

Memorandum 2006-18

2006 Legislative Program: Status of Bills

Attached to this memorandum is a chart showing the status of bills in the Commission's 2006 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.

PENDING LEGISLATION

AB 69 (Harman) – Ownership of Amounts Withdrawn from Joint Account

This measure passed the Assembly unanimously in 2005, but the Senate Judiciary Committee staff had concerns with it. We have been working with committee staff and the California Bankers Association to see whether we can devise an acceptable resolution before setting the bill for hearing in 2006.

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

We will bring the Commission up to date with activity on these bills at the Commission meeting.

AB 1133 (Harman) – Waiver of Privilege By Disclosure

This measure faces significant opposition in the Senate Judiciary Committee. The author has decided to let it die.

AB 1302 (Horton) – Emergency Rulemaking

AB 1302 (Horton), relating to administrative rulemaking, has been amended to incorporate the substance of the Commission's recommendation on *Emergency Rulemaking Under the Administrative Procedure Act* (2004). We had delayed introduction of this measure out of concern that it could get entangled with unrelated political issues about overuse of emergency rulemaking.

ALSO OF INTEREST

AB 928 (J. Horton) – CLRC Study of Attorneys Fees

This bill would prescribe attorneys fees in a collection action to enforce a contract and would sunset on January 1, 2010. The bill would also direct the Law Revision Commission to study the appropriate amount, if any, of a statewide fee scale for attorneys fees in a collection action to enforce a contract that provides for attorneys fees. The Commission's report, including recommendations, would be due by January 1, 2009.

The bill has passed the Assembly and is pending in the Senate Judiciary Committee.

AB 1162 (Mullin) – CLRC Study of Eminent Domain

This bill would direct the Law Revision Commission to study whether the law governing the appraisal and valuation process in eminent domain proceedings fairly compensates a condemnee for the taking of its property, including the role and importance of legal counsel for the condemnee. The Commission's report on this study, together with any recommendations for changes in the law, would be due by January 1, 2008.

The bill passed the Assembly in a different form and is pending in the Senate.

AB 2034 (Spitzer) – CLRC Study of Donative Transfer Restrictions

This bill, sponsored by the State Bar Trusts & Estates Section, would direct the Law Revision Commission to study "the operation and effectiveness of the provisions of the Probate Code restricting donative transfers to certain classes of individuals." The statute referred to is Section 21350 *et seq.*, enacted in 1993 in response to a scandal involving an estate planning attorney who named himself and his family members as fiduciaries for, and beneficiaries of, his clients' estates. The statute invalidates such provisions, subject to exceptions.

The bill would require the Commission to address the following issues in considering the overall effectiveness of the current statutory scheme in protecting a transferor from fraud, menace, or undue influence, while still ensuring freedom of disposition and rewarding "good Samaritans":

- (1) Whether the potential for abuse by care custodians militates in favor of creating a separate, more restrictive, regulatory scheme for donative transfers to that class and how the common law presumption of undue influence that arises when a person having a

confidential relationship with a transferor, who actively participates in the transfer and unduly benefits from it, bears on this.

(2) Whether the provisions concerning gifts to care custodians should be moved to a separate section of the Probate Code.

(3) Whether the definition of "care custodian" contained in subdivision (c) of Section 21350 of the Probate Code should be changed and whether it should include long time family friends, nonprofessional caregivers who have a preexisting relationship with the transferor, or other "good Samaritans."

(4) Whether it should be necessary to have a second attorney, rather than the drafting attorney, sign a certificate of independent review in cases in which the drafting attorney is independent of the transferee.

(5) Whether the uses of the drafting attorney's testimony is or should be limited pursuant to subdivision (d) of Section 21351 of the Probate Code, in cases in which that attorney is independent, and if so, whether the statute should be changed accordingly.

(6) What is or should be the meaning of the phrase "not based solely upon the testimony of any person described in subdivision (a) of Section 21350" contained in subdivision (d) of Section 21351 of the Probate Code, and to what extent there is an actual need for a limitation on testimony.

The Commission's report of its study and recommended revisions and improvements would be due by January 1, 2009.

The bill has passed the Assembly and is pending in the Senate Judiciary Committee.

ACR 73 (McCarthy) – CLRC Study of Firearms Statutes

This measure would direct the Commission to study, report on, and prepare recommended legislation concerning revision of the portions of the Penal Code relating to the control of deadly weapons. The Commission's report on the matter would be due by July 1, 2008.

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

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Status of 2006 Commission Legislative Program

As of June 14, 2006

		AB 69	AB 770	AB 1133	AB 1302	AB 2126	SB 551	SCR 15			
Introduced Last Amended		1/3/05	2/18/05	2/22/05	2/22/05	Feb 21	2/18/05	2/9/05			
		3/1/05	Jan 18	4/14/05	May 22	Apr 20	May 18	6/20/05			
First House	Policy Committee	2/22/05	Jan 12	4/12/05	May 3	Apr 4	Jan 9	6/21/05			
	Fiscal Committee	—	Jan 18	—	Jan 19	Apr 26	Jan 17	7/12/05			
	Passed House	3/7/05	Jan 30	4/21/05	Jan 26	May 4	Jan 30	8/22/05			
Second House	Policy Committee		Jun 12	Dead	<i>Jun 20</i>	Jun 13	Jun 14	8/25/05			
	Fiscal Committee	—						Jan 18			
	Passed House							Jan 26			
Concurrence								—			
Governor	Received Approved							—			
								—			
Secretary of State	Date Chapter #							Jan 31			
								Res 1			

Bill List: AB 69 (Harman): Ownership of Amounts Withdrawn from Joint Account
 AB 770 (Mullin): CID Ombudsperson
 AB 1133 (Harman): Waiver of Privilege By Disclosure
 AB 1302 (Horton): Emergency Rulemaking
 AB 2126 (Lieu and Leno): Enforcement of Judgments Under the Family Code

SB 551 (Lowenthal): CID Ombudsperson
 SCR 15 (Morrow, Dunn, and Escutia): CLRC Studies

Also of Interest:

ACR 73 (McCarthy): CLRC Study of Firearms Statutes
 AB 928 (J. Horton): CLRC Study of Attorneys Fees
 AB 1162 (Mullin): CLRC Study of Eminent Domain
 AB 2034 (Spitzer): CLRC Study of Donative Transfer Restrictions

KEY

Italics: Future or speculative

“—”: Not applicable

*: Double referral, not fiscal

[date]: Deadline