

Memorandum 2006-29

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.

COMMISSION BILLS

Our success rate so far in this year's legislative session is poor. At the meeting we will do a post-mortem on bills that have died.

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 potential for fraud, menace, or undue influence by a drafting attorney in cases where the drafting attorney, his or her employees, or family, relatives, or any person with a close relationship to the drafting attorney is a transferee, should be addressed in the statute. Also, 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 on the Senate floor.

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

Respectfully submitted,

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Executive Secretary

