

## Memorandum 2004-24

**Unincorporated Associations: SB 1746 (Ackerman)**

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The Commission's recommendation on *Unincorporated Associations* has been introduced as SB 1746 (Ackerman). The bill is set for hearing by the Senate Judiciary Committee on April 13. This memorandum describes two changes that were made to the bill. The staff does not intend to discuss these issues at the meeting unless Commissioners have questions.

**Labor Organizations**

The California Labor Federation ("CLF") expressed concern about the application of the proposed law to labor organizations. CLF asserts that existing federal law provides labor organizations with better protections than those offered in our proposal. See, e.g., 29 U.S.C. § 186(b):

Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

In order to avoid any uncertainty as to the supremacy of the federal protections, CLF asked that labor organizations be exempted from the unincorporated associations law.

The staff spoke with CLF's counsel, suggesting that CLF reconsider its position, for two general reasons:

(1) The proposed law is a default that yields to any entity-specific statute, to the extent of any inconsistency. Thus, it would not conflict with federal law applicable to labor organizations. CLF acknowledged that general point, but worried that there would need to be litigation to define the extent of any inconsistency between federal and California law.

(2) Many of the proposed law's provisions are beneficial and address issues that might not be covered adequately by federal law (e.g., the provisions authorizing and facilitating property ownership and transfer). For that reason, a more narrowly tailored exemption might be preferable.

After considering these issues, CLF renewed its original request for a blanket exemption. The staff consulted with the author's office and the Commission's chair, then acceded to CLF's request. The bill was amended on April 1.

### **Nonprofit Medical Associations**

In addition to substantive revision of the law governing unincorporated associations, the proposed law would have relocated an existing statute on liability of a director of a nonprofit medical association. The author expressed concern that one aspect of the relocated section might be politically controversial. Rather than risking the possibility of causing a problem in the bill unrelated to the main thrust of our recommendation, we agreed not to attempt to relocate that section in this bill. We will bring the matter back to the Commission for review in conjunction with the Commission's work on unincorporated association governance.

Respectfully submitted,

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Assistant Executive Secretary