

## Memorandum 2018-35

**Technical and Minor Substantive Corrections:  
Health and Safety Code Section 131052**

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In 2015, while studying the Fish and Game Code, the Commission<sup>1</sup> discovered that Health and Safety Code Section 131052 contains several erroneous cross-references.<sup>2</sup> As most of those references were unrelated to the Fish and Game Code, the Commission decided to examine them later, as part of a separate study.<sup>3</sup> That study would proceed under the Commission's general authority to study technical and minor substantive defects.<sup>4</sup>

This memorandum commences that study. Unless otherwise indicated, all statutory references below are to the Health and Safety Code.

## BACKGROUND

Section 131052 is part of the California Public Health Act of 2006 (hereafter, the "Act").<sup>5</sup>

Among other things, the Act did all of the following:

- Renamed the Department of Health Services the Department of Health *Care* Services.<sup>6</sup>
- Created a new entity, the Department of Public Health ("DPH").<sup>7</sup>
- Specifically assigned certain functions of the Department of Health Services to the new entity. All remaining functions were retained by the Department of Health Care Services ("DHCS").<sup>8</sup>

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Memorandum 2015-40, pp. 8-9.

3. See Minutes (Oct. 2015), p. 8.

4. See Gov't Code § 8298.

5. See 2006 Cal. Stat. ch. 241.

6. See Section 100100 (emphasis added).

7. See 2006 Cal. Stat. ch. 241, § 1(b)(1).

8. See Sections 20, 100100.

Section 131052 is a key component of that division of functions. It provides that DPH “succeeds to and is vested with all the statutory duties, powers, purposes, responsibilities, and jurisdiction of the former State Department of Health Services as they relate to public health as provided for or referred to in” the numerous provisions listed in the section.<sup>9</sup>

Rather than revise all of the provisions that govern functions assumed by DPH to adjust the name of the responsible entity, the Act added a rule of construction to address the matter globally:

... Commencing July 1, 2007, any reference to the former State Department of Health Services regarding a function vested by Chapter 2 (commencing with Section 131050) of Part 1 of Division 112, in the State Department of Public Health is deemed to, instead, refer to the State Department of Public Health, and any reference to the former State Department of Health Services regarding a function not vested by Chapter 2 (commencing with Section 131050) of Part 1 of Division 112, in the State Department of Public Health, is deemed to, instead, refer to the State Department of Health Care Services.<sup>10</sup>

The text of Section 131052 is set out in an attachment to this memorandum, with strikeout and underscore showing revisions that are proposed below.

#### OUTREACH FOR NEW STUDY

At its October 2014 meeting, the Commission gave the staff the following direction:

When inviting stakeholder participation in a new study, the staff should provide Commissioners with a list of the groups and individuals that were invited to participate.<sup>11</sup>

Section 131052 only addresses a single broad question — which functions of the former Department of Health Services were transferred to DPH, rather than being retained by DHCS? The only groups likely to be interested in that question are the executive branch agencies involved and the legislative committees with jurisdiction over those agencies.

For that reason, the staff only intends to reach out to DPH, DHCS, the Health and Human Services Agency (of which DPH and DHCS are part) and the

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9. Section 131052 is not the only provision that transfers functions to DPH. See, e.g., Sections 131050-131051, 131055.1-131055.2.

10. See Section 20.

11. See Minutes (Oct. 2014), p. 3.

relevant legislative committees. Those groups should be able to address any uncertainty about the functions assigned by the Legislature to DPH and DHCS.

**Commissioners should feel free to suggest any other groups that should be contacted as part of this study, keeping in mind that the subject of the study is entirely about the technicalities of government organization. We do not anticipate making any substantive changes to health care programs or policies.**

#### PROPOSED REVISIONS

The staff has examined all of the cross-references in Section 131052, to determine whether any appear, on their faces, to be obsolete or otherwise defective. The problems discovered by staff are discussed below, by type. Revisions to address those problems are set out in the attachment.

#### **Sunsetted Provisions**

In some cases, provisions referenced in Section 131052 were repealed by “sunset” provisions and do not appear to have been continued elsewhere. Those provisions are as follows:

- Former Section 116183 (mosquito-borne disease outbreaks), repealed January 1, 2012.<sup>12</sup>
- Former Education Code Section 49452.6 (three-year pilot program for screening middle school students for diabetes), repealed January 1, 2008.<sup>13</sup>
- Former Penal Code Section 13990 (establishing the California Alliance to Combat Trafficking and Slavery Task Force), repealed January 1, 2008.<sup>14</sup>

Former Sections 114460 and 114475 were also repealed by a “sunset” provision,<sup>15</sup> but some of their substance, relating generally to food establishments in community care facilities, is continued in Section 114437. However, Section 114437 is contained in a division of the Health and Safety Code (Division 104) that is itself cross-referenced in Section 131052.<sup>16</sup>

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12. See 2010 Cal Stats. ch. 699, § 29.7; former Section 116183(d).

13. See 2004 Cal. Stat. ch. 183, § 71; former Educ. Code § 49452.6(k).

14. See 2005 Cal. Stat. ch. 240, § 11; former Penal Code § 13990(h).

15. See 2006 Cal Stat. ch. 23, § 1. The sections were repealed January 1, 2007.

16. See Section 131052(8)(F).

Because each of the former code sections referred to above have been repealed, and their functions either discontinued or continued in another provision referenced in Section 131052, there does not appear to be any need to continue to cross-reference these provisions in Section 131052.

**The staff recommends that the cross-references to the repealed provisions listed above be deleted from Section 131052.**

### **Contingent Repeal**

Several other code sections cross-referenced in Section 131052 have apparently been repealed based on a “contingent repeal” provision, directing automatic repeal once a fact-specific condition was satisfied. In none of the cases can the staff be absolutely certain that the condition was satisfied, but an annotated code reports each of the sections as having been repealed, and none of the sections appear in the Office of the Legislative Counsel’s online database of California statutes.

Those provisions are as follows:

- Former Revenue and Taxation Code Section 18833 (allocation of taxpayer contributions to American Red Cross).<sup>17</sup>
- Former Revenue and Taxation Code Section 18838 (allocation of taxpayer contributions to Lupus Foundation of America).<sup>18</sup>
- Former Revenue and Taxation Code Section 18845.2 (allocation of taxpayer contributions to California Prostate Cancer Research Fund).<sup>19</sup>
- Former Revenue and Taxation Code Section 18846.2 (allocation of taxpayer contributions to California Sexual Violence Victim Services Fund).<sup>20</sup>
- Former Revenue and Taxation Code Section 18847.2 (allocation of taxpayer contributions to California Colorectal Cancer Prevention Fund).<sup>21</sup>

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17. The contingent repeal provision applicable to this section is contained in former Rev. & Tax Code § 18833(a). See 2013 Cal. Stat. ch. 451.

18. The contingent repeal provision applicable to this section is contained in former Revenue and Taxation Code § 18840(a). See 2001 Cal. Stat. ch. 455.

19. The contingent repeal provision applicable to this section is contained in former Revenue and Taxation Code § 18845.3(a). See 2004 Cal. Stat. ch. 562

20. The contingent repeal provision applicable to this section is contained in former Revenue and Taxation Code § 18846.3(a). See 2014 Cal. Stat. ch. 366.

21. The contingent repeal provision applicable to this section is contained in former Revenue and Taxation Code § 18847.3(a). See 2005 Cal. Stat. ch. 697.

As in each case, the substance of the repealed provision also does not appear to have been continued elsewhere, there does not appear to be any need to continue to cross-reference these provisions in Section 131052.

**The staff recommends that the cross-references to the repealed provisions listed above be deleted from Section 131052.**

### **Other Repealed Provision**

Section 131052 also cross-refers to former Chapter 11 of Division 2 of the Health and Safety Code, a chapter relating to home dialysis, which was repealed effective January 1, 2010.<sup>22</sup> The bill that repealed this chapter explained that the home dialysis program had never been implemented, and would not be implemented, due to funding constraints.<sup>23</sup> The staff has not located any other code provision that continues the substance of the repealed chapter.

As this cross-referenced chapter has been repealed and the functions referenced in the chapter discontinued, there does not appear to be any need to continue to cross-reference this chapter in Section 131052.

**The staff recommends that the cross-reference to former Chapter 11 of Division 2 of the Health and Safety Code be deleted from Section 131052.**

### **Relocated Provision**

Section 131052 also cross-refers to former Section 115736, a section relating generally to playground safety. This section was repealed by former Section 115755 as of January 1, 2008,<sup>24</sup> but its content was expressly continued by Section 115730.<sup>25</sup>

**The staff recommends that the cross-reference in Section 131052 to former Section 115736 be revised to instead refer to Section 115730.**

### **Typographical Error**

The cross-reference in Section 131052(7) to “Section 551017.1 of the Government Code” appears to be a typographical error. The last section number in the Government Code is 100522, and the staff has found no evidence that the Government Code ever contained a Section 551017.1.

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22. See 2009 Cal. Stat. ch. 39, § 3.

23. See 2009 Cal. Stat. ch. 39, § 1.

24. See 2006 Cal. Stat. ch. 470, § 1.

25. See Section 115730(f).

However, Government Code Section 51017.1 refers to the State Department of Health Services (and did so at the time that Section 131052 was enacted), and addresses an issue of public health — petroleum pipelines located near drinking water sources. The staff did not find any other Government Code section with a number similar to “551017.1” that either referred to the State Department of Health Services, or otherwise related to public health, at the time that Section 131052 was enacted.

It therefore seems likely that Section 131052 was intended to cross-refer to Section 51017.1, rather than Section “551017.1.” **The staff recommends that the cross-reference to Government Code Section “551017.1” in Section 131052 be revised to instead refer to Government Code Section 51017.1.**

### **Subdivision Designations**

Section 131052 is not divided into lettered subdivisions, as is the usual drafting practice. Instead, after an introductory paragraph, it is divided into numbered paragraphs. If Section 131052 is revised, it would be a convenient time to address this style point, by re-designating the paragraphs as lettered subdivisions.

**The staff recommends doing so.**

### **Cross-Reference Order**

For the most part, the cross-references in Section 131052 are listed alphabetically, by code name. However, references to two of the codes (Public Contract Code and Water Code) are out of alphabetical order.

**The staff recommends that Section 131052 be reorganized to put those references in alphabetical order.**

#### APPARENT DISCREPANCIES BETWEEN SECTION 131052 AND REFERENCED PROVISIONS

In several instances, provisions that are cross-referenced in Section 131052 have been subsequently amended to replace a reference to the former Department of Health Services with a reference to DHCS.

Those revisions seem inconsistent with the purpose of Section 131052, which is to designate functions that were assumed by DPH, *rather than* DHCS. However, it isn’t clear whether these revisions were drafting errors, or whether

they were intended to reflect a subsequent substantive change in the law, i.e., assigning a function to DHCS that originally had been assigned to DPH.

The staff does not know how those apparent discrepancies should be resolved. Presumably, the affected entities and related legislative committees would know how to resolve these matters, consistent with existing practices.

**To solicit input on that issue, the staff proposes to include a Note in the tentative recommendation in this study, identifying the provisions involved and asking for specific input.**

#### NEXT STEP

If the Commission wishes to proceed with the revisions set out in the attachment (with or without changes), the staff will prepare a draft tentative recommendation for presentation at a future meeting.

Respectfully submitted,

Steve Cohen  
Staff Counsel





## PROPOSED LEGISLATION

### **Health & Safety Code § 131052 (amended). Jurisdiction of Department of Public Health**

SEC. \_\_\_\_\_. Section 131052 of the Health and Safety Code is amended to read:

131052. In implementing the transfer of jurisdiction pursuant to this article, the State Department of Public Health succeeds to and is vested with all the statutory duties, powers, purposes, responsibilities, and jurisdiction of the former State Department of Health Services as they relate to public health as provided for or referred to in all of the following provisions of law:

~~(1)~~ (a) Sections 550, 555, 650, 680, 1241, 1658, 2221.1, 2248.5, 2249, 2259, 2259.5, 2541.3, 2585, 2728, 3527, 4017, 4027, 4037, 4191, 19059.5, 19120, 22950, 22973.2, and 22974.8 of the Business and Professions Code.

~~(2)~~ (b) Sections 56.17, 1812.508, and 1812.543 of the Civil Code.

~~(3)~~ (c) Sections 8286, 8803, 17613, 32064, 32065, 32066, 32241, 49030, 49405, 49414, 49423.5, ~~49452.6~~, 49460, 49464, 49565, 49565.8, 49531.1, 56836.165, and 76403 of the Education Code.

~~(4)~~ (d) Sections 405, 6021, 6026, 18963, 30852, 41302, and 78486 of the Food and Agricultural Code.

~~(5)~~ (e) Sections 307, 355, 422, 7572, 7574, 8706, 8817, and 8909 of the Family Code.

~~(6)~~ (f) Sections 1786, 4011, 5523, 5671, 5674, 5700, 5701, 5701.5, 7115, and 15700 of the Fish and Game Code.

~~(7)~~ (g) Sections 855, 51010, and ~~551017.1~~ 51017.1 of the Government Code. For purposes of subdivision (s) of Section 6254 of the Government Code, the term “State Department of Health Services” is hereby deemed to refer to the State Department of Public Health.

~~(8)~~ ~~(A)~~ (h)(1) Sections 475, 1180.6, 1418.1, 1422.1, 1428.2, 1457, 1505, 1507.1, 1507.5, 1570.7, 1599.2, 1599.60, 1599.75, 1599.87, 2002, 2804, 11362.7, 11776, 11839.21, 11839.23, 11839.24, 11839.25, 11839.26, 11839.27, 11839.28, 11839.29, 11839.30, 11839.31, 11839.32, 11839.33, 11839.34, 17920.10, 17961, 18897.2, 24185, 24186, 24187, 24275, 26101, 26122, 26134, 26155, 26200, and 26203.

~~(B)~~ (2) Chapters 1, 2, 2.05, 2.3, 2.35, 2.4, 3.3, 3.9, 3.93, 3.95, 4, 4.1, 4.5, 5, 6, 6.5, 8, 8.3, 8.5, 8.6, 9, and 11 of Division 2.

~~(C)~~ (3) Articles 2 and 4 of Chapter 2, Chapter 3, and Chapter 4 of Part 1, Part 2 and Part 3 of Division 101.

~~(D)~~ (4) Division 102, including Sections 102230 and 102231.

~~(E)~~ (5) Division 103, including Sections 104145, 104181, 104182, 104182.5, 104187, 104191, 104192, 104193, 104316, 104317, 104318, 104319, 104320, 104321, 104324.2, 104324.25, 104350, 105191, 105251, 105255, 105280, 105340, and 105430.

~~(F)~~ (6) Division 104, including Sections 106615, 106675, 106770, 108115, 108855, 109282, 109910, 109915, 112155, 112500, 112650, 113355, ~~114460, 114475,~~ 114650, 114710, 114850, 114855, 114985, 115061, 115261, 115340, ~~115736,~~ 115730, 115880, 115885, 115915, 116064, ~~116183,~~ 116270, 116365.5, 116366, 116375, 116610, 116751, 116760.20, 116825, 117100, 117924, and 119300.

~~(G)~~ (7) Division 105, including Sections 120262, 120381, 120395, 120440, 120480, 120956, 120966, 121155, 121285, 121340, 121349.1, 121480, 122410, and 122420.

~~(H)~~ (8) Part 1, Part 2 excluding Articles 5, 5.5, 6, and 6.5 of Chapter 3, Part 3 and Part 5 excluding Articles 1 and 2 of Chapter 2, Part 7, and Part 8 of Division 106.

~~(9)~~ (i) Sections 799.03, 10123.35, 10123.5, 10123.55, 10123.10, 10123.184, and 11520 of the Insurance Code.

~~(10)~~ (j) Sections 50.8, 142.3, 144.5, 144.7, 147.2, 4600.6, 6307.1, 6359, 6712, 9009, and 9022 of the Labor Code.

~~(11)~~ (k) Sections 4018.1, 5008.1, 7501, 7502, 7510, 7511, 7515, 7518, 7530, 7550, 7553, 7575, 7576, 11010, and 11174.34, ~~and 13990~~ of the Penal Code.

~~(12)~~ (l) Section 4806 of the Probate Code.

(m) Section 10405 of the Public Contract Code.

~~(13)~~ (n) Sections 15027, 25912, 28004, 30950, 41781.1, 42830, 43210, 43308, 44103, and 71081 of the Public Resources Code.

~~(14)~~ Section 10405 of the Public Contract Code.

~~(15)~~ (o) Sections 883, 1507, and 7718 of the Public Utilities Code.

~~(16)~~ (p) Sections ~~18833, 18838, 18845.2, 18846.2, 18847.2,~~ 18863, 30461.6, 43010.1, and 43011.1 of the Revenue and Taxation Code.

~~(17)~~ (q) Section 11020 of the Unemployment Insurance Code.

~~(18)~~ (r) Sections 22511.55, 23158, 27366, and 33000 of the Vehicle Code.

(s) Sections 13176, 13177.5, 13178, 13193, 13390, 13392, 13392.5, 13393.5, 13395.5, 13396.7, 13521, 13522, 13523, 13528, 13529, 13529.2, 13550, 13552.4, 13552.8, 13553, 13553.1, 13554, 13554.2, 13816, 13819, 13820, 13823, 13824, 13825, 13827, 13830, 13834, 13835, 13836, 13837, 13858, 13861, 13862, 13864, 13868, 13868.1, 13868.3, 13868.5, 13882, 13885, 13886, 13887, 13891, 13892, 13895.1, 13895.6, 13895.9, 13896, 13896.3, 13896.4, 13896.5, 13897, 13897.4, 13897.5, 13897.6, 13898, 14011, 14012, 14015, 14016, 14017, 14019, 14022, 14025, 14026, 14027, and 14029 of the Water Code.

~~(19)~~ (t) Sections 5326.9, 5328, 5328.15, 14132, 16902, and 16909, and Division 24 of the Welfare and Institutions Code. Payment for services provided under the Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program pursuant to subdivision (aa) of Section 14132 and Division 24 shall be made through the State Department of Health Care Services. The State Department of Public Health and the State Department of Health Care Services may enter into an interagency agreement for the administration of those payments. This paragraph,

to the extent that it applies to the Family PACT Waiver Program, shall become inoperative on June 30, 2012.

~~(20) Sections 13176, 13177.5, 13178, 13193, 13390, 13392, 13392.5, 13393.5, 13395.5, 13396.7, 13521, 13522, 13523, 13528, 13529, 13529.2, 13550, 13552.4, 13552.8, 13553, 13553.1, 13554, 13554.2, 13816, 13819, 13820, 13823, 13824, 13825, 13827, 13830, 13834, 13835, 13836, 13837, 13858, 13861, 13862, 13864, 13868, 13868.1, 13868.3, 13868.5, 13882, 13885, 13886, 13887, 13891, 13892, 13895.1, 13895.6, 13895.9, 13896, 13896.3, 13896.4, 13896.5, 13897, 13897.4, 13897.5, 13897.6, 13898, 14011, 14012, 14015, 14016, 14017, 14019, 14022, 14025, 14026, 14027, and 14029 of the Water Code.~~

**Comment.** Section 131052 is amended to correct erroneous cross-references, designate paragraphs as subdivisions, rearrange the subdivisions to place them in alphabetical order by code name, and make other technical revisions.

**Staff Note.** Section 131052 vests the Department of Public Health with all the statutory duties, powers, purposes, responsibilities, and jurisdiction of the former State Department of Health Services relating to public health, as provided for or referred to in each provision cross-referenced in that section.

However, subsequent to the enactment of Section 131052, several of the provisions cross-referenced in Section 131052 were amended to refer to either the Department of Health Care Services or its director (rather than the Department of Public Health or its director). Those provisions are as follows:

- Business and Professions Code Section 1241
- Education Code Section 8286
- Education Code Section 8803
- Education Code Section 49423.5
- Family Code Section 7572
- Government Code Section 6254(s)
- Health and Safety Code Section 1250.2
- Health and Safety Code Section 1254
- Health and Safety Code Section 1254.1
- Health and Safety Code Section 1266.1
- Health and Safety Code Section 1268.6
- Health and Safety Code Section 1275.1
- Health and Safety Code Section 1275.2
- Health and Safety Code Section 1275.5
- Health and Safety Code Section 1317.1
- Health and Safety Code Section 1323.5
- Health and Safety Code Section 1324.9
- Health and Safety Code Section 1324.20
- Health and Safety Code Section 1336.1
- Health and Safety Code Section 1422.1
- Health and Safety Code Section 1572
- Health and Safety Code Section 1580.1
- Health and Safety Code Section 104150
- Health and Safety Code Section 104151
- Health and Safety Code Section 104160
- Health and Safety Code Section 104162.1
- Health and Safety Code Section 104163
- Health and Safety Code Section 104314
- Health and Safety Code Section 104322

Health and Safety Code Section 109276  
Health and Safety Code Section 115340  
Health and Safety Code Section 11839.26  
Health and Safety Code Section 120840  
Health and Safety Code Section 120860  
Health and Safety Code Section 120971  
Health and Safety Code Section 121026  
Health and Safety Code Section 123223  
Health and Safety Code Section 123472  
Welfare and Institutions Code Section 5326.9  
Welfare and Institutions Code Section 5328  
Welfare and Institutions Code Section 24000  
Welfare and Institutions Code Section 24001  
Welfare and Institutions Code Section 24005

**The Commission requests public comment on whether amendments to the sections above, adding a reference to the Department of Health Care Services, were erroneous, or were intended to assign functions to that department that had been previously assigned by Section 131052 to the Department of Public Health.**