

Legis. Prog.

July 8, 2005

## Memorandum 2005-23

**2005 Legislative Program: Status of Bills**

Attached to this memorandum is a chart showing the status of bills in the Commission's 2005 legislative program. We will update the information in the chart with any changes at the time of the Commission meeting.

This memorandum supplements the information in the chart with respect to selected matters. Also attached to this memorandum and discussed in it are:

	<i>Exhibit p.</i>
1. SCR 15 (Morrow/Dunn/Escutia) . . . . .	1
2. AB 12 (DeVore) . . . . .	6
3. ACR 73 (McCarthy) . . . . .	9
4. SCR 42 (Campbell) . . . . .	12

AB 69 (HARMAN) – OWNERSHIP OF AMOUNTS WITHDRAWN FROM JOINT  
ACCOUNT

Assembly Bill 69 (Harman) would implement the Commission's recommendation on *Ownership of Amounts Withdrawn from Joint Account*. It would overturn a recent case holding that a party to a joint account may withdraw all the funds without having to account to the other parties. The recommendation is supported by the State Bar Trusts and Estates Section and the State Bar Family Law Section, as well as by the California Judges Association. It passed the Assembly on a unanimous vote.

The bill has run into static in the Senate, however. The Senate Judiciary Committee staff is concerned that the bill may frustrate the reasonable expectations of parties to a joint account. They have argued that the bill should be made prospective only, and that the name "joint account" should be changed since the account is not a true joint tenancy.

The changes being advocated by committee staff would undermine the Commission's recommendation. We have met with committee staff, together with interested parties, to see whether there is any middle ground. So far none of the compromise approaches suggested has proved to be generally acceptable.

The bill's author has decided to hold the bill over until next year in order to give us a more adequate opportunity to work out a compromise, if possible. The staff will continue discussions with all parties during the interim.

#### AB 1133 (HARMAN) – WAIVER OF PRIVILEGE BY DISCLOSURE

Assembly Bill 1133 (Harman) would implement the Commission's recommendation on *Waiver of Privilege By Disclosure*. The bill remains pending in the Senate Judiciary Committee. Efforts to resolve the concerns raised by the Consumer Attorneys of California and the California District Attorneys' Association have not been successful. Based on a number of considerations, the author decided to make the bill a two-year bill.

The Commission will need to revisit this matter next year and determine how to proceed. In the interim, the staff is monitoring the two potentially significant cases pending before the California Supreme Court: *Jasmine Networks, Inc. v. Marvell Semiconductor, Inc.*, No. S124914 (review granted July 21, 2004), and *Rico v. Mitsubishi Motors Corp.*, No. S123808 (review granted June 9, 2004).

#### SB 702 (ACKERMAN) – UNINCORPORATED ASSOCIATION GOVERNANCE

Senate Bill 702 (Ackerman) would implement two Commission recommendations: *Unincorporated Association Governance* and *Nonprofit Association Tort Liability*. SB 702 was approved by the Assembly on June 27 and has returned to the Senate for concurrence in the Assembly amendments.

The bill was amended on May 31 to implement a suggestion of the Secretary of State. The provision authorizing the merger of an unincorporated association into another type of entity was revised to eliminate any ambiguity about its application to foreign entities and to make clear that the section, standing alone, would not be sufficient to authorize an interspecies merger. The proposed merger would also need to be authorized under the law governing the other entities involved. Thus:

18360. An unincorporated association may merge into a ~~domestic corporation, foreign corporation, limited partnership, general partnership, domestic limited liability company, or foreign limited liability company~~ domestic or foreign corporation, domestic or foreign limited partnership, domestic or foreign general partnership, or domestic or foreign limited liability company. Notwithstanding this section, a merger may be effected only if each

constituent entity is authorized to effect the merger by the laws under which it was organized.

The staff recommends that the amendment be ratified.

The bill was amended again on June 13, to address an issue raised by the Department of Corporations. Proposed Corporations Code Section 18330 would provide a default procedure for voting by the members of an unincorporated association. Subdivision (b) of that section would require member notice of a pending vote. The notice could be sent electronically.

The Department of Corporations noted that existing Corporations Code Section 20 provides fairly detailed rules for electronic delivery of a notice to the shareholders of a corporation. The department suggested that SB 702 be amended to incorporate similar rules.

Proposed Section 18330(b) was amended to incorporate the central elements of Corporations Code Section 20 — the requirement that a notice be in writing and that a recipient of a notice delivered electronically have consented to electronic delivery of the notice:

18330. ...

(b) Notice Written notice of the vote shall be delivered to all members entitled to vote on the date of delivery. The notice shall be delivered or mailed or sent electronically to the member addresses shown in the association's records a reasonable time before the vote is to be conducted. The notice shall not be delivered electronically, unless the recipient has consented to electronic delivery of the notice. The notice shall state the matter to be decided and describe how and when the vote is to be conducted.

...

The staff recommends that the Commission ratify this amendment.

#### SB 1104 (SEN. BANK., FIN. & INS. COMM.) – FINANCIAL PRIVACY

This bill is pending in Senate Judiciary Committee and will not be heard before January.

A recent development in this area is that the United States Court of Appeals for the Ninth Circuit has held that the California Financial Information Privacy Act is preempted to some extent by the federal Fair Credit Reporting Act. *American Bankers Ass'n v. Gould*, 1988 DJDAR 7293 (June 20, 2005). The court remanded the case to the United States District Court for the Eastern District of California to determine the extent of preemption.

The bill would authorize the Commission to continue its study of financial privacy, but would defer the study for two years to allow litigation on the matter to play out.

#### SCR 15 (MORROW/DUNN/ESCUTIA) – CLRC STUDIES

SCR 15 (Morrow/Dunn/Escutia) began life as an authorization of the oral argument study. We commenced work on the study at the request of the Chair and Vice Chair of the Senate Judiciary Committee under our general authority to propose technical and minor substantive revisions to the law, but felt that broader authority on this topic would be helpful since it is likely we will recommend more substantive revisions.

We had hoped to introduce our standard resolution of authority in the Assembly this year, but we still lack an Assembly member of the Commission. So Senator Morrow graciously agreed to expand SCR 15 into our general study authority resolution. A copy of the resolution is attached at Exhibit pp. 1-5.

One innovation in this year’s resolution is a requirement that, “before commencing work on any project within the calendar of topics the Legislature has authorized or directed the commission to study, the commission shall submit a detailed description of the scope of work to the Chairs and Vice Chairs of the Committees on Judiciary of the Senate and Assembly, and if during the course of the project there is a major change to the scope of work, submit a description of the change.”

This language grew out of discussions we have been having with the Senate Judiciary Committee. Many of our study topics are quite broadly phrased, and it is not necessarily always clear to the Legislature what exactly we are working on. For example, our study authority includes the Evidence Code, but if we decide to get into an aspect of the Evidence Code that could be politically problematic, we may not know that until well down the road, when our recommendation hits the Legislature.

The Judiciary Committee analysis of this point observes:

In light of the generally broad grant of authority to the CLRC for some of the listed topics, e.g., study and make recommendations for Probate Code revisions, concern was expressed that the Commission might undertake on its own initiative and without legislative input a study that goes beyond the CLRC's traditional role of studying and developing recommended non-controversial changes to the law that are primarily of a

cleanup, consolidation, or restatement nature. Given the limited resources of the Commission which has suffered budget cuts in past years, early communication to the Senate and Assembly Judiciary Committee Chairs and Vice-Chairs of proposed topics of study would allow legislative input on whether a particular proposed topic would likely be controversial and thus perhaps avoided by the Commission so that it may devote its limited resources to other, more productive studies.

The staff thinks this is a salutary development. Often our line of communication with the Legislature is not as robust as it should be. We do publish an Annual Report, but that is not conducive to a dialogue. The Legislature controls our agenda, and the project descriptions will help us coordinate our work with the committees most directly concerned. This should help foster better relations between the Commission and the Legislature.

With respect to the reference in the committee's analysis to the Commission's "traditional role of studying and developing recommended non-controversial changes to the law that are primarily of a cleanup, consolidation, or restatement nature," that only tells part of the story. It is true that many of our projects do exactly that. However, our enabling statute also mandates the Commission to recommend "such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state into harmony with modern conditions." Gov't Code § 8289(d).

But the Judiciary Committee analysis broaches a critically important point. As a practical matter, unless our recommendation is supported by, or at least not opposed by, all important interest groups affected by it, it will be very difficult to enact the recommendation. We do strive to achieve balance in and widespread approval of our proposals; our legislative success with proposals that prove to be controversial is poor. It has not always been that way, and the staff could expound on the reasons for the change in the legislative landscape, if the Commission is interested.

#### ALSO OF INTEREST

#### **AB 12 (DeVore) – Real Property TOD Deed**

AB 12 (DeVore) would direct the Commission to study real property "transfer on death" deeds. This would be a short-fuse study, with the Commission's report due January 1, 2007. A copy of the bill is attached at Exhibit pp. 6-8. The bill has

passed the Assembly and the policy committee in the Senate, and is pending in the Senate fiscal committee.

**ACR 73 (McCarthy) – Firearms Statutes**

ACR 73 (McCarthy) was introduced on June 13. It would direct the Commission to study the statutes relating to firearms with the objective to propose legislation that would clean up and clarify the statutes nonsubstantively. The project would be done in consultation with key interest groups. The Commission's report would be due by July 1, 2008. A copy of the resolution as introduced is attached at Exhibit pp. 9-11. The measure has passed the Assembly policy committee and is pending in the Assembly fiscal committee. It was broadened in the policy committee to include consultation with key gun control groups, but the amended version is not yet in print.

**SCR 42 (Campbell) – No Contest Clause**

SCR 42 (Campbell) would direct the Commission to review the law governing no contest clauses in wills and trusts to determine whether the existing statutes should be revised or replaced by alternative provisions. The measure as introduced is attached at Exhibit pp. 12-13. It has passed the Senate and the policy committee in the Assembly, and is pending in the Assembly fiscal committee. It was broadened in the policy committee to include consideration of additional options, but the amended version is not yet in print.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

# Status of 2005 Commission Legislative Program

As of July 7, 2005

	AB 69	AB 176	AB 333	AB 770	AB 1133	SB 551	SB 702	SB 853	SB 1104	SCR 15
<b>Introduced</b>	Jan 3	Jan 24	Feb 10	Feb 18	Feb 22	Feb 18	Feb 22	Feb 22	Mar 1	Feb 9
<b>Last Amended</b>	Mar 1	Apr 21	May 10	Apr 25	Apr 14	Apr 12	Jun 13	Apr 7		Jun 20
Policy Committee	Feb 22	Apr 6	May 3	2-year Bill	Apr 12	2-year Bill	Apr 19	Apr 5	2-year Bill	Jun 21
Fiscal Committee	—	May 26	—		—		—	—		<i>Jul 11</i>
Passed House	Mar 7	May 31	May 16		Apr 21		Apr 28	Apr 21		
Policy Committee	2-year bill	<i>Jul 12</i>	Jun 14		2-year Bill		Jun 7	Jun 7		
Fiscal Committee	—		—				*Jun 20	*Jun 15		
Passed House							Jun 27	Jun 23		
<b>Concurrence</b>										
<b>Governor</b>	Received									
	Approved									
<b>Secretary of State</b>	Date									
	Chapter #									

## Bill List:

AB 69 (Harman): Ownership of Amounts Withdrawn from Joint Account  
 AB 176 (Bermudez): Chaptered Out Gov 't Code § 71601 Change  
 AB 333 (Harman): Civil Discovery (Statutory Clarification and Minor Substantive Improvements; Correction of Obsolete Cross-References; Legislation to Correct AB 3081 Chaptering Out Problems)  
 AB 770 (Mullin): CID Ombudsperson  
 AB 1133 (Harman): Waiver of Privilege By Disclosure  
 SB 551 (Lowenthal): CID Ombudsperson  
 SB 702 (Ackerman) Unincorporated Association Governance and Nonprofit Tort Liability  
 SB 853 (Kehoe): Preemption of CID Architectural Restrictions and Obsolete Cross-References to Former CCP § 383  
 SB 1104 (Sen. Banking, Finance and Insurance Comm.): Financial Privacy  
 SCR 15 (Morrow; co-authors Escutia/Dunn): Oral Argument Resolution of Authority

TBA: Emergency Rulemaking

## Also of Interest:

AB 12 (Devore): CLRC Study of Real Property TOD Deeds  
 ACR 73 (McCarthy): CLRC Study of Firearms Statutes  
 SCR 42 (Campbell): CLRC Study of No-Contest Clauses

## K E Y

Italics: Future or speculative  
 "—": Not applicable  
 \*: Double referral, not fiscal  
 [date] : Deadline

AMENDED IN SENATE JUNE 20, 2005

AMENDED IN SENATE JUNE 1, 2005

**Senate Concurrent Resolution**

**No. 15**

**Introduced by Senators Morrow, Dunn, and Escutia**

February 9, 2005

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Senate Concurrent Resolution No. 15—Relative to the California Law Revision Commission.

LEGISLATIVE COUNSEL'S DIGEST

SCR 15, as amended, Morrow. California Law Revision Commission: studies.

Under existing law, the California Law Revision Commission is required to study, and is limited to studying, those topics approved for its study by concurrent resolution of the Legislature.

This measure would authorize the commission to study whether specified laws should be revised, including, as a new topic for study, a comprehensive review of the Code of Civil Procedure and applicable case law in order to clarify the circumstances in which parties are entitled to oral argument. *The measure would require the commission, before commencing work on any project within the calendar of topics the Legislature has authorized or directed the commission to study, to submit a detailed description of the scope of work to the Chairs and Vice Chairs of the Committees on Judiciary of the Senate and Assembly, and if during the course of the project there is a major change to the scope of work, submit a description of the change.*

Fiscal committee: yes.

- 1 WHEREAS, The California Law Revision Commission is
- 2 authorized to study topics set forth in the calendar contained in
- 3 its report to the Governor and the Legislature that have been or

1 are thereafter approved for study by concurrent resolution of the  
2 Legislature, and topics that have been referred to the commission  
3 for study by concurrent resolution of the Legislature or by  
4 statute; and

5 WHEREAS, The commission, in its annual report covering its  
6 activities for 2004 and 2005, recommends continued study of 21  
7 topics, all of which the Legislature has previously authorized or  
8 directed the commission to study, and further recommends  
9 addition of one new topic to its calendar; now, therefore, be it

10 *Resolved by the Senate of the State of California, the Assembly*  
11 *thereof concurring*, That the Legislature approves for continued  
12 study by the California Law Revision Commission the topics  
13 listed below, all of which the Legislature has previously  
14 authorized or directed the commission to study:

15 (1) Whether the law should be revised that relates to creditors'  
16 remedies, including, but not limited to, attachment, garnishment,  
17 execution, repossession of property (including the claim and  
18 delivery statute, self-help repossession of property, and the  
19 Commercial Code provisions on repossession of property),  
20 confession of judgment procedures, default judgment procedures,  
21 enforcement of judgments, the right of redemption, procedures  
22 under private power of sale in a trust deed or mortgage,  
23 possessory and nonpossessory liens, insolvency, and related  
24 matters.

25 (2) Whether the California Probate Code should be revised,  
26 including, but not limited to, the issue of whether California  
27 should adopt, in whole or in part, the Uniform Probate Code, and  
28 related matters.

29 (3) Whether the law should be revised that relates to real and  
30 personal property including, but not limited to, a marketable title  
31 act, covenants, servitudes, conditions, and restrictions on land  
32 use or relating to land, powers of termination, escheat of property  
33 and the disposition of unclaimed or abandoned property, eminent  
34 domain, quiet title actions, abandonment or vacation of public  
35 streets and highways, partition, rights and duties attendant on  
36 assignment, subletting, termination, or abandonment of a lease,  
37 and related matters.

38 (4) Whether the law should be revised that relates to family  
39 law, including, but not limited to, community property, the  
40 adjudication of child and family civil proceedings, child custody,

1 adoption, guardianship, freedom from parental custody and  
2 control, and related matters, including other subjects covered by  
3 the Family Code.

4 (5) Whether the law relating to offers of compromise should  
5 be revised.

6 (6) Whether the law relating to discovery in civil cases should  
7 be revised.

8 (7) Whether the acts governing special assessments for public  
9 improvement should be simplified and unified.

10 (8) Whether the law relating to the rights and disabilities of  
11 minors and incompetent persons should be revised.

12 (9) Whether the Evidence Code should be revised.

13 (10) Whether the law relating to arbitration, mediation, and  
14 other alternative dispute resolution techniques should be revised.

15 (11) Whether there should be changes to administrative law.

16 (12) Whether the law relating to the payment and the shifting  
17 of attorney's fees between litigants should be revised.

18 (13) Whether the Uniform Unincorporated Nonprofit  
19 Association Act, or parts of that uniform act, and related  
20 provisions should be adopted in California.

21 (14) Recommendations to be reported pertaining to statutory  
22 changes that may be necessitated by court unification.

23 (15) Whether the law of contracts should be revised, including  
24 the law relating to the effect of electronic communications on the  
25 law governing contract formation, the statute of frauds, the parol  
26 evidence rule, and related matters.

27 (16) Whether the law governing common interest housing  
28 developments should be revised to clarify the law, eliminate  
29 unnecessary or obsolete provisions, consolidate existing statutes  
30 in one place in the codes, establish a clear, consistent, and unified  
31 policy with regard to formation and management of these  
32 developments and transaction of real property interests located  
33 within them, and to determine to what extent they should be  
34 subject to regulation.

35 (17) Whether the statutes of limitation for legal malpractice  
36 actions should be revised to recognize equitable tolling or other  
37 adjustment for the circumstances of simultaneous litigation, and  
38 related matters.

39 (18) Whether the law governing disclosure of public records  
40 and the law governing protection of privacy in public records

1 should be revised to better coordinate them, including  
2 consolidation and clarification of the scope of required disclosure  
3 and creation of a single set of disclosure procedures, to provide  
4 appropriate enforcement mechanisms, and to ensure that the law  
5 governing disclosure of public records adequately treats  
6 electronic information, and related matters.

7 (19) Whether the law governing criminal sentences for  
8 enhancements relating to weapons or injuries should be revised  
9 to simplify and clarify the law and eliminate unnecessary or  
10 obsolete provisions.

11 (20) Whether the Subdivision Map Act (Division 2  
12 commencing with Section 66410) of Title 7 of the Government  
13 Code) and the Mitigation Fee Act (Chapter 5 (commencing with  
14 Section 66000), Chapter 6 (commencing with Section 66010),  
15 Chapter 7 (commencing with Section 66012), Chapter 8  
16 (commencing with Section 66016), and Chapter 9 (commencing  
17 with Section 66020) of Division 1 of Title 7 of the Government  
18 Code) should be revised to improve their organization, resolve  
19 inconsistencies, and clarify and rationalize provisions, and  
20 related matters.

21 (21) Whether the Uniform Statute and Rule Construction Act  
22 (1995) should be adopted in California in whole or part, and  
23 related matters; and be it further

24 *Resolved*, That the Legislature approves for study by the  
25 California Law Revision Commission the new topic listed below:

26 A comprehensive review of the Code of Civil Procedure and  
27 applicable case law in order to clarify the circumstances in which  
28 parties are entitled to oral argument, and related matters; and be  
29 it further

30 *RESOLVED*, That before commencing work on any project  
31 within the calendar of topics the Legislature has authorized or  
32 directed the commission to study, the commission shall submit a  
33 detailed description of the scope of work to the Chairs and Vice  
34 Chairs of the Committees on Judiciary of the Senate and  
35 Assembly, and if during the course of the project there is a major  
36 change to the scope of work, submit a description of the change;  
37 and be it further

38 *Resolved*, That the Secretary of the Senate transmit a copy of  
39 this resolution to the California Law Revision Commission; and  
40 be it further

- 1     *Resolved*, That the Secretary of the Senate transmit copies of
- 2     this resolution to the author for appropriate distribution.

AMENDED IN SENATE JULY 1, 2005  
AMENDED IN ASSEMBLY MAY 4, 2005  
AMENDED IN ASSEMBLY APRIL 26, 2005  
AMENDED IN ASSEMBLY MARCH 16, 2005  
CALIFORNIA LEGISLATURE—2005-06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 12**

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**Introduced by Assembly Member DeVore**

December 6, 2004

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An act relating to nonprobate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 12, as amended, DeVore. Nonprobate transfers: property conveyances upon death.

Existing law authorizes certain types of property to be transferred by a property holder to another person without that property being subject to probate proceedings upon the death of the property holder. Existing law permits, among other types of nonprobate transfers, transfers on death of an insurance policy, bond, pension plan, specified trust and other financial accounts, and property held in joint tenancy. Existing law also requires the California Law Revision Commission to study topics approved by the Legislature.

This bill would require the California Law Revision Commission to study the effect of California's nonprobate transfer provisions and to study statutes in other states that establish beneficiary deeds as a means of conveying real property through nonprobate transfers. The objective of the study would be to determine whether legislation establishing beneficiary deeds should be enacted in California. The bill would require the commission to report its findings to the

Legislature on or before January 1, 2007. The bill would also require the commission, if it recommends that the Legislature adopt a statutory scheme establishing beneficiary deeds, to also recommend the content of the proposed statute.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) The California Law Revision Commission  
2 shall study the effect of California's nonprobate transfer  
3 provisions and shall study statutes in other states that establish  
4 beneficiary deeds as a means of conveying real property through  
5 nonprobate transfers. The objective of the study shall be to  
6 determine whether legislation establishing beneficiary deeds  
7 should be enacted in California. The commission shall report all  
8 of its findings to the Legislature on or before January 1, 2007. If  
9 the commission recommends that the Legislature adopt a  
10 statutory scheme establishing beneficiary deeds as a means of  
11 conveying real property, the commission shall recommend the  
12 content of the proposed statute.
- 13 (b) *The commission shall address all of the following in the*  
14 *study described in subdivision (a):*
- 15 (1) *Whether and when a beneficiary deed would be the most*  
16 *appropriate nonprobate transfer mechanism to use, if a*  
17 *beneficiary deed should be recorded or held by the grantor or*  
18 *grantee until the time of death, and, if not recorded, whether a*  
19 *potential for fraud is created.*
- 20 (2) *What effect the recordation of a beneficiary deed would*  
21 *have on the transferor's property rights after recordation.*
- 22 (3) *How a transferor may exert his or her property rights in*  
23 *the event of a dispute with the beneficiary.*
- 24 (4) *Whether it would be more difficult for a person who has*  
25 *transferred a potential interest in the property by beneficiary*  
26 *deed to change his or her mind than if the property were devised*  
27 *by will to the transferee or transferred through a trust or other*  
28 *instrument.*
- 29 (5) *The tax implications of a beneficiary deed for the*  
30 *transferor, the transferee, and the general public as a result of*

- 1 *the nonprobate transfer, including whether the property would be*
- 2 *reassessed and if tax burdens would shift or decrease.*

**Assembly Concurrent Resolution**

**No. 73**

**Introduced by Assembly Member McCarthy**

June 13, 2005

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Assembly Concurrent Resolution No. 73—Relative to firearms statutes.

LEGISLATIVE COUNSEL'S DIGEST

ACR 73, as introduced, McCarthy. Firearms statutes.

This measure would request the California Law Revision Commission prepare legislation revising specified provisions of the Penal Code relating to firearms, as specified.

Fiscal committee: yes.

1       WHEREAS, Governor Schwarzenegger has stated, "Before a  
2 government exercises its power to take away ones liberty, it  
3 should be clear to every person what actions will cause them to  
4 forfeit their freedom. Instead of adding to the lengthy and  
5 complex area of firearm laws, a reorganization of the current  
6 laws should be undertaken to ensure that statutes that impose  
7 criminal penalties are easily understandable"; and

8       WHEREAS, The firearms laws portion of the Penal Code, and,  
9 in particular, the portions of those laws dealing with criminal  
10 storage of firearms around children, the transfer of firearms, and  
11 many other sections that impose criminal penalties relating to  
12 firearms, are filled with complex, lengthy, unnecessarily  
13 confusing, vague, verbose, and poorly drafted provisions; and

14       WHEREAS, The citizens of the State of California ought to be  
15 able to discover what behavior is required and what is prohibited  
16 by criminal laws; and

- 1 WHEREAS, It is the intent of the Legislature that the firearms  
2 laws be simplified and reorganized; now, therefore, be it  
3 *Resolved by the Assembly of the State of California, the Senate*  
4 *thereof concurring*, That the Legislature authorizes and requests  
5 that the California Law Revision Commission study, report on,  
6 and prepare recommended legislation by July 1, 2008,  
7 concerning the revision of the portions of the Penal Code dealing  
8 with the criminal storage of firearms (Secs. 12035 to 12036,  
9 inclusive, of the Pen. C.) and transfers of firearms (Secs. 12070  
10 to 12086, inclusive, of the Pen. C.), and that this legislation shall  
11 accomplish the following objectives:
- 12 (a) Redraft these provisions as nearly as practicable into plain  
13 English, so that the average, conscientious gun owner, licensee,  
14 and enforcement official can understand what conduct is  
15 required, what is prohibited, what will result in criminal liability.
  - 16 (b) Reduce the length and complexity of current sections.
  - 17 (c) Avoid unnecessary use of cross-references.
  - 18 (d) Except as necessary and consistent with other goals,  
19 neither expand nor contract the scope of criminal liability under  
20 current provisions. In the event that the commission's draft  
21 changes the scope of criminal liability under the current  
22 provisions, this shall be made explicit in the commission's draft  
23 or any commentary related to the draft.
  - 24 (e) To the extent compatible with objective (d), use common  
25 definitions of terms.
  - 26 (f) Organize existing provisions in such a way that similar  
27 provisions are located in close proximity to each other, not  
28 scattered in dispersed sections.
  - 29 (g) Eliminate duplicative provisions.
  - 30 (h) Develop the recommendations in consultation with each of  
31 the following:
    - 32 (1) A representative of the California State Sheriff's  
33 Association, the California Police Chief's Association, or both.
    - 34 (2) A representative of the California District Attorneys  
35 Association.
    - 36 (3) A representative of California Attorneys for Criminal  
37 Justice.
    - 38 (4) A representative of the California Public Defenders  
39 Association.
    - 40 (5) A representative of the Department of Justice.

- 1 (6) A representative of the National Rifle Association.
- 2 (7) A representative of the California Rifle and Pistol  
3 Association.
- 4 (8) A representative of Gun Owners of California.
- 5 (9) A representative of another recognized organization  
6 representing gun owners, firearms dealers, or both.
- 7 (10) A representative of an organization with an interest in the  
8 regulation of firearms, such as the Brady Campaign to Prevent  
9 Gun Violence; and be it further
- 10 *Resolved*, That it is the intent of the Legislature that following  
11 the completion of the commission's work and the passage of  
12 legislation on this issue, that the commission be tasked with the  
13 revision and improvement of other portions of the Penal Code  
14 relating to the regulation of firearms; and be it further
- 15 *Resolved*, That the Chief Clerk of the Assembly transmit  
16 copies of this resolution to the California Law Revision  
17 Commission and to the author for appropriate distribution.

Introduced by Senator Campbell

April 14, 2005

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Senate Concurrent Resolution No. 42—Relative to the California Law Revision Commission.

LEGISLATIVE COUNSEL'S DIGEST

SCR 42, as introduced, Campbell. California Law Revision Commission: studies.

Under existing law, the California Law Revision Commission is required to study, and is limited to studying, those topics approved for its study by concurrent resolution of the Legislature.

This measure would authorize as a new topic for study by the commission a comprehensive review of provisions of the Probate Code relating to no contest clauses, with the objective of determining whether those provisions should be repealed and alternative provisions substituted, as specified.

Fiscal committee: yes.

1       WHEREAS, The California Law Revision Commission is  
2 authorized to study topics approved for study by concurrent  
3 resolution of the Legislature; now, therefore, be it  
4       *Resolved by the Senate of the State of California, the Assembly*  
5 *thereof concurring*, That the Legislature approves for study by  
6 the California Law Revision Commission the topic listed below:  
7       (1) A comprehensive review of the provisions of the Probate  
8 Code relating to no contest clauses, with the objective of  
9 determining whether those provisions should be repealed and  
10 alternative provisions awarding attorney's fees and costs  
11 substituted, if certain conditions are satisfied; and be it further

**SCR 42**

— 2 —

1     *Resolved*, That the Secretary of the Senate transmit a copy of  
2     this resolution to the California Law Revision Commission.

O