

Memorandum 91-52

Subject: 1991 Legislative Program

Attached to this memorandum is a status report on the Commission's 1991 legislative program. We are pleased with our results this session, especially considering the difficulty in obtaining authorship of bills caused by reduced legislative staffing and limitations on bill numbers.

Also attached are three additional revised comments that need to be included in the Commission's Report on Senate Bill 271 (Appendix 7 to the Annual Report). These comments simply combine two Commission comments into one in situations where an amended section was affected by two different Commission recommendations.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

1991 LEGISLATIVE PROGRAM
CALIFORNIA LAW REVISION COMMISSION

ENACTED

ASSEMBLY BILL 1577 (ASSEMBLY MEMBER SHER) - Uniform Statutory Rule Against Perpetuities; Application of Marketable Title Statute to Executory Interests

1991 Cal. Stats. Ch. 156 (July 22).

SENATE BILL 256 (SENATOR BEVERLY) - Commercial Real Property Leases: Remedies for Breach of Assignment or Sublease Covenant; Use Restrictions

1991 Cal. Stats. Ch. 67 (June 20).

SENATE BILL 896 (SENATOR MELLO) - Urgency Probate Bill

1991 Cal. Stats. Ch. 82 (June 30, operative July 1, 1991).

SENATE CONCURRENT RESOLUTION 4 (SENATOR LOCKYER) - Continues Authority of California Law Revision Commission to Study Topics Previously Authorized for Study

1991 Cal. Res. Ch. 33 (May 10).

PASSED SECOND HOUSE

ASSEMBLY BILL 793 (ASSEMBLY MEMBER POLANCO) - Elimination of 7-Year Limit for Durable Power of Attorney for Health Care

Returned to Assembly for concurrence in Senate amendments, and then to be sent to Governor.

SENATE BILL 271 (SENATOR KOPP) - Omnibus Probate Bill

This bill includes several State Bar probate proposals, as well as the following Law Revision Commission proposals:

TOD-Beneficiary Designation for Vehicles and Certain Other State-Registered Property

Debts That Are Contingent, Disputed, or Not Due

Remedies of Creditor Where PR Fails to Give Notice

Repeal of Civil Code Section 704 (U. S. Bonds)

Disposition of Small Estate Without Probate

Gifts in View of Impending Death

Access to Decedent's Safe Deposit Box

Technical and Minor Substantive Revisions

Right of Surviving Spouse to Dispose of Community Property

Returned to Senate for concurrence in Assembly amendments, and then to be sent to Governor.

LEFT OVER FOR NEXT SESSION

(1) Litigation Involving Decedents

This bill would have gone into the omnibus probate bill, but Legislative Counsel determined that it had too many diverse subjects to fit with the rest of the bill.

(2) Compensation in Guardianship and Conservatorship Proceedings

This bill would have gone into the omnibus probate bill, but Legislative Counsel determined that it went beyond the scope of the omnibus bill, which deals with disposition of property at death.

(3) Form for Certificate of Acknowledgment of Power of Attorney

This was approved too late to incorporate in other bills this session. It relates to the Civil Code Section 2476 revision of the certificate of acknowledgment of a notary public in a statutory form power of attorney; it will be incorporated in comprehensive legislation on powers of attorney.

(4) Powers of Fiduciaries

Recognition of Trustee's Powers

Recognition of Agent's Authority Under Statutory Form Power of Attorney

We are working to eliminate banking and title insurance industry opposition.

(5) Repeal of In-Law Inheritance

This proposal is now supported by the Estate Planning, Trust and Probate Law Section of the State Bar, the Probate and Trust Law Section of the Los Angeles County Bar Association, the Probate, Trust & Estate Planning Section of the Beverly Hills Bar Association, the California Association of Public Administrators, Public Guardians, and Public Conservators, and a number of individual lawyers.

(6) Relocation of Powers of Appointment from Civil Code to Probate Code

This proposal was approved too late to incorporate in legislation this session. Assembly Member Horcher has agreed to include it in AB 1722, a two-year bill, and is requesting the Commission to include in its recommendation a review of the power of appointment problem addressed by AB 1722.

ADDITIONS TO REPORT ON SB 271 (APPENDIX 7 OF ANNUAL REPORT)

Prob. Code § 9653 (technical amendment). Duty to recover property transferred in fraud of creditors

Comment. Paragraph (2) of subdivision (a) of Section 9653 is amended to refer to a gift in view of "impending" death, consistent with Sections 5701-5705.

Paragraph (3) is added to subdivision (a) to provide for recovery of property transferred by TOD beneficiary designation.

Prob. Code § 13101 (amended). Furnishing affidavit or declaration

Comment. Subdivision (a)(4) of Section 13101 is revised and subdivision (e) is added to reflect the new authorization for the decedent's personal representative to consent to use of the affidavit procedure, notwithstanding that an estate proceeding is pending or has been conducted in this state. See Section 13108(a)(2).

Subdivision (a)(9) is amended to change "a right" to "a superior right." This conforms Section 13101 to Section 13200(a)(9) (affidavit procedure for real property of small value), and is nonsubstantive.

Prob. Code § 13207 (amended). Limitation on liability under Sections 13204 and 13205

Comment. Subdivision (a) of Section 13207 is amended to reflect the new authorization for the decedent's personal representative to consent to use of the procedure provided by this chapter, notwithstanding that an estate proceeding is pending or has been conducted in this state. See Section 13210.

Subdivision (b) is amended to make a technical, nonsubstantive clarification.