

Memorandum 2005-30

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.

TWO -YEAR BILLS

A two-year bill is a measure introduced in the first year of the biennial legislative session that has been neither enacted nor killed during that year. If the bill has cleared its house of origin during the first year it can be acted on by the other house during the second year of the session. If the bill has not cleared its house of origin during the first year, it must clear the house of origin by January 31 of the second year of the session, or it dies.

No fewer than six Commission bills introduced in 2005, the first year of the biennial session, are two year bills:

AB 69 (Harman) – Ownership of Amounts Withdrawn from Joint Account

This measure passed the Assembly unanimously, but raised concern with the Senate Judiciary Committee staff. We will need to work with committee staff and other interested persons during the legislative interim to see whether we can devise an acceptable compromise before setting the matter for hearing in 2006.

AB 770 (Mullin)/SB 551 (Lowenthal) – CID Ombudsperson

These identical bills would create a new state bureaucracy, and therefore are subject to the "sunrise review" process during the legislative interim.

AB 1133 (Harman) – Waiver of Privilege By Disclosure

This measure has passed the Assembly and is pending in the Senate Judiciary Committee, where it faces significant opposition. The Commission will need to revisit policy issues on the bill before setting it for hearing in 2006.

SB 1104 (Sen. Banking, Finance and Insurance Comm.) – Financial Privacy

This bill was held in Senate Judiciary Committee to await developments in practice and in the courts. Whether it will be set for hearing in January depends on the developments.

SCR 15 (Morrow/Dunn/Escutia) – CLRC Studies

This resolution started life as authority for the oral argument study, was held up for a variety of unrelated reasons, and eventually was converted into the Commission’s general resolution of authority. Due to the late start on its journey through the Legislature, the measure did not make it all the way through before the Legislature recessed for the interim. In 2006, progress should pick up where it left off.

PENDING BEFORE GOVERNOR

AB 333 (Harman) – Civil Discovery (Statutory Clarification and Minor Substantive Improvements; Correction of Obsolete Cross-References; Legislation to Correct AB 3081 Chaptering Out Problems)

When this bill was pending on the Assembly Floor, we learned of two technical problems relating to the 2004 reorganization of the Civil Discovery Act, which was enacted on Commission recommendation. With approval of the Commission Chair, the bill was amended to address those problems. The amendments and corresponding Comments are set out below for the Commission to ratify.

As amended, the bill passed the Senate without a dissenting vote and the Assembly concurred in the Senate amendments. The bill has gone to the Governor for his signature. The Governor has until October 9 to act on it.

Code Civ. Proc. § 2025.250 (amended). Place of deposition

SEC. __. Section 2025.250 of the Code of Civil Procedure is amended to read:

2025.250. (a) Unless the court orders otherwise under Section 2025.260, the deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent’s residence, or within the county where the action is pending and within 150 miles of the deponent’s residence.

(b) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization’s principal executive or business office in California, or within the

county where the action is pending and within 150 miles of that office.

(c) Unless the organization consents to a more distant place, the deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California. ~~If the~~

(d) If an organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

Comment. Section 2025.250 is amended to make clear that the rule regarding where to depose an organization that has not designated a principal executive or business office in California applies regardless of whether the organization is a party or a nonparty. This is not a substantive change.

Staff Note. Currently, the second sentence of Section 2025.250(c) specifies where to take a deposition if an organization has not designated a principal executive or business office in California. That language previously was in a provision that applied to both party and nonparty organizations (former Code Civ. Proc. § 2025(e)(2)). In the nonsubstantive reorganization of the Civil Discovery Act, however, that language was mistakenly grouped in subdivision (c) with a sentence that applies only to a nonparty organization. Unfortunately, that creates the misleading impression that the rule regarding an organization that has not designated a principal executive or business office in California only applies to a nonparty. The amendment shown above will fix this problem by putting the rule in a separate subdivision.

Code Civ. Proc. § 2033.280 (amended). Failure to serve timely response

SEC. __. Section 2033.280 of the Code of Civil Procedure is amended to read:

2033.280. If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:

(a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

(b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section ~~2033.100~~ 2033.220. It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

Comment. Subdivision (c) of Section 2033.280 is amended to correct a cross-reference.

Staff Note. Section 2033.280(c) currently refers to Section 2033.100, but there is no such section. The proper cross-reference is to Section 2033.220 (the provision that continues former Section 2033(f)(1), which was referenced in the provision that became Section 2033.280(c)). The amendment shown above will fix this problem.

VETOED

AB 176 (Bermudez) – Chaptered Out Gov't Code § 71601 Change

This bill primarily dealt with, and was vetoed because of, unrelated matters. Included in the bill was a technical change recommended by the Commission (elimination of a reference to the municipal court). The technical change is a little snake-bit — it has thrice passed the Legislature, only to be twice chaptered out, and now vetoed. We'll try again when an appropriate vehicle surfaces.

ALSO OF INTEREST

AB 12 (DeVore) – CLRC Study of Real Property TOD Deed

This bill has gone to the Governor for his signature. The Governor has until October 9 to act on it.

ACR 73 (McCarthy) – CLRC Study of Firearms Statutes

This measure has passed the Assembly and is pending in the Senate Public Safety Committee.

SCR 42 (Campbell) – CLRC Study of No Contest Clauses

This measure has passed the Legislature and is chaptered as 2005 Cal. Stat. res. ch. 122.

Respectfully submitted,

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Executive Secretary



