

Memorandum 92-38

Subject: 1992 Legislative Program

Attached to this memorandum is a chart showing the status of the Commission's 1992 legislative program. The chart will be updated orally at the July Commission meeting.

All bills are moving along smoothly. Both the Family Code (AB 2650 and 2641) and the general probate bill (SB 1496) have gone to the governor for his signature.

SB 1496 (Senate Judiciary Committee)--Omnibus Probate Bill

We have been told informally by the banks that they will not seek the veto of SB 1496, but will come to the Commission for redress if they encounter problems with recognition of an agent's authority.

AB 3328 (Horcher)--Special Needs Trusts

We received a request from the California Association of Mental Health Directors that the reimbursement provisions in AB 3328 be extended to county agencies that provide services to the beneficiary. The amendments are set out in Exhibit 1.

County agencies have a right of reimbursement under Welfare and Institutions Code Sections 17109 and 17403. To allow county agencies reimbursement on termination of a special needs trust is consistent with the purpose and thrust of the bill.

All interested agencies and organizations involved with the bill approved the proposed amendments. With the concurrence of Chairperson Marzec we amended the bill as requested. The bill as amended was approved by the Senate Judiciary Committee on the consent calendar and by the Senate Appropriations Committee without a hearing.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

STATUS OF 1992 COMMISSION LEGISLATIVE PROGRAM  
(as of July 1, 1992)

Legislative Program:

SB 1372 (Deddeh): Wage Garnishment, etc.  
 SB 1455 (Mello): G & C Compensation etc.  
 SB 1496 (Committee): Omnibus Probate Bill

AB 1719 (Horcher): Nonprobate Transfers of Comm. Prop.  
 AB 1722 (Horcher): Powers of Appointment  
 AB 2641 (Speier): Family Code Conforming Revisions  
 AB 2650 (Speier): Family Code  
 AB 3328 (Horcher): Special-Needs Trusts

SCR 66 (Committee): Continuing authority to study topics

BILL STATUS		SB 1372	SB 1455	SB 1496	AB 1719	AB 1722	AB 2641	AB 2650	AB 3328		SCR 66
Introduced		Feb 3	Feb 11	Feb 13	3/8/91	3/8/91	Feb 11	Feb 11	Feb 20		Feb 13
Last Amended		Mar 16	Jun 24	Mar 31	Apr 6	Jan 6	Jun 4	Jun 4	Jun 10		
First House	Policy Committee	Mar 24	May 5	Apr 21	Jan 27	Jan 23	Mar 25	Mar 25	Apr 1		Apr 7
	Fiscal Committee	Apr 1	----	----	----	----	----	Apr 22	Apr 22		Apr 22
	Passed House	Apr 9	May 22	Apr 30	Jan 30	Jan 28	May 12	Apr 30	Apr 30		Apr 30
Second House	Policy Committee	Jun 10	July 1	Jun 10	Mar 3	Mar 3	Jun 9	Jun 9	Jun 16		Jun 10
	Fiscal Committee	July 1	----	----	----	----	----	----	Jun 29		July 1
	Passed House			Jun 25	Apr 23	Mar 26	Jun 18	Jun 18			
Concurrence		----		----	Apr 27	----	Jun 24	Jun 24			----
Governor	Received				Apr 28	Mar 31					----
	Approved				May 8	Apr 8					----
Chaptered by Secretary of State	Date				May 11	Apr 9					
	Ch. #				51	30					

• Unless otherwise noted, all dates are in 1992. [ ]: scheduled hearings. ----: not applicable.

EXHIBIT 1

Prob. Code § 3604 (added). Special needs trust

3604. (a) If a court makes an order under Section 3602 or 3611 that money of a minor or incompetent person be paid to a special needs trust, the terms of the trust shall be reviewed and approved by the court and shall satisfy the requirements of this section. The trust is subject to continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court. The court may transfer jurisdiction to the court in the proper county for commencement of a proceeding as determined under Section 17005.

(b) A special needs trust may be established and continued under this section only if the court determines all of the following:

(1) That the minor or incompetent person has a disability that substantially impairs the individual's ability to provide for the individual's own care or custody and constitutes a substantial handicap.

(2) That the minor or incompetent person is likely to have special needs that will not be met without the trust.

(3) That money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of the minor or incompetent person.

(c) If at any time it appears (1) that any of the requirements of subdivision (b) are not satisfied or the trustee refuses without good cause to make payments from the trust for the special needs of the beneficiary, and (2) that the State Department of Health Services, the State Department of Mental Health, ~~or~~ the State Department of Developmental Services, or a county or city and county in this state has a claim against trust property, that department, county, or city and county may petition the court for an order terminating the trust.

(d) ~~The court's~~ A court order under Section 3602 or 3611 for payment of money to a special needs trust shall include a provision that all statutory liens in favor of the State Department of Health Services, the State Department of Mental Health, and the State Department of Developmental Services, and any county or city and county in this state shall first be satisfied.

Prob. Code § 3605 (added). Claim of Department of Health Services, Department of Mental Health, Department of Developmental Services, county, or city and county

3605. (a) This section applies only to a special needs trust established under Section 3604 on or after January 1, 1993.

(b) While the special needs trust is in existence, the statute of limitations otherwise applicable to claims of the State Department of Health Services, the State Department of Mental Health, and the State Department of Developmental Services, and any county or city and county in this state is tolled. Notwithstanding any provision in the trust instrument, at the death of the special needs trust beneficiary or on termination of the trust, the trust property is subject to claims of the State Department of Health Services, the State Department of Mental Health, and the State Department of Developmental Services, and

any county or city and county in this state to the extent authorized by law as if the trust property is owned by the beneficiary or is part of the beneficiary's estate.

(c) At the death of the special needs trust beneficiary or on termination of the trust, the trustee shall give notice of the beneficiary's death or the trust termination ~~to the~~ , in the manner provided in Section 1215, to all of the following:

(1) The State Department of Health Services, the State Department of Mental Health, and the State Department of Developmental Services as provided in Section 1215, addressed to the director of that department at the Sacramento office of the director. Failure

(2) Any county or city and county in this state that has made a written request to the trustee for notice, addressed to that county or city and county at the address specified in the request.

(d) Failure to give the notice required by subdivision (c) prevents the running of the statute of limitations against that department's ~~claim~~ the claim of the department, county, or city and county not given the notice.

~~(d)~~

(e) The department , county, or city and county has four months after notice is given in which to make a claim with the trustee. If the trustee rejects the claim, the department , county, or city and county making the claim may petition the court for an order under Chapter 3 (commencing with Section 17200) of Part 5 of Division 9, directing the trustee to pay the claim. ~~The claim~~ A claim made under this subdivision shall be paid as a preferred claim prior to any other distribution. If trust property is insufficient to pay all claims under this subdivision, the trustee shall petition the court for instructions and the claims shall be paid from trust property as the court deems just.

~~(e)~~

(f) If trust property is distributed before expiration of four months after notice is given without payment of the claim, the department , county, or city and county has a claim against the distributees to the full extent of the claim, or each distributee's share of trust property, whichever is less. The claim against distributees includes interest at a rate equal to that earned in the Pooled Money Investment Account, Article 4.5 (commencing with Section 16480) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, from the date of distribution or the date of filing the claim, whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.