

Memorandum 2022-26

2022 Legislative Program (Status Report)

The status of the Commission's legislative program for 2022 is summarized below.¹

Disposition of Estate Without Administration

Assembly Bill 1716 (Maienschein) would implement the following recommendations:

- *Disposition of Estate Without Administration: Liability of Transferee*, 47 Cal. L. Revision Comm'n Reports __ (2020).
- *Nonprobate Transfers: Liability of a Surviving Spouse Under Probate Code Sections 13550 and 13551*, 46 Cal. L. Revision Comm'n Reports 11 (2019).

The bill was approved by the Assembly on March 21, 2022 and is now in the Senate. As noted in Memorandum 2022-19, the bill will need to be amended to correct some technical errors. Once those corrections are made, the staff will present a draft of necessary Comment revisions for the Commission's consideration.

Toxic Materials

The Assembly Committee on Environmental Safety and Toxic Materials has authored AB 2293 and AB 2327 to implement the following recommendations:

- *Hazardous Substance Account Recodification Act* (February 2021).
- *Hazardous Substance Account Recodification Act: Conforming Revisions* (February 2021).

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.

The more substantive of the two bills, AB 2293, was placed on the suspense file by the Assembly Committee on Appropriations. It will be considered again at a later date. AB 2327 was approved by the Assembly and is now in the Senate.

Public Records Act Clean-Up

As expected, the annual “Maintenance of the Codes” bill (SB 1380 (Committee on Judiciary)) was amended to include the cross-reference corrections that were chaptered out of last year’s AB 474 (Chau). The bill was approved by the Senate Committee on Judiciary on May 3, 2022.

The staff has carefully reviewed the Commission language that was added to the bill. Some minor drafting problems were identified and will be addressed later, through amendment of the bill.

The staff also noted some other minor changes in SB 1380 that are worth mentioning:

- *Penal Code § 832.7(b)(8)(A)(iv)*. This provision currently refers to “an action to compel disclosure brought pursuant to Section 6258 of the Government Code ...” In the CPRA recodification, Section 6258 would be recodified in two sections, Sections 7923.000 (right to seek enforcement of request) and 7923.005 (court to set schedule that promotes prompt decision). The Commission’s language replaces the cross-reference to Section 6258 with a cross-reference to both “Sections 7923.000 and 7923.005.” As drafted, SB 1380 would only replace “Section 6258” with “Section 7923.000.” **The staff believes that is a nonsubstantive deviation that is probably not worth addressing.**
- *Educ. Code § 32090*. The Commission’s proposed amendment of this section is not in SB 1380. That should not be a problem because Section 32090 is scheduled to sunset on January 1, 2023. If that sunset operates, it won’t be necessary to update the CPRA cross-reference in that section. **The staff will keep an eye on this provision.**
- *Gov’t Code §§ 1029, 11546.45, 12100.63, 16429.5, 54953, 68109; Health & Safety Code §§ 1424.3, 44274.13, 128734.1; Pub. Res. Code § 21080.47*. Each of the listed provisions includes a technical change that was not part of the Commission’s recommendation. The Commission sometimes revises its Comments to acknowledge such changes (to minimize confusion in the record). **If the Commission wishes to do so here, the staff will present draft language of the Comment revisions in a future memorandum.**
- *Health & Safety Code § 130060*. In this provision, SB 1380 omitted a technical revision that the Commission had included. The omitted revision is not strictly necessary. It has no effect on the cross-

reference correction that prompted revision of the section. **The staff is inclined to leave the bill language alone, to minimize complication of the legislative process. However, the Commission should probably amend the corresponding Comment to remove a reference to the omitted change. If the Commission agrees, the staff will bring back Comment revision language in a future memorandum.**

PROPOSED NEW ASSIGNMENTS

The staff is aware of three provisions that would assign new work to the Commission. They are summarized below.

Antitrust

As noted before, the staff is keeping its eye on a resolution that was introduced last year, Assembly Concurrent Resolution 95 (Cunningham & Wicks). The resolution would authorize the Commission to study certain aspects of antitrust law. The measure is still waiting for a hearing in the Senate Committee on Judiciary.

Equal Rights Amendment

In addition, another resolution was introduced this year that would assign a new study to the Commission. Senate Concurrent Resolution 92 (Leyva) reads as follows:

WHEREAS, The United States House of Representatives passed the Equal Rights Amendment to the United States Constitution (ERA) in 1971 by approval of at least two-thirds of that chamber; and

WHEREAS, The United States Senate passed the ERA in 1972 by approval of at least two-thirds of that chamber; and

WHEREAS, California was among the earliest states to ratify the ERA, doing so on November 13, 1972; and

WHEREAS, The Commonwealth of Virginia became the 38th state to ratify the ERA on January 27, 2020; and

WHEREAS, Article 5 of the United States Constitution requires that any amendment thereto be approved by two-thirds of both chambers of the United States Congress and ratified by three-fourths of the states; and

WHEREAS, Upon Virginia's ratification, legislatures of three-fourths of the states duly ratified the ERA; and

WHEREAS, Notwithstanding the United States archivist's failure to perform their ministerial duty to verify the duly made state ratifications, certify the amendment, and publish notice thereof in the Federal Register and United States Statutes at Large,

the ERA has satisfied all requirements imposed by Article 5 of the United States Constitution; and

WHEREAS, The ERA states that “equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex”; and

WHEREAS, Section 3 of the ERA states that the amendment will take effect two years after the date of its ratification; and

WHEREAS, Representative Jackie Speier recently introduced House Resolution 891 in the 117th Congress with 155 cosponsors to express the sense of that chamber that the ERA is valid; and

WHEREAS, Senators Benjamin Cardin and Lisa Murkowski introduced Senate Joint Resolution 1 in the 117th Congress to eliminate the ratification deadline stated solely in the preamble of the ERA, which 50 additional Senators currently cosponsor; and

WHEREAS, Representative Jackie Speier introduced House Joint Resolution 17 in the 117th Congress to eliminate the ratification deadline stated solely in the preamble of the ERA, which the United States House of Representatives passed on March 17, 2021; and

WHEREAS, The Legislature deems it appropriate and necessary to undertake a comprehensive study of California law to identify any defects that prohibit compliance with the ERA; and

WHEREAS, The California Law Revision Commission is authorized to study topics set forth in the calendar contained in its report to the Governor and the Legislature that have been or are thereafter approved for study by concurrent resolution of the Legislature, and topics that have been referred to the commission for study by concurrent resolution of the Legislature or by statute; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation to revise California law (including common law, statutes of the state, and judicial decisions) to remedy defects related to (i) inclusion of discriminatory language on the basis of sex, and (ii) disparate impacts on the basis of sex upon enforcement thereof. In studying this matter, the commission shall request input from experts and interested parties, including, but not limited to, members of the academic community and research organizations. The commission’s report shall also include a list of further substantive issues that the commission identifies in the course of its work as topics for future examination; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

Landlord-Tenant Terminology

Assembly Bill 2503 (Garcia) was amended in the Assembly Committee on Judiciary to convert it into a Commission study bill. It would add Civil Code Section 1939.99, which would read:

1939.99. (a) The Legislature finds and declares all of the following:

(1) The California codes were first adopted in 1872. Among the topics initially addressed in the codes was the law of real property, including that governing the rental of residential real property.

(2) There are currently a variety of terms used in the California codes to describe the parties to an agreement to rent residential real property, including landlord, lessee, lessor, mobilehome park owner, mobilehome park resident, occupant, owner, persons who hire dwelling units, renter, and tenant.

(3) A review of the derivation and use of the terms “landlord” and “tenant” in the codes could help determine whether these terms remain relevant to modern residential housing law.

(b) It is the intent of the Legislature to do all of the following:

(1) Establish consistent terminology to describe the parties to an agreement to rent residential property.

(2) Determine if continued use of the terms “landlord” and “tenant” in the California codes is useful and appropriate.

(c) On or before December 31, 2024, the California Law Revision Commission shall deliver, pursuant to Section 9795 of the Government Code, to the Legislature a study regarding all of the following:

(1) Establishment of consistent terminology across the California codes to describe the parties to an agreement, lease, or other contract for the rental of residential real property, including in mobilehome parks, that meets all of the following criteria:

(A) The terminology chosen shall preserve legal distinctions currently recognized in statute, regulation, caselaw, and contracts, including the distinction between month-to-month rental agreements and leases for agreed-upon periods of time.

(B) The study addresses whether the continued use of the terms “landlord” and “tenant,” including related terms including “covenant” and “subtenant,” is useful and appropriate in code provisions that involve the rental of residential real property.

(C) (i) If continued use of the terms “landlord” and “tenant” is no longer useful and appropriate, then the study suggests replacement terms that are reasonably concise, given the frequency with which these terms are currently used in statute, regulation, litigation, caselaw, and contracts.

(ii) Replacement terms suggested under this subparagraph shall not affect the usage of the terms “landlord” and “tenant” elsewhere in real property law, including in the terms “joint tenants” and “tenants in common.”

(2) Terminology used in the laws of other states.

(3) The effect of the establishment of terminology under paragraph (1) on caselaw established under existing terminology.

(4) The effect of the establishment of terminology under paragraph (1) on contracts made under existing terminology.

(d) If the California Law Revision Commission determines that adopting a statutory scheme that meets the criteria set forth in paragraph (1) of subdivision (c) is prudent and practicable, the study shall do both of the following:

(1) Recommend a comprehensive statutory scheme that meets those criteria.

(2) Identify provisions of the California Code of Regulations involving the hiring of residential real property that may need to be amended in order to conform to the terminology in the comprehensive statutory scheme under paragraph (1).

(e) This section shall remain in effect until January 1, 2027, and is of that date repealed.

Respectfully submitted,

Brian Hebert
Executive Director