

2/27/69

Memorandum 69-44

Subject: 1969 Legislative Program

All measures recommended to the 1969 Legislature were introduced in the Senate and all have been approved by the Senate Committee on Judiciary. We assume that all will have passed the Senate by the time of the March meeting.

Attached to this memorandum are copies of the bills that were amended at the February 18, 1969, hearing. Bills amended at the February 25 hearing were not available when this memorandum was prepared.

The following is a discussion of each measure recommended.

Senate Bills 98 and 99 - Powers of appointment

Both were approved without amendment.

Senate Bill 100 - Statute of limitations re actions against public entities

The second paragraph of the warning notice was amended to read:

You may seek the advice of an attorney of your choice in connection with this matter. Your-attorney If you desire to consult an attorney, he should be consulted immediately.

The Committee was not convinced that there is a need to give an adult a two-year period to bring his action if the required notice is not given. A representative of the casualty insurance industry advised the Committee that he was most concerned about the sanction--two years from the time the cause of action accrues. The Committee also indicated that it felt generally that the claims statute was in need of a comprehensive study to see whether significant improvements could not be made to eliminate the 100-day claim filing period trap. Also, the view was expressed by Senator

C Grunsky and others that the Commission and the State Bar should make a comprehensive study of the claims statute and the experience under it. The State Bar reported that it was planning to introduce a more comprehensive bill later in the session and the Committee indicated that it might favor such bill over the narrow bill proposed by the Commission. One committee member expressed the view that there is no need to delay an action to give the public entity time to consider and act on the claim. Assemblyman Moorhead told me some time ago that he did not believe that the narrow bill proposed by the Commission was what was needed. He believed, for example, that a provision should be added to the claims statute eliminating any need to file a claim where the public entity had actual notice of the accident and injury.

C In view of the above situation, the staff recommends that no amendments be made to the bill. We would not want to send the bill back to the Senate for concurrence in the amendments (which would have to be made in the Assembly). One possible amendment would be to make the sanction that, if the notice is not given of denial of the claim, the action can be commenced within one year from the date the claim is denied or deemed to be denied. This would, in substance, extend the existing six-month period for an additional six months. The present sanction operates to give the adult an additional year over the normal statute of limitations to bring his action but gives the minor who files a claim just about at the end of the year-period only about six months additional time over the existing six-month period instead of the entire period of minority as under existing law. We do not, however, consider the improvement--if this change is actually an improvement--to be of sufficient importance to amend the bill in the Assembly. However, if the change is considered to be an improvement, the staff might be authorized to make it if the bill is otherwise amended.

Senate Bill 101 - Leases

Senate Bill 101 as amended on February 19 is attached. The bill was further amended at the hearing on February 25 as follows:

(1) Page 1, line 3, change "1951.8" to "1952.6". This change was made so that the definition of "lease" would apply to Section 1952.6. The change was made at the request of the California Land Title Association, which had some doubt as to whether "lease" should be defined, but requested that, if the definition was to be retained, it should be made applicable to all of the new provisions.

(2) The references to January 1, 1970, in Section 1952.2 were all changed to July 1, 1970. This will give lawyers and others more time to plan for the changeover in lease forms before the law becomes operative.

Senate Bill 102 - Fictitious business name certificates

This bill was approved without change.

Senate Bill 103 - Privileges article of Evidence Code

This bill was approved without change. The representative of the District Attorney's Association and Peace Officers Association who appeared in opposition primarily was concerned that the bill was a foot in the door and that the psychotherapist-patient privilege would later be proposed to be extended to other groups. We needed 7 votes to get the bill out of committee and we got just 7 votes. The Committee devoted several hours to a hearing on the bill. The only witnesses who were given an opportunity to testify were the Executive Secretary and the representative of the Peace Officers.

Some of the problems that we discussed concerned the Committee. For example, the Committee was concerned as to who was the holder of the privilege

when the "patient" is a six year old child. The Committee seemed concerned that we had not clarified this matter since, the way the statute reads, the child is now the holder and could claim the privilege--a result that the Committee doubted was a desirable one.

We do not want to amend this bill unless it is absolutely necessary. However, if the bill is amended in the Assembly, we suggest that the following additional section be added to the bill:

Sec. 5. Section 1024 of the Evidence Code is amended to read:

1024. There is no privilege under this article if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or to the person or property of another , or that the patient is in danger from another, and that disclosure of the communication is necessary to prevent the threatened danger.

This suggested revision would, for example, permit the psychotherapist to disclose communications of the child in a child abuse case. If we do not make this change this session, we can consider making it when we consider the law review article being written on the other problems under the psychotherapist-patient privilege.

Senate Bill 104 - Mutuality of remedies

Bill approved by Committee as amended by Commission (copy attached).

Senate Bill 105 - Additur and remittitur

Bill approved by Committee as amended by Commission (copy attached).

SCR 16 - Continues authority to study previously authorized topics

Measure approved by Committee as introduced.

SCR 17 - New topics

See First Supplement to Memorandum 69-44.

Respectfully submitted,

John H. DeMouilly
Executive Secretary