

11/11/85

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Memorandum 85-106

Subject: Assembly Bill 196 and the Problem of Conflicting Amendments
Made by Different Bills to Same Code Section

Assembly Bill 196

Assembly Bill 196 amended Section 18102 of the Health and Safety Code to:

--Revise the certification requirements for transfer without probate of a manufactured home, mobilehome, commercial coach, or truck camper registered with the Department of Housing and Community Development.

--Preclude such a transfer for 40 days following the death of the decedent.

--Make other nonsubstantive changes.

Assembly Bill 2409, which was signed after Assembly Bill 196, amended the same section--Section 18102--to include "floating homes" within the scope of Section 18102. This bill did not include the amendment made to Section 18102 by Assembly Bill 196.

If two bills amending the same code section are enacted during the same year of a biennial session of the Legislature, the last chaptered bill prevails as to the amendment of the code section. Gov't Code § 9605. Accordingly, since Assembly Bill 2409 was signed last, Section 18102 has been amended in the form set out in that bill and does not include the amendment made by Assembly Bill 196; the changes in Section 18102 proposed by Assembly Bill 196 are not effective.

Because of this situation, a bill must be introduced at the 1986 session to make the changes in Section 18102 that are necessary to conform the section to the remainder of Assembly Bill 196. A copy of the needed amendment is set out as Exhibit 1. However, a separate bill will not be necessary if the Commission approves the recommended legislation attached to Memorandum 85-103 (included on the agenda for

the December 1985 meeting of the Law Revision Commission) but we will have to revise the conforming amendment to Section 18102 contained in that memorandum so that it is directed to the latest version of the section.

Problem of Conflicting Amendments to Same Code Section

Attached as Exhibit 2 is a letter from Assemblyman Bill Leonard requesting that the Commission review the rule that the last bill chaptered is the one that determines the form of a code section that is amended by one or more bills previously chaptered. You should read the letter for a discussion of the problem. The letter points out that the last-signed-bill-determines-the-form-of-the-code-section rule creates additional workload, makes the bills more difficult to understand, and increases printing costs.

The Commission is not authorized to study this matter. The Commission could study this matter only if authorized by a concurrent resolution adopted by the Legislature. The staff suggests that the Commission request that the Legislative Counsel prepare an analysis of the problem for the Commission before the Commission makes any decision as to how to dispose of this request.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Exhibit 1

TECHNICAL AMENDMENT TO SECTION 18102 OF HEALTH & SAFETY CODE

Health & Safety Code § 18102 (amended). Transfer of manufactured home, mobilehome, commercial coach, truck camper, or floating home without probate

SEC. ____ . Section 18102 of the Health and Safety Code is amended to read:

18102. (a) ~~Upon~~ If 40 days have elapsed since the death of a registered or legal owner of a manufactured home, mobile home, commercial coach, truck camper, or floating home registered under this part, without the decedent leaving other property necessitating probate, ~~unless the manufactured home, mobilehome, commercial coach, or truck camper is, by will, otherwise bequeathed,~~ and irrespective of the value of the manufactured home, mobilehome, commercial coach, truck camper, or floating home the following person may secure a transfer of registration of the title of the decedent:

(1) The surviving husband or wife or other heir ~~or beneficiary~~ in the order named in Section 630 of the Probate Code, unless the manufactured home, mobilehome, commercial coach, truck camper, or floating home is, by will, otherwise bequeathed.

(2) The beneficiary who takes the manufactured home, mobilehome, commercial coach, truck camper, or floating home under the will of the decedent, where the manufactured home, mobilehome, commercial coach, truck camper, or floating home is, by will, so bequeathed.

(b) The person authorized by subdivision (a) may secure a transfer of registration of the title or interest of the decedent upon presenting to the department all of the following:

~~(a)~~

(1) The appropriate certificate of title and registration card, if available.

~~(b) A certified statement of the heir or beneficiary setting forth his or her interest in the estate of the decedent.~~

~~(c) The names and addresses of any other heirs or beneficiaries.~~

~~(d) If required by the Department, a certificate of the death of the decedent.~~

~~(e) A statement that there are no creditors of the decedent or, if so, that the creditors of the decedent have been paid in full or their claims have been otherwise discharged.~~

(2) A certificate of the heir or beneficiary under penalty of perjury containing the following statements:

(A) The date and place of the decedent's death.

(B) The decedent left no other property necessitating probate and no probate proceeding is now being or has been conducted in this state for the decedent's estate.

(C) The declarant is entitled to the manufactured home, mobilehome, commercial coach, truck camper, or floating home either (i) as the surviving heir or heirs named in Section 630 of the Probate Code if the decedent left no will or (ii) as the beneficiary or beneficiaries under the decedent's last will if the decedent left a will, and no one has a right to the decedent's manufactured home, mobilehome, commercial coach, truck camper, or floating home that is superior to that of the declarant.

(D) There are no unsecured creditors of the decedent or, if there are, the unsecured creditors of the decedent have been paid in full or their claims have been otherwise discharged.

(3) If required by the department, a certificate of the death of the decedent.

(4) If required by the department, the names and addresses of any other heirs or beneficiaries.

Comment. Section 18102 is amended to add the provision for a 40-day delay after the decedent's death, and to make clear that a beneficiary who takes a manufactured home, mobilehome, commercial coach, truck camper, or floating home under the decedent's will (whether or not the beneficiary is related to the decedent) may secure a transfer of registration of the title or interest of the decedent without the need to probate the decedent's estate. This is consistent

with the practice of the department. Since Section 18102 applies only where the decedent left no other property necessitating probate, the amendment to Section 18102 avoids the need to probate the decedent's estate merely to secure a transfer of registration of the title or interest of the decedent. The amendment makes Section 18102 consistent with Section 630 of the Probate Code which permits a beneficiary under the decedent's will to have record title to a right or interest transferred to the beneficiary upon furnishing the registrar or transfer agent with an affidavit (or declaration under penalty of perjury) showing the beneficiary's right to have the transfer made.

Section 18102 is also amended so that the requirement that creditors of the decedent have been paid is limited to unsecured creditors.

For comparable provisions, see Veh. Code §§ 5910 (vehicle), 9916 (vessel).

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BILL LEONARD

STATE ASSEMBLYMAN

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November 5, 1985

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John H. De Mouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94303

Dear Mr. De Mouilly:

During the closing days of every session it becomes increasingly clear that there is a serious problem in procedures relating to conflict amendments which needs to be addressed.

Conflict notices are sent to the respective authors by the Office of Legislative Counsel to alert them to possible problems. This is helpful. The problem arises when conflict amendments are ordered by the authors. They are prepared in a number of ways:

1. Section numbers are changed or new sections are created to avoid conflicts, if possible. (If this is done, there is need for only one set of amendments).
2. Language is added stating the conflict with each bill, and the section numbers involved. The conflicting sections are written in two different forms -- one section is the author's language, the other section incorporates both the author's language and the language of the bill in conflict. At the end of the bill there is "conflict language" for each section of the bill in conflict. These amendments must be prepared for all bills in conflict -- two or more sets of amendments.

Simple conflict amendments can require as much as 25 pages of amendments. This creates an additional workload for consultants who must analyze the bills, causes legislators to question the nature of the amendments, adds cost to the price of printing the

bills, and last, but certainly not least, creates many problems for the Office of Legislative Counsel when all of these requests are coming at the same time. It also creates an added burden for the Governor's office in determining in what order the bills should be signed.

I strongly recommend that this issue be studied, and a simplified procedure established.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill", with a stylized flourish extending from the end.

BILL LEONARD

BL:jc