

## First Supplement to Memorandum 2004-16

**Civil Discovery: Nonsubstantive Reform (Obsolete Cross References)**

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Attached for the Commission's review is a draft of a tentative recommendation proposing to correct the obsolete cross-references to the civil discovery statute, as discussed in Memorandum 2004-16 and Memorandum 2004-13. The Commission needs to decide whether to approve this draft, as is or with revisions, for circulation for comment.

In preparing the draft, the staff discovered the following additional errors in the statutes under consideration, unrelated to civil discovery:

- (1) Health and Safety Code Section 1424.1(c) cross-refers to Welfare and Institutions Code Section 9701. The cross-referenced definitions are still located in Welfare and Institutions Code Section 9701, but not in the subdivisions specified in Health and Safety Code Section 1424.1. The proposed amendment in the attached draft would delete the subdivision references, making it easier to keep the cross-references up-to-date in the future.
- (2) Insurance Code Section 11580.2(c)(5) cross-refers to subdivisions (a), (b), and (c) of Vehicle Code Section 16054. The subdivision references are no longer correct; the pertinent material is now located in subdivisions (a)(1)-(a)(3) of Vehicle Code Section 16054. The proposed amendment in the attached draft would delete the subdivision references and simply refer to Vehicle Code Section 16054. This would make it easier to keep the cross-reference up-to-date in the future.

One possible issue regarding the proposed amendment to Insurance Code Section 11580.2(c)(5) is that it would expand the scope of the cross-reference to include Vehicle Code Section 16054(a)(4) (proof of financial responsibility by an owner or driver who is involved in an accident while operating a vehicle of less than four wheels). A Note in the attached draft would solicit comment on whether this proposed expansion of the cross-reference is appropriate.

Assembly Bill 3081 (Assem. Judic. Comm.) would implement the Commission's proposed nonsubstantive reorganization of the civil discovery provisions. For each proposed amendment in the attached draft, we have

included a Note indicating that the amendment will be revised accordingly if AB 3081 is enacted.

Respectfully submitted,

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# CALIFORNIA LAW REVISION COMMISSION

*Staff Draft*  
TENTATIVE RECOMMENDATION

## Civil Discovery: Correction of Obsolete Cross-References

April 2004

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN \_\_\_\_\_.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

The Commission proposes to amend the following provisions to correct obsolete cross-references to civil discovery provisions:

- (1) Business and Professions Code Section 25009
- (2) Code of Civil Procedure Section 1283
- (3) Code of Civil Procedure Section 1991.2
- (4) Education Code Section 44944
- (5) Government Code Section 12963.3
- (6) Government Code Section 68097.6
- (7) Health and Safety Code Section 1424.1
- (8) Insurance Code Section 11580.2

This recommendation was prepared pursuant to Resolution Chapter 92 of the Statutes of 2003.

## CIVIL DISCOVERY: CORRECTION OF OBSOLETE CROSS-REFERENCES

1 The Law Revision Commission is engaged in a study of civil discovery.<sup>1</sup> As a  
2 preliminary step, the Commission proposed a nonsubstantive reorganization of the  
3 provisions governing civil discovery, to make them more user-friendly and  
4 facilitate sound development of the law.<sup>2</sup>

5 In developing that recommendation, the Commission discovered a number of  
6 statutes with one or more cross-references to civil discovery provisions that were  
7 never properly conformed to reflect enactment of the Civil Discovery Act of  
8 1986.<sup>3</sup> Those provisions are:

- 9 • Business and Professions Code Section 25009
- 10 • Code of Civil Procedure Section 1283
- 11 • Code of Civil Procedure Section 1991.2
- 12 • Education Code Section 44944
- 13 • Government Code Section 12963.3
- 14 • Government Code Section 68097.6
- 15 • Health and Safety Code Section 1424.1
- 16 • Insurance Code Section 11580.2

17 The Commission recommends updating the obsolete cross-references to civil  
18 discovery provisions in these statutes.<sup>4</sup> The proposed legislation is based on

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1. Prof. Gregory Weber of McGeorge School of Law prepared a background study for the Commission. See Weber, *Potential Innovations in Civil Discovery: Lessons for California from the State and Federal Courts*, 32 McGeorge L. Rev. 1051 (2001).

2. *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). A bill to implement the recommendation is pending in the Legislature. See AB 3081 (Judiciary).

3. 1986 Cal. Stat. ch. 1334.

4. The Commission also proposes to make a few grammatical corrections and stylistic changes, delete obsolete language in Code of Civil Procedure Section 1991.2, make explicit that letters rogatory or a letter of request are to be obtained when necessary under Code of Civil Procedure Section 1283, and correct the following additional errors in the statutes under consideration, unrelated to civil discovery:

(1) Health and Safety Code Section 1424.1(c) cross-refers to Welfare and Institutions Code Section 9701. The cross-referenced definitions are still located in Welfare and Institutions Code Section 9701, but not in the subdivisions specified in Health and Safety Code Section 1424.1. The proposed amendment to Health and Safety Code Section 1424.1 would delete the subdivision references, making it easier to keep the cross-references up-to-date in the future.

(2) Insurance Code Section 11580.2(c)(5) cross-refers to subdivisions (a), (b), and (c) of Vehicle Code Section 16054. The subdivision references are no longer correct; the pertinent material is now located in subdivisions (a)(1)-(a)(3) of Vehicle Code Section 16054. The proposed amendment to Insurance Code Section 11580.2(c)(5) would delete the subdivision references and simply refer to Vehicle Code Section 16054. This would make it easier to keep the cross-reference up-to-date in the future.

One possible issue regarding the proposed amendment to Insurance Code Section 11580.2(c)(5) is that it would expand the scope of the cross-reference to include Vehicle Code Section 16054(a)(4)

1 existing law. If the pending reorganization of the civil discovery provisions is  
2 enacted, the Commission will adjust each proposed amendment accordingly.<sup>5</sup>

3 A Comment to each provision includes citations to sources showing:

- 4 (1) The content of each cross-referenced provision at the time when the cross-  
5 reference was inserted.
- 6 (2) Where that material has been relocated.<sup>6</sup>

7 The Commission’s work on civil discovery is continuing, and the Commission  
8 may propose further reforms in the future. The Commission encourages interested  
9 persons to comment on the following proposals and offer suggestions on other  
10 areas or ideas to investigate.

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(proof of financial responsibility by an owner or driver who is involved in an accident while operating a vehicle of less than four wheels). The Commission solicits comment on whether this proposed expansion of the cross-reference is appropriate.

5. Most of the proposed amendments are straightforward. The proposed amendment of Business and Professions Code Section 25009 would simplify the statute by referring to the Civil Discovery Act generally, rather than to several specific discovery provisions. This nonsubstantive change would make it easier to keep the statute up-to-date in the future.

The legislative history of the provisions referenced in Code of Civil Procedure Section 1283 (former Code Civ. Proc. §§ 2024-2028) is complicated. It is clear from the context, however, that the proper modern references are Code of Civil Procedure Sections 2026 and 2027, which pertain to the procedures for obtaining a commission for taking an out-of-state deposition.

The amendment of Insurance Code Section 11580.2(f)(5) would reflect that the cross-referenced provision now refers to “a party to the action,” rather than “a party to the record of any civil action or proceedings.”

6. For further detail on the proposed amendments, see Commission Staff Memorandum 2004-13 and Commission Staff Memorandum 2004-16, which are available on the Commission’s website at <[www.clrc.ca.gov](http://www.clrc.ca.gov)>.


## PROPOSED LEGISLATION

1 **Bus. & Prof. Code § 25009 (amended). Evidence**

2 SECTION 1. Section 25009 of the Business and Professions Code is amended to  
3 read:

4 25009. Any defendant in any action brought under this chapter or any person  
5 who may be a witness therein under ~~Sections 2016, 2018, and 2019~~ Article 3  
6 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of  
7 Civil Procedure or Section 776 of the Evidence Code, and the books and records  
8 of any such defendant or witness, may be brought into court and the books and  
9 records may be introduced by reference into evidence, but no information so  
10 obtained may be used against the defendant or any such witness as a basis for a  
11 misdemeanor prosecution under this chapter.

12 **Comment.** Section 25009 is amended to reflect revision and relocation of the civil discovery  
13 provisions referenced in it (former Code Civ. Proc. §§ 2016, 2018, and 2019), which were  
14 repealed in 1986 and their substance relocated to Code of Civil Procedure Sections 2017, 2018,  
15 2021, and 2025-2028. 1986 Cal. Stat. ch. 1334, §§ 1, 2; see also 1961 Cal. Stat. ch. 192, § 1  
16 (former Code Civ. Proc. § 2018); 1963 Cal. Stat. ch. 519, § 1 (former Code Civ. Proc. § 2019);  
17 1965 Cal. Stat. ch. 299, § 125 (former Code Civ. Proc. § 2016); 1965 Cal. Stat. ch. 299, § 5  
18 (earlier version of Section 25009). For purposes of simplification and to make it easier to keep the  
19 cross-references up-to-date in the future, Section 25009 is amended to refer to the Civil Discovery  
20 Act generally, rather than to a list of discovery provisions pertaining to depositions. This is not a  
21 substantive change.

22  **Note.** Assembly Bill 3081 (Judiciary) would implement the Law Revision Commission's  
23 recommendation on nonsubstantive reorganization of the Civil Discovery Act. *Civil Discovery:*  
24 *Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that bill is enacted,  
25 the Commission will adjust the proposed amendment to Business and Professions Code Section  
26 25009 accordingly.

27 **Code Civ. Proc. § 1283 (amended). Deposition for use as evidence**

28 SEC. 2. Section 1283 of the Code of Civil Procedure is amended to read:

29 1283. On application of a party to the arbitration the neutral arbitrator may order  
30 the deposition of a witness to be taken for use as evidence and not for discovery if  
31 the witness cannot be compelled to attend the hearing or if such exceptional  
32 circumstances exist as to make it desirable, in the interest of justice and with due  
33 regard to the importance of presenting the testimony of witnesses orally at the  
34 hearing, to allow the deposition to be taken. The deposition shall be taken in the  
35 manner prescribed by law for the taking of depositions in civil actions. If the  
36 neutral arbitrator orders the taking of the deposition of a witness who resides  
37 outside the state, the party who applied for the taking of the deposition shall obtain  
38 a commission, letters rogatory, or a letter of request therefor from the superior  
39 court in accordance with Sections ~~2024 to 2028, inclusive, of this code~~ 2026 and  
40 2027.

1 **Comment.** Section 1283 is amended to reflect revision and relocation of the civil discovery  
2 provisions referenced in it. As enacted in 1970, the section referred to Sections 2024-2028. 1970  
3 Cal. Stat. ch. 1045, § 1. That cross-reference is obsolete. See 1986 Cal. Stat. ch. 1334, § 1  
4 (repealing former Sections 2024-2025); 1961 Cal. Stat. ch. 192, §§ 8-10 (repealing former  
5 Sections 2026-2028). The modern provisions governing an out-of-state deposition are Sections  
6 2026 and 2027.

7 Section 1283 is also amended to make clear that letters rogatory or a letter of request are to be  
8 obtained, when necessary, for a deposition taken in arbitration.

9 Section 1283 is further amended to delete surplusage.

10 ☞ **Note.** Assembly Bill 3081 (Judiciary) would implement the Law Revision Commission's  
11 recommendation on nonsubstantive reorganization of the Civil Discovery Act. *Civil Discovery:*  
12 *Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that bill is enacted,  
13 the Commission will adjust the proposed amendment to Code of Civil Procedure Section 1283  
14 accordingly.

### 15 **Code Civ. Proc. § 1991.2 (amended). Application of Section 1991**

16 SEC. 3. Section 1991.2 of the Code of Civil Procedure is amended to read:

17 1991.2. ~~On and after the ninety-first day after adjournment of the 1959 Regular~~  
18 ~~Session, the~~ The provisions of Section 1991 shall do not apply to any act or  
19 omission thereafter occurring in a deposition taken pursuant to Article 3, Chapter  
20 3, Title 3, Part 4 (commencing at Section 2016) but the (commencing with Section  
21 2016) of Chapter 3. The provisions of Section 2034 shall be 2023 are exclusively  
22 applicable.

23 **Comment.** Section 1991.2 is amended to delete obsolete language, correct the cross-reference  
24 to former Section 2034, and conform to modern drafting conventions. For the text of former  
25 Section 2034, see 1959 Cal. Stat. ch. 1590, § 12. Former Section 2034 was repealed in 1986 and  
26 its substance relocated to Section 2023. 1986 Cal. Stat. ch. 1334, §§ 1, 2.

27 ☞ **Note.** Assembly Bill 3081 (Judiciary) would implement the Law Revision Commission's  
28 recommendation on nonsubstantive reorganization of the Civil Discovery Act. *Civil Discovery:*  
29 *Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that bill is enacted,  
30 the Commission will adjust the proposed amendment to Code of Civil Procedure Section 1991.2  
31 accordingly.

### 32 **Educ. Code § 44944 (amended). Conduct of hearing**

33 SEC. 4. Section 44944 of the Education Code is amended to read:

34 44944. (a) In a dismissal or suspension proceeding initiated pursuant to Section  
35 44934, if a hearing is requested by the employee, the hearing shall be commenced  
36 within 60 days from the date of the employee's demand for a hearing. The hearing  
37 shall be initiated, conducted, and a decision made in accordance with Chapter 5  
38 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the  
39 Government Code. However, the hearing date shall be established after  
40 consultation with the employee and the governing board, or their representatives,  
41 and the Commission on Professional Competence shall have all the power granted  
42 to an agency in that chapter, except that the right of discovery of the parties shall  
43 not be limited to those matters set forth in Section 11507.6 of the Government  
44 Code but shall include the rights and duties of any party in a civil action brought in



1 a superior court under Article 3 (commencing with Section 2016) of Chapter 3 of  
2 ~~Title 4~~ Title 3 of Part 4 of the Code of Civil Procedure. Notwithstanding any  
3 provision to the contrary, and except for the taking of oral depositions, no  
4 discovery shall occur later than 30 calendar days after the employee is served with  
5 a copy of the accusation pursuant to Section 11505 of the Government Code. In all  
6 cases, discovery shall be completed prior to seven calendar days before the date  
7 upon which the hearing commences. If any continuance is granted pursuant to  
8 Section 11524 of the Government Code, the time limitation for commencement of  
9 the hearing as provided in this subdivision shall be extended for a period of time  
10 equal to such continuance. However, the extension shall not include that period of  
11 time attributable to an unlawful refusal by either party to allow the discovery  
12 provided for in this section.

13 If the right of discovery granted under the preceding paragraph is denied by  
14 either the employee or the governing board, all the remedies in ~~Section 2034~~  
15 Section 2023 of the Code of Civil Procedure shall be available to the party seeking  
16 discovery and the court of proper jurisdiction, to entertain his or her motion, shall  
17 be the superior court of the county in which the hearing will be held.

18 The time periods in this section and of Chapter 5 (commencing with Section  
19 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Article 3  
20 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of  
21 Civil Procedure shall not be applied so as to deny discovery in a hearing conducted  
22 pursuant to this section.

23 The superior court of the county in which the hearing will be held may, upon  
24 motion of the party seeking discovery, suspend the hearing so as to comply with  
25 the requirement of the preceding paragraph.

26 No witness shall be permitted to testify at the hearing except upon oath or  
27 affirmation. No testimony shall be given or evidence introduced relating to matters  
28 which occurred more than four years prior to the date of the filing of the notice.  
29 Evidence of records regularly kept by the governing board concerning the  
30 employee may be introduced, but no decision relating to the dismissal or  
31 suspension of any employee shall be made based on charges or evidence of any  
32 nature relating to matters occurring more than four years prior to the filing of the  
33 notice.

34 (b) The hearing provided for in this section shall be conducted by a Commission  
35 on Professional Competence. One member of the commission shall be selected by  
36 the employee, one member shall be selected by the governing board, and one  
37 member shall be an administrative law judge of the Office of Administrative  
38 Hearings who shall be chairperson and a voting member of the commission and  
39 shall be responsible for assuring that the legal rights of the parties are protected at  
40 the hearing. If either the governing board or the employee for any reason fails to  
41 select a commission member at least seven calendar days prior to the date of the  
42 hearing, the failure shall constitute a waiver of the right to selection, and the  
43 county board of education or its specific designee shall immediately make the

1 selection. When the county board of education is also the governing board of the  
2 school district or has by statute been granted the powers of a governing board, the  
3 selection shall be made by the Superintendent of Public Instruction, who shall be  
4 reimbursed by the school district for all costs incident to the selection.

5 The member selected by the governing board and the member selected by the  
6 employee shall not be related to the employee and shall not be employees of the  
7 district initiating the dismissal or suspension and shall hold a currently valid  
8 credential and have at least five years' experience within the past 10 years in the  
9 discipline of the employee.

10 (c) The decision of the Commission on Professional Competence shall be made  
11 by a majority vote, and the commission shall prepare a written decision containing  
12 findings of fact, determinations of issues, and a disposition which shall be, solely:

13 (1) That the employee should be dismissed.

14 (2) That the employee should be suspended for a specific period of time without  
15 pay.

16 (3) That the employee should not be dismissed or suspended.

17 The decision of the Commission on Professional Competence that the employee  
18 should not be dismissed or suspended shall not be based on nonsubstantive  
19 procedural errors committed by the school district or governing board unless the  
20 errors are prejudicial errors.

21 The commission shall not have the power to dispose of the charge of dismissal  
22 by imposing probation or other alternative sanctions. The imposition of suspension  
23 pursuant to paragraph (2) shall be available only in a suspension proceeding  
24 authorized pursuant to subdivision (b) of Section 44932 or Section 44933.

25 The decision of the Commission on Professional Competence shall be deemed to  
26 be the final decision of the governing board.

27 The board may adopt from time to time such rules and procedures not  
28 inconsistent with provisions of this section as may be necessary to effectuate this  
29 section.

30 The governing board and the employee shall have the right to be represented by  
31 counsel.

32 (d) (1) If the member selected by the governing board or the member selected by  
33 the employee is employed by any school district in this state the member shall,  
34 during any service on a Commission on Professional Competence, continue to  
35 receive salary, fringe benefits, accumulated sick leave, and other leaves and  
36 benefits from the district in which the member is employed, but shall receive no  
37 additional compensation or honorariums for service on the commission.

38 (2) If service on a Commission on Professional Competence occurs during  
39 summer recess or vacation periods, the member shall receive compensation  
40 proportionate to that received during the current or immediately preceding contract  
41 period from the member's employing district, whichever amount is greater.

42 (e) If the Commission on Professional Competence determines that the employee  
43 should be dismissed or suspended, the governing board and the employee shall

1 share equally the expenses of the hearing, including the cost of the administrative  
2 law judge. The state shall pay any costs incurred under paragraph (2) of  
3 subdivision (d), the reasonable expenses, as determined by the administrative law  
4 judge, of the member selected by the governing board and the member selected by  
5 the employee, including, but not limited to, payments or obligations incurred for  
6 travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for  
7 the member selected by the governing board and the member selected by the  
8 employee. The Controller shall pay all claims submitted pursuant to this paragraph  
9 from the General Fund, and may prescribe reasonable rules, regulations, and forms  
10 for the submission of the claims. The employee and the governing board shall pay  
11 their own attorney fees.

12 If the Commission on Professional Competence determines that the employee  
13 should not be dismissed or suspended, the governing board shall pay the expenses  
14 of the hearing, including the cost of the administrative law judge, any costs  
15 incurred under paragraph (2) of subdivision (d), the reasonable expenses, as  
16 determined by the administrative law judge, of the member selected by the  
17 governing board and the member selected by the employee, including, but not  
18 limited to, payments or obligations incurred for travel, meals, and lodging, the cost  
19 of the substitute or substitutes, if any, for the member selected by the governing  
20 board and the member selected by the employee, and reasonable attorney fees  
21 incurred by the employee.

22 As used in this section, “reasonable expenses” shall not be deemed  
23 “compensation” within the meaning of subdivision (d).

24 If either the governing board or the employee petitions a court of competent  
25 jurisdiction for review of the decision of the commission, the payment of expenses  
26 to members of the commission required by this subdivision shall not be stayed.

27 In the event that the decision of the commission is finally reversed or vacated by  
28 a court of competent jurisdiction, then either the state, having paid the commission  
29 members’ expenses, shall be entitled to reimbursement from the governing board  
30 for those expenses, or the governing board, having paid the expenses, shall be  
31 entitled to reimbursement from the state.

32 Additionally, either the employee, having paid a portion of the expenses of the  
33 hearing, including the cost of the administrative law judge, shall be entitled to  
34 reimbursement from the governing board for the expenses, or the governing board,  
35 having paid its portion and the employee’s portion of the expenses of the hearing,  
36 including the cost of the administrative law judge, shall be entitled to  
37 reimbursement from the employee for that portion of the expenses.

38 (f) The hearing provided for in this section shall be conducted in a place selected  
39 by agreement among the members of the commission. In the absence of  
40 agreement, the place shall be selected by the administrative law judge.

41 **Comment.** Subdivision (a) of Section 44944 is amended to properly reflect the location of the  
42 Civil Discovery Act.

1 Subdivision (a) is also amended to reflect the revision and relocation of former Code of Civil  
2 Procedure Section 2034, which pertained to a sanctions for discovery misuse. Former Code of  
3 Civil Procedure Section 2034 was repealed in 1986 and its substance relocated to Code of Civil  
4 Procedure Section 2023. 1986 Cal. Stat. ch. 1334, §§ 1, 2; see also 1974 Cal. Stat. ch. 732, § 4  
5 (former Code Civ. Proc. § 2034); 1976 Cal. Stat. ch. 1010, § 2 (earlier version of Section 44944).  
6 Section 44944(a) was not revised at that time to reflect the repeal of former Code of Civil  
7 Procedure Section 2034 and the relocation. It is now amended to reflect that change.

8 The first paragraph of subdivision (e) is amended to make a grammatical correction.

9 ☞ **Note.** Assembly Bill 3081 (Judiciary) would implement the Law Revision Commission's  
10 recommendation on nonsubstantive reorganization of the Civil Discovery Act. *Civil Discovery:*  
11 *Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that bill is enacted,  
12 the Commission will adjust the proposed amendment to Education Code Section 44944  
13 accordingly.

#### 14 **Gov. Code § 12963.3 (amended). Depositions**

15 SEC. 5. Section 12963.3 of the Government Code is amended to read:

16 12963.3. (a) Depositions taken by the department shall be noticed by issuance  
17 and service of a subpoena pursuant to Section 12963.1. If, in the course of the  
18 investigation of a complaint, a subpoena is issued and served on an individual or  
19 organization not alleged in the complaint to have committed an unlawful practice,  
20 written notice of the deposition shall also be mailed by the department to each  
21 individual or organization alleged in the complaint to have committed an unlawful  
22 practice.

23 (b) A deposition may be taken before any officer of the department who has  
24 been authorized by the director to administer oaths and take testimony, or before  
25 any other person before whom a deposition may be taken in a civil action pursuant  
26 to ~~subdivision (a) of Section 2018~~ subdivision (c) of Section 2026 of the Code of  
27 Civil Procedure. The person before whom the deposition is to be taken shall put  
28 the witness on oath and shall personally, or by someone acting under the person's  
29 direction and in the person's presence, record the testimony of the witness. The  
30 testimony shall be taken stenographically and transcribed unless the parties agree  
31 otherwise. All objections made at the time of the examination shall be noted on the  
32 deposition by the person before whom the deposition is taken, and evidence  
33 objected to shall be taken subject to the objections.

34 **Comment.** Subdivision (b) of Section 12963.3 is amended to reflect revision and relocation of  
35 the civil discovery provision referenced in it (former Code Civ. Proc. § 2018(a)), which set forth  
36 guidelines for who was permitted to take a valid deposition outside the state. See 1961 Cal. Stat.  
37 ch. 192, § 1 (former Code Civ. Proc. § 2018); see also 1980 Cal. Stat. ch. 1023, § 5 (earlier  
38 version of Section 12963.3). Former Code of Civil Procedure Section 2018(a) was repealed in  
39 1986 and its substance relocated to Code of Civil Procedure 2026(c). 1986 Cal. Stat. ch. 1334, §§  
40 1, 2. Section 12963.3.1(b) was not revised at that time to reflect the repeal of former Code of  
41 Civil Procedure Section 2018(a) and the relocation. It is now amended to reflect that change.

42 ☞ **Note.** Assembly Bill 3081 (Judiciary) would implement the Law Revision Commission's  
43 recommendation on nonsubstantive reorganization of the Civil Discovery Act. *Civil Discovery:*  
44 *Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that bill is enacted,  
45 the Commission will adjust the proposed amendment to Government Code Section 12963.3  
46 accordingly.

1 **Gov. Code § 68097.6 (amended). Subpoenas for depositions of certain employees**

2 SEC. 6. Section 68097.6 of the Government Code is amended to read:

3 68097.6. Sections 68097.1, 68097.2, 68097.3, 68097.4, and 68097.5 of this code  
4 shall be ~~applicable~~ apply to subpoenas issued for the taking of depositions of  
5 employees of the Department of Justice who are peace officers or analysts in  
6 technical fields, peace officers of the Department of the California Highway  
7 Patrol, peace officer members of the State Fire Marshal's office, sheriffs, deputy  
8 sheriffs, marshals, deputy marshals, firefighters, or city police officers pursuant to  
9 Section ~~2019~~ 2025 of the Code of Civil Procedure.

10 **Comment.** Section 68097.6 is amended to reflect revision and relocation of the civil discovery  
11 provision referenced in it (former Code Civ. Proc. § 2019), which set forth guidelines for taking  
12 an oral deposition in the state. Former Code of Civil Procedure Section 2019 was repealed in  
13 1986 and its substance relocated to Code of Civil Procedure Section 2025. 1986 Cal. Stat. ch.  
14 1334, §§ 1, 2; see also 1963 Cal. Stat. ch. 519, § 1 (former Code Civ. Proc. § 2019); 1963 Cal.  
15 Stat. ch. 1485, § 5 (earlier version of Section 68097.6). Section 68097.6 was not revised at that  
16 time to reflect the repeal of former Code of Civil Procedure Section 2019 and the relocation. It is  
17 now amended to reflect that change.

18 Section 68097.6 is also amended to delete surplusage.

19 ☞ **Note.** Assembly Bill 3081 (Judiciary) would implement the Law Revision Commission's  
20 recommendation on nonsubstantive reorganization of the Civil Discovery Act. *Civil Discovery:*  
21 *Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that bill is enacted,  
22 the Commission will adjust the proposed amendment to Government Code Section 68097.6  
23 accordingly.

24 **Health & Safety Code § 1424.1 (amended). Quality assurance logs**

25 SEC. 7. Section 1424.1 of the Health and Safety Code is amended to read:

26 1424.1. (a) On and after the effective date of this section, no citation shall be  
27 issued or sustained under this chapter for a violation of any regulation discovered  
28 and recorded by a facility if all of the following conditions have been met:

29 (1) The facility maintains an ongoing quality assurance and patient care audit  
30 program, which includes maintenance of a quality assurance log which is made  
31 available to the state department at the commencement of each inspection and  
32 investigation. The facility shall retain this log for the current year and the  
33 preceding three years.

34 (2) The violation was not willful and resulted in no actual harm to any patient or  
35 guest.

36 (3) The violation was first discovered by the licensee and was promptly and  
37 accurately recorded in the quality assurance log prior to discovery by the state  
38 department.

39 (4) Promptly upon discovery, the facility implemented remedial action  
40 satisfactory to the state department to correct the violation and prevent a  
41 recurrence. If the state department determines that remedial action voluntarily  
42 undertaken by the facility is unsatisfactory, the state department shall allow the  
43 facility reasonable time to augment the remedial action before the condition shall  
44 be deemed to be a violation.

1 (b) Except as otherwise provided in this section, a quality assurance log which  
2 meets the criteria of this section shall not be discoverable or admissible in any  
3 action against the licensee. The quality assurance log shall be discoverable  
4 pursuant to a motion to produce under Section 2031 of the Code of Civil  
5 Procedure and admissible only for purposes of impeachment. However, the court,  
6 in a motion pursuant to ~~paragraph (1) of subdivision (b) of Section 2019~~  
7 subdivision (i) of Section 2025 of the Code of Civil Procedure, or at trial or other  
8 proceeding, may limit access to those entries which would be admissible for  
9 impeachment purposes.

10 (c) The quality assurance log shall be made available upon request to any of the  
11 following:

12 (1) Full-time state employees of the Office of the State Long-Term Care  
13 Ombudsman.

14 (2) Ombudsman coordinators, as defined in ~~subdivision (h) of~~ Section 9701 of  
15 the Welfare and Institutions Code.

16 (3) Ombudsmen qualified by medical training as defined in ~~subdivision (g) of~~  
17 Section 9701 of the Welfare and Institutions Code, with the approval of either the  
18 State Long-Term Care Ombudsman or ombudsman coordinator.

19 The licensee may make the quality assurance log available, in the licensee's  
20 discretion, to any representative of the Office of the State Long-Term Care  
21 Ombudsman, as defined in ~~subdivision (e) of~~ Section 9701 of the Welfare and  
22 Institutions Code, without liability for the disclosure. Each representative of the  
23 Office of the State Long-Term Care Ombudsman who has been provided access to  
24 a facility's quality assurance log pursuant to this section shall maintain all  
25 disclosures in confidence.

26 **Comment.** Subdivision (b) of Section 1424.1 is amended to reflect revision and relocation of  
27 the civil discovery provision referenced in it (former Code Civ. Proc. § 2019(b)(1)), which  
28 pertained to a motion for a protective order with respect to a deposition. Former Code of Civil  
29 Procedure Section 2019(b)(1) was repealed in 1986 and its substance relocated to Code of Civil  
30 Procedure 2025(i). 1986 Cal. Stat. ch. 1334, §§ 1, 2; see also 1982 Cal. Stat. ch. 192, § 1 (former  
31 Code Civ. Proc. § 2019); 1985 Cal. Stat. ch. 11, § 10 (earlier version of Section 1424.1). Section  
32 1424.1(b) was not revised at that time to reflect the repeal of former Code of Civil Procedure  
33 Section 2019(b)(1) and the relocation. It is now amended to reflect that change.

34 Subdivision (c) is amended to correct the cross-references to definitions in Welfare and  
35 Institutions Code Section 9701.

36 ☞ **Note.** Assembly Bill 3081 (Judiciary) would implement the Law Revision Commission's  
37 recommendation on nonsubstantive reorganization of the Civil Discovery Act. *Civil Discovery:*  
38 *Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that bill is enacted,  
39 the Commission will adjust the proposed amendment to Health and Safety Code Section 1424.1  
40 accordingly.

41 **Ins. Code § 11580.2 (amended). Uninsured and underinsured motorist coverage**

42 SEC. 8. Section 11580.2 of the Insurance Code is amended to read:

43 11580.2. (a)(1) No policy of bodily injury liability insurance covering liability  
44 arising out of the ownership, maintenance, or use of any motor vehicle, except for

1 policies that provide insurance in the Republic of Mexico issued or delivered in  
2 this state by nonadmitted Mexican insurers, shall be issued or delivered in this  
3 state to the owner or operator of a motor vehicle, or shall be issued or delivered by  
4 any insurer licensed in this state upon any motor vehicle then principally used or  
5 principally garaged in this state, unless the policy contains, or has added to it by  
6 endorsement, a provision with coverage limits at least equal to the limits specified  
7 in subdivision (m) and in no case less than the financial responsibility  
8 requirements specified in Section 16056 of the Vehicle Code insuring the insured,  
9 the insured's heirs or legal representative for all sums within the limits that he,  
10 she, or they, as the case may be, shall be legally entitled to recover as damages for  
11 bodily injury or wrongful death from the owner or operator of an uninsured motor  
12 vehicle. The insurer and any named insured, prior to or subsequent to the issuance  
13 or renewal of a policy, may, by agreement in writing, in the form specified in  
14 paragraph (2) or paragraph (3), (1) delete the provision covering damage caused  
15 by an uninsured motor vehicle completely, or (2) delete the coverage when a  
16 motor vehicle is operated by a natural person or persons designated by name, or  
17 (3) agree to provide the coverage in an amount less than that required by  
18 subdivision (m) but not less than the financial responsibility requirements  
19 specified in Section 16056 of the Vehicle Code. Any of these agreements by any  
20 named insured or agreement for the amount of coverage shall be binding upon  
21 every insured to whom the policy or endorsement provisions apply while the  
22 policy is in force, and shall continue to be so binding with respect to any  
23 continuation or renewal of the policy or with respect to any other policy that  
24 extends, changes, supersedes, or replaces the policy issued to the named insured  
25 by the same insurer, or with respect to reinstatement of the policy within 30 days  
26 of any lapse thereof. A policy shall be excluded from the application of this  
27 section if the automobile liability coverage is provided only on an excess or  
28 umbrella basis. Nothing in this section shall require that uninsured motorist  
29 coverage be offered or provided in any homeowner policy, personal and residents'  
30 liability policy, comprehensive personal liability policy, manufacturers' and  
31 contractors' policy, premises liability policy, special multiperil policy, or any other  
32 policy or endorsement where automobile liability coverage is offered as incidental  
33 to some other basic coverage, notwithstanding that the policy may provide  
34 automobile or motor vehicle liability coverage on insured premises or the ways  
35 immediately adjoining.

36 (2) The agreement specified in paragraph (1) to delete the provision covering  
37 damage caused by an uninsured motor vehicle completely or delete the coverage  
38 when a motor vehicle is operated by a natural person or persons designated by  
39 name shall be in the following form:

40 "The California Insurance Code requires an insurer to provide uninsured  
41 motorists coverage in each bodily injury liability insurance policy it issues  
42 covering liability arising out of the ownership, maintenance, or use of a motor  
43 vehicle. Those provisions also permit the insurer and the applicant to delete the

1 coverage completely or to delete the coverage when a motor vehicle is operated by  
2 a natural person or persons designated by name. Uninsured motorists coverage  
3 insures the insured, his or her heirs, or legal representatives for all sums within the  
4 limits established by law, that the person or persons are legally entitled to recover  
5 as damages for bodily injury, including any resulting sickness, disease, or death, to  
6 the insured from the owner or operator of an uninsured motor vehicle not owned or  
7 operated by the insured or a resident of the same household. An uninsured motor  
8 vehicle includes an underinsured motor vehicle as defined in subdivision (p) of  
9 Section 11580.2 of the Insurance Code.”

10 The agreement may contain additional statements not in derogation of or in  
11 conflict with the foregoing. The execution of the agreement shall relieve the  
12 insurer of liability under this section while the agreement remains in effect.

13 (3) The agreement specified in paragraph (1) to provide coverage in an amount  
14 less than that required by subdivision (m) shall be in the following form:

15 “The California Insurance Code requires an insurer to provide uninsured  
16 motorists coverage in each bodily injury liability insurance policy it issues  
17 covering liability arising out of the ownership, maintenance, or use of a motor  
18 vehicle. Those provisions also permit the insurer and the applicant to agree to  
19 provide the coverage in an amount less than that required by subdivision (m) of  
20 Section 11580.2 of the Insurance Code but not less than the financial responsibility  
21 requirements. Uninsured motorists coverage insures the insured, his or her heirs,  
22 or legal representatives for all sums within the limits established by law, that the  
23 person or persons are legally entitled to recover as damages for bodily injury,  
24 including any resulting sickness, disease, or death, to the insured from the owner  
25 or operator of an uninsured motor vehicle not owned or operated by the insured or  
26 a resident of the same household. An uninsured motor vehicle includes an  
27 underinsured motor vehicle as defined in subdivision (p) of Section 11580.2 of the  
28 Insurance Code.”

29 The agreement may contain additional statements not in derogation of or in  
30 conflict with this paragraph. However, it shall be presumed that an application for  
31 a policy of bodily injury liability insurance containing uninsured motorist  
32 coverage in an amount less than that required by subdivision (m), signed by the  
33 named insured and approved by the insurer, with a policy effective date after  
34 January 1, 1985, shall be a valid agreement as to the amount of uninsured motorist  
35 coverage to be provided.

36 (b) As used in subdivision (a), “bodily injury” includes sickness or disease,  
37 including death, resulting therefrom; “named insured” means only the individual  
38 or organization named in the declarations of the policy of motor vehicle bodily  
39 injury liability insurance referred to in subdivision (a); as used in subdivision (a) if  
40 the named insured is an individual “insured” means the named insured and the  
41 spouse of the named insured and, while residents of the same household, relatives  
42 of either while occupants of a motor vehicle or otherwise, heirs and any other  
43 person while in or upon or entering into or alighting from an insured motor vehicle



1 and any person with respect to damages he or she is entitled to recover for care or  
2 loss of services because of bodily injury to which the policy provisions or  
3 endorsement apply; as used in subdivision (a), if the named insured is an entity  
4 other than an individual, “insured” means any person while in or upon or entering  
5 into or alighting from an insured motor vehicle and any person with respect to  
6 damages he or she is entitled to recover for care or loss of services because of  
7 bodily injury to which the policy provisions or endorsement apply. As used in this  
8 subdivision, “individual” shall not include persons doing business as corporations,  
9 partnerships, or associations. As used in this subdivision, “insured motor vehicle”  
10 means the motor vehicle described in the underlying insurance policy of which the  
11 uninsured motorist endorsement or coverage is a part, a temporary substitute  
12 automobile for which liability coverage is provided in the policy or a newly  
13 acquired automobile for which liability coverage is provided in the policy if the  
14 motor vehicle is used by the named insured or with his or her permission or  
15 consent, express or implied, and any other automobile not owned by or furnished  
16 for the regular use of the named insured or any resident of the same household, or  
17 by a natural person or persons for whom coverage has been deleted in accordance  
18 with subdivision (a) while being operated by the named insured or his or her  
19 spouse if a resident of the same household, but “insured motor vehicle” shall not  
20 include any automobile while used as a public or livery conveyance. As used in  
21 this section, “uninsured motor vehicle” means a motor vehicle with respect to the  
22 ownership, maintenance or use of which there is no bodily injury liability  
23 insurance or bond applicable at the time of the accident, or there is the applicable  
24 insurance or bond but the company writing the insurance or bond denies coverage  
25 thereunder or refuses to admit coverage thereunder except conditionally or with  
26 reservation, or an “underinsured motor vehicle” as defined in subdivision (p), or a  
27 motor vehicle used without the permission of the owner thereof if there is no  
28 bodily injury liability insurance or bond applicable at the time of the accident with  
29 respect to the owner or operator thereof, or the owner or operator thereof be  
30 unknown, provided that, with respect to an “uninsured motor vehicle” whose  
31 owner or operator is unknown:

32 (1) The bodily injury has arisen out of physical contact of the automobile with  
33 the insured or with an automobile that the insured is occupying.

34 (2) The insured or someone on his or her behalf has reported the accident within  
35 24 hours to the police department of the city where the accident occurred or, if the  
36 accident occurred in unincorporated territory then either to the sheriff of the  
37 county where the accident occurred or to the local headquarters of the California  
38 Highway Patrol, and has filed with the insurer within 30 days thereafter a  
39 statement under oath that the insured or his or her legal representative has or the  
40 insured’s heirs have a cause of action arising out of the accident for damages  
41 against a person or persons whose identity is unascertainable and set forth facts in  
42 support thereof. As used in this section, “uninsured motor vehicle” shall not  
43 include a motor vehicle owned or operated by the named insured or any resident of

1 the same household or self-insured within the meaning of the Financial  
2 Responsibility Law of the state in which the motor vehicle is registered or that is  
3 owned by the United States of America, Canada, a state or political subdivision of  
4 any such government or an agency of any of the foregoing, or a land motor vehicle  
5 or trailer while located for use as a residence or premises and not as a vehicle, or  
6 any equipment or vehicle designed or modified for use primarily off public roads,  
7 except while actually upon public roads.

8 As used in this section, “uninsured motor vehicle” also means an insured motor  
9 vehicle where the liability insurer thereof is unable to make payment with respect  
10 to the legal liability of its insured within the limits specified therein because of  
11 insolvency. An insurer’s solvency protection shall be applicable only to accidents  
12 occurring during a policy period in which its insured’s motor vehicle coverage is  
13 in effect where the liability insurer of the tortfeasor becomes insolvent within one  
14 year of the accident. In the event of payment to any person under the coverage  
15 required by this section and subject to the terms and conditions of the coverage,  
16 the insurer making the payment, shall to the extent thereof, be entitled to any  
17 proceeds that may be recoverable from the assets of the insolvent insurer through  
18 any settlement or judgment of the person against the insolvent insurer.

19 Nothing in this section is intended to exclude from the definition of an uninsured  
20 motor vehicle any motorcycle or private passenger-type four-wheel drive motor  
21 vehicle if that vehicle was subject to and failed to comply with the Financial  
22 Responsibility Law of this state.

23 (c) The insurance coverage provided for in this section does not apply either as  
24 primary or as excess coverage:

25 (1) To property damage sustained by the insured.

26 (2) To bodily injury of the insured while in or upon or while entering into or  
27 alighting from a motor vehicle other than the described motor vehicle if the owner  
28 thereof has insurance similar to that provided in this section.

29 (3) To bodily injury of the insured with respect to which the insured or his or her  
30 representative shall, without the written consent of the insurer, make any  
31 settlement with or prosecute to judgment any action against any person who may  
32 be legally liable therefor.

33 (4) In any instance where it would inure directly or indirectly to the benefit of  
34 any workers’ compensation carrier or to any person qualified as a self-insurer  
35 under any workers’ compensation law, or directly to the benefit of the United  
36 States, or any state or any political subdivision thereof.

37 (5) To establish proof of financial responsibility as provided in subdivisions (a),  
38 (b), and (c) of Section 16054 of the Vehicle Code.

39 (6) To bodily injury of the insured while occupying a motor vehicle owned by an  
40 insured or leased to an insured under a written contract for a period of six months  
41 or longer, unless the occupied vehicle is an insured motor vehicle. “Motor vehicle”  
42 as used in this paragraph means any self-propelled vehicle.

1 (7) To bodily injury of the insured when struck by a vehicle owned by an  
2 insured, except when the injured insured's vehicle is being operated, or caused to  
3 be operated, by a person without the injured insured's consent in connection with  
4 criminal activity that has been documented in a police report and that the injured  
5 insured is not a party to.

6 (8) To bodily injury of the insured while occupying a motor vehicle rented or  
7 leased to the insured for public or livery purposes.

8 (d) Subject to paragraph (2) of subdivision (c), the policy or endorsement may  
9 provide that if the insured has insurance available to the insured under more than  
10 one uninsured motorist coverage provision, any damages shall not be deemed to  
11 exceed the higher of the applicable limits of the respective coverages, and the  
12 damages shall be prorated between the applicable coverages as the limits of each  
13 coverage bear to the total of the limits.

14 (e) The policy or endorsement added thereto may provide that if the insured has  
15 valid and collectible automobile medical payment insurance available to him or  
16 her, the damages that the insured shall be entitled to recover from the owner or  
17 operator of an uninsured motor vehicle shall be reduced for purposes of uninsured  
18 motorist coverage by the amounts paid or due to be paid under the automobile  
19 medical payment insurance.

20 (f) The policy or an endorsement added thereto shall provide that the  
21 determination as to whether the insured shall be legally entitled to recover  
22 damages, and if so entitled, the amount thereof, shall be made by agreement  
23 between the insured and the insurer or, in the event of disagreement, by arbitration.  
24 The arbitration shall be conducted by a single neutral arbitrator. An award or a  
25 judgment confirming an award shall not be conclusive on any party in any action  
26 or proceeding between (i) the insured, his or her insurer, his or her legal  
27 representative, or his or her heirs and (ii) the uninsured motorist to recover  
28 damages arising out of the accident upon which the award is based. If the insured  
29 has or may have rights to benefits, other than nonoccupational disability benefits,  
30 under any workers' compensation law, the arbitrator shall not proceed with the  
31 arbitration until the insured's physical condition is stationary and ratable. In those  
32 cases in which the insured claims a permanent disability, the claims shall, unless  
33 good cause be shown, be adjudicated by award or settled by compromise and  
34 release before the arbitration may proceed. Any demand or petition for arbitration  
35 shall contain a declaration, under penalty of perjury, stating whether (i) the insured  
36 has a workers' compensation claim; (ii) the claim has proceeded to findings and  
37 award or settlement on all issues reasonably contemplated to be determined in that  
38 claim; and (iii) if not, what reasons amounting to good cause are grounds for the  
39 arbitration to proceed immediately. The arbitration shall be deemed to be a  
40 proceeding and the hearing before the arbitrator shall be deemed to be the trial of  
41 an issue therein for purposes of issuance of a subpoena by an attorney of a party to  
42 the arbitration under Section 1985 of the Code of Civil Procedure. Article 3  
43 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of

1 Civil Procedure shall be applicable to these determinations, and all rights,  
2 remedies, obligations, liabilities and procedures set forth in Article 3 shall be  
3 available to both the insured and the insurer at any time after the accident, both  
4 before and after the commencement of arbitration, if any, with the following  
5 limitations:

6 (1) Whenever in Article 3, reference is made to the court in which the action is  
7 pending, or provision is made for application to the court or obtaining leave of  
8 court or approval by the court, the court that shall have jurisdiction for the  
9 purposes of this section shall be the superior court of the State of California, in and  
10 for any county that is a proper county for the filing of a suit for bodily injury  
11 arising out of the accident, against the uninsured motorist, or any county specified  
12 in the policy or an endorsement added thereto as a proper county for arbitration or  
13 action thereon.

14 (2) Any proper court to which application is first made by either the insured or  
15 the insurer under Article 3 for any discovery or other relief or remedy, shall  
16 thereafter be the only court to which either of the parties shall make any  
17 applications under Article 3 with respect to the same accident, subject, however, to  
18 the right of the court to grant a change of venue after a hearing upon notice, upon  
19 any of the grounds upon which change of venue might be granted in an action filed  
20 in the superior court.

21 (3) A deposition pursuant to Section ~~2016~~ 2025 of the Code of Civil Procedure  
22 may be taken without leave of court, except that leave of court, granted with or  
23 without notice and for good cause shown, must be obtained if the notice of the  
24 taking of the deposition is served by either party within 20 days after the accident.

25 (4) ~~Paragraph (4) of subdivision (a) of Section 2019~~ paragraph (1) of subdivision  
26 (h) of Section 2025 of the Code of Civil Procedure is not applicable to discovery  
27 under this section.

28 (5) For the purposes of discovery under this section, the insured and the insurer  
29 shall each be deemed to be “a party to the ~~record of any civil action or proceedings~~  
30 action,” where that phrase is used in ~~paragraph (2) of subdivision (b) of Section~~  
31 2019 paragraph (3) of subdivision (e) of Section 2025 of the Code of Civil  
32 Procedure.

33 (6) Interrogatories under Section 2030 of the Code of Civil Procedure and  
34 requests for admission under Section 2033 of the Code of Civil Procedure may be  
35 served by either the insured or the insurer upon the other at any time more than 20  
36 days after the accident without leave of court.

37 (7) Nothing in this section limits the rights of any party to discovery in any  
38 action pending or that may hereafter be pending in any court.

39 (g) The insurer paying a claim under an uninsured motorist endorsement or  
40 coverage shall be entitled to be subrogated to the rights of the insured to whom the  
41 claim was paid against any person legally liable for the injury or death to the  
42 extent that payment was made. The action may be brought within three years from  
43 the date that payment was made hereunder.

1 (h) An insured entitled to recovery under the uninsured motorist endorsement or  
2 coverage shall be reimbursed within the conditions stated herein without being  
3 required to sign any release or waiver of rights to which he or she may be entitled  
4 under any other insurance coverage applicable; nor shall payment under this  
5 section to the insured be delayed or made contingent upon the decisions as to  
6 liability or distribution of loss costs under other bodily injury liability insurance or  
7 any bond applicable to the accident. Any loss payable under the terms of the  
8 uninsured motorist endorsement or coverage to or for any person may be reduced:

9 (1) By the amount paid and the present value of all amounts payable to him or  
10 her, his or her executor, administrator, heirs, or legal representative under any  
11 workers' compensation law, exclusive of nonoccupational disability benefits.

12 (2) By the amount the insured is entitled to recover from any other person  
13 insured under the underlying liability insurance policy of which the uninsured  
14 motorist endorsement or coverage is a part, including any amounts tendered to the  
15 insured as advance payment on behalf of the other person by the insurer providing  
16 the underlying liability insurance.

17 (i)(1) No cause of action shall accrue to the insured under any policy or  
18 endorsement provision issued pursuant to this section unless one of the following  
19 actions have been taken within two years from the date of the accident:

20 (A) Suit for bodily injury has been filed against the uninsured motorist, in a  
21 court of competent jurisdiction.

22 (B) Agreement as to the amount due under the policy has been concluded.

23 (C) The insured has formally instituted arbitration proceedings by notifying the  
24 insurer in writing sent by certified mail, return receipt requested. Notice shall be  
25 sent to the insurer or to the agent for process designated by the insurer filed with  
26 the department.

27 (2) Any arbitration instituted pursuant to this section shall be concluded either:

28 (A) Within five years from the institution of the arbitration proceeding.

29 (B) If the insured has a workers' compensation claim arising from the same  
30 accident, within three years of the date the claim is concluded, or within the five-  
31 year period set forth in subparagraph (A), whichever occurs later.

32 (3) The doctrines of estoppel, waiver, impossibility, impracticality, and futility  
33 apply to excuse a party's noncompliance with the statutory timeframe, as  
34 determined by the court.

35 (4) Parties to the insurance contract may stipulate in writing to extending the  
36 time to conclude arbitration.

37 (j) Notwithstanding subdivisions (b) and (i), in the event the accident occurs in  
38 any other state or foreign jurisdiction to which coverage is extended under the  
39 policy and the insurer of the tortfeasor becomes insolvent, any action authorized  
40 pursuant to this section may be maintained within three months of the insolvency  
41 of the tortfeasor's insurer, but in no event later than the pertinent period of  
42 limitation of the jurisdiction in which the accident occurred.

1 (k) Notwithstanding subdivision (i), any insurer whose insured has made a claim  
2 under his or her uninsured motorist coverage, and the claim is pending, shall, at  
3 least 30 days before the expiration of the applicable statute of limitation, notify its  
4 insured in writing of the statute of limitation applicable to the injury or death.  
5 Failure of the insurer to provide the written notice shall operate to toll any  
6 applicable statute of limitation or other time limitation for a period of 30 days from  
7 the date the written notice is actually given. The notice shall not be required if the  
8 insurer has received notice that the insured is represented by an attorney.

9 (l) As used in subdivision (b), “public or livery conveyance,” or terms of similar  
10 import, shall not include the operation or use of a motor vehicle by the named  
11 insured in the performance of volunteer services for a nonprofit charitable  
12 organization or governmental agency by providing social service transportation as  
13 defined in subdivision (f) of Section 11580.1. This subdivision shall apply only to  
14 policies of insurance issued, amended, or renewed on or after January 1, 1976.

15 (m) Coverage provided under an uninsured motorist endorsement or coverage  
16 shall be offered with coverage limits equal to the limits of liability for bodily  
17 injury in the underlying policy of insurance, but shall not be required to be offered  
18 with limits in excess of the following amounts:

19 (1) A limit of thirty thousand dollars (\$30,000) because of bodily injury to or  
20 death of one person in any one accident.

21 (2) Subject to the limit for one person set forth in paragraph (1), a limit of sixty  
22 thousand dollars (\$60,000) because of bodily injury to or death of two or more  
23 persons in any one accident.

24 (n) Underinsured motorist coverage shall be offered with limits equal to the  
25 limits of liability for the insured’s uninsured motorist limits in the underlying  
26 policy, and may be offered with limits in excess of the uninsured motorist  
27 coverage. For the purposes of this section, uninsured and underinsured motorist  
28 coverage shall be offered as a single coverage. However, an insurer may offer  
29 coverage for damages for bodily injury or wrongful death from the owner or  
30 operator of an underinsured motor vehicle at greater limits than an uninsured  
31 motor vehicle.

32 (o) If an insured has failed to provide an insurer with wage loss information or  
33 medical treatment record releases within 15 days of the insurer’s request or has  
34 failed to submit to a medical examination arranged by the insurer within 20 days  
35 of the insurer’s request, the insurer may, at any time prior to 30 days before the  
36 actual arbitration proceedings commence, request, and the insured shall furnish,  
37 wage loss information or medical treatment record releases, and the insurer may  
38 require the insured, except during periods of hospitalization, to make himself or  
39 herself available for a medical examination. The wage loss information or medical  
40 treatment record releases shall be submitted by the insured within 10 days of  
41 request and the medical examination shall be arranged by the insurer no sooner  
42 than 10 days after request, unless the insured agrees to an earlier examination date,  
43 and not later than 20 days after the request. If the insured fails to comply with the

1 requirements of this subdivision, the actual arbitration proceedings shall be stayed  
2 for at least 30 days following compliance by the insured. The proceedings shall be  
3 scheduled as soon as practicable following expiration of the 30-day period.

4 (p) This subdivision applies only when bodily injury, as defined in subdivision  
5 (b), is caused by an underinsured motor vehicle. If the provisions of this  
6 subdivision conflict with subdivisions (a) through (o), the provisions of this  
7 subdivision shall prevail.

8 (1) As used in this subdivision, “an insured motor vehicle” is one that is insured  
9 under a motor vehicle liability policy, or automobile liability insurance policy,  
10 self-insured, or for which a cash deposit or bond has been posted to satisfy a  
11 financial responsibility law.

12 (2) “Underinsured motor vehicle” means a motor vehicle that is an insured motor  
13 vehicle but insured for an amount that is less than the uninsured motorist limits  
14 carried on the motor vehicle of the injured person.

15 (3) This coverage does not apply to any bodily injury until the limits of bodily  
16 injury liability policies applicable to all insured motor vehicles causing the injury  
17 have been exhausted by payment of judgments or settlements, and proof of the  
18 payment is submitted to the insurer providing the underinsured motorist coverage.

19 (4) When bodily injury is caused by one or more motor vehicles, whether  
20 insured, underinsured, or uninsured, the maximum liability of the insurer  
21 providing the underinsured motorist coverage shall not exceed the insured’s  
22 underinsured motorist coverage limits, less the amount paid to the insured by or  
23 for any person or organization that may be held legally liable for the injury.

24 (5) The insurer paying a claim under this subdivision shall, to the extent of the  
25 payment, be entitled to reimbursement or credit in the amount received by the  
26 insured from the owner or operator of the underinsured motor vehicle or the  
27 insurer of the owner or operator.

28 (6) If the insured brings an action against the owner or operator of an  
29 underinsured motor vehicle, he or she shall forthwith give to the insurer providing  
30 the underinsured motorist coverage a copy of the complaint by personal service or  
31 certified mail. All pleadings and depositions shall be made available for copying  
32 or copies furnished the insurer, at the insurer’s expense, within a reasonable time.

33 (7) Underinsured motorist coverage shall be included in all policies of bodily  
34 injury liability insurance providing uninsured motorist coverage issued or renewed  
35 on or after July 1, 1985. Notwithstanding this section, an agreement to delete  
36 uninsured motorist coverage completely, or with respect to a person or persons  
37 designated by name, executed prior to July 1, 1985, shall remain in full force and  
38 effect.

39 (q) Regardless of the number of vehicles involved whether insured or not,  
40 persons covered, claims made, premiums paid or the number of premiums shown  
41 on the policy, in no event shall the limit of liability for two or more motor vehicles  
42 or two or more policies be added together, combined, or stacked to determine the  
43 limit of insurance coverage available to injured persons.

1 **Comment.** Subdivision (c)(5) of Section 11580.2 is amended to correct the cross-reference to  
 2 Vehicle Code Section 16054. See 1974 Cal. Stat. ch. 1409, § 8 (former Veh. Code § 16054(a),  
 3 (b), (c)); 1990 Cal. Stat. ch. 314, § 5 (reorganizes Veh. Code § 16054 and adds paragraph on  
 4 proof of financial responsibility by owner or driver involved in accident while operating vehicle  
 5 of less than four wheels). As amended, subdivision (c)(5) encompasses proof of financial  
 6 responsibility by the means formerly set forth in Vehicle Code Section 16054(a), (b), and (c),  
 7 which are now codified as Vehicle Code Section 16054(a)(1)-(3). Subdivision (c)(5) also  
 8 encompasses proof of financial responsibility by an owner or driver who is involved in an  
 9 accident while operating a vehicle of less than four wheels, as provided in Vehicle Code Section  
 10 16054(a)(4).

11 Subdivision (f)(3) is amended to reflect revision and relocation of the civil discovery provision  
 12 referenced in it (former Code Civ. Proc. § 2016), which pertained to deposition procedure. See  
 13 1961 Cal. Stat. ch. 2067, § 1 (former Code Civ. Proc. § 2016); see also 1963 Cal. Stat. ch. 1750, §  
 14 1 (earlier version of Ins. Code § 11580.2 — see subd. (e)(3)). Former Code of Civil Procedure  
 15 Section 2016 was repealed in 1986 and its substance relocated, with revisions, to Code of Civil  
 16 Procedure Section 2025. 1986 Cal. Stat. ch. 1334, §§ 1,2.

17 Subdivision (f)(4) is amended to reflect revision and relocation of the civil discovery provision  
 18 referenced in it (former Code Civ. Proc. § 2019(a)(4)), which pertained to attendance of specified  
 19 persons at a deposition without service of a subpoena. See 1963 Cal. Stat. ch. 519, § 1 (former  
 20 Code Civ. Proc. § 2019(a)(4)); see also 1963 Cal. Stat. ch. 1750, § 1 (earlier version of Ins. Code  
 21 § 11580.2 — see subd. (e)(4)). Former Code of Civil Procedure Section 2019 was repealed in  
 22 1986 and its substance relocated, with revisions, to Code of Civil Procedure Section 2025(h)(1).  
 23 1986 Cal. Stat. ch. 1334, §§ 1,2.

24 Subdivision (f)(5) is amended to reflect revision and relocation of the civil discovery provision  
 25 referenced in it (former Code Civ. Proc. § 2019(b)(2)), which pertained to the location of a  
 26 deposition of “a party to the record of any civil action or proceedings.” See 1961 Cal. Stat. ch.  
 27 192, § 2 (former Code Civ. Proc. § 2019(b)(2)); see also 1963 Cal. Stat. ch. 1750, § 1 (earlier  
 28 version of Ins. Code § 11580.2 — see subd. (e)(5)). Former Code of Civil Procedure Section  
 29 2019(b)(2) was repealed in 1986 and its substance relocated, with revisions, to Code of Civil  
 30 Procedure Section 2025(e)(3). 1986 Cal. Stat. ch. 1334, §§ 1,2.

31  **Notes.**

32 (1) Insurance Code Section 11580.2(c)(5) cross-refers to subdivisions (a), (b), and (c) of  
 33 Vehicle Code Section 16054. The subdivision references are no longer correct; the pertinent  
 34 material is now located in subdivisions (a)(1)-(a)(3) of Vehicle Code Section 16054. The  
 35 proposed amendment in the attached draft would delete the subdivision references and simply  
 36 refer to Vehicle Code Section 16054. This would make it easier to keep the cross-reference up-to-  
 37 date in the future.

38 One possible issue regarding the proposed amendment to Insurance Code Section 11580.2(c)(5)  
 39 is that it would expand the scope of the cross-reference to include Vehicle Code Section  
 40 16054(a)(4) (proof of financial responsibility by an owner or driver who is involved in an  
 41 accident while operating a vehicle of less than four wheels). The Commission solicits comment  
 42 on whether this proposed expansion of the cross-reference is appropriate.

43 (2) The language that now appears in Insurance Code Section 11580.2(f)(4) was added to the  
 44 provision in 1963. 1963 Cal. Stat. ch. 1750, § 1 (see subd. (e)(4)). At the time, Code of Civil  
 45 Procedure Section 2019(a)(4) stated:

46 (4) In the case of depositions of a party to the record of any civil action or proceeding  
 47 or of any one who at the time of taking the deposition is an officer, director or managing  
 48 agent of any such party, the service of a subpoena upon any such deponent is not required  
 49 if proper notice of the taking of such deposition is given to the attorney for such party or  
 50 to the party, if he has no attorney. In the case of depositions of a person for whose  
 51 immediate benefit an action or proceeding is prosecuted or defended or of any one who at  
 52 the time of taking the deposition is an officer, director or managing agent of any such



1 person, the service of a subpoena upon any such deponent is not required if proper notice  
2 of the taking of such deposition is given to the attorney of the party prosecuting or  
3 defending the action or proceeding for the immediate benefit of the deponent or to such  
4 party, if he has no attorney. A notice to take the deposition of a person described in this  
5 subdivision (4) cannot require the attendance of such person at a place more than 150  
6 miles from the residence of such person, unless the party desiring to take such deposition  
7 first obtains an order pursuant to the provisions of Section 2019(b)(2) of this code.

8 Under this provision, a party to the record of any civil action or proceeding or an officer,  
9 director, or managing agent of such a party could be compelled to attend a deposition without  
10 service of a subpoena, so long as the deponent was given notice of the deposition. The apparent  
11 purpose of the language that now appears in Insurance Code Section 11580(f)(4) was to make  
12 clear that this special rule *did not* apply to a contractual arbitration mandated by Section 11580.2.

13 Former Code of Civil Procedure Section 2019(a)(4) was repealed by the Civil Discovery Act of  
14 1986 and its substance relocated, with revisions, in Code of Civil Procedure Section 2025(h)(1).  
15 1986 Cal. Stat. ch. 1334, §§ 1, 2. Code of Civil Procedure Section 2025(h)(1) now provides:

16 (1) The service of a deposition notice under subdivision (c) is effective to require any  
17 deponent who is a party to the action or an officer, director, managing agent, or employee  
18 of a party to attend and to testify, as well as to produce any document or tangible thing  
19 for inspection and copying.

20 Thus, it appears that a technically faithful update of Insurance Code Section 11580.2(f)(4)  
21 would refer to Code of Civil Procedure Section 2025(h)(1). The apparent effect of such a revision  
22 would be to continue the rule that in a contractual arbitration mandated by Section 11580.2, a  
23 deposition subpoena is necessary even for a deposition of the insured or the insurer.

24 The Commission is not sure, however, whether this would make sense from a substantive  
25 standpoint. The reason for requiring a deposition subpoena of the insured and the insurer in this  
26 context is not obvious. The Commission solicits comment on whether Insurance Code Section  
27 11580.2(f)(4) should be deleted rather than updated.

28 (3) Assembly Bill 3081 (Judiciary) would implement the Law Revision Commission's  
29 recommendation on nonsubstantive reorganization of the Civil Discovery Act. *Civil Discovery:  
30 Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that bill is enacted,  
31 the Commission will adjust the proposed amendment to Insurance Code Section 11580.2  
32 accordingly.