

MEMORANDUM 2023-48

2023-2024 Annual Report (Staff Draft)

This memorandum presents a staff draft of the Commission's *2023-2024 Annual Report*.¹ Much of the content of the Annual Report is routine, and does not change significantly from year to year. Matters for which the staff requests special attention from Commissioners are discussed below. These matters include two draft appendices to the Annual Report, which are attached to the memorandum.

The attached staff draft does not include several other appendices that will be included in the published version of the Annual Report. Most of these appendices contain standard text that largely repeats each year (i.e., the text of the Commission's governing statute, its calendar of topics, a notice about Commission publications, and the cumulative table of legislative action on Commission recommendations). In addition, this year's Annual Report will include an appendix reporting on revised Commission Comments that were approved by the Commission at its October 2023 meeting.² The staff will add all these appendices to the final Annual Report when the report is posted on the Commission's website and submitted for publication.

CONTINGENT TEXT

Some text in the draft has been temporarily flagged with light shading.³ The shaded text is contingent on events or decisions that are expected to occur at the upcoming December meeting.

Following that meeting and those decisions, the staff will remove the temporary shading in the draft and adjust the text as needed.

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.

2. See First Supplement to Memorandum 2023-42, draft Minutes (Oct. 2023), p. 5.

3. See pages 3, 10, 11, 26, and 27.

APPENDIX PRESENTING REVISED AND ADDITIONAL COMMISSION COMMENTS

The first Annual Report appendix attached to the memorandum discusses four Commission Comments on code sections revised in 2023. An understanding of why this appendix is needed requires some brief explanation.

Two recent Commission recommendations have proposed the updating of statutory cross-references in a great number of code sections, to implement statutory recodifications that had been concurrently recommended by the Commission.⁴ These recommendations, in order to avoid “chapters out” (i.e., nullifying) any other legislative proposal seeking to revise a code section containing one of these cross-references,⁵ both included a subordination clause. This clause provided that a conforming revision recommended by the Commission would not take effect, if any another bill revising the code section requiring conforming revision was enacted in the same legislative session.

Commission staff thereafter monitored and sought reintroduction in subsequent legislative sessions of recommended conforming revisions that did not take effect, based on this subordination clause. Four such conforming revisions, all referenced in this first appendix, were reintroduced and enacted this year, and each now requires a Commission approval relating to the Commission Comment on the revision.

With regard to one conforming revision,⁶ the Comment on the revision in the Commission’s final recommendation requires a technical update, due to an intervening and unrelated amendment of the code section.⁷

The three other conforming revisions,⁸ all reflecting the Commission’s recodification of the California Public Records Act, were not included in that final recommendation, and were instead approved by the Commission in a follow-up proposal to that recommendation.⁹ As a result, because the conforming revisions approved by the Commission are not contained within the Commission’s published recommendation, the Comments corresponding to the revisions need to be approved for publication in a supplemental report on that recommendation.

4. See *California Public Records Act Clean-Up: Conforming Revisions*, 46 Cal. L. Revision Comm’n Reports 563 (2019), *Hazardous Substance Account Recodification Act: Conforming Revisions*, 48 Cal. L. Revision Comm’n Reports __ (2021).

5. See Gov’t Code § 9605(b).

6. This conforming revision was to Health and Safety Code Section 25501.

7. The revision of the Comment is needed simply to reflect the current locations of the cross-references that were revised within the code section.

8. These conforming revisions were to Government Code Section 12100.63, Health and Safety Code Section 50254, and Labor Code Section 2783.

9. See First Supplement to Memorandum 2022-4, Minutes (Jan. 2022), pp. 3-4.

APPENDIX CONTAINING COMMISSIONER BIOGRAPHIES

Each Annual Report contains an appendix that includes biographical information relating to all Commissioners who have served in the previous calendar year. The Commission's historical practice relating to the content of these biographies has been to conform the biographical information in the Governor's press release announcing a Commissioner's appointment to a standardized template, and to thereafter add updates as requested.

Staff requests that Commissioners review their biographies in this draft appendix, and advise staff if change to any content is needed.

ACTIVITIES OF COMMISSION MEMBERS AND STAFF

The Annual Report notes any outside activities relating to the Commission's work that were engaged in by Commission members or staff since approval of the previous Annual Report.¹⁰ **Staff requests that Commissioners advise staff of any activities of this type to report for this time period.**¹¹

CONCLUSION

The Commission needs to decide whether to approve the attached draft report and appendix, with or without changes, for publication.

Respectfully submitted,

Steve Cohen
Staff Counsel

10. The Commission's 2022-2023 Annual Report was approved on January 19, 2023.

11. See page 27 of the attached draft for examples of the types of activity reported in previous years.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

2023-2024 Annual Report

STAFF DRAFT

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Comm'n Reports ____ (2023).

SUMMARY OF WORK OF COMMISSION

Recommendations to the 2023 Legislature

In 2023, legislation was approved to implement the following Commission recommendations:

- Stock Cooperatives and Revocable Transfer on Death Deeds
- Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 3)
- Statutes Made Obsolete by Trial Court Restructuring: Part 8
- Statutes Made Obsolete by Trial Court Restructuring (Part 9): Jurisdictional Classification of a Drug Asset Forfeiture Proceeding

2024 Legislative Program

In 2024, the Commission plans to continue work on legislation effectuating a Commission recommendation on the following subject:

- State and Local Agency Access to Electronic Communications: Notice of Administrative Subpoena

Commission Activities Planned for 2024

During 2024, the Commission intends to work on the following major topics: antitrust law, the Equal Rights Amendment and sex-based discrimination, notice of administrative subpoenas used by state and local agencies seeking access to electronic communications, and landlord-tenant terminology.

If staffing permits, the Commission also plans to work on recodification of toxic substance statutes and emergency-related reforms.

The Commission may work on other topics as time permits.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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SENATOR RICHARD ROTH
RICHARD SIMPSON

December 21, 2023

To: The Honorable Gavin Newsom
Governor of California, and
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission submits this report of its activities during 2023 and its plans for 2024.

In 2023, legislation implementing four Commission recommendations was enacted into law. The Commission expresses its gratitude to the following legislator and legislative committees for carrying the implementing legislation:

Assemblymember Brian Maienschein

- Stock Cooperatives and Revocable Transfer on Death Deeds

Assembly Committee on Water, Parks, and Wildlife

- Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 3)

Assembly Committee on Judiciary

- Statutes Made Obsolete by Trial Court Restructuring: Part 8
- Statutes Made Obsolete by Trial Court Restructuring (Part 9): Jurisdictional Classification of a Drug Asset Forfeiture Proceeding

The Commission held nine public meetings in 2023, seven of which were conducted via teleconference, and two in a hybrid format that included both in-person and teleconference participation.

Respectfully submitted,

David Huebner
Chair

2023-2024 ANNUAL REPORT

Introduction

The California Law Revision Commission was created in 1953 and commenced operation in 1954 as the permanent successor to the Code Commission,¹ with responsibility for continuing substantive review of California statutory and decisional law.² The Commission studies the law to discover defects and anachronisms, and recommends legislation to make needed reforms.

The Commission ordinarily works on major topics, assigned by the Legislature, that require detailed study and cannot easily be handled in the ordinary legislative process. The Commission's work is independent, nonpartisan, and objective.

The Commission consists of:³

- A Member of the Senate appointed by the Rules Committee
- A Member of the Assembly appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

The Commission may only study topics that the Legislature has authorized the Commission to study.⁴

1. See 1953 Cal. Stat. ch. 1445, operative September 9, 1953. The first meeting of the Commission was held on February 23, 1954.

2. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*). See also *1955 Report* [Annual Report for 1954] at 7, 1 Cal. L. Revision Comm'n Reports (1957).

3. For current membership, see "Personnel of Commission" *infra*.

4. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*. However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution. Gov't Code § 8298. Additionally, a concurrent resolution or statute may directly confer authority to study a particular subject. See, e.g., 2022 Cal. Stat. ch. 462 [AB 2503] (landlord-tenant terminology); 2022 Cal. Stat. res. ch. 150 [SCR 92] (Equal Rights Amendment); 2022 Cal. Stat. res. ch. 147 [ACR 95] (revision of antitrust law); 2016 Cal. Stat. ch. 179 [AB 1779] and 2015 Cal. Stat. ch. 293 [AB 139] (revocable transfer on death deeds); 2014 Cal. Stat. ch. 243 [SB 406] (standards for recognition of tribal and foreign court money judgments); 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communications service providers); 2006 Cal. Stat. res. ch. 128 [ACR 73] (nonsubstantive reorganization of weapon statutes); 2006 Cal. Stat. ch. 216 [AB 2034] (donative transfer restrictions).

The Commission has prepared 433 final recommendations with proposed reforms it sought to implement. Of those, 409 (more than 93%) have been enacted or otherwise implemented in whole or in substantial part.⁵ Commission recommendations have resulted in the enactment of legislation affecting 26,952 sections of California law: 56,201 sections amended, 11,723 sections added, and 9,028 sections repealed.

The Commission's recommendations and reports are regularly published in hardcover volumes. Most Commission materials are also available on the Commission's website. Information on obtaining printed or electronic versions of Commission material can be found in an appendix to this report.⁶

2024 Legislative Program

In 2024, the Commission plans to continue work on legislation effectuating a Commission recommendation on the following subject:

- State and Local Agency Access to Electronic Communications: Notice of Administrative Subpoena

Commission Activities Planned for 2024

During 2024, the Commission intends to work on the following major topics: antitrust law, the Equal Rights Amendment and sex-based discrimination, notice of administrative subpoenas used by state and local agencies seeking access to electronic communications, and landlord-tenant terminology.

If staffing permits, the Commission also plans to work on recodification of toxic substance statutes and emergency-related reforms.

The Commission may work on other topics as time permits.

Antitrust Law

The Commission will continue to study whether California antitrust law should be revised as directed in Assembly Concurrent Resolution 95 (2022).⁷

5. See *Legislative Action on Commission Recommendations*, Appendix 7 *infra*.

6. See *Commission Publications*, Appendix 3 *infra*.

7. See 2022 Cal. Stat. res. ch. 147.

Equal Rights Amendment

The Commission will continue to study California law to identify and remedy defects related to discrimination and disparate impacts on the basis of sex, as directed in Senate Concurrent Resolution 92 (2022).⁸

Landlord-Tenant Terminology

The Commission will continue to study the 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.⁹

Notice Of Administrative Subpoenas Used by State and Local Agencies Seeking Access to Electronic Communications

The Commission will continue to study revision of statutes that govern state and local agency access to customer information held by communications service providers.¹⁰

Recodification of Toxic Substance Statutes

If staffing permits, the Commission will continue to study the nonsubstantive revision of the Health and Safety Code relating to toxic substances.¹¹

Emergency-Related Reforms

If staffing permits, the Commission will continue to study whether the law should be revised to provide special rules that would apply to an area affected by a state of disaster or emergency declared by the federal government, by a state of emergency proclaimed by the Governor under Section 8625 of the Government Code, or by a local emergency proclaimed by a local governing body or official under Section 8630 of the Government Code.¹²

Other Subjects

The studies described above will dominate the Commission's time and resources during 2024. As time permits, the Commission may consider other subjects that are authorized for study.

8. See 2022 Cal. Stat. res. ch. 150.

9. See 2022 Cal. Stat. ch. 462.

10. See 2021 Cal. Stat. res. ch. 108.

11. See 2021 Cal. Stat. res. ch. 108.

12. See 2021 Cal. Stat. res. ch. 108.

Calendar of Topics for Study

The Commission's calendar of topics includes 14 topics that have been authorized by the Legislature for study.¹³

Function and Procedure of Commission

The principal duties of the Commission are to:¹⁴

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,¹⁵ bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.¹⁶

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study.¹⁷ However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.¹⁸

13. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

14. See Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission); Appendix 1 *infra*.

15. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 10271.

16. Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290. See "Report on Statutes Repealed by Implication or Held Unconstitutional" *infra*.

17. Gov't Code § 8293. Section 8293 also requires that the Commission study any topic that the Legislature by concurrent resolution or statute refers to the Commission for study.

18. Gov't Code § 8298.

Additionally, a concurrent resolution¹⁹ or statute²⁰ may directly confer authority to study a particular subject.

Background Studies and Expert Consultants

The Commission's work on a recommendation typically begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field who is retained as a consultant. Law professors and practicing attorneys who serve as consultants have already acquired the considerable knowledge necessary to understand the specific problems under consideration, and receive little more than an honorarium for their services.

From time to time, the Commission requests expert assistance from law professors and other legal professionals, who may provide written input or testify at meetings.

Recommendations

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to interested persons and organizations, including the State Bar, local and specialized bar associations, public interest organizations, and business and professional associations. Notice of the availability of the tentative recommendation is mailed to interested persons on the Commission's mailing list and publicized in legal newspapers and

19. For examples of concurrent resolutions referring a specific topic to the Commission for study, see 2022 Cal. Stat. res. ch. 150 [SCR 92] (Equal Rights Amendment); 2022 Cal. Stat. res. ch. 147 [ACR 95] (revision of antitrust law); 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communications service providers).

20. For example, Government Code Section 70219 requires the Commission, in consultation with the Judicial Council, to perform follow-up studies taking into consideration the experience in courts that have unified. For a list of specific studies, see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998).

Government Code Section 71674 requires the Commission to recommend repeal of provisions made obsolete by the Trial Court Employment Protection and Governance Act (Gov't Code § 71600 *et seq.*), Lockyer-Isenberg Trial Court Funding Act of 1997 (1997 Cal. Stat. ch. 850), and the implementation of trial court unification.

Pursuant to Code of Civil Procedure Section 681.035, the Commission also has continuing authority to study enforcement of judgments.

Statutory authority for a Commission study may be uncodified. See, e.g., 2022 Cal. Stat. ch. 462 (landlord-tenant terminology); 2016 Cal. Stat. ch. 179 (revocable transfer on death deeds).

other relevant publications. Notice is also posted on the Commission's website and emailed to interested persons.

Comments received on the tentative recommendation are considered by the Commission in determining what recommendation, if any, will be made to the Legislature.²¹ When the Commission has reached a conclusion on the matter,²² its recommendation to the Legislature (including a draft of any necessary legislation) is published and distributed in printed form and on the Internet. If a background study has been prepared in connection with the recommendation, it may be published by the Commission or in a law review.²³

21. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A. J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Gaal, *Evidence Legislation in California*, 36 S.W.U. L. Rev. 561, 563-69 (2008); Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

22. Occasionally, one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission. Dissents are noted in the minutes of the meeting at which the recommendation is approved.

23. For recent background studies published in law reviews, see Méndez, *California Evidence Code - Federal Rules of Evidence, IX. General Provisions*, 44 U.S.F. L. Rev. 891 (2010); Méndez, *California Evidence Code - Federal Rules of Evidence, VIII. Judicial Notice*, 44 U.S.F. L. Rev. 141 (2009); Méndez, *California Evidence Code - Federal Rules of Evidence, VII. Relevance: Definition and Limitations*, 42 U.S.F. L. Rev. 329 (2007); Méndez, *California Evidence Code - Federal Rules of Evidence, VI. Authentication and the Best and Secondary Evidence Rules*, 41 U.S.F. L. Rev. 1 (2006); Méndez, *California Evidence Code - Federal Rules of Evidence, V. Witnesses: Conforming the California Evidence Code to the Federal Rules of Evidence*, 39 U.S.F. L. Rev. 455 (2005); Alford, *Report to Law Revision Commission Regarding Recommendations for Changes to California Arbitration Law*, 4 Pepp. Disp. Resol. L.J. 1 (2004); Méndez, *California Evidence Code - Federal Rules of Evidence, IV. Presumptions and Burden of Proof: Conforming the California Evidence Code to the Federal Rules of Evidence*, 38 U.S.F. L. Rev. 139 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, I. Hearsay and Its Exceptions: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 351 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, II. Expert Testimony and the Opinion Rule: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 411 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, III. The Role of Judge and Jury: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 1003 (2003).

For a list of background studies published in law reviews before 2003, see 32 Cal. L. Revision Comm'n Reports 585 n.14 (2002); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990); 19 Cal. L. Revision Comm'n Reports 513 n.22

Official Comments

The Commission ordinarily prepares an official Comment explaining each section it recommends for enactment, amendment, or repeal. The Comments are included in the Commission's published recommendations. A Comment indicates the derivation of a section and often explains its purpose, its relation to other law, and potential issues concerning its meaning or application.²⁴

Commission Materials as Legislative History

Commission recommendations are printed and sent to both houses of the Legislature, as well as to the Legislative Counsel and Governor.²⁵ Receipt of a recommendation by the Legislature is noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.²⁶

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.²⁷ A copy of the recommendation is provided to legislative committee members and staff before the bill is heard and throughout the legislative process. The legislative committees rely on the recommendation in analyzing the bill and making recommendations to the Legislature concerning it.²⁸

(1988); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971).

24. Commission Comments are published by Thomson Reuters and LexisNexis in their print editions of the annotated codes, and printed in selected codes prepared by other publishers. Comments are also available on Westlaw and LexisNexis.

25. See Gov't Code §§ 8291, 9795, 11094-11099; see also *Reynolds v. Superior Court* (1974) 12 Cal.3d 834, 847 n.18, 528 P.2d 45, 117 Cal.Rptr. 437 (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

26. See, e.g., Senate J. Aug. 18, 2003, at 2031 (noting receipt of 2002-2003 recommendations and their transmittal to the Committee on Judiciary).

27. See, e.g., Office of Chief Clerk, California State Assembly, California's Legislature 126-27 (2000) (discussing purpose and function of legislative committee system).

28. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 542, 28 P.3d 151, 110 Cal.Rptr.2d 412, that a Commission Comment might be entitled to less weight based on speculation that the Legislature may not have read and endorsed every statement in the Commission's report. That suggestion belies the operation of the committee system in the Legislature. See White, *Sources of Legislative Intent in*

If an amendment is made to the bill that renders one of the Commission's original Comments inconsistent, the Commission generally will adopt a revised Comment and provide it to the committee. The Commission also provides this material to the Governor's office once the bill has passed the Legislature and is before the Governor for action. These materials are a matter of public record.

Until the mid-1980s, a legislative committee, on approving a bill implementing a Commission recommendation, would adopt the Commission's recommendation as indicative of the committee's intent in approving the bill.²⁹ If a Comment required revision, the revised Comment would be adopted as a legislative committee Comment. The committee's report would be printed in the journal of the relevant house.³⁰

The Legislature has discontinued the former practice due to increased committee workloads and an effort to decrease the volume of material reprinted in the legislative journals. Under current practice, a legislative committee relies on Commission materials in its analysis of a bill, but does not separately adopt the materials. Instead, the Commission makes a report detailing the legislative history of the bill, including any revised Comments. Bill reports are published as appendices to the Commission's annual reports.³¹

Use of Commission Materials to Determine Legislative Intent

Commission materials that have been placed before and considered by the Legislature are legislative history, are declarative of legislative intent,³² and are entitled to great weight in construing

California, 3 Pac. L.J. 63, 85 (1972) ("The best evidence of legislative intent must surely be the records of the legislature itself and the reports which the committees relied on in recommending passage of the legislation.").

29. See, e.g., *Baldwin v. State* (1972) 6 Cal.3d 424, 433, 491 P.2d 1121, 99 Cal.Rptr. 145. For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno* (1973) 33 Cal.App.3d 877, 884, 109 Cal.Rptr. 421.

30. For an example of such a report, see *Report of Senate Committee on Judiciary on Assembly Bill 3472*, Senate J. June 14, 1984, reprinted in 18 Cal. L. Revision Comm'n Reports 1, 115 (1986).

31. Commission reports have in the past been published as well in the legislative journals. See, e.g., *In re Marriage of Neal* (1984) 153 Cal.App.3d 117, 124, 200 Cal.Rptr. 341 (noting that Chairman of Senate Judiciary Committee, when reporting on AB 26 on Senate floor, moved that revised Commission report be printed in Senate Journal as evidence of legislative intent).

32. See, e.g., *Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1137 n.20, 202 P.3d 1089, 90 Cal.Rptr.3d 701 (Commission's official comments deemed to

statutes.³³ The materials are a key interpretive aid for practitioners as well as courts,³⁴ and courts may judicially notice and rely on them.³⁵ Courts at all levels of the state³⁶ and federal³⁷ judicial

express Legislature’s intent); *Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1132, 176 P.3d 654, 72 Cal.Rptr.3d 382 (official comments of California Law Revision Commission are declarative of intent not only of drafters of code but also of legislators who subsequently enacted it); *Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 308 & n.6, 6 P.3d 713, 99 Cal.Rptr.2d 792 (Comments to reenacted statute reiterate clear understanding and intent of original enactment); *County of Los Angeles v. Superior Court* (1965) 62 Cal.2d 839, 843-44, 402 P.2d 868, 44 Cal.Rptr. 796 (statutes reflect policy recommended by Commission).

33. See, e.g., *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 770, 288 P.3d 1237, 149 Cal.Rptr.3d 614 (“Comments of a commission that proposed a statute are entitled to substantial weight in construing the statute, especially when, as here, the Legislature adopted the statute without change.”); *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 947, 111 P.3d 954, 28 Cal.Rptr.3d 685 (Commission report entitled to substantial weight in construing statute); *Utility Consumers’ Action Network, Inc. v. AT&T Broadband of Southern Cal., Inc.* (2006) 135 Cal.App.4th 1023, 1029, 37 Cal.Rptr.3d 827 (Commission recommendation enacted without change is entitled to substantial weight when interpreting statutory provision); *Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927, 103 Cal.Rptr.2d 773:

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 400, fn. 8 [276 Cal.Rptr. 524]; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal.App.3d 524, 535, fn. 7 [260 Cal.Rptr. 713].) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal.App.4th 23, 30, fn. 10 [17 Cal.Rptr.2d 340].)

34. Cf. 11 B. Witkin, Summary of California Law *Constitutional Law* § 138(d) (2020) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

35. See, e.g., *Lang v. Roché* (2011) 201 Cal.App.4th 254, 263 n.8, 133 Cal.Rptr.3d 675; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 34 Cal.Rptr.3d 520 (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927, 103 Cal.Rptr.2d 773; *Barkley v. City of Blue Lake* (1993) 18 Cal.App.4th 1745, 1751 n.3, 23 Cal.Rptr.2d 315.

36. See, e.g., *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 298, 935 P.2d 781, 63 Cal.Rptr.2d 74 (California Supreme Court); *Branches Neighborhood Corp. v. CalAtlantic Group, Inc.* (2018) 26 Cal.App.5th 743, 754, n.5, 237 Cal.Rptr.3d 411 (court of appeal); *Rossetto v. Barross* (2001) 90 Cal.App.4th Supp. 1, 110 Cal.Rptr.2d 255 (appellate division of superior court).

37. See, e.g., *California v. Green* (1970) 399 U.S. 149, 154 n.3 (United States Supreme Court); *S. Cal. Bank v. Zimmerman (In re Hilde)* (9th Cir. 1997) 120

systems depend on Commission materials to construe statutes enacted on Commission recommendation. Appellate courts have cited Commission materials in more than a thousand published opinions.³⁸

Commission materials have been used as direct support for a court's interpretation of a statute,³⁹ as one of several indicia of legislative intent,⁴⁰ to explain the public policy behind a statute,⁴¹ and on occasion to demonstrate (by their silence) the Legislature's intention not to change the law.⁴² The Legislature's failure to adopt a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.⁴³

Commission materials are entitled to great weight, but they are not conclusive.⁴⁴ While the Commission endeavors in Comments to

F.3d 950, 953 (federal court of appeals); *Mortgage Electronic Registration Systems v. Robinson* (C.D. Cal. 2014) 45 F.Supp.3d 1207, 1210 (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)* (B.A.P. 9th Cir. 1996) 204 B.R. 976, 978-79 (bankruptcy appellate panel); *In re 3 MB, LLC* (Bankr. E.D. Cal. 2019) 609 B.R. 841, 851-52 (bankruptcy court).

38. It should be noted that the Law Revision Commission should not be cited as the "Law Revision Committee" or as the "Law Review Commission." See, e.g., *Venerable v. City of Sacramento* (E.D. Cal. 2002) 185 F.Supp.2d 1128, 1132 (Law Revision "Committee"); *Ryan v. Garcia* (1994) 27 Cal.App.4th 1006, 1010 n.2, 33 Cal.Rptr.2d 158 (Law "Review" Commission).

39. See, e.g., *People v. Ainsworth* (1988) 45 Cal.3d 984, 1015, 755 P.2d 1017, 248 Cal.Rptr. 568.

40. See, e.g., *Heieck & Moran v. City of Modesto* (1966) 64 Cal.2d 229, 233 n.3, 411 P.2d 105, 49 Cal.Rptr. 377.

41. See, e.g., *Southern Cal. Gas Co. v. Public Utils. Comm'n* (1990) 50 Cal.3d 31, 38 n.8, 784 P.2d 1373, 265 Cal.Rptr. 801; *Altizer v. Highsmith* (2020) 52 Cal.App.5th 331, 338, 265 Cal.Rptr.3d 832.

42. See, e.g., *In re Pikush* (B.A.P. 9th Cir. 1993) 157 B.R. 155, 157-58 (Commission's recommendation "[n]owhere" suggests that statutory revisions would create new exemption for annuities, thus Legislature did not create such exemption when it made those revisions); *State ex rel. State Pub. Works Bd. v. Stevenson* (1970) 5 Cal.App.3d 60, 64-65, 84 Cal.Rptr. 742 (Legislature had no intention of changing existing law where "not a word" in Commission's reports indicated intent to abolish or emasculate well-settled rule).

43. See, e.g., *McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 623-24, 300 P.3d 886, 155 Cal.Rptr.3d 817; *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 935-36, 496 P.2d 480, 101 Cal.Rptr. 568.

44. See, e.g., *Wilson v. County of San Joaquin* (2019) 38 Cal.App.5th 1, 11, 250 Cal.Rptr.3d 56; *Redevelopment Agency v. Metropolitan Theatres Corp.* (1989) 215 Cal.App.3d 808, 812, 263 Cal.Rptr. 637 (Comment does not override clear and unambiguous statute). Commission materials are but one indicium of legislative intent. See, e.g., *Estate of Joseph* (1998) 17 Cal.4th 203, 216, 949 P.2d 472, 70 Cal.Rptr.2d 619. The accuracy of a Comment may also be questioned.

explain any changes in the law made by a section, the Commission does not claim that every consistent or inconsistent case is noted in the Comments,⁴⁵ nor can it anticipate judicial conclusions as to the significance of existing case authorities.⁴⁶ Hence, failure of the Comment to note every change the recommendation would make in prior law, or to refer to a consistent or inconsistent judicial decision, is not intended to, and should not, influence the construction of a clearly stated statutory provision.⁴⁷

Some types of Commission materials are not properly relied on as evidence of legislative intent. On occasion, courts have cited preliminary Commission materials such as tentative recommendations, correspondence, and staff memoranda and drafts in support of their construction of a statute.⁴⁸ While these materials may be indicative of the Commission's intent in proposing the legislation, only the Legislature's intent in adopting the legislation is entitled to weight in construing the statute.⁴⁹ Unless preliminary

See, e.g., *Buzgheia v. Leasco Sierra Grove* (1994) 30 Cal.App.4th 766, 774, 36 Cal.Rptr.2d 144; *In re Thomas* (Bankr. E.D. Cal. 1989) 102 B.R. 199, 202.

45. Cf. *People v. Coleman* (1970) 8 Cal.App.3d 722, 731, 87 Cal.Rptr. 554 (Comments make clear intent to reflect existing law even if not all supporting cases are cited).

46. See, e.g., *Arellano v. Moreno* (1973) 33 Cal.App.3d 877, 885, 109 Cal.Rptr. 421 (noting that decisional law cited in Comment was distinguished by the California Supreme Court in a case decided after enactment of the Commission recommendation).

47. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court* (1971) 6 Cal.3d 150, 158-59, 491 P.2d 1, 98 Cal.Rptr. 649. For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973); 1974 Cal. Stat. ch. 227.

48. See, e.g., *Rojas v. Superior Court* (2005) 33 Cal.4th 407, 93 P.3d 260, 15 Cal.Rptr.3d 643 (tentative recommendation, correspondence, and staff memorandum and draft); *Yamaha Corp. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-13, 960 P.2d 1031, 78 Cal.Rptr.2d 1 (tentative recommendation). However, in some cases, proposed legislation will be based on a tentative, rather than final, Commission recommendation. See, e.g., *Estate of Archer* (1987) 193 Cal.App.3d 238, 243, 239 Cal.Rptr. 137. In that event, reliance on the tentative recommendation is proper.

See also *Ilkhchooyi v. Best* (1995) 37 Cal.App.4th 395, 406, 45 Cal.Rptr.2d 766 (letter responding to tentative recommendation); D. Henke, California Legal Research Handbook § 3.51 (1971) (background studies).

49. Cf. *Rittenhouse v. Superior Court* (1991) 235 Cal.App.3d 1584, 1589, 1 Cal.Rptr.2d 595 (linking Commission's intent and Legislature's intent); *Guthman*

Commission materials were before the Legislature during its consideration of the legislation, those materials are not legislative history and are not relevant in determining the Legislature's intention in adopting the legislation.⁵⁰

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.⁵¹ However, documents prepared by or for the Commission may be used by the courts for their analytical value, apart from their role in statutory construction.⁵²

Publications

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.⁵³ Commission materials are also distributed to interest groups, lawyers, law professors, courts, district attorneys, law libraries, and other individuals requesting materials.

The Commission's reports, recommendations, and studies are published in hardcover volumes that serve as a permanent record of the Commission's work and are a valuable contribution to the legal literature of California. These volumes are available at many county law libraries and at some other libraries. About half of the hardcover volumes are out of print, but others are available for purchase.⁵⁴ Publications that are out of print are available as electronic files.⁵⁵

v. Moss (1984) 150 Cal.App.3d 501, 508, 198 Cal.Rptr. 54 (determination of Commission's intent used to infer Legislature's intent).

50. The Commission concurs with the opinion of the court in *Juran v. Epstein* (1994) 23 Cal.App.4th 882, 894 n.5, 28 Cal.Rptr.2d 588, that staff memoranda to the Commission should generally not be considered as legislative history.

51. See, e.g., *Duarte v. Chino Community Hosp.* (1999) 72 Cal.App.4th 849, 856 n.3, 85 Cal.Rptr.2d 521.

52. See, e.g., *Sierra Club v. San Joaquin Local Agency Formation Comm'n* (1999) 21 Cal.4th 489, 502-03, 981 P.2d 543, 87 Cal.Rptr.2d 702 (unenacted Commission recommendation useful as "opinion of a learned panel"); *Hall v. Hall* (1990) 222 Cal.App.3d 578, 585, 271 Cal.Rptr. 773 (Commission staff report most detailed analysis of statute available); *W.E.J. v. Superior Court* (1979) 100 Cal.App.3d 303, 309-10, 160 Cal.Rptr. 862 (law review article prepared for Commission provides insight into development of law); *Schonfeld v. City of Vallejo* (1975) 50 Cal.App.3d 401, 407 n.4, 123 Cal.Rptr. 669 (court indebted to many studies of Commission for analytical materials).

53. See Gov't Code § 8291. For limitations on Section 8291, see Gov't Code §§ 9795, 11094-11099.

54. See *Commission Publications*, Appendix 8 *infra*.

55. See "Electronic Publication and Internet Access" *infra*.

Electronic Publication and Internet Access

Since 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.⁵⁶ Interested persons with Internet access can find the current agenda, meeting minutes, background studies, tentative and final recommendations, staff memoranda, and general background information.

Since 2002, all Commission publications and staff memoranda are available as electronic files. They can be downloaded from the Commission's website.

Electronic Mail

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence. Email to the Commission may be sent to *commission@clrc.ca.gov*.

The Commission distributes the majority of its meeting agendas, staff memoranda, and other written materials electronically, by means of its website and email distribution lists. The Commission encourages use of email as an inexpensive and expedient means of communication with the Commission.

MCLE Credit

The Commission is approved by the State Bar of California as a minimum continuing legal education provider. Participants and attendees at Commission meetings may be eligible to receive MCLE credit. To receive credit for participation or attendance at a meeting, a person must register at the meeting. Meeting materials are available free of charge on the Internet⁵⁷ or may be purchased in advance from the Commission.

56. The URL for the Commission's website is <<http://www.clrc.ca.gov>>.

57. See "Electronic Publication and Internet Access" *supra*.

Personnel of Commission⁵⁸

As of December 21, 2023, the following persons were members of the Law Revision Commission:

Legislative Members⁵⁹

Assembly Member Ash Kalra
 Senator Richard Roth

Legislative Counsel⁶⁰

Cara Jenkins

Members Appointed by Governor⁶¹

	<i>Term Expires</i>
Amb. (r.) David Huebner, Palm Springs <i>Chair</i>	October 1, 2025
Xochitl Carrion, San Francisco <i>Vice-Chair</i>	October 1, 2025
Maria Bee, Oakland	October 1, 2027
David A. Carrillo, Berkeley	October 1, 2027
Ana Cubas, Los Angeles	October 1, 2025
Victor King, La Crescenta	October 1, 2027
Richard Simpson, Sacramento	October 1, 2027

58. See also *Biographies of 2023 Commissioners*, Appendix 6 *infra*.

59. The Senate and Assembly members of the Commission serve at the pleasure of their respective appointing powers, the Senate Committee on Rules and the Speaker of the Assembly. Gov't Code § 8281.

60. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

61. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

The following persons are on the Commission's staff:⁶²

Legal

SHARON REILLY
Executive Director

KRISTIN BURFORD
Chief Deputy Director

STEVE COHEN
Staff Counsel

Administrative

DEBORA LARRABEE
Chief of Administrative Services

MEGAN HAYENGA
Office Technician

On October 26, 2023, the Commission's Executive Director Brian Hebert retired after 27 years on the Commission's staff. On October 19, 2023, in recognition of his upcoming retirement, the Commission and its staff presented Mr. Hebert with a Joint Resolution recognizing his achievements, character, and service to the People of California, which read as follows:

Whereas, Brian Hebert is retiring as Executive Director of the California Law Revision Commission, and it is appropriate at this time to highlight his many achievements and extend to him a heartfelt thank you for a job well done; and

Whereas, Having ably served the California Law Revision Commission for 27 years, Brian Hebert started as a staff attorney in 1996, accepted the role of Assistant Executive Secretary in 2003, and was promoted to Executive Secretary, now known as Executive Director, in 2006; and

Whereas, Renowned for his thorough legal research, keen analytical skills, masterful writing and statutory drafting, cogent oral presentations of difficult legal concepts, and overall constructive approach to law reform, Brian Hebert spearheaded extensive improvements to the law that governs common interest developments, including important substantive reforms and organizational changes to make that law more accessible

62. The Commission also employs three attorneys who work exclusively for the Committee on Revision of the Penal Code, Thomas Nosewicz, Joy Haviland, and Richard Owen.

for the millions of people living in common interest developments across the State of California; and

Whereas, Brian Hebert's sharp insight into the complexities of laws governing estate planning and his ability to discuss them in a clear and understandable manner resulted in an exemplary record of contributions in that area, including reforms relating to no-contest clauses, donative transfer restrictions, disposition of an estate without administration, the intersection of estate planning and marital dissolution, revocable transfer on death deeds, and more; and

Whereas, A consummate professional, Brian Hebert played a leading role in numerous other statutory reforms to improve the clarity, fairness, and effectiveness of California law, including laws relating to unincorporated associations, administrative rulemaking, fish and wildlife, and exemptions from enforcement of judgments, to name just a few; and

Whereas, During Brian Hebert's tenure as Executive Director, the Commission approved more than 60 final recommendations containing proposed legislation, almost all of which were enacted, revising over 4,000 code sections spanning a broad range of topics, and he helped the Commission produce several informational reports for the California State Legislature and the Governor, including a major report on application of the Government Claims Act to charter schools and a comprehensive report on state and local agency access to electronic communications, and he was instrumental in effectively launching the Commission's ongoing study of antitrust law in the modern technological era; and

Whereas, Over the course of his tenure with the Commission, Brian Hebert also developed and implemented many improvements to the Commission's administrative procedures, while being resourceful, patient, and creative in leading the Commission as its Executive Director for almost 17 years, and he guided the agency through repeated state fiscal crises, the COVID-19 pandemic, and the creation of an entirely new law reform body, the Committee on Revision of the Penal Code; and

Whereas, Brian Hebert's model professionalism, calm demeanor, straightforward manner, diplomatic leadership, judiciousness, and thoughtfulness have earned the respect and admiration of those who have had the good fortune to work with him, including numerous staff and Members of the California State Legislature; now, therefore, be it

Resolved by Senators Richard D. Roth and Bill Dodd and Assembly Members Cecilia M. Aguiar-Curry and Ash Kalra, That all best wishes for a long and happy retirement be conveyed to Brian Hebert along with sincere appreciation for his years of dedicated and exemplary service to the people of California.

Committee on Revision of the Penal Code

On January 1, 2020, the Committee on Revision of the Penal Code was formed as a part of the California Law Revision Commission.⁶³

The Commission provides staffing for that new function, but the membership, authority, and deliberative processes of the two bodies are separate and non-overlapping.⁶⁴

The Committee describes its activities and recommendations in a separate Annual Report.⁶⁵ They are not reported here.

Commission Budget

The Commission's operations for the 2023-24 fiscal year, including the operations of the Committee on Revision of the Penal Code, have been funded through a reimbursement from the California Office of Legislative Counsel, in the amount of \$2,326,000.

The Commission also receives substantial donations of necessary library materials from the legal publishing community, especially California Continuing Education of the Bar, LexisNexis, and Thomson Reuters. In addition, the Commission receives some benchbooks from the California Center for Judicial Education and Research (CJER). The Commission also receives a copy of the McGeorge Law Review, annually. The Commission receives

63. Gov't Code § 8280(b).

64. Gov't Code §§ 8281 (Commission membership), 8281.5 (Committee membership), 8289 (Commission duties), 8290.5 (Committee duties and authority), 8293(a) (Commission authority).

65. Gov't Code § 8293(b).

additional library materials from other legal publishers and from other law reform agencies on an exchange basis, and has full access to the law libraries at the University of California, Davis, School of Law and at Stanford Law School. The Commission is grateful for these contributions.

Invited Speakers

The Commission expresses its appreciation to the following persons invited to speak at Commission meetings in 2023 on the following studies:

Antitrust Law

Professor Daniel Crane, University of Michigan Law School
Professor Ausra Deluard
New York State Senator Michael Gianaris
Thomas Greene
Professor Alison Jones, King's College London
Dan Robbins, Uniform Law Commission Immediate Past
President
Eric J. Stock, Gibson Dunn & Crutcher

Equal Rights Amendment

Betsy Butler, California Women's Law Center
Dean Erwin Chemerinsky, Berkeley Law
Professor Cary Franklin, Faculty Director of Williams Institute at
UCLA School of Law
Senator Connie Leyva
Dean Brad Sears, Executive Director of Williams Institute at
UCLA School of Law
Kathy Spillar, Feminist Majority
Professor Mary Ziegler, University of California, Davis Law
School

Other Activities

The Commission is directed by statute to cooperate with bar associations and other learned, professional, or scientific associations, institutions, or foundations in any manner suitable for the fulfillment of the purposes of the Commission.⁶⁶

66. Gov't Code § 8296.

National Conference of Commissioners on Uniform State Laws

The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws.⁶⁷ Legislative Counsel and Commission member Cara Jenkins is a member of the California Commission on Uniform State Laws and the National Conference. The Commission's Executive Director, Sharon Reilly, is an associate member of the National Conference.

Other Commissioner and Staff Activities

[On February 23, 2022, Chief Deputy Director Barbara Gaal gave a presentation about the Commission to an advanced legislative process class at UC Hastings College of the Law, taught by former Commissioner and Legislative Counsel Diane Boyer-Vine.]

[On April 8, 2022, Ms. Gaal gave a presentation about the Commission's recodification of the California Public Records Act to the Public Law Section of the California Lawyers Association.]

[On October 27, 2020, Executive Director Brian Hebert participated in a panel discussion at the UC Davis School of Law on "California State Legislative Externship and Career Opportunities."]

[On November 13, 2019, Commissioner Boyer-Vine and the Executive Director, Brian Hebert, participated in a panel discussion of the legislative process, at the UC Davis School of Law.]

Legislative Action on Recommendations in the 2023 Legislative Session

In 2023, three bills to effectuate four Commission recommendations were introduced. All three bills were enacted.

Stock Cooperatives and Revocable Transfer on Death Deeds

Assembly Bill 288 (2023 Cal. Stat. ch. 62) was introduced in 2023 by Assembly Member Brian Maienschein. The bill effectuated the Commission's recommendation on *Stock Cooperatives and Revocable Transfer on Death Deeds*, 48 Cal. L. Revision Comm'n Reports __ (2022).

The measure was enacted, with an amendment.

67. Gov't Code § 8289.

Fish and Game

Assembly Bill 1760 (2023 Cal. Stat. ch. 132) was introduced in 2023 by the Assembly Committee on Water, Parks, and Wildlife. The bill effectuated the Commission's recommendation on *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 3)*, 48 Cal. L. Revision Comm'n Reports __ (2023).

The measure was enacted.

Trial Court Restructuring

Assembly Bill 1756 (2023 Cal. Stat. ch. 478) was introduced in 2023 by the Assembly Committee on Judiciary. Among other things, the bill effectuated the Commission's recommendations on *Statutes Made Obsolete by Trial Court Restructuring: Part 8*, 48 Cal. L. Revision Comm'n Reports __ (2022), and *Statutes Made Obsolete by Trial Court Restructuring (Part 9): Jurisdictional Classification of a Drug Asset Forfeiture Proceeding*, 48 Cal. L. Revision Comm'n Reports __ (2022).

The measure was enacted, with amendments requiring revision of Commission Comments. See *Report of the California Law Revision Commission on Chapter 478 of the Statutes of 2023 (Assembly Bill 1756)*, 48 Cal. L. Revision Comm'n Reports __ (2023) (*Appendix 5, infra*).

**Report on Statutes Repealed by Implication
or Held Unconstitutional**

Government Code Section 8290 provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared,⁶⁸ and has the following to report:

68. The study in the Commission's last Annual Report was carried through opinions published on or before December 31, 2022. This study has been carried through opinions published on or before December 1, 2023.

- No decision of the United States Supreme Court or of the California Supreme Court repealing a California statute by implication has been found.
- No decision of the United States Supreme Court appearing to have held a California statute unconstitutional has been found.
- No decision of the California Supreme Court holding a California statute unconstitutional has been found.

Recommendations

The Commission respectfully recommends that the Legislature authorize the Commission to continue its study of the topics previously authorized.⁶⁹

69. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

APPENDIX 4

DRAFT REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION
ON CHAPTER 131 OF THE STATUTES OF 2023
(ASSEMBLY BILL 1754)

California Public Records Act Clean-Up: Conforming Revisions

Hazardous Substance Account Recodification Act:
Conforming Revisions

Chapter 131 of the Statutes of 2023 was introduced as Assembly Bill 1754, authored by the Committee on Judiciary. Among other things, the measure implements certain Commission recommended revisions included in *California Public Records Act Clean-Up: Conforming Revisions*, 46 Cal. L. Revision Comm'n Reports 563 (2019) and *Hazardous Substance Account Recodification Act: Conforming Revisions*, 48 Cal. L. Revision Comm'n Reports ___¹ (2021).

The Comments set out below, relating to the code sections indicated, were approved by the Commission after publication of the applicable Commission recommendation identified above. Each of the Comments set out below supercedes any corresponding Comment in the prior recommendations cited above.

**Gov't Code § 12100.63 (amended). California Small Business
Technical Assistance Expansion Program**

Comment. Section 12100.63 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).

1. As this Bound Volume has not yet been printed, the precise page number on which this report will appear is not yet known. Staff will identify the page number before the appendix is submitted for publication.

Health & Safety Code § 25501 (amended). Definitions

Comment. Section 25501(n)(2)(E) is amended to update a cross-reference in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code. See *Hazardous Substance Account Recodification Act: Conforming Revisions*, 48 Cal. L. Revision Comm'n Reports __ (2021).

Section 25501(u) 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).

Health & Safety Code § 50254 (amended). Data elements for tracking in Homeless Data Integration System

Comment. Section 50254 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).

Lab. Code § 2783 (amended). Occupations governed by Borello, not Dynamex

Comment. Section 2783 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).

APPENDIX 6

BIOGRAPHIES OF 2023 COMMISSIONERS

David Huebner, of Palm Springs, presently serves as Chair of the Commission. He has been an arbitrator and mediator affiliated with JAMS since 2017. He was previously a partner at Arnold & Porter from 2014 to 2016, the U.S. Ambassador to New Zealand and the Independent State of Samoa from 2009 to 2014, a partner at Sheppard Mullin Richter & Hampton LLP from 2005 to 2009, an adjunct professor at the University of Southern California Gould School of Law from 1999 to 2007, and a partner at Coudert Brothers from 1992 to 2005, where he also served as Chair and CEO. Commissioner Huebner received a Juris Doctor degree from Yale Law School, and an A.B. degree, *summa cum laude*, from Princeton University.

Xochitl Carrion, of San Francisco, presently serves as Vice-Chair of the Commission. She opened the Law Office of Xochitl Carrion, with the practice areas of civil litigation, state and local government relations and community outreach, economic development and legal support for businesses with an emphasis on Minority-Owned Businesses, and real estate transactions, in 2023. She was previously the lead attorney at the ALTO Alliance LLC from 2021 to 2023, an Assistant District Attorney at the San Francisco District Attorney's Office from 2015 to 2021, and an associate at Goldfarb & Lipman LLC from 2007 to 2015. Commissioner Carrion received a Juris Doctor degree from the University of California College of the Law, San Francisco.

Maria Bee, of Oakland, has been Chief Assistant City Attorney at the Oakland City Attorney's Office since 2018, where she served in several positions since 2014, including Special Counsel and Supervising Attorney. She was previously Chief of Victim Services in the San Francisco District Attorney's Office from 2006 to 2014, and a Deputy City Attorney in the Oakland City Attorney's Office from 2000 to 2006. She is on the board of the Alameda County Bar Association and a member of the Charles Houston Bar Association.

Commissioner Bee received a Juris Doctor degree from the University of California, Berkeley, School of Law.

David A. Carrillo, of Berkeley, has been executive director of the California Constitution Center and lecturer in residence at the University of California, Berkeley School of Law since 2012. He was previously a deputy attorney general for the California Department of Justice from 2001 to 2003 and from 2007 to 2012, a deputy city attorney for the City and County of San Francisco from 2003 to 2007, a litigation associate in private practice from 1999 to 2001, and a deputy district attorney for Contra Costa County from 1995 to 1998. Commissioner Carrillo received Juris Doctor, Master of Laws, and Doctor of the Science of Jurisprudence degrees from the University of California, Berkeley School of Law.

Ana Cubas, of Los Angeles, has been an adjunct professor with the Los Angeles Community College District since 2017. She was previously government affairs manager at Vanir Construction Management from 2016 to 2017, and chief of staff for District 14 of the City of Los Angeles from 2009 to 2012. She is a member of the United States Green Building Council and the California Hispanic Chambers of Commerce. Commissioner Cubas received a Master of Arts degree in Public Affairs and Urban/Regional Planning from Princeton University, and a Master of Business Administration degree from the University of Southern California.

Cara Jenkins, of Sacramento, was appointed Legislative Counsel for the State of California on December 7, 2020. She was previously a deputy in the Legislative Counsel's office from 2010 to 2020, an associate at a private law firm in Sacramento, and an intern at the Sacramento City Attorney's office and the California Department of Justice. She also serves as a member of the California Commission on Uniform State Laws. Commissioner Jenkins received a Juris Doctor degree from the University of the Pacific, McGeorge School of Law.

Assemblymember Ash Kalra, of San Jose, has been a member of the Assembly since 2016. He was previously a Deputy Public Defender for Santa Clara County from 2004 to 2015, and served on

the San Jose City Council for eight years. Commissioner Kalra received a Juris Doctor degree from Georgetown University.

Victor King, of La Crescenta, has been university legal counsel for California State University, Los Angeles since 2002. He was previously a partner with the law firm of Lewis Brisbois Bisgaard and Smith LLP from 2001 to 2002, an associate with the law firm of Lewis Brisbois Bisgaard and Smith LLP from 1999 to 2001, an associate with the law firm of Bottum and Felton from 1996 to 1999, and an associate with the law firm of Ochoa and Sillas from 1991 to 1995. He was also a trustee of the Glendale Community College District from 1997 to 2009. Commissioner King received a Juris Doctor degree from the University of Michigan Law School.

Jane McAllister, of Hilmar, has been a partner with McAllister and McAllister, Inc. since 1996. She was previously an associate attorney with Damrell, Nelson, Schrimp, Pallios, Pacher, and Silva from 1988 to 1996. She has also served as a court-ordered arbitrator for Merced County, and was a member of the Stanislaus County Estate Planning Council. Commissioner McAllister received a Juris Doctor degree from Humphreys College School of Law, and a B.A. degree, with honors, from Stanford University.

Senator Richard Roth, of Riverside, has been a member of the Senate since 2012. He previously was a managing partner in the law firm of Roth Carney APC, engaged in the practice of labor and employment law with other Riverside-based firms for over 30 years, an attorney with the National Labor Relations Board, an adjunct instructor at the University of California at Riverside's Anderson School of Management and in the University's extension division, a Legal Advisor to the Airlift/Tanker Association, and a Lawyer Representative to the Ninth Circuit Court of Appeals Judicial Conference. He has also served in the United States Air Force, and was a member of the JAG Corps, including service in the Pentagon as Mobilization Assistant to the Judge Advocate General of the U.S. Air Force, retiring with the rank of major general. He has also previously served as Chairman of the Board for the Greater Riverside Chambers of Commerce, president of the Monday

Morning Group, vice-chairperson of the Parkview Community Hospital Board, and trustee of the March Field Museum. He is a member of the Raincross Club, the Riverside Community Hospital Advisory Board, the Thomas W. Wathen Foundation Board (Flabob Airport), the Riverside County Bar Association Board of Directors, the Path of Life Ministries Advisory Board, the Air Force Judge Advocate General's School Foundation Board, and the La Sierra University Foundation Board, and a past member of the Riverside Public Library Foundation Board, and the Riverside Art Museum Board. Commissioner Roth received a Juris Doctor degree from Emory University.

Richard Simpson, of Sacramento, was chief of staff for the Office of Senator Hertzberg in 2019, and was previously deputy chief of staff and education advisor for the Office of the Assembly Speaker from 1999 to 2016, legislative secretary for the Office of Governor Gray Davis from 1998 to 1999, deputy chief of staff for the Office of Assembly Speaker Villaraigosa in 1998, a legislative advocate for the California Teachers Association from 1996 to 1998, staff director for the Senate Education Committee from 1995 to 1996, education advisor for the Office of the Assembly Speaker Willie Brown, Jr. from 1991 to 1994, Senior Consultant for the Assembly Education Committee from 1984 to 1990, and Senior Consultant with the Senate Office of Research from 1978 to 1984. He is a member of the Commission on Judicial Performance, and served as a member of the Sacramento County Board of Education from 1990 to 2002. Commissioner Simpson received a Master of Public Policy degree from the University of California, Berkeley.
