Memorandum 2019-42

Minutes of Meeting on July 26, 2019 (Draft)

The California Law Revision Commission¹ held a meeting on July 26, 2019. A draft of Minutes for that meeting is attached for Commissioners to review.

The attached draft will be deemed final after it is approved by a vote of the Commission. When voting, the Commission may make specific changes to the Minutes. If so, those changes will be memorialized in the Minutes for the meeting at which the vote occurred.

Respectfully submitted,

Brian Hebert
Executive Director

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). 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.
A meeting of the California Law Revision Commission was held in Sacramento on July 26, 2019.

Commission:

Present: Jane McAllister, Chairperson
        Victor King, Vice-Chairperson
        Thomas Hallinan
        Susan Duncan Lee
        Crystal Miller-O’Brien

Absent: Assembly Member Ed Chau
        Senator Richard D. Roth
        Diane F. Boyer-Vine, Legislative Counsel

Staff:

Present: Brian Hebert, Executive Director
        Barbara Gaal, Chief Deputy Counsel
        Kristin Burford, Staff Counsel
        Steve Cohen, Staff Counsel

Other Persons:

None

CONTENTS

24 Approval of Actions Taken.................................................................2
25 Minutes .................................................................................................2
26 Administrative Matters ...........................................................................2
27 Report of Executive Director ...............................................................2
28 Commissioner Suggestions ....................................................................2
29 Election of Officers ...............................................................................2
30 Closed Session .....................................................................................3
31 2019 Legislative Program ......................................................................3
32 Study E-200 — Recodification of Toxic Substance Statutes ..................3
33 Study G-400 — California Public Records Act Clean-Up .......................4
34 Study L-4130.3 — Disposition of Estate Without Administration ............4
APPROVAL OF ACTIONS TAKEN

Unless otherwise indicated, the Commission decisions noted in these Minutes were approved by all members present at the meeting. If a member who was present at the meeting voted against a particular decision, abstained from voting, or was not present when the decision was made, that fact will be noted below.

MINUTES

The Commission considered Memorandum 2019-29, presenting draft Minutes for the May 30, 2019, meeting.

The Commission approved the Minutes without change.

ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director reported on the following matters:

- Video of the meeting was live-streamed by the Assembly’s television office.
- The Executive Director requested additional office space on the University of California Davis campus, to accommodate anticipated additions to the Commission’s staff.

Commissioner Suggestions

The Commission suggested that the staff make greater use of “consent” procedures to streamline consideration of purely technical and uncontroversial matters.

Election of Officers

The Commission considered Memorandum 2019-32, relating to the election of Commission officers.

The Commission elected Victor King as Chairperson and Crystal Miller-O’Brien as Vice Chairperson, with terms commencing on September 1, 2019, and ending on August 31, 2020.

If Commissioner King is not reappointed to the Commission, the office of Chairperson will be vacated when he leaves the Commission. In that event, the Vice-Chairperson will serve as acting Chairperson until the Commission has an opportunity to decide how to fill the vacancy.
Closed Session

The Commission met in closed session to discuss personnel matters, pursuant to Government Code Section 11126.

While in closed session, the Commission made the following decision: In order to avoid salary compaction that would result from the intended hiring of an Attorney IV, the Commission approved increasing the salaries of the Executive Director and Chief Deputy Counsel. The Commission approved a 5% compaction buffer, which would be applied using the Commission’s existing reporting structure (i.e., the Chief Deputy Counsel’s maximum salary would be increased to 5% above that of an Attorney IV and the Executive Director’s maximum salary would be increased to 5% above the adjusted maximum salary of the Chief Deputy Counsel).

2019 Legislative Program

The Commission considered Memorandum 2019-35, discussing the Commission’s 2019 Legislative Program. No Commission decisions were required or made.

Study E-200 — Recodification of Toxic Substance Statutes

Cumulative Draft

The Commission considered Memorandum 2019-40, presenting a cumulative draft of the proposed legislation that the Commission has considered to date.

The Commission decided to restate proposed Section 68200, as proposed on the bottom of page 2 of the memorandum, and include a note requesting comment on the proposed restatement. (Commissioner Miller-O’Brien voted against this decision.)

Site Clean-up

The Commission considered Memorandum 2019-41, presenting a draft of Chapters 5, 6, and 7 of Part 2 of the proposed new Division 45 of the Health and Safety Code. The Commission provisionally approved that draft for inclusion in a tentative recommendation.

The Commission added the following item to the list of issues for future study: Is the use of the undefined term “remediation” problematic, in light of its similarity to the defined terms, “remedy” and “remedial action?”
STUDY G-400 — CALIFORNIA PUBLIC RECORDS ACT CLEAN-UP

The Commission considered Memorandum 2019-38 and its First Supplement, which present and discuss a staff draft of a tentative recommendation comprised of the conforming revisions for its proposed recodification of the California Public Records Act (“CPRA”). Subject to the following decisions, the Commission approved that draft as a tentative recommendation, to be broadly circulated for comment:

• The staff’s suggested approach to the two different versions of Revenue and Taxation Code Section 7284.10 is acceptable.

• The cross-references to “Section 6270” in Government Code Sections 15820.907 and 15820.917 appear problematic (as discussed at pages 4-6 of Memorandum 2019-38), but it does not seem advisable to address that matter in this study. The staff should bring it to the attention of the Assembly Public Safety Committee and/or the Senate Public Safety Committee, for possible inclusion in a public safety omnibus bill.

• For purposes of a tentative recommendation, the contingent operation clause and the subordination clause are acceptable as drafted. The staff may make adjustments if necessary as the recodification proposal proceeds.

• The conforming revision of Health and Safety Code Section 125290.30 should be accompanied by the Note shown on pages 3-4 of the First Supplement to Memorandum 2019-38. The conforming revision of Health and Safety Code Section 125290.50 should be accompanied by a similar Note.

• The conforming revision of Health and Safety Code Section 125290.30 should update the cross-reference to the CPRA without making any other changes (even grammatical corrections) in the existing statutory text.

• Due to the possibility of triggering special vote requirements (see pages 4-6 of the First Supplement to Memorandum 2019-38), the conforming revision of Welfare and Institutions Code Section 14165 should not be included in the tentative recommendation.

• The staff should make the minor corrections described on page 6 of the First Supplement to Memorandum 2019-38, as well as any similar corrections that come to its attention before the tentative recommendation is released for comment.

STUDY L-4130.3 — DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

The Commission considered Memorandum 2019-39 and its First and Second Supplements, presenting a staff draft tentative recommendation regarding the
liability of a person who receives a decedent’s property without administration (hereafter, a “transferee”), under certain statutory procedures.

Subject to the decisions described below, the Commission approved the staff draft as a tentative recommendation to be circulated for public comment:

- The tentative recommendation should request public comment on whether a transferee should be liable for any estate obligations other than the decedent’s unsecured debts (e.g., funeral expenses, expenses of last illness, wage claims, costs of administration).
- The tentative recommendation should request public comment on whether the second sentences of Probate Code Sections 13111(d) and 13206(e) should be deleted as superfluous.
- Probate Code Sections 13110(b), 13111(b), 13205(b), and 13206(b) should be revised to make clear that treble damages are only imposed once for each incident of fraud.
- The tentative recommendation should request public comment on who should receive any treble damages awarded under Probate Code Sections 13110(b), 13111(b), 13205(b), and 13206(b), the person with a superior right to the transferred property or the decedent’s estate.
- The tentative recommendation should be revised as described on page 11 of the First Supplement to Memorandum 2019-39.
- The tentative recommendation should request public comment on the application of Probate Code Section 13562. Specifically, which kinds of an estate’s obligations can be satisfied with property returned under that provision?
- Language to implement the decisions listed above shall be submitted to the Chair for approval, before releasing the tentative recommendation.

The question of whether a transferee should be liable for any of an estate’s obligations other than the decedent’s unsecured debts should also be considered in the Commission’s current study of the revocable transfer on death deed.

☐ APPROVED AS SUBMITTED

☐ APPROVED AS CORRECTED
(for corrections, see Minutes of next meeting)