

## Memorandum 2004-36

**Civil Discovery: Correction of Obsolete Cross-References  
(Comments on Tentative Recommendation)**

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In April, the Commission issued a tentative recommendation proposing to correct obsolete cross-references in several statutes that were never conformed to reflect enactment of the Civil Discovery Act of 1986. The comment period on the tentative recommendation closed at the end of July, but the Commission has not received any comments. The Commission needs to decide whether to go forward with the proposal, as is or with revisions. A draft recommendation is attached for the Commission's review. This draft is essentially the same as the tentative recommendation, except that the proposal has been updated to reflect new developments, particularly the enactment of AB 3081 (Assem. Judic. Comm.), which implements the Commission's nonsubstantive reorganization of the civil discovery provisions.

Two issues were flagged in the tentative recommendation, both of which pertain to Insurance Code Section 11580.2:

- (1) **How to revise the obsolete cross-reference to Vehicle Code Section 16054(a)-(c) in Insurance Code Section 11580.2(c)(5).** The pertinent material is now located in Vehicle Code Section 16054(a)(1)-(a)(3). One possibility would be to revise Insurance Code Section 11580.2(c)(5) to refer to Vehicle Code Section 16054(a)(1)-(a)(3). Another possibility would be to revise Insurance Code Section 11580.2(c)(5) to refer simply to Vehicle Code Section 16054. The tentative recommendation took the latter approach. By omitting subdivision and paragraph references, that approach would make it easier to keep the cross-reference up-to-date in the future. It would also 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). That provision was added to Vehicle Code Section 16054 after the cross-reference in Insurance Code Section 11580.2(c)(5) was last updated. As best we can tell, there is no reason to treat it differently than Vehicle Code Section 16054(a)(1)-(a)(3). Having received no

negative input on that approach, we encourage the Commission to stick with it.

- (2) **Whether to delete Insurance Code Section 11580.2(f)(4) instead of updating it.** The tentative recommendation proposes to update Insurance Code Section 11580.2(f)(4) to refer to Code of Civil Procedure Section 2025(h)(1), which corresponds to newly enacted Code of Civil Procedure Section 2025.280(a). A Note at page 21 of the tentative recommendation explained that the “[a]pparent effect of such a revision would be to continue the rule that in a contractual arbitration mandated by Section 11580.2, a deposition subpoena is necessary even for a deposition of the insured or the insurer.” The Note solicited comment on whether that rule is still sound policy. The Commission did not receive any comments on this point. Absent input suggesting that the rule be changed, we recommend that the Commission leave it in place and continue with the approach proposed in the tentative recommendation, with adjustments to reflect the reorganization of the civil discovery provisions.

The attached draft would implement the above recommendations regarding Insurance Code Section 11580.2. If no one objects and the draft is acceptable, the Commission should approve it for printing and submission to the Legislature.

Respectfully submitted,

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Staff Counsel

#J-504

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

*Staff Draft*  
RECOMMENDATION

Civil Discovery: Correction of Obsolete  
Cross-References

August 2004

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## SUMMARY OF 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> The proposal was enacted.<sup>3</sup>

5 In developing that proposal, the Commission discovered a number of statutes  
6 with one or more cross-references to civil discovery provisions that were never  
7 properly conformed to reflect enactment of the Civil Discovery Act of 1986.<sup>4</sup>  
8 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>5</sup> That would help to prevent confusion and

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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).

3. 2004 Cal. Stat. ch. 182 [AB 3081, Assem. Judic. Comm.].

4. 1986 Cal. Stat. ch. 1334.

5. 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. It would also 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).

1 spare courts, attorneys, and litigants from unnecessarily expending resources  
2 investigating and debating the meaning of the cross-references.<sup>6</sup>

3 The proposed legislation is based on the recently enacted nonsubstantive  
4 reorganization of the civil discovery provisions, which will become operative on  
5 July 1, 2005.<sup>7</sup> A Comment accompanies each proposed amendment. To assist in  
6 tracing the history of these provisions, the Comments include citations to sources  
7 showing:

8 (1) The content of the cross-referenced provision at the time when the cross-  
9 reference was inserted.

10 (2) Where that material has been relocated.<sup>8</sup>

11 The Commission's work on civil discovery is continuing. The Commission  
12 welcomes suggestions and may propose further reforms in the future.

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6. For an example of problems created by the obsolete cross-references, see *Miranda v. 21st Century Ins. Co.*, 117 Cal. App. 4th 913, 921, 12 Cal. Rptr. 3d 159 (2004) (obsolete cross-references in Ins. Code § 11580.2(f)).

7. See 2004 Cal. Stat. ch. 182, § 64 [AB 3081, Assem. Judic. Comm.].

8. Most of the proposed revisions are straightforward, replacing each outdated cross-reference with the modern equivalent. 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."

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 ([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~~ Title 4  
6 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure or  
7 Section 776 of the Evidence Code, and the books and records of ~~any such~~ the  
8 defendant or witness, may be brought into court and the books and records may be  
9 introduced by reference into evidence, but no information so obtained may be used  
10 against the defendant or ~~any such~~ the witness as a basis for a misdemeanor  
11 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). Those provisions  
14 were repealed in 1986 and their substance relocated to Code of Civil Procedure Sections 2017,  
15 2018, 2021, and 2025-2028, which were in turn repealed and recodified in 2004, as part of a  
16 nonsubstantive reorganization of the Civil Discovery Act. 1986 Cal. Stat. ch. 1334, §§ 1, 2; 2004  
17 Cal. Stat. ch. 182, §§ 22, 23, 23.5, 61, 62; see *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L.  
18 Revision Comm'n Reports 789 (2003); see also 1961 Cal. Stat. ch. 192, § 1 (former Code Civ.  
19 Proc. § 2018); 1963 Cal. Stat. ch. 519, § 1 (former Code Civ. Proc. § 2019); 1965 Cal. Stat. ch.  
20 299, § 125 (former Code Civ. Proc. § 2016); 1965 Cal. Stat. ch. 299, § 5 (earlier version of  
21 Section 25009). For purposes of simplification and to make it easier to keep the cross-references  
22 up-to-date in the future, Section 25009 is amended to refer to the Civil Discovery Act generally,  
23 rather than to a list of discovery provisions pertaining to depositions. This is not a substantive  
24 change.

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

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

27 1283. On application of a party to the arbitration the neutral arbitrator may order  
28 the deposition of a witness to be taken for use as evidence and not for discovery if  
29 the witness cannot be compelled to attend the hearing or if such exceptional  
30 circumstances exist as to make it desirable, in the interest of justice and with due  
31 regard to the importance of presenting the testimony of witnesses orally at the  
32 hearing, to allow the deposition to be taken. The deposition shall be taken in the  
33 manner prescribed by law for the taking of depositions in civil actions. If the  
34 neutral arbitrator orders the taking of the deposition of a witness who resides  
35 outside the state, the party who applied for the taking of the deposition shall obtain  
36 a commission, letters rogatory, or a letter of request therefor from the superior  
37 court in accordance with ~~Sections 2024 to 2028, inclusive, of this code~~ Chapter 10  
38 (commencing with Section 2026.010) of Title 4 of Part 4.

39 **Comment.** Section 1283 is amended to reflect revision and relocation of the civil discovery  
40 provisions referenced in it. As enacted in 1970, the section referred to Sections 2024-2028. 1970  
41 Cal. Stat. ch. 1045, § 1. That cross-reference is obsolete. See 1986 Cal. Stat. ch. 1334, § 1

1 (repealing former Sections 2024-2025); 1961 Cal. Stat. ch. 192, §§ 8-10 (repealing former  
2 Sections 2026-2028). The modern provisions governing an out-of-state deposition are Sections  
3 2026.010 (oral deposition in another state or territory of the United States) and 2027.010 (oral  
4 deposition in a foreign nation).

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

7 Section 1283 is further amended to delete surplusage.

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

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

10 1991.2. ~~On and after the ninety-first day after adjournment of the 1959 Regular~~  
11 ~~Session, the~~ The provisions of Section 1991 shall do not apply to any act or  
12 ~~omission thereafter occurring in a deposition taken pursuant to Article 3, Chapter~~  
13 ~~3, Title 3, Part 4 (commencing at Section 2016) but the~~ Title 4 (commencing with  
14 Section 2016.010). ~~The provisions of Section 2034 shall be~~ Chapter 7  
15 (commencing with Section 2023.010) of Title 4 are exclusively applicable.

16 **Comment.** Section 1991.2 is amended to delete obsolete language, correct the cross-references,  
17 and conform to modern drafting conventions. For the text of former Section 2034, see 1959 Cal.  
18 Stat. ch. 1590, § 12. Former Section 2034 was repealed in 1986 and its substance relocated to  
19 Section 2023, which was in turn repealed and recodified in 2004, as part of a nonsubstantive  
20 reorganization of the Civil Discovery Act. 1986 Cal. Stat. ch. 1334, §§ 1, 2; 2004 Cal. Stat. ch.  
21 182, §§ 22, 23, 23.5, 61, 62; see *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision  
22 Comm'n Reports 789 (2003).

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

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

25 44944. (a) In a dismissal or suspension proceeding initiated pursuant to Section  
26 44934, if a hearing is requested by the employee, the hearing shall be commenced  
27 within 60 days from the date of the employee's demand for a hearing. The hearing  
28 shall be initiated, conducted, and a decision made in accordance with Chapter 5  
29 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the  
30 Government Code. However, the hearing date shall be established after  
31 consultation with the employee and the governing board, or their representatives,  
32 and the Commission on Professional Competence shall have all the power granted  
33 to an agency in that chapter, except that the right of discovery of the parties shall  
34 not be limited to those matters set forth in Section 11507.6 of the Government  
35 Code but shall include the rights and duties of any party in a civil action brought in  
36 a superior court under ~~Article 3 (commencing with Section 2016) of Chapter 3 of~~  
37 Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil  
38 Procedure. Notwithstanding any provision to the contrary, and except for the  
39 taking of oral depositions, no discovery shall occur later than 30 calendar days  
40 after the employee is served with a copy of the accusation pursuant to Section  
41 11505 of the Government Code. In all cases, discovery shall be completed prior to  
42 seven calendar days before the date upon which the hearing commences. If any  
43 continuance is granted pursuant to Section 11524 of the Government Code, the



1 time limitation for commencement of the hearing as provided in this subdivision  
2 shall be extended for a period of time equal to such the continuance. However, the  
3 extension shall not include that period of time attributable to an unlawful refusal  
4 by either party to allow the discovery provided for in this section.

5 If the right of discovery granted under the preceding paragraph is denied by  
6 either the employee or the governing board, all the remedies in ~~Section 2034~~  
7 Chapter 7 (commencing with Section 2023.010) of Title 4 of Part 4 of the Code of  
8 Civil Procedure shall be available to the party seeking discovery and the court of  
9 proper jurisdiction, to entertain his or her motion, shall be the superior court of the  
10 county in which the hearing will be held.

11 The time periods in this section and of Chapter 5 (commencing with Section  
12 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of ~~Article 3~~  
13 ~~(commencing with Section 2016) of Chapter 3 of Title 3~~ Title 4 (commencing with  
14 Section 2016.010) of Part 4 of the Code of Civil Procedure shall not be applied so  
15 as to deny discovery in a hearing conducted pursuant to this section.

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

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

27 (b) The hearing provided for in this section shall be conducted by a Commission  
28 on Professional Competence. One member of the commission shall be selected by  
29 the employee, one member shall be selected by the governing board, and one  
30 member shall be an administrative law judge of the Office of Administrative  
31 Hearings who shall be chairperson and a voting member of the commission and  
32 shall be responsible for assuring that the legal rights of the parties are protected at  
33 the hearing. If either the governing board or the employee for any reason fails to  
34 select a commission member at least seven calendar days prior to the date of the  
35 hearing, the failure shall constitute a waiver of the right to selection, and the  
36 county board of education or its specific designee shall immediately make the  
37 selection. When the county board of education is also the governing board of the  
38 school district or has by statute been granted the powers of a governing board, the  
39 selection shall be made by the Superintendent of Public Instruction, who shall be  
40 reimbursed by the school district for all costs incident to the selection.

41 The member selected by the governing board and the member selected by the  
42 employee shall not be related to the employee and shall not be employees of the  
43 district initiating the dismissal or suspension and shall hold a currently valid

1 credential and have at least five years' experience within the past 10 years in the  
2 discipline of the employee.

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

6 (1) That the employee should be dismissed.

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

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

10 The decision of the Commission on Professional Competence that the employee  
11 should not be dismissed or suspended shall not be based on nonsubstantive  
12 procedural errors committed by the school district or governing board unless the  
13 errors are prejudicial errors.

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

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

20 The board may adopt from time to time such rules and procedures not  
21 inconsistent with provisions of this section as may be necessary to effectuate this  
22 section.

23 The governing board and the employee shall have the right to be represented by  
24 counsel.

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

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

35 (e) If the Commission on Professional Competence determines that the employee  
36 should be dismissed or suspended, the governing board and the employee shall  
37 share equally the expenses of the hearing, including the cost of the administrative  
38 law judge. The state shall pay any costs incurred under paragraph (2) of  
39 subdivision (d), the reasonable expenses, as determined by the administrative law  
40 judge, of the member selected by the governing board and the member selected by  
41 the employee, including, but not limited to, payments or obligations incurred for  
42 travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for  
43 the member selected by the governing board and the member selected by the

1 employee. The Controller shall pay all claims submitted pursuant to this paragraph  
2 from the General Fund, and may prescribe reasonable rules, regulations, and forms  
3 for the submission of the claims. The employee and the governing board shall pay  
4 their own attorney fees.

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

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

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

20 In the event that the decision of the commission is finally reversed or vacated by  
21 a court of competent jurisdiction, then either the state, having paid the commission  
22 members’ expenses, shall be entitled to reimbursement from the governing board  
23 for those expenses, or the governing board, having paid the expenses, shall be  
24 entitled to reimbursement from the state.

25 Additionally, either the employee, having paid a portion of the expenses of the  
26 hearing, including the cost of the administrative law judge, shall be entitled to  
27 reimbursement from the governing board for the expenses, or the governing board,  
28 having paid its portion and the employee’s portion of the expenses of the hearing,  
29 including the cost of the administrative law judge, shall be entitled to  
30 reimbursement from the employee for that portion of the expenses.

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

34 **Comment.** Subdivision (a) of Section 44944 is amended to reflect nonsubstantive  
35 reorganization of the Civil Discovery Act. 2004 Cal. Stat. ch. 182, §§ 22, 23, 23.5, 61, 62; see  
36 *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm’n Reports 789 (2003).

37 Subdivision (a) is also amended to reflect the revision and relocation of former Code of Civil  
38 Procedure Section 2034, which pertained to sanctions for discovery misuse. Former Code of Civil  
39 Procedure Section 2034 was repealed in 1986 and its substance relocated to Code of Civil  
40 Procedure Section 2023. 1986 Cal. Stat. ch. 1334, §§ 1, 2; see also 1974 Cal. Stat. ch. 732, § 4  
41 (former Code Civ. Proc. § 2034); 1976 Cal. Stat. ch. 1010, § 2 (earlier version of Section 44944).  
42 Section 44944(a) was not revised at that time to reflect the repeal of former Code of Civil  
43 Procedure Section 2034 and the relocation. It is now amended to reflect that change, as well as  
44 the subsequent nonsubstantive reorganization of the provisions governing civil discovery.

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

1 **Gov. Code § 12963.3 (amended). Depositions**

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

3 12963.3. (a) Depositions taken by the department shall be noticed by issuance  
4 and service of a subpoena pursuant to Section 12963.1. If, in the course of the  
5 investigation of a complaint, a subpoena is issued and served on an individual or  
6 organization not alleged in the complaint to have committed an unlawful practice,  
7 written notice of the deposition shall also be mailed by the department to each  
8 individual or organization alleged in the complaint to have committed an unlawful  
9 practice.

10 (b) A deposition may be taken before any officer of the department who has  
11 been authorized by the director to administer oaths and take testimony, or before  
12 any other person before whom a deposition may be taken in a civil action pursuant  
13 to ~~subdivision (a) of Section 2018~~ subdivision (d) of Section 2026.010 of the Code  
14 of Civil Procedure. The person before whom the deposition is to be taken shall put  
15 the witness on oath and shall personally, or by someone acting under the person's  
16 direction and in the person's presence, record the testimony of the witness. The  
17 testimony shall be taken stenographically and transcribed unless the parties agree  
18 otherwise. All objections made at the time of the examination shall be noted on the  
19 deposition by the person before whom the deposition is taken, and evidence  
20 objected to shall be taken subject to the objections.

21 **Comment.** Subdivision (b) of Section 12963.3 is amended to reflect revision and relocation of  
22 the civil discovery provision referenced in it (former Code Civ. Proc. § 2018(a)), which set forth  
23 guidelines for who was permitted to take a valid deposition outside the state. See 1961 Cal. Stat.  
24 ch. 192, § 1 (former Code Civ. Proc. § 2018); see also 1980 Cal. Stat. ch. 1023, § 5 (earlier  
25 version of Section 12963.3). Former Code of Civil Procedure Section 2018(a) was repealed in  
26 1986 and its substance relocated to Code of Civil Procedure 2026(c). 1986 Cal. Stat. ch. 1334, §§  
27 1, 2. Section 12963.3.1(b) was not revised at that time to reflect the repeal of former Code of  
28 Civil Procedure Section 2018(a) and the relocation. It is now amended to reflect that change, as  
29 well as a subsequent nonsubstantive reorganization of the provisions governing civil discovery.  
30 See 2004 Cal. Stat. ch. 182, §§ 22, 23, 23.5, 61, 62; *Civil Discovery: Nonsubstantive Reform*, 33  
31 Cal. L. Revision Comm'n Reports 789 (2003).

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

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

34 68097.6. Sections 68097.1, 68097.2, 68097.3, 68097.4, and 68097.5 of ~~this code~~  
35 ~~shall be applicable~~ apply to subpoenas issued for the taking of depositions of  
36 employees of the Department of Justice who are peace officers or analysts in  
37 technical fields, peace officers of the Department of the California Highway  
38 Patrol, peace officer members of the State Fire Marshal's office, sheriffs, deputy  
39 sheriffs, marshals, deputy marshals, firefighters, or city police officers pursuant to  
40 ~~Section 2019~~ Chapter 9 (commencing with Section 2025.010) of Title 4 of Part 4  
41 of the Code of Civil Procedure.

42 **Comment.** Section 68097.6 is amended to reflect revision and relocation of the civil discovery  
43 provision referenced in it (former Code Civ. Proc. § 2019), which set forth guidelines for taking  
44 an oral deposition in the state. Former Code of Civil Procedure Section 2019 was repealed in

1 1986 and its substance relocated to Code of Civil Procedure Section 2025. 1986 Cal. Stat. ch.  
2 1334, §§ 1, 2; see also 1963 Cal. Stat. ch. 519, § 1 (former Code Civ. Proc. § 2019); 1963 Cal.  
3 Stat. ch. 1485, § 5 (earlier version of Section 68097.6). Section 68097.6 was not revised at that  
4 time to reflect the repeal of former Code of Civil Procedure Section 2019 and the relocation. It is  
5 now amended to reflect that change, as well as a subsequent nonsubstantive reorganization of the  
6 provisions governing civil discovery. See 2004 Cal. Stat. ch. 182, §§ 22, 23, 23.5, 61, 62; *Civil*  
7 *Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003).

8 Section 68097.6 is also amended to delete surplusage.

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

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

11 1424.1. (a) On and after the effective date of this section, no citation shall be  
12 issued or sustained under this chapter for a violation of any regulation discovered  
13 and recorded by a facility if all of the following conditions have been met:

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

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

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

24 (4) Promptly upon discovery, the facility implemented remedial action  
25 satisfactory to the state department to correct the violation and prevent a  
26 recurrence. If the state department determines that remedial action voluntarily  
27 undertaken by the facility is unsatisfactory, the state department shall allow the  
28 facility reasonable time to augment the remedial action before the condition shall  
29 be deemed to be a violation.

30 (b) Except as otherwise provided in this section, a quality assurance log which  
31 meets the criteria of this section shall not be discoverable or admissible in any  
32 action against the licensee. The quality assurance log shall be discoverable  
33 pursuant to a motion to produce under ~~Section 2031~~ Chapter 14 (commencing with  
34 Section 2031.010) of Title 4 of Part 4 of the Code of Civil Procedure and  
35 admissible only for purposes of impeachment. However, the court, in a motion  
36 pursuant to ~~paragraph (1) of subdivision (b) of Section 2019~~ Section 2025.420  
37 of the Code of Civil Procedure, or at trial or other proceeding, may limit access to  
38 those entries which would be admissible for impeachment purposes.

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

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

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

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

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

13 **Comment.** Subdivision (b) of Section 1424.1 is amended to reflect revision and relocation of  
14 the civil discovery provisions referenced in it. Former Code of Civil Procedure Section  
15 2019(b)(1) pertained to a motion for a protective order with respect to a deposition. It was  
16 repealed in 1986 and its substance relocated to Code of Civil Procedure 2025(i). 1986 Cal. Stat.  
17 ch. 1334, §§ 1, 2; see also 1982 Cal. Stat. ch. 192, § 1 (former Code Civ. Proc. § 2019); 1985 Cal.  
18 Stat. ch. 11, § 10 (earlier version of Section 1424.1). Section 1424.1(b) was not revised at that  
19 time to reflect the repeal of former Code of Civil Procedure Section 2019(b)(1) and the  
20 relocation. It is now amended to reflect that change, as well as a subsequent nonsubstantive  
21 reorganization of the provisions governing civil discovery. See 2004 Cal. Stat. ch. 182, §§ 22, 23,  
22 23.5, 61, 62; *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789  
23 (2003).

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

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

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

28 11580.2. (a)(1) No policy of bodily injury liability insurance covering liability  
29 arising out of the ownership, maintenance, or use of any motor vehicle, except for  
30 policies that provide insurance in the Republic of Mexico issued or delivered in  
31 this state by nonadmitted Mexican insurers, shall be issued or delivered in this  
32 state to the owner or operator of a motor vehicle, or shall be issued or delivered by  
33 any insurer licensed in this state upon any motor vehicle then principally used or  
34 principally garaged in this state, unless the policy contains, or has added to it by  
35 endorsement, a provision with coverage limits at least equal to the limits specified  
36 in subdivision (m) and in no case less than the financial responsibility  
37 requirements specified in Section 16056 of the Vehicle Code insuring the insured,  
38 the insured's heirs or legal representative for all sums within the limits that he,  
39 she, or they, as the case may be, shall be legally entitled to recover as damages for  
40 bodily injury or wrongful death from the owner or operator of an uninsured motor  
41 vehicle. The insurer and any named insured, prior to or subsequent to the issuance  
42 or renewal of a policy, may, by agreement in writing, in the form specified in  
43 paragraph (2) or paragraph (3), (1) delete the provision covering damage caused  
44 by an uninsured motor vehicle completely, or (2) delete the coverage when a

1 motor vehicle is operated by a natural person or persons designated by name, or  
2 (3) agree to provide the coverage in an amount less than that required by  
3 subdivision (m) but not less than the financial responsibility requirements  
4 specified in Section 16056 of the Vehicle Code. Any of these agreements by any  
5 named insured or agreement for the amount of coverage shall be binding upon  
6 every insured to whom the policy or endorsement provisions apply while the  
7 policy is in force, and shall continue to be so binding with respect to any  
8 continuation or renewal of the policy or with respect to any other policy that  
9 extends, changes, supersedes, or replaces the policy issued to the named insured  
10 by the same insurer, or with respect to reinstatement of the policy within 30 days  
11 of any lapse thereof. A policy shall be excluded from the application of this  
12 section if the automobile liability coverage is provided only on an excess or  
13 umbrella basis. Nothing in this section shall require that uninsured motorist  
14 coverage be offered or provided in any homeowner policy, personal and residents'  
15 liability policy, comprehensive personal liability policy, manufacturers' and  
16 contractors' policy, premises liability policy, special multiperil policy, or any other  
17 policy or endorsement where automobile liability coverage is offered as incidental  
18 to some other basic coverage, notwithstanding that the policy may provide  
19 automobile or motor vehicle liability coverage on insured premises or the ways  
20 immediately adjoining.

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

25 "The California Insurance Code requires an insurer to provide uninsured  
26 motorists coverage in each bodily injury liability insurance policy it issues  
27 covering liability arising out of the ownership, maintenance, or use of a motor  
28 vehicle. Those provisions also permit the insurer and the applicant to delete the  
29 coverage completely or to delete the coverage when a motor vehicle is operated by  
30 a natural person or persons designated by name. Uninsured motorists coverage  
31 insures the insured, his or her heirs, or legal representatives for all sums within the  
32 limits established by law, that the person or persons are legally entitled to recover  
33 as damages for bodily injury, including any resulting sickness, disease, or death, to  
34 the insured from the owner or operator of an uninsured motor vehicle not owned or  
35 operated by the insured or a resident of the same household. An uninsured motor  
36 vehicle includes an underinsured motor vehicle as defined in subdivision (p) of  
37 Section 11580.2 of the Insurance Code."

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

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

1 “The California Insurance Code requires an insurer to provide uninsured  
2 motorists coverage in each bodily injury liability insurance policy it issues  
3 covering liability arising out of the ownership, maintenance, or use of a motor  
4 vehicle. Those provisions also permit the insurer and the applicant to agree to  
5 provide the coverage in an amount less than that required by subdivision (m) of  
6 Section 11580.2 of the Insurance Code but not less than the financial responsibility  
7 requirements. Uninsured motorists coverage insures the insured, his or her heirs,  
8 or legal representatives for all sums within the limits established by law, that the  
9 person or persons are legally entitled to recover as damages for bodily injury,  
10 including any resulting sickness, disease, or death, to the insured from the owner  
11 or operator of an uninsured motor vehicle not owned or operated by the insured or  
12 a resident of the same household. An uninsured motor vehicle includes an  
13 underinsured motor vehicle as defined in subdivision (p) of Section 11580.2 of the  
14 Insurance Code.”

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

22 (b) As used in subdivision (a), “bodily injury” includes sickness or disease,  
23 including death, resulting therefrom; “named insured” means only the individual  
24 or organization named in the declarations of the policy of motor vehicle bodily  
25 injury liability insurance referred to in subdivision (a); as used in subdivision (a) if  
26 the named insured is an individual “insured” means the named insured and the  
27 spouse of the named insured and, while residents of the same household, relatives  
28 of either while occupants of a motor vehicle or otherwise, heirs and any other  
29 person while in or upon or entering into or alighting from an insured motor vehicle  
30 and any person with respect to damages he or she is entitled to recover for care or  
31 loss of services because of bodily injury to which the policy provisions or  
32 endorsement apply; as used in subdivision (a), if the named insured is an entity  
33 other than an individual, “insured” means any person while in or upon or entering  
34 into or alighting from an insured motor vehicle and any person with respect to  
35 damages he or she is entitled to recover for care or loss of services because of  
36 bodily injury to which the policy provisions or endorsement apply. As used in this  
37 subdivision, “individual” shall not include persons doing business as corporations,  
38 partnerships, or associations. As used in this subdivision, “insured motor vehicle”  
39 means the motor vehicle described in the underlying insurance policy of which the  
40 uninsured motorist endorsement or coverage is a part, a temporary substitute  
41 automobile for which liability coverage is provided in the policy or a newly  
42 acquired automobile for which liability coverage is provided in the policy if the  
43 motor vehicle is used by the named insured or with his or her permission or



1 consent, express or implied, and any other automobile not owned by or furnished  
2 for the regular use of the named insured or any resident of the same household, or  
3 by a natural person or persons for whom coverage has been deleted in accordance  
4 with subdivision (a) while being operated by the named insured or his or her  
5 spouse if a resident of the same household, but “insured motor vehicle” shall not  
6 include any automobile while used as a public or livery conveyance. As used in  
7 this section, “uninsured motor vehicle” means a motor vehicle with respect to the  
8 ownership, maintenance or use of which there is no bodily injury liability  
9 insurance or bond applicable at the time of the accident, or there is the applicable  
10 insurance or bond but the company writing the insurance or bond denies coverage  
11 thereunder or refuses to admit coverage thereunder except conditionally or with  
12 reservation, or an “underinsured motor vehicle” as defined in subdivision (p), or a  
13 motor vehicle used without the permission of the owner thereof if there is no  
14 bodily injury liability insurance or bond applicable at the time of the accident with  
15 respect to the owner or operator thereof, or the owner or operator thereof be  
16 unknown, provided that, with respect to an “uninsured motor vehicle” whose  
17 owner or operator is unknown:

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

20 (2) The insured or someone on his or her behalf has reported the accident within  
21 24 hours to the police department of the city where the accident occurred or, if the  
22 accident occurred in unincorporated territory then either to the sheriff of the  
23 county where the accident occurred or to the local headquarters of the California  
24 Highway Patrol, and has filed with the insurer within 30 days thereafter a  
25 statement under oath that the insured or his or her legal representative has or the  
26 insured’s heirs have a cause of action arising out of the accident for damages  
27 against a person or persons whose identity is unascertainable and set forth facts in  
28 support thereof. As used in this section, “uninsured motor vehicle” shall not  
29 include a motor vehicle owned or operated by the named insured or any resident of  
30 the same household or self-insured within the meaning of the Financial  
31 Responsibility Law of the state in which the motor vehicle is registered or that is  
32 owned by the United States of America, Canada, a state or political subdivision of  
33 ~~any such government~~ of those governments or an agency of any of the foregoing,  
34 or a land motor vehicle or trailer while located for use as a residence or premises  
35 and not as a vehicle, or any equipment or vehicle designed or modified for use  
36 primarily off public roads, except while actually upon public roads.

37 As used in this section, “uninsured motor vehicle” also means an insured motor  
38 vehicle where the liability insurer thereof is unable to make payment with respect  
39 to the legal liability of its insured within the limits specified therein because of  
40 insolvency. An insurer’s solvency protection shall be applicable only to accidents  
41 occurring during a policy period in which its insured’s motor vehicle coverage is  
42 in effect where the liability insurer of the tortfeasor becomes insolvent within one  
43 year of the accident. In the event of payment to any person under the coverage

1 required by this section and subject to the terms and conditions of the coverage,  
2 the insurer making the payment, shall to the extent thereof, be entitled to any  
3 proceeds that may be recoverable from the assets of the insolvent insurer through  
4 any settlement or judgment of the person against the insolvent insurer.

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

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

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

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

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

19 (4) In any instance where it would inure directly or indirectly to the benefit of  
20 any workers' compensation carrier or to any person qualified as a self-insurer  
21 under any workers' compensation law, or directly to the benefit of the United  
22 States, or any state or any political subdivision thereof.

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

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

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

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

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

42 (e) The policy or endorsement added thereto may provide that if the insured has  
43 valid and collectible automobile medical payment insurance available to him or

1 her, the damages that the insured shall be entitled to recover from the owner or  
2 operator of an uninsured motor vehicle shall be reduced for purposes of uninsured  
3 motorist coverage by the amounts paid or due to be paid under the automobile  
4 medical payment insurance.

5 (f) The policy or an endorsement added thereto shall provide that the  
6 determination as to whether the insured shall be legally entitled to recover  
7 damages, and if so entitled, the amount thereof, shall be made by agreement  
8 between the insured and the insurer or, in the event of disagreement, by arbitration.  
9 The arbitration shall be conducted by a single neutral arbitrator. An award or a  
10 judgment confirming an award shall not be conclusive on any party in any action  
11 or proceeding between (i) the insured, his or her insurer, his or her legal  
12 representative, or his or her heirs and (ii) the uninsured motorist to recover  
13 damages arising out of the accident upon which the award is based. If the insured  
14 has or may have rights to benefits, other than nonoccupational disability benefits,  
15 under any workers' compensation law, the arbitrator shall not proceed with the  
16 arbitration until the insured's physical condition is stationary and ratable. In those  
17 cases in which the insured claims a permanent disability, the claims shall, unless  
18 good cause be shown, be adjudicated by award or settled by compromise and  
19 release before the arbitration may proceed. Any demand or petition for arbitration  
20 shall contain a declaration, under penalty of perjury, stating whether (i) the insured  
21 has a workers' compensation claim; (ii) the claim has proceeded to findings and  
22 award or settlement on all issues reasonably contemplated to be determined in that  
23 claim; and (iii) if not, what reasons amounting to good cause are grounds for the  
24 arbitration to proceed immediately. The arbitration shall be deemed to be a  
25 proceeding and the hearing before the arbitrator shall be deemed to be the trial of  
26 an issue therein for purposes of issuance of a subpoena by an attorney of a party to  
27 the arbitration under Section 1985 of the Code of Civil Procedure. ~~Article 3~~  
28 ~~(commencing with Section 2016) of Chapter 3 of Title 3~~ Title 4 (commencing with  
29 Section 2016.010 of Part 4 of the Code of Civil Procedure shall be applicable to  
30 these determinations, and all rights, remedies, obligations, liabilities and  
31 procedures set forth in ~~Article 3~~ Title 4 shall be available to both the insured and  
32 the insurer at any time after the accident, both before and after the commencement  
33 of arbitration, if any, with the following limitations:

34 (1) Whenever in ~~Article 3~~ Title 4, reference is made to the court in which the  
35 action is pending, or provision is made for application to the court or obtaining  
36 leave of court or approval by the court, the court that shall have jurisdiction for the  
37 purposes of this section shall be the superior court of the State of California, in and  
38 for any county that is a proper county for the filing of a suit for bodily injury  
39 arising out of the accident, against the uninsured motorist, or any county specified  
40 in the policy or an endorsement added thereto as a proper county for arbitration or  
41 action thereon.

42 (2) Any proper court to which application is first made by either the insured or  
43 the insurer under ~~Article 3~~ Title 4 for any discovery or other relief or remedy, shall

1 thereafter be the only court to which either of the parties shall make any  
2 applications under ~~Article 3~~ Title 4 with respect to the same accident, subject,  
3 however, to the right of the court to grant a change of venue after a hearing upon  
4 notice, upon any of the grounds upon which change of venue might be granted in  
5 an action filed in the superior court.

6 (3) A deposition pursuant to ~~Section 2016~~ Chapter 9 (commencing with Section  
7 2025.010) of Title 4 of Part 4 of the Code of Civil Procedure may be taken without  
8 leave of court, except that leave of court, granted with or without notice and for  
9 good cause shown, must be obtained if the notice of the taking of the deposition is  
10 served by either party within 20 days after the accident.

11 (4) ~~Paragraph (4) of subdivision (a) of Section 2019~~ Subdivision (a) of Section  
12 2025.280 of the Code of Civil Procedure is not applicable to discovery under this  
13 section.

14 (5) For the purposes of discovery under this section, the insured and the insurer  
15 shall each be deemed to be “a party to the ~~record of any civil action or proceedings~~  
16 action,” where that phrase is used in ~~paragraph (2) of subdivision (b) of Section~~  
17 2019 Section 2025.260 of the Code of Civil Procedure.

18 (6) Interrogatories under ~~Section 2030~~ Chapter 13 (commencing with Section  
19 2030.020) of Title 4 of Part 4 of the Code of Civil Procedure and requests for  
20 admission under ~~Section 2033~~ Chapter 16 (commencing with Section 2033.010) of  
21 Title 4 of Part 4 of the Code of Civil Procedure may be served by either the  
22 insured or the insurer upon the other at any time more than 20 days after the  
23 accident without leave of court.

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

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

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

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

42 (2) By the amount the insured is entitled to recover from any other person  
43 insured under the underlying liability insurance policy of which the uninsured

1 motorist endorsement or coverage is a part, including any amounts tendered to the  
2 insured as advance payment on behalf of the other person by the insurer providing  
3 the underlying liability insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (n) Underinsured motorist coverage shall be offered with limits equal to the  
11 limits of liability for the insured's uninsured motorist limits in the underlying  
12 policy, and may be offered with limits in excess of the uninsured motorist  
13 coverage. For the purposes of this section, uninsured and underinsured motorist  
14 coverage shall be offered as a single coverage. However, an insurer may offer  
15 coverage for damages for bodily injury or wrongful death from the owner or  
16 operator of an underinsured motor vehicle at greater limits than an uninsured  
17 motor vehicle.

18 (o) If an insured has failed to provide an insurer with wage loss information or  
19 medical treatment record releases within 15 days of the insurer's request or has  
20 failed to submit to a medical examination arranged by the insurer within 20 days  
21 of the insurer's request, the insurer may, at any time prior to 30 days before the  
22 actual arbitration proceedings commence, request, and the insured shall furnish,  
23 wage loss information or medical treatment record releases, and the insurer may  
24 require the insured, except during periods of hospitalization, to make himself or  
25 herself available for a medical examination. The wage loss information or medical  
26 treatment record releases shall be submitted by the insured within 10 days of  
27 request and the medical examination shall be arranged by the insurer no sooner  
28 than 10 days after request, unless the insured agrees to an earlier examination date,  
29 and not later than 20 days after the request. If the insured fails to comply with the  
30 requirements of this subdivision, the actual arbitration proceedings shall be stayed  
31 for at least 30 days following compliance by the insured. The proceedings shall be  
32 scheduled as soon as practicable following expiration of the 30-day period.

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

37 (1) As used in this subdivision, "an insured motor vehicle" is one that is insured  
38 under a motor vehicle liability policy, or automobile liability insurance policy,  
39 self-insured, or for which a cash deposit or bond has been posted to satisfy a  
40 financial responsibility law.

41 (2) "Underinsured motor vehicle" means a motor vehicle that is an insured motor  
42 vehicle but insured for an amount that is less than the uninsured motorist limits  
43 carried on the motor vehicle of the injured person.

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

5 (4) When bodily injury is caused by one or more motor vehicles, whether  
6 insured, underinsured, or uninsured, the maximum liability of the insurer  
7 providing the underinsured motorist coverage shall not exceed the insured's  
8 underinsured motorist coverage limits, less the amount paid to the insured by or  
9 for any person or organization that may be held legally liable for the injury.

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

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

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

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

30 **Comment.** Subdivision (c)(5) of Section 11580.2 is amended to correct the cross-reference to  
31 Vehicle Code Section 16054. See 1974 Cal. Stat. ch. 1409, § 8 (former Veh. Code § 16054(a),  
32 (b), (c)); 1990 Cal. Stat. ch. 314, § 5 (reorganizes Veh. Code § 16054 and adds paragraph on  
33 proof of financial responsibility by owner or driver involved in accident while operating vehicle  
34 of less than four wheels). As amended, subdivision (c)(5) encompasses proof of financial  
35 responsibility by the means formerly set forth in Vehicle Code Section 16054(a), (b), and (c),  
36 which are now codified as Vehicle Code Section 16054(a)(1)-(3). Subdivision (c)(5) also  
37 encompasses proof of financial responsibility by an owner or driver who is involved in an  
38 accident while operating a vehicle of less than four wheels, as provided in Vehicle Code Section  
39 16054(a)(4).

40 Subdivision (f)(1)-(2) and the introductory paragraph of subdivision (f) are amended to reflect  
41 nonsubstantive reorganization of the Civil Discovery Act. 2004 Cal. Stat. ch. 182, §§ 22, 23, 23.5,  
42 61, 62; see *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789  
43 (2003).

44 Subdivision (f)(3) is amended to reflect revision and relocation of the civil discovery provision  
45 referenced in it (former Code Civ. Proc. § 2016), which pertained to deposition procedure. See  
46 1961 Cal. Stat. ch. 2067, § 1 (former Code Civ. Proc. § 2016); see also 1963 Cal. Stat. ch. 1750, §

1 1 (earlier version of Ins. Code § 11580.2 — see subd. (e)(3)). Former Code of Civil Procedure  
2 Section 2016 was repealed in 1986 and its substance relocated, with revisions, to Code of Civil  
3 Procedure Section 2025, which in turn was repealed and recodified as part of the nonsubstantive  
4 reorganization of the Civil Discovery Act in 2004. See 1986 Cal. Stat. ch. 1334, §§ 1,2.

5 Subdivision (f)(4) is amended to reflect revision and relocation of the civil discovery provision  
6 referenced in it (former Code Civ. Proc. § 2019(a)(4)), which pertained to attendance of specified  
7 persons at a deposition without service of a subpoena. See 1963 Cal. Stat. ch. 519, § 1 (former  
8 Code Civ. Proc. § 2019(a)(4)); see also 1963 Cal. Stat. ch. 1750, § 1 (earlier version of Ins. Code  
9 § 11580.2 — see subd. (e)(4)). Former Code of Civil Procedure Section 2019 was repealed in  
10 1986 and its substance relocated, with revisions, to Code of Civil Procedure Section 2025(h)(1),  
11 which in turn was repealed and recodified as part of the nonsubstantive reorganization of the Civil  
12 Discovery Act in 2004. See 1986 Cal. Stat. ch. 1334, §§ 1,2.

13 Subdivision (f)(5) is amended to reflect revision and relocation of the civil discovery provision  
14 referenced in it (former Code Civ. Proc. § 2019(b)(2)), which pertained to the location of a  
15 deposition of “a party to the record of any civil action or proceedings.” See 1961 Cal. Stat. ch.  
16 192, § 2 (former Code Civ. Proc. § 2019(b)(2)); see also 1963 Cal. Stat. ch. 1750, § 1 (earlier  
17 version of Ins. Code § 11580.2 — see subd. (e)(5)). Former Code of Civil Procedure Section  
18 2019(b)(2) was repealed in 1986 and its substance relocated, with revisions, to Code of Civil  
19 Procedure Section 2025(e)(3), which in turn was repealed and recodified as part of the  
20 nonsubstantive reorganization of the Civil Discovery Act in 2004. See 1986 Cal. Stat. ch. 1334,  
21 §§ 1,2.

22 Subdivision (f)(6) is amended to reflect the nonsubstantive reorganization of the Civil  
23 Discovery Act in 2004.

24 Section 11580.2 is also amended to make a stylistic revision in subdivision (b)(2).

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