

Memorandum 2022-49

2022 Legislative Program (Clean-Up Legislation)

Now that the 2022 legislative session has ended, it is possible to determine what clean-up legislation will be required to fully implement the Commission's 2022 legislative program.

In addition, this memorandum includes some new and revised Comments, to reflect amendment of Commission-recommended bills in 2022. **The Commission should decide whether to approve those Comments for publication in appendices to this year's Annual Report.**

At the last meeting, the staff noted that a bill to assign a new study topic to the Commission, relating to landlord-tenant terminology (Assembly Bill 2503 (Cristina Garcia)), had not yet been signed by the Governor. The bill has since been signed and it will take effect on January 1, 2023.

CLEAN-UP LEGISLATION

As a general rule, if two bills are enacted and both would amend or repeal the same section, the bill that is signed last prevails. The change made in the earlier bill does not become effective (we call this being "chaptered out," because the bill that is signed last will have a higher chapter number assigned by the Secretary of State).¹

A provision in a bill can also be chaptered out by operation of a bill provision that expressly yields to other bills in the event of a conflict (i.e., a "subordination clause"). Large technical bills often contain a subordination clause, to avoid problematic conflicts with more substantive bills affecting the same law.

Two of the Commission-recommended bills enacted in 2022 had provisions that were chaptered out. **Those provisions should be reintroduced in 2023 (with adjustments to reflect the effect of the 2022 legislation that affected them).**

1. See Gov't Code 9605(b) ("In the absence of any express provision to the contrary in the statute that is enacted last, it shall be conclusively presumed that the statute which is enacted last is intended to prevail over statutes that are enacted earlier at the same session and, in the absence of any express provision to the contrary in the statute that has a higher chapter number, it shall be presumed that a statute that has a higher chapter number was intended by the Legislature to prevail over a statute that is enacted at the same session but has a lower chapter number.")

California Public Records Act Conforming Revisions

Senate Bill 1380 (Judiciary) was this year's maintenance of the codes bill. It included some conforming revisions that had been chaptered out of the Commission's California Public Records Act reorganization legislation in 2021.

Some of those provisions were again chaptered out and need to be reintroduced once more. They are:

- Bus. & Prof. Code §§ 10083.2, 10166.07.
- Gov't Code §§ 11549.3, 12100.63, 54953, 65913.4.
- Health & Safety Code §§ 25501, 50254.
- Labor Code § 2783.
- Welf. & Inst. Code § 8257.

In addition, there were two partial omissions in SB 1380 that should be remedied when convenient:

- Elec. Code § 2194(f) was included in the bill but still needs to be amended to replace a reference to Government Code Section 6254.4 with a reference to Section 7924.000.
- Health & Safety Code § 128736(b) was included in the bill but still needs to be amended to delete the words "of Division 7."

Hazardous Substance Account Recodification Act: Conforming Revisions

Assembly Bill 2327 (Committee on Environmental Safety and Toxic Materials) included technical revisions that were required to conform to the Hazardous Substance Account Recodification Act (Assembly Bill 2293 (Committee on Environmental Safety and Toxic Materials)).

The following provisions were chaptered out of AB 2327 and need to be reintroduced:

- Gov't Code § 65913.4
- Health & Safety Code §§ 25205.2, 25214.8.11.2, and 25501.

COMMENT REVISIONS

Disposition of Estate Without Administration

Assembly Bill 1716 (Maienschein) implemented two Commission recommendations: *Disposition of Estate Without Administration: Liability of Transferee*, 47 Cal. L. Revision Comm'n Reports 1 (2020) and *Nonprobate Transfers*:

Liability of a Surviving Spouse Under Probate Code Sections 13550 and 13551, 46 Cal. L. Revision Comm'n Reports 11 (2019).

During the legislative process, some changes were made to correct an oversight in the Commission's proposal.² In addition, two provisions were changed from amendments to repeal-and-adds, and three provisions were assigned new section numbers.

To conform to those changes, **the staff recommends that the Commission approve the following Comments, which are new or would replace the original Comments:**

Prob. Code § 13111 (repealed and added). Liability for return of transferred property to estate

Comment. Section 13111 was repealed and added to limit the application of the provision to claims by a person with a superior right, to delete language that is continued and generalized in Section 13113.5, and to make technical revisions.

Subdivision (b) changes the disposition of treble damages awarded under the subdivision.

Subdivision (d) deletes the second sentence. With the section limited to preclude its application to creditor claims, the deleted sentence became superfluous.

Subdivision (g) states the relationship between this section and Section 13110.5.

See also Sections 13110.5(a) ("transferee"), Section 13110.5(b) ("transferred property").

Prob. Code § 13113 (amended). Remedies not exclusive

Comment. Section 13113 is amended to reflect the repeal of Section 13112.

Prob. Code § 13113.5 (added). Adjustment to liability under Section 13110.5 or 13111

Comment. Section 13113.5 is new. It generalizes language that was deleted from Section 13111(a) and provides a procedure for determining the adjustments to be made under Sections 13110.5 and 13111(c).

See also Sections 13100.5(a) ("transferee").

Prob. Code § 13114.5 (added). Value of returned property included in value of estate

Comment. Section 13114.5 is new.

See also Sections 13100.5(b) ("transferred property").

2. See Memorandum 2022-19, pp. 1-2.

Prob. Code § 13117 (amended). Waiver of interest

Comment. Section 13117 is amended to reflect the repeal of Section 13112.

Prob. Code § 13206 (repealed and added). Liability for return of transferred property to estate

Comment. Section 13206 was repealed and added to limit the application of the section to claims by a person with a superior right, to delete language that is continued and generalized in Section 13208.5, and to make technical revisions.

Subdivision (b) changes the disposition of treble damages awarded under the subdivision.

Subdivision (d) deletes the second sentence. With the section limited to preclude its application to creditor claims, the deleted sentence became superfluous.

Subdivision (g) states the relationship between this section and Section 13205.5.

See also Section 13202.5(a) (“transferee”), Section 13202.5(b) (“transferred property”).

Prob. Code § 13208 (amended). Remedies not exclusive

Comment. Section 13208 is amended to reflect the repeal of Section 13207.

Prob. Code § 13208.5 (added). Adjustment to liability under Section 13205.5 or 13206

Comment. Section 13208.5 is new. It generalizes language that was deleted from Section 13206(a) and (c) and provides a procedure for determining the adjustments to be made under Sections 13205.5 and 13206(d).

See also Section 13202.5(a) (“transferee”).

Prob. Code § 13211 (amended). Waiver of interest

Comment. Section 13211 is amended to reflect the repeal of Section 13207.

California Public Records Act

When SB 1380 was introduced, a minor technical change was omitted from one of the Commission-recommended provisions. The Commission decided against seeking reintroduction of the change, but acknowledged that the corresponding Comment should be revised to remove reference to the omitted change. **The staff recommends that the Commission approve the following Comment, which does not include the reference:**

Health & Safety Code § 130060 (amended). General acute care hospital building that poses potential risk of collapse or significant loss of life

Comment. Section 130060 is amended to reflect nonsubstantive recodification of the California Public Records Act. See *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm'n Reports 207 (2019).

Hazardous Substance Account Recodification Act

When the Commission drafted the Hazardous Substance Account Recodification Act, references to California regulations were changed to use the term “subsection” rather than “subdivision” (consistent with the terminology used in California’s regulations). Those technical revisions were noted in the related Comments.

When the bill was prepared for introduction, those revisions were not included, as Legislative Counsel’s drafting practice is to use “subdivision” when citing regulations. The bill was enacted in that form, without the Commission’s proposed changes to citation terminology. **To conform to the law as enacted, the staff recommends that four Comments be revised to remove language noting the omitted technical changes.** As revised, the Comments would read:

Health & Safety Code § 79182. Timeline for cost estimate and financial assurances

Comment. Section 79182 continues former Section 25355.3(b), (c), and (d) without substantive change.

See Sections 78050 (“department”), 78060 (“feasibility study”), 78140 (“response,” “respond,” or “response action”), 78145 (“responsible party”).

Health & Safety Code § 79184. Waiver of financial assurance requirement

Comment. Section 79184 continues former Section 25355.3(e), (h), and (i) without substantive change.

A reference to “this chapter or Chapter 6.8 (commencing with Section 25300)” was corrected and updated to refer to “this part or Chapter 6.5 (commencing with Section 25100).”

See Sections 78050 (“department”), 78105 (“release”), 78140 (“response,” “respond,” or “response action”), 78145 (“responsible party”), 78155 (“site”).

Health & Safety Code § 79320. Valid financial assurance mechanisms

Comment. Section 79320 restates former Section 25355.2(b) without substantive change.

See Sections 78050 (“department”), 78080 (“operation and maintenance”), 78100 (“regional board”), 78145 (“responsible party”).

Health & Safety Code § 79325. Conditions for waiver of financial assurance requirement

Comment. Section 79325 continues former Section 25355.2(c) and (d) without substantive change.

See Sections 78050 (“department”), 78080 (“operation and maintenance”), 78100 (“regional board”), 78145 (“responsible party”), 78155 (“site”), 79310 (“small business”).

Respectfully submitted,

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