

Study J-110

May 8, 1996

First Supplement to Memorandum 96-29**Legislative Program: SB 1510 (Tolling Statutes
of Limitation: Comments of CAOC)**

Attached to this supplement is a letter from Lea-Ann Tratten on behalf of the Consumer Attorneys of California outlining CAOC's opposition to the Commission's recommendation on *Tolling Statutes of Limitations When Defendant Is Out of State* (November 1995), part of SB 1510 (Kopp).

We will discuss this letter and the issues it raises at the meeting.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

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May 7, 1996

Law Revision Commission
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Ms. Barbara Gall
California Law Revision Commission
4000 Middlefield Road
Palo Alto, CA 94303-4739

Re: Memorandum 96-28; SB 1510

Dear Ms. Gall:

Consumer Attorneys of California confirms our oral opposition to the repeal of CCP § 351. CAOC understands that the reason for repealing the sections is three-fold: (1) federal courts have held that the section is unconstitutional as applied to interstate commerce, (2) that it is unfair to toll the statute for periods of brief absences from the state and (3) that the original justification of the statute is no longer valid.

The proffered reasons are insufficient to support repeal of the section. California courts have consistently upheld the provisions of the section, and as recently as 1992 upheld its constitutionality in cases that do not involve interstate commerce. (See Pratt v. Gates 4 Cal.App.4th 632.)

CAOC opposes the repeal of CCP § 351 for the following reasons:

1. Repeal of CCP § 351 will unfairly prejudice California residents with claims against nonresident defendants. It is difficult and expensive to effect service of process on nonresident defendants. California has extremely short statutes of limitations, one year in tort cases. Without the benefit of CCP § 351's tolling provisions, legitimate claims by California residents against nonresident defendants will be lost.

2. Repeal of CCP § 351 rewards out-of-state defendants who evade service of process.

CAOC understands that the Commission is concerned about perceived unfairness

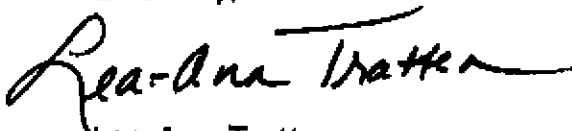
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to a defendant who leaves the state, for even a brief period, who then faces tolling under CCP § 351. CAOC believes that rather than repeal the section, the answer is to directly address the perceived problem. CAOC suggests setting an outside limit on the tolling provision, i.e., add "In no event shall the statute be tolled longer than three years."

Please contact me if you wish to discuss this issue further.

Sincerely,



Lea-Ann Tratten

cc: Senator Quentin Kopp