

Leg. Prog.

September 4, 1998

Memorandum 98-57

1998 Legislative Program

Attached to this memorandum is a chart showing the status of bills in the Commission's 1998 legislative program and other items of interest. Exhibit p. 1. This memorandum supplements the chart as to a few matters. We will make any necessary updates at the meeting.

The legislative session ended August 31. The Governor has until September 30 to act on any bills he receives after September 1 (that would include AB 1094, AB 2801, and SB 2139).

AB 1683 (Kuykendall) — Uniform TOD Security Registration Act

AB 1683 enacts the Uniform TOD Security Registration Act in the form set out in the Commission's recommendation. However, several minor amendments were made to the bill that require minor adjustments in the Commission's Comments. The adjustments we would make are shown in strikeout and underscore in Exhibit pp. 2-3.

The Commission has received a letter from Coleman E. Campbell of Belmont expressing appreciation for the Commission's study, review and recommendations on this matter, leading to its acceptance by the Legislature. Exhibit p. 4.

AB 2801 (Assem. Jud. Comm.) — Inheritance Involving Stepparent or Foster Parent

The recommendation on inheritance involving a stepparent or foster parent was taken out of the Assembly Judiciary Committee's omnibus probate bill — AB 2801. The explanation for this action was that the bill is intended to include only noncontroversial changes. The Senate Judiciary Committee's staff concluded that the Commission's recommendation "would have resolved a dispute between two conflicting court opinions by taking one side over the other", and therefore wasn't noncontroversial.

The staff will continue to look for an appropriate vehicle for this recommendation. It is too small to warrant a separate bill of its own. Perhaps it

can be combined with other miscellaneous Commission recommendations on probate law, should the Commission develop some during the coming year.

SB 2139 (Lockyer) — Trial Court Unification

The bill has passed the Legislature and is awaiting action by the Governor. For further information, please refer to Memorandum 98-61.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

**STATUS OF 1998 COMMISSION LEGISLATIVE PROGRAM
AND OTHER BILLS OF INTEREST**

(as of September 3, 1998)

AB 707 (Ackerman): Real Property Covenants (includes First Rule in Spencer's Case and Statute of Limitations)

AB 1094 (Assem Jud Comm): Response to Demand for Production of Documents in Discovery

AB 1683 (Kuykendall): Uniform TOD Security Registration Act

AB 2164 (Wayne): ALJ Code of Ethics

AB 2801 (Assem Jud Comm): Step and Foster Child Inheritance

SB 177 (Kopp): Best Evidence Rule

SB 2063 (Kopp): Business Judgment Rule

SB 2139 (Lockyer): Trial Court Unification

SCR 65 (Kopp): Continuing Authority to Study Topics

Bill Status		AB 707	AB 1094	AB 1683	AB 2164	AB 2801	SB 177	SB 2063	SB 2139	SCR 65
Introduced		2/26/97	2/27/97	Jan 16	Feb 19	Mar 9	1/22/97	Feb 20	Feb 20	Jan 14
Last Amended		Mar 4	Aug 24	June 29	June 4	Aug 5	5/5/97	Mar 23	Aug 28	
First House	Policy Committee	Jan 14	Jan 16	Mar 3	May 5	Apr 22	Jan 14	Failed	Apr 14	Mar 13
	Fiscal Committee	—	—	—	—	May 14	—		May 4	Apr 20
	Passed House	Jan 22	Jan 26	Mar 12	May 18	May 21	Jan 22		May 14	Apr 30
Second House	Policy Committee	Mar 18	Aug 6	June 23	June 9	Aug 4	June 9		June 30	June 9
	Fiscal Committee	—	Aug 20	—	—	Aug 18	—		Aug 6	July 1
	Passed House	Mar 26	Aug 26	July 9	June 18	Aug 20	June 18		Aug 31	July 8
Concurrence		Mar 30	Aug 29	July 20	June 22	Aug 25	—		Aug 31	—
Governor	Received	Apr 1		July 22	June 24	Sept 3	June 23			—
	Approved	Apr 6		Aug 3	July 3		July 3			—
Chaptered by		Date		Aug 4	July 6		July 6			July 14
Secretary of State		Chapter #	14	242	95		100			Res. 91

• Unless otherwise noted, all dates are in 1998

[date]: scheduled

—: not applicable

AB 1683 (KUYKENDALL)

REVISED COMMENTS

Prob. Code § 5500 (added). Short title; purposes; construction

Comment. Section 5500 is the same in substance as Section 11 of the Uniform TOD Security Registration Act (1989). As to construing provisions drawn from uniform acts, see Section 2(b). Paragraphs (1) and (2) of subdivision (b) (c) are not in the uniform act, but are included as a useful statement of the underlying purposes and policy of this part. For a severability provision, see Section 11.

Prob. Code § 5508 (added). Protection of registering entity

Comment. Section 5508 is the same as Section 8 of the Uniform TOD Security Registration Act (1989), except for substitution of “part” for “act,” and substitution of “Section 5507” for “Section 7 : 1,” and omission in subdivision (b) of language providing that the registering entity agrees that the registration will be implemented “on death of the deceased owner” as provided in this part. The omission from subdivision (b) is nonsubstantive, since subdivision (b) provides that the registering entity agrees to implement the registration as provided in this part, whether before or after the death of the deceased owner.

A “request” for registration in beneficiary form may be in any form chosen by a registering entity. This part does not prescribe a particular form and does not impose record-keeping requirements. Registering entities’ business practices, including any industry standards or rules of transfer agent associations, will control.

The written notice referred to in subdivision (c) would qualify as a notice under Section 8403 of the Uniform Commercial Code.

“Good faith” as used in subdivision (c) is intended to mean “honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade,” as specified in Section 2103(1)(b) of the Uniform Commercial Code.

The protections described in this section are designed to meet any questions regarding registering entity protection that may not be foreclosed by issuer protections provided in the Uniform Commercial Code. For a discussion of the relevant Uniform Commercial Code provisions, see Wellman, *Transfer-on-Death Securities Registration: A New Title Form*, 21 Ga. L. Rev. 789, 823 n.90 (1987).

Prob. Code § 5509 (added). Nontestamentary transfer on death; rights of creditors

Comment. Section 5509 is the same as Section 9 of the Uniform TOD Security Registration Act (1989), ~~with the addition of the last portion of subdivision (a), drawn from Section 5000~~ except for substitution of “part” for “act,” and the addition of the language in subdivision (b) that this part does not limit the rights of a surviving spouse against beneficiaries and other transferees under other laws of this state. This language is consistent with Section 5511 (nothing in this part alters rights in community property).

Prob. Code § 5512 (added). Application of part

Comment. Section 5512 is the same as Section 11 of the Uniform TOD Security Registration Act (1989), except that it applies this “part” to registrations made before, “on,” or after the operative date.

CONFORMING REVISIONS

Com. Code § 8107 (amended). Appropriate person; effectiveness of endorsement, instruction, or entitlement order

Comment. ~~Subdivision (a)(4) of Section 8107 is amended to add paragraph (6) to subdivision (a) the last portion, following “the estate of the decedent.”~~ This is a technical amendment to make clear that a TOD beneficiary is an “appropriate person” when the beneficiary has survived the registered sole owner or all the registered owners of a security registered in beneficiary form under the Uniform TOD Security Registration Act (1989). See Prob. Code §§ 5500-5512. See also Section 8102 (“entitlement order,” “financial asset,” “endorsement,” “instruction,” “security,” “security certificate,” and “uncertificated security” defined).

P.O. Box 5112
Belmont, CA 94002

31 Aug 1998

Mr. Edwin K. Marzec
Chairperson
California Law Revision Commission
Palo Alto, CA

Law Revision Commission
RECEIVED

SEP -1 1998

File: _____


Dear Mr. Marzec:

I have been told that Assembly Bill No. 1683
Uniform TOD Security Registration Act
has been enacted into law during August 1998.

I write to thank you and the members and staff of your
Commission for your study, review, and recommendations for this
act; leading to its acceptance by our legislature.

It will be interesting to see how rapidly Industry will
accept its implementation and use.

Sincerely,



Coleman E. Campbell