statutes (http://www.leginfo.ca.gov/calaw.html) and all existing federal statutes (http://www4.law.cornell.edu/uscode/) relevant to this bill.
Business & Professions code sections 17200-17210; 4380-4382; 17360-17365; 17530-17539.6;

9. Please identify and describe any relevant state and/or federal court decisions.
Two trial courts have ruled on the basis of the State Department of Finance population estimates that the San Francisco City Attorney still has authority to prosecute actions pursuant to Business & Professions Code Secs. 17204 and 17206: San Francisco Community College Dist. v. Keenan & Associates, Case No. RG04183334 (Alameda Superior Court, October 26, 2006); and Jail No. 3 Replacement Project Cases, Judicial Council

Coordination Proceeding No. 4422 (San Mateo Superior Court, May 11, 2006)]. One trial court ruled that the City Attorney did not establish standing to prosecute a claim under B&P Code Sec. 17206, finding that no evidence had been submitted regarding to the population of San Francisco on those dates relevant to the action [City & County of San Francisco v. Ballard, Case No. 325003 (San Francisco Superior Court, April 6, 2004)]. That case was appealed, but the appellate court did not reach the standing issue.

10. Please identify parties that may have concerns in opposition to the bill, describe those concerns, and state your response to those concerns.
N/A

11. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill as soon as possible, but no later than 5 p.m. of the Thursday before the hearing.

12. If you plan substantive amendments to this bill prior to the hearing, please explain briefly the substance of the amendments to be prepared.
N/A

PLEASE NOTE COMMITTEE POLICY ON AUTHOR'S AMENDMENTS.

13. List the witnesses you plan to have testify.
San Francisco City Attorney Dennis Herrera or a representative from his office.

COMMITTEE POLICY ON AUTHOR'S AMENDMENTS

AUTHOR'S AMENDMENTS MUST BE SUBMITTED IN LEGISLATIVE COUNSEL FORM TO THE COMMITTEE ASSISTANT NO LATER THAN **EIGHT** WORKING DAYS (BY 1 P.M.) BEFORE THE SCHEDULED COMMITTEE HEARING.

IF THIS DEADLINE IS NOT MET BY THE AUTHOR, YOUR BILL WILL BE PUT OVER TO ALLOW THE COMMITTEE MEMBERS AND THE PUBLIC SUFFICIENT TIME TO REVIEW AN ANALYSIS THAT REFLECTS THE AMENDED VERSION OF THE BILL. THE AUTHOR WILL BE RESPONSIBLE FOR OBTAINING ANY NECESSARY RULE WAIVERS TO HEAR THE BILL AT A SUBSEQUENT HEARING.

RETURN THIS FORM TO: SENATE COMMITTEE ON JUDICIARY
Phone (916) 651-4113
Fax (916) 445-8390
e-mail to: Roseanne.Moreno@sen.ca.gov

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL No. 376

Introduced by Senator Migden

February 21, 2007

An act to amend Sections 17204 and 17206 of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 376, as amended, Migden. Unfair competition: actions by city attorneys.

Existing law authorizes specified governmental agencies to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. Under existing law, a city attorney for a city or city and county with a population in excess of 750,000 or for a city and county if the district attorney has consented may bring an unfair competition action and recover a civil penalty.

This bill would revise the authorization with regard to a city attorney of a city and county to allow an unfair competition action to be brought and to allow recovery of a civil penalty by a city attorney for ~~a~~ *any* city and county ~~with a population in excess of 500,000 without the consent of the district attorney. The bill would also allow a city attorney of any size city to proceed with an action with the consent of the district attorney and recover a civil penalty~~.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for Injunctions by Attorney General, District Attorney, County Counsel, and City Attorneys

Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition or in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, or corporation, or association by any of the following:

(a) The Attorney General.

(b) A district attorney.

(c) A county counsel authorized by agreement with the district attorney in an action involving the violation of a county ordinance.

(d) A city attorney of a city having a population in excess of 750,000.

(e) A city attorney of a city and county ~~having a population in excess of 500,000.~~

~~(f) A city attorney, with the consent of the district attorney.~~.

(g) A city prosecutor, in a city having a full-time city prosecutor, with the consent of the district attorney.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. Civil Penalty for Violation of Chapter

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by any of the parties described in subdivisions (a) to (g), inclusive, of Section 17204, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the

misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3.

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs

agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

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CITY OF GLENDALE, CALIFORNIA
City Attorney

613 East Broadway, Room 220
Glendale, California 91206-4394
(818) 548-2080 Fax (818) 547-3402
www.ci.glendale.ca.us

APR 17 2007

April 10, 2007

Honorable Senator Ellen Corbett, Chair
Senate Judiciary Committee
State Capitol
Room 2187
Sacramento, CA 95814

RE: SB 376 (Migden) - OPPOSE

Dear Senator Corbett:

The purpose of this letter is to go on record expressing strong opposition by the City of Glendale to SB 376 by which it is proposed to eliminate the ability of a City Attorney to seek permission from the District Attorney to institute action for unfair business competition in order to protect the welfare of a local community. I am aware that in some counties the District Attorney refuses permission for City Attorneys to file these actions, oftentimes with little or no explanation regarding the rejection.

We are concerned that the only remaining exception would be for City Attorneys in a city having a population in excess of 750,000. Our view is that protection of public welfare does not vary depending on the population of the city. Glendale has a population of over 200,000 and yet under the proposed legislation would be deprived of the ability to seek authority from a competent yet overworked District Attorney's office to seek an injunction and/or civil penalty to protect Glendale citizens.

We believe the public's interest is better served if this bill is amended to delete the requirement that the city obtain permission from the District Attorney altogether and allow City Attorneys to file actions under Business and Professions Code 17200 et seq (B&P 17200) without the necessity of seeking the approval of a District Attorney. City Attorneys, whether elected or appointed, are bound by the same professional ethical standards as District Attorneys. We are highly cognizant of our duty to be fair and ethical and not bring legal actions other than where warranted to protect the public interest in full compliance with the law. This additional tool could be of significant assistance to allowing local communities to address unfair business competition.

We believe at the very least the bill is unnecessary and may have the unintended consequence of eroding public protection by curtailing an opportunity for cities to even request permission to protect the public's interest at the local level. We therefore not only express our opposition to SB 376, but suggest that the bill be amended to permit city attorneys to file B&P 17200 actions without requesting consent of a district attorney.

Respectfully,

SCOTT H. HOWARD
City Attorney

SHH:cga

cc: Honorable Mayor and Council
City Manager
Townsend Public Affairs

J:\FILES\DOCFILES\LTR\LEGISLATION OPPOSE SB 376.wpd

Fax From : 415 554 4715
CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CITY ATTORNEY

DENNIS J. HERRERA
City Attorney

DIRECT DIAL: (415) 554-4748

April 12, 2007

The Honorable Ellen Corbett
Chair, Senate Judiciary Committee
State Capitol, Room 2187
Sacramento, CA 95814

RE: SB 376 (Migden) Unfair Competition: Actions by City Attorneys Support

Dear Senator Corbett:

On behalf of the City and County of San Francisco, I write to express strong support of SB 376 (Migden), regarding unfair competition actions by city attorneys. SB 376 amends existing law to expressly provide standing to the city attorney of a city and county to bring unfair competition actions under Section 17200 of the Business and Professions Code.

Currently, Section 17204 provides standing to the City Attorney to bring actions of unfair competition on behalf of the City and County, but this standing is conditioned on San Francisco's population being in excess of 750,000.

This statute is an important tool in code enforcement actions that involve businesses. For example, we often bring unfair competition actions against property owners who maintain substandard housing, owners of nightclubs that are nuisances, and owners of residential hotels that fail to comply with local fire sprinkler requirements. The strong injunctive provisions of Section 17200 are particularly effective in these types of cases that affect the health and safety of people who live in San Francisco.

Recently, the San Francisco City Attorney's Office has faced repeated attacks on our standing under Section 17204. The defense bar has introduced U.S. Census estimates stating that San Francisco's current population has dipped below 750,000 persons. The defense bar also calls upon "experts" to opine that San Francisco's population has dropped dramatically because of the "dotcom bust." Additionally, the California Supreme Court has held that a plaintiff must demonstrate standing during all phases of a proceeding (*Californians For Disability Rights v. Meryvn's, LLC* (2006) 39 Cal. 4th 223.)

The California Department of Finance has documented the population of San Francisco to be more than 750,000 each year over the last ten years. Two trial courts have upheld the City Attorney's standing on the basis of this data. However, no appellate court has addressed the issue as to which data source controls: the U.S. Census data , the California Department of Finance data, or some other data source. SB 376 resolves these issues by eliminating the the population requirement as a condition for standing of a city attorney of a city and county to

CITY HALLL ROOM 234 - 1 DR. CARLTON B. GOODLETT PLACE - SAN FRANCISCO, CALIFORNIA 94102
RECEPTION: (415) 554-4700 FACSIMILE: (415) 554-4715

prosecute unfair competition actions. Passage of SB 376 would also eliminate the waste of limited resources on defending San Francisco's standing.

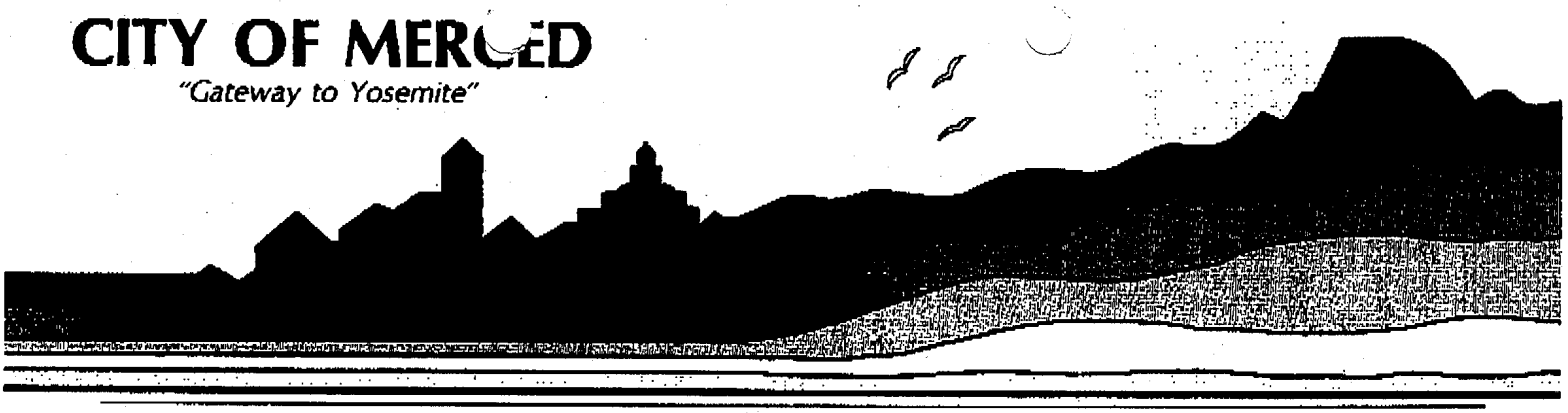
We strongly support SB 376 and urge you to pass this legislation. Please feel free to contact me should you have any additional questions.

Very truly yours,

DENNIS J. HERRERA
City Attorney

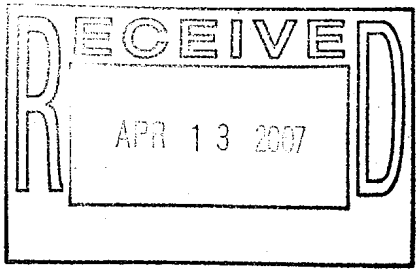
cc: Hon. Carole V. Migden

CITY OF MERCED
"Gateway to Yosemite"



Office of the City Attorney ◊ Telephone (209) 385-6868 ◊ Facsimile (209) 723-1780

April 13, 2007



Honorable Carole Migden
State Senator
State Capitol
Room 5114
Sacramento, CA 95814

Honorable Ellen Corbett
State Senator
Chair, Senate Judiciary Committee
State Capitol
Room 2187
Sacramento, CA 95814

RE: SB 376 (Migden) Unfair Competition; Action By City Attorneys
WITHDRAWAL OF OPPOSITION

Dear Senators Migden and Corbett:

It has been brought to my attention that SB 376 has been amended to address my concerns. Therefore, I withdraw my opposition.

Sincerely,

GREGORY G. DIAZ
City Attorney

GGD/mg

CITY OF MERCED
"Gateway to Yosemite"

Office of the City Attorney ◊ Telephone (209) 385-6868 ◊ Facsimile (209) 723-1780

April 13, 2007

Honorable Carole Migden
State Senator
State Capitol
Room 5114
Sacramento, CA 95814

Honorable Ellen Corbett
State Senator
Chair, Senate Judiciary Committee
State Capitol
Room 2187
Sacramento, CA 95814

RE: SB 376 (Migden) Unfair Competition; Action By City Attorneys
NOTICE OF OPPOSITION

Dear Senators Migden and Corbett:

The purpose of this letter is to express my opposition to SB 376.

After reviewing the language of the bill as introduced on February 21, 2007, and then the April 9, 2007 amendment, I am concerned that the provision allowing a City Attorney to bring an action under the Unfair Competition Act has been completely removed. Theoretically, there is no need for this particular bill. Under existing law, the District Attorney has an

absolute right to deny a request from a City Attorney to prosecute an action under the Unfair Competition Act. However, in today's climate, particularly in more rural areas, understaffing and other priorities in the District Attorney's office (which tends to be the rule more than the exception) may impede the District Attorney's ability to prosecute such an action. Therefore, it seems to be more in line with the original intent of this statute to not disallow the City Attorney its prosecutorial discretion in these matters.

For the above-stated reasons, I strongly urge a "no" vote on SB 376.

Sincerely,

GREGORY G. DIAZ
City Attorney

GGD/mg
cc: Krya Ross, Legislative Representative, League of CA Cities
Patrick Whitnell, General Counsel, League of CA Cities
Hon. Kathleen Galagiani, Member of the Assembly
Hon. Jeff Denham, Member of the Senate
Hon. Mayor and City Council Members
James G. Marshall, City Manager/City Clerk

CalChamber™
CALIFORNIA CHAMBER OF COMMERCE

April 16, 2007

TO: Members of the Senate Committee on Judiciary

FROM: Kyla Christoffersen, Policy Advocate KC

SUBJECT: SB 376 (MIGDEN) UNFAIR COMPETITION: ACTIONS BY CITY ATTORNEYS SCHEDULED FOR HEARING – TUESDAY, APRIL 17, 2007 OPPOSE

The California Chamber of Commerce must respectfully **OPPOSE SB 376 (Migden)**, which would create an exception to existing law that would allow the City and County of San Francisco's city attorney unrestricted ability to bring unfair competition actions against businesses.

Under current law, San Francisco is subject to the population requirement that applies to all California cities – which is that its population must be 750,000 or greater in order for the city's city attorney to prosecute unfair competition actions under Business and Professions Code Section 17200. This bill would remove any population requirement for San Francisco, so that if the population dips below 750,000, San Francisco may still prosecute unfair competition actions, unlike other California cities.

While we are aware that San Francisco's population has experienced fluctuations, lack of population requirement is currently a legal basis for challenging any city attorney's standing to prosecute unfair competition claims. We do not support removal of any defense to unfair competition actions currently available under the unfair competition law, as such actions have been an area ripe for abuse and used to harass businesses. In particular, the City and County of San Francisco already possesses a history of establishing ordinances and policies that are particularly burdensome to businesses within its jurisdiction.

While we are aware that the Legislature has made one such exception in the past, in the 1980s, for the City of San Jose, we are opposed to the state's establishing a trend of carving out exceptions to existing business defenses under the unfair competition law. All cities attorney who wish to prosecute unfair competition actions should be required to establish in court that they have standing – either they meet the population requirement or they do not.

For these and other reasons, the CalChamber respectfully **OPPOSES SB 376.**

cc: The Honorable Carole Migden
Eric Csizmar, Office of the Governor
Gene Wong, Senate Judiciary Committee
Mike Petersen, Senate Republican Caucus

KC:ll

1215 K Street, Suite 1400
Sacramento, CA 95814
916 444 6670
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Lynn M. Suter and Associates
Government Relations

Senator Corbett
Room 3092

APR 16 2007

April 16, 2007

Senator Ellen Corbett
California State Senate
State Capitol, Room 3092
Sacramento, California 95814

Re: SB 376 (Migden) Unfair competition: actions by city attorneys – **SUPPORT**
Senate Judiciary Committee – April 17, 2007

Dear Senator Corbett:

On behalf of the City and County of San Francisco, I would like to inform you of San Francisco's support for SB 376 (Migden). This bill would revise the authorization with regard to a city attorney of a city and county to allow an unfair competition action to be brought and to allow recovery of a civil penalty by a city attorney for any city and county.

Existing law authorizes specified governmental agencies to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. Under existing law, a city attorney for a city or city and county with a population in excess of 750,000 or for a city and county if the district attorney has consented may bring an unfair competition action and recover a civil penalty.

Therefore, the City and County of San Francisco supports SB 376 and urges an "Aye" vote on the measure. If you have any questions or need additional information, please contact our office at (916) 442-0412.

Sincerely,

Nicole Wordelman

Cc: Members and Consultant to the Senate Judiciary Committee
Senator Carole Migden
San Francisco Legislative Delegation
Amiee Albertson

1127 11th Street, Suite 512 ▫ Sacramento, CA 95814 ▫ Telephone 916/442-0412 ▫ Facsimile 916/444-0383
Internet: www.lmsa@lmsa.com

SENATE JUDICIARY COMMITTEE
Senator Ellen M. Corbett, Chair
2007-2008 Regular Session

SB 376	S
Senator Migden	B
As Amended April 9, 2007	
Hearing Date: April 17, 2007	3
Business & Professions Code	7
KB:rm	6

SUBJECT

Unfair Competition: actions by city attorneys

DESCRIPTION

This bill would revise the statute authorizing the city and county of San Francisco to bring unfair competition actions, and to allow recovery of a civil penalty regardless of the size of its population.

(This analysis reflects author's amendments to be offered in committee.)

BACKGROUND

Unfair business practices encompass fraud, misrepresentation, and oppressive or unconscionable acts or practices by businesses, often against consumers. In California, specified governmental agencies are authorized to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions.

Among the agencies authorized to bring such actions, is the city attorney of a city and county with a population in excess of 750,000. A consolidated city-county is a city and county that have been merged into one jurisdiction. As such, it is simultaneously a city, which is a municipal corporation, and a county, which is an administrative division of a state. Currently, the City and County of San Francisco is the only consolidated city-county in California, a status it has held since 1856. Thus, in practice, San Francisco is the only public entity that is affected by the statutory provisions granting authority to a city attorney of a city and county to bring unfair competition actions.

A federal census has recently put San Francisco's population at under 750,000. This has prompted defendants in unfair competition actions to argue, albeit unsuccessfully, that San Francisco no longer has standing to bring these actions.

(more)

The San Francisco City Attorney's office is concerned that it will continuously need to defend attacks on its standing, which will consume scare public resources unless the issue is clarified in the statute.

This bill would remove the population requirement pertaining to a city and county, and instead authorize the city attorney of any city and county to bring an action for unfair competition and recover a civil penalty from the defendant in those actions.

CHANGES TO EXISTING LAW

Existing law authorizes, among other specified governmental agencies, the city attorney of a city and county having a population in excess of 750,000 to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. [Business & Professions Code §§ 17204 & 17206.]

This bill would authorize the city attorney of any city and county, regardless of its population, to bring an action for unfair competition and recover a civil penalty from the defendant in those actions.

COMMENT

1. Stated need for the bill

   According to the sponsor, the San Francisco City Attorney's office has a long and distinguished history of bringing actions under the unfair competion law. However, a recent federal census estimates that San Francisco's population has decreased to below 750,000. This has prompted defendants in unfair compeition actions to argue that the San Francisco City Attorney no longer has standing to bring these actions. While these arguments have ultimately been unsuccessful, there is a concern that defendants will continue to attack San Francisco's standing to bring unfair competition actions unless the issue is clarified by statute.

2. Author's amendments will clarify that this bill will not affect the standing of other parties currently authorized to bring unfair competition actions, or unnecessarily broaden the statute

   The California District Attorneys Association and the League of Cities have expressed concern that the current version of the bill is not narrowly drafted, and could be interpreted as both removing the authority currently granted to certain entities, and granting authority to others who currently do not possess it. They are not opposed to San Francisco retaining its standing, but wish to avoid unnecessary and overbroad changes to the current law. Because this is the primary tool utilized by district and city attorneys in protecting

consumers from unfair business practices, public policy would be best served by minimizing change to the current statutes so as not to create additional disputes as to standing of various entities to bring these actions.

To address these concerns, the author has offered amendments, which would simply delete the population requirement pertaining to a city and county, and leave the remainder of the statutes intact. This would enable San Francisco to maintain its authority to bring unfair competition actions without affecting the standing of any other entity. Thus, in practice, if this bill is enacted, the agencies currently entitled to bring unfair competitions would not change.

The amendments shall be as follows:

On page 2, strike lines 5-22, inclusive and insert,

"Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city having a population in excess of 750,000, or by a city attorney in any city and county and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition."

On page 2, strike lines 26-32, inclusive and insert,

"(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction."

These amendments would resolve the concerns expressed by both the California District Attorneys Association and the League of Cities.

Support: None Known

Opposition: None as Amended

HISTORY

Source: Office of San Francisco City Attorney Dennis Herrera

Related Pending Legislation: None Known

Prior Legislation: AB 759 (Leiber) would have deleted the limitations on unfair competition actions brought by a county counsel, allowing the county counsel to proceed without an agreement with the district attorney. This bill was later amended to pertain to an unrelated matter.

****

The CalChamber™
CALIFORNIA CHAMBER OF COMMERCE

FLOOR ALERT

April 24, 2007

TO: Members, California State Senate

FROM: Kyla Christoffersen, Policy Advocate KC

SUBJECT: SB 376 (MIGDEN) UNFAIR COMPETITION: ACTIONS BY CITY ATTORNEYS
SENATE SECOND READING
OPPOSE

The California Chamber of Commerce must respectfully **OPPOSE SB 376 (Migden)** as amended April 24, 2007, which would create an exception to existing law that would allow the City and County of San Francisco's city attorney unrestricted ability to bring unfair competition actions against businesses.

Under current law, San Francisco is subject to the population requirement that applies to all California cities – which is that its population must be 750,000 or greater in order for the city's city attorney to prosecute unfair competition actions under Business and Professions Code Section 17200. This bill would remove any population requirement for San Francisco, so that if the population dips below 750,000, San Francisco may still prosecute unfair competition actions, unlike other California cities.

While we are aware that San Francisco's population has experienced fluctuations, lack of population requirement is currently a legal basis for challenging any city attorney's standing to prosecute unfair competition claims. We do not support removal of any defense to unfair competition actions currently available under the unfair competition law, as such actions have been an area ripe for abuse and used to harass businesses. In particular, the City and County of San Francisco already possesses a history of establishing ordinances and policies that are particularly burdensome to businesses within its jurisdiction.

While we are aware that the Legislature has made one such exception in the past, in the 1980s, for the City of San Jose, we are opposed to the state's establishing a trend of carving out exceptions to existing business defenses under the unfair competition law. All cities attorney who wish to prosecute unfair competition actions should be required to establish in court that they have standing – either they meet the population requirement or they do not.

For these and other reasons, the CalChamber respectfully **OPPOSES SB 376** as amended April 24, 2007.

cc: The Honorable Carole Migden
Eric Csizmar, Office of the Governor
Mike Petersen, Senate Republican Caucus
Senate Floor Analyses

KC:ll

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Sacramento, CA 95814
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CALIFORNIA CHAMBER OF COMMERCE

Fax cover sheet

Date: 4/2

To: Bob Graham - Senate Floor Analysis

Fax number: 327-4478

From: Kyla
California Chamber of Commerce

Fax numbers:

❑ (916) 325-1268 Accounting	❑ (916) 325-1269 Business Services	❑ (916) 325-1284 Corporate	❑ (916) 444-9730 Helpline
❑ (916) 325-1272 Legislative	❑ (916) 444-6685 Local Chambers	❑ (916) 325-1273 Media Relations	❑ (916) 443-0469 Membership

Telephone: (916) 444-6670 **Ext.** _____

Number of pages (including the cover sheet): _____

❑ Original ❑ Original in the mail

Notes: Oppositions till applies.
We will also send floor alert over via fax

Thx!

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If you no longer wish to receive faxes of this nature, please call (800) 331-8877, fax (916) 444-6685 or e-mail ccc@calchamber.com.

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CalChamber™
CALIFORNIA CHAMBER OF COMMERCE

April 16, 2007

TO: Members of the Senate Committee on Judiciary

FROM: Kyla Christoffersen, Policy Advocate KC

SUBJECT: SB 376 (MIGDEN) UNFAIR COMPETITION: ACTIONS BY CITY ATTORNEYS SCHEDULED FOR HEARING – TUESDAY, APRIL 17, 2007 OPPOSE

The California Chamber of Commerce must respectfully **OPPOSE SB 376 (Migden),** which would create an exception to existing law that would allow the City and County of San Francisco's city attorney unrestricted ability to bring unfair competition actions against businesses.

Under current law, San Francisco is subject to the population requirement that applies to all California cities – which is that its population must be 750,000 or greater in order for the city's city attorney to prosecute unfair competition actions under Business and Professions Code Section 17200. This bill would remove any population requirement for San Francisco, so that if the population dips below 750,000, San Francisco may still prosecute unfair competition actions, unlike other California cities.

While we are aware that San Francisco's population has experienced fluctuations, lack of population requirement is currently a legal basis for challenging any city attorney's standing to prosecute unfair competition claims. We do not support removal of any defense to unfair competition actions currently available under the unfair competition law, as such actions have been an area ripe for abuse and used to harass businesses. In particular, the City and County of San Francisco already possesses a history of establishing ordinances and policies that are particularly burdensome to businesses within its jurisdiction.

While we are aware that the Legislature has made one such exception in the past, in the 1980s, for the City of San Jose, we are opposed to the state's establishing a trend of carving out exceptions to existing business defenses under the unfair competition law. All cities attorney who wish to prosecute unfair competition actions should be required to establish in court that they have standing – either they meet the population requirement or they do not.

For these and other reasons, the CalChamber respectfully **OPPOSES SB 376.**

cc: The Honorable Carole Migden
Eric Csizmar, Office of the Governor
Gene Wong, Senate Judiciary Committee
Mike Petersen, Senate Republican Caucus

KC:ll

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Sacramento, CA 95814
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CALIFORNIA CHAMBER OF COMMERCE

Fax cover sheet

Date: 4 24 07

To: Bob Graham

Fax number: 327-4478

From: Laurie Lively
California Chamber of Commerce

Fax numbers:

❑ (916) 325-1268 Accounting	❑ (916) 325-1269 Business Services	❑ (916) 325-1284 Corporate	❑ (916) 444-9730 Helpline
❑ (916) 325-1272 Legislative	❑ (916) 444-6685 Local Chambers	❑ (916) 325-1273 Media Relations	❑ (916) 443-0469 Membership

Telephone: (916) 444-6670 **Ext.** _____

Number of pages (including the cover sheet): 2

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Notes:

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AMENDED IN SENATE APRIL 24, 2007

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL No. 376

Introduced by Senator Migden

February 21, 2007

An act to amend Sections 17204 and 17206 of the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 376, as amended, Migden. Unfair competition: actions by city attorneys.

Existing law authorizes specified governmental agencies to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. Under existing law, a city attorney for a city or city and county with a population in excess of 750,000 or for a city and county if the district attorney has consented may bring an unfair competition action and recover a civil penalty.

This bill would revise the authorization with regard to a city attorney of a city and county to allow an unfair competition action to be brought and to allow recovery of a civil penalty by a city attorney for any city and county.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for Injunctions by Attorney General, District Attorney, County Counsel, and City Attorneys

~~Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition or in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, or corporation, or association by any of the following:~~

~~(a) The Attorney General.~~

~~(b) A district attorney.~~

~~(c) A county counsel authorized by agreement with the district attorney in an action involving the violation of a county ordinance.~~

~~(d) A city attorney of a city having a population in excess of 750,000.~~

~~(e) A city attorney of a city and county.~~

~~(g) A city prosecutor, in a city having a full-time city prosecutor, with the consent of the district attorney.~~

Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city having a population in excess of 750,000, or by a city attorney in any city and county and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation, or association, or by any person who has suffered injury in fact and has lost money or property as a result of the unfair competition.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. Civil Penalty for Violation of Chapter

~~(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by any of the~~

~~parties described in subdivisions (a) to (g), inclusive, of Section 17204, in any court of competent jurisdiction.~~

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or

settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3.

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

O

File Item # 33
SB 376 (Migden)
Oppose

Senate Judiciary: 3-2 (4/17/07)
(NO: Harman, Ackerman)
Vote requirement: 21
Version Date: 4/24/07

Quick Summary
Allows a city attorney of any city and county to bring an action for unfair competition and seek a civil penalty for the violation without the consent of the district attorney.

Analysis
Arguments in Support:
According to the author's staff, "[t]he San Francisco City Attorney's office has a long and distinguished history of bringing actions under the unfair competition law. Recent federal census estimates put San Francisco's population under 750,000. Defendants in UCL actions have unsuccessfully argued that San Francisco no longer has standing to bring a UCL action. This law would clarify and solidify"

SB 376 would revise existing law and would allow a city attorney of a city and county to bring an action for unfair competition without the consent of the district attorney.

Arguments in Opposition.
The California Chamber of Commerce opposes the bill because allowing the city attorney of San Francisco to prosecute actions on his own for a city and county, which has a "history of establishing ordinances and policies that are particularly burdensome to businesses within its jurisdiction" would create theOpposeential for overaggressive city attorney of a city and county to file unnecessary or frivolous actions under the unfair competition law.

Other Issues:
Why should this one "city and county" be so favored, especially given its unique history of maltreatment of businesses?

Digest
Allows a city attorney of a city and county to 1] file an unfair competition action and 2] pursue recovery of a civil penalty therefor without authorization from the district attorney.

Background
Existing law authorizes specified governmental agencies to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. Under existing law, a city attorney for a city or city and county with a population in excess of 750,000 ... for a city and county if the district attorney has consented may bring an unfair competition action and recover a civil penalty. Bus. & Profs. § 17204.

Two trial courts have ruled on the basis of the State Department of Finance population estimates that the San Francisco City Attorney still has authority to prosecute actions pursuant to Bus. & Prof. §§ 17204 and 17206 : San Francisco Community College Dist. v. Keenan & Associates, Case No. RG04183334 (Alameda Superior Court, October 26, 2006); and Jail No. 3 Replacement Project Cases, Judicial Council Coordination Proceeding No. 4422 (San Mateo Superior Court, May 11, 2006)].

One trial court ruled that the City Attorney did not establish standing to prosecute a claim under Bus. & Prof. § 17206, finding that no evidence had been submitted regarding to the population of San Francisco on those dates relevant to the action [City & County of San Francisco v. Ballard, Case No. 325003 (San Francisco Superior Court, April 6, 2004)]. On appeal, the court did not address the standing issue.

Support & Opposition Received
Support: San Francisco City Attorney Dennis Herrera (sponsor).

Opposition: California Chamber of Commerce.

Senate Republican Office of Policy / *Mike Petersen*

J

CalChamber™

CALIFORNIA CHAMBER OF COMMERCE

June 7, 2007

TO: Members of the Assembly Committee on Judiciary

FROM: Kyla Christoffersen, Policy Advocate KC

SUBJECT: SB 376 (MIGDEN) UNFAIR COMPETITION: ACTIONS BY CITY ATTORNEYS OPPOSE

The California Chamber of Commerce must respectfully **OPPOSE SB 376,** as amended April 24, 2007, which would create an exception to existing law that would allow the City and County of San Francisco's city attorney unrestricted ability to bring unfair competition actions against businesses.

Under current law, San Francisco is subject to the population requirement that applies to all California cities – which is that its population must be 750,000 or greater in order for the city's city attorney to prosecute unfair competition actions under Business and Professions Code Section 17200. This bill would remove any population requirement for San Francisco, so that if the population dips below 750,000, San Francisco may still prosecute unfair competition actions, unlike other California cities.

While we are aware that San Francisco's population has experienced fluctuations, lack of population requirement is currently a legal basis for challenging any city attorney's standing to prosecute unfair competition claims. We do not support removal of any defense to unfair competition actions currently available under the unfair competition law, as such actions have been an area ripe for abuse and used to harass businesses. In particular, the City and County of San Francisco already possesses a history of establishing ordinances and policies that are particularly burdensome to businesses within its jurisdiction.

While we are aware that the Legislature has made one such exception in the past, in the 1980s, for the City of San Jose, we are opposed to the state's establishing a trend of carving out exceptions to existing business defenses under the unfair competition law. All cities attorney who wish to prosecute unfair competition actions should be required to establish in court that they have standing – either they meet the population requirement or they do not.

For these and other reasons, the CalChamber respectfully **OPPOSES SB 376.**

cc: The Honorable Carole Migden
Eric Csizmar, Office of the Governor
Kevin Baker, Assembly Judiciary Committee
Mark Redmond, Assembly Republican Caucus

KC:ll

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Sacramento, CA 95814
916 444 6670
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Lynn M. Suter
and Associates
Government Relations

June 7, 2007

Assemblyman Dave Jones
California State Assembly
State Capitol, Room 3146
Sacramento, California 95814

Re: SB 376 (Migden) Unfair competition: actions by city attorneys – **SUPPORT**
Assembly Judiciary Committee – June 19, 2007

Dear Assemblyman Jones:

On behalf of the City and County of San Francisco, I would like to inform you of San Francisco's support for SB 376 (Migden). This bill would revise the authorization with regard to a city attorney of a city and county to allow an unfair competition action to be brought and to allow recovery of a civil penalty by a city attorney for any city and county.

Existing law authorizes specified governmental agencies to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. Under existing law, a city attorney for a city or city and county with a population in excess of 750,000 or for a city and county if the district attorney has consented may bring an unfair competition action and recover a civil penalty.

Therefore, the City and County of San Francisco supports SB 376 and urges an "Aye" vote on the measure. If you have any questions or need additional information, please contact our office at (916) 442-0412.

Sincerely,

Nicole Wordelman

Cc: Members and Consultant to the Assembly Judiciary Committee
Senator Carole Migden
San Francisco Legislative Delegation
Amiee Albertson

1127 11th Street, Suite 512 Sacramento, CA 95814 Telephone 916/442-0412 Facsimile 916/444-0383

AFSCME®
in the public service

JUN 11 2007

June 8, 2007

TO: The Honorable Dave Jones, Chair
and Members of the Assembly Judiciary Committee

RE: Senate Bill 376 (Midgen) – AFSCME SUPPORT

The American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, would like to inform you of our **support** of **Senate Bill 376**, as amended.

Assembly Bill 376 would revise the authorization with regard to a city attorney of a city and county to allow an unfair competition action to be brought and to allow recovery of a civil penalty by a city attorney for any city and county.

AFSCME supports Assembly Bill 376 in its efforts to provide equal and fair competition and to ensure that just action is brought about to those who are in violation of such provisions.

Please join us in supporting Senate Bill 376.

Should you have any questions regarding our position in this matter, you may call me at your earliest convenience. AFSCME also reserves the right to change our position in the event of further amendments.

Sincerely,

Willie L. Pelote, Sr.
Assistant Director of Political Action, International

CC: committee consultant(s)
WLP/avgp

1121 L Street • Suite 904 • Sacramento, California 95814-3926 • (916) 441-1570 • (916) 441-3426 FAX

SAN FRANCISCO
CHAMBER OF COMMERCE *Where smart business starts.*

JUN 15 2007

June 11, 2007

Honorable Carol Migden
State Senate
State Capitol, Room 5114
Sacramento, CA 95814

RE: SB 376 Unfair Competition

Dear Senator Migden:

I am writing on behalf of the San Francisco Chamber of Commerce in support of SB 376, which would allow a city attorney for any city or county to bring forward an action of unfair competition.

This is an important document because it gives the city attorney more flexibility in going after unfair competition suits. This current law has been used in many important cases such as the Tobacco Cases and the Firearms Cases. Under your proposed amendment a city attorney would no longer be restricted by the population size of a city or county.

Thank you for taking the initiative on such an important matter.

Sincerely,

Jim Lazarus
Sr. Vice President
Public Policy

235 Montgomery St., 12th Flr., San Francisco, CA 94104 • tel 415 392 4520 / fax 415 392 0485

SENATE THIRD READING
SB 376 (Migden)
As Amended April 24, 2007
Majority vote

SENATE VOTE: 22-15

JUDICIARY 7-3

Ayes: Jones, Evans, Berg, Krekorian, Laird, Levine, Lieber

Nays: Berryhill, Duvall, Keene

SUMMARY: Seeks to ensure that the City and County of San Francisco will maintain its standing to bring actions under California's Unfair Competition Law (UCL). Eliminates the population requirement for a consolidated city and county, seeking to ensure that the City and County of San Francisco can bring an action under the UCL.

EXISTING LAW:

1) Defines "unfair competition" as: a) any unlawful, unfair, or fraudulent business practice; b) any unfair, deceptive, untrue, or misleading advertising; or, c) any act prohibited by the state's false advertising statutes.

2) Provides that any actions, including injunctions, brought under the UCL shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney, or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or by any city attorney having a population in excess of 750,000 persons. Allows city attorneys from smaller cities to bring actions with the consent of the district attorney.

3) Authorizes the City Attorney of the City of San Jose to bring a UCL action until such time as its population reaches 750,000, at which this special authorization will be repealed as no longer necessary.

4) Permits private parties to bring claims against unfair competition only if the complaining party has suffered injury in fact and has lost money or property as a result of such unfair competition. However, private individuals cannot seek money damages under the UCL. Private plaintiff remedies are limited to equitable relief; civil penalties are only recoverable in actions brought by the specified public attorneys. (Business and Professions Code Section 17204. See also *Kasky v Nike, Inc.* (2002) 27 Cal. 4th 939; *Brown v. Allstate Insurance Co.* (SD Cal 1998) 17 F. Supp. 2d 1134.)

FISCAL EFFECT: None

COMMENTS: According to the author, the consolidated City and County of San Francisco has a population that hovers around 750,000. As a result, it continually has to prove standing whenever it seeks to bring an unfair competition action. This bill would appear to avoid this

potential confusion by reconfirming standing to the City and County of San Francisco regardless of minor fluctuations in its population.

It should be noted that there is already a precedent for such exceptions. In 1988, the Legislature authorized the City Attorney of the City of San Jose to prosecute UCL actions even though the San Jose's population was close to, but still below, 750,000. The authorization was set to expire when San Jose's population exceeded 750,000, at which time San Jose's standing would be based on the population provisions of Business and Professions Code Section 17204.5. The Legislature found that because the city's population was close to 750,000, and the City Attorney's Office of San Jose had already "demonstrated it competence, the enforcement of the laws relation to unfair competition would be enhanced by this act." The Assembly Judiciary Committee believes that the same logic can and should be applied to the City and County of San Francisco.

In opposition, the California Chamber of Commerce states:

> We do not support removal of any defense to unfair competition actions currently available under the unfair competition law, as such actions have been an area ripe for abuse and used to harass businesses. In particular, the City and County of San Francisco already possesses a history of establishing ordinances and policies that are particularly burdensome to businesses within its jurisdiction.
>
> While we are aware that the Legislature has made one such exception in the past, the 1980's, for the City of San Jose, we are opposed to the state's establishing a trend of carving out exceptions to existing business defenses under the unfair competition law.

As previously stated, San Francisco has consistently proven standing in UCL cases, therefore, the arguments of the opposition seem unfounded. Further, any fears that the floodgates would open seem unfounded considering that San Francisco is the only consolidated city and county remaining in California.

Analysis Prepared by: Manuel Valencia / JUD. / (916) 319-2334

FN: 0001554

SB 376 (MIGDEN)
UNFAIR COMPETITION: ACTIONS BY CITY ATTORNEYS.

Version: 4/24/07 Last Amended
Vote: Majority
Oppose

Vice-Chair: Van Tran
Tax or Fee Increase: No

Removes the population requirement pertaining to the city and county of San Francisco to otherwise authorize the city attorney of the city and county of San Francisco to bring civil actions for unfair competition and to recover civil penalties from defendants in those actions -- even though San Francisco has a history of over-aggressively pursuing litigation against businesses.

Policy Question

Should the city and county of San Francisco be exempted from the population requirement to allow its city attorney to bring unfair competition actions, even though San Francisco has a history of over-aggressively pursuing litigation against businesses?

Summary

This bill removes the population requirement pertaining to the city and county of San Francisco to otherwise authorize the city attorney of the city and county of San Francisco to bring civil actions for unfair competition and to recover civil penalties from defendants in those actions.

Support

San Francisco City Attorney's office (Sponsor); American Federation of State, County and Municipal Employees (AFSCME); City and County of San Francisco; and San Francisco Chamber of Commerce.

Opposition

California Chamber of Commerce.

Senate Republican Floor Votes (22-15) 5/07/07
Ayes: None
Noes: All Republicans
Abs. / NV: None

Assembly Republican Judiciary Votes (0-0) 6/19/07
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/07
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/07
Ayes: None
Noes: None
Abs. / NV: None

Arguments In Support of the Bill

According to the **San Francisco City Attorney's office**, the sponsor, "The San Francisco City Attorney's office has a long and distinguished history of bringing actions under the unfair competition law. However, a recent federal census estimates that San Francisco's population has decreased to below 750,000. This has prompted defendants in unfair competition actions to argue that the San Francisco City Attorney no longer has standing to bring these actions. While these arguments have ultimately been unsuccessful, there is a concern that defendants will continue to attack San Francisco's standing to bring unfair competition actions unless the issue is clarified by statute."

Arguments In Opposition to the Bill

1. The **California Chamber of Commerce** opposes creating an exception to existing law that would allow the City and County of San Francisco's city attorney unrestricted ability to bring unfair competition actions against businesses, further stating in opposition:

- Under current law, San Francisco is subject to the population requirement that applies to all California cities – which is that its population must be 750,000 or greater in order for the city's city attorney to prosecute unfair competition actions under Business and Professions Code Section 17200. This bill would remove any population requirement for San Francisco, so that if the population dips below 750,000, San Francisco may still prosecute unfair competition actions, unlike other California cities.
- While we are aware that San Francisco's population has experienced fluctuations, lack of population requirement is currently a legal basis for challenging any city attorney's standing to prosecute unfair competition claims. We do not support removal of any defense to unfair competition actions currently available under the unfair competition law, as such actions have been an area ripe for abuse and used to harass businesses. In particular, the City and County

of San Francisco already possesses a history of establishing ordinances and policies that are particularly burdensome to businesses within its jurisdiction.

2. There may be further concern that City of Attorney of San Francisco could pursue partnering agreements with private attorneys, without district attorney consent, that could lead to the same kind of abuses by bounty hunter –style , private attorney actions that triggered Proposition 64 reform of the Unfair Competition Law (UCL).

Fiscal Effect

Unknown.

Comments

1. **Existing Law:** "Unfair Competition" is defined as (1) any unlawful, unfair, or fraudulent business practice; (2) any unfair, deceptive, untrue, or misleading advertising; or (3) any act prohibited by the state's false advertising statutes. (Business & Professions Code Section 17200.)

   Under the Unfair Competition Law (UCL) the prosecution of actions for "unfair competition" shall be prosecuted exclusively by the Attorney General or any district attorney, or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city or city and county (City and County of San Francisco) having a population in excess of 750,000. City attorneys from smaller cities must obtain the approval of the district attorney of their county to bring such actions under the UCL. (Business & Professions Code Sections 17203 and 17204.)

   In addition to the persons authorized to bring an action pursuant to Section 17204, the City Attorney of the City of San Jose, with the annual consent of the Santa Clara County District Attorney, has been authorized to prosecute these actions. That section was to remain in effect until such time as the population of the City of San Jose exceeded 750,000, as determined by the Population Research Unit of the Department of Finance, and at that time to thereafter be repealed. (Business & Professions Code Section 17204.5 – Added by Stats. 1988, chapter 790.)

   As of 2004, the population of the City of San Jose had been estimated to be at 904,522 (according to *Time Almanac 2006*).

2. Proposition 64, passed by a strong margin of 59% to 41% margin, narrowed the private enforcement of the Unfair Competition Law (UCL) (Business & Professions Code Section 17200 et seq.), but without changing the statutes provisions governing enforcement actions by public prosecutors. It continues to primarily authorize enforcement of the UCL by the state Attorney General and district attorneys, as well as for city attorneys in the state's largest cities with populations over 750,000. It otherwise restricts private party enforcement actions to those who have suffered injuries or loss of money. It would require private enforcement actions brought on behalf of others to meet criteria for class action suits.

3. AB 759 (Lieber), as amended on January 23, 2006, would have provided a similar exemption for the San Francisco City Attorney to prosecute unfair competition actions. However, the bill was not ultimately pursued with such language but otherwise amended into another subject matter. Further note that the January 4th, 2006 version of AB 759 (Lieber) would have removed the restrictions on county counsel in prosecuting UCL actions; and this brought opposition from the California District Attorneys Association, individual district attorneys, as well as the Civil Justice Association of California (CJAC), a primary author of the UCL. More specifically, county counsel are restricted under the UCL to getting approval from the county district attorney and are further restricted to pursuing civil actions under the UCL to only those that pertain to violation of county ordinances. On this matter the California District Attorneys Association argued, in part: *County counsel litigation policies will create serious problems for UCL enforcement. Many county counsels routinely outsource cases to private law firms to litigate on a contingency fee basis. This creates significant legal, ethical, and policy problems. In People ex rel. Clancy v. Superior Court (1985) 39 Cal.3d 740, the California Supreme Court found impermissible conflict of interest where a local government body hired private counsel on a contingent fee basis to prosecute violations of law. Contingency hiring deprives the defendant of an impartial prosecutor and can divert monies to private attorneys' fees that should go to victim restitution or to the public as civil penalties.*

4. Furthermore on this concern, the Civil Justice Association of California asserted: *Since the passage of Proposition 64, we have become aware of instances where private attorneys have proposed "partnering" with public prosecutors in 17200 actions. Such an arrangement would permit a private attorney to enjoy the benefits of attorney fees and settlements from clientless lawsuits, posing a threat of the bounty-hunting litigation that voters stopped on the November 2004 ballot. To out knowledge none of these*

partner arrangements occurred. We believe, however, that broadening county counsel law enforcement power as proposed by AB 759 and eliminating the district attorney authorization requirement would greatly increase the pressure on county counsels to engage in 17200 partnering agreements. The litigation that could result would, in our opinion, stand a high likelihood of matching in kind if not volume the bounty-hunting sagas that motivated overwhelming support for Proposition 64. Not only would guiltless defendants again suffer but the integrity of the Unfair Competition Law would be put once again at risk and the credibility of county governments degraded as well.

5. Attorneys had filed frivolous suits where there had been little or no actual harm. For years since the 1977 revision of the Unfair Competition Act such attorneys had shaken down businesses costing hundreds of millions of dollars annually; clogged the civil court system; and forced the costs to be passed on to consumers in the form of higher prices.

6. To curb such bogus lawsuits in which the lawyers pocket most of the settlements, the voters passed the Proposition 64 initiative in November 2004 to require those, other than public prosecutors, who would file Unfair Competition Act suits to meet standards for class actions and to demonstrate that they suffered actual harm or loss of money.

Policy Consultant: Mark Redmond 6/13/2007
Fiscal Consultant:

MAY 25 2007

ASSEMBLY JUDICIARY COMMITTEE
MANDATORY INFORMATION WORKSHEET

*****IMPORTANT NOTE*****

THIS FORM MUST BE FULLY COMPLETED AND HAND-DELIVERED TO THE COMMITTEE NO LATER THAN SEVEN (7) CALENDAR DAYS AFTER IT IS INITIALLY DELIVERED TO THE AUTHOR'S OFFICE. IF THE BILL HAS BEEN SET FOR HEARING, IT SHALL CONSTITUTE AN AUTHOR'S RESET IF A SATISFACTORY WORKSHEET OR OTHER REQUESTED INFORMATION HAS NOT BEEN TIMELY RECEIVED BY THE COMMITTEE.

ALL SUBSTANTIVE AUTHOR'S AMENDMENTS MUST BE HAND-DELIVERED TO THE COMMITTEE IN LEGISLATIVE COUNSEL FORM (ORIGINAL AND SIX COPIES) WITHIN SEVEN (7) CALENDAR DAYS PRIOR TO THE HEARING. FAILURE TO DO SO MAY RESULT IN AN AUTHOR'S RESET.

THE COMMITTEE RECORDS THE DATE THIS WORKSHEET IS DELIVERED, THE DATE IT IS RETURNED, AND THE DATE THE COMMITTEE RECEIVES AMENDMENTS.

PLEASE RETURN COMPLETED WORKSHEETS TO THE COMMITTEE BY EMAIL TO SABA.HASHMAT@ASM.CA.GOV. PLEASE ALSO HAND-DELIVER TWO (2) COPIES OF THIS WORKSHEET AND ANY SUPPORTING DOCUMENTS TO THE COMMITTEE.

ASSEMBLY JUDICIARY COMMITTEE, 1020 N Street (LOB), Room 104

Bill Number:SB 376 Author: Migden

Author's staff person:Eric Potashner phone:916-651-4545 (W) (916)201-3617 e-mail: eric.potashner@sen.ca.gov

1. What do you see as the key issue(s) raised by the bill.

SB 376 would revise existing law and would allow a city attorney of a city and county to bring an action for unfair competition without the consent of the district attorney.

2. Please provide a statement of the author's purpose for the bill, which may be used in the Committee's analysis, including *in detail* the problem or deficiency in the current law that the bill seeks to remedy, and how the bill resolves the problem.

The San Francisco' City Attorney's office has a long and distinguished history of bringing actions under the unfair competition law. Recent federal census

estimates put San Francisco's population under 750,000. Defendants in UCL actions have unsuccessfully argued that San Francisco no longer has standing to bring a UCL action. This law would clarify and solidify the City Attorney's authority to bring ucl.

3. Who is the sponsor of the bill? If there is no sponsor, what person or entity requested that the bill be introduced? Please provide the name and telephone number of any sponsor or other person who may be contacted by the Committee for information regarding the bill.

Office of San Francisco City Attorney Dennis Herrera, Owen Clements (415) 554-3944

4. Please show the results of an Inquiry search regarding each similar and/or related bill (for example, same key words and/or code section) that has been introduced in this legislative session, or in any prior legislative session covered by the Inquiry system. (When using the Bill Search function in Inquiry, be sure to check the "all versions" button in the dialog box that appears after you choose the "word" search criterion.) Please include the bill number and year, a summary of the bill's contents, and the disposition of each bill.

In 2006, AB 759(Leiber) would have ensured that the City Attorney of San Francisco would maintain its standing to bring actions under California's Unfair Competition Law (UCL) The bill was later amended to deal with another unrelated matter.

5. Please identify and summarize all similar or related pending federal legislation (see http://thomas.loc.gov/home/thomas2.html) and any bills or existing laws you are aware of in other states.

N/A

6. Please summarize and show the results (by citation) of a computer search regarding all existing California statutes (http://www.leginfo.ca.gov/calaw.html) and all existing federal statutes (http://www4.law.cornell.edu/uscode/) relevant to this bill. Please also indicate any relevant court decisions.

Business & Professions code sections 17200-17210; 4380-4382; 17360-17365; 17530-17539.6

7. Have there been any informational hearings on the subject matter of the bill? If so, when? Please attach all information distributed by the Committee that held the hearing.

No.

8. Please describe all amendments the author currently wishes to make before this bill is heard in Committee. (Please recall that amendments must be hand-delivered to the Committee in Leg Counsel form at least 7 calendar days before the bill is to be heard.)

N/A

9. Please summarize any studies, reports, statistics or other evidence showing that the problem exists and that the bill will properly address the problem. Please also attach copies of all such evidence and/or state where such material is available for reference by Committee counsel.

N/A

10. Please list all groups, agencies or persons that have contacted you in support or in opposition to the bill. Please attach copies of all letters of support and opposition.

City and County of San Francisco in support.
California Chamber of Commerce in opposition.

11. Please describe any concerns that you anticipate may be raised in opposition to your bill, and state your response to those concerns.

N/A

12. Please list the name, organization and telephone number of all witnesses that you anticipate will testify in support or opposition to the bill. (Please note that the Committee limits the number of testifying witnesses to 2 per side. Additional witnesses may identify themselves for the record.)

N/A

PLEASE REMEMBER TO EMAIL THIS COMPLETED WORKSHEET, AND ALSO DROP OFF 2 HARD COPIES TO THE COMMITTEE. TYPE AS DETAILED RESPONSES AS POSSIBLE. THANK YOU VERY MUCH FOR YOUR ASSISTANCE.

Date of Hearing: June 19, 2007

ASSEMBLY COMMITTEE ON JUDICIARY
Dave Jones, Chair
SB 376 (Migden) – As Amended: April 24, 2007

SENATE VOTE: 22-15

SUBJECT: UNFAIR COMPETITION: ACTIONS BY CITY ATTORNEYS

KEY ISSUE: SHOULD THE CITY ATTORNEY OF SAN FRANCISCO MAINTAIN ITS POWER TO BRING UNFAIR COMPETITION ACTIONS, ON BEHALF OF THE CITY AND COUNTY OF SAN FRANCISCO, IRRESPECTIVE OF MINOR FLUCTUATIONS IN ITS POPULATION?

SYNOPSIS

This bill, sponsored by the Office of the San Francisco City Attorney, seeks to ensure that the City and County of San Francisco will maintain its standing to bring actions under California's Unfair Competition Law by eliminating the 750,000 population threshold for consolidated city and county standing. Based on U.S. Census Reports and other "expert" population projections, some defendants have claimed that San Francisco's population has fallen below 750,000. Although these figures are not definitive, this bill seeks to avoid this potential confusion by reconfirming standing to the City and County of San Francisco regardless of minor fluctuations in its population. Opponents, the California Chamber of Commerce, fear that this bill will lead to an influx of exceptions to UCL standing. However, since San Francisco is the only consolidated city and county in California, such fears seem unfounded.

SUMMARY: Seeks to ensure that the City and County of San Francisco will maintain its standing to bring actions under California's Unfair Competition Law (UCL). Specifically, this bill eliminates the population requirement for a consolidated city and county, seeking to ensure that the City and County of San Francisco can bring an action under the UCL.

EXISTING LAW:

1) Defines "unfair competition" as (1) any unlawful, unfair, or fraudulent business practice; (2) any unfair, deceptive, untrue, or misleading advertising; or (3) any act prohibited by the state's false advertising statutes. (Business and Professions Code Section 17200.)

2) Provides that any actions, including injunctions, brought under the UCL shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney, or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or by any city attorney having a population in excess of 750,000 persons. Allows city attorneys from smaller cities to bring actions with the consent of the district attorney. (Business and Professions Code Sections 17203 and 17204.)

3) Authorizes the City Attorney of the City of San Jose to bring a UCL action until such time as its population reaches 750,000, at which this special authorization will be repealed as no

longer necessary. (Business and Professions Code Section 17204.5.)

4) Permits private parties to bring claims against unfair competition only if the complaining party has suffered injury in fact and has lost money or property as a result of such unfair competition. However, private individuals cannot seek money damages under the UCL. Private plaintiff remedies are limited to equitable relief; civil penalties are only recoverable in actions brought by the specified public attorneys. (Business and Professions Code Section 17204. See also *Kasky v Nike, Inc.* (2002) 27 Cal. 4th 939; *Brown v. Allstate Insurance Co.* (SD Cal 1998) 17 F. Supp. 2d 1134.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: This bill seeks to ensure that the City and County of San Francisco will maintain its standing to bring actions under California's Unfair Competition Law (UCL) by eliminating the 750,000 population threshold for consolidated city and county standing. According to the author, the consolidated city and county of San Francisco has a population that hovers around 750,000. As a result, it continually has to prove standing whenever it seeks to bring an unfair competition action. This bill would appear to avoid this potential confusion by reconfirming standing to the City and County of San Francisco regardless of minor fluctuations in its population.

Unfair Competition Law Standing. Unfair business practices encompass fraud, misrepresentation, and oppressive or unconscionable acts or practices by businesses, often against consumers. In California, specified governmental agencies are authorized to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. (Business and Professions Code Section 17200.) Among the agencies authorized to bring such actions, is the city attorney of a city and county with a population in excess of 750,000. A consolidated city-county is a city and county that have been merged into one jurisdiction. As such, it is simultaneously a city, which is a municipal corporation, and a county, which is an administrative division of a state. Currently, the City and County of San Francisco is the only consolidated city-county in California, a status it has held since 1856. Thus, in practice, San Francisco is the only public entity that is affected by the statutory provisions granting authority to a city attorney of a city and county to bring unfair competition actions.

A federal census has recently put San Francisco's population at under 750,000. According to the San Francisco City Attorney's office, this has prompted defendants in unfair competition actions to argue, albeit unsuccessfully, that San Francisco no longer has standing to bring these actions. The San Francisco City Attorney's office is concerned that it will continuously need to defend attacks on its standing, which will consume scarce public resources unless the issue is clarified in the statute. This bill removes the population requirement pertaining to a city and county, and instead authorizes the city attorney of any city and county to bring an action for unfair competition and recover a civil penalty from the defendant in those actions.

Precedent for Standing Exception. It should be noted that there is already a precedent for such exceptions. In 1988, the Legislature authorized the City Attorney of the City of San Jose to prosecute UCL actions even though the San Jose's population was close to, but still below, 750,000. The authorization was to expire at such time that San Jose's population exceeded 750,000, at which time San Jose's standing would be based on the population provisions of Section 17204 (Business and Professions Code Section 17204.5). The Legislature found that

because the city's population was close to 750,000, and the City Attorney's Office of San Jose had already "demonstrated it competence, the enforcement of the laws relation to unfair competition would be enhanced by this act." (Section 3 of Stats. 1988, c. 790.) The Committee believes that the same logic can and should be applied to the City and County of San Francisco.

ARGUMENTS IN OPPOSITION: The California Chamber of Commerce states:

> We do not support removal of any defense to unfair competition actions currently available under the unfair competition law, as such actions have been an area ripe for abuse and used to harass businesses. In particular, the City and County of San Francisco already possesses a history of establishing ordinances and policies that are particularly burdensome to businesses within its jurisdiction.
>
> While we are aware that the Legislature has made one such exception in the past, the 1980's, for the City of San Jose, we are opposed to the state's establishing a trend of carving out exceptions to existing business defenses under the unfair competition law.

As previously stated, San Francisco has consistently proven standing in UCL cases, therefore, the arguments of the opposition seem unfounded. Further, any fears that the floodgates would open seem unfounded considering that San Francisco is the only consolidated city and county remaining in California.

Previous Legislation. The Committee last year heard AB 759 (Lieber) of 2006, which was identical to this bill. It passed the Committee on a vote of 5-3 and from the floor on a vote of 48-32. AB 759 was substantially amended in the Senate and the Assembly-approved provisions of this bill were deleted.

REGISTERED SUPPORT / OPPOSITION:

Support

Office of San Francisco City Attorney Dennis Herrera (sponsor)
American Federation of State, County and Municipal Employees, AFL-CIO
City and County of San Francisco
San Francisco Chamber of Commerce

Opposition

California State Chamber of Commerce

Analysis Prepared by: Manuel Valencia / JUD. / (916) 319-2334

CalChamber™
CALIFORNIA CHAMBER OF COMMERCE

FLOOR ALERT

June 20, 2007

TO: Members, California State Assembly

FROM: Kyla Christoffersen, Policy Advocate KC

SUBJECT: SB 376 (MIGDEN) UNFAIR COMPETITION: ACTIONS BY CITY ATTORNEYS OPPOSE

The California Chamber of Commerce must respectfully **OPPOSE SB 376 (Migden),** as amended April 24, 2007, which would create an exception to existing law that would allow the City and County of San Francisco's city attorney unrestricted ability to bring unfair competition actions against businesses.

Under current law, San Francisco is subject to the population requirement that applies to all California cities – which is that its population must be 750,000 or greater in order for the city's city attorney to prosecute unfair competition actions under Business and Professions Code Section 17200. This bill would remove any population requirement for San Francisco, so that if the population dips below 750,000, San Francisco may still prosecute unfair competition actions, unlike other California cities.

While we are aware that San Francisco's population has experienced fluctuations, lack of population requirement is currently a legal basis for challenging any city attorney's standing to prosecute unfair competition claims. We do not support removal of any defense to unfair competition actions currently available under the unfair competition law, as such actions have been an area ripe for abuse and used to harass businesses. In particular, the City and County of San Francisco already possesses a history of establishing ordinances and policies that are particularly burdensome to businesses within its jurisdiction.

While we are aware that the Legislature has made one such exception in the past, in the 1980s, for the City of San Jose, we are opposed to the state's establishing a trend of carving out exceptions to existing business defenses under the unfair competition law. All cities attorney who wish to prosecute unfair competition actions should be required to establish in court that they have standing – either they meet the population requirement or they do not.

For these and other reasons, the CalChamber respectfully **OPPOSES SB 376,** as amended April 24, 2007.

cc: The Honorable Carole Migden
Eric Csizmar, Office of the Governor
Mark Redmond, Assembly Republican Caucus
Kaye Bassett, Governor's Office of Planning and Research

KC:ll

1215 K Street, Suite 1400
Sacramento, CA 95814
916 444 6670
www.calchamber.com

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: April 24, 2007
RECOMMENDATION: Non-Fiscal
SPONSOR: San Francisco City Attorney's Office
ASSEMBLY: 44/33
SENATE: 22/15

BILL NUMBER: SB 376
AUTHOR: C. Migden

BILL SUMMARY: Unfair Competition: Actions by City Attorneys

This bill would remove the population requirement for a city attorney of a joint city and county to bring legal action against violators for unfair business competition laws.

A city attorney can bring an unfair business competition lawsuit without consent from a district attorney's office if the city, county or city and county has a population over 750,000. This bill removes the population requirement for a joint city and county city attorney to bring unfair business competition actions.

FISCAL SUMMARY

This bill would have no fiscal impact to the state.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	2006-2007	FC	2007-2008	FC	2008-2009	Fund Code
				(Fiscal Impact by Fiscal Year) (Dollars in Thousands)					
9210/LocGovtFin	SO	No		No/Minor Fiscal Impact					0001

Analyst/Principal (0741) K. Amann	Date 6/25/07	Program Budget Manager Mark Hill	Date 6/25/07
Department Director	Date 6/25/07		

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL: SB 376 **AUTHOR:** Migden **DATE:** 6/25/07 **DUE:** 7/9/07

SENATE: 22-15 **ASSEMBLY:** 44-33

PRESENTED BY: Eric Csizmar **RECOMMEND:** Sign ☐ Veto ☐

SUMMARY

This bill revises the statute authorizing the city and county of San Francisco to bring unfair competition actions, and to allow recovery of a civil penalty, regardless of the size of its population.

SPONSOR: San Francisco City Attorney's Office

SUPPORT: San Francisco Chamber of Commerce

OPPOSITION: Governor's Office of Planning and Research
California Chamber of Commerce

FISCAL IMPACT

This bill has no fiscal impact on the state.

PREVIOUS ACTION/SIMILAR LEGISLATION

In 1988, SB 2440 (Alquist) authorized the San Jose City Attorney to prosecute UCL actions even though San Jose's population was close to, but still below the 750,000 minimum.

NOTES

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

CONFIDENTIAL-GOVERNMENT CODE §8254(L)		
OFFICE: OFFICE OF PLANNING AND RESEARCH - LEGISLATIVE UNIT	**AUTHOR:** MIGDEN	**BILL NUMBER/VERSION DATE:** SB 376 APRIL 24, 2007
SPONSOR: SAN FRANCISCO CITY ATTORNEY'S OFFICE ☐ ADMIN SPONSORED PROPOSAL NO.	**RELATED BILL(S)** N/A	**CHAPTERING ORDER (IF KNOWN)** ☐ ATTACHMENT
SUBJECT: UNFAIR COMPETITION: ACTIONS BY CITY ATTORNEYS		

SUMMARY

This bill would authorize the City and County of San Francisco to bring unfair-competition actions, seeking recovery of civil penalties regardless of the size of its population.

PURPOSE OF THE BILL

The San Francisco City Attorney's Office is the sponsor of this bill.

Unfair business practices encompass fraud, misrepresentation, and oppressive or unconscionable acts by businesses against consumers. Unfair competition is often an allegation in code-enforcement cases such as those filed against property owners who maintain substandard housing, owners of nightclubs that are nuisances, and owners of residential hotels that fail to comply with local fire-sprinkler requirements. According to the sponsor, current unfair-competition law (UCL) is particularly effective in the types of cases that affect people's lives and safety.

In California, specified governmental agencies are authorized to file unfair-competition lawsuits to recover civil penalties from the defendants. Among the authorized agencies is the city attorney of a city and county with a population in excess of 750,000. Currently, the City and County of San Francisco is the only consolidated city-county in California.

A federal census has recently put San Francisco's population under 750,000. This has prompted defendants in unfair-competition actions to argue that San Francisco no longer has standing (the

DEPARTMENTS THAT MAY BE AFFECTED				
N/A				
☐ NEW / INCREASED FEE	☐ GOVERNOR'S APPOINTMENT	☐ LEGISLATIVE APPOINTMENT	☐ STATE MANDATE	☐ URGENCY CLAUSE
POSITION ☐ SIGN ☒ VETO ☐ DEFER TO:				
DEPUTY DIRECTOR	DATE	DIRECTOR	DATE	
Karen E. Kramer	6/22/07	[signature]	6-26-07	

right to bring a lawsuit before a court) in UCL cases. California's Department of Finance (DOF) has documented the population of San Francisco to be more than 750,000 each year over the last 10 years. Two trial courts have upheld the San Francisco City Attorney's standing in UCL cases on the basis of this data. However, no appellate court has addressed the issue whether U.S. Census data, DOF data, or some other data source controls. In response, SB 376 would resolve this question by removing the population requirement pertaining to a city and county, authorizing the city attorney of *any* city and county to file an unfair-competition lawsuit.

RECOMMENDATION AND SUPPORTING ARGUMENTS
The Office of Planning and Research recommends that the Governor **VETO** SB 376.

This bill would authorize the City and County of San Francisco to bring unfair-competition actions, seeking recovery of civil penalties regardless of the size of its population.

None of the defenses to UCL actions that currently exist should be eliminated. Failure to meet the population requirement is a legitimate basis for challenging the San Francisco City Attorney's standing to prosecute unfair-competition claims that should be maintained. The state should not establish a trend of carving out exceptions on a city-by-city basis. Instead, *all* city attorneys who wish to prosecute UCL actions should be required to establish in court that they have standing

Allowing the San Francisco City Attorney to pursue UCL actions, regardless of population, would be an inappropriate extension of prosecutorial authority. Prosecutors cooperate and coordinate their cases to promote uniform enforcement of unfair-competition laws throughout the state. This bill could lead to fragmented and inconsistent UCL enforcement.

Prosecutors are subject to special ethical requirements, but because city attorneys are not prosecutors, they are not bound by those same standards. Senate Bill 376 would imprudently permit lawyers subject to lesser ethical obligations to pursue UCL cases.

ANALYSIS
Existing law provides that UCL actions shall be prosecuted exclusively by:

- the attorney general,
- any district attorney,
- any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or
- any city attorney for a city or city and county having a population in excess of 750,000 persons.

City attorneys from smaller cities (with populations less than 750,000) may bring actions with the consent of the district attorney.

Under current law, the San Francisco City Attorney is subject to the population requirement that applies to all California cities—the population must be 750,000 or greater for the office to prosecute unfair-competition actions. This bill would remove the population requirement for the city attorney of any city and county (San Francisco).

LEGISLATIVE HISTORY
Business and Professions Code Section 17204
Section 17204 was added to the Business and Professions Code in 1977 (Chap. 299), specifying that the attorney general, district attorneys, and city attorneys of cities with populations exceeding

750,000 could seek injunctions to stop UCL violations. In 1991, AB 1755 (Speier) added a city attorney for a city and county. This bill would allow the city attorney of *any* size city and county to prosecute a UCL action.

Business and Professions Code Section 17206
Section 17206 was added to the Business and Professions Code in 1977 (Chap. 299), allowing the attorney general, district attorneys, and city attorneys of cities with populations exceeding 750,000 to recover money damages from any person who violates any provision of the UCL. In 1991, AB 1755 (Speier, Stats. 1991) added a city attorney for a city and county. Senate Bill 376 would authorize the City and County of San Francisco to seek recovery of civil penalties in UCL actions regardless of the size of its population.

City of San Jose Exception
In 1988, SB 2440 (Alquist) authorized the San Jose City Attorney to prosecute UCL actions even though San Jose's population was close to, but still below, 750,000. The Legislature found that because the city's population was close to 750,000 and the San Jose City Attorney's Office had already demonstrated its competence, the enforcement of the laws in relation to unfair competition would be enhanced by extending UCL prosecution authority. This bill would attempt to apply the same logic to the City and County of San Francisco.

DISCUSSION
Background
Unfair-competition actions have the potential for abuse and have, on occasion, been used to harass legitimate businesses. Unfortunately, the City and County of San Francisco has a history of establishing ordinances and policies that are particularly burdensome to businesses within its jurisdiction. Therefore, none of the defenses to UCL actions that currently exist should be eliminated.

Proving Standing with Population
In *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, the California Supreme Court held that a plaintiff must demonstrate standing during all phases of a proceeding. Failure to meet the population requirement is a legitimate basis for challenging the San Francisco City Attorney's standing to prosecute unfair-competition claims that should be maintained.

Business and Professions Code section 17204 currently provides standing to the San Francisco City Attorney if the city and county's population exceeds 750,000. U.S. Census data estimates that San Francisco's population has dipped below 750,000. But DOF has documented the population of San Francisco to be more than 750,000 each year over the last 10 years. No appellate court has addressed the issue whether U.S. Census data, DOF data, or some other data source controls the issue of standing. Senate Bill 376 would resolve this question by eliminating the requirement of a population in excess of 750,000 as a condition for standing for a city attorney to prosecute unfair-competition actions.

The San Francisco City Attorney's Office is concerned that it will continuously need to defend attacks on its standing to pursue UCL actions. It contends that SB 376 would clarify that issue by removing the population requirement. Also, the Legislature previously made an exception for the City of San Jose, so one should be granted for San Francisco as well.

City of San Jose Exception
While this bill would clarify the issue of standing for the San Francisco City Attorney's Office, the

state should not establish a trend of carving out exceptions on a city-by-city basis. Instead, *all* city attorneys who wish to prosecute UCL actions should be required to establish in court that they have standing.

Prosecutorial Authority
Allowing the San Francisco City Attorney to pursue UCL actions, regardless of population, would be an inappropriate extension of prosecutorial authority. Prosecutors cooperate and coordinate their cases to promote uniform enforcement of UCL throughout the state. This bill's authorization to city attorneys could lead to fragmented and inconsistent UCL enforcement.

As explained above, SB 376 does not explicitly refer to San Francisco, but it is meant to apply to the City and County of San Francisco. While the San Francisco City Attorney's Office has been handling UCL cases for years and handling them well, SB 376 could authorize other city attorneys to file similar lawsuits. Consistent enforcement of unfair-competition laws is so important that city attorneys should not be able to pursue UCL cases without first meeting the standing requirement.

A UCL lawsuit filed in the name of the People of California is a law-enforcement action, not routine civil litigation. City attorneys are not law-enforcement officials but attorneys for city councils. In California, prosecutorial authority is vested in elected constitutional executive officers, such as district attorneys, not lawyers for local supervisorial bodies. This bill would create a conflict by vesting prosecutorial authority in an attorney who should put justice above advocacy but who has a competing ethical obligation to first advocate for the financial and other interests of his or her client (the city).

Ethical Standards
Prosecutors are subject to special ethical requirements, including filing, litigation, and settlement standards, that exceed those applicable to other attorneys. But because city attorneys are not prosecutors, they are not bound by those same standards. Senate Bill 376 would imprudently permit lawyers subject to lesser ethical obligations to pursue UCL cases.

OTHER STATES' INFORMATION
No information has been obtained.

FISCAL IMPACT
No appropriation is provided. This bill would not create a state-mandated local program.

ECONOMIC IMPACT
This bill would not appear to have an adverse impact on the state's economic or business climate.

LEGAL IMPACT
This bill would not appear to result in any increased liability for the state or conflict with any state or federal laws.

SUPPORT/OPPOSITION
This bill is supported by the City and County of San Francisco; San Francisco Chamber of Commerce; and American Federation of State, County and Municipal Employees, AFL-CIO.

This bill is opposed by the California Chamber of Commerce.

ARGUMENTS

Pro: This bill would clarify the issue of standing for the San Francisco City Attorney's Office by authorizing the City and County of San Francisco to bring unfair-competition actions regardless of the size of its population.

Con: This bill would inappropriately grant prosecutorial authority to nonprosecutors. None of the defenses to UCL actions that currently exist should be eliminated. Failure to meet the population requirement is a legitimate basis for challenging the San Francisco City Attorney's standing to prosecute unfair-competition claims that should be maintained.

VOTES:

Senate – May 7, 2007
Ayes – 22
Noes – 15

Assembly – June 21, 2007
Ayes – 44
Noes – 33

LEGISLATIVE STAFF CONTACT

	Office
Cynthia Bryant, Director	(916) 445-0115
Brent J. Jamison, Deputy Director	(916) 445-4831
Kirstin Kolpitcke, Assistant Director	(916) 445-4831
Kaye C. Bassett, Legislative Analyst	(916) 445-6139

To the members of the California State Senate.

I am returning Senate Bill 376 without my signature.

This bill would authorize the City and County of San Francisco to bring unfair-competition actions, seeking recovery of civil penalties regardless of the size of its population.

None of the defenses to UCL actions that currently exist should be eliminated. Failure to meet the population requirement is a legitimate basis for challenging the San Francisco City Attorney's standing to prosecute unfair-competition claims that should be maintained. The state should not establish a trend of carving out exceptions on a city-by-city basis. Instead, *all* city attorneys who wish to prosecute UCL actions should be required to establish in court that they have standing.

Allowing the San Francisco City Attorney to pursue UCL actions, regardless of population, would be an inappropriate extension of prosecutorial authority. Prosecutors cooperate and coordinate their cases to promote uniform enforcement of unfair-competition laws throughout the state. This bill could lead to fragmented and inconsistent UCL enforcement.

Prosecutors are subject to special ethical requirements, but because city attorneys are not prosecutors, they are not bound by those same standards. Senate Bill 376 would imprudently permit lawyers subject to lesser ethical obligations to pursue UCL cases.

For these reasons I am returning this bill without my signature.

Sincerely,

Arnold Schwarzenegger

CAPITOL OFFICE
STATE CAPITOL
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(916) 651-4003

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SENATOR.MIGDEN@SEN.CA.GOV

California State Senate

SENATOR
CAROLE MIGDEN
THIRD SENATE DISTRICT
DEMOCRATIC CAUCUS CHAIR
LABOR & INDUSTRIAL RELATIONS CHAIR

COMMITTEES
ELECTIONS, REAPPORTIONMENT & CONSTITUTIONAL AMENDMENTS
NATURAL RESOURCES & WATER
PUBLIC EMPLOYMENT & RETIREMENT
SELECT COMMITTEE ON ASIAN PACIFIC ISLAND ECONOMIC DEVELOPMENT
SELECT COMMITTEE ON CALIFORNIA'S HORSE RACING
SELECT COMMITTEE ON CALIFORNIA'S WINE INDUSTRY
SELECT COMMITTEE ON FOOD BORNE ILLNESS

June 26, 2007

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol
Sacramento, CA 95814

Dear Governor Schwarzenegger:

I am writing to request your signature on Senate Bill 376. SB 376 amends existing law to expressly provide standing to the city attorney of a city and county to bring unfair competition actions under Section 17200 of the Business and Professions code. Specifically SB 376 eliminates the 750,000 population threshold for a consolidated city and county in order to maintain its standing under section 17204.

SB 376 is sponsored by the City and County of San Francisco and is strongly supported by the San Francisco Chamber of Commerce.

Moreover, SB 376 merely preserves the existing standing of the San Francisco City Attorney's Office to bring such claims, and is necessary to avoid eroding the strength of public enforcement of section 17200. The office has brought many significant unfair competition cases including:

- ***The Tobacco Cases (JCCP 4041):*** The San Francisco was the first local government in the country to sue the tobacco industry. That suit (which relied heavily on section 17200) was consolidated with a case later filed over a year later by Attorney General Lungren, and ended in a very significant settlement that reformed tobacco industry practices. As part of that settlement, San Francisco receives between $15-20 million per year, much of which is being used to rebuild Laguna Honda hospital. Because the tobacco suits were settled at the superior court level, there is no reported decision in that case.

- ***In re Firearms Cases, 126 Cal.App.4th 959 (2005):*** San Francisco and 12 other California cities and counties brought this suit against the firearms industry under section 17200, to reform reckless gun distribution practices. The case was successful in reforming the practices of some dealers and distributors through settlements, the courts ultimately

- ***People v. Pick Your Part Auto Wrecking (dba The City Tow), S.F. Sup. Ct No. 322-841:*** The San Francisco City Attorney's Office and the California Attorney General's Office jointly prosecuted this False Claims and Section 17200 case against City Tow. By rigging auctions for cars that were abandoned in San Francisco, City Tow under reported the amount it owed to the City (for unpaid parking tickets) and the State (as abandoned property). City Tow also overcharged consumers for towing and storage fees. City Tow agreed to settle the case before trial for $5.7 million.

By removing the popuiation requirement for the City and County of San Francisco to maintain standing in unfair competition cases, SB 376 will ensure that the City Attorney's ability to utilize the strong injunctive provisions of section 17200 to protect the health and safety of the city's residents.

Thank you for your consideration. If you have any questions or need additional information, please do not hesitate to call me at (916) 651-4003.

Sincerely,

CAROLE MIGDEN
Senator, 3rd District

SAN FRANCISCO POLICE OFFICERS ASSOCIATION
800 Bryant Street, Second Floor
San Francisco, CA 94103
415.861.5060 tel
415.552.5741 fax
www.sfpoa.org

June 26, 2007

JUL 3 2007

The Honorable Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, CA 95814

Transmitted by U.S. Mail & Facsimile: (916) 445-4633

RE: Urging Enactment of SB 376

Dear Gov. Schwarzenegger:

I write to urge you to sign into law SB 376, which will preserve the San Francisco City Attorney's ability to pursue civil remedies under California's Unfair Competition Law should the City's population dip below the act's current threshold of 750,000 residents in the next census.

During the entirety of the Unfair Competition Law's existence, the City Attorney of San Francisco has had authority to file civil actions in the name of the People of the State of California under Business and Professions Code § 17200, and the office has demonstrated remarkable effectiveness in pursuing such actions to protect public safety.

In recent months, the Unfair Competition Law has been the cornerstone of City Attorney Dennis Herrera's efforts to enjoin criminal street gangs from a broad range of unlawful and nuisance conduct plaguing San Francisco neighborhoods.

These injunctions have shown remarkable early progress in helping to stem the rising tide of gang violence in San Francisco's Bayview/Hunter's Point neighborhood, and similar efforts are now underway in the City's Western Addition and Mission neighborhoods. The strong injunctive provisions of the Unfair Competition Law are essential to enabling the City Attorney to rely on evidence of such illegal enterprises as drug dealing to secure court-ordered civil injunctions that target and disrupt the ability of gangs to ply their illicit trade in San Francisco.

Unfair competition has also been a critical cause of action in cases brought by the San Francisco City Attorney against irresponsible businesses that flout laws intended to protect public health and safety—laws by which the vast majority of businesses strictly abide. Systematic legal violations involving heath, habitability, and fire safety don't merely compete unfairly, they threaten potentially countless lives in a densely populated city such as San Francisco.

By signing SB 376 into law, you will fulfill an intent clearly expressed by California voters' passage of Proposition 64 in November 2004. That proposition sought to prevent the notorious "shakedown lawsuits" filed by unscrupulous members of the private bar, while explicitly ensuring within the measure's findings that "the Attorney General, district attorneys, county counsel *and city attorneys* maintain their public protection authority and capability under the unfair competition laws" (emphasis added).

In 1988, the California legislature similarly amended the statute to assure San Jose's ability to bring suit under the UCL if its population dipped under 750,000, finding that "because the office of the City Attorney of San Jose has demonstrated its competence, the enforcement of the laws relating to unfair competition will be enhanced by this act." California Governor George Deukmejian saw the logic of the amendment when he signed the measure into law then, and the same logic certainly applies to San Francisco now.

I urge you to sign SB 376 into law to ensure that the San Francisco City Attorney's Office retains its standing under the California Unfair Competition Law to continue to protect public safety.

Sincerely,

Gary P. Delagnes, SFPOA President

GD/yh
cc: Chief of Staff Susan Kennedy

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

DENNIS J. HERRERA
City Attorney

DIRECT DIAL: (415) 554-4748

June 27, 2007

The Honorable Arnold Schwarzenegger
OFFICE OF THE GOVERNOR
State Capitol Building
Sacramento, CA 95814

JUN 27 2007

Transmitted by U.S. Mail and Facsimile: (916) 445-4633

RE: SB 376 (Migden) unfair competition: actions by city attorneys
Support

Dear Governor Schwarzenegger:

On behalf of the City and County of San Francisco, I am writing to express support of SB 376 (Migden), regarding unfair competition actions by city attorneys. SB 376 amends existing law to expressly provide standing to the city attorney of a city and county to bring unfair competition actions under Section 17200 of the Business and Professions Code.

Currently, Section 17204 provides standing to the City Attorney to bring actions of unfair competition on behalf of the City and County. This standing is conditioned on San Francisco's population being in excess of 750,000.

The San Francisco City Attorney's Office repeatedly faces attacks on San Francisco's claim that it has 750,000 persons and that the City Attorney therefore has standing under Section 17204. The defense bar has introduced U.S. Census estimates stating that San Francisco's current population has dipped below 750,000 persons and "experts" who claim that San Francisco's population has dropped dramatically, because of the "dotcom bust."

Also, the California Supreme Court has held that a plaintiff must demonstrate standing during all phases of a proceeding (*Californians For Disability Rights v. Merryn's, LLC* (2006) 39 Cal. 4th 223.)

The California Department of Finance has documented the population of San Francisco to be more than 750,000 each year over the last ten years. Two trial courts have upheld the City Attorney's standing on the basis of this data. However, no appellate court has addressed the issue of whether the U.S. Census data or California Department of Finance data, or some other data source, controls. SB 376 resolves these issues by eliminating the requirement of a population in excess of 750,000 as a condition for standing of a city attorney of a city and county to prosecute unfair competition actions. Passage of SB 376 would also eliminate the need for resources to be used to defend the San Francisco City Attorney's standing.

There is a strong legislative precedent supporting the passage of SB 376. In 1988, the Legislature enacted Business and Professions Code section 17204.5, which gave the City of San Jose standing to bring actions on behalf of the People regardless of San Jose's population. The Legislature found that:

> Although the City of San Jose does not yet have a population of 750,000 and, accordingly, cannot bring [unfair competition] actions under existing law, because the size of the city is close to that population requirement, and because the office of the City Attorney of San Jose has demonstrated its competence, the enforcement of the laws relating to unfair competition will be enhanced by this act.

Stats. 1988, c. 790, § 3. The same is true for San Francisco.

Unfair competition is an important cause of action in code enforcement cases involving businesses that seek to illegally undercut their competitors, including property owners who maintain substandard housing; owners of nightclubs that are nuisances; and residential hotel owners who fail to comply with local fire sprinkler requirements. The law's illegal business practices provisions have been an essential element in my efforts to obtain civil injunctions against criminal street gangs for a broad range of unlawful and nuisance conduct—including drug sales—currently plaguing San Francisco neighborhoods. These civil gang injunctions have shown remarkable early progress in helping to stem the rising tide of gang violence in San Francisco, enabling us to target and disrupt the ability of gangs to ply their illicit trade in San Francisco.

Finally, passage of SB 376 furthers the intent expressed by California voters when they adopted Proposition 64 in November 2004. That proposition sought to cut down on vexatious "private attorney general" suits filed under the former version of Business and Professions Code section 17200. In addition, Proposition 64 expressed the voters' intent that "the Attorney General, district attorneys, county counsel and *city attorneys maintain their public protection authority* and capability under the unfair competition laws." Prop. 64, Findings, sec. 1(g) (emphasis added). Indeed, by requiring civil penalties recovered in section 17200 cases to be used to support further public enforcement actions, Proposition 64 sought to "strengthen the [public] enforcement of California's unfair competition and consumer protection laws." Id., sec. 1(h). SB 376, which merely preserves the existing standing of the San Francisco City Attorney's Office to bring such claims, is necessary to avoid eroding the strength of public enforcement of section 17200.

I urge you to sign SB 376 into law to ensure that my office retains its authority to pursue actions under the California Unfair Competition Law, so that I may continue my office's work both to defend the interests of the vast majority of honest businesses from being undercut by scofflaw competitors, and to protect the public health and safety of our residents.

Thank you for your consideration.

Very truly yours,

DENNIS J. HERRERA
City Attorney

SAN FRANCISCO
CHAMBER OF COMMERCE Where > [illegible]

JUN 27 2007

June 27, 2007

Governor Arnold Schwarzenegger
State Capitol Building
Sacramento, CA 95814

RE: SB 376 Unfair Competition

Dear Governor Schwarzenegger:

I am writing on behalf of the 2,000 members of the San Francisco Chamber of Commerce in support of SB 376, which would allow San Francisco's city attorney to bring forward an action of unfair competition.

This is an important amendment to the Business and Profession: Code because it deletes the arbitrary population requirement for the city attorney to bring unfair competition actions. This change will save time and money by eliminating technical defense arguments regarding which population surveys a court uses to determine San Francisco's population.

The Chamber of Commerce urges you to sign SB376 into law. Thank you for considering such an important matter.

Sincerely,

Jim Lazarus
Sr. Vice President
Public Policy

235 Montgomery St., 12th Flr., San Francisco, CA 94104 • tel 415 392 4520 / fax 415 392 0485

CalChamber

CALIFORNIA CHAMBER OF COMMERCE

CONFIDENTIAL

June 27, 2007

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol
Sacramento, CA 95814

SUBJECT: SB 376 (MIGDEN) UNFAIR COMPETITION: ACTIONS BY CITY ATTORNEYS REQUEST FOR VETO

Dear Governor Schwarzenegger:

The California Chamber of Commerce respectfully requests your **VETO** of **SB 376 (Migden)**, which would create an exception to existing law to allow the City and County of San Francisco's City Attorney unrestricted authority to bring unfair competition actions under Business and Professions Code Section 17200 against businesses.

Under existing law, the Attorney General and district attorneys have unrestricted authority to prosecute unfair competition actions. By contrast, California cities may do so under one of only two scenarios: 1) if they have a population of more than 750,000, their city attorney may bring an action; or 2) if they have a full-time city prosecutor, that prosecutor can bring an action, with the consent of the district attorney.

While San Francisco's City Attorney has a history of unfair competition actions based upon the 750,000 population claim, whether it meets the requirement is in dispute. A federal census recently put San Francisco's population at under 750,000. **SB 376** changes the law, only for San Francisco, so that San Francisco is no longer subject to any population requirement. Other than wanting to avoid standing challenges by defense attorneys, the bill's proponents have not established why the statutory 750,000 population threshold should no longer apply.

Making an exception for San Francisco means removing a valid defense that businesses have under current law. Moreover, since **SB 376** does not specify that it applies only to future filed actions, it appears that it would change the rules mid-stream for pending actions by removing a defense in cases already filed against businesses. It is important the government law enforcement power be balanced against the substantial risk of abuse and harassment shown to exist under the unfair competition law. The current 750,000 threshold is a bright line for determining when cities are entitled to this power. While we are aware that the Legislature made one exception in the past, in the 1980s, for the City of San Jose, we are opposed to the state's removing any further defenses under the unfair competition law. Moreover, San Francisco is notorious for establishing ordinances and policies that are particularly burdensome and unfriendly to businesses within its jurisdiction.

All city attorneys who wish to prosecute unfair competition actions should have to establish standing – either they meet the population requirement or they do not. For these and other reasons, the CalChamber requests your **VETO** of **SB 376**.

Sincerely,

Dominic DiMare
Vice President, Government Relations

DD:KC:ll

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Legislative Counsel of California

June 27, 2007

Honorable Arnold Schwarzenegger
Governor of California
Sacramento, CA 95814

SENATE BILL NO. 376

Dear Governor Schwarzenegger:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Migden and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

Cindy M. Cardullo

By
Cindy M. Cardullo
Principal Deputy

CMC:dlb

Two copies to Honorable Carole Migden, pursuant to Joint Rule 34.

SAN FRANCISCO FIRE FIGHTERS
– Local 798 –
1139 MISSION STREET, SAN FRANCISCO, CA 94103-1514
TELEPHONE (415) 621-7103 • FAX (415) 621-1578

Via Facsimile and US Mail (916) 445-4633
June 27, 2007

The Honorable Arnold Schwarzenegger
OFFICE OF THE GOVERNOR
State Capitol Building
Sacramento, CA 95814

JUL 2 2007

RE: Urging enactment of SB 376

Dear Governor Schwarzenegger,

I write to urge you to sign into law SB 376, which will preserve the San Francisco City Attorney's ability to pursue civil remedies under California's Unfair Competition Law should the City's population dip below the act's current threshold of 750,000 residents in the next census.

During the entirety of the Unfair Competition Law's existence, the City Attorney of San Francisco has had authority to file civil actions in the name of the People of the State of California under Business and Professions Code §17200, and the office has demonstrated remarkable effectiveness in pursuing such actions to protect public safety.

In recent months, the Unfair Competition Law has been the cornerstone of the City Attorney Dennis Herrera's efforts to enjoin criminal street gangs from a broad range of unlawful and nuisance conduct plaguing San Francisco neighborhoods.

These injunctions have shown remarkable early progress in helping to stem the rising tide of gang violence in San Francisco's Bayview/Hunter's Point neighborhood, and similar efforts are now underway in the City's Western Addition and Mission neighborhoods. The strong injunctive provisions of the Unfair Competition Law are essential to enabling the City Attorney to rely on evidence of such illegal enterprises as drug dealing to secure court-ordered civil injunctions that target and disrupt the ability of gangs to ply their illicit trade in San Francisco.

Unfair competition has also been a critical cause of action in cases brought by the San Francisco City Attorney against irresponsible businesses that flout laws intended to protect public health and safety – laws by which the vast majority of businesses strictly abide. Systematic legal violations involving health, habitability, and fire safety don't merely compete unfairly; they threaten potentially countless lives in a densely populated city such as San Francisco.

By signing SB 376 into law, you will fulfill an intent clearly expressed by California voters' passage of Proposition 64 in November 2004. That proposition sought to prevent the notorious "shakedown lawsuits" filed by unscrupulous members of the private bar, while explicitly ensuring within the measure's findings that "the Attorney General, district attorneys, county counsel *and city attorneys* maintain their public protection authority and capability under the unfair competition laws" (emphasis added).

In 1988, the California legislature similarly amended the statute to assure San Jose's ability to bring suit under the UCL if its population dipped under 750,000, finding that "because the office of the City Attorney of San Jose has demonstrated its competence, the enforcement of the laws relating to unfair competition will be enhanced by this act." California Governor George Deukmejian saw the logic of the amendment when he signed the measure into law then, and the same logic certainly applies to San Francisco now.

I urge you to sign SB 376 into law to ensure that the San Francisco City Attorney's Office retains its standing under the California Unfair Competition Law to continue to protect public safety.

Sincerely,

John P. Hanley
President, Local 798

cc: Susan Kennedy, Chief of Staff

COMMITTEE ON **J O B S**

June 29, 2007

Governor Arnold Schwarzenegger
State Capitol Building
Sacramento, CA 95814

JUL 2 2007

Transmitted by U.S. Mail and Facsimile: (916) 445-4633
RE: Urging enactment of SB 376

Dear Governor Schwarzenegger:

San Francisco City Attorney Dennis Herrera contacted our association and explained the importance of SB 376 to the City and County of San Francisco. As you know, the legislation would allow San Francisco's city attorney to continue to pursue civil remedies under California's Unfair Competition Law should the next census determine that the City's population falls short of the law's current threshold of 750,000 residents. We ask that you sign this legislation.

The Committee on Jobs is a CEO driven business trade association and represents the largest corporations in San Francisco. We agree with Mr. Herrera that this is an important amendment to the Business and Professions Code because it deletes the arbitrary population requirement for the city attorney to bring unfair competition actions. It would avoid needless procedural hurdles that could require the San Francisco City Attorney's Office to continually prove standing even if the City's population narrowly exceeds the threshold in the next census.

The California legislature amended the statute in a similar manner in 1988 to assure San Jose's ability to bring suit under the UCL if its population dipped under 750,000. California Governor George Deukmejian saw the logic of that amendment when he signed the legislation into law then, and the same logic certainly applies to San Francisco now.

The Committee on Jobs thanks you for considering our request and is confident that you will sign SB376 into law.

Sincerely,

Nathan Nayman
Executive Director

CC: Susan Kennedy, Chief of Staff

235 MONTGOMERY STREET, SUITE 1018 • SAN FRANCISCO, CA 94104 • Telephone 415/956-9906 • Fax 415/956-9989

Senate Bill No. 376

CHAPTER 17

An act to amend Sections 17204 and 17206 of the Business and Professions Code, relating to unfair competition.

[Approved by Governor June 28, 2007. Filed with
Secretary of State June 28, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 376, Migden. Unfair competition: actions by city attorneys.

Existing law authorizes specified governmental agencies to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. Under existing law, a city attorney for a city or city and county with a population in excess of 750,000 or for a city and county if the district attorney has consented may bring an unfair competition action and recover a civil penalty.

This bill would instead allow an unfair competition action to be brought and allow recovery of a civil penalty by a city attorney for any city and county.

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

SECTION 1. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for Injunctions by Attorney General, District Attorney, County Counsel, and City Attorneys

Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city having a population in excess of 750,000, or by a city attorney in any city and county and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation, or association, or by any person who has suffered injury in fact and has lost money or property as a result of the unfair competition.

SEC. 2. Section 17206 of the Business and Professions Code is amended to read:

17206. Civil Penalty for Violation of Chapter

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two

thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3.

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to

the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

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COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 1498
AUTHOR : Committee on Judiciary
TOPIC : Maintenance of the codes.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

BILL HISTORY
2008
July 22 Chaptered by Secretary of State. Chapter 179, Statutes of 2008.
July 22 Approved by Governor.
July 10 Enrolled. To Governor at 2 p.m.
July 2 Senate concurs in Assembly amendments. (Ayes 40. Noes 0. Page 4622.) To enrollment.
July 1 To Special Consent Calendar.
June 23 In Senate. To unfinished business.
June 23 Read third time. Passed. (Ayes 78. Noes 0. Page 5837.) To Senate.
June 18 Read second time. To Consent Calendar.
June 17 From committee: Do pass. To Consent Calendar. (Ayes 10. Noes 0.)
June 10 Set, first hearing. Hearing canceled at the request of author.
June 9 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on JUD.
May 1 To Com. on JUD.
Apr. 2 In Assembly. Read first time. Held at Desk.
Apr. 1 Read third time. Passed. (Ayes 37. Noes 0. Page 3240.) To Assembly.
Mar. 27 Read second time. To Consent Calendar.
Mar. 26 From committee: Do pass. To Consent Calendar. (Ayes 5. Noes 0. Page 3192.)
Mar. 6 Set for hearing March 25.
Feb. 28 To Com. on JUD.
Feb. 22 From print. May be acted upon on or after March 23.
Feb. 21 Introduced. Read first time. To Com. on RLS. for assignment. To print.

SENATE BILL No. 1498

Introduced by Committee on Judiciary (Senators Corbett (Chair), Ackerman, Harman, Kuehl, and Steinberg)

February 21, 2008

An act to amend Sections 108, 480, 490, 650, 1265.1, 1625.4, 3152, 3702, 4999.2, 4999.7, 5216.6, 5616, 5640, 6073, 6212, 6213, 7027.5, 7159, 8698.5, 14207, 14245, 16721.5, 17204, 17913, 17915, 17929, and 19596.2 of the Business and Professions Code, to amend Sections 56.10, 798.73, 1185, 1789.13, 1936, 1951.7, and 2938 of the Civil Code, to amend Sections 340.7 and 486.050 of the Code of Civil Procedure, to amend Section 9526.5 of the Commercial Code, to amend Sections 8484, 8774, 17075.10, 33051, 33382, 35021.3, 46300, 47605, 48980, 49423.5, 49431.7, 51228, 52244, 52499.66, 52861, 52922, 56030, 56300, 56302, 56328, 56331, 56341.1, 56342.1, 56363.5, 56366.1, 56426.6, 56431, 56456, 56476, 56504, 56851, 66018.55, 69551, and 71095 of, and to amend the headings of Chapter 1 (commencing with Section 8006) of Part 6 of Division 1 of Title 1 of, Article 1 (commencing with Section 8006) of Chapter 1 of Part 6 of Division 1 of Title 1 of, and Part 40.5 (commencing with Section 67500) of Division 5 of Title 3 of, the Education Code, to amend Section 13001 of the Elections Code, to amend Sections 1520 and 50700 of the Financial Code, to amend Section 8235 of the Fish and Game Code, to amend Sections 3352, 3357, and 20755 of the Food and Agricultural Code, to amend Sections 3502.5, 3517.8, 3543, 7267.2, 7576, 7585, 8588.1, 8592.1, 8879.50, 8879.60, 11126, 11549.2, 11549.5, 11549.6, 11550, 13959, 14838, 15820.104, 15820.105, 19609, 27293, 27361, 31521.3, 31739.33, 53343.1, 53601, 56100.1, 56700.1, 57009, 65007, 65865.5, 65917.5, 65962, 66474.5, 66474.62, 66540.1, 66540.9, 66540.10, 66540.12, 66540.32, 66540.54, 69615, 70375, 70391, 76000, 76000.5, 76104.1, 76104.6, 77200, 77201.1, 95001, 95003, and 95020 of, and to amend and renumber Section 66540.34 of, the Government

Code, to amend Sections 1180.1, 1250.8, 1348.8, 1357.03, 1367.07, 1417.2, 1538.5, 1568.09, 1569.145, 1728.8, 11752.1, 25210.9, 25270.2, 25299.57, 25299.58, 39625.02, 43869, 44125, 44272, 101317, 111071, 116033, 121530, 122354, 124900, 124991, 127400, 127405, 128735, and 131540 of the Health and Safety Code, to amend Sections 739.3, 1063.1, 1626, 1764.1, 1765, 1872.8, 1872.81, 1872.86, and 15031 of the Insurance Code, to amend Sections 77.7, 4604.5, and 4658.5 of the Labor Code, to amend Sections 293, 398, 903.2, 1170, 1369.1, and 11062 of the Penal Code, to amend Sections 4584, 5818.2, 25402.5.4, 25402.10, 30253, 30327.5, 30327.6, 31408, 35615, and 40117 of the Public Resources Code, to amend Sections 353.1, 399.12, 884.5, and 2829 of the Public Utilities Code, to amend Sections 107.7, 8352.6, 8352.8, 17053.5, 30182, 32258, 41007, 41011, 41021, 41030, and 41099 of the Revenue and Taxation Code, to amend Sections 118, 464, 25440, and 36622 of the Streets and Highways Code, to amend Section 2739 of the Unemployment Insurance Code, to amend Sections 1803, 2430.1, 4766, 5004.1, 9853.6, 11410, 13353.2, 21251, 22511.85, 24617, 27315, 40002, and 40240 of the Vehicle Code, to amend Sections 8201, 9602, 9610, 9614, 9625, 13478, and 13480 of, and to amend and repeal Section 8610.5 of, the Water Code, to amend Sections 707, 5348, 5352.1, 5777.7, 5806, 10830, 10960, 11322.5, 14043.1, 14043.26, 14045, 14154.3, 14407.1, 15657.3, 15660, 16522.1, and 19630.5 of the Welfare and Institutions Code, to amend Section 34 of the Sacramento Area Flood Control Agency Act (Chapter 510 of the Statutes of 1990), to amend Section 1107 of the Ojai Basin Groundwater Management Agency Act (Chapter 750 of the Statutes of 1991), to amend Section 1 of Chapter 58 of the Statutes of 1997, and to amend Sections 2 and 4 of Chapter 4, Section 2 of Chapter 26, and Section 2 of Chapter 451, of the Statutes of 2007, relating to maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1498, as introduced, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 108 of the Business and Professions Code is amended to read:

108. Each of the boards comprising the department exists as a separate unit, and has the functions of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and holding hearings for the revocation of licenses, and the imposing of penalties following ~~such~~ *those* hearings, ~~in so far~~ *insofar* as these powers are given by statute to each respective board.

SEC. 2. Section 480 of the Business and Professions Code is amended to read:

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action ~~which~~ *that* a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself *or herself* or another, or substantially injure another~~; or~~.

(3) *(A)* Done any act ~~which~~ *that* if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he *or she* has been

in the state. The limitation of 23 imported races per day does not apply to any of the following:

(1) Races imported for wagering purposes pursuant to subdivision (c).

(2) Races imported that are part of the race card of the Kentucky Derby, the Kentucky Oaks, the Preakness Stakes, the Belmont Stakes, the Jockey Club Gold Cup, the Travers Stakes, the Breeders' Cup, the Dubai Cup, or the Haskell Invitational.

(3) Races imported into the northern zone when there is no live thoroughbred or fair racing being conducted in the northern zone.

(4) Races imported into the combined central and southern zones when there is no live thoroughbred or fair racing being conducted in the combined central and southern zones.

(b) ~~Any~~ *A* thoroughbred association or fair accepting wagers pursuant to subdivision (a) shall conduct the wagering in accordance with the applicable provisions of Sections 19601, 19616, 19616.1, and 19616.2.

(c) No thoroughbred association or fair may accept wagers pursuant to this section on out-of-state races commencing after 7 p.m., Pacific ~~standard time~~ *Standard Time*, without the consent of the harness or quarter horse racing association that is then conducting a live racing meeting in Orange or Sacramento ~~Counties~~ *County*.

SEC. 28. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or ~~any other~~ *another* provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit

plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, ~~no~~ information so disclosed shall *not* be further disclosed by the recipient in ~~any~~ *a* way that would violate this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of a provider of health care or health care service plan may be reviewed by a private or public body responsible for licensing or accrediting the provider

of health care or health care service plan. However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in ~~any~~ *a* way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in ~~any~~ *a* way that would disclose the identity of a patient or violate this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the

sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information ~~may~~ *shall* not otherwise be disclosed by a health care service plan except in accordance with ~~the provisions of~~ this part.

(11) ~~Nothing in this part shall~~ *This part does not* prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of *Chapter 1 of* Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all *of the* requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of *Chapter 1 of* Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition ~~and~~, care, and treatment provided may be disclosed to a probate court investigator in the course of ~~any~~ *an* investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an ~~existent~~ *existing* guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, ~~the terms~~ "tissue bank" and "tissue" have the same ~~meaning~~ *meanings* as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, including, but not limited to, the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a ~~state~~ *state-recognized* or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in ~~any~~ *a* way that would violate this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to an entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, if the disease management services and care are authorized by a treating physician, or (B) to a disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, if the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. ~~Nothing in this paragraph shall be construed to~~ *This paragraph does not* require physician authorization for the care or treatment of the adherents of a well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(18) The information may be disclosed, as permitted by state and federal law or regulation, to a local health department for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events, including, but not limited to, birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as authorized or required by state or federal law or regulation.

(19) The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the Evidence Code, if the psychotherapist, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(20) The information may be disclosed as described in Section 56.103.

(d) Except to the extent expressly authorized by ~~the~~ *a* patient or enrollee or subscriber or as provided by subdivisions (b) and (c), ~~no~~ *a* provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall *not* intentionally share, sell, use for marketing, or otherwise use ~~any~~ medical information for ~~any~~ *a* purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by ~~the~~ *a* patient or enrollee or subscriber or as provided by subdivisions (b) and (c), ~~no~~ *a* contractor or corporation and its subsidiaries and affiliates shall *not* further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to ~~any~~ *a* person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 29. Section 798.73 of the Civil Code is amended to read:

798.73. The management ~~may~~ *shall* not require the removal of a mobilehome from the park in the event of ~~its~~ *the* sale *of the mobilehome* to a third party during the term of the homeowner's rental agreement or in the 60 days following the initial notice required by paragraph (1) of subdivision (b) of Section 798.55. However, in the event of a sale to a third party, in order to upgrade the quality of the park, the management may require that a mobilehome be removed from the park where:

(a) It is not a "mobilehome" within the meaning of Section 798.3.

(b) It is more than 20 years old, or more than 25 years old if manufactured after September 15, 1971, and is 20 feet wide or

SENATE JUDICIARY COMMITTEE
Senator Ellen M. Corbett, Chair
2007-2008 Regular Session

SB 1498	S
Senate Committee on Judiciary	B
As Introduced	
Hearing Date: March 25, 2008	1
Various Codes	4
GWW	9
	8

SUBJECT

Maintenance of the Codes: Annual cleanup bill

DESCRIPTION

This bill would make numerous technical changes in the California codes that have been recommended by the Legislative Counsel's Office. The proposed changes would not make any substantive change in the law.

BACKGROUND

Each year, Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing the wholesale corrections. For inclusion into the measure, the change must be technical only and may not affect or enact substantive law. Any proposed change which is identified as having a substantive change is automatically excised from the bill.

Compared with last year's code maintenance bill, AB 299 (Tran), which consisted of 264 sections and 543 pages, this year's code maintenance bill consists of 261 sections and only 443 pages.

CHANGES TO EXISTING LAW

None

(more)

COMMENT

1. Commitment to delete any substantive provision

   A condition for inclusion in the annual code maintenance bill is that the change must be nonsubstantive. Consequently, any provision that is identified as making a substantive law change will be deleted without question by the Legislative Counsel's Office.

2. "All-purpose" yielding clause avoids chaptering problems

   Proposed Section 261 on page 443 of the bill provides that any other bill enacted by the Legislature during the 2008 calendar year that takes effect on or before January 1, 2009 and that amends, adds, repeals, or otherwise affects any section affected by this bill, shall prevail over the provisions of this bill. This "all-purpose" yielding clause avoids any chaptering problems that might otherwise occur and escape the notice of inattentive staff.

Support: None Known

Opposition: None Known

HISTORY

Source: Office of Legislative Counsel

Related Pending Legislation: None Known

Prior Legislation: None Known

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SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

CONSENT

Bill No: SB 1498
Author: Senate Judiciary Committee
Amended: As introduced
Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 3/25/08
AYES: Corbett, Harman, Ackerman, Kuehl, Steinberg

SUBJECT: Maintenance of the codes: annual cleanup bill

SOURCE: Office of the Legislative Counsel

DIGEST: This bill makes numerous technical changes in the California codes that have been recommended by the Office of the Legislative Counsel. The proposed changes would not make any substantive change in the law.

ANALYSIS: A condition for inclusion in the annual code maintenance bill is that the change must be nonsubstantive. Consequently, any provision that is identified as making a substantive law change will be deleted without question by the Office of the Legislative Counsel.

Proposed Section 261 on page 443 of this bill provides that any other bill enacted by the Legislature during the 2008 calendar year that takes effect on or before January 1, 2009, and that amends, adds, repeals, or otherwise affects any section affected by this bill, shall prevail over the provisions of this bill. This "all-purpose" yielding clause avoids any chaptering problems that might otherwise occur and escape the notice of staff.

Each year, Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for

CONTINUED

implementing the wholesale corrections. For inclusion into the bill, the change must be technical only and may not affect or enact substantive law. Any proposed change which is identified as having a substantive change is automatically excised from the bill.

Compared with last year's code maintenance bill, AB 299 (Tran), which consisted of 264 sections and 543 pages, this year's code maintenance bill consists of 261 sections and only 443 pages.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 3/27/08)

Office of the Legislative Counsel (source)

RJG:mw 3/27/08 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

AMENDED IN ASSEMBLY JUNE 9, 2008

SENATE BILL No. 1498

Introduced by Committee on Judiciary (Senators Corbett (Chair), Ackerman, Harman, Kuehl, and Steinberg)

February 21, 2008

An act to amend Sections 108, 480, 490, 650, 1265.1, 1625.4, 3152, 3702, 4999.2, 4999.7, 5216.6, 5616, 5640, 6073, 6212, 6213, 7027.5, 7159, 8698.5, 14207, 14245, 16721.5, 17204, ~~17913,~~ 17915, 17929, and 19596.2 of the Business and Professions Code, to amend Sections 56.10, 798.73, 1185, 1789.13, 1936, 1951.7, and 2938 of the Civil Code, to amend Sections 340.7 and 486.050 of the Code of Civil Procedure, to amend Section 9526.5 of the Commercial Code, to amend Sections 8484, 8774, 17075.10, 33051, 33382, 35021.3, 46300, 47605, 48980, 49423.5, 49431.7, 51228, 52244, 52499.66, 52861, 52922, 56030, 56300, 56302, 56328, 56331, 56341.1, 56342.1, 56363.5, 56366.1, 56426.6, 56431, 56456, 56476, 56504, 56851, 66018.55, 69551, and 71095 of, and to amend the headings of Chapter 1 (commencing with Section 8006) of Part 6 of Division 1 of Title 1 of, Article 1 (commencing with Section 8006) of Chapter 1 of Part 6 of Division 1 of Title 1 of, and Part 40.5 (commencing with Section 67500) of Division 5 of Title 3 of, the Education Code, to amend Section 13001 of the Elections Code, to amend Sections 1520 and 50700 of the Financial Code, to amend Section 8235 of the Fish and Game Code, to amend Sections 3352, 3357, and 20755 of the Food and Agricultural Code, to amend Sections 3502.5, 3517.8, 3543, 7267.2, 7576, 7585, 8588.1, 8592.1, 8879.50, 8879.60, 11126, 11549.2, 11549.5, 11549.6, 11550, 13959, 14838, 15820.104, 15820.105, 19609, 27293, 27361, 31521.3, 31739.33, 53343.1, 53601, 56100.1, 56700.1, 57009, 65007, 65865.5, 65917.5, 65962, 66474.5, 66474.62, 66540.1, 66540.9, 66540.10, 66540.12, 66540.32, 66540.54, 69615, 70375, 70391, 76000,

76000.5, 76104.1, 76104.6, 77200, 77201.1, 95001, 95003, and 95020 of, and to amend and renumber Section 66540.34 of, the Government Code, to amend Sections 1180.1, 1250.8, 1348.8, 1357.03, 1367.07, 1417.2, 1538.5, 1568.09, 1569.145, 1728.8, 11752.1, 25210.9, 25270.2, 25299.57, 25299.58, 39625.02, 43869, 44125, 44272, 101317, 111071, 116033, 121530, 122354, 124900, 124991, 127400, 127405, 128735, and 131540 of the Health and Safety Code, to amend Sections 739.3, 1063.1, 1626, 1764.1, 1765, 1872.8, 1872.81, 1872.86, and 15031 of the Insurance Code, to amend Sections 77.7, 4604.5, and 4658.5 of the Labor Code, to amend Sections 293, 398, 903.2, 1170, 1369.1, and 11062 of the Penal Code, to amend Sections 4584, 5818.2, 25402.5.4, 25402.10, 30253, 30327.5, 30327.6, 31408, 35615, and 40117 of the Public Resources Code, to amend Sections 353.1, 399.12, 884.5, and 2829 of the Public Utilities Code, to amend Sections 107.7, 8352.6, 8352.8, 17053.5, 30182, 32258, 41007, 41011, 41021, 41030, and 41099 of the Revenue and Taxation Code, to amend Sections 118, 464, 25440, and 36622 of the Streets and Highways Code, to amend Section 2739 of the Unemployment Insurance Code, to amend Sections 1803, 2430.1, 4766, 5004.1, 9853.6, 11410, 13353.2, 21251, 22511.85, 24617, 27315, 40002, and 40240 of the Vehicle Code, to amend Sections 8201, 9602, 9610, 9614, 9625, 13478, and 13480 of, and to amend and repeal Section 8610.5 of, the Water Code, to amend Sections 707, 5348, 5352.1, 5777.7, 5806, 10830, 10960, 11322.5, 14043.1, 14043.26, 14045, 14154.3, 14407.1, 15657.3, 15660, 16522.1, and 19630.5 of the Welfare and Institutions Code, to amend Section 34 of the Sacramento Area Flood Control Agency Act (Chapter 510 of the Statutes of 1990), to amend Section 1107 of the Ojai Basin Groundwater Management Agency Act (Chapter 750 of the Statutes of 1991), to amend Section 1 of Chapter 58 of the Statutes of 1997, and to amend Sections 2 and 4 of Chapter 4, Section 2 of Chapter 26, and Section 2 of Chapter 451, of the Statutes of 2007, relating to maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1498, as amended, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 108 of the Business and Professions Code is amended to read:

108. Each of the boards comprising the department exists as a separate unit, and has the functions of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and holding hearings for the revocation of licenses, and the imposing of penalties following those hearings, insofar as these powers are given by statute to each respective board.

SEC. 2. Section 480 of the Business and Professions Code is amended to read:

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications,

(4) Races imported into the combined central and southern zones when there is no live thoroughbred or fair racing being conducted in the combined central and southern zones.

(b) A thoroughbred association or fair accepting wagers pursuant to subdivision (a) shall conduct the wagering in accordance with the applicable provisions of Sections 19601, 19616, 19616.1, and 19616.2.

(c) No thoroughbred association or fair may accept wagers pursuant to this section on out-of-state races commencing after 7 p.m., Pacific Standard Time, without the consent of the harness or quarter horse racing association that is then conducting a live racing meeting in Orange or Sacramento County.

~~SEC. 28.~~

SEC. 27. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or another provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the

extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, information so disclosed shall not be further disclosed by the recipient in a way that would violate this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of a provider of health care or health care service plan may be reviewed by a private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in a way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in a way that would disclose the identity of a patient or violate this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information shall not otherwise be disclosed by a health care service plan except in accordance with this part.

(11) This part does not prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all of the requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition, care, and treatment provided may be disclosed to a probate court investigator in the course of an investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existing guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, "tissue bank" and "tissue" have the same meanings as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, including, but not limited to, the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a state-recognized or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in a way that would violate this part, including the unauthorized manipulation of coded or encrypted medical

information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to an entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, if the disease management services and care are authorized by a treating physician, or (B) to a disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, if the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. This paragraph does not require physician authorization for the care or treatment of the adherents of a well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(18) The information may be disclosed, as permitted by state and federal law or regulation, to a local health department for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events, including, but not limited to, birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as authorized or required by state or federal law or regulation.

(19) The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the Evidence Code, if the psychotherapist, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(20) The information may be disclosed as described in Section 56.103.

(d) Except to the extent expressly authorized by a patient or enrollee or subscriber or as provided by subdivisions (b) and (c),

a provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall not intentionally share, sell, use for marketing, or otherwise use medical information for a purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by a patient or enrollee or subscriber or as provided by subdivisions (b) and (c), a contractor or corporation and its subsidiaries and affiliates shall not further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to a person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

~~SEC. 29.~~

SEC. 28. Section 798.73 of the Civil Code is amended to read:

798.73. The management shall not require the removal of a mobilehome from the park in the event of the sale of the mobilehome to a third party during the term of the homeowner's rental agreement or in the 60 days following the initial notice required by paragraph (1) of subdivision (b) of Section 798.55. However, in the event of a sale to a third party, in order to upgrade the quality of the park, the management may require that a mobilehome be removed from the park where:

(a) It is not a "mobilehome" within the meaning of Section 798.3.

(b) It is more than 20 years old, or more than 25 years old if manufactured after September 15, 1971, and is 20 feet wide or more, and the mobilehome does not comply with the health and safety standards provided in Sections 18550, 18552, and 18605 of the Health and Safety Code and the regulations established thereunder, as determined following an inspection by the appropriate enforcement agency, as defined in Section 18207 of the Health and Safety Code.

(c) The mobilehome is more than 17 years old, or more than 25 years old if manufactured after September 15, 1971, and is less than 20 feet wide, and the mobilehome does not comply with the construction and safety standards under Sections 18550, 18552, and 18605 of the Health and Safety Code and the regulations

Date of Hearing: June 17, 2008

ASSEMBLY COMMITTEE ON JUDICIARY
Dave Jones, Chair
SB 1498 (Senate Judiciary) – As Amended: June 9, 2008

PROPOSED CONSENT

SENATE VOTE: 37-0

SUBJECT: MAINTENANCE OF THE CODES: ANNUAL CLEANUP BILL

KEY ISSUE: SHOULD VARIOUS NON-SUBSTANTIVE, TECHNICAL CHANGES BE MADE VIA THE "MAINTENANCE OF THE CODES" BILL SPONSORED BY THE LEGISLATIVE COUNSEL'S OFFICE IN THIS ANNUAL TECHNICAL CLEAN-UP BILL?

SYNOPSIS

This non-controversial bill makes numerous technical changes in the California codes that have been recommended by the Legislative Counsel's Office. The proposed changes would not make any substantive change in the law.

SUMMARY: Makes non-substantive changes to the codes by recommendation of the Legislative Counsel's office. Specifically, this bill makes various grammatical and other technical changes suggested by the Office of Legislative Counsel in order to correct non-substantive errors that exist in the original bill text.

EXISTING LAW: Unaffected

FISCAL EFFECT: None

COMMENTS: Each year, Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing the wholesale corrections. For inclusion into the measure, the change must be technical only and may not affect or enact substantive law. Any proposed change which is identified as having a substantive change is automatically excised from the bill.

Commitment to delete any substantive provision. A condition for inclusion in the annual code maintenance bill is that the change must be non-substantive. Consequently, any provision that is identified as making a substantive law change will be deleted without question by the Legislative Counsel's Office.

"All-purpose" yielding clause avoids chaptering problems. Proposed Section 260 on page 440 of the bill provides that any other bill enacted by the Legislature during the 2008 calendar year that takes effect on or before January 1, 2009 and that amends, adds, repeals, or otherwise affects any section affected by this bill, shall prevail over the provisions of this bill. This "all-purpose" yielding clause avoids any chaptering problems that might otherwise occur and escape the notice of inattentive staff.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Drew Liebert / JUD. / (916) 319-2334

SENATE RULES COMMITTEE SB 1498
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 1498
Author: Senate Judiciary Committee
Amended: 6/9/08
Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 3/25/08
AYES: Corbett, Harman, Ackerman, Kuehl, Steinberg

SENATE FLOOR: 37-0, 4/1/08 (Consent)
AYES: Aanestad, Ackerman, Alquist, Ashburn, Battin, Cedillo, Cogdill, Corbett, Correa, Cox, Denham, Ducheny, Florez, Harman, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Negrete McLeod, Oropeza, Padilla, Perata, Romero, Runner, Scott, Simitian, Steinberg, Torlakson, Vincent, Wiggins, Wyland, Yee
NO VOTE RECORDED: Calderon, Dutton, Ridley-Thomas

ASSEMBLY FLOOR: 78-0, 6/23/08 (Consent) - See last page for vote

SUBJECT: Maintenance of the codes: annual cleanup bill

SOURCE: Office of the Legislative Counsel

DIGEST: This bill makes numerous technical changes in the California codes that have been recommended by the Office of the Legislative Counsel. The proposed changes would not make any substantive change in the law.

Assembly Amendments (1) deleted provisions that amended Section 17913 of the Business and Professions Code dealing with the Fictitious Business Name Statement, and (2) made technical and grammatical changes.

CONTINUED

ANALYSIS: A condition for inclusion in the annual code maintenance bill is that the change must be nonsubstantive. Consequently, any provision that is identified as making a substantive law change will be deleted without question by the Office of the Legislative Counsel.

Proposed Section 261 on page 443 of this bill provides that any other bill enacted by the Legislature during the 2008 calendar year that takes effect on or before January 1, 2009, and that amends, adds, repeals, or otherwise affects any section affected by this bill, shall prevail over the provisions of this bill. This "all-purpose" yielding clause avoids any chaptering problems that might otherwise occur and escape the notice of staff.

Each year, Legislative Counsel's Office identifies grammatical errors and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing the wholesale corrections. For inclusion into the bill, the change must be technical only and may not affect or enact substantive law. Any proposed change which is identified as having a substantive change is automatically excised from the bill.

Compared with last year's code maintenance bill, AB 299 (Tran), which consisted of 264 sections and 543 pages, this year's code maintenance bill consists of 261 sections and only 443 pages.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/24/08)

Office of the Legislative Counsel (source)

ASSEMBLY FLOOR:
AYES: Adams, Aghazarian, Anderson, Arambula, Beall, Benoit, Berg, Berryhill, Blakeslee, Brownley, Caballero, Charles Calderon, Carter, Cook, Coto, Davis, De La Torre, De Leon, DeSaulnier, DeVore, Duvall, Dymally, Emmerson, Eng, Evans, Feuer, Fuentes, Fuller, Gaines, Galgiani, Garcia, Garrick, Hancock, Hayashi, Hernandez, Horton, Houston, Huff, Huffman, Jeffries, Jones, Karnette, Keene, Krekorian, La Malfa, Laird, Leno, Levine, Lieber, Lieu, Ma, Maze, Mendoza, Mullin, Nakanishi, Nava, Niello, Nunez, Parra, Plescia, Portantino, Price, Sharon

CONTINUED

Runner, Ruskin, Salas, Saldana, Silva, Smyth, Solorio, Spitzer, Strickland, Swanson, Torrico, Tran, Villines, Walters, Wolk, Bass
NO VOTE RECORDED: Furutani, Soto

RJG:mw 6/24/08 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

File Item # 351
SB 1498 (Judiciary)
Support

Assembly Floor: 78-0 (6/23/08)
(AYE: All Republicans)
Senate Floor: 37-0 (4/1/08)
(AYE: All Republicans except; ABS: Dutton)
Vote requirement: 21
Version Date: 6/9/08

Quick Summary
Corrects technical errors in various codes.

Analysis
Arguments in Support:
The Legislative Counsel drafts a bill to maintain the codes annually. This bill is necessary to correct errors such as outdated cross-references.

Arguments in Opposition:
There are no known arguments in opposition.

Other Issues:
None.

Digest
Corrects technical errors in various codes.

Background
The Legislative Counsel drafts a bill to correct technical errors in the codes annually.

Support & Opposition Received
Support: None.

Opposition: None.

Senate Republican Office of Policy/ *Mike Petersen*

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: June 9, 2008
RECOMMENDATION: Non-Fiscal

BILL NUMBER: SB 1498
AUTHOR: Senate Judiciary

ASSEMBLY: 78/0
SENATE: 40/0

BILL SUMMARY: Maintenance of the Codes

This bill would revise various provisions of law to reflect the recommendations made by the Legislative Counsel to the Legislature regarding maintenance of the codes. These changes are technical in nature.

FISCAL SUMMARY

The bill would not have a fiscal impact to the state.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 2008-2009	FC	2009-2010	FC	2010-2011	Fund Code
0160/Leg Counsel	SO	No		---------- No/Minor Fiscal Impact ----------					0001

Analyst/Principal (0220) R. Baker — Date 7/3/08 — Robin E. Baker

Program Budget Manager Todd Jerue — Date 7/3/08 — Nona Martinez for

Department Director — Date 7-7-08

LABOR & WORKFORCE DEVELOPMENT AGENCY

CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY

ENROLLED BILL REPORT

CONFIDENTIAL-Government Code §6254(l)		
Department/Board: Department of Industrial Relations	**Author:** Senate Judiciary Committee	**Bill Number/Version Date:** SB 1498/June 9, 2008
Sponsor: Office of the Legislative Counsel ☐ **Admin Sponsored** **Proposal No.**	**Related Bill(s)** None.	**Chaptering Order (if known)** None. ☐ **Attachment**
Subject: Maintenance of the Codes.		

SUMMARY

Senate Bill (SB) 1498 makes non-substantive changes to various provisions of law to carry out recommendations made by the Legislative Counsel to the Legislature to maintain the codes. The provisions relating to Labor Code sections 77.7, 4604.5, and 4658.5 are non-substantive changes in punctuation or grammar.

PURPOSE OF THE BILL

This is the Office of the Legislative Counsel's annual technical clean-up bill to the California Codes.

RECOMMENDATION AND SUPPORTING ARGUMENTS

The Department of Industrial Relations (DIR) recommends a **SIGN** on **SB 1498.** The amendments to the three sections of the Labor Code contained in this bill do not have any substantive effect on to the Labor Code.

Departments That May Be Affected				
☐ New / Increased Fee	☐ Governor's Appointment	☐ Legislative Appointment	☐ State Mandate	☐ Urgency Clause

Dept/Board Position	Agency Secretary Position
☒ Sign	☒ Sign
☐ Veto	☐ Veto
☐ Defer to:	☐ Defer to:
Director /Chair Date: John C. Duncan 7/7/08	Agency Secretary Date: 7/7/08

Stephanie Nash 7.7.08

ANALYSIS

Existing law directs the Legislative Counsel to periodically advise the Legislature as to legislation necessary to maintain the codes. SB 1498 would make nonsubstantive changes to effectuate the Legislative Counsel's recommendations. The three sections of the Labor Code amended by this bill are changed to add punctuation or alter grammatical structure.

Labor Code section 77.7 directs the Commission on Health and Safety and Workers' Compensation to undertake a study to examine the causes of the number of insolvencies among workers' compensation insurers within the past 10 years. This bill makes the following amendments:

- Grammatical correction of "it's" to "its"
- Nonsubstantive change of several instances of "any" to "a"
- Nonsubstantive deletion of several instances of "or"

Labor Code section 4604.5 concerns the Division of Workers' Compensation's duty to adopt treatment utilization guidelines. This bill makes the following amendments:

- Nonsubstantive movement of the word "is"; "is reasonably required" becomes "reasonably is required"
- Adds punctuation to change "evidence based medical treatment" to "evidence-based medical treatment"
- Moves the word "generally" without apparent substantive effect; "treatment guidelines generally recognized by the national medical community" becomes "treatment guidelines that are recognized generally by the national medical community"

Labor Code section 4658.5 relates to the supplemental job displacement benefit available to injured workers in specified circumstances. This bill makes the following amendments:

- Adds punctuation to change "return to work" to "return-to-work"

Although it is questionable whether some of the amendments actually improve clarity of the statutes, none of the amendments appear to have any substantive effect to the Labor Code.

LEGISLATIVE HISTORY

The Legislative Counsel sponsors an annual maintenance of the codes bill for technical clean-up purposes.

PROGRAM BACKGROUND

The Department of Industrial Relations protects the workforce in California, improves working conditions, and advances opportunities for profitable employment. The Department is responsible for enforcing workers' compensation insurance laws, adjudicating workers' compensation insurance claims, and working to prevent industrial injuries and deaths. The Department also promulgates regulations and enforces laws relating to wages, hours, and conditions of employment, promotes apprenticeship and other on-the-job training, assists in negotiations with parties in dispute when a work stoppage is threatened, and analyzes and disseminates statistics which measure the condition of labor in the state.

OTHER STATES' INFORMATION

There is no information from other states available at this time.

FISCAL IMPACT

The changes proposed by SB 1498 to the Labor Code will have no fiscal impact to DIR.

ECONOMIC IMPACT

The Labor Code revisions contained in this bill will have no economic impact.

LEGAL IMPACT

This bill has no legal impact as far as the changes to the Labor Code.

APPOINTMENTS

This bill would not require any appointments by the Governor or the Legislature.

SUPPORT/OPPOSITION

Support: Office of the Legislative Counsel (sponsor)

There is no **Opposition** on file at this time.

ARGUMENTS

There are no pro or con arguments as this is an annual technical clean-up bill.

VOTES

Senate Judiciary	March 25, 2008	Ayes 5, Noes 0
Senate Floor	April 1, 2008	Ayes 37, Noes 0
Assembly Judiciary	June 17, 2008	Ayes 10, Noes 0
Assembly Floor	June 23, 2008	Ayes 78, Noes 0
Senate Concurrence	July 2, 2008	Ayes 40, Noes 0

LEGISLATIVE STAFF CONTACT

Contact	Work
Secretary Victoria Bradshaw	916/327-9064
Assistant Secretary Legislative Affairs Steffanie Watkins	916/327-9064
Director Dept of Industrial Relations John C. Duncan	415/703-5050
Legislative Director Dept of Industrial Relations Mark Woo-Sam	916/322-3140

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

CONFIDENTIAL-GOVERNMENT CODE §6254(L)		
OFFICE: OFFICE OF PLANNING AND RESEARCH - LEGISLATIVE UNIT	**AUTHOR:** SENATE JUDICIARY COMMITTEE	**BILL NUMBER/VERSION DATE:** SB 1498 JUNE 9, 2008
SPONSOR: OFFICE OF LEGISLATIVE COUNSEL ☐ **ADMIN SPONSORED** **PROPOSAL NO.**	**RELATED BILL(S)** VARIOUS	**CHAPTERING ORDER (IF KNOWN)** N/A ☐ **ATTACHMENT**
SUBJECT: MAINTENANCE OF THE CODES: ANNUAL CLEAN UP BILL		

SUMMARY

This maintenance of the codes bill would make numerous technical changes in the California codes that have been recommended by the Legislative Counsel's Office. The proposed amendments would not make any substantive changes in the law.

PURPOSE OF THE BILL

The Office of Legislative Counsel is the sponsor of this bill.

This is an omnibus bill from the Senate Judiciary Committee that identifies grammatical and technical errors that have been inadvertently enacted into law. This annual "Maintenance of the Codes" bill is the vehicle for implementing wholesale corrections. For inclusion into the measure, a change must be technical only and may not affect or enact substantive law.

RECOMMENDATION AND SUPPORTING ARGUMENTS

The Office of Planning and Research recommends that the Governor **SIGN** SB 1498.

Senate Bill 1498 is a consensus vehicle to clean up technical errors such as spelling, grammar, punctuation, and inadvertently transposed numbers in the various California codes. It would not make substantive changes to the law but simply makes the codes more coherent and grammatically correct.

DEPARTMENTS THAT MAY BE AFFECTED				
N/A				
☐ NEW / INCREASED FEE	☐ GOVERNOR'S APPOINTMENT	☐ LEGISLATIVE APPOINTMENT	☐ STATE MANDATE	☐ URGENCY CLAUSE
POSITION ☒ SIGN ☐ VETO ☐ DEFER TO:				
DEPUTY DIRECTOR	DATE	DIRECTOR	DATE	
Terry E. Tamminen	7/3/08	Cynthia Bryant	7-7-08	

ANALYSIS

This bill would make numerous technical changes to minor errors in the California codes. These amendments correct errors in punctuation, spelling, and grammar. The changes also would fix or clarify wrongly numbered codes, incorrect titles of state agencies, and misplaced parentheses. In several places, the bill would add gender-neutral language, new code section numbers replacing ones that have been repealed, and clarifying words to facilitate understanding of the law.

This bill would make no substantive changes to any laws.

LEGISLATIVE HISTORY

Related Legislation

This bill would amend various sections of the Business and Professions Code, Civil Code, Code of Civil Procedure, Commercial Code, Education Code, Elections Code, Financial Code, Fish and Game Code, Food and Agricultural Code, Government Code, Health and Safety Code, Insurance Code, Labor Code, Penal Code, Public Resources Code, Public Utilities Code, Revenue and Taxation Code, Streets and Highways Code, Unemployment Insurance Code, Vehicle Code, Water Code, Welfare and Institutions Code, Sacramento Area Flood Control Agency Act, Ojai Basin Groundwater Management Agency Act, and various chapters of the Statutes of 1997.

This bill does not contain double jointing language, however it contains yielding language that states "Any section of any act enacted by Legislature during the 2008 calendar year that takes effect on or before January 1, 2009, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act shall prevail over this act whether that act is enacted prior to, or subsequent to, the enactment of this act." Therefore, no conflict exists between this bill and any other piece of legislation.

DISCUSSION

The Senate and/or Assembly Judiciary Committees submit maintenance of the codes bills every year to clean up discrepancies in the codes that have been inadvertently enacted. The annual maintenance of the codes bill is an expeditious vehicle to correct these technical inaccuracies and make the codes more consistent. Any objectionable change is automatically dropped from the bill in order to facilitate consensus and implementation. To date, no objections have arisen, and no "NO" votes have been cast.

Many of the changes correct glaring errors in spelling and grammar. Some replace incorrect words. For instance, in the Education Code, section 67500 PART 40.5 , "CAPTIAL" should read "CAPITAL," and in section 1185(b)(4)(B) of the Civil Code "drivers'" should be "driver's" for noun-verb agreement. Incorrect cross-references to other statutes would also be amended or deleted.

Other amendments appear to be strictly stylistic but are not improper. For example, "which" is changed to "that," and "such" is changed to "those" in many places.

Other changes add a few words to make the codes more clear. For example, Public Resources Code section 30253 is amended to read: "New development *shall do all of the following*:" and section 30327.6(a)(2) of the same code is amended to "~~Nothing in this section shall be construed to prohibit~~ *This section does not prohibit*..." While the original language is acceptable, adding those words would make the subdivisions more clear.

This bill also reflects updates in law and practice. Several statutes would become gender neutral by amending them to read "his *or her*." Some code sections have been repealed such as Education Code section 33051(b), thus subsequent numbering had to be changed to reflect this. In section 124991(c) of the Health and Safety Code "investigators" was added to "researchers and health care providers who have been approved by the department" to receive umbilical cord blood samples after paying certain fees. In multiple code sections, new titles would be amended. For example, "United States Immigration and Naturalization Service" would be amended to read "United States *Citizenship* and Immigration Services *of the Department of Homeland Security*."

OPR Concern
In SB 1498, one error was discovered even though this bill is meant to make corrections. On page 15 of section 5616 of the Business and Professions Code, line 25 includes an addition of a word without deleting or adding punctuation that would make the sentence readable. It currently reads "...services are of the same general kind that the landscape architect has previously rendered to, and received payment *for* from, the same client."

Legislative Counsel was apprised of this item. Though this bill did not correct this, it is not substantively objectionable.

OTHER STATES' INFORMATION
No information germane to California has been found.

FISCAL IMPACT
No appropriation is provided. This bill would not create a state-mandated local program.

ECONOMIC IMPACT
This bill would not appear to have an adverse impact on the state's economic or business climate.

LEGAL IMPACT
This bill would not appear to result in any increased liability for the state or conflict with any state or federal laws.

SUPPORT/OPPOSITION
This bill has no known support.

This bill has no known opposition.

ARGUMENTS
Pro: This bill would amend language throughout the code to make nonsubstantive, clarifying changes to the law.

Con: The bill contains one small nonsubstantive error.

VOTES:

Senate – April 1, 2008
Ayes – 37
Noes – 0

Assembly – June 23, 2008
Ayes – 78
Noes – 0

Concurrence – July 2, 2008
Ayes – 40
Noes – 0

LEGISLATIVE STAFF CONTACT

	Office
Cynthia Bryant, Director	(916) 445-3637
Brent J. Jamison, Deputy Director	(916) 445-4831
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Office of the Secretary of Education

ENROLLED BILL REPORT

CONFIDENTIAL-Government Code §6254(l)		
Department/Board: Office of the Secretary of Education	**Author:** Senate Judiciary Committee	**Bill Number/Version Date:** SB 1498 / 6/09/08
Sponsor: Author ☐ **Admin Sponsored** **Proposal No.**	**Related Bill(s)**	**Chaptering Order (if known)** ☐ **Attachment**
Subject: Maintenance of the Codes: Technical Clean-up		

SUMMARY

This bill would make various technical changes in the California Statutory Codes that have been recommended by the Legislative Counsel's Office. The proposed changes would not make any substantive change in the law.

PURPOSE OF THE BILL

The purpose of this bill is to ensure proper interpretation and implementation of statutory code sections.

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN,
This bill is the annual "Maintenance of the Codes" bill and thus is classified as technical clean-up. Each year, Legislative Counsel's Office identifies grammatical and other errors of a technical nature in current law. This bill is the vehicle for implementing those corrections. None of the changes this bill makes in the Education Code would have a substantive effect, and therefore OSE recommends a SIGN.

Departments That May Be Affected: Various departments and agencies				
☐ New / Increased Fee	☐ Governor's Appointment	☐ Legislative Appointment	☐ State Mandate	☐ Urgency Clause

Dept/Board Position	Agency Secretary Position
☐ Sign	☒ Sign
☐ Veto	☐ Veto
☐ Defer to:	☐ Defer to:
Director /Chair Date	Agency Secretary Date WSA 7/7/08

ANALYSIS

Current law directs the Legislative Counsel to advise the Legislature from time to time on legislation necessary to maintain the codes.

This bill would make technical, non-substantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

LEGISLATIVE HISTORY

N/A

PROGRAM BACKGROUND

There is a long-standing agreement that all provisions of this bill must be technical, must not affect or enact substantive law, and must be agreed upon by budget, policy, and appropriations committees in both houses of the Legislature, the Legislative Analyst, the Department of Finance, and all state agencies.

OTHER STATES' INFORMATION

N/A

FISCAL IMPACT

This bill has no fiscal impact.

ECONOMIC IMPACT

N/A

LEGAL IMPACT

N/A

APPOINTMENTS

N/A

SUPPORT/OPPOSITION

Support:
None

Opposition:
None

ARGUMENTS

Pro: Ensures proper interpretation and implementation of statutory law.

Con: None, as it has no substantive effect on current law.

VOTES
Assembly Floor: 78-0

Senate Floor: 40-0

LEGISLATIVE STAFF CONTACT

Contact	Work
David Long, Secretary of Education	(916) 323-9038
Scott Hill, Undersecretary of Education	(916) 327-0052
Vincent Stewart, Assistant Secretary of Higher Education	(916) 324-6874
Hoorig Santikian, Executive Fellow	(916) 445-9351

ENROLLED BILL REPORT

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

CONFIDENTIAL-Government Code §6254(l)		
Department/Board: Air Resources Board	**Author:** Senate Judiciary Committee (Corbett et al)	**Bill Number/Version Date:** **SB 1498 / 6.9.08**
Sponsor: **Office of Legislative Counsel** ☐ **Admin Sponsored** **Proposal No.**	**Related Bill(s)**	**Chaptering Order (if known)** ☐ **Attachment**
Subject: Maintenance of the Codes		

SUMMARY

SB 1498 makes numerous technical corrections and non-substantive changes to various provisions of law, among them three that are in ARB's portion of the Health and Safety Code. *Note: This analysis addresses only the ARB-related portions of the bill.*

PURPOSE OF THE BILL

This is Legislative Counsel's annual "maintenance of the codes" bill. Each year the Legislative Counsel identifies a number of statutes which contain grammatical errors and other errors of strictly a technical nature (i.e. miss-numbered, incorrectly referenced, improper syntax, etc.) The annual "maintenance of the codes" bill is the vehicle for implementing corrections to these statutes. For inclusion in the measure, proposed changes must be minor, technical, noncontroversial and may not affect or enact substantive law.

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN. The proposed changes make minor corrections to air law.

Departments That May Be Affected: Various				
☐ New / Increased Fee	☐ Governor's Appointment	☐ Legislative Appointment	☐ State Mandate	☐ Urgency Clause

Dept/Board Position	Agency Secretary Position
☒ Sign	☒ Sign
☐ Veto	☐ Veto
☐ Defer to:	☐ Defer to:
Director/Chair Date: 7/7/08	Agency Secretary Date: Linda Adams 7/7/08

ANALYSIS

SB 1498 makes non-substantive and minor corrections of a technical and/or grammatical nature to various statutes, including three sections of the Health and Safety Code that relate to ARB. The three sections and their corresponding "fixes" are:

H/S Code	Subject	Correction
43869	Hydrogen fuel regulations	renumber, section reference, spelling
44125	Enhanced fleet modernization	spelling, grammar
44272	Alternative/renewable fuels	section reference, grammar

LEGISLATIVE HISTORY

The "maintenance of the codes" bill is an annual exercise for the Legislative Counsel. The specific legislative history of the three affected Health and Safety Code sections is irrelevant to correcting the statutes.

PROGRAM BACKGROUND

Not applicable.

OTHER STATES' INFORMATION

Not applicable.

FISCAL IMPACT

None.

SUPPORT/OPPOSITION

Support: Office of the Legislative Counsel (sponsor)
Opposition: None on file.

ARGUMENTS

Pro: SB 1498 corrects errors or oversights that have been included in various state laws. The law should be corrected in order to avoid confusion or misinterpretation and misapplication.

Con: There is no "downside" to making the law concise and accurate.

VOTES

Senate Floor:	37-0	April 1, 2008
Assembly Floor	78-0	June 23, 2008
Senate Concurrence:	40-0	July 2, 2008

LEGISLATIVE STAFF CONTACT

Contact	Work
Linda Adams Agency Secretary Cal/EPA	916.324.9214
Patty Zwarts Assistant Secretary for Legislation CalEPA	916.322.7326
Mary D. Nichols Chairman Air Resources Board	916.322.5840
James N. Goldstene Executive Officer Air Resources Board	916.445.4383
Robert P. Oglesby Legislative Director Air Resources Board	916.322.8520

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL: SB 1498 **AUTHOR:** Judiciary Cmte. **DATE:** 07/10/08 **DUE:** 07/22/08

SENATE: 37-0 **ASSEMBLY:** 78-0 **CONCURRENCE:** 40-0

PRESENTED BY: Chris Ryan **RECOMMEND:** **Sign** ☐ **Veto** ☐

SUMMARY

This bill revises various provisions of law to reflect the recommendations made by the Legislative Counsel to the Legislature regarding maintenance of the codes. These changes are technical in nature.

SPONSOR: Office of Legislative Counsel

SUPPORT: California Environmental Protection Agency
Air Resources Board
Labor & Workforce Development Agency
Department of Industrial Relations
Governor's Office of Planning & Research
Office of the Secretary of Education

OPPOSITION: None Received

FISCAL IMPACT

This bill would have no fiscal impact to the state.

PREVIOUS ACTION/SIMILAR LEGISLATION

None provided.

NOTES

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Legislative Counsel of California

July 14, 2008

Honorable Arnold Schwarzenegger
Governor of California
Sacramento, CA 95814

SENATE BILL NO. 1498

Dear Governor Schwarzenegger:

Pursuant to your request, we have reviewed the above-numbered bill authored by the Committee on Judiciary and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

Alvin D. Gress

By
Alvin D. Gress
Principal Deputy

ADG:clr

Two copies to Honorable Ellen Corbett (Chair),
Committee on Judiciary,
pursuant to Joint Rule 34.

Senate Bill No. 1498

CHAPTER 179

An act to amend Sections 108, 480, 490, 650, 1265.1, 1625.4, 3152, 3702, 4999.2, 4999.7, 5216.6, 5616, 5640, 6073, 6212, 6213, 7027.5, 7159, 8698.5, 14207, 14245, 16721.5, 17204, 17915, 17929, and 19596.2 of the Business and Professions Code, to amend Sections 56.10, 798.73, 1185, 1789.13, 1936, 1951.7, and 2938 of the Civil Code, to amend Sections 340.7 and 486.050 of the Code of Civil Procedure, to amend Section 9526.5 of the Commercial Code, to amend Sections 8484, 8774, 17075.10, 33051, 33382, 35021.3, 46300, 47605, 48980, 49423.5, 49431.7, 51228, 52244, 52499.66, 52861, 52922, 56030, 56300, 56302, 56328, 56331, 56341.1, 56342.1, 56363.5, 56366.1, 56426.6, 56431, 56456, 56476, 56504, 56851, 66018.55, 69551, and 71095 of, and to amend the headings of Chapter 1 (commencing with Section 8006) of Part 6 of Division 1 of Title 1 of, Article 1 (commencing with Section 8006) of Chapter 1 of Part 6 of Division 1 of Title 1 of, and Part 40.5 (commencing with Section 67500) of Division 5 of Title 3 of, the Education Code, to amend Section 13001 of the Elections Code, to amend Sections 1520 and 50700 of the Financial Code, to amend Section 8235 of the Fish and Game Code, to amend Sections 3352, 3357, and 20755 of the Food and Agricultural Code, to amend Sections 3502.5, 3517.8, 3543, 7267.2, 7576, 7585, 8588.1, 8592.1, 8879.50, 8879.60, 11126, 11549.2, 11549.5, 11549.6, 11550, 13959, 14838, 15820.104, 15820.105, 19609, 27293, 27361, 31521.3, 31739.33, 53343.1, 53601, 56100.1, 56700.1, 57009, 65007, 65865.5, 65917.5, 65962, 66474.5, 66474.62, 66540.1, 66540.9, 66540.10, 66540.12, 66540.32, 66540.54, 69615, 70375, 70391, 76000, 76000.5, 76104.1, 76104.6, 77200, 77201.1, 95001, 95003, and 95020 of, and to amend and renumber Section 66540.34 of, the Government Code, to amend Sections 1180.1, 1250.8, 1348.8, 1357.03, 1367.07, 1417.2, 1538.5, 1568.09, 1569.145, 1728.8, 11752.1, 25210.9, 25270.2, 25299.57, 25299.58, 39625.02, 43869, 44125, 44272, 101317, 111071, 116033, 121530, 122354, 124900, 124991, 127400, 127405, 128735, and 131540 of the Health and Safety Code, to amend Sections 739.3, 1063.1, 1626, 1764.1, 1765, 1872.8, 1872.81, 1872.86, and 15031 of the Insurance Code, to amend Sections 77.7, 4604.5, and 4658.5 of the Labor Code, to amend Sections 293, 398, 903.2, 1170, 1369.1, and 11062 of the Penal Code, to amend Sections 4584, 5818.2, 25402.5.4, 25402.10, 30253, 30327.5, 30327.6, 31408, 35615, and 40117 of the Public Resources Code, to amend Sections 353.1, 399.12, 884.5, and 2829 of the Public Utilities Code, to amend Sections 107.7, 8352.6, 8352.8, 17053.5, 30182, 32258, 41007, 41011, 41021, 41030, and 41099 of the Revenue and Taxation Code, to amend Sections 118, 464, 25440, and 36622 of the Streets and Highways Code, to amend Section 2739 of the Unemployment Insurance Code, to amend Sections 1803, 2430.1, 4766, 5004.1, 9853.6, 11410, 13353.2, 21251, 22511.85, 24617, 27315, 40002, and 40240 of the Vehicle Code, to amend

Sections 8201, 9602, 9610, 9614, 9625, 13478, and 13480 of, and to amend and repeal Section 8610.5 of, the Water Code, to amend Sections 707, 5348, 5352.1, 5777.7, 5806, 10830, 10960, 11322.5, 14043.1, 14043.26, 14045, 14154.3, 14407.1, 15657.3, 15660, 16522.1, and 19630.5 of the Welfare and Institutions Code, to amend Section 34 of the Sacramento Area Flood Control Agency Act (Chapter 510 of the Statutes of 1990), to amend Section 1107 of the Ojai Basin Groundwater Management Agency Act (Chapter 750 of the Statutes of 1991), to amend Section 1 of Chapter 58 of the Statutes of 1997, and to amend Sections 2 and 4 of Chapter 4, Section 2 of Chapter 26, and Section 2 of Chapter 451, of the Statutes of 2007, relating to maintenance of the codes.

[Approved by Governor July 22, 2008. Filed with Secretary of State July 22, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1498, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

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

SECTION 1. Section 108 of the Business and Professions Code is amended to read:

108. Each of the boards comprising the department exists as a separate unit, and has the functions of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and holding hearings for the revocation of licenses, and the imposing of penalties following those hearings, insofar as these powers are given by statute to each respective board.

SEC. 2. Section 480 of the Business and Professions Code is amended to read:

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence,

that is then conducting a live racing meeting in Orange or Sacramento County.

SEC. 27. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or another provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, information so disclosed shall not be further disclosed by the recipient in a way that would violate this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of a provider of health care or health care service plan may be reviewed by a private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient-identifying medical information may

be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in a way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in a way that would disclose the identity of a patient or violate this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information shall not otherwise be disclosed by a health care service plan except in accordance with this part.

(11) This part does not prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has

complied with all of the requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition, care, and treatment provided may be disclosed to a probate court investigator in the course of an investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existing guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, "tissue bank" and "tissue" have the same meanings as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, including, but not limited to, the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a state-recognized or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in a way that would violate this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to an entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, if the disease management services and care are authorized by a treating physician, or (B) to a disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, if the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. This paragraph does not require physician authorization for the care or treatment of the adherents of a well-recognized church or religious denomination who

depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(18) The information may be disclosed, as permitted by state and federal law or regulation, to a local health department for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events, including, but not limited to, birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as authorized or required by state or federal law or regulation.

(19) The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the Evidence Code, if the psychotherapist, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(20) The information may be disclosed as described in Section 56.103.

(d) Except to the extent expressly authorized by a patient or enrollee or subscriber or as provided by subdivisions (b) and (c), a provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall not intentionally share, sell, use for marketing, or otherwise use medical information for a purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by a patient or enrollee or subscriber or as provided by subdivisions (b) and (c), a contractor or corporation and its subsidiaries and affiliates shall not further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to a person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 28. Section 798.73 of the Civil Code is amended to read:

798.73. The management shall not require the removal of a mobilehome from the park in the event of the sale of the mobilehome to a third party during the term of the homeowner's rental agreement or in the 60 days following the initial notice required by paragraph (1) of subdivision (b) of Section 798.55. However, in the event of a sale to a third party, in order to upgrade the quality of the park, the management may require that a mobilehome be removed from the park where:

(a) It is not a "mobilehome" within the meaning of Section 798.3.

(b) It is more than 20 years old, or more than 25 years old if manufactured after September 15, 1971, and is 20 feet wide or more, and the mobilehome does not comply with the health and safety standards provided in Sections 18550, 18552, and 18605 of the Health and Safety Code and the regulations established thereunder, as determined following an inspection by the appropriate enforcement agency, as defined in Section 18207 of the Health and Safety Code.

Office of Legislative Counsel

Forty-eighth Report on

LEGISLATION NECESSARY TO MAINTAIN THE CODES

April 17, 2009

Diane F. Boyer-Vine
Legislative Counsel

FORTY-EIGHTH REPORT ON LEGISLATION NECESSARY TO MAINTAIN THE CODES

INTRODUCTION

The Legislative Counsel is required, by Section 10242 of the Government Code, to advise the Legislature from time to time as to legislation necessary to maintain the codes and legislation necessary to codify those statutes that are enacted subsequent to the enactment of the codes. This report is submitted to the Legislature in compliance with that requirement.

The present report includes recommendations only for nonsubstantive changes in the statutes, and continues without change the policies first stated in the March 1, 1954, Report on Legislation Necessary to Maintain the Codes.

This report reflects the changes proposed in Senate Bill No. 1498 of the 2007–08 Regular Session.

PART I

ACTS RECOMMENDED FOR CODIFICATION IN 2008

Since the publication in 2007 of the Forty-Seventh Report, no statutes have been proposed for codification.

PART II

CORRECTIVE LEGISLATION TO MAINTAIN THE CODES

Recommendations for Correction in 2008

The suggestions for corrective legislation necessary to maintain the codes in 2008 are set forth in the appendix to this report. These suggestions represent an accumulation of matters that have come to the attention of the Office of Legislative Counsel since the 2007 report, through correspondence and the suggestions of public officials and members of the public.

Further, with regard to any code provision that is a subject of this report, any reference to any individual, or class of individuals, by sex, or by any term that ordinarily refers only to one sex, has been revised to refer to both sexes or to a neutral class, except where the context of the provision otherwise requires.

In any code provision that is a subject of this report, the word "said" or "such," when it is used as a grammatical article in place of "the," "those," or any other term appropriately used in that context, has been deleted and replaced with a more appropriate word or phrase, to conform to code style. Furthermore, the phrase "the provisions of," when referring to an entire code or an otherwise designated body of law (for example, "pursuant to the provisions of the Civil Code" or "under the provisions of this chapter"), has been deleted to conform to code style.

No substantive change is involved in the proposed recommendations for correction in 2008.

Summary of Action on Prior Recommendations for Corrective Legislation

Assembly Bill No. 299 was introduced in 2007 at the 2007-08 Regular Session for the correction of those errors in the codes listed in the appendix of the Forty-Seventh Report on Legislation Necessary to Maintain the Codes. The bill was enacted as Chapter 130 of the Statutes of 2007.

CONCLUSION

The Legislative Counsel recommends to the Legislature that the subject of this report be referred to the appropriate committees of the Senate and the Assembly for the purpose of ascertaining the propriety of the correction or repeal of those statutes listed in the appendix of this report, and of holding any hearings thereon that may appear desirable to those committees.

Appendix

CORRECTIVE LEGISLATION NECESSARY

TO MAINTAIN THE CODES

CIVIL CODE

§ 56.10 *(Item 08-27)* In this section, changes should be made to correct errors in grammar and to conform to code style. In addition, the references to "Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code" should be changed to "Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code" to correct incorrect cross-references.

§ 798.73 *(Item 08-28)* In this section, changes should be made to conform to code style.

§ 1185 *(Item 08-29)* In this section, changes should be made to correct errors in punctuation and to conform to code style. In addition, the reference in subparagraph (A) of paragraph (3) of subdivision (b) to the "California Department of Motor Vehicles" should be changed to "Department of Motor Vehicles" to correct an incorrect reference, and the reference in paragraph (4) of subdivision (b) to "United States Immigration and Naturalization Service" should be changed to "United States Citizenship and Immigration Services of the Department of Homeland Security" to update an obsolete reference.

§ 1789.13 *(Item 08-30)* In this section, changes should be made to correct errors in punctuation and to conform to code style.

§ 1936 *(Item 08-31)* In this section, changes should be made to correct errors in grammar, capitalization, and punctuation, and to conform to code style. In addition, the reference in subparagraph (E) of paragraph (9) of subdivision (a) to "subparagraph (C) of paragraph (1) of subdivision (r)" should be changed to "subparagraph (C) of paragraph (1) of subdivision (t)" to correct an incorrect internal cross-reference.

§ 1951.7 *(Item 08-32)* In this section, changes should be made to conform to code style.

§ 2938 *(Item 08-33)* In this section, changes should be made to correct errors in grammar and punctuation, and to conform to code style and organization. In addition, the reference in paragraph (3) of subdivision (c) to "subdivision (j)" should be changed to "subdivision (k)" to correct an incorrect internal cross-reference.

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 1006
AUTHOR : Committee on Budget and Fiscal Review
TOPIC : State government.

TYPE OF BILL :
Inactive
Non-Urgency
Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY
2012
June 27 Chaptered by Secretary of State. Chapter 32, Statutes of 2012.
June 27 Approved by the Governor.
June 27 Enrolled and presented to the Governor at 5:45 p.m.
June 27 In Senate. Concurrence in Assembly amendments pending. Assembly amendments concurred in. (Ayes 25. Noes 14. Page 4147.) Ordered to engrossing and enrolling.
June 27 Assembly Rule 96 suspended. (Ayes 50. Noes 26. Page 5460.) Withdrawn from committee. Ordered to third reading. Read third time. Passed. (Ayes 50. Noes 28. Page 5474.) Ordered to the Senate.
June 25 From committee with author's amendments. Read second time and amended. Re-referred to Com. on BUDGET.
Mar. 26 Referred to Com. on BUDGET.
Mar. 22 In Assembly. Read first time. Held at Desk.
Mar. 22 Read third time. Passed. (Ayes 23. Noes 10. Page 2975.) Ordered to the Assembly.
Mar. 12 Read second time. Ordered to third reading.
Mar. 8 Withdrawn from committee. (Ayes 24. Noes 14. Page 2916.) Ordered to second reading.
Feb. 16 Referred to Com. on RLS.
Feb. 7 From printer. May be acted upon on or after March 8.
Feb. 6 Introduced. Read first time. To Com. on RLS. for assignment. To print.

SENATE BILL **No. 1006**

Introduced by Committee on Budget and Fiscal Review

February 6, 2012

An act relating to the Budget Act of 2012.

LEGISLATIVE COUNSEL'S DIGEST

SB 1006, as introduced, Committee on Budget and Fiscal Review. Budget Act of 2012.

This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.

O

SENATE RULES COMMITTEE SB 1006
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 1006
Author: Senate Budget and Fiscal Review Committee
Amended: As introduced
Vote: 21

SUBJECT: Budget Trailer Bill

SOURCE: Author

DIGEST: This bill expresses the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.

ANALYSIS: Senate Bills 1004 through 1043, inclusive, are to be considered as vehicles for the 2012-13 Budget Trailer Bills.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

DLW:mw 3/5/12 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

AMENDED IN ASSEMBLY JUNE 25, 2012

SENATE BILL No. 1006

Introduced by Committee on Budget and Fiscal Review

February 6, 2012

~~An act relating to the Budget Act of 2012.~~ *An act to amend Section 17206 of the Business and Professions Code, to amend Section 1936 of the Civil Code, to amend Sections 8879.58, 8879.59, 11270, 11546, 13071, 17581, 17617, 19849, 19851, and 76104.7 of, to amend and repeal Section 5924 of, to amend, repeal, and add Section 51298 of, to add Sections 8169.7, 12531, and 13300.5 to, to add and repeal Section 15849.65 of, to repeal Section 50087 of, and to repeal and amend Section 15849.6 of, the Government Code, to amend Section 11873 of the Insurance Code, to amend Section 62.9 of the Labor Code, to amend Section 972.1 of the Military and Veterans Code, to amend Section 6611 of the Public Contract Code, and to amend Sections 8352.3, 8352.4, 8352.5, 8352.6, and 19533 of, and to repeal Article 6 (commencing with Section 19290) of Chapter 5 of Part 10.2 of Division 2 of, the Revenue and Taxation Code, and to amend Item 7300-001-0001 of Section 2.00 of the Budget Act of 2012, relating to state government, and making an appropriation therefor, to take effect immediately, bill related to the budget.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1006, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2012.~~ *State government.*

(1) Existing law regulates consumer rental car agreements and authorizes rental car companies to collect a customer facility charge based on a fee required by an airport operated by specified entities. Existing law also directs those airports to complete independent audits

to substantiate the need for the fee prior to the collection of these fees from rental companies. Existing law requires the Controller to review these independent audits and report its conclusions to the Legislature, as specified. Existing law also requires the Controller to be reimbursed for these reviews by the airport being audited.

This bill would remove the provisions requiring the Controller to review, and report to the Legislature regarding, the independent audits described above.

(2) Existing law requires every city, county, or city and county that has at least 5,000 residents or in which 5% of the population is of Filipino ancestry or ethnic origin and that conducts a survey as to the ancestry or ethnic origin of its employees, or that maintains any statistical tabulation of minority group employees, to categorize employees whose ancestry or ethnic origin is Filipino as Filipinos in the survey or tabulation.

This bill would repeal that requirement.

(3) Existing law requires the Department of General Services to offer for sale land that is declared excess or is declared surplus by the Legislature, and that is not needed by any state agency, to local agencies and private entities and individuals, subject to specified conditions.

This bill would authorize the Department of General Services to sell all or a portion of specified parcels of property located in the City of Sacramento that are leased by the department to the Capitol Area Development Authority, subject to specified criteria. The bill would require the proceeds of that sale to be deposited into the General Fund or the Deficit Recovery Fund, as specified.

(4) Existing law requires a $3 state-only penalty to be levied in each county for every $10, or part of $10, of a fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, as specified.

This bill would increase the amount of the state-only penalty to $4 for every $10, or part of $10, of those payments.

(5) Existing law, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by the voters as Proposition 1B at the November 7, 2006, general election, authorizes the issuance of $19.925 billion of general obligation bonds for specified purposes. Existing law specifies the responsibilities of the California Emergency Management Agency (Cal EMA) with respect to the allocation of bond funds appropriated from the Transit System Safety, Security, and Disaster Response Account.

This bill would require Cal EMA, in prioritizing the funding of projects, to additionally prioritize projects that demonstrate the ability and intent to expend a significant percentage of project funds within 6 months. During each fiscal year a transit agency or transit operator receives funds, the bill would authorize Cal EMA to monitor project expenditures.

(6) Existing law establishes the California Technology Agency within state government, and requires the office to carry out specified duties relating to creating and managing the technology policy of the state. Existing law requires the agency to be responsible for the approval and oversight of information technology projects.

This bill would require a state department to get written approval from the California Technology Agency to procure oversight services for information technology projects unless otherwise required by law.

(7) Existing law requires the Department of Finance to certify annually to the Controller the amount determined to be the fair share of administrative costs due and payable from each state agency and to certify to the Controller any amount redetermined to be the fair share of administrative costs due and payable from a state agency. Existing law requires the Controller to notify a state agency of that amount, and, unless the state agency requests that those payments be deferred, to transfer that amount from specified funds to the Central Service Cost Recovery Fund. Existing law defines "administrative costs" as the amounts expended by various specified state entities for supervision or administration of the state government or for services to the various state agencies.

This bill would modify the definition of administrative costs to include amounts expended by the Financial Information System for California.

(8) Existing law requires the Director of Finance, in coordinating the internal auditors of state agencies, to ensure that these auditors utilize the "Standards for the Professional Practices of Internal Auditing."

This bill would also require the director to be responsible for coordinating state agency internal audits and identifying when agencies are required to comply with federally mandated audits.

(9) Existing law requires the Department of Finance, the Controller, the Treasurer, and the Department of General Services to collaboratively develop, implement, utilize, maintain, and operate the Financial Information System for California (FISCal) as a single integrated financial management system, as specified. Existing law

requires the fiscal Project Office in the Department of Finance to implement these provisions until the Office of the Financial Information System is established.

This bill would require the FISCal Project Office to report to the Legislature, by February 15 of each year, an update on the project, as specified. The provisions of the bill would remain in effect only until a postimplementation evaluation report has been approved by the California Technology Agency.

(10) Existing law sets forth the duties and powers of the Treasurer in the sale of state bonds. Moneys are continuously appropriated from the General Fund in an annual amount necessary to pay all obligations, including principal, interest, fees, costs, indemnities, and all other amounts incurred by the state pursuant to any credit enhancement or liquidity agreement entered into by the state, as specified, for bonds payable pursuant to an appropriation from the General Fund. Existing law, until June 30, 2013, prohibits the amount appropriated for these fees, costs, and other similar expenses from exceeding 3% of the original principal amount of the bonds.

This bill would repeal the inoperative date of those provisions, thereby extending the 3% interest rate indefinitely, thereby making an appropriation.

(11) Existing law, the State Building Construction Act of 1955, authorizes the State Public Works Board to acquire and construct public buildings for use by state agencies, when authorized by a separate act or appropriation enacted by the Legislature. Existing law authorizes the board to issue bonds, notes, or other obligations to finance the acquisition or construction of a public building, facility, or equipment as authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing.

This bill would revise and recast that provision to instead authorize the State Public Works Board to issue bonds, notes, or other obligations to finance the acquisition, design, or construction of a public building as authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing, including interest payable on any interim loan or interim financing for the public building.

(12) Existing law, until January 1, 2013, requires a mortgagee, trustee, beneficiary, or authorized agent to comply with certain procedures in dealing with a borrower who is in default prior to filing a notice of default and to explore options for the borrower to avoid foreclosure, as specified. Existing law provides that a violation of these

provisions would result in specified civil penalties, including penalties for unfair business practices. Existing law provides that civil penalties collected for unfair business practice violations brought by the Attorney General are deposited in the Unfair Competition Law Fund within the General Fund.

This bill would establish the National Mortgage Special Deposit Fund in the State Treasury as a continuously appropriated fund and would require certain direct payments made to the state under the National Mortgage Settlement to be deposited in the fund for allocation by the Director of Finance, as specified. This bill would further authorize the Director of Finance to allocate moneys from the fund to offset General Fund expenditures during the 2011–12, 2012–13, and 2013–14 fiscal years for purposes consistent with the National Mortgage Settlement. The bill would also require that civil penalties collected under the National Mortgage Settlement be deposited into the Unfair Competition Fund, and be continuously appropriated to the Department of Justice to offset the General Fund costs incurred by the department, thereby also making an appropriation.

(13) Existing law requires the Department of Veterans Affairs to disburse funds, appropriated to the department for the purpose of supporting county veterans service offices pursuant to the annual Budget Act, on a pro rata basis, to counties that comply with certain conditions. Existing law requires the Department of Veterans Affairs to determine annually the amount of new or increased monetary benefits paid to eligible veterans by the federal government attributable to the assistance of county veterans service offices and requires the department to prepare and transmit its determination for the preceding fiscal year to the Department of Finance and the Legislature, as specified.

This bill would require the Department of Veterans Affairs, by June 30, 2013, to develop a performance-based formula that will incentivize county veterans service offices to perform workload units, as defined, that help veterans access federal compensation and pension benefits and other benefits, in order to maximize the amount of federal money received by California veterans. This bill would require the department to conduct a review of the high-performing and low-performing county veterans service offices and based on this review, produce a best-practices manual for county veterans service offices by June 30, 2013.

(14) Existing law, known as the Capital Investment Incentive Program, authorizes, until January 1, 2017, a city, county, or city and

county to pay capital investment incentive amounts to a requesting proponent of a "qualified manufacturing facility," as defined. Existing law also requires the Business, Transportation and Housing Agency to certify qualified manufacturing facilities for purposes of these provisions and to carry out various oversight duties, including, but not limited to, reporting specified information to the Legislature.

This bill would, until June 30, 2013, expand these provisions to include a "qualified research and development facility," modify and provide additional definitions, and transfer the duties of the Business, Transportation and Housing Agency to the Governor's Office of Business and Economic Development. This bill would, on July 1, 2013, restore these provisions to existing law.

(15) Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, including school districts, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions.

Existing law provides that no local agency or school district shall be required to implement or give effect to any statute or executive order, or portion thereof that imposes a mandate during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if specified conditions are met, including that the statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year.

This bill would provide that all state-mandated local programs suspended in the Budget Act for the 2012–13 fiscal year will also be suspended in the 2013–14 and 2014–15 fiscal years.

(16) Existing law also requires that the total amount due to each city, county, city and county, and special district, for which the state has determined that reimbursement is required under the California Constitution, be appropriated for payment to these entities over a period of not more than 15 years, commencing with the Budget Act for the 2006–07 fiscal year and concluding with the Budget Act for the 2020–21 fiscal year.

This bill would prohibit appropriations for payment of reimbursement claims pursuant to these provisions for the fiscal years 2012-13, 2013-14, and 2014-15.

(17) Existing law imposes an excise tax on motor vehicle fuel (gasoline). Existing law, as a result of the elimination of the sales tax on gasoline effective July 1, 2010, provides for a commensurate increase in the excise tax on gasoline. Article XIX of the California Constitution requires gasoline excise tax revenues from motor vehicles traveling upon public streets and highways to be deposited in the Highway Users Tax Account, for allocation to city, county, and state transportation purposes. Existing law generally provides for statutory allocation of gasoline excise tax revenues attributable to other modes of transportation, including aviation, boats, agricultural vehicles, and off-highway vehicles, to particular accounts and funds for expenditure on purposes associated with those other modes. Expenditure of the gasoline excise tax revenues attributable to those other modes is not restricted by Article XIX of the California Constitution.

This bill, with respect to the increase in gasoline excise taxes as a result of the elimination of the sales tax on gasoline, would instead transfer the revenues attributable to aviation, boats, agricultural vehicles, and off-highway vehicles to the General Fund, commencing July 1, 2012. The bill, with respect to these revenues already transferred to the particular nonhighway accounts and funds in the 2010–11 and 2011–12 fiscal years, would also transfer those revenues to the General Fund.

(18) Existing law states that it is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of state employees 8 hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies.

This bill would require a state employee, except as specified, for the period from July 1, 2012, to June 30, 2013, inclusive, either as required by an applicable memorandum of understanding or by the direction of the Department of Human Resources for excluded employees, to participate in the Personal Leave Program 2012 (PLP 2012 Program), under which each employee would receive a reduction in pay not greater than 5% in exchange for 8 hours of PLP 2012 Program leave credits per month.

(19) Existing law requires the department to adopt rules governing hours of work and overtime compensation and the keeping of related records, except that conflicting provisions of a memorandum of understanding are controlling, as specified.

This bill would require the department, notwithstanding any conflicting provisions of a memorandum of understanding, to adopt a plan for the period from July 1, 2012, to June 30, 2013, inclusive, by which all state employees, except as specified, who are not subject to the PLP 2012 Program, as described above, shall be furloughed for one workday per calendar month, and to adopt rules for the implementation, administration, and enforcement of this furlough plan.

(20) Existing law provides that the State Compensation Insurance Fund shall not be subject to the provisions of the Government Code made applicable to state agencies generally or collectively, unless the provision specifically names the fund as an agency to which it applies. Existing law also provides that employee positions funded by the State Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law.

This bill would provide that employees of the fund shall, without limitation, be subject to any and all reductions in state employee compensation imposed by the Legislature on other state employees for the period from July 1, 2012, to June 30, 2013, inclusive, regardless of the means adopted to effect those reductions. With the exception of those reductions, the bill would further provide that if any of these provisions, or a practice or procedure adopted pursuant to these provisions, conflicts with a memorandum of understanding, the memorandum of understanding shall be controlling, as specified.

(21) Existing law authorizes the Department of General Services to, relative to contracts for goods, services, information technology, and telecommunications, use a negotiation process if the department finds that certain conditions exist, as specified.

This bill would authorize, until January 1, 2018, the California Technology Agency to utilize that negotiation process for the purpose of procuring information technology and telecommunications goods and services on behalf of state departments and information technology projects. The bill would require an annual report to the Legislature, as specified.

(22) Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an injured employee for injuries sustained in the course of his or her employment. Existing law requires that the Director of Industrial Relations levy and collect assessments from employers in an amount determined by the director to be sufficient to fund specified workers' compensation programs implemented in the

state. In that connection, existing law requires the director to include in the total assessment amount the Department of Industrial Relations' costs for administering the assessment, including the collections process and the cost of reimbursing the Franchise Tax Board or another agency or department for its cost of collection activities.

Existing law requires the Department of Industrial Relations to enter into an agreement with the Franchise Tax Board that transfers responsibility from the Department of Industrial Relations to the Franchise Tax Board for the collection of delinquent fees, wages, penalties, and costs, and any interest, including the assessments from employers in an amount determined by the Director of Industrial Relations to be sufficient to fund specified workers' compensation programs implemented in the state and any penalties.

Existing law also authorizes the Department of Industrial Relations to enter into an agreement with the Employment Development Department that provides for the transfer of all or part of the responsibility from the Department of Industrial Relations, or any office or division within that department, to the Employment Development Department for the collection of assessments, as specified, arising out of the enforcement of any law within the jurisdiction of the Department of Industrial Relations or any office or division within that department, as provided.

This bill would repeal the requirement that the Department of Industrial Relations enter into an agreement with the Franchise Tax Board to transfer responsibility from the Department of Industrial Relations to the Franchise Tax Board for the collection of delinquent fees, wages, penalties, and costs, and any interest, including the assessments from employers in an amount determined by the Director of Industrial Relations to be sufficient to fund specified workers' compensation programs implemented in the state and any penalties. This bill would require the Director of Industrial Relations to include in that total assessment amount the cost of reimbursing the Employment Development Department or another agency or department for its cost of collection activities, as provided. This bill would make other conforming changes.

(23) The Budget Bill, enacted as the Budget Act of 2012, would make appropriations for the support of state government for the 2012–13 fiscal year.

This bill would amend the Budget Act of 2012 by revising an item of appropriation in the Budget Act of 2012.

(24) This bill would appropriate $1,000 from the General Fund to the Department of Finance to implement this bill.

(25) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.~~

Vote: majority. Appropriation: ~~no~~ *yes*. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

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

SECTION 1. Section 17206 of the Business and Professions Code is amended to read:

17206. Civil Penalty for Violation of Chapter

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in

which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3. *Notwithstanding Section 13340 of the Government Code, any civil penalties deposited in the fund pursuant to the National Mortgage Settlement, as provided in Section 12531 of the Government Code, are continuously appropriated to the Department of Justice for the purpose of offsetting General Fund costs incurred by the Department of Justice.*

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 2. Section 1936 of the Civil Code, as amended by Section 1 of Chapter 531 of the Statutes of 2011, is amended to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) "Rental company" means a person or entity in the business of renting passenger vehicles to the public.

(2) "Renter" means any person in a manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) "Authorized driver" means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if he or she is engaged in business activity with the renter, is a licensed driver, and satisfies the rental company's minimum age requirement, and (D) a person expressly listed by the rental company on the renter's contract as an authorized driver.

(4) (A) "Customer facility charge" means any fee, including an alternative fee, required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) To finance, design, and construct consolidated airport car rental facilities.

(ii) To finance, design, construct, and operate common-use transportation systems that move passengers between airport

terminals and those consolidated car rental facilities, and acquire vehicles for use in that system.

(iii) To finance, design, and construct terminal modifications solely to accommodate and provide customer access to common-use transportation systems.

(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary, the Assembly Committee on Transportation, and the Senate Committee on Transportation and Housing. In the case of a transportation system, the audit also shall consider the reasonable costs of providing the transit system or busing network. Notwithstanding clause (iii) of subparagraph (A), the fees designated as a customer facility charge shall not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) Except as provided in subparagraph (D), the authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(D) If a bond or other form of indebtedness is not used for financing, or the bond or other form of indebtedness used for financing has been paid, the Oakland International Airport may require the collection of a customer facility charge for a period of up to 10 years from the imposition of the charge for the purposes allowed by, and subject to the conditions imposed by, this section.

(5) "Damage waiver" means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(6) "Electronic surveillance technology" means a technological method or system used to observe, monitor, or collect information, including telematics, Global Positioning System (GPS), wireless technology, or location-based technologies. "Electronic surveillance technology" does not include event data recorders (EDR), sensing and diagnostic modules (SDM), or other systems that are used either:

(A) For the purpose of identifying, diagnosing, or monitoring functions related to the potential need to repair, service, or perform maintenance on the rental vehicle.

(B) As part of the vehicle's airbag sensing and diagnostic system in order to capture safety systems-related data for retrieval after a crash has occurred or in the event that the collision sensors are activated to prepare the decisionmaking computer to make the determination to deploy or not to deploy the airbag.

(7) "Estimated time for replacement" means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as "crash books."

(8) "Estimated time for repair" means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(9) "Membership program" means a service offered by a rental company that permits customers to bypass the rental counter and go directly to the car previously reserved. A membership program shall meet all of the following requirements:

(A) The renter initiates enrollment by completing an application on which the renter can specify a preference for type of vehicle and acceptance or declination of optional services.

(B) The rental company fully discloses, prior to the enrollee's first rental as a participant in the program, all terms and conditions of the rental agreement as well as all required disclosures.

(C) The renter may terminate enrollment at any time.

(D) The rental company fully explains to the renter that designated preferences, as well as acceptance or declination of optional services, may be changed by the renter at any time for the next and future rentals.

(E) An employee designated to receive the form specified in subparagraph (C) of paragraph (1) of subdivision (t) is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(10) "Passenger vehicle" means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle. However, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(6) An administrative charge, which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle.

(c) The total amount of the renter’s liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts, which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts, which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(6) The administrative charge described in paragraph (6) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). An administrative

charge shall not be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle shall not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company shall not recover from the renter or other authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and shall not assert or collect a claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim shall not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles, less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or business insurance carrier. The rental company shall not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved between the insurance carrier and the rental company. The renter shall remain responsible for payment to the rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

(5) A rental company shall not recover from the renter or other authorized driver for an item described in subdivision (b) to the extent the rental company obtains recovery from another person.

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of another person.

(e) (1) Except as provided in subdivision (f), a damage waiver shall provide or, if not expressly stated in writing, shall be deemed to provide that the renter has no liability for a damage, loss, loss of use, or a cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to a damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside the United States.

(3) An authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company that offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract, and, for renters who are enrolled in the rental company's membership program, in a sign that shall be posted in a location clearly visible to those renters as they enter the location where their reserved rental cars are parked or near the exit of the bus or other conveyance that transports the enrollee to

a reserved car: (A) the nature of the renter's liability, such as liability for all collision damage regardless of cause, (B) the extent of the renter's liability, such as liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides a damage waiver shall orally disclose to all renters, except those who are participants in the rental company's membership program, that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. The renter's receipt of the oral disclosure shall be demonstrated through the renter's acknowledging receipt of the oral disclosure near that part of the contract where the renter indicates, by the renter's own initials, his or her acceptance or declination of the damage waiver. Adjacent to that same part, the contract also shall state that the damage waiver is optional. Further, the contract for these renters shall include a clear and conspicuous written disclosure that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance.

(3) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

"NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company, or credit card issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

Further, if you use a credit card that provides coverage for your potential liability, you should check with the issuer to determine if you must first exhaust the coverage limits of your own insurance before the credit card coverage applies.

The rental company will not hold you responsible if you buy a damage waiver. But a damage waiver will not protect you if (list exceptions)."

(A) When the above notice is printed in the rental contract or holder in which the contract is placed, the following shall be printed immediately following the notice:

"The cost of an optional damage waiver is $____ for every (day or week)."

(B) When the above notice appears on a sign, the following shall appear immediately adjacent to the notice:

"The cost of an optional damage waiver is $____ to $____ for every (day or week), depending upon the vehicle rented."

(h) Notwithstanding any other provision of law, a rental company may sell a damage waiver subject to the following rate limitations for each full or partial 24-hour rental day for the damage waiver.

(1) For rental vehicles that the rental company designates as an "economy car," "subcompact car," "compact car," or another term having similar meaning when offered for rental, or another vehicle having a manufacturer's suggested retail price of nineteen thousand dollars ($19,000) or less, the rate shall not exceed nine dollars ($9).

(2) For rental vehicles that have a manufacturer's suggested retail price from nineteen thousand one dollars ($19,001) to thirty-four thousand nine hundred ninety-nine dollars ($34,999),

inclusive, and that are also either vehicles of next year's model, or not older than the previous year's model, the rate shall not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model-year, the rate shall not exceed nine dollars ($9).

(i) The manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from the previous year in the Consumer Price Index. For the purposes of this section, "Consumer Price Index" means the United States Consumer Price Index for All Urban Consumers, for all items.

(j) A rental company that disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for a damage waiver and a statement that a damage waiver is optional.

(k) (1) A rental company shall not require the purchase of a damage waiver, optional insurance, or another optional good or service.

(2) A rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase the damage waiver, optional insurance, or another optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase the damage waiver, optional insurance, or another optional good or service.

(*l*) (1) In the absence of express permission granted by the renter subsequent to damage to, or loss of, the vehicle, a rental company shall not seek to recover any portion of a claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing a debit or block to be placed on the renter's credit card account.

(2) A rental company shall not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A customer facility charge may be collected by a rental company under the following circumstances:

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, a special district, or the San Diego County

Regional Airport Authority formed pursuant to Division 17 (commencing with Section 170000) of the Public Utilities Code.

(B) The fee is calculated on a per contract basis or as provided in paragraph (2).

(C) The fee is a user fee, not a tax imposed upon real property or an incidence of property ownership under Article XIIID of the California Constitution.

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract or the amount provided in paragraph (2).

(E) The fee for a consolidated rental car facility shall be collected only from customers of on-airport rental car companies. If the fee imposed by the airport is for both a consolidated rental car facility and a common-use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10) or the amount provided in paragraph (2), but the fee imposed on customers of off-airport rental car companies who are transported on the common-use transportation system is proportionate to the costs of the common-use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided that the airport requires off-airport customers to use the common-use transportation system. For purposes of this subparagraph, "on-airport rental car company" means a rental company operating under an airport property lease or an airport concession or license agreement whose customers use or will use the consolidated rental car facility and the collection of the fee as to those customers is consistent with subparagraph (C).

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, and constructing the facility and financing, designing, constructing, and operating any common-use transportation system, or acquiring vehicles for use in that system, and shall not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to fees which are governed by Section 50474.1 of the Government Code or Section 57.5 of the San Diego Unified Port District Act.

(I) For any airport seeking to require rental car companies to collect an alternative customer facility charge pursuant to paragraph (2), the following provisions apply:

(i) Notwithstanding Section 10231.5 of the Government Code, the airport shall provide reports on an annual basis to the Senate and Assembly Committees on Judiciary detailing all of the following:

(I) The total amount of the customer facility charge collected.

(II) How the funds are being spent.

(III) The amount of and reason for any changes in the airport's budget or financial needs for the facility or common-use transportation system.

(IV) Whether airport concession fees authorized by Section 1936.01 have increased since the prior report, if any.

(ii) The airport shall complete the independent audit required by subparagraph (B) of paragraph (4) of subdivision (a) prior to initial collection of the customer facility charge, prior to any increase pursuant to paragraph (2), and every three years after initial collection and any increase until such time as the fee authorization becomes inoperative pursuant to subparagraph (C) of paragraph (4) of subdivision (a). ~~The Controller shall review those audits and independently examine and substantiate the necessity for and the amount of the customer facility charge. The Controller's costs shall be reimbursed by the individual airport being audited. Notwithstanding Section 10231.5 of the Government Code, the Controller shall report to the Legislature on its conclusions, including whether the airport's actual or projected costs are supported and justified, any steps the airport may take to limit costs, potential alternatives for meeting the airport's revenue needs other than the collection of the fee, and whether and to what extent car rental companies or other businesses or individuals using the facility or common-use transportation system may pay for the costs associated with these facilities and systems other than the fee from rental customers, or whether the airport did not comply with any provision of this subparagraph.~~

(iii) Use of the bonds shall be limited to construction and design of the consolidated rental car facility, terminal modifications, and operating costs of the common-use transportation system, as specified in paragraph (4) of subdivision (a).

(2) Any airport may require rental car companies to collect an alternative customer facility charge under the following conditions:

(A) The airport first conducts a publicly noticed hearing pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section

54950) of Part 1 of Division 2 of Title 5 of the Government Code) to review the costs of financing the design and construction of a consolidated rental car facility and the design, construction, and operation of any common-use transportation system in which all of the following occur:

(i) The airport establishes the amount of revenue necessary to finance the reasonable cost to design and construct a consolidated rental car facility and to design, construct, and operate any common-use transportation system, or acquire vehicles for use in that system, based on evidence presented during the hearing.

(ii) The airport finds, based on evidence presented during the hearing, that the fee authorized in paragraph (1) will not generate sufficient revenue to finance the reasonable costs to design and construct a consolidated rental car facility and to design, construct, and operate any common-use transportation system, or acquire vehicles for use in that system.

(iii) The airport finds that the reasonable cost of the project requires the additional amount of revenue that would be generated by the proposed daily rate, including any rate increase, authorized pursuant to this paragraph.

(iv) The airport outlines each of the following:

(I) Steps it has taken to limit costs.

(II) Other potential alternatives for meeting its revenue needs other than the collection of the fee.

(III) The extent to which rental car companies or other businesses or individuals using the facility or common-use transportation system will pay for the costs associated with these facilities and systems other than the fee from rental customers.

~~(v) The Controller reviews and substantiates the need for and amount of the fee pursuant to clause (ii) of subparagraph (I) of paragraph (1).~~

(B) The airport may not require the fee authorized in this paragraph to be collected at any time that the fee authorized in paragraph (1) of this subdivision is being collected.

(C) Pursuant to the procedure set forth in this subdivision, the fee may be collected at a rate charged on a per-day basis subject to the following conditions:

(i) Commencing January 1, 2011, the amount of the fee may not exceed six dollars ($6) per day.

(ii) Commencing January 1, 2014, the amount of the fee may not exceed seven dollars and fifty cents ($7.50) per day.

(iii) Commencing January 1, 2017, and thereafter, the amount of the fee may not exceed nine dollars ($9) per day.

(iv) At no time shall the fee authorized in this paragraph be collected from any customer for more than five days for each individual rental car contract.

(v) An airport subject to this paragraph shall initiate the process for obtaining the authority to require or increase the alternative fee no later than January 1, 2018. Any airport that obtains the authority to require or increase an alternative fee shall be authorized to continue collecting that fee until the fee authorization becomes inoperative pursuant to subparagraph (C) of paragraph (4) of subdivision (a).

(3) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section, or another law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, are not subject to sales, use, or transaction taxes.

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, that a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee that is required to be paid by the renter as a condition of hiring or leasing the vehicle, including, but not limited to, required fuel or airport surcharges other than customer facility charges, nor a fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may

impose an additional charge include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company shall not charge a fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall disclose clearly in that advertisement or quotation the terms of mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an airport where a customer facility charge is imposed, the rental company shall disclose clearly the existence and amount of the customer facility charge. For purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. For purposes of this subparagraph, quotations and reservations include those that are telephonic, in-person, and computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

(B) If a person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer facility charge is imposed, that person or entity shall, provided that he, she, or it is provided with information about the existence

and amount of the fee, to the extent not specifically prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company is not responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

(6) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter an amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter an amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(o) A rental company shall not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except in the following circumstances:

(1) (A) When the equipment is used by the rental company only for the purpose of locating a stolen, abandoned, or missing rental vehicle after one of the following:

(i) The renter or law enforcement has informed the rental company that the vehicle is missing or has been stolen or abandoned.

(ii) The rental vehicle has not been returned following one week after the contracted return date, or by one week following the end of an extension of that return date.

(iii) The rental company discovers the rental vehicle has been stolen or abandoned, and, if stolen, it shall report the vehicle stolen to law enforcement by filing a stolen vehicle report, unless law enforcement has already informed the rental company that the vehicle is missing or has been stolen or abandoned.

(B) If electronic surveillance technology is activated pursuant to subparagraph (A), a rental company shall maintain a record, in either electronic or written form, of information relevant to the activation of that technology. That information shall include the

rental agreement, including the return date, and the date and time the electronic surveillance technology was activated. The record shall also include, if relevant, a record of written or other communication with the renter, including communications regarding extensions of the rental, police reports, or other written communication with law enforcement officials. The record shall be maintained for a period of at least 12 months from the time the record is created and shall be made available upon the renter's request. The rental company shall maintain and furnish explanatory codes necessary to read the record. A rental company shall not be required to maintain a record if electronic surveillance technology is activated to recover a rental vehicle that is stolen or missing at a time other than during a rental period.

(2) In response to a specific request from law enforcement pursuant to a subpoena or search warrant.

(3) This subdivision does not prohibit a rental company from equipping rental vehicles with GPS-based technology that provides navigation assistance to the occupants of the rental vehicle, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except for the purposes of discovering or repairing a defect in the technology and the information may then be used only for that purpose.

(4) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows for the remote locking or unlocking of the vehicle at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except as necessary to lock or unlock the vehicle.

(5) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows the company to provide roadside assistance, such as towing, flat tire, or fuel services, at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology except as necessary to provide the requested roadside assistance.

(6) This subdivision does not prohibit a rental company from obtaining, accessing, or using information from electronic

surveillance technology for the sole purpose of determining the date and time the vehicle is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter has returned the vehicle to the rental company, and the information shall only be used for the purpose described in this paragraph.

(p) A rental company shall not use electronic surveillance technology to track a renter in order to impose fines or surcharges relating to the renter's use of the rental vehicle.

(q) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(r) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or, if the renter is not a resident of this state, in the jurisdiction in which the renter resides.

(s) A waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

(t) (1) A rental company's disclosure requirements shall be satisfied for renters who are enrolled in the rental company's membership program if all of the following conditions are met:

(A) Prior to the enrollee's first rental as a participant in the program, the renter receives, in writing, the following:

(i) All of the disclosures required by paragraph (1) of subdivision (g), including the terms and conditions of the rental agreement then in effect.

(ii) An Internet Web site address, as well as a contact number or address, where the enrollee can learn of changes to the rental agreement or to the laws of this state governing rental agreements since the effective date of the rental company's most recent restatement of the rental agreement and distribution of that restatement to its members.

(B) At the commencement of each rental period, the renter is provided, on the rental record or the folder in which it is inserted, with a printed notice stating that he or she had either previously selected or declined an optional damage waiver and that the renter has the right to change preferences.

(C) At the commencement of each rental period, the rental company provides, on the rearview mirror, a hanger on which a

statement is printed, in a box, in at least 12-point boldface type, notifying the renter that the collision damage waiver offered by the rental company may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. If it is not feasible to hang the statement from the rearview mirror, it shall be hung from the steering wheel.

The hanger shall provide the renter a box to initial if he or she (not his or her employer) has previously accepted or declined the collision damage waiver and that he or she now wishes to change his or her decision to accept or decline the collision damage waiver, as follows:

"□ If I previously accepted the collision damage waiver, I now decline it.

□ If I previously declined the collision damage waiver, I now accept it."

The hanger shall also provide a box for the enrollee to indicate whether this change applies to this rental transaction only or to all future rental transactions. The hanger shall also notify the renter that he or she may make that change, prior to leaving the lot, by returning the form to an employee designated to receive the form who is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(2) (A) This subdivision is not effective unless the employee designated pursuant to subparagraph (E) of paragraph (8) of subdivision (a) is actually present at the required location.

(B) This subdivision does not relieve the rental company from the disclosures required to be made within the text of a contract or holder in which the contract is placed; in or on an advertisement containing a rental rate; or in a telephonic, in-person, or computer-transmitted quotation or reservation.

(u) The amendments made to this section during the 2001–02 Regular Session of the Legislature do not affect litigation pending on or before January 1, 2003, alleging a violation of Section 22325 of the Business and Professions Code as it read at the time the action was commenced.

(v) (1) When a rental company enters into a rental agreement in the state for the rental of a vehicle to any renter who is not a

resident of this country and, as part of, or associated with, the rental agreement, the renter purchases liability insurance, as defined in subdivision (b) of Section 1758.85 of the Insurance Code, from the rental company in its capacity as a rental car agent for an authorized insurer, the rental company shall be authorized to accept, and, if served as set forth in this subdivision, shall accept, service of a summons and complaint and any other required documents against the foreign renter for any accident or collision resulting from the operation of the rental vehicle within the state during the rental period. If the rental company has a registered agent for service of process on file with the Secretary of State, process shall be served on the rental company's registered agent, either by first-class mail, return receipt requested, or by personal service.

(2) Within 30 days of acceptance of service of process, the rental company shall, provide a copy of the summons and complaint and any other required documents served in accordance with this subdivision to the foreign renter by first-class mail, return receipt requested.

(3) Any plaintiff, or his or her representative, who elects to serve the foreign renter by delivering a copy of the summons and complaint and any other required documents to the rental company pursuant to paragraph (1) shall agree to limit his or her recovery against the foreign renter and the rental company to the limits of the protection extended by the liability insurance.

(4) Notwithstanding the requirements of Sections 17450 to 17456, inclusive, of the Vehicle Code, service of process in compliance with paragraph (1) shall be deemed valid and effective service.

(5) Notwithstanding any other provision of law, the requirement that the rental company accept service of process pursuant to paragraph (1) shall not create any duty, obligation, or agency relationship other than that provided in paragraph (1).

(w) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 3. Section 1936 of the Civil Code, as added by Section 2 of Chapter 531 of the Statutes of 2011, is amended to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) "Rental company" means a person or entity in the business of renting passenger vehicles to the public.

(2) "Renter" means any person in a manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) "Authorized driver" means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if he or she is engaged in business activity with the renter, is a licensed driver, and satisfies the rental company's minimum age requirement, and (D) a person expressly listed by the rental company on the renter's contract as an authorized driver.

(4) (A) "Customer facility charge" means any fee, including an alternative fee, required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) To finance, design, and construct consolidated airport car rental facilities.

(ii) To finance, design, construct, and operate common-use transportation systems that move passengers between airport terminals and those consolidated car rental facilities, and acquire vehicles for use in that system.

(iii) To finance, design, and construct terminal modifications solely to accommodate and provide customer access to common-use transportation systems.

(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary, the Assembly Committee on Transportation, and the Senate Committee on Transportation and Housing. In the case of a transportation system, the audit also shall consider the reasonable costs of providing the transit system or busing network. Notwithstanding clause (iii) of subparagraph (A), the fees designated as a customer facility charge shall not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) Except as provided in subparagraph (D), the authorization given pursuant to this section for an airport to impose a customer

facility charge shall become inoperative when the bonds used for financing are paid.

(D) If a bond or other form of indebtedness is not used for financing, or the bond or other form of indebtedness used for financing has been paid, the Oakland International Airport may require the collection of a customer facility charge for a period of up to 10 years from the imposition of the charge for the purposes allowed by, and subject to the conditions imposed by, this section.

(5) "Damage waiver" means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(6) "Electronic surveillance technology" means a technological method or system used to observe, monitor, or collect information, including telematics, Global Positioning System (GPS), wireless technology, or location-based technologies. "Electronic surveillance technology" does not include event data recorders (EDR), sensing and diagnostic modules (SDM), or other systems that are used either:

(A) For the purpose of identifying, diagnosing, or monitoring functions related to the potential need to repair, service, or perform maintenance on the rental vehicle.

(B) As part of the vehicle's airbag sensing and diagnostic system in order to capture safety systems-related data for retrieval after a crash has occurred or in the event that the collision sensors are activated to prepare the decisionmaking computer to make the determination to deploy or not to deploy the airbag.

(7) "Estimated time for replacement" means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as "crash books."

(8) "Estimated time for repair" means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(9) "Membership program" means a service offered by a rental company that permits customers to bypass the rental counter and go directly to the car previously reserved. A membership program shall meet all of the following requirements:

(A) The renter initiates enrollment by completing an application on which the renter can specify a preference for type of vehicle and acceptance or declination of optional services.

(B) The rental company fully discloses, prior to the enrollee's first rental as a participant in the program, all terms and conditions of the rental agreement as well as all required disclosures.

(C) The renter may terminate enrollment at any time.

(D) The rental company fully explains to the renter that designated preferences, as well as acceptance or declination of optional services, may be changed by the renter at any time for the next and future rentals.

(E) An employee designated to receive the form specified in subparagraph (C) of paragraph (1) of subdivision (t) is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(10) "Passenger vehicle" means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which

the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle. However, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(6) An administrative charge, which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts, which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts, which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(6) The administrative charge described in paragraph (6) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). An administrative charge shall not be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle shall not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company shall not recover from the renter or other authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and shall not assert or collect a claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim shall not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles,

less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or business insurance carrier. The rental company shall not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved between the insurance carrier and the rental company. The renter shall remain responsible for payment to the rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

(5) A rental company shall not recover from the renter or other authorized driver for an item described in subdivision (b) to the extent the rental company obtains recovery from another person.

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of another person.

(e) (1) Except as provided in subdivision (f), a damage waiver shall provide or, if not expressly stated in writing, shall be deemed to provide that the renter has no liability for a damage, loss, loss of use, or a cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to a damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if

the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside the United States.

(3) An authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company that offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract, and, for renters who are enrolled in the rental company's membership program, in a sign that shall be posted in a location clearly visible to those renters as they enter the location where their reserved rental cars are parked or near the exit of the bus or other conveyance that transports the enrollee to a reserved car: (A) the nature of the renter's liability, such as liability for all collision damage regardless of cause, (B) the extent of the renter's liability, such as liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides a damage waiver shall orally disclose to all renters, except those who are participants in the rental company's membership program, that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. The renter's

receipt of the oral disclosure shall be demonstrated through the renter's acknowledging receipt of the oral disclosure near that part of the contract where the renter indicates, by the renter's own initials, his or her acceptance or declination of the damage waiver. Adjacent to that same part, the contract also shall state that the damage waiver is optional. Further, the contract for these renters shall include a clear and conspicuous written disclosure that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance.

(3) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

"NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company, or credit card issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

Further, if you use a credit card that provides coverage for your potential liability, you should check with the issuer to determine if you must first exhaust the coverage limits of your own insurance before the credit card coverage applies.

The rental company will not hold you responsible if you buy a damage waiver. But a damage waiver will not protect you if (list exceptions)."

(A) When the above notice is printed in the rental contract or holder in which the contract is placed, the following shall be printed immediately following the notice:

"The cost of an optional damage waiver is $____ for every (day or week)."

(B) When the above notice appears on a sign, the following shall appear immediately adjacent to the notice:

"The cost of an optional damage waiver is $____ to $____ for every (day or week), depending upon the vehicle rented."

(h) Notwithstanding any other provision of law, a rental company may sell a damage waiver subject to the following rate limitations for each full or partial 24-hour rental day for the damage waiver.

(1) For rental vehicles that the rental company designates as an "economy car," "subcompact car," "compact car," or another term having similar meaning when offered for rental, or another vehicle having a manufacturer's suggested retail price of nineteen thousand dollars ($19,000) or less, the rate shall not exceed nine dollars ($9).

(2) For rental vehicles that have a manufacturer's suggested retail price from nineteen thousand one dollars ($19,001) to thirty-four thousand nine hundred ninety-nine dollars ($34,999), inclusive, and that are also either vehicles of next year's model, or not older than the previous year's model, the rate shall not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model-year, the rate shall not exceed nine dollars ($9).

(i) The manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from the previous year in the Consumer Price Index. For the purposes of this section, "Consumer Price Index" means the United States Consumer Price Index for All Urban Consumers, for all items.

(j) A rental company that disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for a damage waiver and a statement that a damage waiver is optional.

(k) (1) A rental company shall not require the purchase of a damage waiver, optional insurance, or another optional good or service.

(2) A rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase the damage waiver, optional insurance, or another optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card

account for a sum equivalent to a deposit if the renter declines to purchase the damage waiver, optional insurance, or another optional good or service.

(*l*) (1) In the absence of express permission granted by the renter subsequent to damage to, or loss of, the vehicle, a rental company shall not seek to recover any portion of a claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing a debit or block to be placed on the renter's credit card account.

(2) A rental company shall not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A customer facility charge may be collected by a rental company under the following circumstances:

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, a special district, or the San Diego County Regional Airport Authority formed pursuant to Division 17 (commencing with Section 170000) of the Public Utilities Code.

(B) The fee is calculated on a per contract basis or as provided in paragraph (2).

(C) The fee is a user fee, not a tax imposed upon real property or an incidence of property ownership under Article XIII D of the California Constitution.

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract or the amount provided in paragraph (2).

(E) The fee for a consolidated rental car facility shall be collected only from customers of on-airport rental car companies. If the fee imposed by the airport is for both a consolidated rental car facility and a common-use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10) or the amount provided in paragraph (2), but the fee imposed on customers of off-airport rental car companies who are transported on the common-use transportation system is proportionate to the costs of the common-use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided that the airport requires off-airport customers to use the common-use transportation system. For purposes of this subparagraph, "on-airport rental car company"

means a rental company operating under an airport property lease or an airport concession or license agreement whose customers use or will use the consolidated rental car facility and the collection of the fee as to those customers is consistent with subparagraph (C).

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, and constructing the facility and financing, designing, constructing, and operating any common-use transportation system, or acquiring vehicles for use in that system, and shall not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to fees which are governed by Section 50474.1 of the Government Code or Section 57.5 of the San Diego Unified Port District Act.

(I) For any airport seeking to require rental car companies to collect an alternative customer facility charge pursuant to paragraph (2), the following provisions apply:

(i) Notwithstanding Section 10231.5 of the Government Code, the airport shall provide reports on an annual basis to the Senate and Assembly Committees on Judiciary detailing all of the following:

(I) The total amount of the customer facility charge collected.

(II) How the funds are being spent.

(III) The amount of and reason for any changes in the airport's budget or financial needs for the facility or common-use transportation system.

(IV) Whether airport concession fees authorized by Section 1936.01 have increased since the prior report, if any.

(ii) The airport shall complete the independent audit required by subparagraph (B) of paragraph (4) of subdivision (a) prior to initial collection of the customer facility charge, prior to any increase pursuant to paragraph (2), and every three years after initial collection and any increase until such time as the fee authorization becomes inoperative pursuant to subparagraph (C) of paragraph (4) of subdivision (a). ~~The Controller shall review those audits and independently examine and substantiate the necessity for and the amount of the customer facility charge. The Controller's costs shall be reimbursed by the individual airport being audited. Notwithstanding Section 10231.5 of the Government Code, the Controller shall report to the Legislature on its~~

~~conclusions, including whether the airport's actual or projected costs are supported and justified, any steps the airport may take to limit costs, potential alternatives for meeting the airport's revenue needs other than the collection of the fee, and whether and to what extent car rental companies or other businesses or individuals using the facility or common-use transportation system may pay for the costs associated with these facilities and systems other than the fee from rental customers, or whether the airport did not comply with any provision of this subparagraph.~~

(iii) Use of the bonds shall be limited to construction and design of the consolidated rental car facility, terminal modifications, and operating costs of the common-use transportation system, as specified in paragraph (4) of subdivision (a).

(2) Any airport may require rental car companies to collect an alternative customer facility charge under the following conditions:

(A) The airport first conducts a publicly noticed hearing pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) to review the costs of financing the design and construction of a consolidated rental car facility and the design, construction, and operation of any common-use transportation system in which all of the following occur:

(i) The airport establishes the amount of revenue necessary to finance the reasonable cost to design and construct a consolidated rental car facility and to design, construct, and operate any common-use transportation system, or acquire vehicles for use in that system, based on evidence presented during the hearing.

(ii) The airport finds, based on evidence presented during the hearing, that the fee authorized in paragraph (1) will not generate sufficient revenue to finance the reasonable costs to design and construct a consolidated rental car facility and to design, construct, and operate any common-use transportation system, or acquire vehicles for use in that system.

(iii) The airport finds that the reasonable cost of the project requires the additional amount of revenue that would be generated by the proposed daily rate, including any rate increase, authorized pursuant to this paragraph.

(iv) The airport outlines each of the following:

(I) Steps it has taken to limit costs.

(II) Other potential alternatives for meeting its revenue needs other than the collection of the fee.

(III) The extent to which rental car companies or other businesses or individuals using the facility or common-use transportation system will pay for the costs associated with these facilities and systems other than the fee from rental customers.

~~(v) The Controller reviews and substantiates the need for and amount of the fee pursuant to clause (ii) of subparagraph (I) of paragraph (1).~~

(B) The airport may not require the fee authorized in this paragraph to be collected at any time that the fee authorized in paragraph (1) of this subdivision is being collected.

(C) Pursuant to the procedure set forth in this subdivision, the fee may be collected at a rate charged on a per-day basis subject to the following conditions:

(i) Commencing January 1, 2011, the amount of the fee may not exceed six dollars ($6) per day.

(ii) Commencing January 1, 2014, the amount of the fee may not exceed seven dollars and fifty cents ($7.50) per day.

(iii) Commencing January 1, 2017, and thereafter, the amount of the fee may not exceed nine dollars ($9) per day.

(iv) At no time shall the fee authorized in this paragraph be collected from any customer for more than five days for each individual rental car contract.

(v) An airport subject to this paragraph shall initiate the process for obtaining the authority to require or increase the alternative fee no later than January 1, 2018. Any airport that obtains the authority to require or increase an alternative fee shall be authorized to continue collecting that fee until the fee authorization becomes inoperative pursuant to subparagraph (C) of paragraph (4) of subdivision (a).

(3) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section, or another law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, are not subject to sales, use, or transaction taxes.

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, that a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee that is required to be paid by the renter as a condition of hiring or leasing the vehicle, including, but not limited to, required fuel or airport surcharges other than customer facility charges, nor a fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company shall not charge a fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall disclose clearly in that advertisement or quotation the terms of mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an airport where a customer facility charge is imposed, the rental company

shall disclose clearly the existence and amount of the customer facility charge. For purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. For purposes of this subparagraph, quotations and reservations include those that are telephonic, in-person, and computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

(B) If a person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer facility charge is imposed, that person or entity shall, provided that he, she, or it is provided with information about the existence and amount of the fee, to the extent not specifically prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company is not responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

(6) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter an amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter an amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(o) A rental company shall not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except in the following circumstances:

(1) (A) When the equipment is used by the rental company only for the purpose of locating a stolen, abandoned, or missing rental vehicle after one of the following:

(i) The renter or law enforcement has informed the rental company that the vehicle is missing or has been stolen or abandoned.

(ii) The rental vehicle has not been returned following one week after the contracted return date, or by one week following the end of an extension of that return date.

(iii) The rental company discovers the rental vehicle has been stolen or abandoned, and, if stolen, it shall report the vehicle stolen to law enforcement by filing a stolen vehicle report, unless law enforcement has already informed the rental company that the vehicle is missing or has been stolen or abandoned.

(B) If electronic surveillance technology is activated pursuant to subparagraph (A), a rental company shall maintain a record, in either electronic or written form, of information relevant to the activation of that technology. That information shall include the rental agreement, including the return date, and the date and time the electronic surveillance technology was activated. The record shall also include, if relevant, a record of written or other communication with the renter, including communications regarding extensions of the rental, police reports, or other written communication with law enforcement officials. The record shall be maintained for a period of at least 12 months from the time the record is created and shall be made available upon the renter's request. The rental company shall maintain and furnish explanatory codes necessary to read the record. A rental company shall not be required to maintain a record if electronic surveillance technology is activated to recover a rental vehicle that is stolen or missing at a time other than during a rental period.

(2) In response to a specific request from law enforcement pursuant to a subpoena or search warrant.

(3) This subdivision does not prohibit a rental company from equipping rental vehicles with GPS-based technology that provides navigation assistance to the occupants of the rental vehicle, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except for the purposes of discovering or repairing

a defect in the technology and the information may then be used only for that purpose.

(4) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows for the remote locking or unlocking of the vehicle at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except as necessary to lock or unlock the vehicle.

(5) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows the company to provide roadside assistance, such as towing, flat tire, or fuel services, at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology except as necessary to provide the requested roadside assistance.

(6) This subdivision does not prohibit a rental company from obtaining, accessing, or using information from electronic surveillance technology for the sole purpose of determining the date and time the vehicle is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter has returned the vehicle to the rental company, and the information shall only be used for the purpose described in this paragraph.

(p) A rental company shall not use electronic surveillance technology to track a renter in order to impose fines or surcharges relating to the renter's use of the rental vehicle.

(q) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(r) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or, if the renter is not a resident of this state, in the jurisdiction in which the renter resides.

(s) A waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

(t) (1) A rental company's disclosure requirements shall be satisfied for renters who are enrolled in the rental company's membership program if all of the following conditions are met:

(A) Prior to the enrollee's first rental as a participant in the program, the renter receives, in writing, the following:

(i) All of the disclosures required by paragraph (1) of subdivision (g), including the terms and conditions of the rental agreement then in effect.

(ii) An Internet Web site address, as well as a contact number or address, where the enrollee can learn of changes to the rental agreement or to the laws of this state governing rental agreements since the effective date of the rental company's most recent restatement of the rental agreement and distribution of that restatement to its members.

(B) At the commencement of each rental period, the renter is provided, on the rental record or the folder in which it is inserted, with a printed notice stating that he or she had either previously selected or declined an optional damage waiver and that the renter has the right to change preferences.

(C) At the commencement of each rental period, the rental company provides, on the rearview mirror, a hanger on which a statement is printed, in a box, in at least 12-point boldface type, notifying the renter that the collision damage waiver offered by the rental company may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. If it is not feasible to hang the statement from the rearview mirror, it shall be hung from the steering wheel.

The hanger shall provide the renter a box to initial if he or she (not his or her employer) has previously accepted or declined the collision damage waiver and that he or she now wishes to change his or her decision to accept or decline the collision damage waiver, as follows:

"□ If I previously accepted the collision damage waiver, I now decline it.

□ If I previously declined the collision damage waiver, I now accept it."

The hanger shall also provide a box for the enrollee to indicate whether this change applies to this rental transaction only or to all future rental transactions. The hanger shall also notify the renter that he or she may make that change, prior to leaving the lot, by

returning the form to an employee designated to receive the form who is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(2) (A) This subdivision is not effective unless the employee designated pursuant to subparagraph (E) of paragraph (8) of subdivision (a) is actually present at the required location.

(B) This subdivision does not relieve the rental company from the disclosures required to be made within the text of a contract or holder in which the contract is placed; in or on an advertisement containing a rental rate; or in a telephonic, in-person, or computer-transmitted quotation or reservation.

(u) The amendments made to this section during the 2001–02 Regular Session of the Legislature do not affect litigation pending on or before January 1, 2003, alleging a violation of Section 22325 of the Business and Professions Code as it read at the time the action was commenced.

(v) This section shall become operative on January 1, 2015.

SEC. 4. Section 5924 of the Government Code, as amended by Section 1 of Chapter 646 of the Statutes of 2009, is amended to read:

5924. (a) (1) Notwithstanding Section 13340, there is hereby continuously appropriated without regard to fiscal years, from the General Fund in the State Treasury for the purpose of this chapter, an amount that will equal the sum annually as will be necessary to pay all obligations, including principal, interest, fees, costs, indemnities, and all other amounts incurred by the state under or in connection with any credit enhancement or liquidity agreement, as specified in paragraph (2), that is entered into by the state pursuant to this chapter for bonds payable pursuant to an appropriation from the General Fund.

(2) A credit enhancement or liquidity agreement subject to this section includes a credit enhancement or liquidity agreement that is in the form of a letter of credit, standby purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement.

(b) (1) If the agent for sale determines that the credit enhancement or liquidity agreement is expected to result in a lower cost of the borrowing for the bonds to which the credit enhancement or liquidity agreement pertains, the state may incur fees, costs, and other similar expenses under or in connection with

any credit enhancement or liquidity agreement entered into by the state pursuant to this chapter.

(2) The amount appropriated pursuant to subdivision (a) for fees, costs, and other similar expenses incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the original principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed 3 percent.

(3) The amount appropriated pursuant to subdivision (a) for interest incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the outstanding principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed the interest rate percentage set forth in subdivision (d) of Section 16731.

~~(c) This section shall become inoperative on June 30, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.~~

SEC. 5. Section 5924 of the Government Code, as added by Section 2 of Chapter 633 of the Statutes of 2009, is repealed.

~~5924. (a) (1) Notwithstanding Section 13340, there is hereby continuously appropriated without regard to fiscal years, from the General Fund in the State Treasury for the purpose of this chapter, an amount that will equal the sum annually as will be necessary to pay all obligations, including principal, interest, fees, costs, indemnities, and all other amounts incurred by the state under or in connection with any credit enhancement or liquidity agreement, as specified in paragraph (2), that is entered into by the state pursuant to this chapter for bonds payable pursuant to an appropriation from the General Fund.~~

~~(2) A credit enhancement or liquidity agreement subject to this section includes a credit enhancement or liquidity agreement that is in the form of a letter of credit, standby purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement.~~

~~(b) (1) If the agent for sale determines that the credit enhancement or liquidity agreement is expected to result in a lower cost of the borrowing for the bonds to which the credit enhancement or liquidity agreement pertains, the state may incur~~

~~fees, costs, and other similar expenses under or in connection with any credit enhancement or liquidity agreement entered into by the state pursuant to this chapter.~~

~~(2) The amount appropriated pursuant to subdivision (a) for fees, costs, and other similar expenses incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the original principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed the percentage set forth in paragraph (1) of subdivision (g) of Section 147 of Title 26 of the United States Code enacted as of January 1, 2003.~~

~~(3) The amount appropriated pursuant to subdivision (a) for interest incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the outstanding principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed the interest rate percentage set forth in subdivision (d) of Section 16731.~~

~~(c) This section shall become operative June 30, 2013.~~

SEC. 6. Section 5924 of the Government Code, as added by Section 2 of Chapter 646 of the Statutes of 2009, is repealed.

~~5924. (a) (1) Notwithstanding Section 13340, there is hereby continuously appropriated without regard to fiscal years, from the General Fund in the State Treasury for the purpose of this chapter, an amount that will equal the sum annually as will be necessary to pay all obligations, including principal, interest, fees, costs, indemnities, and all other amounts incurred by the state under or in connection with any credit enhancement or liquidity agreement, as specified in paragraph (2), that is entered into by the state pursuant to this chapter for bonds payable pursuant to an appropriation from the General Fund.~~

~~(2) A credit enhancement or liquidity agreement subject to this section includes a credit enhancement or liquidity agreement that is in the form of a letter of credit, standby purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement.~~

~~(b) (1) If the agent for sale determines that the credit enhancement or liquidity agreement is expected to result in a lower cost of the borrowing for the bonds to which the credit enhancement or liquidity agreement pertains, the state may incur~~

~~fees, costs, and other similar expenses under or in connection with any credit enhancement or liquidity agreement entered into by the state pursuant to this chapter.~~

~~(2) The amount appropriated pursuant to subdivision (a) for fees, costs, and other similar expenses incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the original principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed the percentage set forth in paragraph (1) of subdivision (g) of Section 147 of Title 26 of the United States Code enacted as of January 1, 2003.~~

~~(3) The amount appropriated pursuant to subdivision (a) for interest incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the outstanding principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed the interest rate percentage set forth in subdivision (d) of Section 16731.~~

~~(c) This section shall become operative June 30, 2013.~~

SEC. 7. Section 8169.7 is added to the Government Code, to read:

8169.7. (a) The department may sell all or a portion of the following properties located in the County of Sacramento, City of Sacramento, State of California, and leased by the department to the Capitol Area Development Authority:

(1) Parcel 1. Approximately 0.14 acres of land, not including improvements thereon, located at 1510 14th Street, and identified by Sacramento County Assessor Parcel Number 006-0224-026.

(2) Parcel 2. Approximately 0.22 acres of land, not including improvements thereon, located at 1530 N Street and 1412 16th Street, and identified by Sacramento County Assessor Parcel Numbers 006-0231-008 and 006-0231-009.

(3) Parcel 3. Approximately 0.15 acres of land, not including improvements thereon, located at 1416 17th Street and 1631 O Street, and identified by Sacramento County Assessor Parcel Numbers 006-0233-012 and 006-0233-013.

(4) Parcel 4. Approximately 0.59 acres of land, not including improvements thereon, located at 1609 O Street, and identified by Sacramento County Assessor Parcel Number 006-0233-026.

(5) Parcel 5. Approximately 0.07 acres of land, not including improvements thereon, located at 1612 14th Street, and identified by Sacramento County Assessor Parcel Number 006-0284-011.

(6) Parcel 6. Approximately 0.30 acres of land, not including improvements thereon, located at 1616, 1622, and 1626 14th Street and 1325 and 1331 Q Street, and identified by Sacramento County Assessor Parcel Numbers 006-0284-012, 006-0284-013, 006-0284-014, 006-0284-015, and 006-0284-016.

(b) The properties shall be sold for market value, or upon terms and conditions as the director, with concurrence of the Department of Finance, determines are in the best interest of the state.

(c) The department may offer the property for sale pursuant to a public bidding process designed to obtain the highest return for the state. Any transaction based on such a bidding process shall be deemed to be the market value. The director, at the director's sole discretion, may reject all bids received if it is in the best interest of the state to do so.

(d) The department shall be reimbursed for any cost or expense incurred in the disposition of any parcels from the sale proceeds.

(e) The Director of Finance may provide a loan from the General Fund in the amount of not more than two hundred thousand dollars ($200,000) to augment Item 1760-001-0002 of Section 2.00 of the Budget Act of 2012 and may adjust the amounts appropriated in Item 1760-001-0002 of Section 2.00 of the Budget Act of 2012, for the purposes of supporting the management of the state's real property footprint reduction to accommodate any increase in workload or other costs to the department in implementing this section.

(f) The disposition of the properties shall be made on an "as is" basis, and any sale shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(g) As to any property sold pursuant to this section, the director shall except and reserve to the state all mineral deposits possessed by the state, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director,

after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

(h) The disposition of the properties pursuant to this section shall not constitute a sale or other disposition of surplus state property pursuant to Section 11011.

(i) The net proceeds of any moneys received from the disposition of any parcels described in this section shall be deposited in the General Fund or the Deficit Recovery Fund as determined by the Department of Finance.

SEC. 8. Section 8879.58 of the Government Code is amended to read:

8879.58. (a) (1) No later than September 1 of the first fiscal year in which the Legislature appropriates funds from the Transit System Safety, Security, and Disaster Response Account, and no later than September 1 of each fiscal year thereafter in which funds are appropriated from that account, the Controller shall develop and make public a list of eligible agencies and transit operators and the amount of funds each is eligible to receive from the account pursuant to subdivision (a) of Section 8879.57. It is the intent of the Legislature that funds allocated to specified recipients pursuant to this section provide each recipient with the same proportional share of funds as the proportional share each received from the allocation of State Transit Assistance funds, pursuant to Sections 99313 and 99314 of the Public Utilities Code, over fiscal years 2004–05, 2005–06, and 2006–07.

(2) In establishing the amount of funding each eligible recipient is to receive under subdivision (a) of Section 8879.57 from appropriated funds to be allocated based on Section 99313 of the Public Utilities Code, the Controller shall make the following computations:

(A) For each eligible recipient, compute the amounts of State Transit Assistance funds allocated to that recipient pursuant to Section 99313 of the Public Utilities Code during the 2004–05, 2005–06, and 2006–07 fiscal years.

(B) Compute the total statewide allocation of State Transit Assistance funds pursuant to Section 99313 of the Public Utilities Code during the 2004–05, 2005–06, and 2006–07 fiscal years.

(C) Divide subparagraph (A) by subparagraph (B).

(D) For each eligible recipient, multiply the allocation factor computed pursuant to subparagraph (C) by 50 percent of the

amount available for allocation pursuant to subdivision (a) of Section 8879.57.

(3) In establishing the amount of funding each eligible recipient is eligible to receive under subdivision (a) of Section 8879.57 from funds to be allocated based on Section 99314 of the Public Utilities Code, the Controller shall make the following computations:

(A) For each eligible recipient, compute the amounts of State Transit Assistance funds allocated to that recipient pursuant to Section 99314 of the Public Utilities Code during the 2004–05, 2005–06, and 2006–07 fiscal years.

(B) Compute the total statewide allocation of State Transit Assistance funds pursuant to Section 99314 of the Public Utilities Code during the 2004–05, 2005–06, and 2006–07 fiscal years.

(C) Divide subparagraph (A) by subparagraph (B).

(D) For each eligible recipient, multiply the allocation factor computed pursuant to subparagraph (C) by 50 percent of the amount available for allocation pursuant to subdivision (a) of Section 8879.57.

(4) The Controller shall notify eligible recipients of the amount of funding each is eligible to receive pursuant to subdivision (a) of Section 8879.57 for the duration of time that these funds are made available for these purposes based on the computations pursuant to subparagraph (D) of paragraph (2) and subparagraph (D) of paragraph (3).

(b) Prior to seeking a disbursement of funds for an eligible project, an agency or transit operator on the public list described in paragraph (1) of subdivision (a) shall submit to the California Emergency Management Agency a description of the project it proposes to fund with its share of funds from the account. The description shall include all of the following:

(1) A summary of the proposed project that describes the safety, security, or emergency response benefit that the project intends to achieve.

(2) That the useful life of the project shall not be less than the required useful life for capital assets specified in subdivision (a) of Section 16727.

(3) The estimated schedule for the completion of the project.

(4) The total cost of the proposed project, including identification of all funding sources necessary for the project to be completed.

(c) After receiving the information required to be submitted under subdivision (b), the agency shall review the information to determine all of the following:

(1) The project is consistent with the purposes described in subdivision (h) of Section 8879.23.

(2) The project is an eligible capital expenditure, as described in subdivision (a) of Section 8879.57.

(3) The project is a capital improvement that meets the requirements of paragraph (2) of subdivision (b).

(4) The project, or a useful component thereof, is, or will become, fully funded with an allocation of funds from the Transit System Safety, Security, and Disaster Response Account.

(d) (1) Upon conducting the review required in subdivision (c) and determining that a proposed project meets the requirements of that subdivision, the agency shall, on a quarterly basis, provide the Controller with a list of projects and the sponsoring agencies or transit operators eligible to receive an allocation from the account.

(2) The list of projects submitted to the Controller for allocation for any one fiscal year shall be constrained by the total amount of funds appropriated by the Legislature for the purposes of this section for that fiscal year.

(3) For a fiscal year in which the number of projects submitted for funding under this section exceeds available funds, the agency shall prioritize projects contained on the lists submitted pursuant to paragraph (1) so that (A) projects addressing the greatest risks to the public *and that demonstrate the ability and intent to expend a significant percentage of project funds within six months* have the highest priority and (B) to the maximum extent possible, the list reflects a distribution of funding that is geographically balanced.

(e) Upon receipt of the information from the agency required by subdivision (d), the Controller's office shall commence any necessary actions to allocate funds to eligible agencies and transit operators sponsoring projects on the list of projects, including, but not limited to, seeking the issuance of bonds for that purpose. The total allocations to any one eligible agency or transit operator shall not exceed that agency's or transit operator's share of funds from the account pursuant to the formula contained in subdivision (a) of Section 8879.57.

(f) During each fiscal year that an agency or transit operator receives funds pursuant to this section, the California Emergency Management Agency may monitor the project expenditures to ensure compliance with this section.

~~(f)~~

(g) The Controller's office may, pursuant to Section 12410, use its authority to audit the use of state bond funds on projects receiving an allocation under this section. Each eligible agency or transit operator sponsoring a project subject to an audit shall provide any and all data requested by the Controller's office in order to complete the audit. The Controller's office shall transmit copies of all completed audits to the agency and to the policy committees of the Legislature with jurisdiction over transportation and budget issues.

SEC. 9. Section 8879.59 of the Government Code is amended to read:

8879.59. (a) For funds appropriated from the Transit System Safety, Security, and Disaster Response Account for allocation to transit agencies eligible to receive funds pursuant to subdivision (b) of Section 8879.57, the California Emergency Management Agency (Cal EMA) shall administer a grant application and award program for those transit agencies.

(b) Funds awarded to transit agencies pursuant to this section shall be for eligible capital expenditures as described in subdivision (b) of Section 8879.57.

(c) Prior to allocating funds to projects pursuant to this section, Cal EMA shall adopt guidelines to establish the criteria and process for the distribution of funds described in this section. Prior to adopting the guidelines, Cal EMA shall hold a public hearing on the proposed guidelines.

(d) For each fiscal year in which funds are appropriated for the purposes of this section, Cal EMA shall issue a notice of funding availability no later than October 1.

(e) No later than December 1 of each fiscal year in which the notice in subdivision (d) is issued, eligible transit agencies may submit project nominations for funding to Cal EMA for its review and consideration. Project nominations shall include all of the following:

(1) A description of the project, which shall illustrate the physical components of the project and the security or emergency response benefit to be achieved by the completion of the project.

(2) Identification of all nonbond sources of funding committed to the project.

(3) An estimate of the project's full cost and the proposed schedule for the project's completion.

(f) For a fiscal year in which the number of projects submitted for funding under this section exceeds available funds, Cal EMA shall prioritize projects so that projects addressing the greatest risks to the public and that demonstrate the ability and intent to expend a significant percentage of project funds within six months have the highest priority.

~~(f)~~

(g) No later than February 1, Cal EMA shall select eligible projects to receive grants under this section and shall provide the Controller with a list of the projects and the sponsoring agencies eligible to receive an allocation from the account. Upon receipt of this information, the Controller's office shall commence any necessary actions to allocate funds to those agencies, including, but not limited to, seeking the issuance of bonds for that purpose. Grants awarded to eligible transit agencies pursuant to subdivision (b) of Section 8879.57 shall be for eligible capital expenditures, as described in paragraph (2) of subdivision (b) of that section.

(h) During each fiscal year that a transit agency receives funds pursuant to this section, Cal EMA may monitor the project expenditures to ensure project funds are expended in compliance with the submitted project nomination.

SEC. 10. Section 11270 of the Government Code is amended to read:

11270. As used in this article, "administrative costs" means the amounts expended by the Legislature, the Legislative Counsel Bureau, the ~~office of the Governor~~ *Governor's Office*, the ~~office of the State Chief Information Officer~~ *California Technology Agency*, the Office of Planning and Research, the Department of Justice, the ~~office of the Controller~~ *State Controller's Office*, the ~~office of the Treasurer~~ *State Treasurer's Office*, the State Personnel Board, the Department of Finance, *the Financial Information System for California,* the Office of Administrative Law, the Department of ~~Personnel Administration~~ *Human Resources*, the

Secretary of ~~the~~ State and Consumer Services ~~Agency~~, the Secretary of ~~the~~ California Health and Human Services ~~Agency~~, the Bureau of State Audits, and the California State Library, and a proration of any other cost to or expense of the state for services or facilities provided for the Legislature and the above agencies, for supervision or administration of the state government or for services to other state agencies.

SEC. 11. Section 11546 of the Government Code is amended to read:

11546. (a) The California Technology Agency shall be responsible for the approval and oversight of information technology projects, which shall include, but are not limited to, all of the following:

(1) Establishing and maintaining a framework of policies, procedures, and requirements for the initiation, approval, implementation, management, oversight, and continuation of information technology projects. *Unless otherwise required by law, a state department shall not procure oversight services of information technology projects without the approval of the California Technology Agency.*

(2) Evaluating information technology projects based on the business case justification, resources requirements, proposed technical solution, project management, oversight and risk mitigation approach, and compliance with statewide strategies, policies, and procedures. Projects shall continue to be funded through the established Budget Act process.

(3) Consulting with agencies during initial project planning to ensure that project proposals are based on well-defined programmatic needs, clearly identify programmatic benefits, and consider feasible alternatives to address the identified needs and benefits consistent with statewide strategies, policies, and procedures.

(4) Consulting with agencies prior to project initiation to review the project governance and management framework to ensure that it is best designed for success and will serve as a resource for agencies throughout the project implementation.

(5) Requiring agencies to provide information on information technology projects including, but not limited to, all of the following:

(A) The degree to which the project is within approved scope, cost, and schedule.

(B) Project issues, risks, and corresponding mitigation efforts.

(C) The current estimated schedule and costs for project completion.

(6) Requiring agencies to perform remedial measures to achieve compliance with approved project objectives. These remedial measures may include, but are not limited to, any of the following:

(A) Independent assessments of project activities, the cost of which shall be funded by the agency administering the project.

(B) Establishing remediation plans.

(C) Securing appropriate expertise, the cost of which shall be funded by the agency administering the project.

(D) Requiring additional project reporting.

(E) Requiring approval to initiate any action identified in the approved project schedule.

(7) Suspending, reinstating, or terminating information technology projects. The agency shall notify the Joint Legislative Budget Committee of any project suspension, reinstatement, and termination within 30 days of that suspension, reinstatement, or termination.

(8) Establishing restrictions or other controls to mitigate nonperformance by agencies, including, but not limited to, any of the following:

(A) The restriction of future project approvals pending demonstration of successful correction of the identified performance failure.

(B) The revocation or reduction of authority for state agencies to initiate information technology projects or acquire information technology or telecommunications goods or services.

(b) The California Technology Agency shall have the authority to delegate to another agency any authority granted under this section based on its assessment of the agency's project management, project oversight, and project performance.

SEC. 12. Section 12531 is added to the Government Code, to read:

12531. (a) The Legislature finds and declares that California, represented by the California Attorney General, entered a national multistate settlement with the country's five largest loan servicers. This agreement, the National Mortgage Settlement stemmed from

successful resolution of federal court action (Consent Judgment, United States v. Bank of America (No. 1:12-cv-00361, Banzr. D.C. Apr. 4, 2012). The National Mortgage Settlement is broad ranging, with California's share of this settlement estimated to be up to eighteen billion dollars ($18,000,000,000). Of this amount, approximately four hundred ten million dollars ($410,000,000) will come directly to the state in costs, fees, and penalty payments.

(b) There is hereby created in the State Treasury the National Mortgage Special Deposit Fund. Notwithstanding Section 13340, all moneys in the fund are hereby continuously appropriated, and shall be allocated by the Department of Finance.

(c) Direct payments made to the State of California as civil penalties pursuant to the National Mortgage Settlement shall be deposited in the Unfair Competition Law Fund as required by the settlement.

(d) Direct payments made to the State of California pursuant to the National Mortgage Settlement, except for those payments made pursuant to subdivision (c), shall be deposited in the National Mortgage Special Deposit Fund.

(e) Notwithstanding any other law, the Director of Finance may allocate or otherwise use the funds in the National Mortgage Special Deposit Fund to offset General Fund expenditures in the 2011–12, 2012–13, and 2013–14 fiscal years. The Department of Finance and the Controller's office shall recognize this fiscal alignment accordingly for the purpose of the state budget process and legal basis of accounting.

(f) Not less than 30 days prior to allocating any moneys pursuant to subdivision (e), the Department of Finance shall submit an expenditure plan to the Joint Legislative Budget Committee detailing the proposed use of the moneys in the National Mortgage Special Deposit Fund.

(g) Notwithstanding any other law, the Controller may use the funds in the National Mortgage Special Deposit Fund for cashflow loans to the General Fund as provided in Sections 16310 and 16381.

SEC. 13. Section 13071 of the Government Code is amended to read:

13071. *The Director of Finance shall be responsible for coordinating state agency internal audits and identifying when agencies are required to comply with federally mandated audits.*

The Director of Finance, in coordinating the internal auditors of state agencies, shall ensure that these auditors utilize the "Standards for the Professional Practices of Internal Auditing."

SEC. 14. Section 13300.5 is added to the Government Code, to read:

13300.5. (a) The Legislature finds and declares that the project of the FISCal Project to modernize the state's internal financial systems is a critical project that must be subject to the highest level of oversight. According to the California Technology Agency, the size and scope of this modernization and automation effort make this project one of the highest risk projects undertaken by the state. Therefore, the Legislature must take steps to ensure it is fully informed as the project is implemented. It is the intent of the Legislature to adopt additional reporting requirements for the FISCal Project Office to adequately manage the project's risk and to ensure the successful implementation of this effort.

(b) The FISCal Project Office shall report to the Legislature, by February 15 of each year, an update on the project. The report shall include all of the following:

(1) An executive summary and overview of the project's status.

(2) An overview of the project's history.

(3) Significant events of the project within the current reporting period and a projection of events during the next reporting period.

(4) A discussion of mitigation actions being taken by the project for any missed major milestones.

(5) A comparison of actual to budgeted expenditures, and an explanation of variances and any planned corrective actions, including a summary of FISCal project and staffing levels and an estimate of staff participation from partner agencies.

(6) An articulation of expected functionality and qualitative benefits from the project that were achieved during the reporting period and that are expected to be achieved in the subsequent year.

(7) An overview of change management activities and stakeholder engagement in the project, including a summary of departmental participation in the FISCal project.

(8) A discussion of lessons learned and best practices that will be incorporated into future changes in management activities.

(9) A description of any significant software customization, including a justification for why, if any, customization was granted.

(10) Updates on the progress of meeting the project objectives, including the objectives provided in paragraph (1) of subdivision (c) of Section 15849.22.

(c) The initial report, due February 15, 2013, shall provide a description of the approved project scope. Later reports shall describe any later deviations to the project scope, cost, or schedule.

(d) The initial report shall also provide a summary of the project history from Special Project Report 1 to Special Project Report 4, inclusive.

(e) This section shall remain in effect until a postimplementation evaluation report has been approved by the California Technology Agency. The California Technology Agency shall post a notice on its Internet Web site when the report is approved.

SEC. 15. Section 15849.6 of the Government Code, as added by Section 13 of Chapter 726 of the Statutes of 2010, is repealed.

~~15849.6. Notwithstanding any provision of this part to the contrary, the board may issue bonds, notes, or other obligations to finance the acquisition or construction of a public building, facility, or equipment as authorized by the Legislature, in the total amount authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing. This additional amount may include interest during acquisition or interest prior to, during, and for a period of six months after construction of the public building, facility, or equipment, interest payable on any interim loan for the public building, facility, or equipment from the General Fund or from the Pooled Money Investment Account, a reasonably required reserve fund, and the costs of issuance of any interim financing and permanent financing after completion of the construction or acquisition of the public building, facility, or equipment.~~

~~This section shall be applicable to, but not limited to, bonds, notes, or obligations of the board that were authorized by appropriations of the Legislature made prior to the effective date of this section.~~

SEC. 16. Section 15849.6 of the Government Code, as added by Section 2 of Chapter 727 of the Statutes of 2010, is amended to read:

15849.6. Notwithstanding any provision of this part to the contrary, the board may issue bonds, notes, or other obligations to finance the acquisition, *design,* or construction of a public

building~~, facility, or equipment~~ as authorized by the Legislature, in the total amount authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing. This additional amount may include interest during acquisition or interest prior to, during, and for a period of six months after construction of the public building~~, facility, or equipment~~, interest payable on any interim loan *or interim financing* for the public building~~, facility, or equipment from the General Fund or from the Pooled Money Investment Account~~, a reasonably required reserve fund, and the costs of issuance of any interim financing and permanent financing ~~after completion of the construction or acquisition of the public building, facility, or equipment~~.

This section shall be applicable to, but not limited to, bonds, notes, or obligations of the board that were authorized by appropriations of the Legislature made prior to the effective date of this section.

SEC. 17. Section 15849.65 is added to the Government Code, to read:

15849.65. (a) Notwithstanding any provision of this part to the contrary, when a public building for the University of California is authorized, in full or in part, to be financed under this part, the board may issue bonds, notes, or other obligations to reimburse any debt service related to obligations issued or entered into by the Regents of the University of California as interim financing for the public building. In addition to the amount authorized by the Legislature for a public building for the University of California, the board may authorize an additional amount to pay related interest and issuance costs associated with the obligations issued or entered into by the Regents of the University of California.

(b) This section shall be applicable to, but not limited to, bonds, notes, or obligations of the board that were authorized by appropriations of the Legislature made prior to the effective date of this section.

(c) This section shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 18. Section 17581 of the Government Code is amended to read:

17581. (a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute or executive order, or portion thereof, or the commission's test claim number, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) Within 30 days after enactment of the Budget Act, the Department of Finance shall notify local agencies of any statute or executive order, or portion thereof, for which operation of the mandate is suspended because reimbursement is not provided for that fiscal year pursuant to this section and Section 6 of Article XIII B of the California Constitution.

(c) Notwithstanding any other provision of law, if a local agency elects to implement or give effect to a statute or executive order described in subdivision (a), the local agency may assess fees to persons or entities which benefit from the statute or executive order. Any fee assessed pursuant to this subdivision shall not exceed the costs reasonably borne by the local agency.

(d) This section shall not apply to any state-mandated local program for the trial courts, as specified in Section 77203.

(e) This section shall not apply to any state-mandated local program for which the reimbursement funding counts toward the minimum General Fund requirements of Section 8 of Article XVI of the Constitution.

(f) All state-mandated local programs suspended in the Budget Act for the 2012–13 fiscal year shall also be suspended in the 2013–14 and 2014–15 fiscal years.

SEC. 19. Section 17617 of the Government Code is amended to read:

17617. The total amount due to each city, county, city and county, and special district, for which the state has determined that reimbursement is required under paragraph (2) of subdivision (b) of Section 6 of Article XIIIB of the California Constitution, shall be appropriated for payment to these entities over a period of not more than 15 years, commencing with the Budget Act for the 2006–07 fiscal year and concluding with the Budget Act for the 2020–21 fiscal year. *There shall be no appropriation for payment of reimbursement claims submitted pursuant to this section for the 2012–13, 2013–14, and 2014–15 fiscal years.*

SEC. 20. Section 19849 of the Government Code is amended to read:

19849. (a) The department shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules.

(b) Notwithstanding any other law, the department shall adopt a plan for the period from July 1, 2012, to June 30, 2013, inclusive, by which all state employees not subject to the Personal Leave Program 2012 (PLP 2012 Program), as described in subdivision (c) of Section 19851, shall be furloughed for one workday per calendar month. The department shall further adopt rules for the implementation, administration, and enforcement of this furlough plan. This subdivision shall not apply to retired annuitants or to employees of entities listed in Section 3.90 of the Budget Act of 2012.

~~(b) If~~

(c) Except as provided in subdivision (b), if the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 21. Section 19851 of the Government Code is amended to read:

19851. (a) It is the policy of the state, *except during the operation of subdivision (c),* that the workweek of the state employee shall be 40 hours, and the workday of state employees eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies. It is the policy of the state to avoid the necessity for overtime work whenever possible. This policy does not restrict the extension of regular working-hour schedules on an overtime basis in those activities and agencies where it is necessary to carry on the state business properly during a manpower shortage.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) Notwithstanding any other law, for the period from July 1, 2012, to June 30, 2013, inclusive, a state employee shall participate in the Personal Leave Program 2012 (PLP 2012 Program), either as required by an applicable memorandum of understanding reached pursuant to Section 3517.5 or by the direction of the department for excluded employees. Under the PLP 2012 Program, each employee shall receive a reduction in pay not greater than 5 percent. In exchange for this reduction in pay, each employee shall receive eight hours of PLP 2012 Program leave credits on the first day of each monthly pay period. This subdivision shall not apply to retired annuitants or to employees of entities listed in Section 3.90 of the Budget Act of 2012.

SEC. 22. Section 50087 of the Government Code is repealed.

~~50087. Every city, county, or city and county which has at least 5,000 residents or in which 5 percent of the population is of Filipino ancestry or ethnic origin, according to the last federal census, and which conducts any survey as to the ancestry or ethnic origin of its employees, or which maintains any statistical tabulation of minority group employees, shall categorize employees~~

~~whose ancestry or ethnic origin is Filipino as Filipinos in such survey or tabulation.~~

SEC. 23. Section 51298 of the Government Code is amended to read:

51298. It is the intent of the Legislature in enacting this chapter to provide local governments with opportunities to attract *either* large manufacturing *or research and development* facilities to invest in their communities and to encourage industries, such as high technology, aerospace, automotive, biotechnology, software, environmental sources, and others, to locate and invest in those facilities in California.

(a) Commencing in the 1998–99 fiscal year, the governing body of a county, city and county, or city, may, by means of an ordinance or resolution approved by a majority of its entire membership, elect to establish a capital investment incentive program. In any county, city and county, or city in which the governing body has so elected, the county, city and county, or city shall, upon the approval by a majority of the entire membership of its governing body of a written request therefor, pay a capital investment incentive amount to the proponent of a qualified manufacturing *facility or a qualified research and development* facility for up to 15 consecutive fiscal years. A request for the payment of capital investment incentive amounts shall be filed by a proponent in writing with the governing body of an electing county, city and county, or city in the time and manner specified in procedures adopted by that governing body. In the case in which the governing body of an electing county, city and county, or city approves a request for the payment of capital investment incentive amounts, both of the following conditions shall apply:

(1) The consecutive fiscal years during which a capital investment incentive amount is to be paid shall commence with the first fiscal year commencing after the date upon which the qualified manufacturing *facility or the qualified research and development* facility is certified for occupancy or, if no certification is issued, the first fiscal year commencing after the date upon which the qualified manufacturing facility *or the qualified research and development facility* commences operation.

(2) In accordance with paragraph (4) of subdivision (d), the annual payment to a proponent of each capital investment incentive

amount shall be contingent upon the proponent's payment of a community services fee.

(b) For purposes of this section:

(1) "Qualified manufacturing facility" means a proposed manufacturing facility that meets all of the following criteria:

(A) The proponent's initial investment in that facility, in real and personal property, necessary for the full and normal operation of that facility, made pursuant to the capital investment incentive program, that comprises any portion of that facility or has its situs at that facility, exceeds ~~one~~ *two* hundred fifty million dollars ~~($150,000,000)~~ *($250,000,000)*. Compliance with this subparagraph shall be certified by the ~~Business, Transportation and Housing Agency~~ *Governor's Office of Business and Economic Development* upon the ~~agency's~~ *director's* approval of a proponent's application for certification of a qualified manufacturing facility. An application for certification shall be submitted by a proponent to the ~~agency~~ *Governor's Office of Business and Economic Development* in writing in the time and manner as specified by the ~~agency~~ *director*.

(B) The facility is to be located within the jurisdiction of the electing county, city and county, or city to which the request is made for payment of capital investment incentive amounts.

(C) The facility is operated by any of the following:

(i) A business described in Codes 3500 to 3899, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, except that "January 1, 1997," shall be substituted for "January 1, 1994," in each place in which it appears.

(ii) A business engaged in the recovery of minerals from geothermal resources, including the proportional amount of a geothermal electric generating plant that is integral to the recovery process by providing electricity for it.

(iii) A business engaged in the manufacturing of parts or components related to the production of electricity using solar, wind, biomass, hydropower, or geothermal resources on or after July 1, 2010.

(D) The proponent is ~~either~~ currently engaged in *any of the following: (i)* commercial production ~~or engaged in~~, *(ii)* the perfection of the manufacturing process, or *(iii)* the perfection of a product intended to be manufactured.

(2) "Qualified research and development facility" means a proposed research and development facility that meets all of the following criteria:

(A) The proponent's initial investment in that facility, in real and personal property, necessary for the full and normal operation of that facility, made pursuant to the capital investment incentive program, that comprises any portion of that facility or has its situs at that facility, exceeds two hundred fifty million dollars ($250,000,000). Compliance with this subparagraph shall be certified by the Governor's Office of Business and Economic Development upon the director's approval of a proponent's application for certification of a qualified research and development facility. An application for certification shall be submitted by a proponent to the Governor's Office of Business and Economic Development in writing in the time and manner specified by the director.

(B) The facility is to be located within the jurisdiction of the electing county, city and county, or city to which the request is made for payment of capital investment incentive amounts.

(C) The facility is operated by a business described in Code 7371, 7373, or 8711 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, except that "January 1, 1997," shall be substituted for "January 1, 1994," in each place in which it appears.

(D) The proponent is currently engaged in research and development.

~~(2)~~

(3) "Proponent" means a party or parties that meet all of the following criteria:

(A) The party is named in the application to the county, city and county, or city within which the qualified manufacturing *facility or the qualified research and development* facility would be located for a permit to construct a qualified manufacturing *facility or a qualified research and development* facility.

(B) The party will be the fee owner of the qualified manufacturing *facility or the qualified research and development* facility upon the completion of that facility. Notwithstanding the previous sentence, the party may enter into a sale-leaseback transaction and nevertheless be considered the proponent.

(C) If a proponent that is receiving capital investment incentive amounts subsequently leases the subject qualified manufacturing *facility or qualified research and development* facility to another party, the lease may provide for the payment to that lessee of any portion of a capital investment incentive amount. Any lessee receiving any portion of a capital investment incentive amount shall also be considered a proponent for the purposes of subdivision (d).

~~(3)~~

(4) "Capital investment incentive amount" means, with respect to a qualified manufacturing *facility or a qualified research and development* facility for a relevant fiscal year, an amount up to or equal to the amount of ad valorem property tax revenue derived by the participating local agency from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) *or subparagraph (A) of paragraph (2)* that is in excess of ~~one hundred fifty~~ *twenty-five* million dollars ~~($150,000,000)~~ *($25,000,000)*.

(5) "Development" means a systematic application of knowledge or understanding, directed toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

~~(4)~~

(6) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(7) "Research" means either basic research or applied research.

(A) "Applied research" means a systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

(B) "Basic research" means a systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications toward processes or products in mind.

(c) A city or special district may, upon the approval by a majority of the entire membership of its governing body, pay to the county, city and county, or city an amount equal to the amount of ad valorem property tax revenue allocated to that city or special district, but not the actual allocation, derived from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) of subdivision (b) *or subparagraph (A) of paragraph (2) of subdivision (b)* that is in excess of ~~one hundred fifty~~ *twenty-five* million dollars ~~($150,000,000)~~ *($25,000,000)*.

(d) A proponent whose request for the payment of capital investment incentive amounts is approved by an electing county, city and county, or city shall enter into a community services agreement with that county, city and county, or city that includes, but is not limited to, all of the following provisions:

(1) A provision requiring that a community services fee be remitted by the proponent to the county, city and county, or city, in each fiscal year ~~subject to the agreement~~, in an amount that is equal to 25 percent of the capital investment incentive amount calculated for that proponent for that fiscal year, except that in no fiscal year shall the amount of the community services fee exceed two million dollars ($2,000,000).

(2) A provision specifying the dates in each relevant fiscal year upon which payment of the community services fee is due and delinquent, and the rate of interest to be charged to a proponent for any delinquent portion of the community services fee amount.

(3) A provision specifying the procedures and rules for the determination of underpayments or overpayments of a community services fee, for the appeal of determinations of any underpayment, and for the refunding or crediting of any overpayment.

(4) A provision specifying that a proponent is ineligible to receive a capital investment incentive amount if that proponent is currently delinquent in the payment of any portion of a community services fee amount, if the qualified manufacturing *facility or the qualified research and development* facility is constructed in a manner materially different from the facility as described in building permit application materials, or if the facility is no longer operated as a qualified manufacturing *facility or a qualified research and development* facility meeting the requirements of paragraph (1) *or (2)* of subdivision (b), *as applicable*. If a

proponent becomes ineligible to receive a capital investment incentive amount as a result of an agreement provision included pursuant to this subparagraph, the running of the number of consecutive fiscal years specified in an agreement made pursuant to subdivision (a) is not tolled during the period in which the proponent is ineligible.

(5) A provision that sets forth a job creation plan with respect to the relevant qualified manufacturing *facility or the qualified research and development* facility. The plan shall specify the number of jobs to be created by that facility, and the types of jobs and compensation ranges to be created thereby. The plan shall also specify that for the entire term of the community services agreement, both of the following shall apply:

(A) All of the employees working at the qualified manufacturing *facility or the qualified research and development* facility shall be covered by an employer-sponsored health benefits plan.

(B) The average weekly wage, exclusive of overtime, paid to all of the employees working at the qualified manufacturing *facility or the qualified research and development* facility, who are not management or supervisory employees, shall be not less than the state average weekly wage.

For the purpose of this subdivision, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30 of the preceding calendar year.

(6) (A) In the case in which the proponent fails to operate the qualified manufacturing *facility or the qualified research and development* facility as required by the community services agreement, a provision that requires the recapture of any portion of any capital investment incentive amounts previously paid to the proponent equal to the lesser of the following:

(i) All of the capital investment incentive amounts paid to the proponent, less all of the community services fees received from the proponent, and less any capital investment incentive amounts previously recaptured.

(ii) The last capital investment incentive amount paid to the proponent, less the last community services fee received from the proponent, multiplied by 40 percent of the number of years remaining in the community services agreement, but not to exceed

10 years, and less any capital investment incentive amounts previously recaptured.

(B) If the proponent fails to operate the qualified manufacturing *facility or the qualified research and development* facility as required by the community services agreement, the county, city and county, or city may, upon a finding that good cause exists, waive any portion of the recapture of any capital investment incentive amount due under this subdivision. For the purpose of this subdivision, good cause includes, but is not limited to, the following:

(i) The proponent has sold or leased the property to a person who has entered into an agreement with the county, city and county, or city to assume all of the responsibilities of the proponent under the community services agreement.

(ii) The qualified manufacturing *facility or the qualified research and development* facility has been rendered inoperable and beyond repair as a result of an act of God.

(C) For purposes of this subdivision, failure to operate a qualified manufacturing *facility or a qualified research and development* facility as required by the community services agreement includes, but is not limited to, failure to establish the number of jobs specified in the jobs creation plan created pursuant to paragraph (5).

(e) (1) Each county, city and county, or city that elects to establish a capital investment incentive program shall notify the ~~Business, Transportation and Housing Agency~~ *Governor's Office of Business and Economic Development* of its election to do so no later than June ~~30th~~ *30* of the fiscal year in which the election was made.

(2) In addition to the information required to be reported pursuant to paragraph (1), each county, city and county, or city that has elected to establish a capital investment incentive program shall notify the ~~Business, Transportation and Housing Agency~~ *Governor's Office of Business and Economic Development* each fiscal year no later than June ~~30th~~ *30* of the amount of any capital investment incentive payments made and the proponent of the qualified manufacturing *facility or the qualified research and development* facility to whom the payments were made during that fiscal year.

(3) The ~~Business, Transportation and Housing Agency~~ *Governor's Office of Business and Economic Development* shall compile the information submitted by each county, city and county, and city pursuant to paragraphs (1) and (2) and submit a report to the Legislature containing this information no later than October 1, every two years commencing October 1, 2000.

(f) This section is repealed on June 30, 2013.

SEC. 24. Section 51298 is added to the Government Code, to read:

51298. It is the intent of the Legislature in enacting this chapter to provide local governments with opportunities to attract large manufacturing facilities to invest in their communities and to encourage industries, such as high technology, aerospace, automotive, biotechnology, software, environmental sources, and others, to locate and invest in those facilities in California.

(a) Commencing in the 1998–99 fiscal year, the governing body of a county, city and county, or city, may, by means of an ordinance or resolution approved by a majority of its entire membership, elect to establish a capital investment incentive program. In any county, city and county, or city in which the governing body has so elected, the county, city and county, or city shall, upon the approval by a majority of the entire membership of its governing body of a written request therefor, pay a capital investment incentive amount to the proponent of a qualified manufacturing facility for up to 15 consecutive fiscal years. A request for the payment of capital investment incentive amounts shall be filed by a proponent in writing with the governing body of an electing county, city and county, or city in the time and manner specified in procedures adopted by that governing body. In the case in which the governing body of an electing county, city and county, or city approves a request for the payment of capital investment incentive amounts, both of the following conditions shall apply:

(1) The consecutive fiscal years during which a capital investment incentive amount is to be paid shall commence with the first fiscal year commencing after the date upon which the qualified manufacturing facility is certified for occupancy or, if no certification is issued, the first fiscal year commencing after the date upon which the qualified manufacturing facility commences operation.

(2) In accordance with paragraph (4) of subdivision (d), the annual payment to a proponent of each capital investment incentive amount shall be contingent upon the proponent's payment of a community services fee.

(b) For purposes of this section:

(1) "Qualified manufacturing facility" means a proposed manufacturing facility that meets all of the following criteria:

(A) The proponent's initial investment in that facility, in real and personal property, necessary for the full and normal operation of that facility, made pursuant to the capital investment incentive program, that comprises any portion of that facility or has its situs at that facility, exceeds one hundred fifty million dollars ($150,000,000). Compliance with this subparagraph shall be certified by the Business, Transportation and Housing Agency upon the agency's approval of a proponent's application for certification of a qualified manufacturing facility. An application for certification shall be submitted by a proponent to the agency in writing in the time and manner as specified by the agency.

(B) The facility is to be located within the jurisdiction of the electing county, city and county, or city to which the request is made for payment of capital investment incentive amounts.

(C) The facility is operated by any of the following:

(i) A business described in Codes 3500 to 3899, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, except that "January 1, 1997," shall be substituted for "January 1, 1994," in each place in which it appears.

(ii) A business engaged in the recovery of minerals from geothermal resources, including the proportional amount of a geothermal electric generating plant that is integral to the recovery process by providing electricity for it.

(iii) A business engaged in the manufacturing of parts or components related to the production of electricity using solar, wind, biomass, hydropower, or geothermal resources on or after July 1, 2010.

(D) The proponent is either currently engaged in commercial production or engaged in the perfection of the manufacturing process, or the perfection of a product intended to be manufactured.

(2) "Proponent" means a party or parties that meet all of the following criteria:

(A) The party is named in the application to the county, city and county, or city within which the qualified manufacturing facility would be located for a permit to construct a qualified manufacturing facility.

(B) The party will be the fee owner of the qualified manufacturing facility upon the completion of that facility. Notwithstanding the previous sentence, the party may enter into a sale-leaseback transaction and nevertheless be considered the proponent.

(C) If a proponent that is receiving capital investment incentive amounts subsequently leases the subject qualified manufacturing facility to another party, the lease may provide for the payment to that lessee of any portion of a capital investment incentive amount. Any lessee receiving any portion of a capital investment incentive amount shall also be considered a proponent for the purposes of subdivision (d).

(3) "Capital investment incentive amount" means, with respect to a qualified manufacturing facility for a relevant fiscal year, an amount up to or equal to the amount of ad valorem property tax revenue derived by the participating local agency from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) that is in excess of one hundred fifty million dollars ($150,000,000).

(4) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(c) A city or special district may, upon the approval by a majority of the entire membership of its governing body, pay to the county, city and county, or city an amount equal to the amount of ad valorem property tax revenue allocated to that city or special district, but not the actual allocation, derived from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) of

subdivision (b) that is in excess of one hundred fifty million dollars ($150,000,000).

(d) A proponent whose request for the payment of capital investment incentive amounts is approved by an electing county, city and county, or city shall enter into a community services agreement with that county, city and county, or city that includes, but is not limited to, all of the following provisions:

(1) A provision requiring that a community services fee be remitted by the proponent to the county, city and county, or city, in each fiscal year subject to the agreement, in an amount that is equal to 25 percent of the capital investment incentive amount calculated for that proponent for that fiscal year, except that in no fiscal year shall the amount of the community services fee exceed two million dollars ($2,000,000).

(2) A provision specifying the dates in each relevant fiscal year upon which payment of the community services fee is due and delinquent, and the rate of interest to be charged to a proponent for any delinquent portion of the community services fee amount.

(3) A provision specifying the procedures and rules for the determination of underpayments or overpayments of a community services fee, for the appeal of determinations of any underpayment, and for the refunding or crediting of any overpayment.

(4) A provision specifying that a proponent is ineligible to receive a capital investment incentive amount if that proponent is currently delinquent in the payment of any portion of a community services fee amount, if the qualified manufacturing facility is constructed in a manner materially different from the facility as described in building permit application materials, or if the facility is no longer operated as a qualified manufacturing facility meeting the requirements of paragraph (1) of subdivision (b). If a proponent becomes ineligible to receive a capital investment incentive amount as a result of an agreement provision included pursuant to this subparagraph, the running of the number of consecutive fiscal years specified in an agreement made pursuant to subdivision (a) is not tolled during the period in which the proponent is ineligible.

(5) A provision that sets forth a job creation plan with respect to the relevant qualified manufacturing facility. The plan shall specify the number of jobs to be created by that facility, and the types of jobs and compensation ranges to be created thereby. The

plan shall also specify that for the entire term of the community services agreement, both of the following shall apply:

(A) All of the employees working at the qualified manufacturing facility shall be covered by an employer-sponsored health benefits plan.

(B) The average weekly wage, exclusive of overtime, paid to all of the employees working at the qualified manufacturing facility, who are not management or supervisory employees, shall be not less than the state average weekly wage.

For the purpose of this subdivision, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30 of the preceding calendar year.

(6) (A) In the case in which the proponent fails to operate the qualified manufacturing facility as required by the community services agreement, a provision that requires the recapture of any portion of any capital investment incentive amounts previously paid to the proponent equal to the lesser of the following:

(i) All of the capital investment incentive amounts paid to the proponent, less all of the community services fees received from the proponent, and less any capital investment incentive amounts previously recaptured.

(ii) The last capital investment incentive amount paid to the proponent, less the last community services fee received from the proponent, multiplied by 40 percent of the number of years remaining in the community services agreement, but not to exceed 10 years, and less any capital investment incentive amounts previously recaptured.

(B) If the proponent fails to operate the qualified manufacturing facility as required by the community services agreement, the county, city and county, or city may, upon a finding that good cause exists, waive any portion of the recapture of any capital investment incentive amount due under this subdivision. For the purpose of this subdivision, good cause includes, but is not limited to, the following:

(i) The proponent has sold or leased the property to a person who has entered into an agreement with the county, city and county, or city to assume all of the responsibilities of the proponent under the community services agreement.

(ii) The qualified manufacturing facility has been rendered inoperable and beyond repair as a result of an act of God.

(C) For purposes of this subdivision, failure to operate a qualified manufacturing facility as required by the community services agreement includes, but is not limited to, failure to establish the number of jobs specified in the jobs creation plan created pursuant to paragraph (5).

(e) (1) Each county, city and county, or city that elects to establish a capital investment incentive program shall notify the Business, Transportation and Housing Agency of its election to do so no later than June 30th of the fiscal year in which the election was made.

(2) In addition to the information required to be reported pursuant to paragraph (1), each county, city and county, or city that has elected to establish a capital investment incentive program shall notify the Business, Transportation and Housing Agency each fiscal year no later than June 30th of the amount of any capital investment incentive payments made and the proponent of the qualified manufacturing facility to whom the payments were made during that fiscal year.

(3) The Business, Transportation and Housing Agency shall compile the information submitted by each county, city and county, and city pursuant to paragraphs (1) and (2) and submit a report to the Legislature containing this information no later than October 1, every two years commencing October 1, 2000.

(f) This section shall become operative on July 1, 2013.

SEC. 25. Section 76104.7 of the Government Code is amended to read:

76104.7. (a) Except as otherwise provided in this section, in addition to the penalty levied pursuant to Section 76104.6, there shall be levied an additional state-only penalty of ~~three~~ *four* dollars ~~($3)~~ *($4)* for every ten dollars ($10), or part of ten dollars ($10), in each county upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code.

(b) This additional penalty shall be collected together with, and in the same manner as, the amounts established by Section 1464 of the Penal Code. These moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division

pursuant to Section 1463 of the Penal Code. These funds shall be deposited into the county treasury DNA Identification Fund. One hundred percent of these funds, including any interest earned thereon, shall be transferred to the state Controller at the same time that moneys are transferred pursuant to paragraph (2) of subdivision (b) of Section 76104.6, for deposit into the state's DNA Identification Fund. These funds shall be used to fund the operations of the Department of Justice forensic laboratories, including the operation of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, and to facilitate compliance with the requirements of subdivision (e) of Section 299.5 of the Penal Code.

(c) This additional penalty does not apply to the following:

(1) Any restitution fine.

(2) Any penalty authorized by Section 1464 of the Penal Code or this chapter.

(3) Any parking offense subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

(4) The state surcharge authorized by Section 1465.7 of the Penal Code.

(d) The fees collected pursuant to this section shall not be subject to subdivision (e) of Section 1203.1d of the Penal Code, but shall be disbursed under paragraph (3) of subdivision (b) of Section 1203.1d of the Penal Code.

SEC. 26. Section 11873 of the Insurance Code is amended to read:

11873. (a) Except as provided by subdivision (b), the fund shall not be subject to the provisions of the Government Code made applicable to state agencies generally or collectively, unless the section specifically names the fund as an agency to which the provision applies.

(b) The fund shall be subject to the provisions of Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of, Chapter 6.5 (commencing with Section 8543) of Division 1 of Title 2 of, Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code, and Division 5 (commencing with Section 18000) of Title 2 of the Government Code, with the exception of all of the following provisions of that division:

(1) Article 1 (commencing with Section 19820) and Article 2 (commencing with Section 19823) of Chapter 2 of Part 2.6 of Division 5.

(2) Sections 19849.2, 19849.3, 19849.4, and 19849.5.

(3) Chapter 4.5 (commencing with Section 19993.1) of Part 2.6 of Division 5.

(c) ~~Notwithstanding~~ *Except as provided in subdivisions (d) and (e) for the period from July 1, 2012, to June 30, 2013, inclusive, and notwithstanding* any provision of the Government Code or any other provision of law, the positions funded by the State Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law. This subdivision is declaratory of existing law.

(d) Notwithstanding any other law, employees of the fund shall, without limitation, be subject to any and all reductions in state employee compensation imposed by the Legislature on other state employees for the period from July 1, 2012, to June 30, 2013, inclusive, regardless of the means adopted to effect those reductions.

(e) With the exception of the reductions authorized in subdivision (d), if any provision of this section, or any practice or procedure adopted pursuant to this section, is in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 27. Section 62.9 of the Labor Code is amended to read:

62.9. (a) (1) The director shall levy and collect assessments from employers in accordance with this section. The total amount of the assessment collected shall be the amount determined by the director to be necessary to produce the revenue sufficient to fund the programs specified by Section 62.7, except that the amount assessed in any year for those purposes shall not exceed 50 percent of the amounts appropriated from the General Fund for the support of the occupational safety and health program for the 1993–94 fiscal year, adjusted for inflation. The director also shall include in the total assessment amount the department's costs for

administering the assessment, including the collections process and the cost of reimbursing the ~~Franchise Tax Board~~ *Employment Development Department* or another agency or department for its cost of collection activities pursuant to subdivision (c).

(2) The insured employers and private sector self-insured employers that, pursuant to subdivision (b), are subject to assessment shall be assessed, respectively, on the basis of their annual payroll subject to premium charges or their annual payroll that would be subject to premium charges if the employer were insured, as follows:

(A) An employer with a payroll of less than two hundred fifty thousand dollars ($250,000) shall be assessed one hundred dollars ($100).

(B) An employer with a payroll of two hundred fifty thousand dollars ($250,000) or more, but not more than five hundred thousand dollars ($500,000), shall be assessed two hundred dollars ($200).

(C) An employer with a payroll of more than five hundred thousand dollars ($500,000), but not more than seven hundred fifty thousand dollars ($750,000), shall be assessed four hundred dollars ($400).

(D) An employer with a payroll of more than seven hundred fifty thousand dollars ($750,000), but not more than one million dollars ($1,000,000), shall be assessed six hundred dollars ($600).

(E) An employer with a payroll of more than one million dollars ($1,000,000), but not more than one million five hundred thousand dollars ($1,500,000), shall be assessed eight hundred dollars ($800).

(F) An employer with a payroll of more than one million five hundred thousand dollars ($1,500,000), but not more than two million dollars ($2,000,000), shall be assessed one thousand dollars ($1,000).

(G) An employer with a payroll of more than two million dollars ($2,000,000), but not more than two million five hundred thousand dollars ($2,500,000), shall be assessed one thousand five hundred dollars ($1,500).

(H) An employer with a payroll of more than two million five hundred thousand dollars ($2,500,000), but not more than three million five hundred thousand dollars ($3,500,000), shall be assessed two thousand dollars ($2,000).

(I) An employer with a payroll of more than three million five hundred thousand dollars ($3,500,000), but not more than four million five hundred thousand dollars ($4,500,000), shall be assessed two thousand five hundred dollars ($2,500).

(J) An employer with a payroll of more than four million five hundred thousand dollars ($4,500,000), but not more than five million five hundred thousand dollars ($5,500,000), shall be assessed three thousand dollars ($3,000).

(K) An employer with a payroll of more than five million five hundred thousand dollars ($5,500,000), but not more than seven million dollars ($7,000,000), shall be assessed three thousand five hundred dollars ($3,500).

(L) An employer with a payroll of more than seven million dollars ($7,000,000), but not more than twenty million dollars ($20,000,000), shall be assessed six thousand seven hundred dollars ($6,700).

(M) An employer with a payroll of more than twenty million dollars ($20,000,000) shall be assessed ten thousand dollars ($10,000).

(b) (1) In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience modification rating of 1.25 or more, and private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (e).

(2) The assessment required by this section shall be levied annually, on a calendar year basis, on those insured employers and private sector self-insured employers, as identified pursuant to paragraph (1), having the highest workers' compensation experience modification ratings or equivalent experience modification ratings, that the director determines to be required numerically to produce the total amount of the assessment to be collected pursuant to subdivision (a).

(c) The director shall collect the assessment from insured employers as follows:

(1) Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25

or more, according to the organization's records at the time the list is requested, for policies commencing the year preceding the year in which the assessment is to be collected.

(2) The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers.

(3) On or before September 1 of each year, the director shall determine each of the current insured employers subject to assessment, and the amount of the total assessment for which each insured employer is liable. The director immediately shall notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision.

(4) The director shall identify any insured employers that, within 30 days after the mailing of the billing notice, fail to pay, or object to, their assessments. The director shall mail to each of these employers a notice of delinquency and a notice of the intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after the mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to ~~the Franchise Tax Board or~~ another agency or department for collection. The notices required by this paragraph shall be sent by United States first-class mail.

(5) If an assessment is not paid by an insured employer within 15 days after the mailing of the notices required by paragraph (4), the director shall refer the delinquent assessment and the penalty to the ~~Franchise Tax Board~~ *Employment Development Department*, or another agency or department, as deemed appropriate by the director, for collection pursuant to ~~Section 19290.1 of the Revenue and Taxation Code, or~~ Section 1900 of the Unemployment Insurance Code.

(d) The director shall collect the assessment directly from private sector self-insured employers. The failure of any private sector self-insured employer to pay the assessment as billed constitutes

grounds for the suspension or termination of the employer's certificate to self-insure.

(e) The director shall adopt regulations implementing this section that include provision for a method of determining experience modification ratings for private sector self-insured employers that is generally equivalent to the modification ratings that apply to insured employers and is weighted by both severity and frequency.

(f) The director shall determine whether the amount collected pursuant to any assessment exceeds expenditures, as described in subdivision (a), for the current year and shall credit the amount of any excess to any deficiency in the prior year's assessment or, if there is no deficiency, against the assessment for the subsequent year.

SEC. 28. Section 972.1 of the Military and Veterans Code, as amended by Section 1 of Chapter 183 of the Statutes of 2009, is amended to read:

972.1. (a) The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the General Fund to the Department of Veterans Affairs for allocation, during the 1989–90 fiscal year, for purposes of funding the activities of county ~~veteran~~ *veterans* service ~~officers~~ *offices* pursuant to this section. Funds for allocation in future years shall be as provided in the annual Budget Act.

(b) Funds shall be disbursed each fiscal year on a pro rata basis to counties that have established and maintain a county ~~veteran~~ *veterans* service ~~officer~~ *office* in accordance with the staffing level and workload of each county ~~veteran~~ *veterans* service ~~officer~~ *office* under a formula based upon performance that shall be developed by the Department of Veterans Affairs for these purposes.

(1) For the purposes of this section, "workload unit" means a specific claim activity that is used to allocate subvention funds to counties, which is approved by the department, and performed by county veterans service offices.

(2) For the purposes of this subdivision, the department, by June 30, 2013, shall develop a performance-based formula that will incentivize county veterans service offices to perform workload units that help veterans access federal compensation and pension benefits and other benefits, in order to maximize the amount of federal money received by California veterans.

(c) The department shall annually determine the amount of new or increased monetary benefits paid to eligible veterans by the

federal government attributable to the assistance of county ~~veteran~~ *veterans* service ~~officers~~ *offices*. The department shall, on or before January 1 of each year, prepare and transmit its determination for the preceding fiscal year to the Department of Finance and the Legislature. The Department of Finance shall review the department's determination in time to use the information in the annual Budget Act for the budget of the department for the next fiscal year.

(d) The department shall conduct a review of the high-performing and low-performing county veterans service offices and based on this review, shall produce a best-practices manual for county veterans service offices by June 30, 2013.

~~(d)~~

(e) (1) The Legislature finds and declares that 50 percent of the amount annually budgeted for county ~~veteran~~ *veterans* service ~~officers~~ *offices* is approximately eleven million dollars ($11,000,000). The Legislature further finds and declares that it is an efficient and reasonable use of state funds to increase the annual budget for county ~~veteran~~ *veterans* service ~~officers~~ *offices* in an amount not to exceed eleven million dollars ($11,000,000) if it is justified by the monetary benefits to the state's veterans attributable to the effort of these ~~officers~~ *offices*.

(2) It is the intent of the Legislature, after reviewing the department's determination in subdivision (c), to consider an increase in the annual budget for county ~~veteran~~ *veterans* service ~~officers~~ *offices* in an amount not to exceed five million dollars ($5,000,000), if the monetary benefits to the state's veterans attributable to the assistance of county ~~veteran~~ *veterans* service ~~officers~~ *offices* justify that increase in the budget.

~~(e)~~

(f) This section shall remain in effect only until January 1, 2016, and as of that date is repealed.

SEC. 29. Section 6611 of the Public Contract Code is amended to read:

6611. (a) Notwithstanding any other provision of law, the Department of General Services may, relative to contracts for goods, services, information technology, and telecommunications, use a negotiation process if the department finds that one or more of the following conditions exist:

(1) The business need or purpose of a procurement or contract can be further defined as a result of a negotiation process.

(2) The business need or purpose of a procurement or contract is known by the department, but a negotiation process may identify different types of solutions to fulfill this business need or purpose.

(3) The complexity of the purpose or need suggests a bidder's costs to prepare and develop a solicitation response are extremely high.

(4) The business need or purpose of a procurement or contract is known by the department, but negotiation is necessary to ensure that the department is receiving the best value or the most cost-efficient goods, services, information technology, and telecommunications.

(b) When it is in the best interests of the state, the department may negotiate amendments to the terms and conditions, including scope of work, of existing contracts for goods, services, information technology, and telecommunications, whether or not the original contract was the result of competition, on behalf of itself or another state agency.

(c) (1) The department shall establish the procedures and guidelines for the negotiation process described in subdivision (a), which procedures and guidelines shall include, but not be limited to, a clear description of the methodology that will be used by the department to evaluate a bid for the procurement goods, services, information technology, and telecommunications.

(2) The procedures and guidelines described in paragraph (1) may include provisions that authorize the department to receive supplemental bids after the initial bids are opened. If the procedures and guidelines include these provisions, the procedures and guidelines shall specify the conditions under which supplemental bids may be received by the department.

(d) An unsuccessful bidder shall have no right to protest the results of the negotiating process undertaken pursuant to this section. As a remedy, an unsuccessful bidder may file a petition for a writ of mandate in accordance with Section 1085 of the Code of Civil Procedure. The venue for the petition for a writ of mandate shall be Sacramento, California. An action filed pursuant to this subdivision shall be given preference by the court.

(e) (1) The California Technology Agency may utilize the negotiation process described in subdivisions (a) and (b) for the

purpose of procuring information technology and telecommunications goods and services on behalf of state departments and information technology projects.

(2) Nothing in this section shall be interpreted to supersede the department's existing statutory control over procurement processes as dictated in Section 12100.

(f) On or before January 1, 2013, and annually thereafter, the California Technology Agency and the Department of General Services shall report to the relevant budget subcommittees of each house of the Legislature on the use of subdivision (e) during budget hearings.

(g) Subdivisions (e) and (f) shall remain in effect only until January 1, 2018, unless an enacted statute deletes or extends that date. Procurements still in the negotiation process pursuant to subdivision (e) on January 1, 2018, shall complete negotiations using that process.

SEC. 30. Section 8352.3 of the Revenue and Taxation Code is amended to read:

8352.3. *(a)* Subject to Sections 8352 and 8352.1, *and except as otherwise provided in subdivision (b),* all moneys deposited to the credit of the Motor Vehicle Fuel Account attributable to the distribution of motor vehicle fuel for use or used in propelling an aircraft in the state shall be transferred to the Aeronautics Account in the State Transportation Fund, for allocation as follows:

~~(a) To pay the refunds authorized by Section 8101.5.~~

~~(b)~~

(1) To pay the pro rata cost of the Controller and the board under subdivisions (b), (c), and (d) of Section 8352.1.

~~(c)~~

(2) To pay for the support of the Department of Transportation, for the administration of the State Aeronautics Act (Division 9 (commencing with Section 21001) of the Public Utilities Code).

~~(d)~~

(3) Remaining balance to be available for expenditures in accordance with ~~Sections~~ *Section* 21602~~,~~ and ~~21682 to 21684, inclusive,~~ *Article 4 (commencing with Section 21680) of Chapter 4 of Part 1 of Division 9* of the Public Utilities Code.

(b) Commencing July 1, 2012, the revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 and otherwise to be deposited in the Aeronautics

Account pursuant to subdivision (a) shall instead be transferred to the General Fund. The revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 that were deposited in the Aeronautics Account in the 2010–11 and 2011–12 fiscal years shall be transferred to the General Fund.

SEC. 31. Section 8352.4 of the Revenue and Taxation Code is amended to read:

8352.4. *(a)* Subject to Sections 8352 and 8352.1, *and except as otherwise provided in subdivision (b),* there shall be transferred from the money deposited to the credit of the Motor Vehicle Fuel Account to the Harbors and Watercraft Revolving Fund, for expenditure in accordance with Division 1 (commencing with Section 30) of the Harbors and Navigation Code, the sum of six million six hundred thousand dollars ($6,600,000) per annum, representing the amount of money in the Motor Vehicle Fuel Account attributable to taxes imposed on distributions of motor vehicle fuel used or usable in propelling vessels. The actual amount shall be calculated using the annual reports of registered boats prepared by the Department of Motor Vehicles for the United States Coast Guard and the formula and method of the December 1972 report prepared for this purpose and submitted to the Legislature on December 26, 1972, by the Director of Transportation. If the amount transferred during each fiscal year is in excess of the calculated amount, the excess shall be retransferred from the Harbors and Watercraft Revolving Fund to the Motor Vehicle Fuel Account. If the amount transferred is less than the amount calculated, the difference shall be transferred from the Motor Vehicle Fuel Account to the Harbors and Watercraft Revolving Fund. No adjustment shall be made if the computed difference is less than fifty thousand dollars ($50,000), and the amount shall be adjusted to reflect any temporary or permanent increase or decrease that may be made in the rate under the Motor Vehicle Fuel Tax Law. Payments pursuant to this section shall be made prior to payments pursuant to Section 8352.2.

(b) Commencing July 1, 2012, the revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 and otherwise to be deposited in the Harbors and Watercraft Revolving Fund pursuant to subdivision (a) shall instead be transferred to the General Fund. The revenues

attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 that were deposited in the Harbors and Watercraft Revolving Fund in the 2010–11 and 2011–12 fiscal years shall be transferred to the General Fund.

~~When~~

(c) When deemed necessary by the Department of Transportation and the Department of Boating and Waterways, the Department of Transportation, after consultation with the Department of Boating and Waterways, shall prepare, or cause to be prepared, an updated report setting forth the current estimate of the amount of money credited to the Motor Vehicle Fuel Account attributable to taxes imposed on distributions of motor vehicle fuel used or usable in propelling vessels. The Department of Transportation shall submit the report to the Legislature upon its completion.

SEC. 32. Section 8352.5 of the Revenue and Taxation Code is amended to read:

8352.5. *(a) (1)* Subject to Sections 8352 and 8352.1, *and except as otherwise provided in subdivision (b),* there shall be transferred from the money deposited to the credit of the Motor Vehicle Fuel Account to the Department of Food and Agriculture Fund, during the second quarter of each fiscal year, an amount equal to the estimate contained in the most recent report prepared pursuant to this section.

~~The~~

(2) The amounts are not subject to Section 6357 with respect to the collection of sales and use taxes thereon, and represent the portion of receipts in the Motor Vehicle Fuel Account during a calendar year that were attributable to agricultural off-highway use of motor vehicle fuel which is subject to refund pursuant to Section 8101, less gross refunds allowed by the Controller during the fiscal year ending June 30th following the calendar year to persons entitled to refunds for agricultural off-highway use pursuant to Section 8101. Payments pursuant to this section shall be made prior to payments pursuant to Section 8352.2.

(b) Commencing July 1, 2012, the revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 and otherwise to be deposited in the Department of Food and Agriculture Fund pursuant to subdivision (a) shall instead be transferred to the General Fund. The revenues attributable to the taxes imposed pursuant to subdivision (b) of

Section 7360 and Section 7361.1 that were deposited in the Department of Food and Agriculture Fund in the 2010–11 and 2011–12 fiscal years shall be transferred to the General Fund.

~~On~~

(c) On or before September 30, 2012, and on or before September ~~30th~~ *30* of each ~~odd-numbered~~ *even-numbered* year *thereafter,* the Director of Transportation and the Director of Food and Agriculture shall jointly prepare, or cause to be prepared, a report setting forth the current estimate of the amount of money in the Motor Vehicle Fuel Account attributable to agricultural off-highway use of motor vehicle fuel, which is subject to refund pursuant to Section 8101 less gross refunds allowed by the Controller to persons entitled to refunds for agricultural off-highway use pursuant to Section 8101; and they shall submit a copy of the report to the Legislature.

SEC. 33. Section 8352.6 of the Revenue and Taxation Code is amended to read:

8352.6. (a) (1) Subject to Section 8352.1, *and except as otherwise provided in paragraphs (2) and (3),* on the first day of every month, there shall be transferred from moneys deposited to the credit of the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund created by Section 38225 of the Vehicle Code an amount attributable to taxes imposed upon distributions of motor vehicle fuel used in the operation of motor vehicles off highway and for which a refund has not been claimed. Transfers made pursuant to this section shall be made prior to transfers pursuant to Section 8352.2.

(2) Commencing July 1, 2012, the revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 and otherwise to be deposited in the Off-Highway Vehicle Trust Fund pursuant to paragraph (1) shall instead be transferred to the General Fund. The revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 that were deposited in the Off-Highway Vehicle Trust Fund in the 2010–11 and 2011–12 fiscal years shall be transferred to the General Fund.

~~(2)~~

(3) The Controller shall withhold eight hundred thirty-three thousand dollars ($833,000) from ~~this~~ *the* monthly transfer *to the*

Off-Highway Vehicle Trust Fund pursuant to paragraph (1), and transfer that amount to the General Fund.

(b) The amount transferred *to the Off-Highway Vehicle Trust Fund* pursuant to paragraph (1) of subdivision (a), as a percentage of the Motor Vehicle Fuel Account, shall be equal to the percentage transferred in the 2006–07 fiscal year. Every five years, starting in the 2013–14 fiscal year, the percentage transferred may be adjusted by the Department of Transportation in cooperation with the Department of Parks and Recreation and the Department of Motor Vehicles. Adjustments shall be based on, but not limited to, the changes in the following factors since the 2006–07 fiscal year or the last adjustment, whichever is more recent:

(1) The number of vehicles registered as off-highway motor vehicles as required by Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(2) The number of registered street-legal vehicles that are anticipated to be used off highway, including four-wheel drive vehicles, all-wheel drive vehicles, and dual-sport motorcycles.

(3) Attendance at the state vehicular recreation areas.

(4) Off-highway recreation use on federal lands as indicated by the United States Forest Service's National Visitor Use Monitoring and the United States Bureau of Land Management's Recreation Management Information System.

(c) It is the intent of the Legislature that transfers from the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund should reflect the full range of motorized vehicle use off highway for both motorized recreation and motorized off-road access to other recreation opportunities. Therefore, the Legislature finds that the fuel tax baseline established in subdivision (b), attributable to off-highway estimates of use as of the 2006–07 fiscal year, accounts for the three categories of vehicles that have been found over the years to be users of fuel for off-highway motorized recreation or motorized access to nonmotorized recreational pursuits. These three categories are registered off-highway motorized vehicles, registered street-legal motorized vehicles used off highway, and unregistered off-highway motorized vehicles.

(d) It is the intent of the Legislature that the off-highway motor vehicle recreational use to be determined by the Department of Transportation pursuant to paragraph (2) of subdivision (b) be that usage by vehicles subject to registration under Division 3

(commencing with Section 4000) of the Vehicle Code, for recreation or the pursuit of recreation on surfaces where the use of vehicles registered under Division 16.5 (commencing with Section 38000) of the Vehicle Code may occur.

SEC. 34. Article 6 (commencing with Section 19290) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 35. Section 19533 of the Revenue and Taxation Code is amended to read:

19533. *(a)* In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

~~(a)~~

(1) Payment of any delinquencies transferred for collection under Article 5 (commencing with Section 19270) of Chapter 5.

~~(b)~~

(2) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 7.5 (commencing with Section 13201), Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, and amounts authorized to be collected under Section 19722.

~~(c) Payment of delinquent wages collected pursuant to the Labor Code.~~

~~(d)~~

(3) Payment of delinquencies collected under Section 10878.

~~(e)~~

(4) Payment of any amounts due that are referred for collection under Article 5.5 (commencing with Section 19280) of Chapter 5.

~~(f) Payment of any amounts that are referred for collection pursuant to Section 62.9 of the Labor Code.~~

~~(g) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.~~

~~(h) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.~~

~~(i) Payment of delinquencies referred by the Student Aid Commission.~~

~~(j)~~

(5) Payment of any delinquencies referred for collection under Article 7 (commencing with Section 19291) of Chapter 5.

~~(k)~~

(b) Notwithstanding the payment priority established by this section, voluntary payments designated by the taxpayer as payment for a personal income tax liability or as a payment on amounts authorized to be collected under Section 19722, shall not be applied pursuant to this priority, but shall instead be applied as designated.

SEC. 36. Item 7300-001-0001 of Section 2.00 of the Budget Act of 2012 is amended to read:

7300-001-0001—For support of Agricultural Labor Relations Board		4,904,000
Schedule:		
(1) 10-Board Administration	~~2,138,000~~ *1,938,000*	
(2) 20-General Counsel Administration	~~2,766,000~~ *2,966,000*	
(3) 30.01-Administration Services	275,000	
(4) 30.02-Distributed Administration Services	−275,000	

SEC. 37. Section 36 of this act shall become operative only if Assembly Bill 1464 or Senate Bill 1004 of the 2011–12 Regular Session is enacted as the Budget Act of 2012, and Assembly Bill 1497 or Senate Bill 1037 of the 2011–12 Regular Session is enacted and amends the Budget Act of 2012.

SEC. 38. The sum of one thousand dollars ($1,000) is hereby appropriated from the General Fund to the Department of Finance to implement this act.

SEC. 39. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

~~SECTION 1. It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.~~

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SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 1006
Author: Senate Budget and Fiscal Review Committee
Amended: 6/25/12
Vote: 21

PRIOR VOTES NOT RELEVANT

ASSEMBLY FLOOR: Not available

SUBJECT: General Government Omnibus Budget Trailer Bill

SOURCE: Author

DIGEST: This bill provides the necessary statutory references to enact the 2012-13 Budget related to General Government, as specified in the analysis below.

Assembly Amendments delete the Senate version of the bill and insert the above language.

ANALYSIS: This bill includes the following provisions:

1. National Mortgage Settlement Proceeds. Creates a deposit fund for the receipt of certain direct payments from the National Mortgage Settlement. Allows the Director of the Department of Finance (DOF), in accordance with legislative intent, to offset General Fund (GF) expenditures during the 2011-12, 2012-13, and 2012-14 fiscal years.

2. Deletes Requirement for State Controller to perform review of Airport Fee Audits. Deletes the requirement for the State Controller to review independent audits necessary to collect specified fees related to rental

CONTINUED

car companies and customer facilities. The independent audits will still be a requirement prior to an airport entity collecting the specified fee.

3. Oversight and Audit Responsibilities of DOF. Ensures that DOF retains its internal oversight audit responsibilities.

4. Authorizes the Sale of Capital Area Development Authority (CADA) Properties. Authorizes the Department of General Services to sell specified parcels of property that are leased by the department to CADA. The proceeds of the sale would be deposited into the GF or the Deficit Recovery Fund.

5. DNA Penalty Assessment. Increases the amount of state-only penalty to $4 for every $10, or part of $10 of those payments for specified criminal offenses. Funds are utilized to fund the operations of the Department of Justice forensic laboratories.

6. Proposition 1B Transit and Waterborne Programs. Enhances oversight responsibilities of the disposition of Proposition 1B related funds by the California Emergency Management Agency (CalEMA) and allows for CalEMA to take into account when funding projects the ability of a project to expend funds within a specified timeframe.

7. Technology Agency Project Oversight. Enables the California Technology Agency to develop and apply uniform criteria on high risk projects in order to reduce project risk and the potential for cost increases.

8. CVSO Funding and Review. Revises the formula utilized by the Department of Veterans Affairs to ensure that a more qualitative rather than quantitative measure is utilized to disburse funds to support County Veteran Service Officer (CVSO) related operations.

9. Negotiated Process for the California Technology Agency. Allows the California Technology Agency to utilize a negotiated process on information technology related procurement contracts if certain criteria are met.

10. University of California (UC) Capital Outlay Interim Financing Costs Reimbursement by the Public Works Board (PWB). Authorizes PWB to provide repayment from state bond proceeds to the UC for the interim

CONTINUED

financing costs of capital outlay projects that have been approved by the Legislature. Under existing law, reimbursement is limited to only the principal amount financed. With this change, UC would be able to provide interim financing for the list of projects that have been approved by the Legislature, but for which bonds have not been sold, thereby allowing these projects to move forward.

11. Employment Development Department: Automated Collection Enhancement System Technical Statutory Clean-up. Provides for the necessary "clean-up" to remove from statute the Franchise Tax Board's authority to collect delinquent accounts for the Department of Industrial Relations (DIR). This statutory authority is no longer needed; as of January 31, 2012, the Employment Development Department's Automated Collection Enhancement System is collecting all delinquent accounts for DIR.

12. Reduction for Employee Compensation. As required by a memorandum of understanding or by direction of the Department of Human Resources (CalHR) for excluded employees, specifies state employees shall participate in the Personal Leave Program 2012 (PLP 2012) for the period from July 1, 2012, to June 30, 2012. Under the provisions of this bill, an employee participating in the PLP 2012 shall receive a reduction in pay not greater than five percent and, in exchange, receive eight hours of PLP 2012 leave credits on the first day of each monthly pay period. For those state employees not subject to the PLP 2012, requires CalHR to adopt a plan to furlough those employees one workday per calendar month for the period July 1, 2012, to June 30, 2013. Requires that reductions for employee compensation for the period from July 1, 2012, to June 30, 2013, apply to employees of the State Compensation Insurance Fund. These statutory changes further implement Control Section 3.90 of the Budget Act of 2012; which achieves employee compensation-related savings of $402 million GF.

13. Administrative Costs for Financial Information System for California. Modifies the definition of administrative costs to include amounts expended by the Financial Information System for California. Administrative costs are defined as amounts required for supervision and administration of state government for services to state agencies. Existing law requires DOF to determine, and the State Controller to notify, a state agency of the amount deemed to be the fair share of administrative costs due and payable from each state agency.

CONTINUED

14. Credit Enhancement Fees. Deletes the sunset date for language that places a 3% cap on amounts appropriated for fees, costs, and other similar expenses incurred in connection with any credit enhancement or liquidity agreement on bonds payable from the State's General Fund. After the June 30, 2013 sunset, the cap will fall to 2%. The cap was temporarily raised to 3% in budget legislation adopted in 2009. Market conditions could necessitate retention of the 3% cap and allow flexible overall terms possible for state borrowing.

15. Repeal of the Filipino Employee Survey Mandate. Repeals the Filipino Employee Survey Mandate, a state mandate that had been suspended since 1990.

16. Financial Information Systems for California (FI$Cal). Improves annual legislative reporting requirements for FI$Cal, including benefits from the project that were achieved during the reporting period, and updates on the progress of meeting specific project objectives.

17. Capital Investment Incentive Program. Expands the ability of a city, county, or a city and a county to pay an investment incentive, to include qualified research and development facilities until July 1, 2013. Capital investment incentives are amounts up to the amount of ad valorem property taxes paid by the qualified research and development facility, less 25%.

18. Mandate Suspensions. Specifies that local government mandates suspended in the 2012-13 Budget Act shall also be suspended in 2013-14 and 2014-15, and there shall be no appropriation for payment of reimbursement claims submitted for fiscal years 2012-13, 2013-14 and 2014-15.

19. Excise Tax Sunset Elimination. Removes the sunset date from the shift to the GF of excise taxes on gasoline purchased for certain uses, thus allowing the shift of these excise tax revenues to flow to the GF indefinitely.

20. ALRB General Counsel Allocation. Shifted funding from the Board Administration budget item to the General Counsel Administration budget item within the Agricultural Labor Relations Board. This shift is

CONTINUED

cost neutral to the GF and is necessary to help the General Counsel oversee union representation elections among farmworkers.

Comments

This bill enacts various provisions to support the 2012 Budget Act, and among other things, improves oversight of state technology procurement, enacts changes to help bring more federal benefits to veterans, and makes changes to allow for a structurally-balanced budget for the next four years.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

According to the Senate Budget and Fiscal Review Committee analysis, creates a special deposit fund that will allow the state to use $410.6 million from the National Mortgage Settlement to offset GF costs, allows for the sale of state property that can be deposited into the GF, and helps provide for a balanced budget in future years by removing the sunset date regarding excise taxes on gasoline purchased for specific uses and extending a suspension of local mandates.

DLW:mw:d 6/26/12 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

****** END ******

Senate Bill No. 1006

CHAPTER 32

An act to amend Section 17206 of the Business and Professions Code, to amend Section 1936 of the Civil Code, to amend Sections 8879.58, 8879.59, 11270, 11546, 13071, 17581, 17617, 19849, 19851, and 76104.7 of, to amend and repeal Section 5924 of, to amend, repeal, and add Section 51298 of, to add Sections 8169.7, 12531, and 13300.5 to, to add and repeal Section 15849.65 of, to repeal Section 50087 of, and to repeal and amend Section 15849.6 of, the Government Code, to amend Section 11873 of the Insurance Code, to amend Section 62.9 of the Labor Code, to amend Section 972.1 of the Military and Veterans Code, to amend Section 6611 of the Public Contract Code, and to amend Sections 8352.3, 8352.4, 8352.5, 8352.6, and 19533 of, and to repeal Article 6 (commencing with Section 19290) of Chapter 5 of Part 10.2 of Division 2 of, the Revenue and Taxation Code, and to amend Item 7300-001-0001 of Section 2.00 of the Budget Act of 2012, relating to state government, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 27, 2012. Filed with Secretary of State June 27, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1006, Committee on Budget and Fiscal Review. State government.

(1) Existing law regulates consumer rental car agreements and authorizes rental car companies to collect a customer facility charge based on a fee required by an airport operated by specified entities. Existing law also directs those airports to complete independent audits to substantiate the need for the fee prior to the collection of these fees from rental companies. Existing law requires the Controller to review these independent audits and report its conclusions to the Legislature, as specified. Existing law also requires the Controller to be reimbursed for these reviews by the airport being audited.

This bill would remove the provisions requiring the Controller to review, and report to the Legislature regarding, the independent audits described above.

(2) Existing law requires every city, county, or city and county that has at least 5,000 residents or in which 5% of the population is of Filipino ancestry or ethnic origin and that conducts a survey as to the ancestry or ethnic origin of its employees, or that maintains any statistical tabulation of minority group employees, to categorize employees whose ancestry or ethnic origin is Filipino as Filipinos in the survey or tabulation.

This bill would repeal that requirement.

(3) Existing law requires the Department of General Services to offer for sale land that is declared excess or is declared surplus by the Legislature,

and that is not needed by any state agency, to local agencies and private entities and individuals, subject to specified conditions.

This bill would authorize the Department of General Services to sell all or a portion of specified parcels of property located in the City of Sacramento that are leased by the department to the Capitol Area Development Authority, subject to specified criteria. The bill would require the proceeds of that sale to be deposited into the General Fund or the Deficit Recovery Fund, as specified.

(4) Existing law requires a $3 state-only penalty to be levied in each county for every $10, or part of $10, of a fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, as specified.

This bill would increase the amount of the state-only penalty to $4 for every $10, or part of $10, of those payments.

(5) Existing law, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by the voters as Proposition 1B at the November 7, 2006, general election, authorizes the issuance of $19.925 billion of general obligation bonds for specified purposes. Existing law specifies the responsibilities of the California Emergency Management Agency (Cal EMA) with respect to the allocation of bond funds appropriated from the Transit System Safety, Security, and Disaster Response Account.

This bill would require Cal EMA, in prioritizing the funding of projects, to additionally prioritize projects that demonstrate the ability and intent to expend a significant percentage of project funds within 6 months. During each fiscal year a transit agency or transit operator receives funds, the bill would authorize Cal EMA to monitor project expenditures.

(6) Existing law establishes the California Technology Agency within state government, and requires the office to carry out specified duties relating to creating and managing the technology policy of the state. Existing law requires the agency to be responsible for the approval and oversight of information technology projects.

This bill would require a state department to get written approval from the California Technology Agency to procure oversight services for information technology projects unless otherwise required by law.

(7) Existing law requires the Department of Finance to certify annually to the Controller the amount determined to be the fair share of administrative costs due and payable from each state agency and to certify to the Controller any amount redetermined to be the fair share of administrative costs due and payable from a state agency. Existing law requires the Controller to notify a state agency of that amount, and, unless the state agency requests that those payments be deferred, to transfer that amount from specified funds to the Central Service Cost Recovery Fund. Existing law defines "administrative costs" as the amounts expended by various specified state entities for supervision or administration of the state government or for services to the various state agencies.

This bill would modify the definition of administrative costs to include amounts expended by the Financial Information System for California.

(8) Existing law requires the Director of Finance, in coordinating the internal auditors of state agencies, to ensure that these auditors utilize the "Standards for the Professional Practices of Internal Auditing."

This bill would also require the director to be responsible for coordinating state agency internal audits and identifying when agencies are required to comply with federally mandated audits.

(9) Existing law requires the Department of Finance, the Controller, the Treasurer, and the Department of General Services to collaboratively develop, implement, utilize, maintain, and operate the Financial Information System for California (FISCal) as a single integrated financial management system, as specified. Existing law requires the fiscal Project Office in the Department of Finance to implement these provisions until the Office of the Financial Information System is established.

This bill would require the FISCal Project Office to report to the Legislature, by February 15 of each year, an update on the project, as specified. The provisions of the bill would remain in effect only until a postimplementation evaluation report has been approved by the California Technology Agency.

(10) Existing law sets forth the duties and powers of the Treasurer in the sale of state bonds. Moneys are continuously appropriated from the General Fund in an annual amount necessary to pay all obligations, including principal, interest, fees, costs, indemnities, and all other amounts incurred by the state pursuant to any credit enhancement or liquidity agreement entered into by the state, as specified, for bonds payable pursuant to an appropriation from the General Fund. Existing law, until June 30, 2013, prohibits the amount appropriated for these fees, costs, and other similar expenses from exceeding 3% of the original principal amount of the bonds.

This bill would repeal the inoperative date of those provisions, thereby extending the 3% interest rate indefinitely, thereby making an appropriation.

(11) Existing law, the State Building Construction Act of 1955, authorizes the State Public Works Board to acquire and construct public buildings for use by state agencies, when authorized by a separate act or appropriation enacted by the Legislature. Existing law authorizes the board to issue bonds, notes, or other obligations to finance the acquisition or construction of a public building, facility, or equipment as authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing.

This bill would revise and recast that provision to instead authorize the State Public Works Board to issue bonds, notes, or other obligations to finance the acquisition, design, or construction of a public building as authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing, including interest payable on any interim loan or interim financing for the public building.

(12) Existing law, until January 1, 2013, requires a mortgagee, trustee, beneficiary, or authorized agent to comply with certain procedures in dealing with a borrower who is in default prior to filing a notice of default and to explore options for the borrower to avoid foreclosure, as specified. Existing law provides that a violation of these provisions would result in specified

civil penalties, including penalties for unfair business practices. Existing law provides that civil penalties collected for unfair business practice violations brought by the Attorney General are deposited in the Unfair Competition Law Fund within the General Fund.

This bill would establish the National Mortgage Special Deposit Fund in the State Treasury as a continuously appropriated fund and would require certain direct payments made to the state under the National Mortgage Settlement to be deposited in the fund for allocation by the Director of Finance, as specified. This bill would further authorize the Director of Finance to allocate moneys from the fund to offset General Fund expenditures during the 2011–12, 2012–13, and 2013–14 fiscal years for purposes consistent with the National Mortgage Settlement. The bill would also require that civil penalties collected under the National Mortgage Settlement be deposited into the Unfair Competition Fund, and be continuously appropriated to the Department of Justice to offset the General Fund costs incurred by the department, thereby also making an appropriation.

(13) Existing law requires the Department of Veterans Affairs to disburse funds, appropriated to the department for the purpose of supporting county veterans service offices pursuant to the annual Budget Act, on a pro rata basis, to counties that comply with certain conditions. Existing law requires the Department of Veterans Affairs to determine annually the amount of new or increased monetary benefits paid to eligible veterans by the federal government attributable to the assistance of county veterans service offices and requires the department to prepare and transmit its determination for the preceding fiscal year to the Department of Finance and the Legislature, as specified.

This bill would require the Department of Veterans Affairs, by June 30, 2013, to develop a performance-based formula that will incentivize county veterans service offices to perform workload units, as defined, that help veterans access federal compensation and pension benefits and other benefits, in order to maximize the amount of federal money received by California veterans. This bill would require the department to conduct a review of the high-performing and low-performing county veterans service offices and based on this review, produce a best-practices manual for county veterans service offices by June 30, 2013.

(14) Existing law, known as the Capital Investment Incentive Program, authorizes, until January 1, 2017, a city, county, or city and county to pay capital investment incentive amounts to a requesting proponent of a "qualified manufacturing facility," as defined. Existing law also requires the Business, Transportation and Housing Agency to certify qualified manufacturing facilities for purposes of these provisions and to carry out various oversight duties, including, but not limited to, reporting specified information to the Legislature.

This bill would, until June 30, 2013, expand these provisions to include a "qualified research and development facility," modify and provide additional definitions, and transfer the duties of the Business, Transportation and Housing Agency to the Governor's Office of Business and Economic

Development. This bill would, on July 1, 2013, restore these provisions to existing law.

(15) Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, including school districts, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions.

Existing law provides that no local agency or school district shall be required to implement or give effect to any statute or executive order, or portion thereof that imposes a mandate during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if specified conditions are met, including that the statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year.

This bill would provide that all state-mandated local programs suspended in the Budget Act for the 2012–13 fiscal year will also be suspended in the 2013–14 and 2014–15 fiscal years.

(16) Existing law also requires that the total amount due to each city, county, city and county, and special district, for which the state has determined that reimbursement is required under the California Constitution, be appropriated for payment to these entities over a period of not more than 15 years, commencing with the Budget Act for the 2006–07 fiscal year and concluding with the Budget Act for the 2020–21 fiscal year.

This bill would prohibit appropriations for payment of reimbursement claims pursuant to these provisions for the fiscal years 2012-13, 2013-14, and 2014-15.

(17) Existing law imposes an excise tax on motor vehicle fuel (gasoline). Existing law, as a result of the elimination of the sales tax on gasoline effective July 1, 2010, provides for a commensurate increase in the excise tax on gasoline. Article XIX of the California Constitution requires gasoline excise tax revenues from motor vehicles traveling upon public streets and highways to be deposited in the Highway Users Tax Account, for allocation to city, county, and state transportation purposes. Existing law generally provides for statutory allocation of gasoline excise tax revenues attributable to other modes of transportation, including aviation, boats, agricultural vehicles, and off-highway vehicles, to particular accounts and funds for expenditure on purposes associated with those other modes. Expenditure of the gasoline excise tax revenues attributable to those other modes is not restricted by Article XIX of the California Constitution.

This bill, with respect to the increase in gasoline excise taxes as a result of the elimination of the sales tax on gasoline, would instead transfer the revenues attributable to aviation, boats, agricultural vehicles, and off-highway vehicles to the General Fund, commencing July 1, 2012. The bill, with respect to these revenues already transferred to the particular

nonhighway accounts and funds in the 2010–11 and 2011–12 fiscal years, would also transfer those revenues to the General Fund.

(18) Existing law states that it is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of state employees 8 hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies.

This bill would require a state employee, except as specified, for the period from July 1, 2012, to June 30, 2013, inclusive, either as required by an applicable memorandum of understanding or by the direction of the Department of Human Resources for excluded employees, to participate in the Personal Leave Program 2012 (PLP 2012 Program), under which each employee would receive a reduction in pay not greater than 5% in exchange for 8 hours of PLP 2012 Program leave credits per month.

(19) Existing law requires the department to adopt rules governing hours of work and overtime compensation and the keeping of related records, except that conflicting provisions of a memorandum of understanding are controlling, as specified.

This bill would require the department, notwithstanding any conflicting provisions of a memorandum of understanding, to adopt a plan for the period from July 1, 2012, to June 30, 2013, inclusive, by which all state employees, except as specified, who are not subject to the PLP 2012 Program, as described above, shall be furloughed for one workday per calendar month, and to adopt rules for the implementation, administration, and enforcement of this furlough plan.

(20) Existing law provides that the State Compensation Insurance Fund shall not be subject to the provisions of the Government Code made applicable to state agencies generally or collectively, unless the provision specifically names the fund as an agency to which it applies. Existing law also provides that employee positions funded by the State Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law.

This bill would provide that employees of the fund shall, without limitation, be subject to any and all reductions in state employee compensation imposed by the Legislature on other state employees for the period from July 1, 2012, to June 30, 2013, inclusive, regardless of the means adopted to effect those reductions. With the exception of those reductions, the bill would further provide that if any of these provisions, or a practice or procedure adopted pursuant to these provisions, conflicts with a memorandum of understanding, the memorandum of understanding shall be controlling, as specified.

(21) Existing law authorizes the Department of General Services to, relative to contracts for goods, services, information technology, and telecommunications, use a negotiation process if the department finds that certain conditions exist, as specified.

This bill would authorize, until January 1, 2018, the California Technology Agency to utilize that negotiation process for the purpose of procuring

information technology and telecommunications goods and services on behalf of state departments and information technology projects. The bill would require an annual report to the Legislature, as specified.

(22) Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an injured employee for injuries sustained in the course of his or her employment. Existing law requires that the Director of Industrial Relations levy and collect assessments from employers in an amount determined by the director to be sufficient to fund specified workers' compensation programs implemented in the state. In that connection, existing law requires the director to include in the total assessment amount the Department of Industrial Relations' costs for administering the assessment, including the collections process and the cost of reimbursing the Franchise Tax Board or another agency or department for its cost of collection activities.

Existing law requires the Department of Industrial Relations to enter into an agreement with the Franchise Tax Board that transfers responsibility from the Department of Industrial Relations to the Franchise Tax Board for the collection of delinquent fees, wages, penalties, and costs, and any interest, including the assessments from employers in an amount determined by the Director of Industrial Relations to be sufficient to fund specified workers' compensation programs implemented in the state and any penalties.

Existing law also authorizes the Department of Industrial Relations to enter into an agreement with the Employment Development Department that provides for the transfer of all or part of the responsibility from the Department of Industrial Relations, or any office or division within that department, to the Employment Development Department for the collection of assessments, as specified, arising out of the enforcement of any law within the jurisdiction of the Department of Industrial Relations or any office or division within that department, as provided.

This bill would repeal the requirement that the Department of Industrial Relations enter into an agreement with the Franchise Tax Board to transfer responsibility from the Department of Industrial Relations to the Franchise Tax Board for the collection of delinquent fees, wages, penalties, and costs, and any interest, including the assessments from employers in an amount determined by the Director of Industrial Relations to be sufficient to fund specified workers' compensation programs implemented in the state and any penalties. This bill would require the Director of Industrial Relations to include in that total assessment amount the cost of reimbursing the Employment Development Department or another agency or department for its cost of collection activities, as provided. This bill would make other conforming changes.

(23) The Budget Bill, enacted as the Budget Act of 2012, would make appropriations for the support of state government for the 2012–13 fiscal year.

This bill would amend the Budget Act of 2012 by revising an item of appropriation in the Budget Act of 2012.

(24) This bill would appropriate $1,000 from the General Fund to the Department of Finance to implement this bill.

(25) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

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

SECTION 1. Section 17206 of the Business and Professions Code is amended to read:

17206. Civil Penalty for Violation of Chapter

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or settlement of a claim made by

the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3. Notwithstanding Section 13340 of the Government Code, any civil penalties deposited in the fund pursuant to the National Mortgage Settlement, as provided in Section 12531 of the Government Code, are continuously appropriated to the Department of Justice for the purpose of offsetting General Fund costs incurred by the Department of Justice.

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 2. Section 1936 of the Civil Code, as amended by Section 1 of Chapter 531 of the Statutes of 2011, is amended to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) "Rental company" means a person or entity in the business of renting passenger vehicles to the public.

(2) "Renter" means any person in a manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) "Authorized driver" means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if he or she is engaged in business activity with the renter, is a licensed driver, and satisfies the rental company's minimum age requirement, and (D) a person expressly listed by the rental company on the renter's contract as an authorized driver.

(4) (A) "Customer facility charge" means any fee, including an alternative fee, required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) To finance, design, and construct consolidated airport car rental facilities.

(ii) To finance, design, construct, and operate common-use transportation systems that move passengers between airport terminals and those consolidated car rental facilities, and acquire vehicles for use in that system.

(iii) To finance, design, and construct terminal modifications solely to accommodate and provide customer access to common-use transportation systems.

(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary, the Assembly Committee on Transportation, and the Senate Committee on Transportation and Housing. In the case of a transportation system, the audit also shall consider the reasonable costs of providing the transit system or busing network. Notwithstanding clause (iii) of subparagraph (A), the fees designated as a customer facility charge shall not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) Except as provided in subparagraph (D), the authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(D) If a bond or other form of indebtedness is not used for financing, or the bond or other form of indebtedness used for financing has been paid, the Oakland International Airport may require the collection of a customer facility charge for a period of up to 10 years from the imposition of the charge for the purposes allowed by, and subject to the conditions imposed by, this section.

(5) "Damage waiver" means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(6) "Electronic surveillance technology" means a technological method or system used to observe, monitor, or collect information, including telematics, Global Positioning System (GPS), wireless technology, or location-based technologies. "Electronic surveillance technology" does not include event data recorders (EDR), sensing and diagnostic modules (SDM), or other systems that are used either:

(A) For the purpose of identifying, diagnosing, or monitoring functions related to the potential need to repair, service, or perform maintenance on the rental vehicle.

(B) As part of the vehicle's airbag sensing and diagnostic system in order to capture safety systems-related data for retrieval after a crash has occurred or in the event that the collision sensors are activated to prepare the decisionmaking computer to make the determination to deploy or not to deploy the airbag.

(7) "Estimated time for replacement" means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as "crash books."

(8) "Estimated time for repair" means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(9) "Membership program" means a service offered by a rental company that permits customers to bypass the rental counter and go directly to the car previously reserved. A membership program shall meet all of the following requirements:

(A) The renter initiates enrollment by completing an application on which the renter can specify a preference for type of vehicle and acceptance or declination of optional services.

(B) The rental company fully discloses, prior to the enrollee's first rental as a participant in the program, all terms and conditions of the rental agreement as well as all required disclosures.

(C) The renter may terminate enrollment at any time.

(D) The rental company fully explains to the renter that designated preferences, as well as acceptance or declination of optional services, may be changed by the renter at any time for the next and future rentals.

(E) An employee designated to receive the form specified in subparagraph (C) of paragraph (1) of subdivision (t) is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(10) "Passenger vehicle" means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession

of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle. However, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(6) An administrative charge, which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts, which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts, which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(6) The administrative charge described in paragraph (6) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). An administrative charge shall not be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle shall not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company shall not recover from the renter or other authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and shall not assert or collect a claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim shall not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles, less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or business insurance carrier. The rental company shall not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved between the insurance carrier and the rental company. The renter shall remain responsible for payment to the

rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

(5) A rental company shall not recover from the renter or other authorized driver for an item described in subdivision (b) to the extent the rental company obtains recovery from another person.

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of another person.

(e) (1) Except as provided in subdivision (f), a damage waiver shall provide or, if not expressly stated in writing, shall be deemed to provide that the renter has no liability for a damage, loss, loss of use, or a cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to a damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside the United States.

(3) An authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company that offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract, and, for renters who are enrolled in the rental company's membership program, in a sign that shall be posted in a location clearly visible to those renters as they enter the location where their reserved rental cars are parked or near the exit of the bus or other conveyance that transports the enrollee to a reserved car: (A) the nature of the renter's liability, such as liability for all collision damage regardless of cause, (B) the extent of the renter's liability, such as liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for

which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides a damage waiver shall orally disclose to all renters, except those who are participants in the rental company's membership program, that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. The renter's receipt of the oral disclosure shall be demonstrated through the renter's acknowledging receipt of the oral disclosure near that part of the contract where the renter indicates, by the renter's own initials, his or her acceptance or declination of the damage waiver. Adjacent to that same part, the contract also shall state that the damage waiver is optional. Further, the contract for these renters shall include a clear and conspicuous written disclosure that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance.

(3) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

"NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company, or credit card issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

Further, if you use a credit card that provides coverage for your potential liability, you should check with the issuer to determine if you must first exhaust the coverage limits of your own insurance before the credit card coverage applies.

The rental company will not hold you responsible if you buy a damage waiver. But a damage waiver will not protect you if (list exceptions)."

(A) When the above notice is printed in the rental contract or holder in which the contract is placed, the following shall be printed immediately following the notice:

"The cost of an optional damage waiver is $____ for every (day or week)."

(B) When the above notice appears on a sign, the following shall appear immediately adjacent to the notice:

"The cost of an optional damage waiver is $____ to $____ for every (day or week), depending upon the vehicle rented."

(h) Notwithstanding any other provision of law, a rental company may sell a damage waiver subject to the following rate limitations for each full or partial 24-hour rental day for the damage waiver.

(1) For rental vehicles that the rental company designates as an "economy car," "subcompact car," "compact car," or another term having similar meaning when offered for rental, or another vehicle having a manufacturer's suggested retail price of nineteen thousand dollars ($19,000) or less, the rate shall not exceed nine dollars ($9).

(2) For rental vehicles that have a manufacturer's suggested retail price from nineteen thousand one dollars ($19,001) to thirty-four thousand nine hundred ninety-nine dollars ($34,999), inclusive, and that are also either vehicles of next year's model, or not older than the previous year's model, the rate shall not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model-year, the rate shall not exceed nine dollars ($9).

(i) The manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from the previous year in the Consumer Price Index. For the purposes of this section, "Consumer Price Index" means the United States Consumer Price Index for All Urban Consumers, for all items.

(j) A rental company that disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for a damage waiver and a statement that a damage waiver is optional.

(k) (1) A rental company shall not require the purchase of a damage waiver, optional insurance, or another optional good or service.

(2) A rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase the damage waiver, optional insurance, or another optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase the damage waiver, optional insurance, or another optional good or service.

(*l*) (1) In the absence of express permission granted by the renter subsequent to damage to, or loss of, the vehicle, a rental company shall not seek to recover any portion of a claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing a debit or block to be placed on the renter's credit card account.

(2) A rental company shall not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A customer facility charge may be collected by a rental company under the following circumstances:

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, a special district, or the San Diego County Regional Airport Authority formed pursuant to Division 17 (commencing with Section 170000) of the Public Utilities Code.

(B) The fee is calculated on a per contract basis or as provided in paragraph (2).

(C) The fee is a user fee, not a tax imposed upon real property or an incidence of property ownership under Article XIII D of the California Constitution.

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract or the amount provided in paragraph (2).

(E) The fee for a consolidated rental car facility shall be collected only from customers of on-airport rental car companies. If the fee imposed by the airport is for both a consolidated rental car facility and a common-use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10) or the amount provided in paragraph (2), but the fee imposed on customers of off-airport rental car companies who are transported on the common-use transportation system is proportionate to the costs of the common-use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided that the airport requires off-airport customers to use the common-use transportation system. For purposes of this subparagraph, “on-airport rental car company” means a rental company operating under an airport property lease or an airport concession or license agreement whose customers use or will use the consolidated rental car facility and the collection of the fee as to those customers is consistent with subparagraph (C).

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, and constructing the facility and financing, designing, constructing, and operating any common-use transportation system, or acquiring vehicles for use in that system, and shall not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to fees which are governed by Section 50474.1 of the Government Code or Section 57.5 of the San Diego Unified Port District Act.

(I) For any airport seeking to require rental car companies to collect an alternative customer facility charge pursuant to paragraph (2), the following provisions apply:

(i) Notwithstanding Section 10231.5 of the Government Code, the airport shall provide reports on an annual basis to the Senate and Assembly Committees on Judiciary detailing all of the following:

(I) The total amount of the customer facility charge collected.

(II) How the funds are being spent.

(III) The amount of and reason for any changes in the airport's budget or financial needs for the facility or common-use transportation system.

(IV) Whether airport concession fees authorized by Section 1936.01 have increased since the prior report, if any.

(ii) The airport shall complete the independent audit required by subparagraph (B) of paragraph (4) of subdivision (a) prior to initial collection of the customer facility charge, prior to any increase pursuant to paragraph (2), and every three years after initial collection and any increase until such time as the fee authorization becomes inoperative pursuant to subparagraph (C) of paragraph (4) of subdivision (a).

(iii) Use of the bonds shall be limited to construction and design of the consolidated rental car facility, terminal modifications, and operating costs of the common-use transportation system, as specified in paragraph (4) of subdivision (a).

(2) Any airport may require rental car companies to collect an alternative customer facility charge under the following conditions:

(A) The airport first conducts a publicly noticed hearing pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) to review the costs of financing the design and construction of a consolidated rental car facility and the design, construction, and operation of any common-use transportation system in which all of the following occur:

(i) The airport establishes the amount of revenue necessary to finance the reasonable cost to design and construct a consolidated rental car facility and to design, construct, and operate any common-use transportation system, or acquire vehicles for use in that system, based on evidence presented during the hearing.

(ii) The airport finds, based on evidence presented during the hearing, that the fee authorized in paragraph (1) will not generate sufficient revenue to finance the reasonable costs to design and construct a consolidated rental car facility and to design, construct, and operate any common-use transportation system, or acquire vehicles for use in that system.

(iii) The airport finds that the reasonable cost of the project requires the additional amount of revenue that would be generated by the proposed daily rate, including any rate increase, authorized pursuant to this paragraph.

(iv) The airport outlines each of the following:

(I) Steps it has taken to limit costs.

(II) Other potential alternatives for meeting its revenue needs other than the collection of the fee.

(III) The extent to which rental car companies or other businesses or individuals using the facility or common-use transportation system will pay

for the costs associated with these facilities and systems other than the fee from rental customers.

(B) The airport may not require the fee authorized in this paragraph to be collected at any time that the fee authorized in paragraph (1) of this subdivision is being collected.

(C) Pursuant to the procedure set forth in this subdivision, the fee may be collected at a rate charged on a per-day basis subject to the following conditions:

(i) Commencing January 1, 2011, the amount of the fee may not exceed six dollars ($6) per day.

(ii) Commencing January 1, 2014, the amount of the fee may not exceed seven dollars and fifty cents ($7.50) per day.

(iii) Commencing January 1, 2017, and thereafter, the amount of the fee may not exceed nine dollars ($9) per day.

(iv) At no time shall the fee authorized in this paragraph be collected from any customer for more than five days for each individual rental car contract.

(v) An airport subject to this paragraph shall initiate the process for obtaining the authority to require or increase the alternative fee no later than January 1, 2018. Any airport that obtains the authority to require or increase an alternative fee shall be authorized to continue collecting that fee until the fee authorization becomes inoperative pursuant to subparagraph (C) of paragraph (4) of subdivision (a).

(3) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section, or another law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, are not subject to sales, use, or transaction taxes.

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, that a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee that is required to be paid by the renter as a condition of hiring or leasing the vehicle, including, but not limited to, required fuel or airport surcharges other than customer facility charges, nor a fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge include, but are not limited to, optional insurance and accessories requested by the renter, service charges

incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company shall not charge a fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall disclose clearly in that advertisement or quotation the terms of mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an airport where a customer facility charge is imposed, the rental company shall disclose clearly the existence and amount of the customer facility charge. For purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. For purposes of this subparagraph, quotations and reservations include those that are telephonic, in-person, and computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

(B) If a person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer facility charge is imposed, that person or entity shall, provided that he, she, or it is provided with information about the existence and amount of the fee, to the extent not specifically prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company is not responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

(6) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter an amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the

rental company normally carries on its business, the rental company shall not charge the renter an amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(o) A rental company shall not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except in the following circumstances:

(1) (A) When the equipment is used by the rental company only for the purpose of locating a stolen, abandoned, or missing rental vehicle after one of the following:

(i) The renter or law enforcement has informed the rental company that the vehicle is missing or has been stolen or abandoned.

(ii) The rental vehicle has not been returned following one week after the contracted return date, or by one week following the end of an extension of that return date.

(iii) The rental company discovers the rental vehicle has been stolen or abandoned, and, if stolen, it shall report the vehicle stolen to law enforcement by filing a stolen vehicle report, unless law enforcement has already informed the rental company that the vehicle is missing or has been stolen or abandoned.

(B) If electronic surveillance technology is activated pursuant to subparagraph (A), a rental company shall maintain a record, in either electronic or written form, of information relevant to the activation of that technology. That information shall include the rental agreement, including the return date, and the date and time the electronic surveillance technology was activated. The record shall also include, if relevant, a record of written or other communication with the renter, including communications regarding extensions of the rental, police reports, or other written communication with law enforcement officials. The record shall be maintained for a period of at least 12 months from the time the record is created and shall be made available upon the renter's request. The rental company shall maintain and furnish explanatory codes necessary to read the record. A rental company shall not be required to maintain a record if electronic surveillance technology is activated to recover a rental vehicle that is stolen or missing at a time other than during a rental period.

(2) In response to a specific request from law enforcement pursuant to a subpoena or search warrant.

(3) This subdivision does not prohibit a rental company from equipping rental vehicles with GPS-based technology that provides navigation assistance to the occupants of the rental vehicle, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except for the purposes of discovering or repairing a defect in the technology and the information may then be used only for that purpose.

(4) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows for the remote locking or unlocking of the vehicle at the request of the renter, if the rental company does not use, access, or obtain information relating to

the renter's use of the rental vehicle that was obtained using that technology, except as necessary to lock or unlock the vehicle.

(5) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows the company to provide roadside assistance, such as towing, flat tire, or fuel services, at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology except as necessary to provide the requested roadside assistance.

(6) This subdivision does not prohibit a rental company from obtaining, accessing, or using information from electronic surveillance technology for the sole purpose of determining the date and time the vehicle is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter has returned the vehicle to the rental company, and the information shall only be used for the purpose described in this paragraph.

(p) A rental company shall not use electronic surveillance technology to track a renter in order to impose fines or surcharges relating to the renter's use of the rental vehicle.

(q) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(r) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or, if the renter is not a resident of this state, in the jurisdiction in which the renter resides.

(s) A waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

(t) (1) A rental company's disclosure requirements shall be satisfied for renters who are enrolled in the rental company's membership program if all of the following conditions are met:

(A) Prior to the enrollee's first rental as a participant in the program, the renter receives, in writing, the following:

(i) All of the disclosures required by paragraph (1) of subdivision (g), including the terms and conditions of the rental agreement then in effect.

(ii) An Internet Web site address, as well as a contact number or address, where the enrollee can learn of changes to the rental agreement or to the laws of this state governing rental agreements since the effective date of the rental company's most recent restatement of the rental agreement and distribution of that restatement to its members.

(B) At the commencement of each rental period, the renter is provided, on the rental record or the folder in which it is inserted, with a printed notice stating that he or she had either previously selected or declined an optional damage waiver and that the renter has the right to change preferences.

(C) At the commencement of each rental period, the rental company provides, on the rearview mirror, a hanger on which a statement is printed,

in a box, in at least 12-point boldface type, notifying the renter that the collision damage waiver offered by the rental company may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. If it is not feasible to hang the statement from the rearview mirror, it shall be hung from the steering wheel.

The hanger shall provide the renter a box to initial if he or she (not his or her employer) has previously accepted or declined the collision damage waiver and that he or she now wishes to change his or her decision to accept or decline the collision damage waiver, as follows:

"□ If I previously accepted the collision damage waiver, I now decline it.

□ If I previously declined the collision damage waiver, I now accept it."

The hanger shall also provide a box for the enrollee to indicate whether this change applies to this rental transaction only or to all future rental transactions. The hanger shall also notify the renter that he or she may make that change, prior to leaving the lot, by returning the form to an employee designated to receive the form who is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(2) (A) This subdivision is not effective unless the employee designated pursuant to subparagraph (E) of paragraph (8) of subdivision (a) is actually present at the required location.

(B) This subdivision does not relieve the rental company from the disclosures required to be made within the text of a contract or holder in which the contract is placed; in or on an advertisement containing a rental rate; or in a telephonic, in-person, or computer-transmitted quotation or reservation.

(u) The amendments made to this section during the 2001–02 Regular Session of the Legislature do not affect litigation pending on or before January 1, 2003, alleging a violation of Section 22325 of the Business and Professions Code as it read at the time the action was commenced.

(v) (1) When a rental company enters into a rental agreement in the state for the rental of a vehicle to any renter who is not a resident of this country and, as part of, or associated with, the rental agreement, the renter purchases liability insurance, as defined in subdivision (b) of Section 1758.85 of the Insurance Code, from the rental company in its capacity as a rental car agent for an authorized insurer, the rental company shall be authorized to accept, and, if served as set forth in this subdivision, shall accept, service of a summons and complaint and any other required documents against the foreign renter for any accident or collision resulting from the operation of the rental vehicle within the state during the rental period. If the rental company has a registered agent for service of process on file with the Secretary of State, process shall be served on the rental company's registered

agent, either by first-class mail, return receipt requested, or by personal service.

(2) Within 30 days of acceptance of service of process, the rental company shall, provide a copy of the summons and complaint and any other required documents served in accordance with this subdivision to the foreign renter by first-class mail, return receipt requested.

(3) Any plaintiff, or his or her representative, who elects to serve the foreign renter by delivering a copy of the summons and complaint and any other required documents to the rental company pursuant to paragraph (1) shall agree to limit his or her recovery against the foreign renter and the rental company to the limits of the protection extended by the liability insurance.

(4) Notwithstanding the requirements of Sections 17450 to 17456, inclusive, of the Vehicle Code, service of process in compliance with paragraph (1) shall be deemed valid and effective service.

(5) Notwithstanding any other provision of law, the requirement that the rental company accept service of process pursuant to paragraph (1) shall not create any duty, obligation, or agency relationship other than that provided in paragraph (1).

(w) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 3. Section 1936 of the Civil Code, as added by Section 2 of Chapter 531 of the Statutes of 2011, is amended to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) "Rental company" means a person or entity in the business of renting passenger vehicles to the public.

(2) "Renter" means any person in a manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) "Authorized driver" means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if he or she is engaged in business activity with the renter, is a licensed driver, and satisfies the rental company's minimum age requirement, and (D) a person expressly listed by the rental company on the renter's contract as an authorized driver.

(4) (A) "Customer facility charge" means any fee, including an alternative fee, required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) To finance, design, and construct consolidated airport car rental facilities.

(ii) To finance, design, construct, and operate common-use transportation systems that move passengers between airport terminals and those consolidated car rental facilities, and acquire vehicles for use in that system.

(iii) To finance, design, and construct terminal modifications solely to accommodate and provide customer access to common-use transportation systems.

(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary, the Assembly Committee on Transportation, and the Senate Committee on Transportation and Housing. In the case of a transportation system, the audit also shall consider the reasonable costs of providing the transit system or busing network. Notwithstanding clause (iii) of subparagraph (A), the fees designated as a customer facility charge shall not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) Except as provided in subparagraph (D), the authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(D) If a bond or other form of indebtedness is not used for financing, or the bond or other form of indebtedness used for financing has been paid, the Oakland International Airport may require the collection of a customer facility charge for a period of up to 10 years from the imposition of the charge for the purposes allowed by, and subject to the conditions imposed by, this section.

(5) "Damage waiver" means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(6) "Electronic surveillance technology" means a technological method or system used to observe, monitor, or collect information, including telematics, Global Positioning System (GPS), wireless technology, or location-based technologies. "Electronic surveillance technology" does not include event data recorders (EDR), sensing and diagnostic modules (SDM), or other systems that are used either:

(A) For the purpose of identifying, diagnosing, or monitoring functions related to the potential need to repair, service, or perform maintenance on the rental vehicle.

(B) As part of the vehicle's airbag sensing and diagnostic system in order to capture safety systems-related data for retrieval after a crash has occurred or in the event that the collision sensors are activated to prepare the decisionmaking computer to make the determination to deploy or not to deploy the airbag.

(7) "Estimated time for replacement" means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as "crash books."

(8) "Estimated time for repair" means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(9) "Membership program" means a service offered by a rental company that permits customers to bypass the rental counter and go directly to the car previously reserved. A membership program shall meet all of the following requirements:

(A) The renter initiates enrollment by completing an application on which the renter can specify a preference for type of vehicle and acceptance or declination of optional services.

(B) The rental company fully discloses, prior to the enrollee's first rental as a participant in the program, all terms and conditions of the rental agreement as well as all required disclosures.

(C) The renter may terminate enrollment at any time.

(D) The rental company fully explains to the renter that designated preferences, as well as acceptance or declination of optional services, may be changed by the renter at any time for the next and future rentals.

(E) An employee designated to receive the form specified in subparagraph (C) of paragraph (1) of subdivision (t) is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(10) "Passenger vehicle" means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting

from vandalism occurring after, or in connection with, the theft of the rented vehicle. However, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(6) An administrative charge, which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts, which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts, which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate, or otherwise promptly credited or refunded to the renter.

(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(6) The administrative charge described in paragraph (6) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total

estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). An administrative charge shall not be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle shall not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company shall not recover from the renter or other authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and shall not assert or collect a claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim shall not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles, less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or business insurance carrier. The rental company shall not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved between the insurance carrier and the rental company. The renter shall remain responsible for payment to the rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

(5) A rental company shall not recover from the renter or other authorized driver for an item described in subdivision (b) to the extent the rental company obtains recovery from another person.

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of another person.

(e) (1) Except as provided in subdivision (f), a damage waiver shall provide or, if not expressly stated in writing, shall be deemed to provide that the renter has no liability for a damage, loss, loss of use, or a cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to a damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside the United States.

(3) An authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company that offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract, and, for renters who are enrolled in the rental company's membership program, in a sign that shall be posted in a location clearly visible to those renters as they enter the location where their reserved rental cars are parked or near the exit of the bus or other conveyance that transports the enrollee to a reserved car: (A) the nature of the renter's liability, such as liability for all collision damage regardless of cause, (B) the extent of the renter's liability, such as liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides a damage waiver shall orally disclose to all renters, except those who are participants in the rental company's membership program, that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. The renter's receipt of the oral disclosure shall be demonstrated through the renter's acknowledging receipt of the oral disclosure near that part of the contract where the renter indicates, by the renter's own initials, his or her

acceptance or declination of the damage waiver. Adjacent to that same part, the contract also shall state that the damage waiver is optional. Further, the contract for these renters shall include a clear and conspicuous written disclosure that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance.

(3) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

"NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company, or credit card issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

Further, if you use a credit card that provides coverage for your potential liability, you should check with the issuer to determine if you must first exhaust the coverage limits of your own insurance before the credit card coverage applies.

The rental company will not hold you responsible if you buy a damage waiver. But a damage waiver will not protect you if (list exceptions)."

(A) When the above notice is printed in the rental contract or holder in which the contract is placed, the following shall be printed immediately following the notice:

"The cost of an optional damage waiver is $____ for every (day or week)."

(B) When the above notice appears on a sign, the following shall appear immediately adjacent to the notice:

"The cost of an optional damage waiver is $____ to $____ for every (day or week), depending upon the vehicle rented."

(h) Notwithstanding any other provision of law, a rental company may sell a damage waiver subject to the following rate limitations for each full or partial 24-hour rental day for the damage waiver.

(1) For rental vehicles that the rental company designates as an "economy car," "subcompact car," "compact car," or another term having similar meaning when offered for rental, or another vehicle having a manufacturer's suggested retail price of nineteen thousand dollars ($19,000) or less, the rate shall not exceed nine dollars ($9).

(2) For rental vehicles that have a manufacturer's suggested retail price from nineteen thousand one dollars ($19,001) to thirty-four thousand nine hundred ninety-nine dollars ($34,999), inclusive, and that are also either

vehicles of next year's model, or not older than the previous year's model, the rate shall not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model-year, the rate shall not exceed nine dollars ($9).

(i) The manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from the previous year in the Consumer Price Index. For the purposes of this section, "Consumer Price Index" means the United States Consumer Price Index for All Urban Consumers, for all items.

(j) A rental company that disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for a damage waiver and a statement that a damage waiver is optional.

(k) (1) A rental company shall not require the purchase of a damage waiver, optional insurance, or another optional good or service.

(2) A rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase the damage waiver, optional insurance, or another optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase the damage waiver, optional insurance, or another optional good or service.

(*l*) (1) In the absence of express permission granted by the renter subsequent to damage to, or loss of, the vehicle, a rental company shall not seek to recover any portion of a claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing a debit or block to be placed on the renter's credit card account.

(2) A rental company shall not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A customer facility charge may be collected by a rental company under the following circumstances:

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, a special district, or the San Diego County Regional Airport Authority formed pursuant to Division 17 (commencing with Section 170000) of the Public Utilities Code.

(B) The fee is calculated on a per contract basis or as provided in paragraph (2).

(C) The fee is a user fee, not a tax imposed upon real property or an incidence of property ownership under Article XIII D of the California Constitution.

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract or the amount provided in paragraph (2).

(E) The fee for a consolidated rental car facility shall be collected only from customers of on-airport rental car companies. If the fee imposed by

the airport is for both a consolidated rental car facility and a common-use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10) or the amount provided in paragraph (2), but the fee imposed on customers of off-airport rental car companies who are transported on the common-use transportation system is proportionate to the costs of the common-use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided that the airport requires off-airport customers to use the common-use transportation system. For purposes of this subparagraph, "on-airport rental car company" means a rental company operating under an airport property lease or an airport concession or license agreement whose customers use or will use the consolidated rental car facility and the collection of the fee as to those customers is consistent with subparagraph (C).

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, and constructing the facility and financing, designing, constructing, and operating any common-use transportation system, or acquiring vehicles for use in that system, and shall not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to fees which are governed by Section 50474.1 of the Government Code or Section 57.5 of the San Diego Unified Port District Act.

(I) For any airport seeking to require rental car companies to collect an alternative customer facility charge pursuant to paragraph (2), the following provisions apply:

(i) Notwithstanding Section 10231.5 of the Government Code, the airport shall provide reports on an annual basis to the Senate and Assembly Committees on Judiciary detailing all of the following:

(I) The total amount of the customer facility charge collected.

(II) How the funds are being spent.

(III) The amount of and reason for any changes in the airport's budget or financial needs for the facility or common-use transportation system.

(IV) Whether airport concession fees authorized by Section 1936.01 have increased since the prior report, if any.

(ii) The airport shall complete the independent audit required by subparagraph (B) of paragraph (4) of subdivision (a) prior to initial collection of the customer facility charge, prior to any increase pursuant to paragraph (2), and every three years after initial collection and any increase until such time as the fee authorization becomes inoperative pursuant to subparagraph (C) of paragraph (4) of subdivision (a).

(iii) Use of the bonds shall be limited to construction and design of the consolidated rental car facility, terminal modifications, and operating costs of the common-use transportation system, as specified in paragraph (4) of subdivision (a).

(2) Any airport may require rental car companies to collect an alternative customer facility charge under the following conditions:

(A) The airport first conducts a publicly noticed hearing pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) to review the costs of financing the design and construction of a consolidated rental car facility and the design, construction, and operation of any common-use transportation system in which all of the following occur:

(i) The airport establishes the amount of revenue necessary to finance the reasonable cost to design and construct a consolidated rental car facility and to design, construct, and operate any common-use transportation system, or acquire vehicles for use in that system, based on evidence presented during the hearing.

(ii) The airport finds, based on evidence presented during the hearing, that the fee authorized in paragraph (1) will not generate sufficient revenue to finance the reasonable costs to design and construct a consolidated rental car facility and to design, construct, and operate any common-use transportation system, or acquire vehicles for use in that system.

(iii) The airport finds that the reasonable cost of the project requires the additional amount of revenue that would be generated by the proposed daily rate, including any rate increase, authorized pursuant to this paragraph.

(iv) The airport outlines each of the following:

(I) Steps it has taken to limit costs.

(II) Other potential alternatives for meeting its revenue needs other than the collection of the fee.

(III) The extent to which rental car companies or other businesses or individuals using the facility or common-use transportation system will pay for the costs associated with these facilities and systems other than the fee from rental customers.

(B) The airport may not require the fee authorized in this paragraph to be collected at any time that the fee authorized in paragraph (1) of this subdivision is being collected.

(C) Pursuant to the procedure set forth in this subdivision, the fee may be collected at a rate charged on a per-day basis subject to the following conditions:

(i) Commencing January 1, 2011, the amount of the fee may not exceed six dollars ($6) per day.

(ii) Commencing January 1, 2014, the amount of the fee may not exceed seven dollars and fifty cents ($7.50) per day.

(iii) Commencing January 1, 2017, and thereafter, the amount of the fee may not exceed nine dollars ($9) per day.

(iv) At no time shall the fee authorized in this paragraph be collected from any customer for more than five days for each individual rental car contract.

(v) An airport subject to this paragraph shall initiate the process for obtaining the authority to require or increase the alternative fee no later than January 1, 2018. Any airport that obtains the authority to require or increase an alternative fee shall be authorized to continue collecting that fee until

the fee authorization becomes inoperative pursuant to subparagraph (C) of paragraph (4) of subdivision (a).

(3) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section, or another law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, are not subject to sales, use, or transaction taxes.

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, that a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee that is required to be paid by the renter as a condition of hiring or leasing the vehicle, including, but not limited to, required fuel or airport surcharges other than customer facility charges, nor a fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company shall not charge a fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall disclose clearly in that advertisement or quotation the terms of mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an airport where a customer facility charge is imposed, the rental company shall disclose clearly the existence and amount of the customer facility charge. For purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. For purposes of this subparagraph,

quotations and reservations include those that are telephonic, in-person, and computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

(B) If a person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer facility charge is imposed, that person or entity shall, provided that he, she, or it is provided with information about the existence and amount of the fee, to the extent not specifically prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company is not responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

(6) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter an amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter an amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(o) A rental company shall not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except in the following circumstances:

(1) (A) When the equipment is used by the rental company only for the purpose of locating a stolen, abandoned, or missing rental vehicle after one of the following:

(i) The renter or law enforcement has informed the rental company that the vehicle is missing or has been stolen or abandoned.

(ii) The rental vehicle has not been returned following one week after the contracted return date, or by one week following the end of an extension of that return date.

(iii) The rental company discovers the rental vehicle has been stolen or abandoned, and, if stolen, it shall report the vehicle stolen to law enforcement by filing a stolen vehicle report, unless law enforcement has already informed the rental company that the vehicle is missing or has been stolen or abandoned.

(B) If electronic surveillance technology is activated pursuant to subparagraph (A), a rental company shall maintain a record, in either

electronic or written form, of information relevant to the activation of that technology. That information shall include the rental agreement, including the return date, and the date and time the electronic surveillance technology was activated. The record shall also include, if relevant, a record of written or other communication with the renter, including communications regarding extensions of the rental, police reports, or other written communication with law enforcement officials. The record shall be maintained for a period of at least 12 months from the time the record is created and shall be made available upon the renter's request. The rental company shall maintain and furnish explanatory codes necessary to read the record. A rental company shall not be required to maintain a record if electronic surveillance technology is activated to recover a rental vehicle that is stolen or missing at a time other than during a rental period.

(2) In response to a specific request from law enforcement pursuant to a subpoena or search warrant.

(3) This subdivision does not prohibit a rental company from equipping rental vehicles with GPS-based technology that provides navigation assistance to the occupants of the rental vehicle, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except for the purposes of discovering or repairing a defect in the technology and the information may then be used only for that purpose.

(4) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows for the remote locking or unlocking of the vehicle at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology, except as necessary to lock or unlock the vehicle.

(5) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows the company to provide roadside assistance, such as towing, flat tire, or fuel services, at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology except as necessary to provide the requested roadside assistance.

(6) This subdivision does not prohibit a rental company from obtaining, accessing, or using information from electronic surveillance technology for the sole purpose of determining the date and time the vehicle is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter has returned the vehicle to the rental company, and the information shall only be used for the purpose described in this paragraph.

(p) A rental company shall not use electronic surveillance technology to track a renter in order to impose fines or surcharges relating to the renter's use of the rental vehicle.

(q) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section.

The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(r) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or, if the renter is not a resident of this state, in the jurisdiction in which the renter resides.

(s) A waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

(t) (1) A rental company's disclosure requirements shall be satisfied for renters who are enrolled in the rental company's membership program if all of the following conditions are met:

(A) Prior to the enrollee's first rental as a participant in the program, the renter receives, in writing, the following:

(i) All of the disclosures required by paragraph (1) of subdivision (g), including the terms and conditions of the rental agreement then in effect.

(ii) An Internet Web site address, as well as a contact number or address, where the enrollee can learn of changes to the rental agreement or to the laws of this state governing rental agreements since the effective date of the rental company's most recent restatement of the rental agreement and distribution of that restatement to its members.

(B) At the commencement of each rental period, the renter is provided, on the rental record or the folder in which it is inserted, with a printed notice stating that he or she had either previously selected or declined an optional damage waiver and that the renter has the right to change preferences.

(C) At the commencement of each rental period, the rental company provides, on the rearview mirror, a hanger on which a statement is printed, in a box, in at least 12-point boldface type, notifying the renter that the collision damage waiver offered by the rental company may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. If it is not feasible to hang the statement from the rearview mirror, it shall be hung from the steering wheel.

The hanger shall provide the renter a box to initial if he or she (not his or her employer) has previously accepted or declined the collision damage waiver and that he or she now wishes to change his or her decision to accept or decline the collision damage waiver, as follows:

"□ If I previously accepted the collision damage waiver, I now decline it.

□ If I previously declined the collision damage waiver, I now accept it."

The hanger shall also provide a box for the enrollee to indicate whether this change applies to this rental transaction only or to all future rental transactions. The hanger shall also notify the renter that he or she may make that change, prior to leaving the lot, by returning the form to an employee designated to receive the form who is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(2) (A) This subdivision is not effective unless the employee designated pursuant to subparagraph (E) of paragraph (8) of subdivision (a) is actually present at the required location.

(B) This subdivision does not relieve the rental company from the disclosures required to be made within the text of a contract or holder in which the contract is placed; in or on an advertisement containing a rental rate; or in a telephonic, in-person, or computer-transmitted quotation or reservation.

(u) The amendments made to this section during the 2001–02 Regular Session of the Legislature do not affect litigation pending on or before January 1, 2003, alleging a violation of Section 22325 of the Business and Professions Code as it read at the time the action was commenced.

(v) This section shall become operative on January 1, 2015.

SEC. 4. Section 5924 of the Government Code, as amended by Section 1 of Chapter 646 of the Statutes of 2009, is amended to read:

5924. (a) (1) Notwithstanding Section 13340, there is hereby continuously appropriated without regard to fiscal years, from the General Fund in the State Treasury for the purpose of this chapter, an amount that will equal the sum annually as will be necessary to pay all obligations, including principal, interest, fees, costs, indemnities, and all other amounts incurred by the state under or in connection with any credit enhancement or liquidity agreement, as specified in paragraph (2), that is entered into by the state pursuant to this chapter for bonds payable pursuant to an appropriation from the General Fund.

(2) A credit enhancement or liquidity agreement subject to this section includes a credit enhancement or liquidity agreement that is in the form of a letter of credit, standby purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement.

(b) (1) If the agent for sale determines that the credit enhancement or liquidity agreement is expected to result in a lower cost of the borrowing for the bonds to which the credit enhancement or liquidity agreement pertains, the state may incur fees, costs, and other similar expenses under or in connection with any credit enhancement or liquidity agreement entered into by the state pursuant to this chapter.

(2) The amount appropriated pursuant to subdivision (a) for fees, costs, and other similar expenses incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the original principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed 3 percent.

(3) The amount appropriated pursuant to subdivision (a) for interest incurred in connection with any credit enhancement or liquidity agreement, when expressed as a percentage of the outstanding principal amount of the bonds to which the credit enhancement or liquidity agreement pertains, may not exceed the interest rate percentage set forth in subdivision (d) of Section 16731.

SEC. 5. Section 5924 of the Government Code, as added by Section 2 of Chapter 633 of the Statutes of 2009, is repealed.

SEC. 6. Section 5924 of the Government Code, as added by Section 2 of Chapter 646 of the Statutes of 2009, is repealed.

SEC. 7. Section 8169.7 is added to the Government Code, to read:

8169.7. (a) The department may sell all or a portion of the following properties located in the County of Sacramento, City of Sacramento, State of California, and leased by the department to the Capitol Area Development Authority:

(1) Parcel 1. Approximately 0.14 acres of land, not including improvements thereon, located at 1510 14th Street, and identified by Sacramento County Assessor Parcel Number 006-0224-026.

(2) Parcel 2. Approximately 0.22 acres of land, not including improvements thereon, located at 1530 N Street and 1412 16th Street, and identified by Sacramento County Assessor Parcel Numbers 006-0231-008 and 006-0231-009.

(3) Parcel 3. Approximately 0.15 acres of land, not including improvements thereon, located at 1416 17th Street and 1631 O Street, and identified by Sacramento County Assessor Parcel Numbers 006-0233-012 and 006-0233-013.

(4) Parcel 4. Approximately 0.59 acres of land, not including improvements thereon, located at 1609 O Street, and identified by Sacramento County Assessor Parcel Number 006-0233-026.

(5) Parcel 5. Approximately 0.07 acres of land, not including improvements thereon, located at 1612 14th Street, and identified by Sacramento County Assessor Parcel Number 006-0284-011.

(6) Parcel 6. Approximately 0.30 acres of land, not including improvements thereon, located at 1616, 1622, and 1626 14th Street and 1325 and 1331 Q Street, and identified by Sacramento County Assessor Parcel Numbers 006-0284-012, 006-0284-013, 006-0284-014, 006-0284-015, and 006-0284-016.

(b) The properties shall be sold for market value, or upon terms and conditions as the director, with concurrence of the Department of Finance, determines are in the best interest of the state.

(c) The department may offer the property for sale pursuant to a public bidding process designed to obtain the highest return for the state. Any transaction based on such a bidding process shall be deemed to be the market value. The director, at the director's sole discretion, may reject all bids received if it is in the best interest of the state to do so.

(d) The department shall be reimbursed for any cost or expense incurred in the disposition of any parcels from the sale proceeds.

(e) The Director of Finance may provide a loan from the General Fund in the amount of not more than two hundred thousand dollars ($200,000) to augment Item 1760-001-0002 of Section 2.00 of the Budget Act of 2012 and may adjust the amounts appropriated in Item 1760-001-0002 of Section 2.00 of the Budget Act of 2012, for the purposes of supporting the management of the state's real property footprint reduction to accommodate any increase in workload or other costs to the department in implementing this section.

(f) The disposition of the properties shall be made on an "as is" basis, and any sale shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(g) As to any property sold pursuant to this section, the director shall except and reserve to the state all mineral deposits possessed by the state, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

(h) The disposition of the properties pursuant to this section shall not constitute a sale or other disposition of surplus state property pursuant to Section 11011.

(i) The net proceeds of any moneys received from the disposition of any parcels described in this section shall be deposited in the General Fund or the Deficit Recovery Fund as determined by the Department of Finance.

SEC. 8. Section 8879.58 of the Government Code is amended to read:

8879.58. (a) (1) No later than September 1 of the first fiscal year in which the Legislature appropriates funds from the Transit System Safety, Security, and Disaster Response Account, and no later than September 1 of each fiscal year thereafter in which funds are appropriated from that account, the Controller shall develop and make public a list of eligible agencies and transit operators and the amount of funds each is eligible to receive from the account pursuant to subdivision (a) of Section 8879.57. It is the intent of the Legislature that funds allocated to specified recipients pursuant to this section provide each recipient with the same proportional share of funds as the proportional share each received from the allocation of State Transit Assistance funds, pursuant to Sections 99313 and 99314 of the Public Utilities Code, over fiscal years 2004–05, 2005–06, and 2006–07.

(2) In establishing the amount of funding each eligible recipient is to receive under subdivision (a) of Section 8879.57 from appropriated funds to be allocated based on Section 99313 of the Public Utilities Code, the Controller shall make the following computations:

(A) For each eligible recipient, compute the amounts of State Transit Assistance funds allocated to that recipient pursuant to Section 99313 of the Public Utilities Code during the 2004–05, 2005–06, and 2006–07 fiscal years.

(B) Compute the total statewide allocation of State Transit Assistance funds pursuant to Section 99313 of the Public Utilities Code during the 2004–05, 2005–06, and 2006–07 fiscal years.

(C) Divide subparagraph (A) by subparagraph (B).

(D) For each eligible recipient, multiply the allocation factor computed pursuant to subparagraph (C) by 50 percent of the amount available for allocation pursuant to subdivision (a) of Section 8879.57.

(3) In establishing the amount of funding each eligible recipient is eligible to receive under subdivision (a) of Section 8879.57 from funds to be allocated based on Section 99314 of the Public Utilities Code, the Controller shall make the following computations:

(A) For each eligible recipient, compute the amounts of State Transit Assistance funds allocated to that recipient pursuant to Section 99314 of the Public Utilities Code during the 2004–05, 2005–06, and 2006–07 fiscal years.

(B) Compute the total statewide allocation of State Transit Assistance funds pursuant to Section 99314 of the Public Utilities Code during the 2004–05, 2005–06, and 2006–07 fiscal years.

(C) Divide subparagraph (A) by subparagraph (B).

(D) For each eligible recipient, multiply the allocation factor computed pursuant to subparagraph (C) by 50 percent of the amount available for allocation pursuant to subdivision (a) of Section 8879.57.

(4) The Controller shall notify eligible recipients of the amount of funding each is eligible to receive pursuant to subdivision (a) of Section 8879.57 for the duration of time that these funds are made available for these purposes based on the computations pursuant to subparagraph (D) of paragraph (2) and subparagraph (D) of paragraph (3).

(b) Prior to seeking a disbursement of funds for an eligible project, an agency or transit operator on the public list described in paragraph (1) of subdivision (a) shall submit to the California Emergency Management Agency a description of the project it proposes to fund with its share of funds from the account. The description shall include all of the following:

(1) A summary of the proposed project that describes the safety, security, or emergency response benefit that the project intends to achieve.

(2) That the useful life of the project shall not be less than the required useful life for capital assets specified in subdivision (a) of Section 16727.

(3) The estimated schedule for the completion of the project.

(4) The total cost of the proposed project, including identification of all funding sources necessary for the project to be completed.

(c) After receiving the information required to be submitted under subdivision (b), the agency shall review the information to determine all of the following:

(1) The project is consistent with the purposes described in subdivision (h) of Section 8879.23.

(2) The project is an eligible capital expenditure, as described in subdivision (a) of Section 8879.57.

(3) The project is a capital improvement that meets the requirements of paragraph (2) of subdivision (b).

(4) The project, or a useful component thereof, is, or will become, fully funded with an allocation of funds from the Transit System Safety, Security, and Disaster Response Account.

(d) (1) Upon conducting the review required in subdivision (c) and determining that a proposed project meets the requirements of that subdivision, the agency shall, on a quarterly basis, provide the Controller

with a list of projects and the sponsoring agencies or transit operators eligible to receive an allocation from the account.

(2) The list of projects submitted to the Controller for allocation for any one fiscal year shall be constrained by the total amount of funds appropriated by the Legislature for the purposes of this section for that fiscal year.

(3) For a fiscal year in which the number of projects submitted for funding under this section exceeds available funds, the agency shall prioritize projects contained on the lists submitted pursuant to paragraph (1) so that (A) projects addressing the greatest risks to the public and that demonstrate the ability and intent to expend a significant percentage of project funds within six months have the highest priority and (B) to the maximum extent possible, the list reflects a distribution of funding that is geographically balanced.

(e) Upon receipt of the information from the agency required by subdivision (d), the Controller's office shall commence any necessary actions to allocate funds to eligible agencies and transit operators sponsoring projects on the list of projects, including, but not limited to, seeking the issuance of bonds for that purpose. The total allocations to any one eligible agency or transit operator shall not exceed that agency's or transit operator's share of funds from the account pursuant to the formula contained in subdivision (a) of Section 8879.57.

(f) During each fiscal year that an agency or transit operator receives funds pursuant to this section, the California Emergency Management Agency may monitor the project expenditures to ensure compliance with this section.

(g) The Controller's office may, pursuant to Section 12410, use its authority to audit the use of state bond funds on projects receiving an allocation under this section. Each eligible agency or transit operator sponsoring a project subject to an audit shall provide any and all data requested by the Controller's office in order to complete the audit. The Controller's office shall transmit copies of all completed audits to the agency and to the policy committees of the Legislature with jurisdiction over transportation and budget issues.

SEC. 9. Section 8879.59 of the Government Code is amended to read:

8879.59. (a) For funds appropriated from the Transit System Safety, Security, and Disaster Response Account for allocation to transit agencies eligible to receive funds pursuant to subdivision (b) of Section 8879.57, the California Emergency Management Agency (Cal EMA) shall administer a grant application and award program for those transit agencies.

(b) Funds awarded to transit agencies pursuant to this section shall be for eligible capital expenditures as described in subdivision (b) of Section 8879.57.

(c) Prior to allocating funds to projects pursuant to this section, Cal EMA shall adopt guidelines to establish the criteria and process for the distribution of funds described in this section. Prior to adopting the guidelines, Cal EMA shall hold a public hearing on the proposed guidelines.

(d) For each fiscal year in which funds are appropriated for the purposes of this section, Cal EMA shall issue a notice of funding availability no later than October 1.

(e) No later than December 1 of each fiscal year in which the notice in subdivision (d) is issued, eligible transit agencies may submit project nominations for funding to Cal EMA for its review and consideration. Project nominations shall include all of the following:

(1) A description of the project, which shall illustrate the physical components of the project and the security or emergency response benefit to be achieved by the completion of the project.

(2) Identification of all nonbond sources of funding committed to the project.

(3) An estimate of the project's full cost and the proposed schedule for the project's completion.

(f) For a fiscal year in which the number of projects submitted for funding under this section exceeds available funds, Cal EMA shall prioritize projects so that projects addressing the greatest risks to the public and that demonstrate the ability and intent to expend a significant percentage of project funds within six months have the highest priority.

(g) No later than February 1, Cal EMA shall select eligible projects to receive grants under this section and shall provide the Controller with a list of the projects and the sponsoring agencies eligible to receive an allocation from the account. Upon receipt of this information, the Controller's office shall commence any necessary actions to allocate funds to those agencies, including, but not limited to, seeking the issuance of bonds for that purpose. Grants awarded to eligible transit agencies pursuant to subdivision (b) of Section 8879.57 shall be for eligible capital expenditures, as described in paragraph (2) of subdivision (b) of that section.

(h) During each fiscal year that a transit agency receives funds pursuant to this section, Cal EMA may monitor the project expenditures to ensure project funds are expended in compliance with the submitted project nomination.

SEC. 10. Section 11270 of the Government Code is amended to read:

11270. As used in this article, "administrative costs" means the amounts expended by the Legislature, the Legislative Counsel Bureau, the Governor's Office, the California Technology Agency, the Office of Planning and Research, the Department of Justice, the State Controller's Office, the State Treasurer's Office, the State Personnel Board, the Department of Finance, the Financial Information System for California, the Office of Administrative Law, the Department of Human Resources, the Secretary of State and Consumer Services, the Secretary of California Health and Human Services, the Bureau of State Audits, and the California State Library, and a proration of any other cost to or expense of the state for services or facilities provided for the Legislature and the above agencies, for supervision or administration of the state government or for services to other state agencies.

SEC. 11. Section 11546 of the Government Code is amended to read:

11546. (a) The California Technology Agency shall be responsible for the approval and oversight of information technology projects, which shall include, but are not limited to, all of the following:

(1) Establishing and maintaining a framework of policies, procedures, and requirements for the initiation, approval, implementation, management, oversight, and continuation of information technology projects. Unless otherwise required by law, a state department shall not procure oversight services of information technology projects without the approval of the California Technology Agency.

(2) Evaluating information technology projects based on the business case justification, resources requirements, proposed technical solution, project management, oversight and risk mitigation approach, and compliance with statewide strategies, policies, and procedures. Projects shall continue to be funded through the established Budget Act process.

(3) Consulting with agencies during initial project planning to ensure that project proposals are based on well-defined programmatic needs, clearly identify programmatic benefits, and consider feasible alternatives to address the identified needs and benefits consistent with statewide strategies, policies, and procedures.

(4) Consulting with agencies prior to project initiation to review the project governance and management framework to ensure that it is best designed for success and will serve as a resource for agencies throughout the project implementation.

(5) Requiring agencies to provide information on information technology projects including, but not limited to, all of the following:

(A) The degree to which the project is within approved scope, cost, and schedule.

(B) Project issues, risks, and corresponding mitigation efforts.

(C) The current estimated schedule and costs for project completion.

(6) Requiring agencies to perform remedial measures to achieve compliance with approved project objectives. These remedial measures may include, but are not limited to, any of the following:

(A) Independent assessments of project activities, the cost of which shall be funded by the agency administering the project.

(B) Establishing remediation plans.

(C) Securing appropriate expertise, the cost of which shall be funded by the agency administering the project.

(D) Requiring additional project reporting.

(E) Requiring approval to initiate any action identified in the approved project schedule.

(7) Suspending, reinstating, or terminating information technology projects. The agency shall notify the Joint Legislative Budget Committee of any project suspension, reinstatement, and termination within 30 days of that suspension, reinstatement, or termination.

(8) Establishing restrictions or other controls to mitigate nonperformance by agencies, including, but not limited to, any of the following:

(A) The restriction of future project approvals pending demonstration of successful correction of the identified performance failure.

(B) The revocation or reduction of authority for state agencies to initiate information technology projects or acquire information technology or telecommunications goods or services.

(b) The California Technology Agency shall have the authority to delegate to another agency any authority granted under this section based on its assessment of the agency's project management, project oversight, and project performance.

SEC. 12. Section 12531 is added to the Government Code, to read:

12531. (a) The Legislature finds and declares that California, represented by the California Attorney General, entered a national multistate settlement with the country's five largest loan servicers. This agreement, the National Mortgage Settlement stemmed from successful resolution of federal court action (Consent Judgment, United States v. Bank of America (No. 1:12-cv-00361, Banzr. D.C. Apr. 4, 2012). The National Mortgage Settlement is broad ranging, with California's share of this settlement estimated to be up to eighteen billion dollars ($18,000,000,000). Of this amount, approximately four hundred ten million dollars ($410,000,000) will come directly to the state in costs, fees, and penalty payments.

(b) There is hereby created in the State Treasury the National Mortgage Special Deposit Fund. Notwithstanding Section 13340, all moneys in the fund are hereby continuously appropriated, and shall be allocated by the Department of Finance.

(c) Direct payments made to the State of California as civil penalties pursuant to the National Mortgage Settlement shall be deposited in the Unfair Competition Law Fund as required by the settlement.

(d) Direct payments made to the State of California pursuant to the National Mortgage Settlement, except for those payments made pursuant to subdivision (c), shall be deposited in the National Mortgage Special Deposit Fund.

(e) Notwithstanding any other law, the Director of Finance may allocate or otherwise use the funds in the National Mortgage Special Deposit Fund to offset General Fund expenditures in the 2011–12, 2012–13, and 2013–14 fiscal years. The Department of Finance and the Controller's office shall recognize this fiscal alignment accordingly for the purpose of the state budget process and legal basis of accounting.

(f) Not less than 30 days prior to allocating any moneys pursuant to subdivision (e), the Department of Finance shall submit an expenditure plan to the Joint Legislative Budget Committee detailing the proposed use of the moneys in the National Mortgage Special Deposit Fund.

(g) Notwithstanding any other law, the Controller may use the funds in the National Mortgage Special Deposit Fund for cashflow loans to the General Fund as provided in Sections 16310 and 16381.

SEC. 13. Section 13071 of the Government Code is amended to read:

13071. The Director of Finance shall be responsible for coordinating state agency internal audits and identifying when agencies are required to

comply with federally mandated audits. The Director of Finance, in coordinating the internal auditors of state agencies, shall ensure that these auditors utilize the "Standards for the Professional Practices of Internal Auditing."

SEC. 14. Section 13300.5 is added to the Government Code, to read:

13300.5. (a) The Legislature finds and declares that the project of the FISCal Project to modernize the state's internal financial systems is a critical project that must be subject to the highest level of oversight. According to the California Technology Agency, the size and scope of this modernization and automation effort make this project one of the highest risk projects undertaken by the state. Therefore, the Legislature must take steps to ensure it is fully informed as the project is implemented. It is the intent of the Legislature to adopt additional reporting requirements for the FISCal Project Office to adequately manage the project's risk and to ensure the successful implementation of this effort.

(b) The FISCal Project Office shall report to the Legislature, by February 15 of each year, an update on the project. The report shall include all of the following:

(1) An executive summary and overview of the project's status.

(2) An overview of the project's history.

(3) Significant events of the project within the current reporting period and a projection of events during the next reporting period.

(4) A discussion of mitigation actions being taken by the project for any missed major milestones.

(5) A comparison of actual to budgeted expenditures, and an explanation of variances and any planned corrective actions, including a summary of FISCal project and staffing levels and an estimate of staff participation from partner agencies.

(6) An articulation of expected functionality and qualitative benefits from the project that were achieved during the reporting period and that are expected to be achieved in the subsequent year.

(7) An overview of change management activities and stakeholder engagement in the project, including a summary of departmental participation in the FISCal project.

(8) A discussion of lessons learned and best practices that will be incorporated into future changes in management activities.

(9) A description of any significant software customization, including a justification for why, if any, customization was granted.

(10) Updates on the progress of meeting the project objectives, including the objectives provided in paragraph (1) of subdivision (c) of Section 15849.22.

(c) The initial report, due February 15, 2013, shall provide a description of the approved project scope. Later reports shall describe any later deviations to the project scope, cost, or schedule.

(d) The initial report shall also provide a summary of the project history from Special Project Report 1 to Special Project Report 4, inclusive.

(e) This section shall remain in effect until a postimplementation evaluation report has been approved by the California Technology Agency. The California Technology Agency shall post a notice on its Internet Web site when the report is approved.

SEC. 15. Section 15849.6 of the Government Code, as added by Section 13 of Chapter 726 of the Statutes of 2010, is repealed.

SEC. 16. Section 15849.6 of the Government Code, as added by Section 2 of Chapter 727 of the Statutes of 2010, is amended to read:

15849.6. Notwithstanding any provision of this part to the contrary, the board may issue bonds, notes, or other obligations to finance the acquisition, design, or construction of a public building as authorized by the Legislature, in the total amount authorized by the Legislature, and any additional amount authorized by the board to pay the cost of financing. This additional amount may include interest during acquisition or interest prior to, during, and for a period of six months after construction of the public building, interest payable on any interim loan or interim financing for the public building, a reasonably required reserve fund, and the costs of issuance of any interim financing and permanent financing.

This section shall be applicable to, but not limited to, bonds, notes, or obligations of the board that were authorized by appropriations of the Legislature made prior to the effective date of this section.

SEC. 17. Section 15849.65 is added to the Government Code, to read:

15849.65. (a) Notwithstanding any provision of this part to the contrary, when a public building for the University of California is authorized, in full or in part, to be financed under this part, the board may issue bonds, notes, or other obligations to reimburse any debt service related to obligations issued or entered into by the Regents of the University of California as interim financing for the public building. In addition to the amount authorized by the Legislature for a public building for the University of California, the board may authorize an additional amount to pay related interest and issuance costs associated with the obligations issued or entered into by the Regents of the University of California.

(b) This section shall be applicable to, but not limited to, bonds, notes, or obligations of the board that were authorized by appropriations of the Legislature made prior to the effective date of this section.

(c) This section shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 18. Section 17581 of the Government Code is amended to read:

17581. (a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program

or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute or executive order, or portion thereof, or the commission's test claim number, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) Within 30 days after enactment of the Budget Act, the Department of Finance shall notify local agencies of any statute or executive order, or portion thereof, for which operation of the mandate is suspended because reimbursement is not provided for that fiscal year pursuant to this section and Section 6 of Article XIII B of the California Constitution.

(c) Notwithstanding any other provision of law, if a local agency elects to implement or give effect to a statute or executive order described in subdivision (a), the local agency may assess fees to persons or entities which benefit from the statute or executive order. Any fee assessed pursuant to this subdivision shall not exceed the costs reasonably borne by the local agency.

(d) This section shall not apply to any state-mandated local program for the trial courts, as specified in Section 77203.

(e) This section shall not apply to any state-mandated local program for which the reimbursement funding counts toward the minimum General Fund requirements of Section 8 of Article XVI of the Constitution.

(f) All state-mandated local programs suspended in the Budget Act for the 2012–13 fiscal year shall also be suspended in the 2013–14 and 2014–15 fiscal years.

SEC. 19. Section 17617 of the Government Code is amended to read:

17617. The total amount due to each city, county, city and county, and special district, for which the state has determined that reimbursement is required under paragraph (2) of subdivision (b) of Section 6 of Article XIII B of the California Constitution, shall be appropriated for payment to these entities over a period of not more than 15 years, commencing with the Budget Act for the 2006–07 fiscal year and concluding with the Budget Act for the 2020–21 fiscal year. There shall be no appropriation for payment of reimbursement claims submitted pursuant to this section for the 2012–13, 2013–14, and 2014–15 fiscal years.

SEC. 20. Section 19849 of the Government Code is amended to read:

19849. (a) The department shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules.

(b) Notwithstanding any other law, the department shall adopt a plan for the period from July 1, 2012, to June 30, 2013, inclusive, by which all state

employees not subject to the Personal Leave Program 2012 (PLP 2012 Program), as described in subdivision (c) of Section 19851, shall be furloughed for one workday per calendar month. The department shall further adopt rules for the implementation, administration, and enforcement of this furlough plan. This subdivision shall not apply to retired annuitants or to employees of entities listed in Section 3.90 of the Budget Act of 2012.

(c) Except as provided in subdivision (b), if the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 21. Section 19851 of the Government Code is amended to read:

19851. (a) It is the policy of the state, except during the operation of subdivision (c), that the workweek of the state employee shall be 40 hours, and the workday of state employees eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies. It is the policy of the state to avoid the necessity for overtime work whenever possible. This policy does not restrict the extension of regular working-hour schedules on an overtime basis in those activities and agencies where it is necessary to carry on the state business properly during a manpower shortage.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) Notwithstanding any other law, for the period from July 1, 2012, to June 30, 2013, inclusive, a state employee shall participate in the Personal Leave Program 2012 (PLP 2012 Program), either as required by an applicable memorandum of understanding reached pursuant to Section 3517.5 or by the direction of the department for excluded employees. Under the PLP 2012 Program, each employee shall receive a reduction in pay not greater than 5 percent. In exchange for this reduction in pay, each employee shall receive eight hours of PLP 2012 Program leave credits on the first day of each monthly pay period. This subdivision shall not apply to retired annuitants or to employees of entities listed in Section 3.90 of the Budget Act of 2012.

SEC. 22. Section 50087 of the Government Code is repealed.

SEC. 23. Section 51298 of the Government Code is amended to read:

51298. It is the intent of the Legislature in enacting this chapter to provide local governments with opportunities to attract either large manufacturing or research and development facilities to invest in their communities and to encourage industries, such as high technology,

aerospace, automotive, biotechnology, software, environmental sources, and others, to locate and invest in those facilities in California.

(a) Commencing in the 1998–99 fiscal year, the governing body of a county, city and county, or city, may, by means of an ordinance or resolution approved by a majority of its entire membership, elect to establish a capital investment incentive program. In any county, city and county, or city in which the governing body has so elected, the county, city and county, or city shall, upon the approval by a majority of the entire membership of its governing body of a written request therefor, pay a capital investment incentive amount to the proponent of a qualified manufacturing facility or a qualified research and development facility for up to 15 consecutive fiscal years. A request for the payment of capital investment incentive amounts shall be filed by a proponent in writing with the governing body of an electing county, city and county, or city in the time and manner specified in procedures adopted by that governing body. In the case in which the governing body of an electing county, city and county, or city approves a request for the payment of capital investment incentive amounts, both of the following conditions shall apply:

(1) The consecutive fiscal years during which a capital investment incentive amount is to be paid shall commence with the first fiscal year commencing after the date upon which the qualified manufacturing facility or the qualified research and development facility is certified for occupancy or, if no certification is issued, the first fiscal year commencing after the date upon which the qualified manufacturing facility or the qualified research and development facility commences operation.

(2) In accordance with paragraph (4) of subdivision (d), the annual payment to a proponent of each capital investment incentive amount shall be contingent upon the proponent's payment of a community services fee.

(b) For purposes of this section:

(1) "Qualified manufacturing facility" means a proposed manufacturing facility that meets all of the following criteria:

(A) The proponent's initial investment in that facility, in real and personal property, necessary for the full and normal operation of that facility, made pursuant to the capital investment incentive program, that comprises any portion of that facility or has its situs at that facility, exceeds two hundred fifty million dollars ($250,000,000). Compliance with this subparagraph shall be certified by the Governor's Office of Business and Economic Development upon the director's approval of a proponent's application for certification of a qualified manufacturing facility. An application for certification shall be submitted by a proponent to the Governor's Office of Business and Economic Development in writing in the time and manner as specified by the director.

(B) The facility is to be located within the jurisdiction of the electing county, city and county, or city to which the request is made for payment of capital investment incentive amounts.

(C) The facility is operated by any of the following:

(i) A business described in Codes 3500 to 3899, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, except that "January 1, 1997," shall be substituted for "January 1, 1994," in each place in which it appears.

(ii) A business engaged in the recovery of minerals from geothermal resources, including the proportional amount of a geothermal electric generating plant that is integral to the recovery process by providing electricity for it.

(iii) A business engaged in the manufacturing of parts or components related to the production of electricity using solar, wind, biomass, hydropower, or geothermal resources on or after July 1, 2010.

(D) The proponent is currently engaged in any of the following: (i) commercial production, (ii) the perfection of the manufacturing process, or (iii) the perfection of a product intended to be manufactured.

(2) "Qualified research and development facility" means a proposed research and development facility that meets all of the following criteria:

(A) The proponent's initial investment in that facility, in real and personal property, necessary for the full and normal operation of that facility, made pursuant to the capital investment incentive program, that comprises any portion of that facility or has its situs at that facility, exceeds two hundred fifty million dollars ($250,000,000). Compliance with this subparagraph shall be certified by the Governor's Office of Business and Economic Development upon the director's approval of a proponent's application for certification of a qualified research and development facility. An application for certification shall be submitted by a proponent to the Governor's Office of Business and Economic Development in writing in the time and manner specified by the director.

(B) The facility is to be located within the jurisdiction of the electing county, city and county, or city to which the request is made for payment of capital investment incentive amounts.

(C) The facility is operated by a business described in Code 7371, 7373, or 8711 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, except that "January 1, 1997," shall be substituted for "January 1, 1994," in each place in which it appears.

(D) The proponent is currently engaged in research and development.

(3) "Proponent" means a party or parties that meet all of the following criteria:

(A) The party is named in the application to the county, city and county, or city within which the qualified manufacturing facility or the qualified research and development facility would be located for a permit to construct a qualified manufacturing facility or a qualified research and development facility.

(B) The party will be the fee owner of the qualified manufacturing facility or the qualified research and development facility upon the completion of that facility. Notwithstanding the previous sentence, the party may enter

into a sale-leaseback transaction and nevertheless be considered the proponent.

(C) If a proponent that is receiving capital investment incentive amounts subsequently leases the subject qualified manufacturing facility or qualified research and development facility to another party, the lease may provide for the payment to that lessee of any portion of a capital investment incentive amount. Any lessee receiving any portion of a capital investment incentive amount shall also be considered a proponent for the purposes of subdivision (d).

(4) "Capital investment incentive amount" means, with respect to a qualified manufacturing facility or a qualified research and development facility for a relevant fiscal year, an amount up to or equal to the amount of ad valorem property tax revenue derived by the participating local agency from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) or subparagraph (A) of paragraph (2) that is in excess of twenty-five million dollars ($25,000,000).

(5) "Development" means a systematic application of knowledge or understanding, directed toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

(6) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(7) "Research" means either basic research or applied research.

(A) "Applied research" means a systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

(B) "Basic research" means a systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications toward processes or products in mind.

(c) A city or special district may, upon the approval by a majority of the entire membership of its governing body, pay to the county, city and county, or city an amount equal to the amount of ad valorem property tax revenue allocated to that city or special district, but not the actual allocation, derived from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) of subdivision (b) or subparagraph (A) of paragraph (2) of subdivision (b) that is in excess of twenty-five million dollars ($25,000,000).

(d) A proponent whose request for the payment of capital investment incentive amounts is approved by an electing county, city and county, or city shall enter into a community services agreement with that county, city

and county, or city that includes, but is not limited to, all of the following provisions:

(1) A provision requiring that a community services fee be remitted by the proponent to the county, city and county, or city, in each fiscal year, in an amount that is equal to 25 percent of the capital investment incentive amount calculated for that proponent for that fiscal year, except that in no fiscal year shall the amount of the community services fee exceed two million dollars ($2,000,000).

(2) A provision specifying the dates in each relevant fiscal year upon which payment of the community services fee is due and delinquent, and the rate of interest to be charged to a proponent for any delinquent portion of the community services fee amount.

(3) A provision specifying the procedures and rules for the determination of underpayments or overpayments of a community services fee, for the appeal of determinations of any underpayment, and for the refunding or crediting of any overpayment.

(4) A provision specifying that a proponent is ineligible to receive a capital investment incentive amount if that proponent is currently delinquent in the payment of any portion of a community services fee amount, if the qualified manufacturing facility or the qualified research and development facility is constructed in a manner materially different from the facility as described in building permit application materials, or if the facility is no longer operated as a qualified manufacturing facility or a qualified research and development facility meeting the requirements of paragraph (1) or (2) of subdivision (b), as applicable. If a proponent becomes ineligible to receive a capital investment incentive amount as a result of an agreement provision included pursuant to this subparagraph, the running of the number of consecutive fiscal years specified in an agreement made pursuant to subdivision (a) is not tolled during the period in which the proponent is ineligible.

(5) A provision that sets forth a job creation plan with respect to the relevant qualified manufacturing facility or the qualified research and development facility. The plan shall specify the number of jobs to be created by that facility, and the types of jobs and compensation ranges to be created thereby. The plan shall also specify that for the entire term of the community services agreement, both of the following shall apply:

(A) All of the employees working at the qualified manufacturing facility or the qualified research and development facility shall be covered by an employer-sponsored health benefits plan.

(B) The average weekly wage, exclusive of overtime, paid to all of the employees working at the qualified manufacturing facility or the qualified research and development facility, who are not management or supervisory employees, shall be not less than the state average weekly wage.

For the purpose of this subdivision, “state average weekly wage” means the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development

Department for the four calendar quarters ending June 30 of the preceding calendar year.

(6) (A) In the case in which the proponent fails to operate the qualified manufacturing facility or the qualified research and development facility as required by the community services agreement, a provision that requires the recapture of any portion of any capital investment incentive amounts previously paid to the proponent equal to the lesser of the following:

(i) All of the capital investment incentive amounts paid to the proponent, less all of the community services fees received from the proponent, and less any capital investment incentive amounts previously recaptured.

(ii) The last capital investment incentive amount paid to the proponent, less the last community services fee received from the proponent, multiplied by 40 percent of the number of years remaining in the community services agreement, but not to exceed 10 years, and less any capital investment incentive amounts previously recaptured.

(B) If the proponent fails to operate the qualified manufacturing facility or the qualified research and development facility as required by the community services agreement, the county, city and county, or city may, upon a finding that good cause exists, waive any portion of the recapture of any capital investment incentive amount due under this subdivision. For the purpose of this subdivision, good cause includes, but is not limited to, the following:

(i) The proponent has sold or leased the property to a person who has entered into an agreement with the county, city and county, or city to assume all of the responsibilities of the proponent under the community services agreement.

(ii) The qualified manufacturing facility or the qualified research and development facility has been rendered inoperable and beyond repair as a result of an act of God.

(C) For purposes of this subdivision, failure to operate a qualified manufacturing facility or a qualified research and development facility as required by the community services agreement includes, but is not limited to, failure to establish the number of jobs specified in the jobs creation plan created pursuant to paragraph (5).

(e) (1) Each county, city and county, or city that elects to establish a capital investment incentive program shall notify the Governor's Office of Business and Economic Development of its election to do so no later than June 30 of the fiscal year in which the election was made.

(2) In addition to the information required to be reported pursuant to paragraph (1), each county, city and county, or city that has elected to establish a capital investment incentive program shall notify the Governor's Office of Business and Economic Development each fiscal year no later than June 30 of the amount of any capital investment incentive payments made and the proponent of the qualified manufacturing facility or the qualified research and development facility to whom the payments were made during that fiscal year.

(3) The Governor's Office of Business and Economic Development shall compile the information submitted by each county, city and county, and city pursuant to paragraphs (1) and (2) and submit a report to the Legislature containing this information no later than October 1, every two years commencing October 1, 2000.

(f) This section is repealed on June 30, 2013.

SEC. 24. Section 51298 is added to the Government Code, to read:

51298. It is the intent of the Legislature in enacting this chapter to provide local governments with opportunities to attract large manufacturing facilities to invest in their communities and to encourage industries, such as high technology, aerospace, automotive, biotechnology, software, environmental sources, and others, to locate and invest in those facilities in California.

(a) Commencing in the 1998–99 fiscal year, the governing body of a county, city and county, or city, may, by means of an ordinance or resolution approved by a majority of its entire membership, elect to establish a capital investment incentive program. In any county, city and county, or city in which the governing body has so elected, the county, city and county, or city shall, upon the approval by a majority of the entire membership of its governing body of a written request therefor, pay a capital investment incentive amount to the proponent of a qualified manufacturing facility for up to 15 consecutive fiscal years. A request for the payment of capital investment incentive amounts shall be filed by a proponent in writing with the governing body of an electing county, city and county, or city in the time and manner specified in procedures adopted by that governing body. In the case in which the governing body of an electing county, city and county, or city approves a request for the payment of capital investment incentive amounts, both of the following conditions shall apply:

(1) The consecutive fiscal years during which a capital investment incentive amount is to be paid shall commence with the first fiscal year commencing after the date upon which the qualified manufacturing facility is certified for occupancy or, if no certification is issued, the first fiscal year commencing after the date upon which the qualified manufacturing facility commences operation.

(2) In accordance with paragraph (4) of subdivision (d), the annual payment to a proponent of each capital investment incentive amount shall be contingent upon the proponent's payment of a community services fee.

(b) For purposes of this section:

(1) "Qualified manufacturing facility" means a proposed manufacturing facility that meets all of the following criteria:

(A) The proponent's initial investment in that facility, in real and personal property, necessary for the full and normal operation of that facility, made pursuant to the capital investment incentive program, that comprises any portion of that facility or has its situs at that facility, exceeds one hundred fifty million dollars ($150,000,000). Compliance with this subparagraph shall be certified by the Business, Transportation and Housing Agency upon the agency's approval of a proponent's application for certification of a

qualified manufacturing facility. An application for certification shall be submitted by a proponent to the agency in writing in the time and manner as specified by the agency.

(B) The facility is to be located within the jurisdiction of the electing county, city and county, or city to which the request is made for payment of capital investment incentive amounts.

(C) The facility is operated by any of the following:

(i) A business described in Codes 3500 to 3899, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, except that "January 1, 1997," shall be substituted for "January 1, 1994," in each place in which it appears.

(ii) A business engaged in the recovery of minerals from geothermal resources, including the proportional amount of a geothermal electric generating plant that is integral to the recovery process by providing electricity for it.

(iii) A business engaged in the manufacturing of parts or components related to the production of electricity using solar, wind, biomass, hydropower, or geothermal resources on or after July 1, 2010.

(D) The proponent is either currently engaged in commercial production or engaged in the perfection of the manufacturing process, or the perfection of a product intended to be manufactured.

(2) "Proponent" means a party or parties that meet all of the following criteria:

(A) The party is named in the application to the county, city and county, or city within which the qualified manufacturing facility would be located for a permit to construct a qualified manufacturing facility.

(B) The party will be the fee owner of the qualified manufacturing facility upon the completion of that facility. Notwithstanding the previous sentence, the party may enter into a sale-leaseback transaction and nevertheless be considered the proponent.

(C) If a proponent that is receiving capital investment incentive amounts subsequently leases the subject qualified manufacturing facility to another party, the lease may provide for the payment to that lessee of any portion of a capital investment incentive amount. Any lessee receiving any portion of a capital investment incentive amount shall also be considered a proponent for the purposes of subdivision (d).

(3) "Capital investment incentive amount" means, with respect to a qualified manufacturing facility for a relevant fiscal year, an amount up to or equal to the amount of ad valorem property tax revenue derived by the participating local agency from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) that is in excess of one hundred fifty million dollars ($150,000,000).

(4) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements

to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(c) A city or special district may, upon the approval by a majority of the entire membership of its governing body, pay to the county, city and county, or city an amount equal to the amount of ad valorem property tax revenue allocated to that city or special district, but not the actual allocation, derived from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) of subdivision (b) that is in excess of one hundred fifty million dollars ($150,000,000).

(d) A proponent whose request for the payment of capital investment incentive amounts is approved by an electing county, city and county, or city shall enter into a community services agreement with that county, city and county, or city that includes, but is not limited to, all of the following provisions:

(1) A provision requiring that a community services fee be remitted by the proponent to the county, city and county, or city, in each fiscal year subject to the agreement, in an amount that is equal to 25 percent of the capital investment incentive amount calculated for that proponent for that fiscal year, except that in no fiscal year shall the amount of the community services fee exceed two million dollars ($2,000,000).

(2) A provision specifying the dates in each relevant fiscal year upon which payment of the community services fee is due and delinquent, and the rate of interest to be charged to a proponent for any delinquent portion of the community services fee amount.

(3) A provision specifying the procedures and rules for the determination of underpayments or overpayments of a community services fee, for the appeal of determinations of any underpayment, and for the refunding or crediting of any overpayment.

(4) A provision specifying that a proponent is ineligible to receive a capital investment incentive amount if that proponent is currently delinquent in the payment of any portion of a community services fee amount, if the qualified manufacturing facility is constructed in a manner materially different from the facility as described in building permit application materials, or if the facility is no longer operated as a qualified manufacturing facility meeting the requirements of paragraph (1) of subdivision (b). If a proponent becomes ineligible to receive a capital investment incentive amount as a result of an agreement provision included pursuant to this subparagraph, the running of the number of consecutive fiscal years specified in an agreement made pursuant to subdivision (a) is not tolled during the period in which the proponent is ineligible.

(5) A provision that sets forth a job creation plan with respect to the relevant qualified manufacturing facility. The plan shall specify the number of jobs to be created by that facility, and the types of jobs and compensation ranges to be created thereby. The plan shall also specify that for the entire term of the community services agreement, both of the following shall apply:

(A) All of the employees working at the qualified manufacturing facility shall be covered by an employer-sponsored health benefits plan.

(B) The average weekly wage, exclusive of overtime, paid to all of the employees working at the qualified manufacturing facility, who are not management or supervisory employees, shall be not less than the state average weekly wage.

For the purpose of this subdivision, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30 of the preceding calendar year.

(6) (A) In the case in which the proponent fails to operate the qualified manufacturing facility as required by the community services agreement, a provision that requires the recapture of any portion of any capital investment incentive amounts previously paid to the proponent equal to the lesser of the following:

(i) All of the capital investment incentive amounts paid to the proponent, less all of the community services fees received from the proponent, and less any capital investment incentive amounts previously recaptured.

(ii) The last capital investment incentive amount paid to the proponent, less the last community services fee received from the proponent, multiplied by 40 percent of the number of years remaining in the community services agreement, but not to exceed 10 years, and less any capital investment incentive amounts previously recaptured.

(B) If the proponent fails to operate the qualified manufacturing facility as required by the community services agreement, the county, city and county, or city may, upon a finding that good cause exists, waive any portion of the recapture of any capital investment incentive amount due under this subdivision. For the purpose of this subdivision, good cause includes, but is not limited to, the following:

(i) The proponent has sold or leased the property to a person who has entered into an agreement with the county, city and county, or city to assume all of the responsibilities of the proponent under the community services agreement.

(ii) The qualified manufacturing facility has been rendered inoperable and beyond repair as a result of an act of God.

(C) For purposes of this subdivision, failure to operate a qualified manufacturing facility as required by the community services agreement includes, but is not limited to, failure to establish the number of jobs specified in the jobs creation plan created pursuant to paragraph (5).

(e) (1) Each county, city and county, or city that elects to establish a capital investment incentive program shall notify the Business, Transportation and Housing Agency of its election to do so no later than June 30th of the fiscal year in which the election was made.

(2) In addition to the information required to be reported pursuant to paragraph (1), each county, city and county, or city that has elected to establish a capital investment incentive program shall notify the Business,

Transportation and Housing Agency each fiscal year no later than June 30th of the amount of any capital investment incentive payments made and the proponent of the qualified manufacturing facility to whom the payments were made during that fiscal year.

(3) The Business, Transportation and Housing Agency shall compile the information submitted by each county, city and county, and city pursuant to paragraphs (1) and (2) and submit a report to the Legislature containing this information no later than October 1, every two years commencing October 1, 2000.

(f) This section shall become operative on July 1, 2013.

SEC. 25. Section 76104.7 of the Government Code is amended to read:

76104.7. (a) Except as otherwise provided in this section, in addition to the penalty levied pursuant to Section 76104.6, there shall be levied an additional state-only penalty of four dollars ($4) for every ten dollars ($10), or part of ten dollars ($10), in each county upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code.

(b) This additional penalty shall be collected together with, and in the same manner as, the amounts established by Section 1464 of the Penal Code. These moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code. These funds shall be deposited into the county treasury DNA Identification Fund. One hundred percent of these funds, including any interest earned thereon, shall be transferred to the state Controller at the same time that moneys are transferred pursuant to paragraph (2) of subdivision (b) of Section 76104.6, for deposit into the state's DNA Identification Fund. These funds shall be used to fund the operations of the Department of Justice forensic laboratories, including the operation of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, and to facilitate compliance with the requirements of subdivision (e) of Section 299.5 of the Penal Code.

(c) This additional penalty does not apply to the following:

(1) Any restitution fine.

(2) Any penalty authorized by Section 1464 of the Penal Code or this chapter.

(3) Any parking offense subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

(4) The state surcharge authorized by Section 1465.7 of the Penal Code.

(d) The fees collected pursuant to this section shall not be subject to subdivision (e) of Section 1203.1d of the Penal Code, but shall be disbursed under paragraph (3) of subdivision (b) of Section 1203.1d of the Penal Code.

SEC. 26. Section 11873 of the Insurance Code is amended to read:

11873. (a) Except as provided by subdivision (b), the fund shall not be subject to the provisions of the Government Code made applicable to state agencies generally or collectively, unless the section specifically names the fund as an agency to which the provision applies.

(b) The fund shall be subject to the provisions of Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of, Chapter 6.5 (commencing with Section 8543) of Division 1 of Title 2 of, Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code, and Division 5 (commencing with Section 18000) of Title 2 of the Government Code, with the exception of all of the following provisions of that division:

(1) Article 1 (commencing with Section 19820) and Article 2 (commencing with Section 19823) of Chapter 2 of Part 2.6 of Division 5.

(2) Sections 19849.2, 19849.3, 19849.4, and 19849.5.

(3) Chapter 4.5 (commencing with Section 19993.1) of Part 2.6 of Division 5.

(c) Except as provided in subdivisions (d) and (e) for the period from July 1, 2012, to June 30, 2013, inclusive, and notwithstanding any provision of the Government Code or any other provision of law, the positions funded by the State Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law. This subdivision is declaratory of existing law.

(d) Notwithstanding any other law, employees of the fund shall, without limitation, be subject to any and all reductions in state employee compensation imposed by the Legislature on other state employees for the period from July 1, 2012, to June 30, 2013, inclusive, regardless of the means adopted to effect those reductions.

(e) With the exception of the reductions authorized in subdivision (d), if any provision of this section, or any practice or procedure adopted pursuant to this section, is in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 27. Section 62.9 of the Labor Code is amended to read:

62.9. (a) (1) The director shall levy and collect assessments from employers in accordance with this section. The total amount of the assessment collected shall be the amount determined by the director to be necessary to produce the revenue sufficient to fund the programs specified by Section 62.7, except that the amount assessed in any year for those purposes shall not exceed 50 percent of the amounts appropriated from the General Fund for the support of the occupational safety and health program for the 1993–94 fiscal year, adjusted for inflation. The director also shall include in the total assessment amount the department's costs for administering the assessment, including the collections process and the cost of reimbursing the Employment Development Department or another agency or department for its cost of collection activities pursuant to subdivision (c).

(2) The insured employers and private sector self-insured employers that, pursuant to subdivision (b), are subject to assessment shall be assessed, respectively, on the basis of their annual payroll subject to premium charges or their annual payroll that would be subject to premium charges if the employer were insured, as follows:

(A) An employer with a payroll of less than two hundred fifty thousand dollars ($250,000) shall be assessed one hundred dollars ($100).

(B) An employer with a payroll of two hundred fifty thousand dollars ($250,000) or more, but not more than five hundred thousand dollars ($500,000), shall be assessed two hundred dollars ($200).

(C) An employer with a payroll of more than five hundred thousand dollars ($500,000), but not more than seven hundred fifty thousand dollars ($750,000), shall be assessed four hundred dollars ($400).

(D) An employer with a payroll of more than seven hundred fifty thousand dollars ($750,000), but not more than one million dollars ($1,000,000), shall be assessed six hundred dollars ($600).

(E) An employer with a payroll of more than one million dollars ($1,000,000), but not more than one million five hundred thousand dollars ($1,500,000), shall be assessed eight hundred dollars ($800).

(F) An employer with a payroll of more than one million five hundred thousand dollars ($1,500,000), but not more than two million dollars ($2,000,000), shall be assessed one thousand dollars ($1,000).

(G) An employer with a payroll of more than two million dollars ($2,000,000), but not more than two million five hundred thousand dollars ($2,500,000), shall be assessed one thousand five hundred dollars ($1,500).

(H) An employer with a payroll of more than two million five hundred thousand dollars ($2,500,000), but not more than three million five hundred thousand dollars ($3,500,000), shall be assessed two thousand dollars ($2,000).

(I) An employer with a payroll of more than three million five hundred thousand dollars ($3,500,000), but not more than four million five hundred thousand dollars ($4,500,000), shall be assessed two thousand five hundred dollars ($2,500).

(J) An employer with a payroll of more than four million five hundred thousand dollars ($4,500,000), but not more than five million five hundred thousand dollars ($5,500,000), shall be assessed three thousand dollars ($3,000).

(K) An employer with a payroll of more than five million five hundred thousand dollars ($5,500,000), but not more than seven million dollars ($7,000,000), shall be assessed three thousand five hundred dollars ($3,500).

(L) An employer with a payroll of more than seven million dollars ($7,000,000), but not more than twenty million dollars ($20,000,000), shall be assessed six thousand seven hundred dollars ($6,700).

(M) An employer with a payroll of more than twenty million dollars ($20,000,000) shall be assessed ten thousand dollars ($10,000).

(b) (1) In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience

modification rating of 1.25 or more, and private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (e).

(2) The assessment required by this section shall be levied annually, on a calendar year basis, on those insured employers and private sector self-insured employers, as identified pursuant to paragraph (1), having the highest workers' compensation experience modification ratings or equivalent experience modification ratings, that the director determines to be required numerically to produce the total amount of the assessment to be collected pursuant to subdivision (a).

(c) The director shall collect the assessment from insured employers as follows:

(1) Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25 or more, according to the organization's records at the time the list is requested, for policies commencing the year preceding the year in which the assessment is to be collected.

(2) The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers.

(3) On or before September 1 of each year, the director shall determine each of the current insured employers subject to assessment, and the amount of the total assessment for which each insured employer is liable. The director immediately shall notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision.

(4) The director shall identify any insured employers that, within 30 days after the mailing of the billing notice, fail to pay, or object to, their assessments. The director shall mail to each of these employers a notice of delinquency and a notice of the intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after the mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to another agency or department for collection. The notices required by this paragraph shall be sent by United States first-class mail.

(5) If an assessment is not paid by an insured employer within 15 days after the mailing of the notices required by paragraph (4), the director shall refer the delinquent assessment and the penalty to the Employment Development Department, or another agency or department, as deemed appropriate by the director, for collection pursuant to Section 1900 of the Unemployment Insurance Code.

(d) The director shall collect the assessment directly from private sector self-insured employers. The failure of any private sector self-insured employer to pay the assessment as billed constitutes grounds for the suspension or termination of the employer's certificate to self-insure.

(e) The director shall adopt regulations implementing this section that include provision for a method of determining experience modification ratings for private sector self-insured employers that is generally equivalent to the modification ratings that apply to insured employers and is weighted by both severity and frequency.

(f) The director shall determine whether the amount collected pursuant to any assessment exceeds expenditures, as described in subdivision (a), for the current year and shall credit the amount of any excess to any deficiency in the prior year's assessment or, if there is no deficiency, against the assessment for the subsequent year.

SEC. 28. Section 972.1 of the Military and Veterans Code, as amended by Section 1 of Chapter 183 of the Statutes of 2009, is amended to read:

972.1. (a) The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the General Fund to the Department of Veterans Affairs for allocation, during the 1989–90 fiscal year, for purposes of funding the activities of county veterans service offices pursuant to this section. Funds for allocation in future years shall be as provided in the annual Budget Act.

(b) Funds shall be disbursed each fiscal year on a pro rata basis to counties that have established and maintain a county veterans service office in accordance with the staffing level and workload of each county veterans service office under a formula based upon performance that shall be developed by the Department of Veterans Affairs for these purposes.

(1) For the purposes of this section, "workload unit" means a specific claim activity that is used to allocate subvention funds to counties, which is approved by the department, and performed by county veterans service offices.

(2) For the purposes of this subdivision, the department, by June 30, 2013, shall develop a performance-based formula that will incentivize county veterans service offices to perform workload units that help veterans access federal compensation and pension benefits and other benefits, in order to maximize the amount of federal money received by California veterans.

(c) The department shall annually determine the amount of new or increased monetary benefits paid to eligible veterans by the federal government attributable to the assistance of county veterans service offices. The department shall, on or before January 1 of each year, prepare and transmit its determination for the preceding fiscal year to the Department of Finance and the Legislature. The Department of Finance shall review the department's determination in time to use the information in the annual Budget Act for the budget of the department for the next fiscal year.

(d) The department shall conduct a review of the high-performing and low-performing county veterans service offices and based on this review,

shall produce a best-practices manual for county veterans service offices by June 30, 2013.

(e) (1) The Legislature finds and declares that 50 percent of the amount annually budgeted for county veterans service offices is approximately eleven million dollars ($11,000,000). The Legislature further finds and declares that it is an efficient and reasonable use of state funds to increase the annual budget for county veterans service offices in an amount not to exceed eleven million dollars ($11,000,000) if it is justified by the monetary benefits to the state's veterans attributable to the effort of these offices.

(2) It is the intent of the Legislature, after reviewing the department's determination in subdivision (c), to consider an increase in the annual budget for county veterans service offices in an amount not to exceed five million dollars ($5,000,000), if the monetary benefits to the state's veterans attributable to the assistance of county veterans service offices justify that increase in the budget.

(f) This section shall remain in effect only until January 1, 2016, and as of that date is repealed.

SEC. 29. Section 6611 of the Public Contract Code is amended to read:

6611. (a) Notwithstanding any other provision of law, the Department of General Services may, relative to contracts for goods, services, information technology, and telecommunications, use a negotiation process if the department finds that one or more of the following conditions exist:

(1) The business need or purpose of a procurement or contract can be further defined as a result of a negotiation process.

(2) The business need or purpose of a procurement or contract is known by the department, but a negotiation process may identify different types of solutions to fulfill this business need or purpose.

(3) The complexity of the purpose or need suggests a bidder's costs to prepare and develop a solicitation response are extremely high.

(4) The business need or purpose of a procurement or contract is known by the department, but negotiation is necessary to ensure that the department is receiving the best value or the most cost-efficient goods, services, information technology, and telecommunications.

(b) When it is in the best interests of the state, the department may negotiate amendments to the terms and conditions, including scope of work, of existing contracts for goods, services, information technology, and telecommunications, whether or not the original contract was the result of competition, on behalf of itself or another state agency.

(c) (1) The department shall establish the procedures and guidelines for the negotiation process described in subdivision (a), which procedures and guidelines shall include, but not be limited to, a clear description of the methodology that will be used by the department to evaluate a bid for the procurement goods, services, information technology, and telecommunications.

(2) The procedures and guidelines described in paragraph (1) may include provisions that authorize the department to receive supplemental bids after the initial bids are opened. If the procedures and guidelines include these

provisions, the procedures and guidelines shall specify the conditions under which supplemental bids may be received by the department.

(d) An unsuccessful bidder shall have no right to protest the results of the negotiating process undertaken pursuant to this section. As a remedy, an unsuccessful bidder may file a petition for a writ of mandate in accordance with Section 1085 of the Code of Civil Procedure. The venue for the petition for a writ of mandate shall be Sacramento, California. An action filed pursuant to this subdivision shall be given preference by the court.

(e) (1) The California Technology Agency may utilize the negotiation process described in subdivisions (a) and (b) for the purpose of procuring information technology and telecommunications goods and services on behalf of state departments and information technology projects.

(2) Nothing in this section shall be interpreted to supersede the department's existing statutory control over procurement processes as dictated in Section 12100.

(f) On or before January 1, 2013, and annually thereafter, the California Technology Agency and the Department of General Services shall report to the relevant budget subcommittees of each house of the Legislature on the use of subdivision (e) during budget hearings.

(g) Subdivisions (e) and (f) shall remain in effect only until January 1, 2018, unless an enacted statute deletes or extends that date. Procurements still in the negotiation process pursuant to subdivision (e) on January 1, 2018, shall complete negotiations using that process.

SEC. 30. Section 8352.3 of the Revenue and Taxation Code is amended to read:

8352.3. (a) Subject to Sections 8352 and 8352.1, and except as otherwise provided in subdivision (b), all moneys deposited to the credit of the Motor Vehicle Fuel Account attributable to the distribution of motor vehicle fuel for use or used in propelling an aircraft in the state shall be transferred to the Aeronautics Account in the State Transportation Fund, for allocation as follows:

(1) To pay the pro rata cost of the Controller and the board under subdivisions (b), (c), and (d) of Section 8352.1.

(2) To pay for the support of the Department of Transportation, for the administration of the State Aeronautics Act (Division 9 (commencing with Section 21001) of the Public Utilities Code).

(3) Remaining balance to be available for expenditures in accordance with Section 21602 and Article 4 (commencing with Section 21680) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(b) Commencing July 1, 2012, the revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 and otherwise to be deposited in the Aeronautics Account pursuant to subdivision (a) shall instead be transferred to the General Fund. The revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 that were deposited in the Aeronautics Account in the 2010–11 and 2011–12 fiscal years shall be transferred to the General Fund.

SEC. 31. Section 8352.4 of the Revenue and Taxation Code is amended to read:

8352.4. (a) Subject to Sections 8352 and 8352.1, and except as otherwise provided in subdivision (b), there shall be transferred from the money deposited to the credit of the Motor Vehicle Fuel Account to the Harbors and Watercraft Revolving Fund, for expenditure in accordance with Division 1 (commencing with Section 30) of the Harbors and Navigation Code, the sum of six million six hundred thousand dollars ($6,600,000) per annum, representing the amount of money in the Motor Vehicle Fuel Account attributable to taxes imposed on distributions of motor vehicle fuel used or usable in propelling vessels. The actual amount shall be calculated using the annual reports of registered boats prepared by the Department of Motor Vehicles for the United States Coast Guard and the formula and method of the December 1972 report prepared for this purpose and submitted to the Legislature on December 26, 1972, by the Director of Transportation. If the amount transferred during each fiscal year is in excess of the calculated amount, the excess shall be retransferred from the Harbors and Watercraft Revolving Fund to the Motor Vehicle Fuel Account. If the amount transferred is less than the amount calculated, the difference shall be transferred from the Motor Vehicle Fuel Account to the Harbors and Watercraft Revolving Fund. No adjustment shall be made if the computed difference is less than fifty thousand dollars ($50,000), and the amount shall be adjusted to reflect any temporary or permanent increase or decrease that may be made in the rate under the Motor Vehicle Fuel Tax Law. Payments pursuant to this section shall be made prior to payments pursuant to Section 8352.2.

(b) Commencing July 1, 2012, the revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 and otherwise to be deposited in the Harbors and Watercraft Revolving Fund pursuant to subdivision (a) shall instead be transferred to the General Fund. The revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 that were deposited in the Harbors and Watercraft Revolving Fund in the 2010–11 and 2011–12 fiscal years shall be transferred to the General Fund.

(c) When deemed necessary by the Department of Transportation and the Department of Boating and Waterways, the Department of Transportation, after consultation with the Department of Boating and Waterways, shall prepare, or cause to be prepared, an updated report setting forth the current estimate of the amount of money credited to the Motor Vehicle Fuel Account attributable to taxes imposed on distributions of motor vehicle fuel used or usable in propelling vessels. The Department of Transportation shall submit the report to the Legislature upon its completion.

SEC. 32. Section 8352.5 of the Revenue and Taxation Code is amended to read:

8352.5. (a) (1) Subject to Sections 8352 and 8352.1, and except as otherwise provided in subdivision (b), there shall be transferred from the money deposited to the credit of the Motor Vehicle Fuel Account to the

Department of Food and Agriculture Fund, during the second quarter of each fiscal year, an amount equal to the estimate contained in the most recent report prepared pursuant to this section.

(2) The amounts are not subject to Section 6357 with respect to the collection of sales and use taxes thereon, and represent the portion of receipts in the Motor Vehicle Fuel Account during a calendar year that were attributable to agricultural off-highway use of motor vehicle fuel which is subject to refund pursuant to Section 8101, less gross refunds allowed by the Controller during the fiscal year ending June 30th following the calendar year to persons entitled to refunds for agricultural off-highway use pursuant to Section 8101. Payments pursuant to this section shall be made prior to payments pursuant to Section 8352.2.

(b) Commencing July 1, 2012, the revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 and otherwise to be deposited in the Department of Food and Agriculture Fund pursuant to subdivision (a) shall instead be transferred to the General Fund. The revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 that were deposited in the Department of Food and Agriculture Fund in the 2010–11 and 2011–12 fiscal years shall be transferred to the General Fund.

(c) On or before September 30, 2012, and on or before September 30 of each even-numbered year thereafter, the Director of Transportation and the Director of Food and Agriculture shall jointly prepare, or cause to be prepared, a report setting forth the current estimate of the amount of money in the Motor Vehicle Fuel Account attributable to agricultural off-highway use of motor vehicle fuel, which is subject to refund pursuant to Section 8101 less gross refunds allowed by the Controller to persons entitled to refunds for agricultural off-highway use pursuant to Section 8101; and they shall submit a copy of the report to the Legislature.

SEC. 33. Section 8352.6 of the Revenue and Taxation Code is amended to read:

8352.6. (a) (1) Subject to Section 8352.1, and except as otherwise provided in paragraphs (2) and (3), on the first day of every month, there shall be transferred from moneys deposited to the credit of the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund created by Section 38225 of the Vehicle Code an amount attributable to taxes imposed upon distributions of motor vehicle fuel used in the operation of motor vehicles off highway and for which a refund has not been claimed. Transfers made pursuant to this section shall be made prior to transfers pursuant to Section 8352.2.

(2) Commencing July 1, 2012, the revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 and otherwise to be deposited in the Off-Highway Vehicle Trust Fund pursuant to paragraph (1) shall instead be transferred to the General Fund. The revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 that were deposited in the Off-Highway

Vehicle Trust Fund in the 2010–11 and 2011–12 fiscal years shall be transferred to the General Fund.

(3) The Controller shall withhold eight hundred thirty-three thousand dollars ($833,000) from the monthly transfer to the Off-Highway Vehicle Trust Fund pursuant to paragraph (1), and transfer that amount to the General Fund.

(b) The amount transferred to the Off-Highway Vehicle Trust Fund pursuant to paragraph (1) of subdivision (a), as a percentage of the Motor Vehicle Fuel Account, shall be equal to the percentage transferred in the 2006–07 fiscal year. Every five years, starting in the 2013–14 fiscal year, the percentage transferred may be adjusted by the Department of Transportation in cooperation with the Department of Parks and Recreation and the Department of Motor Vehicles. Adjustments shall be based on, but not limited to, the changes in the following factors since the 2006–07 fiscal year or the last adjustment, whichever is more recent:

(1) The number of vehicles registered as off-highway motor vehicles as required by Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(2) The number of registered street-legal vehicles that are anticipated to be used off highway, including four-wheel drive vehicles, all-wheel drive vehicles, and dual-sport motorcycles.

(3) Attendance at the state vehicular recreation areas.

(4) Off-highway recreation use on federal lands as indicated by the United States Forest Service's National Visitor Use Monitoring and the United States Bureau of Land Management's Recreation Management Information System.

(c) It is the intent of the Legislature that transfers from the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund should reflect the full range of motorized vehicle use off highway for both motorized recreation and motorized off-road access to other recreation opportunities. Therefore, the Legislature finds that the fuel tax baseline established in subdivision (b), attributable to off-highway estimates of use as of the 2006–07 fiscal year, accounts for the three categories of vehicles that have been found over the years to be users of fuel for off-highway motorized recreation or motorized access to nonmotorized recreational pursuits. These three categories are registered off-highway motorized vehicles, registered street-legal motorized vehicles used off highway, and unregistered off-highway motorized vehicles.

(d) It is the intent of the Legislature that the off-highway motor vehicle recreational use to be determined by the Department of Transportation pursuant to paragraph (2) of subdivision (b) be that usage by vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code, for recreation or the pursuit of recreation on surfaces where the use of vehicles registered under Division 16.5 (commencing with Section 38000) of the Vehicle Code may occur.

SEC. 34. Article 6 (commencing with Section 19290) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 35. Section 19533 of the Revenue and Taxation Code is amended to read:

19533. (a) In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(1) Payment of any delinquencies transferred for collection under Article 5 (commencing with Section 19270) of Chapter 5.

(2) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 7.5 (commencing with Section 13201), Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, and amounts authorized to be collected under Section 19722.

(3) Payment of delinquencies collected under Section 10878.

(4) Payment of any amounts due that are referred for collection under Article 5.5 (commencing with Section 19280) of Chapter 5.

(5) Payment of any delinquencies referred for collection under Article 7 (commencing with Section 19291) of Chapter 5.

(b) Notwithstanding the payment priority established by this section, voluntary payments designated by the taxpayer as payment for a personal income tax liability or as a payment on amounts authorized to be collected under Section 19722, shall not be applied pursuant to this priority, but shall instead be applied as designated.

SEC. 36. Item 7300-001-0001 of Section 2.00 of the Budget Act of 2012 is amended to read:

7300-001-0001—For support of Agricultural Labor Relations Board		4,904,000
Schedule:		
(1) 10-Board Administration	1,938,000	
(2) 20-General Counsel Administration	2,966,000	
(3) 30.01-Administration Services	275,000	
(4) 30.02-Distributed Administration Services	−275,000	

SEC. 37. Section 36 of this act shall become operative only if Assembly Bill 1464 or Senate Bill 1004 of the 2011–12 Regular Session is enacted as the Budget Act of 2012, and Assembly Bill 1497 or Senate Bill 1037 of the 2011–12 Regular Session is enacted and amends the Budget Act of 2012.

SEC. 38. The sum of one thousand dollars ($1,000) is hereby appropriated from the General Fund to the Department of Finance to implement this act.

SEC. 39. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article

IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

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COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 2370
AUTHOR : Mansoor
TOPIC : Mental retardation: change of term to intellectual disabilities.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

BILL HISTORY
2012
Sept. 22 Chaptered by Secretary of State - Chapter 448, Statutes of 2012.
Sept. 22 Approved by the Governor.
Sept. 13 Enrolled and presented to the Governor at 3:30 p.m.
Aug. 31 In Assembly. Concurrence in Senate amendments pending. Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 77. Noes 2. Page 6757.).
Aug. 31 Read third time. Passed. Ordered to the Assembly. (Ayes 36. Noes 0. Page 5048.).
Aug. 30 Read second time. Ordered to third reading.
Aug. 29 In Senate. Held at Desk. Action rescinded whereby the bill was read third time, passed, and to Assembly. Ordered to third reading. Pursuant to Joint Rule 33.1, Joint Rule 61(b)(16) suspended. (Page 4984.) Read third time and amended. Ordered to second reading.
Aug. 29 Withdrawn from Engrossing and Enrolling. Action rescinded whereby the Assembly concurred in Senate amendments. Ordered to the Senate.
Aug. 24 Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 75. Noes 0. Page 6246.).
Aug. 22 In Assembly. Concurrence in Senate amendments pending. May be considered on or after August 24 pursuant to Assembly Rule 77.
Aug. 21 Read third time. Passed. Ordered to the Assembly. (Ayes 38. Noes 0. Page 4650.).
Aug. 16 Read second time. Ordered to third reading.
Aug. 15 Read third time and amended. Ordered to second reading.
July 2 Ordered to third reading.
June 27 Ordered to special consent calendar.
June 25 Read second time. Ordered to third reading.
June 21 Withdrawn from committee. Ordered to second reading.
June 20 Read second time and amended. Re-referred to Com. on APPR.
June 19 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 7. Noes 0.) (June 13).
June 6 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on HEALTH.
Apr. 26 Referred to Com. on HEALTH.
Apr. 16 In Senate. Read first time. To Com. on RLS. for assignment.
Apr. 16 Read third time. Passed. Ordered to the Senate. (Ayes 77. Noes 0. Page 4374.)
Apr. 11 Read second time. Ordered to consent calendar.

Apr. 10 From committee: Do pass. To consent calendar. (Ayes 10. Noes 0.) (April 10).
Apr. 9 From committee chair, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended. Re-referred to Com. on JUD.
Mar. 26 Re-referred to Com. on JUD. pursuant to Assembly Rule 96.
Mar. 22 Referred to Com. on HEALTH.
Feb. 27 Read first time.
Feb. 26 From printer. May be heard in committee March 27.
Feb. 24 Introduced. To print.

AB 2370 (MANSOOR, A)
MENTAL RETARDATION: CHANGE OF TERM TO INTELLECTUAL DISABILITIES.

Version: 4/9/2012 Last Amended
Vote: Majority
Support

Vice-Chair: Donald Wagner
Tax or Fee Increase: No

Replaces the term "mental retardation," where provided in existing law, with "intellectual disability" and also replaces "mentally retarded" with intellectually disabled."

Policy Question

Should the term "mental retardation" be replaced, where provided in existing law, with "intellectual disability" and "mentally retarded" replaced with "intellectually disabled"?

Summary

This bill would replace the term "mental retardation," where provided in existing law, with "intellectual disability" and also replace "mentally retarded" with "intellectually disabled." This includes such replacements in provisions of the following codes: Business and Professions Code, Civil Code, Education Code, Government Code, Health and Safety Code, Insurance Code, Penal Code, Probate Code, Vehicle Code, and Welfare and Institutions Code.

Support

Best Buddies of California (Sponsor); Association of Regional Center Agencies (ARCA); California Disability Services Association; Special Olympics International; Special Olympics Northern California and Nevada; The Dayle McIntosh Disability Center; The Arc in California; and United Cerebral Palsy in California.

Assembly Republican Judiciary Votes (0-0) 4/10/2012
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/11
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/11
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/11
Ayes: None
Noes: None
Abs. / NV: None

Opposition

None on file.

Arguments In Support of the Bill

The author's office states in support: "AB 2370 is a simple measure that replaces the depreciatory 'R-Word' term in California Codes with language that does not propagate demeaning and negative stigmas on individuals with disabilities."

Best Buddies California, the sponsor states in support:

- ...By changing the language in our laws the bill will not change the coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions. Conversely, it will ensure consistency with federal law, which was amended for this very purpose in the 111th Congress by S. 2781 (Mikulski), also known as Rosa's law.
- California is usually on the cutting edge of legislation, but in this case, we are playing catch-up. The majority of states have already changed their statutes to eliminate the "r-word" and other states are considering similar bills this year. In all of these instances, the goal is to eliminate a term that promotes a negative stereotype for intellectually disabled individuals. AB 2370 will help to ensure that people with intellectual disabilities are treated with the dignity they deserve.

Arguments In Opposition to the Bill

No significant argument raised in opposition.

Fiscal Effect

Unknown.

Comments

Although the term "retardation" may have once been intended as a respectful term of classification, as noted by the Arc and United Cerebral Palsy, times and terms have changed, and such term is currently used frequently to inflict pain.

Related Legislation
AB 1640 (LaMalfa), Chapter 31 of 2007 Statutes, deleted the terms "idiot," "imbecility," and lunatics"

in state code and replaced those terms with "persons who are mentally incapacitated."

SB 1381 (Pavley) of 2012 would also replace the term "mental retardation," where provided in existing law, with "intellectual disability" and also replace "mentally retarded" with "intellectually disabled." It apparently includes some different code sections that are not covered in this bill. SB 1381 passed 7 to 0 in Senate Health Committee on March 28, 2012.

Policy Consultant: Mark Redmond 4/9/2011
Fiscal Consultant:

Coauthors
Assembly coauthors include Ammiano, Beall, Hill, Perea, V. M. Perez, Valadao and Yamada. Senate coauthors include Padilla and Strickland.

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Support

Best Buddies of California (Sponsor); Association of Regional Center Agencies (ARCA); California Disability Services Association; California Hospital Association; Special Olympics International; Special Olympics Northern California and Nevada; The Dayle McIntosh Disability Center; The Arc in California; and United Cerebral Palsy in California.

Assembly Republican Judiciary Votes (10-0) 4/10/2012
Ayes: Wagner, Gorell, Jones
Noes: None
Abs. / NV: None

Assembly Republican Floor Votes (77-0) 4/16/12
Ayes: All Republicans
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/11
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/11
Ayes: None
Noes: None
Abs. / NV: None

Opposition

None on file.

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Fiscal Effect

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Comments

Although the term "retardation" may have once been intended as a respectful term of classification, as noted by the Arc and United Cerebral Palsy, times and terms have changed, and such term is currently used frequently to inflict pain.

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Coauthors

Assembly coauthors include Ammiano, Beall, Hill, Perea, V. M. Perez, Valadao and Yamada. Senate coauthors include Padilla and Strickland.

Policy Consultant: Mark Redmond 4/10/2011
Fiscal Consultant:

Laura's Law

REPORT

Combined annual reports for 2009-2011 and
One Time Evaluation required by AB 2357
Chapter 1017, Statutes of 2002,
as amended by Chapter 774, Statutes of 2006,
W&I Code, Section 5348 et seq.

July 2011

Cliff Allenby
Acting Director

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DEFINITIONS AND ABBREVIATIONS

Term	Meaning
AACT	Adult Assertive Community Treatment
AB	Assembly Bill
AOT	Assisted Outpatient Treatment
DMH	California Department of Mental Health
GAF	Global Assessment of Functioning
KET	Key Event Tracking
LPS	Lanterman-Petris-Short
MHALA	Mental Health America Los Angeles
MHP	Mental Health Plan
MHSIP	Mental Health Statistics Improvement Program
MOR	Milestone of Recovery
PAF	Partnership Assessment Form
SAMHSA	Substance Abuse and Mental Health Services Administration
TPPC	Turning Point Providence Center
WIC	California Welfare and Institutions Code

EXECUTIVE SUMMARY

Assembly Bill (AB) 1421 (Thomson, Chapter 1017, Statutes of 2002) established the Assisted Outpatient Treatment (AOT) Demonstration Project Act of 2002, known as Laura's Law (named for one of the individuals killed during an incident in 2001 in Nevada County). The Act requires the California Department of Mental Health (DMH) to establish criteria for counties that want to implement the program, to collect data on the outcomes of the programs and to report to the Legislature annually on May 1 of each year on the program's effectiveness. The Act provides for AOT, which is court-ordered involuntary outpatient mental health treatment for individuals that, due to the symptoms of their mental illness, do not voluntarily access local mental health services. The sunset date for this legislation was extended from 2008 to 2013 with the passage of AB 2357 (Karnette, Chapter 774, Statutes of 2006), which also requires DMH to submit an additional one-time report and evaluation to the Governor and Legislature by July 31, 2011.

In March of 2003, DMH published a letter (DMH LETTER NO.: March 20, 2003) specifying the documentation counties have to submit to DMH prior to the implementation of an AOT program, including a program description and methods of data collection. No county implemented an AOT program until 2008. This report serves as both the annual reports due in 2009, 2010 and 2011 and the one-time report and evaluation due July 31, 2011. It reports on the effectiveness of county programs in developing strategies that reduce homelessness and hospitalization of persons in AOT programs and in reducing involvement with local law enforcement by persons in the program. Specifically, the legislative report is mandated to contain:

- The number of persons served by the program and, of those, the number who are able to maintain housing and the number who maintain contact with the treatment system;
- The number of persons in the program with contacts with local law enforcement, and the extent to which local and State incarceration of persons in the program has been reduced or avoided;
- The number of persons in the program participating in employment services programs, including competitive employment;
- The days of hospitalization of persons in the program that have been reduced or avoided;
- Adherence to prescribed treatment, indicators of successful engagement, if any, victimization, violent behavior, substance abuse, type/intensity/frequency of treatment, extent to which enforcement mechanisms are used when applicable, social functioning, skills in independent living by those persons participating in the program; and,
- Satisfaction with program services by those receiving them and their families, when relevant.

Currently, only Nevada County operates an AOT program, through Turning Point Providence Center (TPPC), which has an intensive community support program. This program is recovery-oriented and supportive for individuals by helping them to reduce or avoid hospitalizations and contact with local law enforcement related to their mental health issues. The program is housed under TPPC Adult Assertive Community Team services and is focused on promoting member-driven decision making in treatment planning to the extent possible. The program provides community-based care by a multidisciplinary team of highly trained mental health professionals with a staff-to-client ratio of not more than one to 10. Services include 24/7 crisis contact and/or intervention, rehabilitation, counseling, medications and daily living skills assistance.[1]

The AOT program has served a total of four court-ordered individuals over two years; two individuals were served each year.[2] For FYs 2008-2009 and 2009-2010, data show that the program has succeeded primarily in assisting clients to significantly reduce hospitalization days. Contact with the treatment team appears to be correlated to this outcome. Following the end of the court orders, three individuals maintained contact with Turning Point; the fourth was contacted in the hospital by Turning Point periodically for support.

Comprehensive program results for the two years combined include the following highlights:

- Total hospitalization days for all participants decreased from 239 to 97.
- No individuals had contact with local law enforcement during their participation in the program. (One individual made threats which were deemed associated with lack of adherence to prescribed treatment. The individual did not require contact with local law enforcement.)
- Three individuals were able to live in homes or independently, while the fourth required longer term inpatient treatment.
- All four individuals successfully engaged with the program as defined by reduction of symptoms.
- One individual was victimized financially by another person who gained access to Social Security Income. Charges were filed by the individual's family on behalf of the individual.
- One individual used alcohol and methamphetamines.
- Two individuals maintained their housing.

[1] Turning Point opened their Nevada County office in 2007. In FY 2010-11, they served 87 individuals. Most were served on a voluntary basis under their Adult Assertive Community Treatment Program (AACT). Further information is available on their website at www.tpcp.org.

[2] This report covers FY 2008-09 and 2009-10, though recent data suggests an additional six individuals were served by Nevada County through FY 2010-11. A statewide Laura's Law survey has not yet been completed for FY 2010-11. This report addresses only those individuals in Nevada County that went to a Court hearing and Assisted Outpatient Treatment was, in fact, court ordered. Seventy-five (75) percent of referrals to the AOT program result in a "voluntary" agreement by the individual to accept mental health treatment assistance. See attached letter (p.13) from Nevada County Presiding Superior Court Judge Tom Anderson to Bill Campbell, Chairman of the Orange County Board of Supervisors encouraging the implementation of Laura's Law in Orange County, California. [September 28, 2011]

ISSUE STATEMENT

Assembly Bill (AB) 1421 (Thomson, Chapter 1017, Statutes of 2002) established the AOT Demonstration Project Act of 2002, known as Laura's Law (named for one of the individuals killed during an incident in 2001 in Nevada County). The Act requires the DMH to establish criteria for counties that want to implement the program, to collect data on the outcomes of the programs and to report to the Legislature annually on the program's effectiveness. The Act provides for AOT, which is court-ordered involuntary outpatient mental health treatment for individuals that, due to the symptoms of their mental illness, do not voluntarily access local mental health services. This report summarizes data provided by the County Mental Health Plans (MHPs) to DMH on the outcomes and effectiveness of the "Laura's Law" program implemented in Nevada County.

OBJECTIVES

The objective of this report is to apprise the Legislature on the effectiveness of the programs implemented under Laura's Law. The effectiveness is evaluated, per statutory guidelines, by whether persons served by these programs:

1. Are able to maintain housing and participation/contact with treatment;
2. Had reduced involvement with local law enforcement and extent to which incarceration was reduced or avoided;
3. Participated in employment services;
4. Had reduced or avoided hospitalization;
5. Adhered to treatment;
6. Were successfully engaged in the program;
7. Were victimized;
8. Had incidents of violent behavior;
9. Abused substances;
10. Received treatment and to what extent (type, frequency, and intensity);
11. Required enforcement mechanisms;
12. Had an improved level of social functioning;
13. Had independent living skills; and,
14. Were satisfied with program services.

BACKGROUND

Historically, individuals with mental health disabilities have had the right to refuse mental health treatment in California since the 1960's. Between the end of World War II and the civil rights movements of the 1960's, alarming conditions at State mental hospitals across the nation had been featured in many media exposés, leading to reforms in mental health care.

Responding to calls to reduce the number of persons housed in State Hospitals and the emerging area of civil rights for individuals with mental illness in the 1960's, then-Governor Reagan continued the deinstitutionalization efforts begun by previous Governors Knight (1953-59) and Brown (1959-67), and took steps that resulted in hundreds of persons being discharged from California's State Hospitals and the closing of several of the hospitals in 1973. The plan at the time was to have communities provide mental health treatment and support; however, due to limited funding, this did not happen in a significant way. Many of the individuals released from the hospitals ended up homeless with very little or no mental health treatment. The movement that had reduced "warehousing" of individuals with mental health issues had effectively increased the numbers of homeless that many communities had to address.

In 1969, the Lanterman-Petris-Short (LPS) Act (Chapter 1667, Statutes of 1967, operative July 1, 1969) created specific criteria by which an individual could be committed involuntarily to an inpatient locked facility for a mental health assessment for specific periods of time. To meet LPS criteria, a person must be a danger to themselves or others, or gravely disabled (unable to care for daily needs).

Kendra's Law

In 1999, New York State (NY) passed a law that provided for court-ordered AOT for individuals with mental illness and a history of hospitalizations or violence requiring that they participate in community-based services appropriate to their needs. The law was named in memory of a woman who died after being pushed in front of a New York City subway train by a man with a history of mental illness and hospitalizations. The law defines the target population to be served by the AOT programs as "....mentally ill people who are capable of living in the community without the help of family, friend and mental health professionals, but who, without routine care and treatment, may relapse and become violent or suicidal, or require hospitalization." The program is required in all counties in NY and the individuals served by the court orders are given priority for services.

Kendra's Law (Chapter 408, NY Statutes of 1999) differs from California's Laura's Law in several significant ways. Kendra's Law was quite successful in reducing Harmful Conduct (-44%) and difficulties in Self Care, Task Performance and Social Functioning (-22%) among mentally ill individuals in New York in the first six months of implementation. See *Kendra's Law: Final Report on the Status of Assisted Outpatient Treatment Outcomes for Recipients during the First Six Months of AOT* [Office of Mental Health, State of New York 2005] and *New York State Assisted Outpatient Treatment Program Evaluation* [Swartz, MS et al. Duke University School of Medicine, Durham, NC, June, 2009]. It requires that all counties in NY implement AOT programs, and requires that the clients accessing these programs have priority for services. In California, the law makes it voluntary for counties to implement Laura's Law programs and it sets forth specific criteria for counties that want the program in order to demonstrate that its funding will not detract from already established and funded mental health services.

Laura's Law

In 2002, California passed AB 1421 (Thomson, Chapter 1017, Statutes of 2002), its own version of Kendra's Law, which also provides for court-ordered community treatment for individuals with a history of hospitalization and contact with the law. It is named after a woman who was killed by an individual with mental illness who was not following prescribed mental health treatment.

Laura's Law authorizes counties to implement an AOT program and specifies that established community services may not be reduced to accommodate the program. In other words, Laura's Law services may not be provided at the expense of services that are already being provided to the adult population and may not be financed by children's services funds. The legislation did not require that counties provide AOT programs and did not provide for any additional funding for this purpose. The law includes various findings and declarations by the Legislature regarding persons with mental illness who require court-ordered outpatient treatment.

Laura's Law sought to address the needs of mentally ill adults who have not accessed mental health services or have not maintained participation in such services, by providing a process to allow court-ordered outpatient treatment. The legislation established an option for counties to provide a way for courts, probation and the mental health systems to address the needs of

individuals who are unable to benefit from mental health treatment programs in the community without supervision.

Implementation of Laura's Law

Currently, only Nevada County operates an AOT program, through Turning Point Providence Center (TPPC), which has an intensive community support program. This program is recovery-oriented and supportive for individuals to help them reduce or avoid hospitalization and contact with local law enforcement related to their mental health issues. The program is housed under TPPC Adult Assertive Community Team (AACT) services and is focused on promoting member-driven decision making in treatment planning to the extent possible. The program provides community-based care by a multidisciplinary team of highly trained mental health professionals with a staff-to-client ratio of not more than one to 10. Services include 24/7 crisis contact and/or intervention, rehabilitation, counseling, medications and daily living skills assistance.

Individuals access the program by qualifying under the legal criteria for a court order for 180 days of required outpatient treatment in their home community. The criteria for application for a court order are:

1. 18 years of age;
2. Suffering from a mental illness as defined;
3. A clinical determination that the person needs supervision to survive safely in the community;
4. The person has a history of lack of compliance with treatment for his/her mental illness as evidenced by hospitalizations in the last 36 months/incarceration related to the mental illness/violent behavior;
5. The person has been offered a voluntary program but has continued to fail to engage in treatment;
6. The person's condition is substantially deteriorating;
7. Participating in the AOT program would be the least restrictive placement;
8. In regards to the person's history, participation in AOT would prevent relapse or deterioration requiring involuntary holds under Welfare and Institutions Code (WIC) Section 5150 (LPS laws); and,
9. It is likely the person will benefit from AOT.

Only the county mental health director, or his or her designee, may file a petition to authorize AOT with the Superior Court in the county where the person resides. The following persons, however, may request that the county health department investigate whether to file a petition for court-ordered outpatient treatment of an individual:

1. Any adult with whom the person resides;
2. An adult parent, spouse, sibling, or child of the person;
3. The hospital director, if the person is an inpatient;
4. The director of a program providing mental health services to the person and in whose institution the person resides;
5. A treating or supervising licensed mental health treatment provider; or,
6. A supervising peace officer, parole or probation officer.

Upon receiving a request from a person in one of the classifications above, the county mental health director is required to conduct an investigation. The law requires, however, that the Director only file a petition if he or she determines that it is likely that all the necessary elements for an AOT petition can be proven by clear and convincing evidence.

DMH receives counties' plans for implementing Laura's Law and approves or makes recommendations for adjustments to the plans. In a DMH Letter dated March 20, 2003, DMH outlined the requirements of the programs and specified that counties submit implementation plans to DMH.

The initial information (see Appendices A through C) from Nevada County shows the number of individuals identified and court-ordered for mental health services, and the outcomes of their progress through the Laura's Law program.

DATA DISCUSSION

For data reporting purposes for this report, Nevada County provided the required data as described in the Objectives section (see Appendices for client data reported by Nevada County). The data contained in this report was received from Nevada County for June 1, 2008 to May 31, 2009 and June 1, 2009 to May 31, 2010.

Nevada County's TPPC collected the required data based on program participation and the use of the tool "Milestone of Recovery Scale" to determine the level of severity of symptoms for the client's progress in the program. This scale was developed from a Substance Abuse and Mental Health Services Administration (SAMHSA) grant with California Association of Social Rehabilitation Agencies (CASRA) and Mental Health America Los Angeles (MHALA) researchers Dave Pilon, Ph.D. and Mark Ragins, M.D. to more closely align evaluations of client progress with the recovery model.

Nevada County Laura's Law program clients are served by TPPC through its AACT program, which specializes in serving individuals who are at risk for hospitalization and/or contact with law enforcement. The program provides support with assessment, medications, individual therapy, and crisis intervention. The program also provides instruction on skills for individuals to be able to structure their personal time, and assistance with supported employment or education.

During the first year (FY 2008-2009) that the Laura's Law program was implemented in Nevada County, two individuals were referred to the program by the court and participated in services. The most dramatic outcome noted in the data was the reduction in number of hospitalization days for both individuals. One individual had 135 days of inpatient psychiatric hospitalization in the 12 months prior to the Laura's Law program, but had only 50 days of hospitalization during the year in the Laura's Law program. The other individual had 59 days of inpatient psychiatric hospitalization in the 12 months prior to Laura's Law services and 21 days of hospitalization during the time the individual participated in the Laura's Law program. Neither client had contact with local law enforcement, participated in employment services, or was victimized.

In FY 2009-2010, two additional individuals were ordered by the Court to participate in Laura's Law services. One individual had 45 days of inpatient psychiatric hospitalization in the 12 months prior to Laura's Law services and 26 days while being served. The other was hospitalized for most of the term of Laura's Law services but is reported to have attained stability after many years of frequent and severe mental health relapses. The individual is now in contact with family again after being estranged due to behavior associated with severe symptoms. TPPC reports continuing contact with this individual, under their regular AACT services, because the psychiatric hospitalization was under Lanterman-Petris-Short (LPS) laws. The other individual was able to maintain engagement in services and was able to live independently when not hospitalized. One individual made threats of violence (associated with lack of adherence to prescribed treatment), and was reported, but did not require contact with local law enforcement.

FINDINGS AND CONCLUSIONS

1. *The number of persons served by the program and, of those, the number who are able to maintain housing and the number who maintain contact with the treatment system.*

   A total of four individuals were served by this program; two individuals maintained housing and two maintained contact with the treatment system. Due to the small number of clients served, it may be premature to make firm conclusions regarding the efficacy of the program. However, the participants were able to benefit from the increased level of service (see Appendices A, B, C). For the first year of full implementation, both clients reduced their reliance on hospitalization for mental health support, while remaining engaged with the program. Similar results were recorded for the second year and are included in this report.

2. *The number of persons in the program with contacts with local law enforcement, and the extent to which local and State incarceration of persons in the program have been reduced or avoided.*

   For both years, there were no contacts with local law enforcement for any of the individuals served.

3. *The number of persons in the program participating in employment services programs, including competitive employment.*

   None of the four clients participated in employment services either year.

4. *The days of hospitalization of persons in the program that have been reduced or avoided.*

   Each year of data shows significant reductions in the number of days of hospitalization by individuals involved in services. The results appear to be related to the intensive contact with the treatment team. The total hospitalization days for all individuals in the 12 months prior to AOT were 239, compared to 97 days during their participation in the program.

5. *Adherence to prescribed treatment, indicators of successful engagement, if any, victimization, violent behavior, substance abuse, type/intensity/frequency of treatment, extent to which enforcement mechanisms are used when applicable, social functioning, skills in independent living by those persons participating in the program.*

   - Two individuals participating during the two-year period were able to maintain engagement in services; those who were unable to maintain engagement were described as having severe symptoms that appeared to interfere with the individual's ability to engage. This correlated to adherence to prescribed treatment, and two of the individuals showed improvement as indicated by a reduction in hospitalization days.
   - During the second year of data, there was one report of financial victimization, in which an individual allowed another person access to the individual's Social Security income.
   - In the second year, one individual made threats of violence; however, it did not require contact with local law enforcement. In each year, one individual was known to use illegal substances.

- Reports about social functioning and independent living also appear to correlate to whether the client was able to engage with the treatment team and maintain services. The Global Assessment of Functioning Scale (GAF), a 100-point tool rating overall psychological, social and occupational functioning of adults, e.g. how well or adaptively one is meeting various problems-in-living, was also used to assess levels of functioning.
- All individuals received the same basic levels of type/intensity/frequency of treatment, including 24/7 on-call crisis support, treatment/medication services, rehabilitation and service supports, a minimum of one direct rehabilitation contact per week, at least one psychiatric medication service per month and support services as identified in the individual's treatment plan, up to seven days per week. Each participant's treatment plan was individualized.
- In each year, one individual was able to achieve independent living, which is defined as not requiring placement in board and care or other supervised housing.
- Only one enforcement mechanism has been utilized during the two years that the program has been in effect. (Enforcement mechanisms are defined as a Notice of Hearing that may be supported by a "civil standby" with law enforcement assisting the candidate in receiving the Notice.) This mechanism is designed to be strength-based by increasing the number of interactions with the AOT Court, which is described as supportive and focused on positive outcomes.

6. *Satisfaction with program services by those receiving them and their families, when relevant.*

In the first year of implementation, Nevada County did not conduct satisfaction surveys. However, in the second year, when surveys were conducted, both clients indicated that they were not satisfied with services interfering with their lives, but their family members reported appreciation of the support offered to their family member. This outcome was discussed with TPPC staff, who report that the client responses are to be expected prior to having AOT services. Those individuals had very little to no prior contact with mental health staff other than locked facilities or hospitalization, and had to adjust to forming new relationships with supportive community mental health workers and the intensive services that were being provided.

Nevada County utilized the Mental Health Statistics Improvement Program (MHSIP)-Adult Survey form as the instrument to obtain this data. This survey is currently utilized by County Mental Health Plans (MHPs) to comply with satisfaction survey requirements.

APPENDIX A: ASSISTED OUTPATIENT TREATMENT DATA FY 2008/09 NEVADA COUNTY

REQUIRED DATA ITEMS	NUMBER (Court-Ordered)	SUB-CATEGORIES		COMMENTS
1. No. of persons served by the program (i.e., court-ordered)	2	No. Maintain Housing	1	Both persons maintained contact with the treatment team through AOT services. One maintained residence in a supported living home. One was in temporary housing and then hospitalized.
		No. Maintain contact with the treatment system	2	
2. No. of persons in the program with contacts with local law enforcement	0	No. of Reduction/ Avoidance of local and State incarceration	2	No persons receiving AOT treatment during this reporting period had contact with law enforcement or jail days in the 12 months prior to or following the AOT order
3. No. of persons participating in employment services programs, including competitive employment	0			No candidate participated in employment services programs during this reporting period
4. Days of hospitalization that were reduced or avoided		Pre-AOT (based on 12 months of pre-treatment) • Person 1: 135 days • Person 2: 59 days		• Person 1: 50 days • Person 2: 21 days While receiving AOT services (page 5)
5. Adherence to prescribed treatment	1			One person demonstrated adherence following the AOT. One person struggled with engagement and adherence to treatment, including high symptom distress and hospitalization
6. Other indicators of successful engagement	Both clients increased ability to tolerate contact with treatment providers. Both clients' initiation of contact with treatment team demonstrates more effective communication. Both clients made efforts in keeping appointments. Both clients demonstrated improved ability to maintain safe housing, follow MD recommendations, access basic needs, and increased participation in community activities.			
7. Victimization of persons in the program	0			No persons had events of victimization reported or suspected.
8. Engagement in Violent behavior	2			Both persons demonstrated threats of violence and volatility during the review period. Both demonstrated improvement following the AOT order.

REQUIRED DATA ITEMS	NUMBER (Court-Ordered)	SUB- CATEGORIES		COMMENTS
9. Engagement in substance abuse	1			One person used poly-substances, including excessive beer consumption and use of controlled substances. This behavior diminished in the period following AOT treatment.
10. Type, Intensity, and Frequency of Treatment	• Medication services • Rehabilitation and service supports with a minimum of 1 direct rehabilitation contact per week, • At least 1 psychiatric medication service appointment per month • Support services as identified in the individual treatment plan, up to 7 days a week.			
11. Extent to which enforcement mechanisms are used by the program, when applicable	The Notice of Hearing may be supported by a "civil standby" with law enforcement assisting the candidate in receiving the Notice. If the AOT candidate does not show up for the hearing, and there is sufficient evidence to suggest the person may meet criteria for AOT treatment, the court may order a hospital evaluation. Status reports are provided to the court for the evaluation of whether or not additional hearings are needed to encourage engagement or increased engagement in court ordered treatment. This enforcement mechanism is strength-based, assisting the person in recovery by increasing the number of interactions with the AOT Court.			
12. Social functioning of persons in the program (Per GAF Scale)	Superior Social Functioning			Both persons struggled with functioning socially in the community and in accessing personal needs due to severe symptoms prior to AOT
	Moderate Social Functioning			
	Limited to No Social Functioning		2	
13. Independent Living Skills	Yes	No 1		One person developed increased ability to live independently and moved to a home with some assistance, maintaining stable housing. One person was in temporary housing and eventually hospitalized with serious challenges in maintaining safety and health.
14. Satisfaction with program services based on Consumer Perception Survey Scores		Client Satisfaction	N/A	Client/Family (Consumer Perception Survey) was not utilized during the initial year of implementation.
		Family Satisfaction	N/A	

APPENDIX B: ASSISTED OUTPATIENT TREATMENT DATA FY 2009/10 NEVADA COUNTY

REQUIRED DATA ITEMS	NUMBER (Court-Ordered)	SUB- CATEGORIES		COMMENTS
1. No. of persons served by the program (i.e., court-ordered)	2	No. Maintain Housing	0	One person was hospitalized approximately 10 months following AOT. One person maintained limited voluntary contact with treatment team due to severe symptoms.
		No. Maintain contact with the treatment system	1	
2. No. of persons in the program with contacts with local law enforcement	0	No. of Reduction/Avoidance of local and State incarceration	0	Both persons receiving AOT treatment during this reporting period had contact with law enforcement or jail days in the 12 months prior to or following the AOT order; however, none during the AOT program.
3. No. of persons participating in employment services programs, including competitive employment	0			No candidate participated in employment services programs during this reporting period.
4. Days of hospitalization that were reduced or avoided		Pre-AOT (based on 12 months pre-treatment) • Person 1: 45 days • Person 2: 15 days		• Person 1: 26 days Person 2: had AOT court case closed due to crisis and long term hospitalization (298 days stable, continued contact with TPPC)
5. Adherence to prescribed treatment	1			One person demonstrated improved adherence to prescribed treatment during this period as evidenced by a decrease in days of hospitalization. One person struggled with severe symptoms interfering with prescribed treatment adherence. This resulted in involuntary hospitalization.
6. Other indicators of successful engagement	Both clients increased ability to tolerate contact with treatment providers. Both clients' initiation of contact with treatment team demonstrated more effective communication. Both clients made efforts in keeping appointments. Both clients demonstrated improved ability to maintain safe housing, follow MD recommendations, access basic needs, and increased participation in community activities. TPPS utilized outcome tools to measure success. These include the Milestones of Recovery Scale (MOR), the MHSA reporting via the Partnership Assessment Form (PAF), Key Event Tracking (KET) as well as the Client Satisfaction Surveys. Reduction of symptoms indicates successful engagement.			
7. Victimization of persons in the program	1			One person experienced financial victimization during this period. Lack of insight and poor judgment led this individual to give access to the client's Social Security Income to a "friend" who fraudulently used the funds. Charges were filed by the client's family on behalf of the client.

REQUIRED DATA ITEMS	NUMBER (Court-Ordered)	SUB- CATEGORIES	COMMENTS
8. Engagement in Violent behavior	1		One person threatened harm to one of the AOT team members and took reported steps to find a gun. This same person threatened to burn down their apartment building. Both events were reported to law enforcement and were associated with the lack of adherence with prescribed treatment.
9. Engagement in substance abuse	1		One person used alcohol and methamphetamines during this reporting period.
10. Type, Intensity, and Frequency of Treatment	• Medication services • Rehabilitation and service supports with a minimum of 1 direct rehabilitation contact per week • At least 1 psychiatric medication service appointment per month • Support services as identified in the individual treatment plan, up to 7 days a week		
11. Extent to which enforcement mechanisms are used by the program, when applicable	The Notice of Hearing may be supported by a "civil standby" with law enforcement assisting the candidate in receiving the Notice. If the AOT candidate does not show up for the hearing, and there is sufficient evidence to suggest the person may meet criteria for AOT treatment, the court may order a hospital evaluation. Status reports are provided to the court for the evaluation of whether or not additional hearings are needed to encourage engagement or increased engagement in court ordered treatment. This enforcement mechanism is strength-based, assisting the person in recovery by increasing the number of interactions with the AOT Court..		
12. Social functioning of persons in the program (Per GAF Scale)	Superior Social Functioning		Both persons struggled with social functioning. Attitude and level of cooperation with the treatment team was mixed. Both persons demonstrated poor insight into their mental illness. Both could present well and briefly interact positively with others. Both persons showed lack of ability to resolve entitlement issues, i.e., Social Security Income, Medi-Cal, and money management (payee services). Both persons struggled with interpretation of social cues and with poor social boundaries.
	Moderate Social Functioning		
	Limited to No Social Functioning	2	
13. Independent Living Skills	Yes 1	No 1	One person lived independently and utilized some community support, when not hospitalized. One person was unable to maintain independent living during the reporting period. Support efforts were challenged by the client's symptoms (thought and mood disturbances), and a lack of adherence to prescribed treatment.
14. Satisfaction with program services based on Consumer Perception Survey Scores		Client Satisfaction Family Satisfaction	No Yes Both persons in the AOT program reported dissatisfaction with the support services interfering with their lives during this period. Families of both individuals expressed appreciation of support offered on behalf of the family member.

APPENDIX C: SUMMARY OF ASSISTED OUTPATIENT TREATMENT DATA NEVADA COUNTY FY 2008/09 AND 2009/10

REQUIRED DATA ITEMS	NUMBER (Court-Ordered)	SUB- CATEGORIES	
1. No. of persons served by the program (i.e., court-ordered)	4	No. Maintain Housing	2
		No. Maintain contact with the treatment system	2
2. No. of persons in the program with contacts with local law enforcement	0	No. of Reduction/Avoidance of local and State incarceration	0
3. No. of persons participating in employment services programs, including competitive employment	0		
4. Days of hospitalization that were reduced or avoided		Pre-AOT (based on 12 months pre-treatment) • 239 days	Post AOT • 97 days o Reduction of 142 days
5. Adherence to prescribed treatment		Yes	2
		No	2
6. Other indicators of successful engagement		Successful Engagement	4
		Non-Successful Engagement	0
7. Victimization of persons in the program	1		
8. Engagement in Violent behavior	3 (2 individuals improved after AOT)		
9. Engagement in substance abuse	2		

REQUIRED DATA ITEMS	NUMBER (Court-Ordered)	SUB-CATEGORIES	
10. Type, Intensity, and Frequency of Treatment	4		
11. Extent to which enforcement mechanisms are used by the program, when applicable	1		
12. Social functioning of persons in the program (Per GAF Scale)	Limited to No Social Functioning	4	
13. Independent Living Skills	Yes 2	No 2	
14. Satisfaction with program services based on Consumer Perception Survey Scores		Client Satisfaction Family Satisfaction	No satisfaction survey 2008-09; in 2009-10 both clients reported dissatisfaction with support services interfering with their lives during that period. No satisfaction survey of family members 2008-09; in 2009-10, both families satisfied with support for their family member.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
County of Nevada

201 Church Street
Nevada City, CA 95959
(530) 265-1380

September 28, 2011

Bill Campbell, Chairman
Orange County Board of Supervisors
Hall of Administration
333 West Santa Ana Boulevard
Santa Ana, CA 92701

Re: California's Laura's Law (Welfare & Institutions Code Section 5340, et seq.)

Dear Mr. Campbell:

I am writing to encourage the implementation of Laura's Law in Orange County, California.

Nevada County began utilizing Laura's Law in 2008. Laura's Law has provided life-saving services to individuals suffering from mental illness and kept many from the trauma and brain damage associated with involuntary commitments to mental health facilities under W & I Code, Section 5150, and the jail commits and tragedies associated with untreated mental health crisis. Most notable, is that the process of initiating a Laura's Law Petition, by itself, most often results in negating the need for Court action. In over 75% of our cases, the intervention of the designated mental health professional by their personal outreach to the individual in crisis resulted in that person accepting some level of treatment. Thus, avoiding continued decompensation that could potentially result in injury to themselves or others. This outreach provided that person with the stability to allow them to remain free of forced commitment (hospital and/or jail) and provided relief to their families and security to our community. This process has reduced the need for action by law enforcement, medical emergency personnel, and the Courts, and lessens the trauma and anguish of family and friends.

Money: Laura's Law saves a lot of money! During our experiences with Laura's Law, it has provided a return of $1.80 for every $1.00 spent. In this era of ongoing budget cuts and close scrutiny of all public spending, having a program that is successful, efficient, lifesaving and cost effective is priceless.

Laura's Law is not a panacea for all that is needed for proper mental health care. However, it is a much needed safety net that works. It saves lives and money. Most importantly, the assisted outpatient treatment that is provided through Laura's Law is the "best practice model" for those who qualify. It is, simply stated, the right thing to do.

Our experience in implementing Laura's Law turned out to be easier than anticipated. With the cooperation and support of our County's Board of Supervisors, Behavioral Health Department, County Counsel, Public Defender and the Court, we have created a proactive team and a seamless and efficient process. If we can be of any assistance to your County or answer any questions you may have regarding Laura's Law, please do not hesitate to contact me and/or any other participants in this essential program.

You may reach me by phone at (530) 265-1273, or by email at tom.anderson@nevadacountycourts.com. I look forward to hearing from you.

Very truly yours,

THOMAS M. ANDERSON
Presiding Judge of the Superior Court California,
County of Nevada

TMA:hb

Original letters sent to:

Bill Campbell, Chairman
Third District

John M.W. Moorlach, Vice Chairman
Second District

Janet Nguyen
First District

Shawn Nelson
Fourth District

Patricia C. Bates
Fifth District

Darlene J. Bloom
Clerk of the Board of Supervisors

Dietz, Eric

From: RebeccaThompson <rebeccat@sonc.org>
Sent: Tuesday, February 21, 2012 5:04 PM
To: Dietz, Eric
Cc: Rick Collett
Subject: Support for Proposed Legislation

Eric:

Thank you for last week forwarding to me the most recent revisions to Assemblyman Mansoor's proposed legislation to reword various California statutes and eliminate the phrase "mentally retarded". On behalf of Richard Collett, the President & CEO of Special Olympics Northern California, Inc. ("SONC"), I am pleased to tell you that SONC supports the proposed legislation as now written. As I stated in an earlier email to your office, SONC is very much in favor of replacing what has become a pejorative term with the term "intellectually disabled". Doing so in our statutes is a wonderful place to begin and to make a statement regarding the dignity and respect that all Californians deserve.

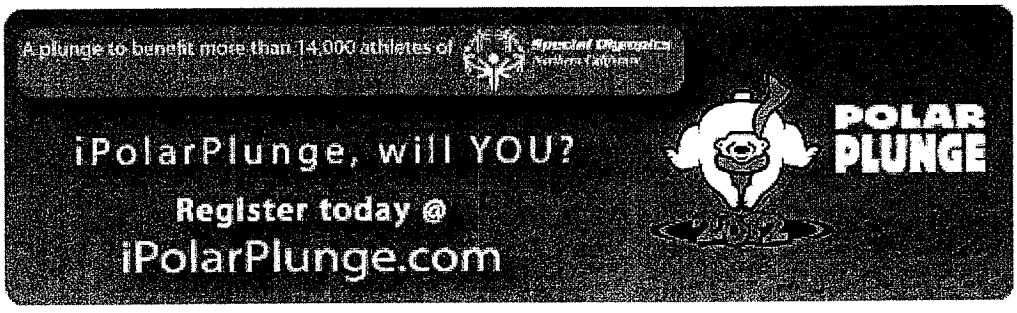
Thank you to the Assemblyman, and to all of you on his staff, for your work and dedication.

Regards,

Rebecca Thompson
General Counsel

Special Olympics Northern California & Nevada
3480 Buskirk Avenue, Suite 340
Pleasant Hill, CA 94523
Tel: (925) 944-8801; ext. 329
Fax: (925) 944-8803
Email: rebeccat@sonc.org

WE'RE ON FACEBOOK! JOIN US!
Special Olympics Northern California
Polar Plunge
Northern California Law Enforcement Torch Run
Polar Plunge Cool School Challenge



Parra, Joe

From: Parra, Joe
Sent: Wednesday, February 29, 2012 3:20 PM
To: Maw, Greg; Alexander, Amber; Conaghan, Tim
Subject: RE: AB 2370

While looking for the bill I remember, I came across AB 1640 (La Malfa) of 2007. Mansoor isn't alone.

From: Maw, Greg
Sent: Wednesday, February 29, 2012 2:37 PM
To: Parra, Joe; Alexander, Amber; Conaghan, Tim
Subject: RE: AB 2370

Unfortunately, Democrats do not hold a monopoly on silliness...

Greg Maw
Policy Director
Senate Republican Caucus
(916) 651-1501

From: Parra, Joe
Sent: Wednesday, February 29, 2012 2:36 PM
To: Maw, Greg; Alexander, Amber; Conaghan, Tim
Subject: RE: AB 2370

Good point. I didn't even notice the author. I was focusing on the subject matter. Definitely a None since it's a Reep author.

From: Maw, Greg
Sent: Wednesday, February 29, 2012 2:33 PM
To: Parra, Joe; Alexander, Amber; Conaghan, Tim
Subject: RE: AB 2370

Good take.

With a Republican author, a NONE may be the more prudent way to go for starters – of course we will have the luxury of seeing how the Assembly floor vote went as well...

Greg Maw
Policy Director
Senate Republican Caucus
(916) 651-1501

From: Parra, Joe
Sent: Wednesday, February 29, 2012 2:30 PM
To: Maw, Greg; Alexander, Amber; Conaghan, Tim
Subject: RE: AB 2370

If I remember correctly, Alquist had a similar bill a few years ago (the article does mention a previous bill). I'll find the bill# and look up what the prediction then was. The bill I remember went through Health Committee.

Focusing on this bill alone, if all the bill does is update the terminology (and doesn't inadvertently make any policy changes), I'd probably start with a "None." My explanation would be along the lines of "While the antiquated terminology arguably should be updated, the need to do so does not justify a bill solely for this purpose. References to 'mental retardation' could just as effectively be updated when relevant code sections are amended for other reasons."

I might even start with an "Oppose," and then gauge our members' willingness to stand against the silliness of the bill.

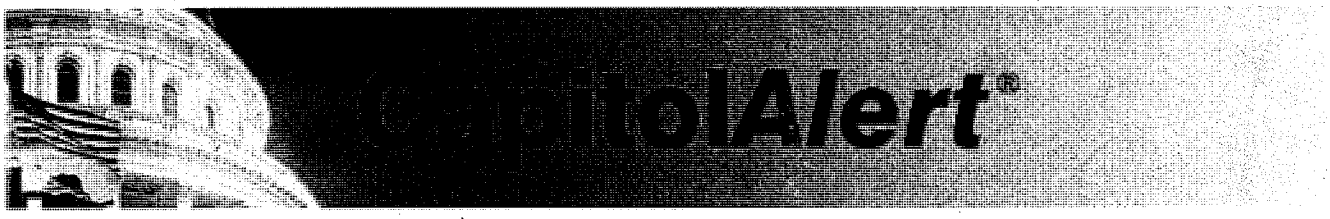
From: Maw, Greg
Sent: Wednesday, February 29, 2012 2:15 PM
To: Alexander, Amber; Joe.Parra@sen.ca.gov; Tim.Conaghan@SEN.CA.GOV
Subject: AB 2370

See this article and bill. Not sure whose committee it will go to – but I'm seriously wondering how you think we'll play this?

http://blogs.sacbee.com/capitolalertlatest/2012/02/california-lawmaker-pushes-to-cut-word-retarded-from-state-law-books.html

Greg Maw
Policy Director
Senate Republican Caucus
(916) 651-1501

THE SACRAMENTO BEE sacbee.com



The latest on California politics and government

February 29, 2012

Lawmaker pushes to cut 'R-word' from California law books

A California lawmaker is determined to rid the state of mental retardation -- in its law books.

Dozens of references to "mentally retarded" or "mental retardation" would be wiped off state statutes under legislation by Republican Assemblyman **Allan Mansoor** of Costa Mesa.

"This is not an acceptable way to refer to people with intellectual disabilities," said **Saulo Londoño**, Mansoor's spokesman.

"People already have an awareness of other slurs that are used, but this is one that kind of flies under the radar, in our opinion," Londoño said.

Assembly Bill 2370 would replace mentally retarded with the term "intellectually disabled," and it would replace mental retardation with "intellectual disability."

Two organizations serving people with disabilities, **Best Buddies California** and **Special Olympics International**, are spearheading a national campaign to discourage use of the word "retarded."

Londoño said he knows of no opposition to the measure, which was proposed last Friday. No public hearing has yet been scheduled.

Nearly five years ago, the state adopted legislation similar to Mansoor's that erased from California statutes three other words deemed offensive by many --"idiot," "lunatic" and "imbecile."

"Government officials are supposed to be leaders, and they're supposed to lead by example with these kinds of things," Londoño said.

Categories: Bills (2011-2012 session)

Posted by **Jim Sanders**
8:49 AM | 94 Comments | Share

About Comments

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Like

Showing 1-10 of 101 comments

Sort by newest first

4 new comments were just posted. Show

The Spoon , Forward, yes. Backward, no.

Some folks here may be put off by this issue because it speaks to people who often have little or no voice in society. If it's not about you, it has no worth. It leads to the conclusion that all these individuals care about is themselves.

9 minutes ago Report Abuse Like Reply

The Spoon , Forward, yes. Backward, no.

Support for developmental centers should receive such care.

14 minutes ago Report Abuse Like Reply

JeffRandall

If I was to see/hear someone use the R-word toward someone who was developmentally disabled, it would offend the heck out of me. They are people- not labels.

However, it just proves the point by Dan Walters today in his article. If the legislature ever gets voted to part time, they have nothing to blame but themselves.

14 minutes ago 1 Like Report Abuse Like Reply

mattstam

Everything is going so well in CA that this is all we have to worry about. That is awesome. We have the extra money to throw around to pass bills like this and pay for all of the printing and man hours.

I was surprised to see that this R-word was an R. Since this is a proposition state, who would vote for a proposition that makes the legal definition of Retarded a CA State Legislator and that the word would be added to their title. So this guy would be Retarded Assemblyman Mansoor.

26 minutes ago 1 Like Report Abuse Like Reply

The Arc. California
UCP United Cerebral Palsy
life without limits for people with disabilities
California Collaboration

March 6, 2012

Honorable Allan Mansoor
State Capitol

SUBJECT: AB 2370 – SUPPORT

Dear M. Mansoor:

The Arc and United Cerebral Palsy in California, a coalition of people with intellectual and other disabilities and their families, friends, and service providers, is happy to support your bill to eliminate the R-word in state law.

Eliminating this stigmatized, hurtful term in all usage is a high priority for the developmental disability community in order to build respect for people with intellectual disabilities. The R-word was once intended to be a term of respect; in fact, The Arc (formerly correctly called ARC, and still sometimes incorrectly called that) originally used the word in its name. But times and terms have changed, and it now used to inflict intentional or unintentional pain, including in bullying and outright hate crimes.

As you know, we are the sponsor of SB 1381 (Pavley) to achieve the same purpose. We are eager to cooperate with you, Best Buddies, and the Special Olympics to support both bills.

Thank you for introducing this important bill.

Sincerely,

Greg deGiere
Public Policy Director

cc: Assembly Human Services Committee

The Arc and United Cerebral Palsy in California
1225 Eighth Street, Suite 350, Sacramento, CA 95814
916-552-6619 x16 (office) 916-223-7319 (mobile) 916-441-3494 (fax)
Greg@TheArcCA.org

BEST BUDDIES
CALIFORNIA

March 15, 2012

The Honorable Allan R. Mansoor
California State Capitol, Room 4177
Sacramento, California 95814

RE: **AB 2370 (Mansoor)** Mental retardation: change of term to intellectual disabilities
SPONSOR

Dear Mr. Mansoor:

Best Buddies California is pleased to sponsor AB 2370 (Mansoor), the Shriver R-word Act. This measure will change references to "mental retardation" in California statutes to "intellectual disability." By changing the language in our laws the bill will not change the coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions. Conversely, it will ensure consistency with federal law, which was amended for this very purpose in the 111th Congress by S.2781 (Mikulski), also known as Rosa's law.

California is usually on the cutting edge of legislation, but in this case, we are playing catch-up. The majority of states have already changed their statutes to eliminate the "r-word" and other states are considering similar bills this year. In all of these instances, the goal is to eliminate a term that promotes a negative stereotype for intellectually disabled individuals. Best Buddies is most appreciative of your taking a leadership role in authoring this legislation, which will help to ensure that people with intellectual disabilities are treated with the dignity they deserve.

Best Buddies works to enhance the lives of children and adults with intellectual disabilities by providing opportunities for one-to-one friendships with typical peers, competitive, paying jobs, and leadership development. AB 2370 is consistent with our organization's mission, and we are pleased to sponsor it.

Again, thank you for introducing AB 2370.

Sincerely,

Patricia Evans
State Director

5601 West Slauson Avenue | Suite 255 | Culver City, California 90230 | P | 310.642.2620 | F | 310.642.2630
1.888.68.BUDDY | www.bestbuddiescalifornia.org

March 16, 2012

RE: WELL DESERVED RECOGNITION/BILL AB2370

To Whom It May Concern:

People like Allan Mansoor make the world a better place!

Dayle McIntosh Disability Resource Centers—*California's Leading Independent Living Center*— applaud Assemblyman Allan Mansoor for always promoting equality and for Bill AB2370. His tireless efforts supporting people with disabilities (a surprising 1 out of 7 Americans) and amazing dedication to appropriate language when it comes to people with disabilities not only opens doors but also changes lives.

Many look at Bill AB2370 as common sense and long-overdue. However, the language used in school documentation in reference to people with disabilities was overlooked until Assemblyman Mansoor took it upon himself to sponsor this important legislation.

This simple change in language of a derogatory phrase into an enlightened and progressive phrase will make great strides in the Independent Living Movement for countless children with disabilities. How we refer to children with disabilities on paper is often reflected in people's actions and behaviors. Changing the language used from "mentally retarded" to "intellectual disability" will make a difference in how these children are treated, opening the doors of equality for children with disabilities.

Once again we thank Assemblyman Allan Mansoor for making Orange County a better place and being a champion for people with disabilities.

Sincerely,

The Dayle McIntosh Disability Resource Centers
13272 Garden Grove Blvd.
Garden Grove, California 92843

CALIFORNIA Disability Services ASSOCIATION

428 J Street, Suite 550
Sacramento, CA 95814
Phone: 916-441-5844
Fax: 916-441-2804
www.cal-dsa.org

March 26, 2012

The Honorable Allan Mansoor
California State Assembly
State Capitol, Room 4177
Sacramento, CA 95814

RE: SUPPORT AB 2370 (Mansoor)

Dear Assembly Member Mansoor:

The California Disability Services Association (CDSA) is a statewide association representing nearly 100 community based organizations supporting the lives of tens of thousands of Californians with developmental disabilities. We are pleased to **SUPPORT AB 2370 (Mansoor).**

When they were originally introduced, the terms "mental retardation" or "mentally retarded" were medical terms with a specifically clinical connotation; however, the pejorative forms, "retard" and "retarded" have been used widely in today's society to degrade and insult people with intellectual disabilities.

Additionally, when "retard" and "retarded" are used as synonyms for "dumb" or "stupid" by people without disabilities, it only reinforces painful stereotypes of people with intellectual disabilities being less valued members of humanity.

Across the nation, people with disabilities, their families, friends and supporters have committed to ending the use of the word and, instead, incorporating the term "intellectual disability" into the lexicon. We are pleased that you have taken a leadership role in ending its use.

For these reasons CDSA **SUPPORTS AB 2370 (Mansoor)**. If you have any questions regarding our position, please contact Dwight Hansen, Hansen & Associates, at (916) 798-0550.

Sincerely,

Christopher J. Rice
Executive Director

COPY

ASSOCIATION OF REGIONAL CENTER AGENCIES
915 L Street, Suite 1440 • Sacramento, California 95814 • 916.446.7961 • Fax: 916.446.6912

March 28, 2012

APR 3 2012

The Honorable Allan Mansoor
P.O. Box 942849
Room 4177
Sacramento, CA 94249-0068

RE: AB 2370 - SUPPORT

Dear Assembly Member Mansoor:

The Association of Regional Center Agencies (ARCA) represents the nonprofit regional centers that serve approximately 250,000 Californian children and adults with developmental disabilities.

On behalf of ARCA, I wish to express our support of AB 2370, your bill that would change all references in state law of the terms "mental retardation" and "mentally retarded" to "intellectual disability" or "person with an intellectual disability."

The bill provides an important change away from a term used to demean and hurt people with intellectual disabilities, and towards a phrase that puts the person first.

Sincerely,

/s/

Eileen Richey
Executive Director

Cc: Assembly Health Committee

CALIFORNIA HOSPITAL ASSOCIATION
Providing Leadership in Health Policy and Advocacy

April 9, 2012

The Honorable Mike Feuer
Chair, Assembly Judiciary Committee
State Capitol, Room 2013
Sacramento, CA 95814

SUBJECT: AB 2370 (Mansoor) - SUPPORT

Dear Assembly Member Feuer:

The California Hospital Association (CHA), which represents nearly 400 hospitals and health systems, is writing today in support of AB 2370 (Mansoor).

This bill will change all references in the California codes from "mental retardation" to "intellectual disability" and from "mentally retarded" to "intellectually disabled." By modifying the language, California will help reduce the stigma associated with its use. These terms are preferred by most advocates in most English-speaking countries and this legislation will ensure California law reflects current terminology and is consistent with United States official documents following the passing of Rosa's Law on October 6, 2010.

Your support of this legislative action shows that our elected officials understand and embrace this ideal by taking the necessary steps towards a brighter more inclusive future for individuals with these conditions.

For these reasons, CHA respectfully ask for your "AYE" vote on AB 2370.

Sincerely,

Judy Wolen
Legislative Advocate

JW:tm

cc: Honorable Allan Mansoor
The Honorable Members of Assembly Judiciary Committee
Consultant, Assembly Judiciary Committee

1215 K Street, Suite 800, Sacramento, CA 95814 • *Telephone:* 916.443.7401 • *Facsimile:* 916.552.7596 • www.calhospital.org

April 10, 2012

The Honorable Mike Feuer, Chair, Assembly Judiciary Committee
California State Capitol, Room 2013
Sacramento, California 95814

RE: **AB 2370 (Mansoor)** Mental retardation: change of term to intellectual disabilities
SPONSOR – Assembly Judiciary Committee – April 10, 2012

Dear Chairman Feuer:

Best Buddies California is pleased to sponsor AB 2370 (Mansoor), the Shriver R-word Act. This measure will change references to "mental retardation" in California statutes to "intellectual disability." By changing the language in our laws the bill will not change the coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions. Conversely, it will ensure consistency with federal law, which was amended for this very purpose in the 111th Congress by S.2781 (Mikulski), also known as Rosa's law.

California is usually on the cutting edge of legislation, but in this case, we are playing catch-up. The majority of states have already changed their statutes to eliminate the "r-word" and other states are considering similar bills this year. In all of these instances, the goal is to eliminate a term that promotes a negative stereotype for intellectually disabled individuals. AB 2370 will help to ensure that people with intellectual disabilities are treated with the dignity they deserve.

Best Buddies works to enhance the lives of children and adults with intellectual disabilities by providing opportunities for one-to-one friendships with typical peers, competitive, paying jobs, and leadership development. AB 2370 is consistent with our organization's mission, we are pleased to sponsor it, and urge you to join us in supporting it.

Sincerely,

Patricia Evans
State Director

Dietz, Eric

From: Greg deGiere <greg@thearcca.org>
Sent: Wednesday, April 11, 2012 11:53 AM
To: Dietz, Eric
Subject: AB 2370

Eric

Good work getting the bill out on consent.

I noticed that the bill still refers to "intellectually disabled persons" rather than "persons with intellectual disabilities," the people-first language that the disability community prefers. Can this get fixed?

Thanks again for this bill

Greg

Greg deGiere
Public Policy Director
The Arc and United Cerebral Palsy in California
1225 Eighth Street, Suite 350
Sacramento, CA 95814
916-552-6619 x16 (office)
916-223-7319 (mobile)
916-441-3494 (fax)

JUNIOR LEAGUE OF
ORANGE COUNTY, CALIFORNIA, INC.
Women building better communities

April 30, 2012

The Honorable Assembly Member Allan Mansoor
California State Assembly Capital Office
PO Box 942849
Sacramento, CA 94249-0068

Regarding: SUPPORT OF AB 2370

Dear Assembly Member Mansoor:

On behalf of the Junior League of Orange County, California, I am writing to inform you of our position of support for AB 2370, regarding replacing, in California code, the terms "mentally retarded" and "mental retardation" with "intellectually disabled' and "intellectual disability", respectively. We would like to thank you for this simple bill, which will serve to lessen the negative stigmas associated with disabled individuals.

When it was originally introduced, the term "mentally retarded" or "mental retardation" was a medical term with a specific clinical connotation, used to describe people with significant intellectual impairment. However, "retard" and "retarded" are now widely used in today's society to degrade and insult people with intellectual disabilities. In this sense, the R-Word is exclusive, offensive and derogatory.

The R-Word is also common slang used to degrade someone or something not specific to an individual with intellectual disability. However, even when not targeting someone with a disability, the R-Word is hurtful and reinforces stereotypes of people with intellectual disabilities being less valued members of humanity. The R-Word is outdated and no longer used in clinical settings or in many other countries. This bill provides an important terminology change to the disabled community throughout California.

The Junior League of Orange County (JLOCC) is a non-partisan, solely educational and charitable organization of trained volunteers. The JLOCC works to accomplish our goal of helping local at-risk children and their families by partnering with various organizations in Orange County to support the health, safety and education of all individuals. Our membership recently voted to establish a multi-year partnership with the Down Syndrome Foundation of Orange County beginning in June 2012. Thank you for authoring this important bill. Please let us know if there is anything else we can do to support you in this effort. Please feel free to contact me.

Digitally signed by Laura Anderson
DN: cn=Laura Anderson, o=SPAC of Junior Leagues of California, ou, email=lauramarieanderson@gmail.com, c=US
Date: 2012.05.02 14:26:13 -07'00'

Laura Anderson
State Public Affairs Delegate
Junior Leagues of California
jloccspac@gmail.com
714.234.4234

Parra, Joe

From: Dietz, Eric
Sent: Wednesday, May 02, 2012 8:58 AM
To: Nguyen, Michael; Parra, Joe; Conaghan, Tim
Subject: AB 2370 background request
Attachments: Shriver R-Word Act Fact Sheet.doc; AB 2370 Senate Health Background Request.doc

See attached:

Eric Dietz
Legislative Director
Assemblyman Allan Mansoor
916-319-2068

From: Nguyen, Michael
Sent: Monday, April 30, 2012 4:59 PM
To: Dietz, Eric
Subject: AB 2370 Background Request

The above bill has been referred to this Committee for consideration. Please complete the following questions. Include any supporting documentation. Hand-deliver a hard copy of the completed form and background materials to the Senate Health Committee, Capitol Room 2191, within 7 days of this request. Also, e-mail this completed form and any electronic documents to the consultant analyzing the bill, Michael.Nguyen@sen.ca.gov, Joe.Parra@sen.ca.gov, and Tim.Conaghan@sen.ca.gov.

Michael Nguyen
Senate Health Committee
State Capitol, Room 2191
Phone: (916) 651-4111
Fax: (916) 324-0384

Sacramento County Developmental Disabilities Planning and Advisory Council

May 9, 2012

The Honorable Allan Mansoor
State Capitol Room 4177
Sacramento, CA 95811

RE: AB 2370 as amended: April 9, 2012

Position: *Support*

Dear Assemblyman Mansoor:

The Sacramento County Developmental Disabilities Planning and Advisory Council is pleased to support AB 2370. We are a council of parents, professionals and consumers, appointed by the Sacramento County Board of Supervisors to advise them on issues related to developmental disabilities.

The Council believes that the term "mental retardation" is offensive and antiquated. Replacing it with "intellectual disability" will assist with the process of removing the "r-word" from pejorative uses in everyday speech.

Last year, at our request, the Sacramento County Board of Supervisors removed three instances from local ordinances. AB 2370 will give the cause of changing terminology more legitimacy as we (and other groups like us) seek to change local ordinances.

We appreciate you authoring this bill, If you have any questions or comments on this matter, please feel free to contact me on my cell phone at 559-269-0959 or via e-mail at sacddcouncil@gmail.com. Thank you.

Sincerely,

Justin C. Salenik, Chair
Sacramento County Developmental Disabilities
Planning and Advisory Council

Cc: The Honorable Roger Dickinson
The Honorable Joan Buchanan
The Honorable Alyson Huber
The Honorable Richard Pan
The Honorable Beth Gaines
The Honorable Ted Gaines
The Honorable Lois Wolk
The Honorable Darrell Steinberg
Sacramento County Board of Supervisors

NORTH LOS ANGELES COUNTY
REGIONAL CENTER

15400 Sherman Way, Suite 170 • Van Nuys, CA 91406-4211
Main Number (818) 778-1900 • Fax (818) 756-6140

May 9, 2012

Honorable Allan R. Mansoor
CA Assembly Member, 68th District
State Capitol, Room 4177
Sacramento, CA 95814

RE: **Assembly Bill 2370** (Mental retardation: change of term to intellectual disabilities.)

NLACRC's position: **Support**

Dear Assembly Member Mansoor,

North Los Angeles County Regional Center (NLACRC) provides services and supports to more than 18,000 persons with developmental disabilities (consumers) in the San Fernando, Santa Clarita, and Antelope Valleys.

Upon the recommendation of our board's Consumer Advisory Committee, which is composed of 9 of the center's consumers, the NLACRC Board of Trustees has taken a support position on your bill number 2370.

We applaud you for authoring this bill which would change the term "mental retardation" to "intellectual disability." As you are obviously aware, the current terminology is very hurtful to many of us who have loved ones with intellectual disabilities, and we have come to refer to it as "the r word." We are proud to support a bill that will finally eliminate this hurtful language.

The Board of Trustees has also taken a support position on Senate Bill 1381 (Pavley) which would also change the old terminology to the new one.

Thank you.

Sincerely,

Yolanda Bosch
President, NLACRC Board of Trustees

c: Senate Health Committee
NLACRC Board of Trustees
NLACRC Consumer Advisory Committee

The Arc. California

UCP United Cerebral Palsy — Life without limits for people with disabilities

California Collaboration

May 15, 2012

Honorable Allan Mansoor
State Capitol

SUBJECT: AB 2370 – SUPPORT and REQUEST AMENDMENT

Dear Mr. Mansoor:

The Arc and United Cerebral Palsy in California, a coalition of people with intellectual and other disabilities and their families, friends, and service providers, is happy to support your bill to eliminate the R-word in state law.

Eliminating this stigmatized, hurtful term in all usage is a high priority for the developmental disability community in order to build respect for people with intellectual disabilities. The R-word was once intended to be a term of respect; in fact, The Arc (formerly correctly called ARC, and still sometimes incorrectly called that) originally used the word in its name. But times and terms have changed, and it now used to inflict intentional or unintentional pain, including in bullying and outright hate crimes.

Our one concern about AB 2370 is that it refers to "disabled persons," rather than the more accurate and sensitive people-first term, "persons with disabilities." We ask an amendment to correct this terminology.

Thank you for introducing this important bill and for considering our amendment.

Sincerely,

Greg deGiere
Public Policy Director

cc: Senate Health Committee

The Arc and United Cerebral Palsy in California
1225 Eighth Street, Suite 350, Sacramento, CA 95814
916-552-6619 x16 (office) 916-823-7319 (mobile) 916-441-3494 (fax)
Greg@TheArcCA.org

Rubin, Benjamin

From: Dietz, Eric
Sent: Monday, June 04, 2012 1:35 PM
To: Rubin, Benjamin
Subject: AB 2370

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Ben,
I just submitted an amendment request to Leg Counsel that will replace the term "intellectually disabled" with "persons with intellectual disabilities". The amendment is supported by Best Buddies (sponsor), Special Olympics and The ARC and United Cerebral Palsy in California.

I request the amendments back by Wednesday, June 6th, so it will give us 7 days for you to review them.

If you have any questions, please let me know.
Thanks,
-Eric

Eric Dietz
Legislative Director
Assemblyman Allan Mansoor
916-319-2068

Parra, Joe

From: Dietz, Eric
Sent: Wednesday, June 06, 2012 3:18 PM
To: Parra, Joe
Subject: FW: AB 2370

Hi Joe,
We submitted amendments to the committee earlier today that replaced the terms "intellectual disabled persons" with "persons with intellectual disability".

In addition, the committee suggested the following amendments. The sponsors are okay with them, but I wanted to also get your opinion.
Thanks!

Eric Dietz
Legislative Director
Assemblyman Allan Mansoor
916-319-2068

From: Rubin, Benjamin
Sent: Wednesday, June 06, 2012 1:27 PM
To: Dietz, Eric
Subject: AB 2370

I'm going to probably be in the Health Committee hearing this afternoon; if I'm not around could you drop the amendments off at my desk (I just want to make sure they don't get lost in the shuffle)?

I also would like to know whether you would be okay with adding the following language to the end of the bill. This is the same language that was suggested (and taken) for the Pavley bill by our committee, to be on the safe side regarding the possible fiscal impact of the bill.

"(c) As used in a state regulation, state publication, or other writing, the terms "mental retardation" and "mentally retarded person" have the same meaning as the terms "intellectual disability" and "person with intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning."

Ben Rubin
Science & Technology Fellow
Senate Committee on Health
(916) 651-4111

Parra, Joe

From: Dietz, Eric
Sent: Monday, June 04, 2012 1:37 PM
To: Parra, Joe
Subject: FW: AB 2370

Hi Joe,

I just let Ben know, and I wanted to give you a heads up too, we're amending AB 2370, The "R-Word" Act to replace the term "intellectually disabled" with "persons with intellectual disabilities".

Everyone is in support and seems to agree that these amendments will make this a much better bill, and closer to the Pavley bill.
-Eric

From: Dietz, Eric
Sent: Monday, June 04, 2012 1:35 PM
To: Rubin, Benjamin
Subject: AB 2370

Hi Ben,
I just submitted an amendment request to Leg Counsel that will replace the term "intellectually disabled" with "persons with intellectual disabilities". The amendment is supported by Best Buddies (sponsor), Special Olympics and The ARC and United Cerebral Palsy in California.

I request the amendments back by Wednesday, June 6th, so it will give us 7 days for you to review them.

If you have any questions, please let me know.
Thanks,
-Eric

Eric Dietz
Legislative Director
Assemblyman Allan Mansoor
916-319-2068

Sacramento County Developmental Disabilities Planning and Advisory Council

June 7, 2012

SUPPORT

The Honorable Edward Hernandez
State Capitol Room 2191
Sacramento, CA 95811

RE: AB 2370 (Mansoor): Mental retardation: change of term to intellectual disability
As amended: June 6, 2012

Position: ***Support***

Dear Senator Hernandez,

The Sacramento County Developmental Disabilities Planning and Advisory Council is pleased to support AB 2370. We are a council of parents, professionals and consumers, appointed by the Sacramento county Board of Supervisors to advise them on issues related to developmental disabilities.

The Council believes that the term "mental retardation" is offensive and antiquated. Replacing it with "intellectual disability" will assist with the process of removing the "r-word" from pejorative uses in everyday speech.

Last year, at our request, the Sacramento County Board of Supervisors removed three instances from local ordinances. AB 2370 will give the cause of changing terminology more legitimacy as we (and other groups like us) seek to change local ordinances.

If you have any questions or comments on this matter, please feel free to contact me on my cell phone at 559-269-0959 or via e-mail at sacddcouncil@gmail.com. Thank you.

Sincerely,

Justin C. Salenik, Chair
Sacramento County Developmental Disabilities
Planning and Advisory Council

cc: The Honorable Allan Mansoor
Members of the Senate Health Committee

BEST BUDDIES
CALIFORNIA

June 7, 2012

SUPPORT

The Honorable Ed Hernandez, O.D.
Chair, Senate Committee on Health
Room 4085, State Capitol
Sacramento, California 95814

Re: **AB 2370 (Mansoor) Mental retardation: change of term to intellectual disability - SPONSOR**
Senate Committee on Health – June 13, 2012

Dear Senator Hernandez:

Best Buddies California is pleased to sponsor AB 2370 (Mansoor), the Shriver "R-Word" Act, and I urge you to support it. This measure will change references to "mental retardation" in California statutes to "intellectual disability." By changing the language in our laws, the bill will not change the coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions. Conversely, it will ensure consistency with federal law, which was amended for this very purpose in the 111th Congress by S.2781 (Mikulski), also known as Rosa's law.

California is usually on the cutting edge of legislation, but in this case it is playing catch-up. Several other states have already changed their statutes to eliminate the "r-word" and other states are considering similar bills this year. In all of these instances, the goal is to eliminate a term that promotes a negative stereotype and to help ensure that people with intellectual disabilities are treated with the dignity they deserve.

Best Buddies works to enhance the lives of children and adults with intellectual disabilities by providing opportunities for one-to-one friendships with typical peers, competitive paying jobs, and leadership development. AB 2370 is consistent with our organization's mission, we are pleased to sponsor it, and we urge you to join us in supporting it.

Sincerely,

Patricia Evans
State Director

cc: Members of and Consultant to the Senate Committee on Health
Assembly Member Allan Mansoor
Lisa Derx, Vice President, Best Buddies International

5601 West Slauson Avenue | Suite 255 | Culver City, California 90230 | P | 310.642.2620 | F | 310.642.2630
1.888.68.BUDDY | www.bestbuddiescalifornia.org

Parra, Joe

From: Nguyen, Michael
Sent: Monday, June 11, 2012 5:28 PM
To: Parra, Joe; Conaghan, Tim
Subject: FW: ARCA support letters for AB 1453 and AB 2370
Attachments: ARCA Letter on AB 1453 to Assembly Member Monning.pdf; ATT2131126.htm; ARCA Letter on AB 2370 to Assembly Member Mansoor.pdf; ATT2131127.htm

Michael Nguyen
Senate Health Committee
State Capitol, Room 2191
Phone: (916) 651-4111
Fax: (916) 324-0384

From: Trueworthy, Katie
Sent: Friday, June 08, 2012 5:58 PM
To: Nguyen, Michael
Subject: Fwd: ARCA support letters for AB 1453 and AB 2370

Begin forwarded message:

> **From:** "Daniel Savino" <DSavino@arcanet.org>
> **Date:** June 8, 2012 5:39:23 PM PDT
> **To:** <senator.hernandez@senate.ca.gov>
> **Cc:** "Senator Elaine Alquist" <senator.alquist@sen.ca.gov>, "Senator Joel Anderson" <senator.anderson@senate.ca.gov>, "Senator Kevin de Leon" <senator.deleon@senate.ca.gov>, "Senator Lois Wolk" <senator.wolk@senate.ca.gov>, "Senator Mark DeSaulnier" <senator.desaulnier@sen.ca.gov>, "Senator Michael Rubio" <michael.rubio@sen.ca.gov>, "Senator Sam Blakeslee" <senator.blakeslee@senate.ca.gov>, "Senator Tom Harman" <senator.harman@sen.ca.gov>, <katie.trueworthy@sen.ca.gov>, "Eileen Richey" <RicheyE@arcanet.org>, "Rick Rollens" <rollensconsult@aol.com>
> **Subject: ARCA support letters for AB 1453 and AB 2370**
>
> Honorable Senator Hernandez,
>
> Attached, please find copies of the Association of Regional Center Agencies' letters of support for AB 1453 and AB 2370. Originally conveyed to their authors, the Assembly Health Committee, and Chief Consultant Teri Boughton, timing had precluded their inclusion in the initial analyses. Thus, we are submitting these copies for your consideration and discretionary use in any Health Committee analyses. Additional recipients of this mailing include Assemblymembers Monning and Mansoor, the Senate Health Committee, and consultant Katie Trueworthy.
>
> Respectfully submitted,

Daniel Savino
Association of Regional Center Agencies
Staff Analyst
916-446-7961 x15

The Arc. California

UCP United Cerebral Palsy
Life without limits for people with disabilities

California Collaboration

June 14, 2012

Honorable Allan Mansoor
State Capitol

SUBJECT: AB 2370 – SUPPORT

Dear Mr. Mansoor:

The Arc and United Cerebral Palsy in California, a coalition of people with intellectual and other disabilities and their families, friends, and service providers, is happy to support your bill to eliminate the R-word in state law.

Eliminating this stigmatized, hurtful term in all usage is a high priority for the developmental disability community in order to build respect for people with intellectual disabilities. The R-word was once intended to be a term of respect; in fact, The Arc (formerly correctly called ARC, and still sometimes incorrectly called that) originally used the word in its name. But times and terms have changed, and it now used to inflict intentional or unintentional pain, including in bullying and outright hate crimes.

Thank you for introducing this important bill and for accepting our amendments.

Sincerely,

Greg deGiere
Public Policy Director

The Arc and United Cerebral Palsy in California
1225 Eighth Street, Suite 350, Sacramento, CA 95814
916-552-6619 x16 (office) 916-223-7319 (mobile) 916-441-3494 (fax)
Greg@TheArcCA.org

ASSEMBLY BILL No. 2370

Introduced by Assembly Member Mansoor

February 24, 2012

An act to amend Section 4502 of the Business and Professions Code, to amend Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401, and 51765 of the Education Code, to amend Sections 854.2, 6514, 12428, 14670.1, 14670.2, 14670.3, 14670.5, 14672.1, 14672.92, 16813, 16814, and 16816 of the Government Code, to amend Sections 1275.5, 13113, 123935, 127260, and 129395 of the Health and Safety Code, to amend Sections 1370.1 and 1376 of the Penal Code, to amend Section 1420 of the Probate Code, to amend Section 25276 of the Vehicle Code, and to amend Sections 4426, 4801, 5002, 5008, 5325, 6250, 6500, 6502, 6504, 6504.5, 6505, 6506, 6507, 6508, 6509, 6511, 6512, 6513, 6551, 6715, 6717, 6718, 6740, 6741, 7275, and 7351 of, and to amend the heading of Article 2 (commencing with Section 6500) of Chapter 2 of, and to amend the heading of Article 4 (commencing with Section 6715) of Chapter 3 of, Part 2 of Division 6 of, the Welfare and Institutions Code, relating to intellectual disabilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2370, as introduced, Mansoor. Mental retardation: change of term to intellectual disabilities.

Existing federal Medicaid provisions require a state to describe its Medicaid program in its state plan, which is required by federal law to provide for, among other things, a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded.

Under existing law, various state statutes refer to mentally retarded persons in provisions relating to, among other things, services, commitment to state facilities, and criminal punishment.

This bill would revise various statutes to, instead, refer to a person with an intellectual disability. The bill would also state the intent of the Legislature not to make a change to services or the eligibility for services.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 4502 of the Business and Professions Code is amended to read:

4502. As used in this chapter, "psychiatric technician" means any person who, for compensation or personal profit, implements procedures and techniques which involve understanding of cause and effect and which are used in the care, treatment, and rehabilitation of mentally ill, emotionally disturbed, or ~~mentally retarded~~ *intellectually disabled* persons and who has one or more of the following:

(a) Direct responsibility for administering or implementing specific therapeutic procedures, techniques, treatments, or medications with the aim of enabling recipients or patients to make optimal use of their therapeutic regime, their social and personal resources, and their residential care.

(b) Direct responsibility for the application of interpersonal and technical skills in the observation and recognition of symptoms and reactions of recipients or patients, for the accurate recording of such symptoms and reactions, and for the carrying out of treatments and medications as prescribed by a licensed physician and surgeon or a psychiatrist.

The psychiatric technician in the performance of such procedures and techniques is responsible to the director of the service in which his *or her* duties are performed. The director may be a licensed physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.

Nothing herein shall authorize a licensed psychiatric technician to practice medicine or surgery or to undertake the prevention,

liability shall exist whether the person has become a patient of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code.

This section does not impose liability for the care of ~~mentally retarded~~ persons *with intellectual disabilities* in state hospitals.

SEC. 58. Section 7351 of the Welfare and Institutions Code is amended to read:

7351. Wherever in any provision of this code heretofore or hereafter enacted the term "parole" is used in relation to the release of a patient from a state hospital, it shall be construed to refer to and mean "leave of absence." ~~Any~~ *A* judicially committed patient or ~~mentally retarded~~ patient *with an intellectual disability* granted a leave of absence on or after July 1, 1969, and ~~any~~ *a* patient on leave of absence as of July 1, 1969, may at any time during the period of the leave of absence be recalled and returned to the hospital.

Upon the release of a judicially committed patient as granted by the medical director of a state hospital, on leave of absence or discharge upon any of the grounds provided in this article, in accordance with the rules and regulations prescribed by the department, the superintendent shall issue to or on behalf of the judicially committed patient a document stating the general terms or limitations of the leave of absence, or a certificate stating the general condition of, or the reason for, the discharge of the judicially committed patient.

SEC. 59. Nothing in this act shall be construed as making changes to services being provided or eligibility standards in effect at the time of enactment.

O

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 2370

Introduced by Assembly Member Mansoor
(Coauthors: Assembly Members Ammiano, Beall, Hill, Perea, V. Manuel Pérez, Valadao, Wieckowski, and Yamada)
(Coauthors: Senators Padilla and Strickland)

February 24, 2012

An act to amend ~~Section~~ *Sections* 4502 *and 17206.1* of the Business and Professions Code, *to amend Section 1761 of the Civil Code,* to amend Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401, and 51765 of the Education Code, to amend Sections 854.2, 6514, 12428, *12926,* 14670.1, 14670.2, 14670.3, 14670.5, 14672.1, 14672.92, 16813, 16814, and 16816 of the Government Code, to amend Sections 1275.5, *1337.1, 1337.3,* 13113, *51312, 110403,* 123935, *125000,* 127260, and 129395 of the Health and Safety Code, *to amend Sections 10118, 10124, and 10203.4 of the Insurance Code,* to amend Sections *1001.20, 1346,* 1370.1 ~~and 1376~~*, 1376, and 2962* of the Penal Code, to amend Section 1420 of the Probate Code, to amend Section 25276 of the Vehicle Code, and to amend Sections *4417,* 4426, *4512,* 4801, 5002, 5008, 5325, *5585.25,* 6250, 6500, 6502, 6504, 6504.5, 6505, 6506, 6507, 6508, 6509, 6511, 6512, 6513, 6551, 6715, 6717, 6718, 6740, 6741, 7275, ~~and 7351~~ *7351, and 11014* of, ~~and~~ to amend the heading of Article 2 (commencing with Section 6500) of Chapter 2 of, ~~and~~ to amend the heading of Article 4 (commencing with Section 6715) of Chapter 3 of, *and to amend the heading of Article 4 (commencing with Section 6740) of Chapter 4 of,* Part 2 of Division 6 of, the Welfare and Institutions Code, relating to intellectual disabilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2370, as amended, Mansoor. Mental retardation: change of term to intellectual disabilities.

Existing federal Medicaid provisions require a state to describe its Medicaid program in its state plan, which is required by federal law to provide for, among other things, a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded.

Under existing law, various state statutes refer to mentally retarded persons in provisions relating to, among other things, services, commitment to state facilities, and criminal punishment.

This bill, *which would be known as the Shriver "R-Word" Act,* would revise various statutes to, instead, refer to a person with an intellectual disability. The bill would also state the intent of the Legislature not to make a change to services or the eligibility for services.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. This act shall be known, and may be cited, as the Shriver "R-Word" Act.

~~SECTION 1.~~

SEC. 2. Section 4502 of the Business and Professions Code is amended to read:

4502. As used in this chapter, "psychiatric technician" means any person who, for compensation or personal profit, implements procedures and techniques which involve understanding of cause and effect and which are used in the care, treatment, and rehabilitation of mentally ill, emotionally disturbed, or intellectually disabled persons and who has one or more of the following:

(a) Direct responsibility for administering or implementing specific therapeutic procedures, techniques, treatments, or medications with the aim of enabling recipients or patients to make optimal use of their therapeutic regime, their social and personal resources, and their residential care.

(b) Direct responsibility for the application of interpersonal and technical skills in the observation and recognition of symptoms and reactions of recipients or patients, for the accurate recording of such symptoms and reactions, and for the carrying out of treatments and medications as prescribed by a licensed physician and surgeon or a psychiatrist.

The psychiatric technician in the performance of such procedures and techniques is responsible to the director of the service in which his or her duties are performed. The director may be a licensed physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.

Nothing herein shall authorize a licensed psychiatric technician to practice medicine or surgery or to undertake the prevention, treatment or cure of disease, pain, injury, deformity, or mental or physical condition in violation of the law.

SEC. 3. Section 17206.1 of the Business and Professions Code is amended to read:

17206.1. (a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, any person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) "Senior citizen" means a person who is 65 years of age or older.

(2) "Disabled person" means any person who has a physical or mental impairment that substantially limits one or more major life activities.

(A) As used in this subdivision, "physical or mental impairment" means any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs;

cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) Any mental or psychological disorder, such as ~~mental retardation~~ *intellectual disability*, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, ~~mental retardation~~ *intellectual disability*, and emotional illness.

(B) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) Any court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as may be necessary to restore to any senior citizen or disabled person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any

civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over any civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

SEC. 4. Section 1761 of the Civil Code is amended to read:

1761. As used in this title:

(a) "Goods" means tangible chattels bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property.

(b) "Services" means work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods.

(c) "Person" means an individual, partnership, corporation, limited liability company, association, or other group, however organized.

(d) "Consumer" means an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

(e) "Transaction" means an agreement between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.

(f) "Senior citizen" means a person who is 65 years of age or older.

(g) "Disabled person" means any person who has a physical or mental impairment that substantially limits one or more major life activities.

(1) As used in this subdivision, "physical or mental impairment" means any of the following:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs;

(b) It is the intent of the Legislature that future statutory and administrative revisions to reflect the change in terminology provided for in this act shall be made only in the course of other necessary revisions or amendments, in order to minimize costs to the state.

O

ASSEMBLY JUDICIARY COMMITTEE
MANDATORY INFORMATION WORKSHEET

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ASSEMBLY JUDICIARY COMMITTEE, 1020 N Street (LOB), Room 104

Bill Number: **AB 2370** Author: **Asm. Mansoor**

- **Author's staff person: Eric Dietz**
- **Phone: 319-2068**
- **e-mail: eric.dietz@asm.ca.gov**

1. What do you see as the key issue(s) raised by the bill.

   - *The key issue of AB 2370 is to replace in state law the terms "mental retardation" with "intellectual disability" and "mentally retarded" with "intellectually disabled".*

   - *Also, nothing in this act shall be construed as making changes to services being provided or eligibility standards in effect at the time of enactment*

2. Please provide a statement of the author's purpose for the bill, which may be used in the Committee's analysis, including *in detail* the problem or deficiency in the current law that the bill seeks to remedy, and how the bill resolves the problem.

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  - *Patricia Evans, State Director, 310-642-2620*

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  - *Replaces in state law the terms "mental retardation" and "mentally retarded person" with "intellectual disability" and "person with an intellectual disability."*
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- *S. 2781 (2010) "Rosa's Law*
  - *To change references in Federal law to mental retardation to references to an intellectual disability, and change references to a mentally retarded individual to references to an individual with an intellectual disability.*

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- ***Education Code:*** *Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401, and 51765*
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- ***Probate Code:*** *Section 1420*
- ***Vehicle Code:*** *Section 25276*
- ***Welfare and Institutions Code:*** *Sections 4426, 4801, 5002, 5008, 5325, 6250, 6500, 6502, 6504, 6504.5, 6505, 6506, 6507, 6508, 6509, 6511, 6512, 6513, 6551, 6715, 6717, 6718, 6740, 6741, 7275, and 7351 of, and to amend the heading of Article 2 (commencing with Section 6500) of Chapter 2 of, and to amend the heading of Article 4 (commencing with Section 6715) of Chapter 3 of, Part 2 of Division 6*
- ***Federal Code:***
- ***Higher Education Act of 1965****- Section 760(2)(A) (20 U.S.C. 1140(2)(A))*
- ***Individuals With Disabilities Education Act****: (1) Section 601(c)(12)(C) (2) Section 602 of such Act (20 U.S.C. 1401)*
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- ***Genetic Information Nondiscrimination Act of 2008****: Section 2(2)*

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   - give this bill the official name: The Shriver "R-Word Act

- add the following Senators as co-authors:
  - Senator Padilla
  - Senator Strickland

- add the following Assembly members as co-authors:
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  - Assembly member Beall
  - Assembly member Hill
  - Assembly member Perea
  - Assembly member V. M. Perez
  - Assembly member Valadao
  - Assembly member Wieckowski
  - Assembly member Yamada

- replace the terms "mental retardation" with "intellectual disability" and "mentally retarded" with "intellectually disabled" in the following California Code Sections:

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  - **Civil Code**: 1761
  - **Government Code**: 12926
  - **Health and Safety Code**: 1337.1, 1337.3, 51312, 110403, 125000, 127260
  - **Insurance Code**: 10118, 10124, 10203.4
  - **Penal Code**: 1001.20, 1346, 2962
  - **Welfare and Intuitions Code**: 4417, 4512, 5585.25, 11014 and article 4 (commencing with Section 6740) of Chapter 4, Part 2 of Division 6

- In order to avoid additional cost we plan for these changes to appear in code as routine revisions are made to these codes.

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    - *This issue has already been addressed on the federal level.*
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    - *Special Olympics International*
    - *Special Olympics Northern California and Nevada*
    - *The Dayle McIntosh Disability Resource Center*
    - *The Arc in California*
    - *United Cerebral Palsy in California*

12. Please describe any concerns that you anticipate may be raised in opposition to your bill, and state your response to those concerns.

- *(Possible) associated costs to changing state code.*
  - *This is a necessary change and all associated costs are a necessity and were accomplished with the passage of AB 1640 (2007).*

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  - *Patricia Evans, State Director, 310-642-2620*
- *Special Olympics International*

PLEASE REMEMBER TO EMAIL THIS COMPLETED WORKSHEET, AND ALSO DROP OFF 2 HARD COPIES TO THE COMMITTEE. TYPE AS DETAILED RESPONSES AS POSSIBLE. THANK YOU VERY MUCH FOR YOUR ASSISTANCE.

Date of Hearing: April 10, 2012

ASSEMBLY COMMITTEE ON JUDICIARY
Mike Feuer, Chair
AB 2370 (Mansoor) – As Amended: April 9, 2012

PROPOSED CONSENT

SUBJECT: MENTAL RETARDATION: CHANGE OF TERM TO INTELLECTUAL DISABILITIES

KEY ISSUE: SHOULD ALL REFERENCES CONTAINED IN STATE LAW TO "MENTAL RETARDATION" OR A "MENTALLY RETARDED PERSON" BE REPLACED WITH THE TERMS "INTELLECTUAL DISABILITY" OR "A PERSON WITH AN INTELLECTUAL DISABILITY?"

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

SYNOPSIS

This non-controversial bill deletes the numerous references in state law to "mental retardation" or "mentally retarded person" and replaces them with the terms "intellectual disability" or "person with an intellectual disability," respectively. This bill parallels a federal law, passed in 2012, removing references to the phrase "mental retardation" from federal health, education and labor policies. The bill is widely supported by mental health advocacy groups, disability rights advocates and several school districts from across California and has no known opposition.

SUMMARY: Removes all references to "mental retardation" or "mentally retarded person" and replaces them with "intellectual disability" or "a person with an intellectual disability." Specifically, this bill:

1) Amends Sections 4502 and 17206.1 of the Business and Professions Code to replace all references to "mental retardation" or "mentally retarded person" with "intellectual disability" or "a person with an intellectual disability."

2) Amends Section 1761 of the Civil Code to replace all references to "mental retardation" or "mentally retarded person" with "intellectual disability" or "a person with an intellectual disability."

3) Amends Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401,and 51765 of the Education Code to replace all references to "mental retardation" or "mentally retarded person" with "intellectual disability" or "a person with an intellectual disability."

4) Amends Sections 854.2, 6514, 12428, 12926, 14670.1, 14670.2, 14670.3, 14670.5, 14672.1, 14672.92, 16813,16814, and 16816 of the Government Code to replace all references to "mental retardation" or "mentally retarded person" with "intellectual disability" or "a person with an intellectual disability."

5) Amends Sections 1337.1, 1337.3, 1275.5, 13113, 51312, 110403, 123935, 125000, 127260, and 129395 of the Health and Safety Code to replace all references to "mental retardation" or "mentally retarded person" with "intellectual disability" or "a person with an intellectual disability."

6) Amends Sections 10118, 10124 and 10203.4 of the Insurance Code to replace all references to "mental retardation" or "mentally retarded person" with "intellectual disability" or "a person with an intellectual disability."

7) Amends Sections 1101.20, 1346, 1370.1, 1376 and 2962 of the Penal Code to replace all references to "mental retardation" or "mentally retarded person" with "intellectual disability" or "a person with an intellectual disability."

8) Amends Section 25276 of the Vehicle Code to replace all references to "mental retardation" or "mentally retarded person" with "intellectual disability" or "a person with an intellectual disability."

9) Amends Sections 4426, 4417, 4512, 4801, 5002, 5008, 5325, 5585.25, 6250, 6500, 6502, 6504, 6504.5, 6505, 6506, 6507, 6508, 6509, 6511, 6512, 6513, 6551, 6715, 6717, 6718, 6740, 6741, 7275, 7351 and 11014 of the Welfare and Institutions Code to replace all references to "mental retardation" or "mentally retarded person" with "intellectual disability" or "a person with an intellectual disability."

10) Stipulates that nothing in the bill shall be construed as making changes to services being provided or eligibility standards in effect at the time of enactment.

EXISTING LAW:

1) Refers to "mental retardation" or "a mentally retarded person" in numerous state statutory provisions, including provisions relating to psychiatric technician regulation, the state's unfair competition statute, educational and social services, commitment to state facilities, and criminal punishment.

2) Federal law, S. 2781 (2010), changed all references in federal codes from "mental retardation" to "intellectual disability" and "mentally retarded individual" to "individual with an intellectual disability."

COMMENTS: This bill seeks to remove all references in California law to "mentally retardation" or "mentally retarded person" with "intellectual disability" and "person with an intellectual disability." The author states:

> AB 2370 is a simple measure that replaces the depreciatory "R-Word" term in California Codes with language that does not propagate demeaning and negative stigmas on individuals with disabilities.

Removing Stigma From the California Code: The term mental retardation carries a great deal of stigma. Several surveys of mental health advocates, clinicians, families, parents, and other education and health professionals consistently show that the term is filled with negative connotations. In order to lessen the stigma of mental retardation and ensure the California Code

is not promoting negative stereotypes, this bill will replace the term with the more acceptable term "intellectual disability." Although many experts surveyed believe that any substitute term for the same population will also soon develop stigmatizing qualities there is current momentum to change the term. Additionally, the term "mental retardation" has long subjected individuals with intellectual disabilities to discrimination and its due time the hurtful phrase was eliminated from statutory language.

New Term, Same Entitlements: AB 2370 makes clear that any change in the term mental retardation in the California Code will not change any benefits, services or rights currently given to those with intellectual disabilities under California law. Similar protections were drafted into the federal legislation, "Rosa's Law" (S. 2781-2010), to ensure the rights of those with intellectual disabilities were preserved despite the change in code language.

ARGUMENTS IN SUPPORT: Numerous advocacy groups for the intellectually disabled support this bill including Best Buddies of California and the Special Olympics. Both groups believe codifying the term "intellectually disabled" into California law will remove a hurtful and stigmatizing term from law and promote dignity and respect for thousands of intellectually disabled persons and their families across California.

PRIOR AND RELATED LEGISLATION: SB 1381 (Pavley-2010) is a substantially similar bill currently in the Senate. SB 1381 is similar in that it too would revise various statutes to delete references to "mentally retarded persons" and instead refer to "persons with an intellectual disability" or "intellectually disabled."

AB 1640 (La Malfa, Ch. 31, Stats of 2007) deleted the terms "idiot," "imbecility," and "lunatics" from state code and replaced those terms with "persons who are mentally incapacitated." This bill unanimously passed this Committee in 2007.

REGISTERED SUPPORT / OPPOSITION:

Support

Best Buddies of California (sponsor)
Special Olympics International
Special Olympics of Northern California and Nevada
The Dayle McIntosh Disability Resource Center
The Arc in California
United Cerebral Palsy in California

Opposition

None on file

Analysis Prepared by: Drew Liebert and Nicholas Liedtke/ JUD. / (916) 319-2334

ASSEMBLY JUDICIARY COMMITTEE
MANDATORY INFORMATION WORKSHEET

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ASSEMBLY JUDICIARY COMMITTEE, 1020 N Street (LOB), Room 104

Bill Number: **AB 2370** Author: **Asm. Mansoor**

- **Author's staff person: Eric Dietz**
- **Phone: 319-2068**
- **e-mail: eric.dietz@asm.ca.gov**

1. What do you see as the key issue(s) raised by the bill.

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ASSEMBLY BILL 2370 (Mansoor)
Shriver "R Word" Act
Spread the Word to End the Word

SUMMARY

Respectful and inclusive language is essential to the movement for dignity and humanity towards People with intellectual disabilities. However, much of society does not recognize the hurtful, dehumanizing and exclusive effects of the word "retard(ed)" when improperly used.

It is time to address the term "retard(ed)" and raise the consciousness of society to its hurtful effects.

Tim Shriver from Olympics International, Anthony Shriver, from Best Buddies, and the rest of the Shriver family have been working with the intellectually disabled community for decades.

EXISTING LAW

California statutes currently reference the term "mental retardation" or "mentally retarded persons." Such use propagates the demeaning stereotypes associated with the term. The state of California should not unnecessarily use a term that has negative stigmas and associations.

Last year the Federal Government passed "Rosa's Law," which changed all federal legislation that referenced "mental retardation" to "intellectual disability." New York and Maryland have also altered their state laws to reflect this change.

THIS BILL

This bill will change all references in California law from "mental retardation" to "intellectual disability." By changing the language in our law, California will ensure that people with intellectual disabilities are portrayed with dignity.

This bill will not change the coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions.

STATUS

- February 24th: Introduced
- April 10th: Passed Judiciary Committee on consent
- April 16th: Passed through Assembly floor on consent
- April 26th: referred to Senate Committee on Health

SUPPORT

- Best Buddies California (Sponsor)
- Special Olympics International
- Special Olympics Northern California and Nevada
- Dayle McIntosh Center
- The Arc and United Cerebral Palsy in California
- The CA Disability Services Association
- Association of Regional Center Agencies
- Junior League of Orange County, California, Inc.
- Sacramento County Developmental Disabilities Planning and Advisory Council
- North Los Angeles County Regional Center

OPPOSITION

- None on File

FOR MORE INFORMATION

Contact: Eric Dietz
Phone: (916) 319-2068
Email: Eric.Dietz@asm.ca.gov

ASSEMBLY BILL 2370 (Mansoor)
Shriver "R Word" Act
Spread the Word to End the Word

SUMMARY

Respectful and inclusive language is essential to the movement for dignity and humanity towards People with intellectual disabilities. However, much of society does not recognize the hurtful, dehumanizing and exclusive effects of the word "retard(ed)" when improperly used.

It is time to address the term "retard(ed)" and raise the consciousness of society to its hurtful effects.

Tim Shriver from Olympics International, Anthony Shriver, from Best Buddies, and the rest of the Shriver family have been working with the intellectually disabled community for decades.

EXISTING LAW

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Phone: (916) 319-2068
Email: Eric.Dietz@asm.ca.gov

ERIC J. DIETZ
Eric.Dietz@asm.ca.gov

LTH COMMITTEE
191, 651-4111

FORMATION REQUEST

JOE:

I KNOW THE COMMITTEE WILL GET YOU A COPY OF THIS, BUT IN CASE YOU WANTED IT FASTER, HERE YOU GO. THANKS, -ERIC

to intellectual disabilities.

for consideration. Please complete the following questions.

form and background materials to the Senate Health Committee,
equest.
nic documents to the consultant listed above,
en.ca.gov, and Tim.Conaghan@sen.ca.gov.

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- *The purpose of this bill is to change this hurtful term, which is long overdue, as evident by the attached letters of support.*

3. **Author's statement of need for the bill. This will appear in the analysis exactly as provided.**
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   - *Business, Transportation and Housing Agency*
   - *Corrections and Rehabilitation Agency*
   - *Health and Human Services Agency*
5. **Sponsor name and contact information.**
   - *Best Buddies California (Sponsor)*
     - *Patricia Evans, State Director, (310) 642-2620*
     - *Casey Kaneko, Platinum Advisors, (916) 442-0412*

ERIC J. DIETZ
Eric.Dietz@asm.ca.gov

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SENATE HEALTH COMMITTEE
Room 2191, 651-4111

BACKGROUND INFORMATION REQUEST

TO: ASSEMBLYMAN MANSOOR

RE: AB 2370

SUBJECT: Mental retardation: change of term to intellectual disabilities.

CONSULTANT: Scott Bain

The above bill has been referred to this Committee for consideration. Please complete the following questions. Include any supporting documentation.

- Hand-deliver a hard copy of the completed form and background materials to the Senate Health Committee, Capitol Room 2191, within 7 days of this request.
- E-mail this completed form and any electronic documents to the consultant listed above, Michael.Nguyen@sen.ca.gov, Joe.Parra@sen.ca.gov, and Tim.Conaghan@sen.ca.gov.

Background Request

1. **What does this bill do?**
   - *AB 2370 will replace in state law the terms "mental retardation" with "intellectual disability" and "mentally retarded" with "intellectually disabled".*
   - *Nothing in this act shall be construed as making changes to services being provided or eligibility standards in effect at the time of enactment.*
   - *In order to minimize costs to the state, change in terminology provided in this bill will only be made during the course of other necessary revisions or amendments.*
2. **What is the purpose of the bill, and what are the problems it is attempting to solve?**
   - *The purpose of this bill is to change this hurtful term, which is long overdue, as evident by the attached letters of support.*
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BACKGROUND INFORMATION REQUEST SENATE HEALTH COMMITTEE

6. **Staff contact (include daytime, home and cell phone number).**
   - *Eric Dietz, (916) 319-2068-work. (760) 975-9493-cell.*
   - *Saulo Londono, (916) 319-2068-work. (714) 227-4009-cell.*
7. **Give summary of arguments in support or opposition.** Attach copies of letters in support and opposition in *alphabetical order.* E-mail an alphabetical list of support and opposition to Michael.Nguyen@sen.ca.gov.
   - *This bill provides an important change away from a term used to demean and hurt people with intellectual disabilities.*
   - *The pejorative forms, "retard" and "retarded" have been used widely in today's society to degrade and insult people with intellectual disabilities.*
   - *Eliminating this stigmatized, hurtful term in all usage is a high priority for the developmental disability community.*
   - *California is usually on the cutting edge of legislation, but in this case, we are playing catch-up.*
   - ***SUPPORT:***
     - *The Arc and United Cerebral Palsy in California*
     - *Association of Regional Center Agencies*
     - *Best Buddies California (Sponsor)*
     - *The California Disability Services Association*
     - *Dayle McIntosh Center*
     - *Special Olympics International*
     - *Special Olympics Northern California and Nevada*
   - ***OPPOSITION:***
     - *None on file*
8. **Please list any related prior legislation below.**
   - ***SB 1381*** *(2012) Senator Pavley*
     - *Replaces in state law the terms "mental retardation" and "mentally retarded person" with "intellectual disability" and "person with an intellectual disability."*
   - ***AB 1640*** *(2007) Assemblyman LaMalfa*
     - *Deleted the terms "idiot," "imbecility," and "lunatics" in state code and replaced those terms with "persons who are mentally incapacitated."*
   - ***S. 2781*** *(2010) "Rosa's Law*
     - *To change references in Federal law to mental retardation to references to an intellectual disability, and change references to a mentally retarded individual to references to an individual with an intellectual disability.*

Amendments

Do you plan on amending this bill prior to the hearing?

( ) YES, will amend. Provide a brief summary of planned amendments.

(X) NO, will not amend.

Amendments

- Submit one signed original *plus* 8 unsigned copies (must be in Legislative Counsel form) to the Committee Assistant in Senate Health, Capitol Room 2191.
- Due no later than 12 noon, 7 calendar days prior to the bill's hearing date.

SENATE HEALTH COMMITTEE
Room 2191, 651-4111

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AMENDED IN SENATE JUNE 6, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 2370

Introduced by Assembly Member Mansoor
(Coauthors: Assembly Members Ammiano, Beall, Hill, Perea, V. Manuel Pérez, Valadao, Wieckowski, and Yamada)
(Coauthors: Senators Padilla and Strickland)

February 24, 2012

An act to amend Sections 4502 and 17206.1 of the Business and Professions Code, to amend Section 1761 of the Civil Code, to amend Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401, and 51765 of the Education Code, to amend Sections 854.2, 6514, 12428, 12926, 14670.1, 14670.2, 14670.3, 14670.5, 14672.1, 14672.92, 16813, 16814, and 16816 of the Government Code, to amend Sections 1275.5, 1337.1, 1337.3, 13113, 51312, 110403, 123935, 125000, 127260, and 129395 of the Health and Safety Code, to amend Sections 10118, 10124, and 10203.4 of the Insurance Code, to amend Sections 1001.20, 1346, 1370.1, 1376, and 2962 of the Penal Code, to amend Section 1420 of the Probate Code, to amend Section 25276 of the Vehicle Code, and to amend Sections 4417, 4426, 4512, 4801, 5002, 5008, 5325, 5585.25, 6250, 6500, 6502, 6504, 6504.5, 6505, 6506, 6507, 6508, 6509, 6511, 6512, 6513, 6551, 6715, 6717, 6718, 6740, 6741, 7275, 7351, and 11014 of, to amend the heading of Article 2 (commencing with Section 6500) of Chapter 2 of, to amend the heading of Article 4 (commencing with Section 6715) of Chapter 3 of, and to amend the heading of Article 4 (commencing with Section 6740) of Chapter 4 of, Part 2 of Division 6 of, the Welfare and Institutions Code, relating to intellectual disabilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2370, as amended, Mansoor. Mental retardation: change of term to intellectual disabilities.

Existing federal Medicaid provisions require a state to describe its Medicaid program in its state plan, which is required by federal law to provide for, among other things, a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded.

Under existing law, various state statutes refer to mentally retarded persons in provisions relating to, among other things, services, commitment to state facilities, and criminal punishment.

This bill, which would be known as the Shriver "R-Word" Act, would revise various statutes to, instead, refer to a person with an intellectual disability. The bill would also state the intent of the Legislature not to make a change to services or the eligibility for services.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. This act shall be known, and may be cited, as the Shriver "R-Word" Act.

SEC. 2. Section 4502 of the Business and Professions Code is amended to read:

4502. As used in this chapter, "psychiatric technician" means any person who, for compensation or personal profit, implements procedures and techniques which involve understanding of cause and effect and which are used in the care, treatment, and rehabilitation of *persons who are* mentally ill, emotionally disturbed, or ~~intellectually disabled persons~~ *have intellectual disabilities* and who ~~has~~ *have* one or more of the following:

(a) Direct responsibility for administering or implementing specific therapeutic procedures, techniques, treatments, or medications with the aim of enabling recipients or patients to make optimal use of their therapeutic regime, their social and personal resources, and their residential care.

(b) Direct responsibility for the application of interpersonal and technical skills in the observation and recognition of symptoms

and reactions of recipients or patients, for the accurate recording of such symptoms and reactions, and for the carrying out of treatments and medications as prescribed by a licensed physician and surgeon or a psychiatrist.

The psychiatric technician in the performance of such procedures and techniques is responsible to the director of the service in which his or her duties are performed. The director may be a licensed physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.

Nothing herein shall authorize a licensed psychiatric technician to practice medicine or surgery or to undertake the prevention, treatment or cure of disease, pain, injury, deformity, or mental or physical condition in violation of the law.

SEC. 3. Section 17206.1 of the Business and Professions Code is amended to read:

17206.1. (a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, any person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) "Senior citizen" means a person who is 65 years of age or older.

(2) "Disabled person" means any person who has a physical or mental impairment that substantially limits one or more major life activities.

(A) As used in this subdivision, "physical or mental impairment" means any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, and emotional illness.

(B) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) Any court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as may be necessary to restore to any senior citizen or disabled person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over any civil penalty

imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

SEC. 4. Section 1761 of the Civil Code is amended to read:

1761. As used in this title:

(a) "Goods" means tangible chattels bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property.

(b) "Services" means work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods.

(c) "Person" means an individual, partnership, corporation, limited liability company, association, or other group, however organized.

(d) "Consumer" means an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

(e) "Transaction" means an agreement between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.

(f) "Senior citizen" means a person who is 65 years of age or older.

(g) "Disabled person" means any person who has a physical or mental impairment that substantially limits one or more major life activities.

(1) As used in this subdivision, "physical or mental impairment" means any of the following:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

department, the superintendent shall issue to or on behalf of the judicially committed patient a document stating the general terms or limitations of the leave of absence, or a certificate stating the general condition of, or the reason for, the discharge of the judicially committed patient.

SEC. 78. Section 11014 of the Welfare and Institutions Code is amended to read:

11014. To the extent that any provision of this part prohibits the granting of aid to persons confined in a public institution for tuberculosis or mental disease or as a result of the diagnosis of tuberculosis, intellectual disability, or psychosis permitted by federal law, such provision shall be inoperative.

SEC. 79. (a) Nothing in this act shall be construed as making changes to services being provided or eligibility standards in effect at the time of enactment.

(b) It is the intent of the Legislature that future statutory and administrative revisions to reflect the change in terminology provided for in this act shall be made only in the course of other necessary revisions or amendments, in order to minimize costs to the state.

O

SENATE COMMITTEE ON HEALTH
Senator Ed Hernandez, O.D., Chair

BILL NO: AB 2370
AUTHOR: Mansoor
AMENDED: June 6, 2012
HEARING DATE: June 13, 2012
CONSULTANT: Rubin

SUBJECT: Mental retardation: change of term to intellectual disabilities.

SUMMARY: Deletes in state law references to "mental retardation" or a "mentally retarded person" and instead replaces them with "intellectual disability" or "a person with an intellectual disability."

Existing law: Refers to "mental retardation" or "a mentally retarded person" in numerous state statutory provisions, including provisions relating to psychiatric technician regulation, the state's unfair competition statute, educational and social services, commitment to state facilities, and criminal punishment.

This bill:
1. Deletes references to mental retardation or a mentally retarded person and instead replaces them with "intellectual disability" or "a person with an intellectual disability."

2. Prohibits standards in effect at the time of enactment from being construed as making a substantive change in law, a change of services being provided, or eligibility.

3. Shall be known as the Shriver "R-Word" Act.

FISCAL EFFECT: This bill is keyed non-fiscal.

PRIOR VOTES:
Assembly Judiciary: 10- 0
Assembly Floor: 77- 0

COMMENTS:
1. **Author's statement.** According to the author, respectful and inclusive language is essential to the movement for dignity and humanity toward people with intellectual disabilities. However, much of society does not recognize the harmful, dehumanizing effects of the word "retard(ed)" when improperly used. It is time to address the term "retard(ed)" and raise the consciousness of society to its hurtful effects.

2. **Background.** The Resource Network International contracted with the Kansas University Center for the Study of Family, Neighborhood and Community Policy to do an in-depth study related to the past and current use of the term "mental retardation" in the context of government programs. Published in 2002, the study, entitled "Usage of the Term 'Mental Retardation:' Language, Image and Public Education," found there are many definitions of mental retardation but four are the most prevalent. The term "mental retardation" is used

Continued---

consistently in the United States far more than other terms and the next most consistent equivalent term is "intellectual disability," which is used in British Commonwealth countries and by the International Society for the Scientific Study of Intellectual Disabilities. There has recently been a move away from the term "mental retardation," but no substitute has been agreed upon. The general consensus among activists and responders to surveys (advocates, clinicians, families, parents, or other professionals) is that the term has negative connotations although many concede that any substitute for the same population will also soon develop stigmatizing qualities. There is also fear among some that a name change will endanger entitlement programs, but the current momentum is to change the term.

3. **Related legislation.** SB 1381 (Pavley) is similar to this bill in that it would revise various statutes to delete references to "mentally retarded persons" and instead refer to "persons with an intellectual disability" or "intellectually disabled." SB 1381 would also state that as used in a state regulation, state publication, or other writing, the terms "mental retardation" and "mentally retarded person" have the same meaning as the terms "intellectual disability" and "person with intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning.

4. **Support.** Best Buddies California, the sponsor of this bill, writes that, while California is usually on the cutting edge of legislation, the majority of states have already changed their statutes to eliminate the "R-word" with the goal to eliminate a term that promotes a negative stereotype of intellectually disabled individuals. The Arc and United Cerebral Palsy in California states that eliminating the "R-word" in all usage is a high priority for the developmental disability community in order to build respect for people with intellectual disabilities and that, while the "R-word" was once intended to be a term of respect, times and terms have changed, and "R-word" now inflicts intentional or unintentional pain and is used in bullying and hate crimes.

5. **Proposed amendment.** To address the fiscal impact of implementation of this bill, the author has agreed to add following Page 79, Line 20: ***"(c) As used in a state regulation, state publication, or other writing, the terms "mental retardation" and "mentally retarded person" have the same meaning as the terms "intellectual disability" and "person with intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning."***

SUPPORT AND OPPOSITION:

Support: Best Buddies California (sponsor)
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California Disability Services Association
Dayle McIntosh Disability Resource Centers
Junior League of Orange County, California
North Los Angeles County Regional Center
Sacramento County Developmental Disabilities Planning and Advisory Council
Special Olympics Northern California
The Arc and United Cerebral Palsy in California

Oppose: None received.

-- END --

SENATE HEALTH COMMITTEE
Room 2191, 651-4111

BACKGROUND INFORMATION REQUEST

TO: ASSEMBLYMAN MANSOOR

RE: AB 2370

SUBJECT: Mental retardation: change of term to intellectual disabilities.

CONSULTANT: Scott Bain

The above bill has been referred to this Committee for consideration. Please complete the following questions. Include any supporting documentation.

- Hand-deliver a hard copy of the completed form and background materials to the Senate Health Committee, Capitol Room 2191, within 7 days of this request.
- E-mail this completed form and any electronic documents to the consultant listed above, Michael.Nguyen@sen.ca.gov, Joe.Parra@sen.ca.gov, and Tim.Conaghan@sen.ca.gov.

Background Request

1. **What does this bill do?**
   - *AB 2370 will replace in state law the terms "mental retardation" with "intellectual disability" and "mentally retarded" with "intellectually disabled".*
   - *Nothing in this act shall be construed as making changes to services being provided or eligibility standards in effect at the time of enactment.*
   - *In order to minimize costs to the state, change in terminology provided in this bill will only be made during the course of other necessary revisions or amendments.*
2. **What is the purpose of the bill, and what are the problems it is attempting to solve?**
   - *The purpose of this bill is to change this hurtful term, which is long overdue, as evident by the attached letters of support.*
3. **Author's statement of need for the bill. This will appear in the analysis exactly as provided.**
   - *Respectful and inclusive language is essential to the movement for dignity and humanity towards people with intellectual disabilities. However, much of society does not recognize the hurtful, dehumanizing effects of the word "retard(ed)" when improperly used. It is time to address the term "retard(ed)" and raise the consciousness of society to its hurtful effects.*
4. **Which state agencies are affected by this bill?**
   - *Business, Transportation and Housing Agency.*
   - *Corrections and Rehabilitation Agency*
   - *Health and Human Services Agency*
5. **Sponsor name and contact information.**
   - *Best Buddies California (Sponsor)*
     - *Patricia Evans, State Director. (310) 642-2620*
     - *Casey Kaneko, Platinum Advisors. (916) 442-0412*

BACKGROUND INFORMATION REQUEST SENATE HEALTH COMMITTEE

6. **Staff contact (include daytime, home and cell phone number).**
   - *Eric Dietz, (916) 319-2068-work. (760) 975-9493-cell.*
   - *Saulo Londono, (916) 319-2068-work. (714) 227-4009-cell.*
7. **Give summary of arguments in support or opposition.** Attach copies of letters in support and opposition in *alphabetical order.* E-mail an alphabetical list of support and opposition to Michael.Nguyen@sen.ca.gov.
   - *This bill provides an important change away from a term used to demean and hurt people with intellectual disabilities.*
   - *The pejorative forms, "retard" and "retarded" have been used widely in today's society to degrade and insult people with intellectual disabilities.*
   - *Eliminating this stigmatized, hurtful term in all usage is a high priority for the developmental disability community.*
   - *California is usually on the cutting edge of legislation, but in this case, we are playing catch-up.*
   - ***SUPPORT:***
     - *The Arc and United Cerebral Palsy in California*
     - *Association of Regional Center Agencies*
     - *Best Buddies California (Sponsor)*
     - *The California Disability Services Association*
     - *Dayle McIntosh Center*
     - *Special Olympics International*
     - *Special Olympics Northern California and Nevada*
   - ***OPPOSITION:***
     - *None on file*
8. **Please list any related prior legislation below.**
   - ***SB 1381*** *(2012) Senator Pavley*
     - *Replaces in state law the terms "mental retardation" and "mentally retarded person" with "intellectual disability" and "person with an intellectual disability."*
   - ***AB 1640*** *(2007) Assemblyman LaMalfa*
     - *Deleted the terms "idiot," "imbecility," and "lunatics" in state code and replaced those terms with "persons who are mentally incapacitated."*
   - ***S. 2781*** *(2010) "Rosa's Law*
     - *To change references in Federal law to mental retardation to references to an intellectual disability, and change references to a mentally retarded individual to references to an individual with an intellectual disability.*

Amendments

Do you plan on amending this bill prior to the hearing?

( ) YES, will amend. Provide a brief summary of planned amendments.

(X) NO, will not amend.

Amendments

- Submit one signed original *plus* 8 unsigned copies (must be in Legislative Counsel form) to the Committee Assistant in Senate Health, Capitol Room 2191.
- Due no later than 12 noon, 7 calendar days prior to the bill's hearing date.

Assembly Floor: 77-0 (04/16/2012)
(AYE: All Republicans)
Senate Health: xx-xx (6/13/12)
(AYE:; NO:; ABS:;)
Vote requirement: 21
Version Date: 06/06/2012

Quick Summary
Deletes in state law references to "mental retardation" or a "mentally retarded person" and instead replaces them with "intellectual disability" or "a person with an intellectual disability."

Note: Senator Strickland is a coauthor.

Analysis
Arguments in Support:
The author states, "California statutes currently reference the term 'mental retardation' or 'mentally retarded persons.' Such use propagates the demeaning stereotypes associated with the term. The state of California should not unnecessarily use a term that has negative stigmas and associations.

"Last year the Federal Government passed 'Rosa's Law,' which changed all federal legislation that referenced 'mental retardation' to 'intellectual disability.' New York and Maryland have also altered their state laws to reflect this change.

"This bill will change all references in California law from 'mental retardation' to 'intellectual disability.' By changing the language in our law, California will ensure that people with intellectual disabilities are portrayed with dignity.

"This bill will not change the coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions."

Arguments in Opposition:
While the goal of supporters -- updating outdated terminology that some may find hurtful or offensive -- may be supportable, it is far from certain that this effort requires its own bill. Why not wait and change the outdated terminology when other bills amending the relevant code sections come along?

Additionally, it is likely that in a few years the new terms required by AB 2370 will be used by some individuals in a pejorative manner. What will supporters do then? Introduce yet another bill with new terminology?

Other Issues:
The proposed amendment in the Health Committee analysis, if accepted by the author, will not change the prediction on this analysis.

Digest
Enancts the Shriver "R-Word" Act.

Deletes references to mental retardation or a mentally retarded person and instead replaces them with "intellectual disability" or "a person with an intellectual disability."

Provides that nothing in this act shall be construed as making changes to services being provided or eligibility standards in effect at the time of enactment.

States legislative intent that future statutory and administrative revisions to reflect the change in terminology provided for in this act shall be made only in the course of other necessary revisions or amendments, in order to minimize costs to the state.

Background
From the Senate Health Committee analysis:
The Resource Network International contracted with the Kansas University Center for the Study of Family, Neighborhood and Community Policy to do an in-depth study related to the past and current use of the term "mental retardation" in the context of government programs. Published in 2002, the study, entitled "Usage of the Term 'Mental Retardation:' Language, Image and Public Education," found there are many definitions of mental retardation but four are the most prevalent. The term "mental retardation" is used consistently in the United States far more than other terms and the next most consistent equivalent term is "intellectual disability," which is used in British Commonwealth countries and by the International Society for the Scientific Study of Intellectual Disabilities. There has recently been a move away from the term "mental retardation," but no substitute has been agreed upon. **The general consensus among activists and responders to surveys (advocates, clinicians, families, parents, or other professionals) is that the term has negative connotations although many concede that any substitute for the same population will also soon develop stigmatizing qualities. There is also fear among some that a name change will endanger entitlement programs, but the current momentum is to change the term.**

Related Legislation
SB 1381 (Pavley) [Senate Floor: 37-0 4/12/12 (AYE: All Republicans except; ABS: Runner)] is similar to this bill in that it would revise various statutes to delete references to "mentally retarded persons" and instead refer to

"persons with an intellectual disability" or "intellectually disabled." SB 1381 also states that as used in a state regulation, state publication, or other writing, the terms "mental retardation" and "mentally retarded person" have the same meaning as the terms "intellectual disability" and "person with intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning. *SB 1381 is currently in the Assembly Judiciary Committee.*

Support & Opposition Received

Support: Best Buddies California (sponsor)
Association of Regional Center Agencies
California Disability Services Association
Dayle McIntosh Disability Resource Centers
Junior League of Orange County, California
North Los Angeles County Regional Center
Sacramento County Developmental Disabilities Planning and Advisory Council
Special Olympics Northern California
The Arc and United Cerebral Palsy in California

Opposition: None

Senate Republican Policy Office/*Joe F. Parra*

AMENDED IN SENATE JUNE 20, 2012

AMENDED IN SENATE JUNE 6, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 2370

Introduced by Assembly Member Mansoor
(Coauthors: Assembly Members Ammiano, Beall, Hill, Perea, V. Manuel Pérez, Valadao, Wieckowski, and Yamada)
(Coauthors: Senators *Anderson*, Padilla, and Strickland)

February 24, 2012

An act to amend Sections 4502 and 17206.1 of the Business and Professions Code, to amend Section 1761 of the Civil Code, to amend Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401, and 51765 of the Education Code, to amend Sections 854.2, 6514, 12428, 12926, 14670.1, 14670.2, 14670.3, 14670.5, 14672.1, 14672.92, 16813, 16814, and 16816 of the Government Code, to amend Sections 1275.5, 1337.1, 1337.3, 13113, 51312, 110403, 123935, 125000, 127260, and 129395 of the Health and Safety Code, to amend Sections 10118, 10124, and 10203.4 of the Insurance Code, to amend Sections 1001.20, 1346, 1370.1, 1376, and 2962 of the Penal Code, to amend Section 1420 of the Probate Code, to amend Section 25276 of the Vehicle Code, and to amend Sections 4417, 4426, 4512, 4801, 5002, 5008, 5325, 5585.25, 6250, 6500, 6502, 6504, 6504.5, 6505, 6506, 6507, 6508, 6509, 6511, 6512, 6513, 6551, 6715, 6717, 6718, 6740, 6741, 7275, 7351, and 11014 of, to amend the heading of Article 2 (commencing with Section 6500) of Chapter 2 of, to amend the heading of Article 4 (commencing with Section 6715) of Chapter 3 of, and to amend the heading of Article 4 (commencing with Section 6740) of Chapter 4 of, Part 2 of Division 6 of, the Welfare and Institutions Code, relating to intellectual disabilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2370, as amended, Mansoor. Mental retardation: change of term to intellectual disabilities.

Existing federal Medicaid provisions require a state to describe its Medicaid program in its state plan, which is required by federal law to provide for, among other things, a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded.

Under existing law, various state statutes refer to mentally retarded persons in provisions relating to, among other things, services, commitment to state facilities, and criminal punishment.

This bill, which would be known as the Shriver "R-Word" Act, would revise various statutes to, instead, refer to a person with an intellectual disability. The bill would also state the intent of the Legislature not to make a change to services or the eligibility for services.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. This act shall be known, and may be cited, as the Shriver "R-Word" Act.

SEC. 2. Section 4502 of the Business and Professions Code is amended to read:

4502. As used in this chapter, "psychiatric technician" means any person who, for compensation or personal profit, implements procedures and techniques which involve understanding of cause and effect and which are used in the care, treatment, and rehabilitation of persons who are mentally ill, emotionally disturbed, or have intellectual disabilities and who have one or more of the following:

(a) Direct responsibility for administering or implementing specific therapeutic procedures, techniques, treatments, or medications with the aim of enabling recipients or patients to make optimal use of their therapeutic regime, their social and personal resources, and their residential care.

(b) Direct responsibility for the application of interpersonal and technical skills in the observation and recognition of symptoms

and reactions of recipients or patients, for the accurate recording of such symptoms and reactions, and for the carrying out of treatments and medications as prescribed by a licensed physician and surgeon or a psychiatrist.

The psychiatric technician in the performance of such procedures and techniques is responsible to the director of the service in which his or her duties are performed. The director may be a licensed physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.

Nothing herein shall authorize a licensed psychiatric technician to practice medicine or surgery or to undertake the prevention, treatment or cure of disease, pain, injury, deformity, or mental or physical condition in violation of the law.

SEC. 3. Section 17206.1 of the Business and Professions Code is amended to read:

17206.1. (a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, any person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) “Senior citizen” means a person who is 65 years of age or older.

(2) “Disabled person” means any person who has a physical or mental impairment that substantially limits one or more major life activities.

(A) As used in this subdivision, “physical or mental impairment” means any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, and emotional illness.

(B) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) Any court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as may be necessary to restore to any senior citizen or disabled person any money or property, real or personal, which may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of any civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over any civil penalty

imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

SEC. 4. Section 1761 of the Civil Code is amended to read:

1761. As used in this title:

(a) "Goods" means tangible chattels bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property.

(b) "Services" means work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods.

(c) "Person" means an individual, partnership, corporation, limited liability company, association, or other group, however organized.

(d) "Consumer" means an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

(e) "Transaction" means an agreement between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.

(f) "Senior citizen" means a person who is 65 years of age or older.

(g) "Disabled person" means any person who has a physical or mental impairment that substantially limits one or more major life activities.

(1) As used in this subdivision, "physical or mental impairment" means any of the following:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

SEC. 78. Section 11014 of the Welfare and Institutions Code is amended to read:

11014. To the extent that any provision of this part prohibits the granting of aid to persons confined in a public institution for tuberculosis or mental disease or as a result of the diagnosis of tuberculosis, intellectual disability, or psychosis permitted by federal law, such provision shall be inoperative.

SEC. 79. (a) Nothing in this act shall be construed as making changes to services being provided or eligibility standards in effect at the time of enactment.

(b) It is the intent of the Legislature that future statutory and administrative revisions to reflect the change in terminology provided for in this act shall be made only in the course of other necessary revisions or amendments, in order to minimize costs to the state.

(c) As used in a state regulation, state publication, or other writing, the terms "mental retardation" and "mentally retarded person" have the same meaning as the terms "intellectual disability" and "person with an intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning.

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SENATE FLOOR AMENDMENTS COMMITTEE ANALYSIS

F
8/15
JP

Bill No: AB 2370
Author: Mansoor
RN: 1221241
Set: 1
Submitted by: Pavley

SUBJECT OF BILL: Mental retardation: change of term to intellectual disabilities

Subject of Amendments: Mental retardation: change of term to intellectual disabilities

Amendments are: Technical / Substantive / Re-write Bill / New Bill

Were these amendments discussed in committee? No
If yes, were they defeated?

Likely opposition to amendments? No
If yes, from whom?

Purpose of Amendments: To avoid chaptering conflicts and to provide clarification and consistency.

ANALYSIS:
The amendments will make various conforming changes to this bill to make the language identical to SB 1381 (Pavley) and to prevent chaptering conflicts with other bills. The changes also provide clarification and consistency by, for example, using person-first language (changing "intellectually disabled person" to "person with an intellectual disability").

By: Ben Rubin/Senate Health Committee
Date: August 14, 2012

**** END ****

AMENDED IN SENATE AUGUST 15, 2012

AMENDED IN SENATE JUNE 20, 2012

AMENDED IN SENATE JUNE 6, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 2370

Introduced by Assembly Member Mansoor
(Coauthors: Assembly Members Ammiano, Beall, Hill, Perea, V. Manuel Pérez, Valadao, Wieckowski, and Yamada)
(Coauthors: Senators Anderson, Padilla, and Strickland)

February 24, 2012

An act to amend Sections 4502 and 17206.1 of the Business and Professions Code, to amend Section 1761 of the Civil Code, to amend Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401, and 51765 of the Education Code, to amend Sections 854.2, 6514, 12428, 12926, 14670.1, 14670.2, 14670.3, 14670.5, 14672.1, 14672.92, 16813, 16814, and 16816 of the Government Code, to amend Sections 1275.5, 1337.1, 1337.3, 13113, 51312, 110403, 123935, 125000, 127260, and 129395 of the Health and Safety Code, to amend Sections 10118, 10124, and 10203.4 of the Insurance Code, to amend Sections 1001.20, 1346, 1370.1, 1376, and 2962 of the Penal Code, to amend Section 1420 of the Probate Code, to amend Section 25276 of the Vehicle Code, and to amend Sections 4417, 4426, 4512, 4801, 5002, 5008, 5325, 5585.25, 6250, ~~6500, 6502, 6504, 6504.5,~~ 6505, ~~6506, 6507, 6508, 6509, 6511, 6512,~~ 6513, 6551, 6715, 6717, ~~6718,~~ 6740, 6741, 7275, 7351, and 11014 of, to amend the heading of Article 2 (commencing with Section 6500) of Chapter 2 of, to amend the heading of Article 4 (commencing with Section 6715) of Chapter 3 of, and to amend the heading of Article 4

(commencing with Section 6740) of Chapter 4 of, Part 2 of Division 6 of, the Welfare and Institutions Code, relating to intellectual disabilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2370, as amended, Mansoor. Mental retardation: change of term to intellectual disabilities.

Existing federal Medicaid provisions require a state to describe its Medicaid program in its state plan, which is required by federal law to provide for, among other things, a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded.

Under existing law, various state statutes refer to mentally retarded persons in provisions relating to, among other things, services, commitment to state facilities, and criminal punishment.

This bill, which would be known as the Shriver "R-Word" Act, would revise various statutes to, instead, refer to a person with an intellectual disability. The bill would also state the intent of the Legislature ~~not to make a change to services or the eligibility for services~~ *that the bill not be construed to change the coverage, eligibility, rights, responsibilities, or substantive definitions referred to in the amended provisions of the bill.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. This act shall be known, and may be cited, as the Shriver "R-Word" Act.

SEC. 2. Section 4502 of the Business and Professions Code is amended to read:

4502. As used in this chapter, "psychiatric technician" means any person who, for compensation or personal profit, implements procedures and techniques ~~which~~ *that* involve understanding of cause and effect and ~~which~~ *that* are used in the care, treatment, and rehabilitation of ~~persons who are~~ mentally ill~~,~~ *or* emotionally disturbed *persons,* or ~~have~~ *persons with* intellectual disabilities ~~and who have~~*, and who has* one or more of the following:

(a) Direct responsibility for administering or implementing specific therapeutic procedures, techniques, treatments, or medications with the aim of enabling recipients or patients to make optimal use of their therapeutic regime, their social and personal resources, and their residential care.

(b) Direct responsibility for the application of interpersonal and technical skills in the observation and recognition of symptoms and reactions of recipients or patients, for the accurate recording of ~~such~~ *these* symptoms and reactions, and for the carrying out of treatments and medications as prescribed by a licensed physician and surgeon or a psychiatrist.

The psychiatric technician in the performance of ~~such~~ *these* procedures and techniques is responsible to the director of the service in which his or her duties are performed. The director may be a licensed physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.

Nothing herein shall authorize a licensed psychiatric technician to practice medicine or surgery or to undertake the prevention, treatment, or cure of disease, pain, injury, deformity, or mental or physical condition in violation of the law.

SEC. 3. Section 17206.1 of the Business and Professions Code is amended to read:

17206.1. (a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, ~~any~~ *a* person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) “Senior citizen” means a person who is 65 years of age or older.

(2) “Disabled person” means ~~any~~ *a* person who has a physical or mental impairment that substantially limits one or more major life activities.

(A) As used in this subdivision, "physical or mental impairment" means any of the following:

(i) ~~Any~~ *A* physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) ~~Any~~ *A* mental or psychological disorder, ~~such as~~ *including* intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Physical or mental impairment" includes, but is not limited to, ~~such~~ diseases and conditions ~~as~~ *including* orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, and emotional illness.

(B) "Major life activities" means functions ~~such as~~ *that include* caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer *any of the following*: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) ~~Any~~ *A* court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as ~~may be~~ necessary to restore to ~~any~~ *a* senior citizen or disabled person ~~any~~ money or property, real or personal, ~~which~~ *that* may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of ~~any~~ *a* civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over ~~any~~ *a* civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

SEC. 4. Section 1761 of the Civil Code is amended to read:

1761. As used in this title:

(a) "Goods" means tangible chattels bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property.

(b) "Services" means work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods.

(c) "Person" means an individual, partnership, corporation, limited liability company, association, or other group, however organized.

(d) "Consumer" means an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

(e) "Transaction" means an agreement between a consumer and ~~any other~~ *another* person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.

(f) "Senior citizen" means a person who is 65 years of age or older.

(g) "Disabled person" means ~~any~~ *a* person who has a physical or mental impairment that substantially limits one or more major life activities.

person" have the same meaning as the terms "intellectual disability" and "person with an intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning.

(d) For purposes of this section, "person" includes child, defendant, individual, minor, pupil, and other words used to describe a type of person.

SEC. 69. Any section of any act enacted by the Legislature during the 2012 calendar year, except for Senate Bill 1381, that takes effect on or before January 1, 2013, and that amends, amends and renumbers, adds, repeals and adds, or repeals Section 51765 of the Education Code or Section 12926 of the Government Code, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2012 calendar year and takes effect on or before January 1, 2013, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

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SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

AB 2370

THIRD READING

Bill No: AB 2370
Author: Mansoor (R), et al.
Amended: 8/15/12 in Senate
Vote: 21

SENATE HEALTH COMMITTEE: 7-0, 6/13/12
AYES: Hernandez, Harman, Alquist, Anderson, DeSaulnier, Rubio, Wolk
NO VOTE RECORDED: Blakeslee, De León

ASSEMBLY FLOOR: 77-0, 4/16/12(Consent) - See last page for vote

SUBJECT: Mental retardation: change of term to intellectual disabilities

SOURCE: Best Buddies California

DIGEST: This bill deletes in state law references to "mental retardation" or a "mentally retarded person" and instead replaces them with "intellectual disability" or "a person with an intellectual disability."

Senate Floor Amendments of 8/15/12 av~~oid chaptering issues.~~

ANALYSIS: Existing law refers to "mental retardation" or "a mentally retarded person" in numerous state statutory provisions, including provisions relating to psychiatric technician regulation, the state's unfair competition statute, educational and social services, commitment to state facilities, and criminal punishment.

This bill:

1. Deletes references to mental retardation or a mentally retarded person and instead replaces them with "intellectual disability" or "a person with an intellectual disability."

2. Prohibits standards in effect at the time of enactment from being construed as making a substantive change in law, a change of services being provided, or eligibility.

3. States that, as used in a state regulation, state publication, or other writing, the terms "mental retardation" and "mentally retarded person" have the same meaning as the terms "intellectual disability" and "person with intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning."

4. Shall be known as the Shriver "R-Word" Act.

Background

The Resource Network International contracted with the Kansas University Center for the Study of Family, Neighborhood and Community Policy to do an in-depth study related to the past and current use of the term "mental retardation" in the context of government programs. Published in 2002, the study, entitled "Usage of the Term 'Mental Retardation:' Language, Image and Public Education," found there are many definitions of mental retardation but four are the most prevalent. The term "mental retardation" is used consistently in the United States far more than other terms and the next most consistent equivalent term is "intellectual disability," which is used in British Commonwealth countries and by the International Society for the Scientific Study of Intellectual Disabilities. There has recently been a move away from the term "mental retardation," but no substitute has been agreed upon. The general consensus among activists and responders to surveys (advocates, clinicians, families, parents, or other professionals) is that the term has negative connotations although many concede that any substitute for the same population will also soon develop stigmatizing qualities. There is also fear among some that a name change will endanger entitlement programs, but the current momentum is to change the term.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

CONTINUED

SUPPORT: (Verified 8/17/12)

Best Buddies California (source)
Association of Regional Center Agencies
California Disability Services Association
Dayle McIntosh Disability Resource Centers
Junior League of Orange County, California
North Los Angeles County Regional Center
Sacramento County Developmental Disabilities Planning and Advisory Council
Special Olympics Northern California
The Arc and United Cerebral Palsy in California

ARGUMENTS IN SUPPORT: Best Buddies California, the sponsor of this bill, writes that, while California is usually on the cutting edge of legislation, the majority of states have already changed their statutes to eliminate the "R-word" with the goal to eliminate a term that promotes a negative stereotype of intellectually disabled individuals. The Arc and United Cerebral Palsy in California states that eliminating the "R-word" in all usage is a high priority for the developmental disability community in order to build respect for people with intellectual disabilities and that, while the "R-word" was once intended to be a term of respect, times and terms have changed, and "R-word" now inflicts intentional or unintentional pain and is used in bullying and hate crimes.

ASSEMBLY FLOOR: 77-0, 4/16/12
AYES: Achadjian, Alejo, Allen, Ammiano, Atkins, Beall, Bill Berryhill, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Chesbro, Conway, Cook, Dickinson, Donnelly, Eng, Feuer, Fletcher, Fong, Fuentes, Beth Gaines, Galgiani, Garrick, Gatto, Gordon, Gorell, Grove, Hagman, Halderman, Hall, Harkey, Hayashi, Roger Hernández, Hill, Huber, Hueso, Huffman, Jeffries, Jones, Knight, Lara, Logue, Bonnie Lowenthal, Ma, Mansoor, Mendoza, Miller, Mitchell, Monning, Morrell, Nestande, Nielsen, Norby, Olsen, Pan, Perea, V. Manuel Pérez, Portantino, Silva, Skinner, Smyth, Solorio, Swanson, Torres, Valadao, Wagner, Wieckowski, Williams, Yamada, John A. Pérez

CONTINUED

NO VOTE RECORDED: Cedillo, Davis, Furutani

CTW:nl 8/17/12 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** **END** ****

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 2370
Author: Mansoor (R), et al.
Amended: 8/15/12 in Senate
Vote: 21

SENATE HEALTH COMMITTEE: 7-0, 6/13/12
AYES: Hernandez, Harman, Alquist, Anderson, DeSaulnier, Rubio, Wolk
NO VOTE RECORDED: Blakeslee, De León

ASSEMBLY FLOOR: 77-0, 4/16/12(Consent) - See last page for vote

SUBJECT: Mental retardation: change of term to intellectual disabilities

SOURCE: Best Buddies California

DIGEST: This bill deletes in state law references to "mental retardation" or a "mentally retarded person" and instead replaces them with "intellectual disability" or "a person with an intellectual disability."

Senate Floor Amendments of 8/15/12 make various conforming changes to this bill to make the language identical to SB 1381 (Pavley) and to prevent chaptering conflicts with other bills. The changes also provide clarification and consistency by, for example, using person-first language (changing "intellectually disabled person" to "person with an intellectual disability").

ANALYSIS: Existing law refers to "mental retardation" or "a mentally retarded person" in numerous state statutory provisions, including provisions relating to psychiatric technician regulation, the state's unfair competition statute, educational and social services, commitment to state facilities, and criminal punishment.

CONTINUED

This bill:

1. Deletes references to mental retardation or a mentally retarded person and instead replaces them with "intellectual disability" or "a person with an intellectual disability."

2. Prohibits standards in effect at the time of enactment from being construed as making a substantive change in law, a change of services being provided, or eligibility.

3. States that, as used in a state regulation, state publication, or other writing, the terms "mental retardation" and "mentally retarded person" have the same meaning as the terms "intellectual disability" and "person with intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning."

4. Shall be known as the Shriver "R-Word" Act.

Background

The Resource Network International contracted with the Kansas University Center for the Study of Family, Neighborhood and Community Policy to do an in-depth study related to the past and current use of the term "mental retardation" in the context of government programs. Published in 2002, the study, entitled "Usage of the Term 'Mental Retardation:' Language, Image and Public Education," found there are many definitions of mental retardation but four are the most prevalent. The term "mental retardation" is used consistently in the United States far more than other terms and the next most consistent equivalent term is "intellectual disability," which is used in British Commonwealth countries and by the International Society for the Scientific Study of Intellectual Disabilities. There has recently been a move away from the term "mental retardation," but no substitute has been agreed upon. The general consensus among activists and responders to surveys (advocates, clinicians, families, parents, or other professionals) is that the term has negative connotations although many concede that any substitute for the same population will also soon develop stigmatizing qualities. There is also fear among some that a name change will endanger entitlement programs, but the current momentum is to change the term.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

CONTINUED

SUPPORT: (Verified 8/17/12)

Best Buddies California (source)
Association of Regional Center Agencies
California Disability Services Association
Dayle McIntosh Disability Resource Centers
Junior League of Orange County, California
North Los Angeles County Regional Center
Sacramento County Developmental Disabilities Planning and Advisory Council
Special Olympics Northern California
The Arc and United Cerebral Palsy in California

ARGUMENTS IN SUPPORT: Best Buddies California, the sponsor of this bill, writes that, while California is usually on the cutting edge of legislation, the majority of states have already changed their statutes to eliminate the "R-word" with the goal to eliminate a term that promotes a negative stereotype of intellectually disabled individuals. The Arc and United Cerebral Palsy in California states that eliminating the "R-word" in all usage is a high priority for the developmental disability community in order to build respect for people with intellectual disabilities and that, while the "R-word" was once intended to be a term of respect, times and terms have changed, and "R-word" now inflicts intentional or unintentional pain and is used in bullying and hate crimes.

ASSEMBLY FLOOR: 77-0, 4/16/12
AYES: Achadjian, Alejo, Allen, Ammiano, Atkins, Beall, Bill Berryhill, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Chesbro, Conway, Cook, Dickinson, Donnelly, Eng, Feuer, Fletcher, Fong, Fuentes, Beth Gaines, Galgiani, Garrick, Gatto, Gordon, Gorell, Grove, Hagman, Halderman, Hall, Harkey, Hayashi, Roger Hernández, Hill, Huber, Hueso, Huffman, Jeffries, Jones, Knight, Lara, Logue, Bonnie Lowenthal, Ma, Mansoor, Mendoza, Miller, Mitchell, Monning, Morrell, Nestande, Nielsen, Norby, Olsen, Pan, Perea, V. Manuel Pérez, Portantino, Silva, Skinner, Smyth, Solorio, Swanson, Torres, Valadao, Wagner, Wieckowski, Williams, Yamada, John A. Pérez

CONTINUED

NO VOTE RECORDED: Cedillo, Davis, Furutani

CTW:nl 8/20/12 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** **END** ****

Assembly Floor: 77-0 (04/16/2012)
(AYE: All Republicans)
Senate Health: 7-0 (6/13/12)
(AYE: Harman, Anderson; ABS: Blakeslee)
Vote requirement: 21
Version Date: 08/15/2012

Quick Summary
Deletes in state law references to "mental retardation" or a "mentally retarded person" and instead replaces them with "intellectual disability" or a "person with an intellectual disability."

Note: Senators Anderson and Strickland are coauthors.

Analysis
Arguments in Support:
The author states, "California statutes currently reference the term 'mental retardation' or 'mentally retarded persons.' Such use propagates the demeaning stereotypes associated with the term. The state of California should not unnecessarily use a term that has negative stigmas and associations.

"Last year the Federal Government passed 'Rosa's Law,' which changed all federal legislation that referenced 'mental retardation' to 'intellectual disability.' New York and Maryland have also altered their state laws to reflect this change.

"This bill will change all references in California law from 'mental retardation' to 'intellectual disability.' By changing the language in our law, California will ensure that people with intellectual disabilities are portrayed with dignity.

"This bill will not change the coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions."

Arguments in Opposition:
While the goal of supporters -- updating outdated terminology that some may find hurtful or offensive -- may be supportable, it is far from certain that this effort requires its own bill. Why not wait and change the outdated terminology when other bills amending the relevant code sections come along?

Additionally, it is likely that in a few years the new terms required by AB 2370 will be used by some individuals in a pejorative manner. What will supporters do then? Introduce yet another bill with new terminology?

Digest

Enacts the Shriver "R-Word" Act.

Deletes references to mental retardation or a mentally retarded person and instead replaces them with "intellectual disability" or "a person with an intellectual disability."

Provides that nothing in this act shall be construed as making changes to services being provided or eligibility standards in effect at the time of enactment.

States legislative intent that future statutory and administrative revisions to reflect the change in terminology provided for in this act shall be made only in the course of other necessary revisions or amendments, in order to minimize costs to the state.

Provides that, as used in a state regulation, state publication, or other writing, the terms "mental retardation" and "mentally retarded person" have the same meaning as the terms "intellectual disability" and "person with an intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning.

Addresses potential chaptering conflicts with other bills.

Background

From the Senate Health Committee analysis:
The Resource Network International contracted with the Kansas University Center for the Study of Family, Neighborhood and Community Policy to do an in-depth study related to the past and current use of the term "mental retardation" in the context of government programs. Published in 2002, the study, entitled "Usage of the Term 'Mental Retardation:' Language, Image and Public Education," found there are many definitions of mental retardation but four are the most prevalent. The term "mental retardation" is used consistently in the United States far more than other terms and the next most consistent equivalent term is "intellectual disability," which is used in British Commonwealth countries and by the International Society for the Scientific Study of Intellectual Disabilities. There has recently been a move away from the term "mental retardation," but no substitute has been agreed upon. **The general consensus among activists and responders to surveys (advocates, clinicians, families, parents, or other professionals) is that the term has negative connotations although many concede that any substitute for the same population will also soon develop stigmatizing qualities. There is also fear among some that a name change will endanger entitlement programs, but the current momentum is to change the term.**

Related Legislation

SB 1381 (Pavley) [Senate Floor: 37-0 4/12/12 (AYE: All Republicans except; ABS: Runner)] is similar to this bill in that it would revise various statutes to delete references to "mentally retarded persons" and instead refer to "persons with an intellectual disability" or "intellectually disabled." SB 1381 also states that as used in a state regulation, state publication, or other writing, the terms "mental retardation" and "mentally retarded person" have the same meaning as the terms "intellectual disability" and "person with intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning. *SB 1381 passed out of the Assembly Judiciary Committee 10-0 on June 19, 2012.*

Support & Opposition Received

Support: Best Buddies California (sponsor)
Association of Regional Center Agencies
California Disability Services Association
Dayle McIntosh Disability Resource Centers
Junior League of Orange County, California
North Los Angeles County Regional Center
Sacramento County Developmental Disabilities Planning and Advisory Council
Special Olympics Northern California
The Arc and United Cerebral Palsy in California

Opposition: None

Senate Republican Policy Office/*Joe F. Parra*

SENATE FLOOR AMENDMENTS COMMITTEE ANALYSIS

Bill No: AB 2370
Author: Mansoor
RN: 1224003
Set: 1
Submitted by: Pavley

SUBJECT OF BILL: Mental retardation: change of term to intellectual disabilities

Subject of Amendments: Mental retardation: change of term to intellectual disabilities

Amendments are: Technical / Substantive / Re-write Bill / New Bill

Were these amendments discussed in committee? No
If yes, were they defeated?

Likely opposition to amendments? No
If yes, from whom?

Purpose of Amendments: To avoid chaptering conflicts.

ANALYSIS: The amendments will make various technical and conforming changes to this bill to make the language identical to SB 1381 (Pavley) and to prevent chaptering conflicts with SB 1009 (Committee on Budget and Fiscal Review), Chapter 34, Statutes of 2012.

By: Senate Health/Ben Rubin
Date: August 29, 2012

**** END ****

AMENDED IN SENATE AUGUST 29, 2012

AMENDED IN SENATE AUGUST 15, 2012

AMENDED IN SENATE JUNE 20, 2012

AMENDED IN SENATE JUNE 6, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 2370

Introduced by Assembly Member Mansoor
(Coauthors: Assembly Members Ammiano, Beall, Hill, Perea, V. Manuel Pérez, Valadao, Wieckowski, and Yamada)
(Coauthors: Senators Anderson, Padilla, and Strickland)

February 24, 2012

An act to amend Sections 4502 and 17206.1 of the Business and Professions Code, to amend Section 1761 of the Civil Code, to amend Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401, and 51765 of the Education Code, to amend Sections 854.2, 6514, 12428, 12926, 14670.1, 14670.2, 14670.3, 14670.5, 14672.1, 14672.92, 16813, 16814, and 16816 of the Government Code, to amend Sections 1275.5, 1337.1, 1337.3, 13113, 51312, 110403, 123935, 125000, 127260, and 129395 of the Health and Safety Code, to amend Sections 10118, 10124, and 10203.4 of the Insurance Code, to amend Sections 1001.20, 1346, 1370.1, 1376, and 2962 of the Penal Code, to amend Section 1420 of the Probate Code, to amend Section 25276 of the Vehicle Code, and to amend Sections 4417, 4426, 4512, 4801, 5002, 5008, 5325, 5585.25, 6250, 6505, 6513, 6551, 6715, 6717, 6740, 6741, 7275, 7351, and 11014 of, to amend the heading of Article 2 (commencing with Section 6500) of Chapter 2 of, to amend the heading of Article 4 (commencing with

Section 6715) of Chapter 3 of, and to amend the heading of Article 4 (commencing with Section 6740) of Chapter 4 of, Part 2 of Division 6 of, the Welfare and Institutions Code, relating to intellectual disabilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2370, as amended, Mansoor. Mental retardation: change of term to intellectual disabilities.

Existing federal Medicaid provisions require a state to describe its Medicaid program in its state plan, which is required by federal law to provide for, among other things, a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded.

Under existing law, various state statutes refer to mentally retarded persons in provisions relating to, among other things, services, commitment to state facilities, and criminal punishment.

This bill, which would be known as the Shriver "R-Word" Act, would revise various statutes to, instead, refer to a person with an intellectual disability. The bill would also state the intent of the Legislature that the bill not be construed to change the coverage, eligibility, rights, responsibilities, or substantive definitions referred to in the amended provisions of the bill.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. This act shall be known, and may be cited, as the Shriver "R-Word" Act.

SEC. 2. Section 4502 of the Business and Professions Code is amended to read:

4502. As used in this chapter, "psychiatric technician" means any person who, for compensation or personal profit, implements procedures and techniques that involve understanding of cause and effect and that are used in the care, treatment, and rehabilitation of mentally ill or emotionally disturbed persons, or persons with intellectual disabilities, and who has one or more of the following:

(a) Direct responsibility for administering or implementing specific therapeutic procedures, techniques, treatments, or

medications with the aim of enabling recipients or patients to make optimal use of their therapeutic regime, their social and personal resources, and their residential care.

(b) Direct responsibility for the application of interpersonal and technical skills in the observation and recognition of symptoms and reactions of recipients or patients, for the accurate recording of these symptoms and reactions, and for the carrying out of treatments and medications as prescribed by a licensed physician and surgeon or a psychiatrist.

The psychiatric technician in the performance of these procedures and techniques is responsible to the director of the service in which his or her duties are performed. The director may be a licensed physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.

Nothing herein shall authorize a licensed psychiatric technician to practice medicine or surgery or to undertake the prevention, treatment, or cure of disease, pain, injury, deformity, or mental or physical condition in violation of the law.

SEC. 3. Section 17206.1 of the Business and Professions Code is amended to read:

17206.1. (a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, a person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) "Senior citizen" means a person who is 65 years of age or older.

(2) "Disabled person" means a person who has a physical or mental impairment that substantially limits one or more major life activities.

(A) As used in this subdivision, "physical or mental impairment" means any of the following:

(i) A physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) A mental or psychological disorder, including intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Physical or mental impairment" includes, but is not limited to, diseases and conditions including orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, and emotional illness.

(B) "Major life activities" means functions that include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer any of the following: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) A court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as necessary to

restore to a senior citizen or disabled person money or property, real or personal, that may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of a civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over a civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

SEC. 4. Section 1761 of the Civil Code is amended to read:

1761. As used in this title:

(a) "Goods" means tangible chattels bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property.

(b) "Services" means work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods.

(c) "Person" means an individual, partnership, corporation, limited liability company, association, or other group, however organized.

(d) "Consumer" means an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

(e) "Transaction" means an agreement between a consumer and another person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.

(f) "Senior citizen" means a person who is 65 years of age or older.

(g) "Disabled person" means a person who has a physical or mental impairment that substantially limits one or more major life activities.

(1) As used in this subdivision, "physical or mental impairment" means any of the following:

adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

O

File Item #
AB 910 (Karnette)
None

Assembly Floor: 71-1 (5/24/07)
(AYE: All Republicans except; NO: Anderson; ABS: Gaines, Garrick, Huff, Jeffries, Niello)
Senate Health: 7-2 (6/20/07)
(AYE: Maldonado, Wyland; NO: Aanestad, Cox)
Senate Judiciary: 3-2 (7/10/07)
(NO: Harman, Ackerman)
Senate Appropriations: 9-2 (08/22/07)
(NO: Cox, Ashburn; ABS: Aanestad, Battin, Dutton, Runner, Wyland)
Vote requirement: 21
Version Date: 8/28/07

Quick Summary
Revises one of the two criteria a dependent child of a subscriber or insured must meet if the subscriber or insured wishes to keep the dependent eligible for health coverage under the subscriber's or insured's coverage after the dependent reaches the age beyond which he/she would normally cease to be considered a dependent. The criterion is changed from "incapable of self-sustaining employment by reason of *mental retardation or physical handicap*" to "incapable of self-sustaining employment by reason of *a physically or mentally disabling injury, illness, or condition.*"

The "None" prediction is based on the fact that, while the author's goal – ensuring continued private health coverage for physically and mentally disabled adult dependents – may be laudable, there is no indication that the goal is not being achieved under current law.

Fiscal Effect

MINOR STATE COSTS

Minor/absorbable costs for the Department of Managed Health Care to ensure compliance with the requirements of the bill.

Fiscal Consultant: Anissa Nachman

Analysis

Arguments in Support:
According to the California Council of Community Mental Health Agencies (CCCMHA), "This bill seeks to change the definition to include disabled dependents who are incapable of self-sustaining employment by reason of a mental disability including mental illness or a physical disability ... The concern is that the current definition does not adequately cover all disabled dependents who are in need of support, possibly including a person with severe schizophrenia, for example."

The National Alliance for the Mentally Ill – California (NAMI California) writes, "AB 910 will help ensure continued health care coverage for disabled mentally ill adults unable to support themselves."

Protection and Advocacy, Inc. (PAI) states, "Because of the shrinking pool of Medi-Cal providers, particularly with respect to specialists depended upon by persons with disabilities, protecting access to providers through private health benefit plans reduces the demand burden under the Medi-Cal program."

Arguments in Opposition:
AB 910 is unnecessary. While the terms "mental retardation" and "physical handicap" may be somewhat outdated, the author has provided no evidence that either health insurers or health care service plans reject continuation coverage for adult disabled dependents.

Digest
Revises the eligibility criteria for dependents who reach a limiting age to continue health coverage under a subscriber, member, or policyholder's coverage from those who are incapable of self-sustaining employment by reason of "mental retardation or physical handicap" to those who are incapable of self-sustaining employment by reason of "a physically or mentally disabling injury, illness, or condition," provided they also meet other criteria specified in current law.

Requires health care service plans and insurers to send the subscriber, member, or policyholder a notice of termination at least 90 days prior to the date the child attains the limiting age. The notice must let the subscriber, member, or policyholder know that the dependent child's coverage will terminate upon attainment of the limiting age unless they submit proof of the required criteria within 60 days of the date of receipt of a notification.

Requires plans and insurers to make a determination as to whether the dependent child meets the criteria for continuation of coverage before the child reaches the limiting age, or continue coverage pending its determination.

Requires a subsequent plan or insurer, when a subscriber, member or policyholder changes carriers to another plan or insurer, to continue to provide

coverage for the dependent child subject to the plan or insurer's ability to request information annually about the child to determine if he or she continues to satisfy the criteria for the continued coverage described above.

Permits the new plan or insurer to request information about the dependent child initially and not more frequently than annually thereafter.

Requires the insured, policyholder or subscriber to submit information requested by the new insurer or plan within 60 days of receiving the request.

Extends, in the context of court-ordered child support, the responsibility of the parent who provides health insurance coverage for a supported child to seek continuation of coverage for the child upon attainment of limiting age if the child meets the criteria specified above, and the health coverage is available at no cost or reasonable cost to the parent or parents, as applicable.

Background

Most individual and group health coverage regulated by either the Department of Managed Health Care or the Department of Insurance set a "limiting age" for coverage of dependent children, at which time they are no longer considered dependents. Plans and insurers set the limiting age in the policy, often at age 19, but the contract may allow a child enrolled in college to stay on the policy as a dependent longer, perhaps until age 23 or 24. However, for "mentally retarded or physically handicapped children" who remain "chiefly dependent" on the subscriber, member, or policyholder for support and maintenance and who are incapable of self-sustaining employment, existing law prohibits plans and insurers from terminating their coverage subject to submission of proof of incapacity and dependency.

Support & Opposition Received

Support: United Disabled for Economic Security (sponsor); American Federation of State, County and Municipal Employees; Association of Regional Center Agencies; California Council of Community Mental Health Agencies; Health Access California; Mental Health Association in California; National Alliance on Mental Illness, California; Protection and Advocacy, Inc.

Opposition: None.

Senate Republican Office of Policy/*Joe Parra/Mike Petersen*

SENATE RULES COMMITTEE AB 2370
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1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 2370
Author: Mansoor (R), et al.
Amended: 8/29/12 in Senate
Vote: 21

SENATE HEALTH COMMITTEE: 7-0, 6/13/12
AYES: Hernandez, Harman, Alquist, Anderson, DeSaulnier, Rubio, Wolk
NO VOTE RECORDED: Blakeslee, De León

SENATE FLOOR: 38-0, 8/21/12
AYES: Alquist, Anderson, Berryhill, Blakeslee, Calderon, Cannella, Corbett, Correa, De León, DeSaulnier, Dutton, Emmerson, Evans, Fuller, Gaines, Hancock, Hernandez, Huff, Kehoe, La Malfa, Leno, Lieu, Liu, Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Rubio, Simitian, Steinberg, Strickland, Vargas, Walters, Wolk, Wright, Wyland, Yee
NO VOTE RECORDED: Harman, Runner

ASSEMBLY FLOOR: 75-0, 8/24/12 - See last page for vote

SUBJECT: Mental retardation: change of term to intellectual disabilities

SOURCE: Best Buddies California

DIGEST: This bill deletes in state law references to "mental retardation" or a "mentally retarded person" and instead replaces them with "intellectual disability" or "a person with an intellectual disability."

Senate Floor Amendments of 8/29/12 make further technical and conforming changes to this bill to make the language identical to SB 1381 (Pavley) and to prevent chaptering conflicts with SB 1009 (Senate Budget and Fiscal Review Committee), Chapter 34, Statutes of 2012.

CONTINUED

Senate Floor Amendments of 8/15/12 make various conforming changes to this bill to make the language identical to SB 1381 (Pavley) and to prevent chaptering conflicts with other bills. The changes also provide clarification and consistency by, for example, using person-first language (changing "intellectually disabled person" to "person with an intellectual disability").

ANALYSIS: Existing law refers to "mental retardation" or "a mentally retarded person" in numerous state statutory provisions, including provisions relating to psychiatric technician regulation, the state's unfair competition statute, educational and social services, commitment to state facilities, and criminal punishment.

This bill:

1. Deletes references to mental retardation or a mentally retarded person and instead replaces them with "intellectual disability" or "a person with an intellectual disability."

2. Prohibits standards in effect at the time of enactment from being construed as making a substantive change in law, a change of services being provided, or eligibility.

3. States that, as used in a state regulation, state publication, or other writing, the terms "mental retardation" and "mentally retarded person" have the same meaning as the terms "intellectual disability" and "person with intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning."

4. Shall be known as the Shriver "R-Word" Act.

Background

The Resource Network International contracted with the Kansas University Center for the Study of Family, Neighborhood and Community Policy to do an in-depth study related to the past and current use of the term "mental retardation" in the context of government programs. Published in 2002, the study, entitled "Usage of the Term 'Mental Retardation:' Language, Image and Public Education," found there are many definitions of mental retardation but four are the most prevalent. The term "mental retardation" is used consistently in the United States far more than other terms and the next

CONTINUED

most consistent equivalent term is "intellectual disability," which is used in British Commonwealth countries and by the International Society for the Scientific Study of Intellectual Disabilities. There has recently been a move away from the term "mental retardation," but no substitute has been agreed upon. The general consensus among activists and responders to surveys (advocates, clinicians, families, parents, or other professionals) is that the term has negative connotations although many concede that any substitute for the same population will also soon develop stigmatizing qualities. There is also fear among some that a name change will endanger entitlement programs, but the current momentum is to change the term.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/17/12)

Best Buddies California (source)
Association of Regional Center Agencies
California Disability Services Association
Dayle McIntosh Disability Resource Centers
Junior League of Orange County, California
North Los Angeles County Regional Center
Sacramento County Developmental Disabilities Planning and Advisory Council
Special Olympics Northern California
The Arc and United Cerebral Palsy in California

ARGUMENTS IN SUPPORT: Best Buddies California, writes that, while California is usually on the cutting edge of legislation, the majority of states have already changed their statutes to eliminate the "R-word" with the goal to eliminate a term that promotes a negative stereotype of intellectually disabled individuals. The Arc and United Cerebral Palsy in California states that eliminating the "R-word" in all usage is a high priority for the developmental disability community in order to build respect for people with intellectual disabilities and that, while the "R-word" was once intended to be a term of respect, times and terms have changed, and "R-word" now inflicts intentional or unintentional pain and is used in bullying and hate crimes.

CONTINUED

ASSEMBLY FLOOR: 75-0, 8/24/12

AYES: Achadjian, Alejo, Allen, Ammiano, Atkins, Beall, Bill Berryhill, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Chesbro, Conway, Davis, Dickinson, Eng, Feuer, Fletcher, Fong, Fuentes, Furutani, Beth Gaines, Galgiani, Garrick, Gatto, Gordon, Gorell, Grove, Hagman, Hall, Harkey, Hayashi, Hill, Huber, Hueso, Huffman, Jeffries, Jones, Knight, Lara, Logue, Bonnie Lowenthal, Ma, Mansoor, Mendoza, Miller, Monning, Morrell, Nestande, Nielsen, Norby, Olsen, Pan, Perea, V. Manuel Pérez, Portantino, Silva, Skinner, Smyth, Solorio, Swanson, Torres, Valadao, Wagner, Wieckowski, Williams, Yamada, John A. Pérez

NO VOTE RECORDED: Cook, Donnelly, Halderman, Roger Hernández, Mitchell

CTW:n 8/30/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

****** END ******

Assembly Committee On Health

FULL COMMITTEE LOG FOR 11/08/2012

MEASURE NUMBER : AB 2370

AUTHOR : Mansoor CONSULTANT : CR

LAST AMENDED DATE: 08/29/2012 ASSIGNED DATE: 03/22/2012 30 DAYS: 03/27/2012

FISCAL: N URGENCY: N APPROPRIATIONS: N TAX LEVY: N

SMLP : N CONSENT: N CONS. SUSPENDED: N PENDING 0

SUBJECT: Mental retardation: change of term to intellectual disabilities.

COMMENTS: Background sent 3/22/12\Staff: Eric Dietz

HISTORY:

031 Withdrawn from Committee. Re-referred to Committee on Judiciary.

Assembly Bill No. 2370

CHAPTER 448

An act to amend Sections 4502 and 17206.1 of the Business and Professions Code, to amend Section 1761 of the Civil Code, to amend Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401, and 51765 of the Education Code, to amend Sections 854.2, 6514, 12428, 12926, 14670.1, 14670.2, 14670.3, 14670.5, 14672.1, 14672.92, 16813, 16814, and 16816 of the Government Code, to amend Sections 1275.5, 1337.1, 1337.3, 13113, 51312, 110403, 123935, 125000, 127260, and 129395 of the Health and Safety Code, to amend Sections 10118, 10124, and 10203.4 of the Insurance Code, to amend Sections 1001.20, 1346, 1370.1, 1376, and 2962 of the Penal Code, to amend Section 1420 of the Probate Code, to amend Section 25276 of the Vehicle Code, and to amend Sections 4417, 4426, 4512, 4801, 5002, 5008, 5325, 5585.25, 6250, 6505, 6513, 6551, 6715, 6717, 6740, 6741, 7275, 7351, and 11014 of, to amend the heading of Article 2 (commencing with Section 6500) of Chapter 2 of, to amend the heading of Article 4 (commencing with Section 6715) of Chapter 3 of, and to amend the heading of Article 4 (commencing with Section 6740) of Chapter 4 of, Part 2 of Division 6 of, the Welfare and Institutions Code, relating to intellectual disabilities.

[Approved by Governor September 22, 2012. Filed with Secretary of State September 22, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2370, Mansoor. Mental retardation: change of term to intellectual disabilities.

Existing federal Medicaid provisions require a state to describe its Medicaid program in its state plan, which is required by federal law to provide for, among other things, a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded.

Under existing law, various state statutes refer to mentally retarded persons in provisions relating to, among other things, services, commitment to state facilities, and criminal punishment.

This bill, which would be known as the Shriver "R-Word" Act, would revise various statutes to, instead, refer to a person with an intellectual disability. The bill would also state the intent of the Legislature that the bill not be construed to change the coverage, eligibility, rights, responsibilities, or substantive definitions referred to in the amended provisions of the bill.

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

SECTION 1. This act shall be known, and may be cited, as the Shriver "R-Word" Act.

SEC. 2. Section 4502 of the Business and Professions Code is amended to read:

4502. As used in this chapter, "psychiatric technician" means any person who, for compensation or personal profit, implements procedures and techniques that involve understanding of cause and effect and that are used in the care, treatment, and rehabilitation of mentally ill or emotionally disturbed persons, or persons with intellectual disabilities, and who has one or more of the following:

(a) Direct responsibility for administering or implementing specific therapeutic procedures, techniques, treatments, or medications with the aim of enabling recipients or patients to make optimal use of their therapeutic regime, their social and personal resources, and their residential care.

(b) Direct responsibility for the application of interpersonal and technical skills in the observation and recognition of symptoms and reactions of recipients or patients, for the accurate recording of these symptoms and reactions, and for the carrying out of treatments and medications as prescribed by a licensed physician and surgeon or a psychiatrist.

The psychiatric technician in the performance of these procedures and techniques is responsible to the director of the service in which his or her duties are performed. The director may be a licensed physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.

Nothing herein shall authorize a licensed psychiatric technician to practice medicine or surgery or to undertake the prevention, treatment, or cure of disease, pain, injury, deformity, or mental or physical condition in violation of the law.

SEC. 3. Section 17206.1 of the Business and Professions Code is amended to read:

17206.1. (a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, a person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) "Senior citizen" means a person who is 65 years of age or older.

(2) "Disabled person" means a person who has a physical or mental impairment that substantially limits one or more major life activities.

(A) As used in this subdivision, "physical or mental impairment" means any of the following:

(i) A physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) A mental or psychological disorder, including intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Physical or mental impairment" includes, but is not limited to, diseases and conditions including orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, and emotional illness.

(B) "Major life activities" means functions that include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer any of the following: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) A court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as necessary to restore to a senior citizen or disabled person money or property, real or personal, that may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of a civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over a civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

SEC. 4. Section 1761 of the Civil Code is amended to read:

to change the coverage, eligibility, rights, responsibilities, or substantive definitions referred to in the amended provisions of this act.

(b) It is the intent of the Legislature that future statutory and administrative revisions to reflect the change in terminology provided for in this act shall be made only in the course of other necessary revisions or amendments, in order to minimize costs to the state.

(c) As used in a state regulation, state publication, or other writing, the terms "mental retardation" and "mentally retarded person" have the same meaning as the terms "intellectual disability" and "person with an intellectual disability," unless the context or an explicit provision of federal or state law clearly requires a different meaning.

(d) For purposes of this section, "person" includes child, defendant, individual, minor, pupil, and other words used to describe a type of person.

SEC. 69. Any section of any act enacted by the Legislature during the 2012 calendar year, except for Senate Bill 1381, that takes effect on or before January 1, 2013, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2012 calendar year and takes effect on or before January 1, 2013, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

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SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

SB 1890

1. Source

(a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill? Please list the requestor's telephone number or, if unavailable, his address.

Calif. D.A.'s Assn.
- Steve White, Exec. Dir. 443-2017

(b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

None

(c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

Would allow greater discretion on the part of the public prosecutor in the initiations of prosecutions. Would require notification of non-felony juvenile arrests to the public prosecutor and would further allow prosecution by same, at his or her discretion.

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2046 AS SOON AS POSSIBLE. THE COMMITTEE STAFF CANNOT SET THE BILL FOR A HEARING UNTIL THIS FORM HAS BEEN RETURNED.

SB 1890 (Rains)
As introduced
Government/Penal Codes
MRR

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PROSECUTIONS
-FILING OF NOTICES TO APPEAR-

HISTORY

Source: California District Attorney's Ass'n.

Prior Legislation: None

Support: Santa Barbara County

Opposition: No Known

KEY ISSUE

SHOULD NOTICES TO APPEAR WITH RESPECT TO CERTAIN MISDEMEANORS BE FILED WITH THE PROSECUTING ATTORNEY RATHER THAN THE COURT?

PURPOSE

Under existing law, with respect to certain misdemeanor prosecutions, the arresting officer files a copy of a written notice to appear with a magistrate or other officer of the court.

This bill would provide that such notices be filed with the prosecuting attorney who then, in her or his discretion, would initiate prosecution by filing the notice or a formal complaint with the specified magistrate.

The purpose of this bill is to allow the public prosecutor greater discretion in the initiation of prosecutions.

(More)

COMMENT

1. Need for legislation

Proponents state that the procedure set forth in this bill is presently used in approximately fifty counties. It was developed partly in response to the problem of improperly issued citations.

Where current statutory procedure is followed, people who have been cited incorrectly may plead guilty and pay fines for which they are not actually liable. In these counties, no way exists for prosecutors to screen citations unless a person pleads not guilty.

Proponents argue that if prosecutors received all notices to appear, they would be able to ascertain whether a citation had been properly issued.

2. Offenses affected

The procedure set forth in this bill would affect misdemeanor arrests, when the person does not demand to be taken before a magistrate, and violations of the Fish and Game Code that are not felonies when the person arrested appears to be a minor.

3. Initiation of prosecution

Under this bill the prosecuting attorney would be required to exercise her or his discretion to initiate prosecution within 48 hours before the date specified on the notice to appear.

4. Technical amendments

On page 2, line 16, after "his" insert: or her

On page 2, line 23, after "his" insert: or her

(More)

On page 3, line 4, after "his" insert: or her

On page 3, line 15, after "his" insert: or her

On page 3, line 19, after "him" insert: or her

On page 3, line 21, after "he" insert: or she

On page 3, line 26, after "his" insert: or her

On page 3, line 32, after "he" insert: or she

On page 4, line 6, after "he" insert: or she

On page 4, line 10, after "he" insert: or she

On page 4, line 18, after "he" insert: or she

On page 4, line 24, after "his" insert: or her

On page 4, line 27, after "he" insert: or she

On page 4, line 34, after "his" insert: or her

On page 5, line 2, after "his" insert: or her

On page 5, line 5, after "he" insert: or she

On page 5, line 5, after "himself" insert: or herself

On page 5, line 9, after "his" insert: or her

On page 5, line 32, after "him" insert: or her

On page 6, line 21, after "his" insert: or her

On page 6, line 28, after "him" insert: or her

****

ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE
BILL McVITTIE, Chairman

State Capitol - Room 3251
445-3268

DPAA Amend: DA to notify defendant if case not filed

BILL ANALYSIS

Staff Member SDB

Ways & Means YES

Rev. & Tax NO

Urgency NO

BILL: Senate Bill 1890 (as amended 4/29/80)

AUTHOR: Rains

Hearing Date: June 2, 1980

SUBJECT: Prosecutions

BILL DESCRIPTION:

Existing law authorizes the release of persons on a written promise to appear in any case in which an arrest is made for an offense declared to be a misdemeanor and the person arrested does not demand to be taken before a magistrate. Unless waived by the person arrested, the time specified in the notice to appear in court must be at least five days after the arrest. One copy of the notice to appear is given to the person arrested and the duplicate notice is filed with the magistrate specified therein. In the event the person is arrested for a misdemeanor violation of the Fish and Game Code and is under 18, the duplicate copy of such notice must be filed with the clerk of the juvenile court, the juvenile court referee or a juvenile traffic hearing officer before whom the person arrested is required to appear.

S.B. 1890 would instead provide that the duplicate copies of these notices must be filed with the prosecuting attorney who then, in his or her discretion, would initiate prosecution by filing the notice or a formal complaint or petition with the specified magistrate. It would also qualify the statement of existing law that the district attorney is the public prosecutor, eliminate the mandate and confer discretion to conduct on behalf of the people all prosecutions for public offenses.

COMMENTS:

1. Need for Legislation. The source of this legislation is the California District Attorneys' Association and it's purpose is to allow the public prosecutors greater discretion in the initiation of prosecutions. Proponen s indicate that where current statutory procedure is followed, people who have been cited incorrectly may plead guilty and pay fines for violations for which they are not actually culpable. In these counties, there are no provisions which allow prosecutors to screen

citations unless a person pleads not guilty. Proponents argue that these provisions would afford the prosecuting attorney the opportunity to evaluate the circumstances and legal principles involved to determine whether a citation has been properly issued. How prevalent is this problem? Should these changes be made so that citations issued by officers are not automatically filed with the courts without any assessment being made to determine culpability for the specified offense, the presence of defenses which would affect legal liability and/or extenuating circumstances (i.e. absence of criminal history, surrounding circumstances, etc.) which would mitigate the offense or for public policy reasons dictate against it's prosecution? Should "justice" and fair treatment of individuals be dependent upon merely whether the person is intelligent, and/or gutsy enough to challenge the issuing authority, or whether the person has a sufficient amount of confidence in the "system" to do so?

a. Proponents indicate that the procedure set forth in this legislation is presently in use in approximately fifty counties. It was developed and implemented partly in response to the above problems.

b. How costly will implementation of these provisions be?

2. Initiation of prosecutions. Under this legislation, the prosecuting attorney would be required to exercise his or her discretion to initiate prosecution of all misdemeanors (other than the Fish and Game misdemeanors when the person is a minor) within 48 hours of the time of arrest by filing the notice or a formal complaint with the magistrate. When the person is a minor and is arrested for a misdemeanor under the Fish and Game Code, the prosecuting attorney would be required to exercise his or her discretion to initiate such prosecutions within 48 hours before the date specified on the notice to appear by filing the notice or a formal petition with the appropriate person in the juvenile court.

a. General misdemeanors. The time of arrest takes place prior to the issuance of the notice to appear. Is there a reason the prosecuting attorney must initiate prosecution within 48 hours of the time of arrest in these cases as opposed to 48 hours before the scheduled court date as in the Fish and Game violations? Inasmuch as the person arrested must be given a court date at least five days after the arrest, what is the reason the prosecutor must initiate the prosecution within 48 hours after the arrest? Will this requirement be difficult to comply with? What result when the law enforcement agency does not deliver the notices to the prosecuting attorney for 24 or 48 hours? Will this necessarily

inhibit or prevent the prosecuting attorney from being able to comply? The officer is required to deliver the notices to the prosecuting attorney "as soon as practicable". Should this be amended to specify a time limitation with reference to the arrest to ensure receipt of the notices by the prosecuting attorneys in a sufficient amount of time to make the necessary assessment and file the complaints or petitions?

3. What result when the filing is not made within the time period specified? Will the matter automatically be dismissed? Should it be? Should this be specified? Will persons who have signed promises to appear be informed of the prosecuting attorney's decision not to prosecute the matter (or his/her failure to file a complaint) in order to avoid unnecessary court appearances?

4. Are the changes in Section one of this bill necessary? This language appears to eliminate the existing mandate that the public prosecutor conduct all prosecutions for public offenses on behalf of the people and insert in it's stead discretionary provisions. Is this the intent? Different language should be drafted to accomplish the ostensible purpose of this provision without modifying the existing mandates (i.e. "The public prosecutor shall attend the courts and conduct on behalf of the people all prosecutions for public offenses which, within his/her discretion, have been initiated")

   a. In People v. Municipal Court of Ventura County, (1972) 27 C.A. 3d 193, the court ruled that the prosecutor is vested with discretionary power in determining whether to prosecute any particular case. In view of the courts' interpretation of existing law, is this qualifying language necessary?

5. SENATE VOTES:

Judiciary:	7 Ayes	0 Noes
Finance:	Consent	
Floor:	31 Ayes	0 Noes

SOURCE: California District Attorneys Association

SUPPORT: Santa Barbara County, Attorneys for Criminal Justice

OPPOSITION: Unknown

Legislative Analyst
June 25, 1980

ANALYSIS OF SENATE BILL NO. 1890 (Rains)
As Amended in Assembly June 9, 1980
1979-80 Session

SB 1890 (Am. 6/9/80)

Fiscal Effect:

Cost: 1. No direct state cost.

2. Mandated Local Program. Minor, if any, net costs; contains an offsetting savings disclaimer.

Revenue: Undetermined, but probably minor, revenue loss to the extent that persons who now post and forfeit bail are not required to post such.

Analysis:

This bill:

1. Requires an arresting officer to file with the prosecuting attorney the duplicate copy of a notice to appear in court which is given (a) to an adult arrested for a misdemeanor or (b) to a person under 18 arrested for a misdemeanor violation of the Fish and Game Code.

2. Gives the prosecuting attorney the discretion, within 48 hours of the time of arrest in these cases, to initiate prosecution by filing the notice or a formal complaint with the appropriate magistrate.

3. Requires the prosecutor to notify the arrested adult in those cases where it is determined that prosecution is not warranted.

Under current law, the arresting officer issues the notice to appear to the person arrested and files the duplicate with the court. Such appearances must be set at least five days after the arrest. Juvenile cases require notification of the accused and the clerk of the juvenile court or the juvenile court referee or juvenile traffic officer as soon as is practicable.

The bill would not increase state direct costs.

Mandated Local Program. The bill would result in additional costs to local governments to the extent that (a) police departments need to make administrative adjustments to provide the arrest information to prosecutors and (b) prosecuting attorneys must review such reports. However, it would probably also result in offsetting savings by requiring the prosecuting attorney to specify which cases are to be tried. This could reduce the number of trials. The bill contains an offsetting savings disclaimer.

Revenues

The bill also would result in an undetermined, but probably minor, revenue loss to counties and local municipalities. Under current procedures, persons who are arrested for misdemeanors may forfeit bail in order to avoid trial. To the extent that the prosecuting attorneys would identify and dismiss some cases before bail is set, local governments may lose bail forfeitures.

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ASSEMBLY APPROPRIATIONS STAFF ANALYSIS

BILL NUMBER: SB 1890 AUTHOR: Rains AMENDED 6/9/80

POLICY COMMITTEE: Criminal Justice VOTE: 5 - 0 CONSULTANT: D. Perales

SUBJECT: Notice of changes to prosecutions

FISCAL SUMMARY:	FUND (G,S,N,B, F, or L)	1979/80 FY	1980/81 FY	1981/82 FY
State Cost: None.				
Local Cost: Indeterminate costs for notices	L		Indeterminate	Indeterminate
Disclaimed: [x]; Reimbursed: [ ]				
Local Savings: Indeterminate savings to local courts.	L		Indeterminate	Indeterminate

Urgency: Yes [ ] No [x]

SUMMARY:
This bill requires peace officers to file a duplicate copy of their notices to appear in court given to suspected misdemeanants to the prosecuting attorney, instead of the local court under current law.

ANALYSIS:
The bill also provides for direct notice to the prosecuting attorney in instances when the arrested person is under the age of 18 years and that there is an alleged violation of the Fish and Game Code.

FISCAL IMPACT:
The bill will result in a shift of costs from local courts to the prosecutors' office for the initial processing and filing of the notices. However, the bill would result in indeterminate savings to local courts by allowing the prosecution to screen out charges without merit that generally are not identified until further along the process when the person pleads not guilty. The prosecutors' office would also incur indeterminate costs because it would be required to notify the arrested person if criminal proceedings did not continue. The number of such notices is unknown. The bill disclaims any imposition of state-mandated local costs.

RECOMMENDATION:
Do pass, consent

BA 33A:16/jlc 6/26/80

PLEASE RESPOND TO:
STATE CAPITOL, ROOM 5082
SACRAMENTO, CA 95814
(916) 445-5405

DISTRICT ADDRESSES:
STUDIO 127, EL PASEO
SANTA BARBARA, CA 93101
(805) 963-0634

501 POLI STREET, ROOM 200
VENTURA, CA 93001
(805) 654-4648 • 647-8505

OMER L. RAINS

EIGHTEENTH SENATORIAL DISTRICT
SANTA BARBARA AND VENTURA COUNTIES

CALIFORNIA LEGISLATURE

Senate

Chairman, Senate Majority Caucus

COMMITTEES
VICE-CHAIRMAN, ENERGY AND PUBLIC UTILITIES
ELECTIONS AND REAPPORTIONMENT
NATURAL RESOURCES AND WILDLIFE
TRANSPORTATION
CHAIRMAN, SENATE SELECT COMMITTEE ON POLITICAL REFORM
SELECT COMMITTEE ON MARITIME INDUSTRY
JOINT COMMITTEE ON FAIRS ALLOCATION & CLASSIFICATION
CALIFORNIA LAW REVISION COMMISSION
GEOTHERMAL RESOURCES TASK FORCE
INTERAGENCY OIL TANKER TASK FORCE
STATE SOLARCAL COUNCIL

August 28, 1980

The Honorable Edmund G. Brown Jr.
State Capitol, First Floor
Sacramento, California 95814

Dear Jerry:

I urge you to sign into law Senate Bill 1890, concerning the filing of misdemeanor citations.

Under existing law, the citing officer gives one copy of a notice to appear to the person arrested and the duplicate notice is filed with the specified magistrate.

This legislation would instead require that the copy of the notice to appear be filed with the prosecutor, rather than with the court, in order for the prosecutor to assess the matter and to determine whether prosecution should be initiated. If the prosecutor decides not to proceed with the case, the person would be notified of that decision.

While Senate Bill 1890 would provide the prosecutor greater discretion in the initiation of misdemeanor prosecutions, significantly, it would prevent those people who have been cited incorrectly from pleading guilty and paying fines for violations for which they are not actually culpable.

Sincerely,

OMER L. RAINS

OLR/msw

ENROLLED BILL REPORT
DEPARTMENT OF FINANCE

Form DF-44D (Rev. 5/79 4M)

AUTHOR	BILL NUMBER
Rains	SB 1890

SUBJECT:

DATE LAST AMENDED
June 9, 1980

This bill provides that a copy of a written notice to appear in court or juvenile court be filed with the district attorney. The district attorney, within his or her discretion, would initiate prosecution by filing the notice or a formal complaint with a magistrate or, for juvenile court, a clerk or other specified officer.

SUMMARY OF REASONS FOR SIGNATURE

There will be no additional fiscal impact upon the State with enactment of SB 1890.

FISCAL SUMMARY

None.

ANALYSIS

A. Specific Findings

Currently in certain prosecutions of minors and certain misdemeanor prosecutions, the arresting officer files a copy of a written notice to appear in court or juvenile court (a citation) with a magistrate or, for juvenile court, a clerk or other designated officer.

Specifically, this bill would require the officer, as soon as practicable to file a duplicate notice with the district attorney. The district attorney, within 48 hours of the time of the arrest and within his or her discretion, may then initiate prosecution by filing the notice or a formal complaint with the magistrate as specified. If the prosecution is not to be initiated the district attorney would then be required to notify the person who was arrested.

This bill also specifies that if a person is arrested and appears to be a minor, and the arrest is for a violation of the Fish and Game Code, not declared to be a felony, the officer shall as soon as practicable file a duplicate notice to appear as outlined in the bill. The officer shall, as soon as practicable, file a duplicate notice with the district attorney who, within 48 hours before the date specified on the notice to appear, within his or her discretion, may initiate prosecution by filing the notice of a formal petition with the clerk of the juvenile court, or other appropriate person as specified in the bill.

B. Fiscal Effect

Enactment of SB 1890 in its present form would not result in any additional known net costs on local entities because of the savings resulting from more efficient court hearings (i.e., fewer cases brought to court inappropriately). Therefore, there should be no additional State or local cost associated with the bill.

RECOMMENDATION	PRINCIPAL ANALYST	PROGRAM BUDGET MANAGER
Sign the bill.		
DEPARTMENT REPRESENTATIVE	DATE	DIRECTOR
	2-11-80	DATE
		SEP 12 1980

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Sacramento, California
September 15, 1980

Honorable Edmund G. Brown Jr.
Governor of California
Sacramento, CA

Senate Bill No. 1890

Dear Governor Brown:

Pursuant to your request we have reviewed the above-numbered bill authored by Senator Rains and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By John T. Studebaker
John T. Studebaker
Principal Deputy

JTS:AB

Two copies to Honorable Omer L. Rains, pursuant to Joint Rule 34.

california attorneys for criminal justice

311 South Spring Street, No. 502 • Los Angeles 90013 • (213) 620-1081

September 18, 1980

Edmund G. Brown, Jr.
Governor of California
State Capitol
Sacramento, CA 95814

RE: SB 1890 (Rains) JUVENILE PROSECUTIONS

Dear Governor Brown:

The California Attorneys for Criminal Justice urge you to sign SB 1890, which would prevent peace officers from directly filing complaints in juvenile matters. SB 1890 would end this practice and instead allow the prosecuting attorney to initiate the prosecution. The decision to file is one of the most delicate of the prosecutorial functions and should not be exercised by arresting officers. Again, we encourage you to approve this bill.

Respectfully,

MICHAEL L. PINKERTON
Legislative Advocate

cc: Senator Rains

Volume 3

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1980

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, June 3, 1980
and General Election, November 4, 1980

General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature

1979–80 Regular Session

Compiled by
BION M. GREGORY
Legislative Counsel

110—271

(4) and (5) of subdivision (b) of Section 17, respectively, a complaint shall be filed within the time specified in Section 800 for such offense.

SEC. 2. Section 1426a of the Penal Code is repealed.

CHAPTER 1094

An act to amend Section 26500 of the Government Code, and to amend Sections 853.6, 853.6a, and 853.9 of the Penal Code, relating to prosecution of crimes.

[Approved by Governor September 25, 1980 Filed with Secretary of State September 26, 1980]

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

SECTION 1. Section 26500 of the Government Code is amended to read:

26500. The district attorney is the public prosecutor, except as otherwise provided by law.

The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses.

SEC. 2. Section 853.6 of the Penal Code is amended to read:

853.6. (a) In any case in which a person is arrested for an offense declared to be a misdemeanor and does not demand to be taken before a magistrate, such person may, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter. If the arresting officer or his superior determines that the person should be released, such officer or superior shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court. If the person is not released prior to being booked and the officer in charge of the booking or his superior determines that the person should be released, such officer or superior shall prepare such written notice to appear in a court.

(b) Unless waived by the person, the time specified in the notice to appear must be at least 10 days after arrest.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by such court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, must give his written promise so to appear in court by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person

arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice and underlying police reports in support of the charge or charges with the prosecuting attorney. Within 5 days from the time of arrest the prosecutor, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified therein. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. Thereupon the magistrate may fix the amount of bail which in his judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by him in the form set forth in Section 815a of this code. The defendant may, prior to the date upon which he promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in his discretion order that no further proceedings shall be had in such case, unless the defendant has been charged with violation of Section 374b or 374e of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he has previously been convicted of a violation of such section or punishable under such section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in such case.

Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of this code.

(f) No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until he has violated such promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer shall indicate on the notice to appear whether he desires the arrested person to be booked as defined in subdivision 21 of Section 7 of this code. In such event, the magistrate shall, before the proceedings are finally concluded, order the defendant to be booked by the arresting agency.

(h) A peace officer may use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person pursuant to Section 836 or in which he has taken custody of a person pursuant to Section 847.

(i) If the arrested person is not released pursuant to the provisions of this chapter prior to being booked by the arresting agency, then at the time of booking the arresting officer, the officer in charge of

such booking or his superior officer, or any other person designated by a city or county for this purpose shall make an immediate investigation into the background of the person to determine whether he should be released pursuant to the provisions of this chapter. Such investigation shall include, but need not be limited to, the person's name, address, length of residence at that address, length of residence within this state, marital and family status, employment, length of that employment, prior arrest record, and such other facts relating to the person's arrest which would bear on the question of his release pursuant to the provisions of this chapter.

(j) Whenever any person is arrested by a peace officer for a misdemeanor, other than an offense described in subdivision (b) of Section 11357 or subdivision (c) of Section 11360 of the Health and Safety Code, and is not released with a written notice to appear in court pursuant to this chapter, the arresting officer shall indicate, on a form to be established by his employing law enforcement agency, which of the following was a reason for such nonrelease:

(1) The person arrested was so intoxicated that he could have been a danger to himself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his own safety.

(3) The person was arrested for one or more of the offenses listed in Section 40302 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested or the prosecution of any other offense or offenses would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) Any other reason, which shall be specifically stated on the form by the arresting officer.

Such form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him for custody before trial.

SEC. 3. Section 853.6a of the Penal Code is amended to read:

853.6a. If the person arrested appears to be under the age of 18 years, and the arrest is for a violation of the Fish and Game Code not declared to be a felony, the notice under Section 853.6 shall instead provide that such person shall appear before the juvenile court, a juvenile court referee, or a juvenile traffic hearing officer within the county in which the offense charged is alleged to have been

committed, and the officer shall instead, as soon as practicable, file the duplicate notice with the prosecuting attorney. Within 48 hours before the date specified on the notice to appear, the prosecutor, within his or her discretion, may initiate prosecution by filing the notice of a formal petition with the clerk of the juvenile court, or the juvenile court referee or juvenile traffic officer, before whom the person is required to appear by the notice.

SEC. 4. Section 853.9 of the Penal Code is amended to read:

853.9. (a) Whenever written notice to appear has been prepared, delivered, and filed by the prosecuting attorney with the court pursuant to the provisions of Section 853.6 of this code, an exact and legible duplicate copy of the notice when filed with the magistrate, in lieu of a verified complaint, shall constitute a complaint to which the defendant may plead "guilty" or "nolo contendere."

If, however, the defendant violates his promise to appear in court, or does not deposit lawful bail, or pleads other than "guilty" or "nolo contendere" to the offense charged, a complaint shall be filed which shall conform to the provisions of this code and which shall be deemed to be an original complaint; and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by him and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

(b) Notwithstanding the provisions of subdivision (a) of this section, whenever the written notice to appear has been prepared on a form approved by the Judicial Council, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea and, if the notice to appear is verified, upon which a warrant may be issued. If the notice to appear is not verified, the defendant may, at the time of arraignment, request that a verified complaint be filed.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 2231 or 2234 of the Revenue and Taxation Code or Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 1095

An act to amend Sections 395 and 800 of, and to add Section 700.1 to, the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor September 25, 1980. Filed with Secretary of State September 26, 1980]