

Memorandum 2023-25

2023 Legislative Program (Status Report)

This memorandum provides an update on the Commission's 2023 Legislative Program.¹ All of the bills that would implement Commission recommendations continue to make progress.

STATUS UPDATES

Stock Cooperatives and Revocable Transfer on Death Deeds

Assembly Bill 288 (Maienschein) would implement the Commission's recommendation on *Stock Cooperatives and Revocable Transfer on Death Deeds* (Feb. 2022). It has been referred to the Senate Committee on Judiciary.

Administrative Subpoena

Assembly Bill 522 (Kalra) would implement the Commission's recommendation on *State and Local Agency Access to Electronic Communications: Notice of Administrative Subpoena* (Mar. 2022). On April 25, 2023, the bill was approved on consent by the Assembly Public Safety Committee. It is now on the Assembly Floor.

Trial Court Restructuring

Assembly Bill 1757 (Committee on Judiciary) would implement the following recommendations:

- (1) *Statutes Made Obsolete by Trial Court Restructuring: Part 8* (Jan. 2022).
- (2) *Statutes Made Obsolete by Trial Court Restructuring (Part 9): Jurisdictional Classification of a Drug Asset Forfeiture Proceeding* (Aug. 2022).

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.

On April 17, 2023, the bill was approved by the Assembly. It has been referred to the Senate Committee on Judiciary.

Fish and Game

Assembly Bill 1760 (Committee on Water, Parks, and Wildlife) would implement the Commission's recommendation on *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 3)*. On April 19, 2023, it was approved on consent by the Assembly Committee on Water, Parks, and Wildlife for a hearing. On May 10, 2023, it was approved on consent by the Assembly Committee on Appropriations. It is now on the Assembly Floor.

POSSIBLE COMMENT REVISION

As noted above, AB 522 (Kalra) would implement the Commission's recommendation to require notice to a customer when the customer's records are sought from a communication service provider, by means of an administrative subpoena.

The American Civil Liberties Union of Northern California expressed concern that the purpose of the proposed law might be misunderstood. They suggested that AB 522 be amended to state its purpose.

The staff was skeptical that the purpose of the proposed law could be misconstrued and argued against adding a *statutory* statement of purpose, which might be seen as somehow changing the meaning of the proposed law. Instead, the staff raised the possibility of the Commission revising its Comment to draw attention to the constitutional underpinnings of the proposed law. That could be done by adding language to the Comment, along these lines:

This section requires that a customer of a communication service provider be given notice and an opportunity to object when an administrative subpoena is used to seek the customer's electronic communication information. A failure to provide such notice before the customer's electronic communication information is provided pursuant to the administrative subpoena is likely a violation of the Fourth Amendment of the United States Constitution and Section 13 of Article I of the California Constitution. See *In re Subpoena Duces Tecum* (4th Cir. 2000) 228 F.3d 341, 347-48 (citations omitted) ("A subpoena ... commences an adversary process during which the person served with the subpoena may challenge it in court before complying with its demands. As judicial process is afforded before any intrusion occurs, the proposed intrusion is regulated by, and its justification

derives from, that process.”). See also *People v. West Coast Shows, Inc.* (1970) 10 Cal.App.3d 462, 470 (“The Government Code provides an opportunity for adjudication of all claimed constitutional and legal rights before one is required to obey the command of a subpoena duces tecum issued for investigative purposes”).

Placing such guidance in the Comment would make it relatively easy for practitioners and judges to find (publishers of annotated codes typically include Commission Comments as part of the historical notes for a code section).

If the Commission decides to make a change along those lines, it could be implemented in the Commission’s recommendation, which has not yet been printed in final form. **How would the Commission like to proceed?**

Respectfully submitted,

Brian Hebert
Executive Director