

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Civil Discovery: Correction of Obsolete Cross-References

April 2004

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN July 31, 2004.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335 FAX: 650-494-1827

SUMMARY OF TENTATIVE RECOMMENDATION

The Commission proposes to amend the following provisions to correct obsolete cross-references to civil discovery provisions:

- (1) Business and Professions Code Section 25009
- (2) Code of Civil Procedure Section 1283
- (3) Code of Civil Procedure Section 1991.2
- (4) Education Code Section 44944
- (5) Government Code Section 12963.3
- (6) Government Code Section 68097.6
- (7) Health and Safety Code Section 1424.1
- (8) Insurance Code Section 11580.2

This recommendation was prepared pursuant to Resolution Chapter 92 of the Statutes of 2003.

CIVIL DISCOVERY: CORRECTION OF OBSOLETE CROSS-REFERENCES

1 The Law Revision Commission is engaged in a study of civil discovery.¹ As a
2 preliminary step, the Commission proposed a nonsubstantive reorganization of the
3 provisions governing civil discovery, to make them more user-friendly and
4 facilitate sound development of the law.²

5 In developing that recommendation, the Commission discovered a number of
6 statutes with one or more cross-references to civil discovery provisions that were
7 never properly conformed to reflect enactment of the Civil Discovery Act of
8 1986.³ Those provisions are:

- 9 • Business and Professions Code Section 25009
- 10 • Code of Civil Procedure Section 1283
- 11 • Code of Civil Procedure Section 1991.2
- 12 • Education Code Section 44944
- 13 • Government Code Section 12963.3
- 14 • Government Code Section 68097.6
- 15 • Health and Safety Code Section 1424.1
- 16 • Insurance Code Section 11580.2

17 The Commission recommends updating the obsolete cross-references to civil
18 discovery provisions in these statutes.⁴ That would help to prevent confusion and

1. Prof. Gregory Weber of McGeorge School of Law prepared a background study for the Commission. See Weber, *Potential Innovations in Civil Discovery: Lessons for California from the State and Federal Courts*, 32 McGeorge L. Rev. 1051 (2001).

2. *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). A bill to implement the recommendation is pending in the Legislature. See AB 3081 (Assem. Judic. Comm.).

3. 1986 Cal. Stat. ch. 1334.

4. The Commission also proposes to make a few grammatical corrections and stylistic changes, delete obsolete language in Code of Civil Procedure Section 1991.2, make explicit that letters rogatory or a letter of request are to be obtained when necessary under Code of Civil Procedure Section 1283, and correct the following additional errors in the statutes under consideration, unrelated to civil discovery:

(1) Health and Safety Code Section 1424.1(c) cross-refers to Welfare and Institutions Code Section 9701. The cross-referenced definitions are still located in Welfare and Institutions Code Section 9701, but not in the subdivisions specified in Health and Safety Code Section 1424.1. The proposed amendment to Health and Safety Code Section 1424.1 would delete the subdivision references, making it easier to keep the cross-references up-to-date in the future.

(2) Insurance Code Section 11580.2(c)(5) cross-refers to subdivisions (a), (b), and (c) of Vehicle Code Section 16054. The subdivision references are no longer correct; the pertinent material is now located in subdivisions (a)(1)-(a)(3) of Vehicle Code Section 16054. The proposed amendment to Insurance Code Section 11580.2(c)(5) would delete the subdivision references and simply refer to Vehicle Code Section 16054. This would make it easier to keep the cross-reference up-to-date in the future.

One possible issue regarding the proposed amendment to Insurance Code Section 11580.2(c)(5) is that it would expand the scope of the cross-reference to include Vehicle Code Section 16054(a)(4)

1 spare courts, attorneys, and litigants from unnecessarily expending resources
2 investigating and debating the meaning of the cross-references.⁵

3 The proposed legislation is based on existing law. If the pending reorganization
4 of the civil discovery provisions is enacted, the Commission will adjust each
5 proposed amendment accordingly.⁶

6 A Comment accompanies each proposed amendment. The Comments include
7 citations to sources showing:

8 (1) The content of the cross-referenced provision at the time when the cross-
9 reference was inserted.

10 (2) Where that material has been relocated.⁷

11 The Commission's work on civil discovery is continuing, and the Commission
12 may propose further reforms in the future. The Commission encourages interested
13 persons to comment on the following proposals and offer suggestions on other
14 areas or ideas to investigate.

(proof of financial responsibility by an owner or driver who is involved in an accident while operating a vehicle of less than four wheels). The Commission solicits comment on whether this proposed expansion of the cross-reference is appropriate.

5. For an example of problems created by the obsolete cross-references, see *Miranda v. 21st Century Ins. Co.*, __ Cal. App. 4th __, 2004 WL 772084 (April 13, 2004) (obsolete cross-references in Ins. Code § 11580.2(f)).

6. Most of the proposed amendments are straightforward. The proposed amendment of Business and Professions Code Section 25009 would simplify the statute by referring to the Civil Discovery Act generally, rather than to several specific discovery provisions. This nonsubstantive change would make it easier to keep the statute up-to-date in the future.

The legislative history of the provisions referenced in Code of Civil Procedure Section 1283 (former Code Civ. Proc. §§ 2024-2028) is complicated. It is clear from the context, however, that the proper modern references are Code of Civil Procedure Sections 2026 and 2027, which pertain to the procedures for obtaining a commission for taking an out-of-state deposition.

The amendment of Insurance Code Section 11580.2(f)(5) would reflect that the cross-referenced provision now refers to "a party to the action," rather than "a party to the record of any civil action or proceedings."

7. For further detail on the proposed amendments, see Commission Staff Memorandum 2004-13 and Commission Staff Memorandum 2004-16, which are available on the Commission's website (www.clrc.ca.gov).

PROPOSED LEGISLATION

1 **Bus. & Prof. Code § 25009 (amended). Evidence**

2 SECTION 1. Section 25009 of the Business and Professions Code is amended to
3 read:

4 25009. Any defendant in any action brought under this chapter or any person
5 who may be a witness therein under ~~Sections 2016, 2018, and 2019~~ Article 3
6 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of
7 Civil Procedure or Section 776 of the Evidence Code, and the books and records
8 of ~~any such~~ the defendant or witness, may be brought into court and the books and
9 records may be introduced by reference into evidence, but no information so
10 obtained may be used against the defendant or ~~any such~~ the witness as a basis for a
11 misdemeanor prosecution under this chapter.

12 **Comment.** Section 25009 is amended to reflect revision and relocation of the civil discovery
13 provisions referenced in it (former Code Civ. Proc. §§ 2016, 2018, and 2019), which were
14 repealed in 1986 and their substance relocated with revisions to Code of Civil Procedure Sections
15 2017, 2018, 2021, and 2025-2028. 1986 Cal. Stat. ch. 1334, §§ 1, 2; see also 1961 Cal. Stat. ch.
16 192, § 1 (former Code Civ. Proc. § 2018); 1963 Cal. Stat. ch. 519, § 1 (former Code Civ. Proc. §
17 2019); 1965 Cal. Stat. ch. 299, § 125 (former Code Civ. Proc. § 2016); 1965 Cal. Stat. ch. 299, §
18 5 (earlier version of Section 25009). For purposes of simplification and to make it easier to keep
19 the cross-references up-to-date in the future, Section 25009 is amended to refer to the Civil
20 Discovery Act generally, rather than to a list of discovery provisions pertaining to depositions.
21 This is not a substantive change.

22 Section 25009 is also amended to make stylistic revisions.

23  **Note.** Assembly Bill 3081 (Assem. Judic. Comm.) would implement the Law Revision
24 Commission's recommendation on nonsubstantive reorganization of the Civil Discovery Act.
25 *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that
26 bill is enacted, the Commission will adjust the proposed amendment to Business and Professions
27 Code Section 25009 accordingly.

28 **Code Civ. Proc. § 1283 (amended). Deposition for use as evidence**

29 SEC. 2. Section 1283 of the Code of Civil Procedure is amended to read:

30 1283. On application of a party to the arbitration the neutral arbitrator may order
31 the deposition of a witness to be taken for use as evidence and not for discovery if
32 the witness cannot be compelled to attend the hearing or if such exceptional
33 circumstances exist as to make it desirable, in the interest of justice and with due
34 regard to the importance of presenting the testimony of witnesses orally at the
35 hearing, to allow the deposition to be taken. The deposition shall be taken in the
36 manner prescribed by law for the taking of depositions in civil actions. If the
37 neutral arbitrator orders the taking of the deposition of a witness who resides
38 outside the state, the party who applied for the taking of the deposition shall obtain
39 a commission, letters rogatory, or a letter of request therefor from the superior
40 court in accordance with Sections ~~2024 to 2028, inclusive, of this code~~ 2026 and
41 2027.

1 **Comment.** Section 1283 is amended to reflect revision and relocation of the civil discovery
2 provisions referenced in it. As enacted in 1970, the section referred to Sections 2024-2028. 1970
3 Cal. Stat. ch. 1045, § 1. That cross-reference is obsolete. See 1986 Cal. Stat. ch. 1334, § 1
4 (repealing former Sections 2024-2025); 1961 Cal. Stat. ch. 192, §§ 8-10 (repealing former
5 Sections 2026-2028). The modern provisions governing an out-of-state deposition are Sections
6 2026 and 2027.

7 Section 1283 is also amended to make clear that letters rogatory or a letter of request are to be
8 obtained, when necessary, for a deposition taken in arbitration.

9 Section 1283 is further amended to delete surplusage and make a stylistic revision.

10 ☞ **Note.** Assembly Bill 3081 (Assem. Judic. Comm.) would implement the Law Revision
11 Commission's recommendation on nonsubstantive reorganization of the Civil Discovery Act.
12 *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that
13 bill is enacted, the Commission will adjust the proposed amendment to Code of Civil Procedure
14 Section 1283 accordingly.

15 **Code Civ. Proc. § 1991.2 (amended). Application of Section 1991**

16 SEC. 3. Section 1991.2 of the Code of Civil Procedure is amended to read:

17 1991.2. ~~On and after the ninety-first day after adjournment of the 1959 Regular~~
18 ~~Session, the~~ The provisions of Section 1991 shall do not apply to any act or
19 omission thereafter occurring in a deposition taken pursuant to Article 3, Chapter
20 3, Title 3, Part 4 ~~(commencing at Section 2016)~~ but the (commencing with Section
21 2016) of Chapter 3. The provisions of Section 2034 shall be 2023 are exclusively
22 applicable.

23 **Comment.** Section 1991.2 is amended to delete obsolete language, correct the cross-reference
24 to former Section 2034, and conform to modern drafting conventions. For the text of former
25 Section 2034, see 1959 Cal. Stat. ch. 1590, § 12. Former Section 2034 was repealed in 1986 and
26 its substance relocated with revisions to Section 2023. 1986 Cal. Stat. ch. 1334, §§ 1, 2.

27 ☞ **Note.** Assembly Bill 3081 (Assem. Judic. Comm.) would implement the Law Revision
28 Commission's recommendation on nonsubstantive reorganization of the Civil Discovery Act.
29 *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that
30 bill is enacted, the Commission will adjust the proposed amendment to Code of Civil Procedure
31 Section 1991.2 accordingly.

32 **Educ. Code § 44944 (amended). Conduct of hearing**

33 SEC. 4. Section 44944 of the Education Code is amended to read:

34 44944. (a) In a dismissal or suspension proceeding initiated pursuant to Section
35 44934, if a hearing is requested by the employee, the hearing shall be commenced
36 within 60 days from the date of the employee's demand for a hearing. The hearing
37 shall be initiated, conducted, and a decision made in accordance with Chapter 5
38 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
39 Government Code. However, the hearing date shall be established after
40 consultation with the employee and the governing board, or their representatives,
41 and the Commission on Professional Competence shall have all the power granted
42 to an agency in that chapter, except that the right of discovery of the parties shall
43 not be limited to those matters set forth in Section 11507.6 of the Government
44 Code but shall include the rights and duties of any party in a civil action brought in

1 a superior court under Article 3 (commencing with Section 2016) of Chapter 3 of
2 ~~Title 4~~ Title 3 of Part 4 of the Code of Civil Procedure. Notwithstanding any
3 provision to the contrary, and except for the taking of oral depositions, no
4 discovery shall occur later than 30 calendar days after the employee is served with
5 a copy of the accusation pursuant to Section 11505 of the Government Code. In all
6 cases, discovery shall be completed prior to seven calendar days before the date
7 upon which the hearing commences. If any continuance is granted pursuant to
8 Section 11524 of the Government Code, the time limitation for commencement of
9 the hearing as provided in this subdivision shall be extended for a period of time
10 equal to such the continuance. However, the extension shall not include that period
11 of time attributable to an unlawful refusal by either party to allow the discovery
12 provided for in this section.

13 If the right of discovery granted under the preceding paragraph is denied by
14 either the employee or the governing board, all the remedies in ~~Section 2034~~
15 Section 2023 of the Code of Civil Procedure shall be available to the party seeking
16 discovery and the court of proper jurisdiction, to entertain his or her motion, shall
17 be the superior court of the county in which the hearing will be held.

18 The time periods in this section and of Chapter 5 (commencing with Section
19 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Article 3
20 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of
21 Civil Procedure shall not be applied so as to deny discovery in a hearing conducted
22 pursuant to this section.

23 The superior court of the county in which the hearing will be held may, upon
24 motion of the party seeking discovery, suspend the hearing so as to comply with
25 the requirement of the preceding paragraph.

26 No witness shall be permitted to testify at the hearing except upon oath or
27 affirmation. No testimony shall be given or evidence introduced relating to matters
28 which occurred more than four years prior to the date of the filing of the notice.
29 Evidence of records regularly kept by the governing board concerning the
30 employee may be introduced, but no decision relating to the dismissal or
31 suspension of any employee shall be made based on charges or evidence of any
32 nature relating to matters occurring more than four years prior to the filing of the
33 notice.

34 (b) The hearing provided for in this section shall be conducted by a Commission
35 on Professional Competence. One member of the commission shall be selected by
36 the employee, one member shall be selected by the governing board, and one
37 member shall be an administrative law judge of the Office of Administrative
38 Hearings who shall be chairperson and a voting member of the commission and
39 shall be responsible for assuring that the legal rights of the parties are protected at
40 the hearing. If either the governing board or the employee for any reason fails to
41 select a commission member at least seven calendar days prior to the date of the
42 hearing, the failure shall constitute a waiver of the right to selection, and the
43 county board of education or its specific designee shall immediately make the

1 selection. When the county board of education is also the governing board of the
2 school district or has by statute been granted the powers of a governing board, the
3 selection shall be made by the Superintendent of Public Instruction, who shall be
4 reimbursed by the school district for all costs incident to the selection.

5 The member selected by the governing board and the member selected by the
6 employee shall not be related to the employee and shall not be employees of the
7 district initiating the dismissal or suspension and shall hold a currently valid
8 credential and have at least five years' experience within the past 10 years in the
9 discipline of the employee.

10 (c) The decision of the Commission on Professional Competence shall be made
11 by a majority vote, and the commission shall prepare a written decision containing
12 findings of fact, determinations of issues, and a disposition which shall be, solely:

13 (1) That the employee should be dismissed.

14 (2) That the employee should be suspended for a specific period of time without
15 pay.

16 (3) That the employee should not be dismissed or suspended.

17 The decision of the Commission on Professional Competence that the employee
18 should not be dismissed or suspended shall not be based on nonsubstantive
19 procedural errors committed by the school district or governing board unless the
20 errors are prejudicial errors.

21 The commission shall not have the power to dispose of the charge of dismissal
22 by imposing probation or other alternative sanctions. The imposition of suspension
23 pursuant to paragraph (2) shall be available only in a suspension proceeding
24 authorized pursuant to subdivision (b) of Section 44932 or Section 44933.

25 The decision of the Commission on Professional Competence shall be deemed to
26 be the final decision of the governing board.

27 The board may adopt from time to time such rules and procedures not
28 inconsistent with provisions of this section as may be necessary to effectuate this
29 section.

30 The governing board and the employee shall have the right to be represented by
31 counsel.

32 (d) (1) If the member selected by the governing board or the member selected by
33 the employee is employed by any school district in this state the member shall,
34 during any service on a Commission on Professional Competence, continue to
35 receive salary, fringe benefits, accumulated sick leave, and other leaves and
36 benefits from the district in which the member is employed, but shall receive no
37 additional compensation or honorariums for service on the commission.

38 (2) If service on a Commission on Professional Competence occurs during
39 summer recess or vacation periods, the member shall receive compensation
40 proportionate to that received during the current or immediately preceding contract
41 period from the member's employing district, whichever amount is greater.

42 (e) If the Commission on Professional Competence determines that the employee
43 should be dismissed or suspended, the governing board and the employee shall

1 share equally the expenses of the hearing, including the cost of the administrative
2 law judge. The state shall pay any costs incurred under paragraph (2) of
3 subdivision (d), the reasonable expenses, as determined by the administrative law
4 judge, of the member selected by the governing board and the member selected by
5 the employee, including, but not limited to, payments or obligations incurred for
6 travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for
7 the member selected by the governing board and the member selected by the
8 employee. The Controller shall pay all claims submitted pursuant to this paragraph
9 from the General Fund, and may prescribe reasonable rules, regulations, and forms
10 for the submission of the claims. The employee and the governing board shall pay
11 their own attorney fees.

12 If the Commission on Professional Competence determines that the employee
13 should not be dismissed or suspended, the governing board shall pay the expenses
14 of the hearing, including the cost of the administrative law judge, any costs
15 incurred under paragraph (2) of subdivision (d), the reasonable expenses, as
16 determined by the administrative law judge, of the member selected by the
17 governing board and the member selected by the employee, including, but not
18 limited to, payments or obligations incurred for travel, meals, and lodging, the cost
19 of the substitute or substitutes, if any, for the member selected by the governing
20 board and the member selected by the employee, and reasonable attorney fees
21 incurred by the employee.

22 As used in this section, “reasonable expenses” shall not be deemed
23 “compensation” within the meaning of subdivision (d).

24 If either the governing board or the employee petitions a court of competent
25 jurisdiction for review of the decision of the commission, the payment of expenses
26 to members of the commission required by this subdivision shall not be stayed.

27 In the event that the decision of the commission is finally reversed or vacated by
28 a court of competent jurisdiction, then either the state, having paid the commission
29 members’ expenses, shall be entitled to reimbursement from the governing board
30 for those expenses, or the governing board, having paid the expenses, shall be
31 entitled to reimbursement from the state.

32 Additionally, either the employee, having paid a portion of the expenses of the
33 hearing, including the cost of the administrative law judge, shall be entitled to
34 reimbursement from the governing board for the expenses, or the governing board,
35 having paid its portion and the employee’s portion of the expenses of the hearing,
36 including the cost of the administrative law judge, shall be entitled to
37 reimbursement from the employee for that portion of the expenses.

38 (f) The hearing provided for in this section shall be conducted in a place selected
39 by agreement among the members of the commission. In the absence of
40 agreement, the place shall be selected by the administrative law judge.

41 **Comment.** Subdivision (a) of Section 44944 is amended to properly reflect the location of the
42 Civil Discovery Act.

1 Subdivision (a) is also amended to reflect the revision and relocation of former Code of Civil
2 Procedure Section 2034, which pertained to a sanctions for discovery misuse. Former Code of
3 Civil Procedure Section 2034 was repealed in 1986 and its substance relocated with revisions to
4 Code of Civil Procedure Section 2023. 1986 Cal. Stat. ch. 1334, §§ 1, 2; see also 1974 Cal. Stat.
5 ch. 732, § 4 (former Code Civ. Proc. § 2034); 1976 Cal. Stat. ch. 1010, § 2 (earlier version of
6 Section 44944). Section 44944(a) was not revised at that time to reflect the repeal of former Code
7 of Civil Procedure Section 2034 and the relocation. It is now amended to reflect that change.

8 Section 44944 is also amended to make stylistic revisions in subdivisions (a) and (c)(3) and a
9 grammatical correction in the first paragraph of subdivision (e).

10 ☞ **Note.** Assembly Bill 3081 (Assem. Judic. Comm.) would implement the Law Revision
11 Commission's recommendation on nonsubstantive reorganization of the Civil Discovery Act.
12 *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that
13 bill is enacted, the Commission will adjust the proposed amendment to Education Code Section
14 44944 accordingly.

15 **Gov. Code § 12963.3 (amended). Depositions**

16 SEC. 5. Section 12963.3 of the Government Code is amended to read:

17 12963.3. (a) Depositions taken by the department shall be noticed by issuance
18 and service of a subpoena pursuant to Section 12963.1. If, in the course of the
19 investigation of a complaint, a subpoena is issued and served on an individual or
20 organization not alleged in the complaint to have committed an unlawful practice,
21 written notice of the deposition shall also be mailed by the department to each
22 individual or organization alleged in the complaint to have committed an unlawful
23 practice.

24 (b) A deposition may be taken before any officer of the department who has
25 been authorized by the director to administer oaths and take testimony, or before
26 any other person before whom a deposition may be taken in a civil action pursuant
27 to ~~subdivision (a) of Section 2018~~ subdivision (c) of Section 2026 of the Code of
28 Civil Procedure. The person before whom the deposition is to be taken shall put
29 the witness on oath and shall personally, or by someone acting under the person's
30 direction and in the person's presence, record the testimony of the witness. The
31 testimony shall be taken stenographically and transcribed unless the parties agree
32 otherwise. All objections made at the time of the examination shall be noted on the
33 deposition by the person before whom the deposition is taken, and evidence
34 objected to shall be taken subject to the objections.

35 **Comment.** Subdivision (b) of Section 12963.3 is amended to reflect revision and relocation of
36 the civil discovery provision referenced in it (former Code Civ. Proc. § 2018(a)), which set forth
37 guidelines for who was permitted to take a valid deposition outside the state. See 1961 Cal. Stat.
38 ch. 192, § 1 (former Code Civ. Proc. § 2018); see also 1980 Cal. Stat. ch. 1023, § 5 (earlier
39 version of Section 12963.3). Former Code of Civil Procedure Section 2018(a) was repealed in
40 1986 and its substance relocated with revisions to Code of Civil Procedure 2026(c). 1986 Cal.
41 Stat. ch. 1334, §§ 1, 2. Section 12963.3.1(b) was not revised at that time to reflect the repeal of
42 former Code of Civil Procedure Section 2018(a) and the relocation. It is now amended to reflect
43 that change.

44 ☞ **Note.** Assembly Bill 3081 (Assem. Judic. Comm.) would implement the Law Revision
45 Commission's recommendation on nonsubstantive reorganization of the Civil Discovery Act.
46 *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that

1 bill is enacted, the Commission will adjust the proposed amendment to Government Code Section
2 12963.3 accordingly.

3 **Gov. Code § 68097.6 (amended). Subpoenas for depositions of certain employees**

4 SEC. 6. Section 68097.6 of the Government Code is amended to read:

5 68097.6. Sections 68097.1, 68097.2, 68097.3, 68097.4, and 68097.5 ~~of this code~~
6 ~~shall be applicable~~ apply to subpoenas issued for the taking of depositions of
7 employees of the Department of Justice who are peace officers or analysts in
8 technical fields, peace officers of the Department of the California Highway
9 Patrol, peace officer members of the State Fire Marshal's office, sheriffs, deputy
10 sheriffs, marshals, deputy marshals, firefighters, or city police officers pursuant to
11 Section 2019 2025 of the Code of Civil Procedure.

12 **Comment.** Section 68097.6 is amended to reflect revision and relocation of the civil discovery
13 provision referenced in it (former Code Civ. Proc. § 2019), which set forth guidelines for taking
14 an oral deposition in the state. Former Code of Civil Procedure Section 2019 was repealed in
15 1986 and its substance relocated with revisions to Code of Civil Procedure Section 2025. 1986
16 Cal. Stat. ch. 1334, §§ 1, 2; see also 1963 Cal. Stat. ch. 519, § 1 (former Code Civ. Proc. § 2019);
17 1963 Cal. Stat. ch. 1485, § 5 (earlier version of Section 68097.6). Section 68097.6 was not
18 revised at that time to reflect the repeal of former Code of Civil Procedure Section 2019 and the
19 relocation. It is now amended to reflect that change.

20 Section 68097.6 is also amended to delete surplusage.

21 ☞ **Note.** Assembly Bill 3081 (Assem. Judic. Comm.) would implement the Law Revision
22 Commission's recommendation on nonsubstantive reorganization of the Civil Discovery Act.
23 *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that
24 bill is enacted, the Commission will adjust the proposed amendment to Government Code Section
25 68097.6 accordingly.

26 **Health & Safety Code § 1424.1 (amended). Quality assurance log**

27 SEC. 7. Section 1424.1 of the Health and Safety Code is amended to read:

28 1424.1. (a) On and after the effective date of this section, no citation shall be
29 issued or sustained under this chapter for a violation of any regulation discovered
30 and recorded by a facility if all of the following conditions have been met:

31 (1) The facility maintains an ongoing quality assurance and patient care audit
32 program, which includes maintenance of a quality assurance log which is made
33 available to the state department at the commencement of each inspection and
34 investigation. The facility shall retain this log for the current year and the
35 preceding three years.

36 (2) The violation was not willful and resulted in no actual harm to any patient or
37 guest.

38 (3) The violation was first discovered by the licensee and was promptly and
39 accurately recorded in the quality assurance log prior to discovery by the state
40 department.

41 (4) Promptly upon discovery, the facility implemented remedial action
42 satisfactory to the state department to correct the violation and prevent a
43 recurrence. If the state department determines that remedial action voluntarily

1 undertaken by the facility is unsatisfactory, the state department shall allow the
2 facility reasonable time to augment the remedial action before the condition shall
3 be deemed to be a violation.

4 (b) Except as otherwise provided in this section, a quality assurance log which
5 meets the criteria of this section shall not be discoverable or admissible in any
6 action against the licensee. The quality assurance log shall be discoverable
7 pursuant to a motion to produce under Section 2031 of the Code of Civil
8 Procedure and admissible only for purposes of impeachment. However, the court,
9 in a motion pursuant to ~~paragraph (1) of subdivision (b) of Section 2019~~
10 subdivision (i) of Section 2025 of the Code of Civil Procedure, or at trial or other
11 proceeding, may limit access to those entries which would be admissible for
12 impeachment purposes.

13 (c) The quality assurance log shall be made available upon request to any of the
14 following:

15 (1) Full-time state employees of the Office of the State Long-Term Care
16 Ombudsman.

17 (2) Ombudsman coordinators, as defined in ~~subdivision (h) of~~ Section 9701 of
18 the Welfare and Institutions Code.

19 (3) Ombudsmen qualified by medical training as defined in ~~subdivision (g) of~~
20 Section 9701 of the Welfare and Institutions Code, with the approval of either the
21 State Long-Term Care Ombudsman or ombudsman coordinator.

22 The licensee may make the quality assurance log available, in the licensee's
23 discretion, to any representative of the Office of the State Long-Term Care
24 Ombudsman, as defined in ~~subdivision (e) of~~ Section 9701 of the Welfare and
25 Institutions Code, without liability for the disclosure. Each representative of the
26 Office of the State Long-Term Care Ombudsman who has been provided access to
27 a facility's quality assurance log pursuant to this section shall maintain all
28 disclosures in confidence.

29 **Comment.** Subdivision (b) of Section 1424.1 is amended to reflect revision and relocation of
30 the civil discovery provision referenced in it (former Code Civ. Proc. § 2019(b)(1)), which
31 pertained to a motion for a protective order with respect to a deposition. Former Code of Civil
32 Procedure Section 2019(b)(1) was repealed in 1986 and its substance relocated with revisions to
33 Code of Civil Procedure 2025(i). 1986 Cal. Stat. ch. 1334, §§ 1, 2; see also 1982 Cal. Stat. ch.
34 192, § 1 (former Code Civ. Proc. § 2019); 1985 Cal. Stat. ch. 11, § 10 (earlier version of Section
35 1424.1). Section 1424.1(b) was not revised at that time to reflect the repeal of former Code of
36 Civil Procedure Section 2019(b)(1) and the relocation. It is now amended to reflect that change.

37 Subdivision (c) is amended to correct the cross-references to definitions in Welfare and
38 Institutions Code Section 9701.

39 ☞ **Note.** Assembly Bill 3081 (Assem. Judic. Comm.) would implement the Law Revision
40 Commission's recommendation on nonsubstantive reorganization of the Civil Discovery Act.
41 *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that
42 bill is enacted, the Commission will adjust the proposed amendment to Health and Safety Code
43 Section 1424.1 accordingly.

1 **Ins. Code § 11580.2 (amended). Uninsured and underinsured motorist coverage**

2 SEC. 8. Section 11580.2 of the Insurance Code is amended to read:

3 11580.2. (a)(1) No policy of bodily injury liability insurance covering liability
4 arising out of the ownership, maintenance, or use of any motor vehicle, except for
5 policies that provide insurance in the Republic of Mexico issued or delivered in
6 this state by nonadmitted Mexican insurers, shall be issued or delivered in this
7 state to the owner or operator of a motor vehicle, or shall be issued or delivered by
8 any insurer licensed in this state upon any motor vehicle then principally used or
9 principally garaged in this state, unless the policy contains, or has added to it by
10 endorsement, a provision with coverage limits at least equal to the limits specified
11 in subdivision (m) and in no case less than the financial responsibility
12 requirements specified in Section 16056 of the Vehicle Code insuring the insured,
13 the insured's heirs or legal representative for all sums within the limits that he,
14 she, or they, as the case may be, shall be legally entitled to recover as damages for
15 bodily injury or wrongful death from the owner or operator of an uninsured motor
16 vehicle. The insurer and any named insured, prior to or subsequent to the issuance
17 or renewal of a policy, may, by agreement in writing, in the form specified in
18 paragraph (2) or paragraph (3), (1) delete the provision covering damage caused
19 by an uninsured motor vehicle completely, or (2) delete the coverage when a
20 motor vehicle is operated by a natural person or persons designated by name, or
21 (3) agree to provide the coverage in an amount less than that required by
22 subdivision (m) but not less than the financial responsibility requirements
23 specified in Section 16056 of the Vehicle Code. Any of these agreements by any
24 named insured or agreement for the amount of coverage shall be binding upon
25 every insured to whom the policy or endorsement provisions apply while the
26 policy is in force, and shall continue to be so binding with respect to any
27 continuation or renewal of the policy or with respect to any other policy that
28 extends, changes, supersedes, or replaces the policy issued to the named insured
29 by the same insurer, or with respect to reinstatement of the policy within 30 days
30 of any lapse thereof. A policy shall be excluded from the application of this
31 section if the automobile liability coverage is provided only on an excess or
32 umbrella basis. Nothing in this section shall require that uninsured motorist
33 coverage be offered or provided in any homeowner policy, personal and residents'
34 liability policy, comprehensive personal liability policy, manufacturers' and
35 contractors' policy, premises liability policy, special multiperil policy, or any other
36 policy or endorsement where automobile liability coverage is offered as incidental
37 to some other basic coverage, notwithstanding that the policy may provide
38 automobile or motor vehicle liability coverage on insured premises or the ways
39 immediately adjoining.

40 (2) The agreement specified in paragraph (1) to delete the provision covering
41 damage caused by an uninsured motor vehicle completely or delete the coverage
42 when a motor vehicle is operated by a natural person or persons designated by
43 name shall be in the following form:

1 “The California Insurance Code requires an insurer to provide uninsured
2 motorists coverage in each bodily injury liability insurance policy it issues
3 covering liability arising out of the ownership, maintenance, or use of a motor
4 vehicle. Those provisions also permit the insurer and the applicant to delete the
5 coverage completely or to delete the coverage when a motor vehicle is operated by
6 a natural person or persons designated by name. Uninsured motorists coverage
7 insures the insured, his or her heirs, or legal representatives for all sums within the
8 limits established by law, that the person or persons are legally entitled to recover
9 as damages for bodily injury, including any resulting sickness, disease, or death, to
10 the insured from the owner or operator of an uninsured motor vehicle not owned or
11 operated by the insured or a resident of the same household. An uninsured motor
12 vehicle includes an underinsured motor vehicle as defined in subdivision (p) of
13 Section 11580.2 of the Insurance Code.”

14 The agreement may contain additional statements not in derogation of or in
15 conflict with the foregoing. The execution of the agreement shall relieve the
16 insurer of liability under this section while the agreement remains in effect.

17 (3) The agreement specified in paragraph (1) to provide coverage in an amount
18 less than that required by subdivision (m) shall be in the following form:

19 “The California Insurance Code requires an insurer to provide uninsured
20 motorists coverage in each bodily injury liability insurance policy it issues
21 covering liability arising out of the ownership, maintenance, or use of a motor
22 vehicle. Those provisions also permit the insurer and the applicant to agree to
23 provide the coverage in an amount less than that required by subdivision (m) of
24 Section 11580.2 of the Insurance Code but not less than the financial responsibility
25 requirements. Uninsured motorists coverage insures the insured, his or her heirs,
26 or legal representatives for all sums within the limits established by law, that the
27 person or persons are legally entitled to recover as damages for bodily injury,
28 including any resulting sickness, disease, or death, to the insured from the owner
29 or operator of an uninsured motor vehicle not owned or operated by the insured or
30 a resident of the same household. An uninsured motor vehicle includes an
31 underinsured motor vehicle as defined in subdivision (p) of Section 11580.2 of the
32 Insurance Code.”

33 The agreement may contain additional statements not in derogation of or in
34 conflict with this paragraph. However, it shall be presumed that an application for
35 a policy of bodily injury liability insurance containing uninsured motorist
36 coverage in an amount less than that required by subdivision (m), signed by the
37 named insured and approved by the insurer, with a policy effective date after
38 January 1, 1985, shall be a valid agreement as to the amount of uninsured motorist
39 coverage to be provided.

40 (b) As used in subdivision (a), “bodily injury” includes sickness or disease,
41 including death, resulting therefrom; “named insured” means only the individual
42 or organization named in the declarations of the policy of motor vehicle bodily
43 injury liability insurance referred to in subdivision (a); as used in subdivision (a) if

1 the named insured is an individual “insured” means the named insured and the
2 spouse of the named insured and, while residents of the same household, relatives
3 of either while occupants of a motor vehicle or otherwise, heirs and any other
4 person while in or upon or entering into or alighting from an insured motor vehicle
5 and any person with respect to damages he or she is entitled to recover for care or
6 loss of services because of bodily injury to which the policy provisions or
7 endorsement apply; as used in subdivision (a), if the named insured is an entity
8 other than an individual, “insured” means any person while in or upon or entering
9 into or alighting from an insured motor vehicle and any person with respect to
10 damages he or she is entitled to recover for care or loss of services because of
11 bodily injury to which the policy provisions or endorsement apply. As used in this
12 subdivision, “individual” shall not include persons doing business as corporations,
13 partnerships, or associations. As used in this subdivision, “insured motor vehicle”
14 means the motor vehicle described in the underlying insurance policy of which the
15 uninsured motorist endorsement or coverage is a part, a temporary substitute
16 automobile for which liability coverage is provided in the policy or a newly
17 acquired automobile for which liability coverage is provided in the policy if the
18 motor vehicle is used by the named insured or with his or her permission or
19 consent, express or implied, and any other automobile not owned by or furnished
20 for the regular use of the named insured or any resident of the same household, or
21 by a natural person or persons for whom coverage has been deleted in accordance
22 with subdivision (a) while being operated by the named insured or his or her
23 spouse if a resident of the same household, but “insured motor vehicle” shall not
24 include any automobile while used as a public or livery conveyance. As used in
25 this section, “uninsured motor vehicle” means a motor vehicle with respect to the
26 ownership, maintenance or use of which there is no bodily injury liability
27 insurance or bond applicable at the time of the accident, or there is the applicable
28 insurance or bond but the company writing the insurance or bond denies coverage
29 thereunder or refuses to admit coverage thereunder except conditionally or with
30 reservation, or an “underinsured motor vehicle” as defined in subdivision (p), or a
31 motor vehicle used without the permission of the owner thereof if there is no
32 bodily injury liability insurance or bond applicable at the time of the accident with
33 respect to the owner or operator thereof, or the owner or operator thereof be
34 unknown, provided that, with respect to an “uninsured motor vehicle” whose
35 owner or operator is unknown:

36 (1) The bodily injury has arisen out of physical contact of the automobile with
37 the insured or with an automobile that the insured is occupying.

38 (2) The insured or someone on his or her behalf has reported the accident within
39 24 hours to the police department of the city where the accident occurred or, if the
40 accident occurred in unincorporated territory then either to the sheriff of the
41 county where the accident occurred or to the local headquarters of the California
42 Highway Patrol, and has filed with the insurer within 30 days thereafter a
43 statement under oath that the insured or his or her legal representative has or the

1 insured's heirs have a cause of action arising out of the accident for damages
2 against a person or persons whose identity is unascertainable and set forth facts in
3 support thereof. As used in this section, "uninsured motor vehicle" shall not
4 include a motor vehicle owned or operated by the named insured or any resident of
5 the same household or self-insured within the meaning of the Financial
6 Responsibility Law of the state in which the motor vehicle is registered or that is
7 owned by the United States of America, Canada, a state or political subdivision of
8 any such government of those governments or an agency of any of the foregoing,
9 or a land motor vehicle or trailer while located for use as a residence or premises
10 and not as a vehicle, or any equipment or vehicle designed or modified for use
11 primarily off public roads, except while actually upon public roads.

12 As used in this section, "uninsured motor vehicle" also means an insured motor
13 vehicle where the liability insurer thereof is unable to make payment with respect
14 to the legal liability of its insured within the limits specified therein because of
15 insolvency. An insurer's solvency protection shall be applicable only to accidents
16 occurring during a policy period in which its insured's motor vehicle coverage is
17 in effect where the liability insurer of the tortfeasor becomes insolvent within one
18 year of the accident. In the event of payment to any person under the coverage
19 required by this section and subject to the terms and conditions of the coverage,
20 the insurer making the payment, shall to the extent thereof, be entitled to any
21 proceeds that may be recoverable from the assets of the insolvent insurer through
22 any settlement or judgment of the person against the insolvent insurer.

23 Nothing in this section is intended to exclude from the definition of an uninsured
24 motor vehicle any motorcycle or private passenger-type four-wheel drive motor
25 vehicle if that vehicle was subject to and failed to comply with the Financial
26 Responsibility Law of this state.

27 (c) The insurance coverage provided for in this section does not apply either as
28 primary or as excess coverage:

29 (1) To property damage sustained by the insured.

30 (2) To bodily injury of the insured while in or upon or while entering into or
31 alighting from a motor vehicle other than the described motor vehicle if the owner
32 thereof has insurance similar to that provided in this section.

33 (3) To bodily injury of the insured with respect to which the insured or his or her
34 representative shall, without the written consent of the insurer, make any
35 settlement with or prosecute to judgment any action against any person who may
36 be legally liable therefor.

37 (4) In any instance where it would inure directly or indirectly to the benefit of
38 any workers' compensation carrier or to any person qualified as a self-insurer
39 under any workers' compensation law, or directly to the benefit of the United
40 States, or any state or any political subdivision thereof.

41 (5) To establish proof of financial responsibility as provided in subdivisions (a),
42 (b), and (c) of Section 16054 of the Vehicle Code.

1 (6) To bodily injury of the insured while occupying a motor vehicle owned by an
2 insured or leased to an insured under a written contract for a period of six months
3 or longer, unless the occupied vehicle is an insured motor vehicle. "Motor vehicle"
4 as used in this paragraph means any self-propelled vehicle.

5 (7) To bodily injury of the insured when struck by a vehicle owned by an
6 insured, except when the injured insured's vehicle is being operated, or caused to
7 be operated, by a person without the injured insured's consent in connection with
8 criminal activity that has been documented in a police report and that the injured
9 insured is not a party to.

10 (8) To bodily injury of the insured while occupying a motor vehicle rented or
11 leased to the insured for public or livery purposes.

12 (d) Subject to paragraph (2) of subdivision (c), the policy or endorsement may
13 provide that if the insured has insurance available to the insured under more than
14 one uninsured motorist coverage provision, any damages shall not be deemed to
15 exceed the higher of the applicable limits of the respective coverages, and the
16 damages shall be prorated between the applicable coverages as the limits of each
17 coverage bear to the total of the limits.

18 (e) The policy or endorsement added thereto may provide that if the insured has
19 valid and collectible automobile medical payment insurance available to him or
20 her, the damages that the insured shall be entitled to recover from the owner or
21 operator of an uninsured motor vehicle shall be reduced for purposes of uninsured
22 motorist coverage by the amounts paid or due to be paid under the automobile
23 medical payment insurance.

24 (f) The policy or an endorsement added thereto shall provide that the
25 determination as to whether the insured shall be legally entitled to recover
26 damages, and if so entitled, the amount thereof, shall be made by agreement
27 between the insured and the insurer or, in the event of disagreement, by arbitration.
28 The arbitration shall be conducted by a single neutral arbitrator. An award or a
29 judgment confirming an award shall not be conclusive on any party in any action
30 or proceeding between (i) the insured, his or her insurer, his or her legal
31 representative, or his or her heirs and (ii) the uninsured motorist to recover
32 damages arising out of the accident upon which the award is based. If the insured
33 has or may have rights to benefits, other than nonoccupational disability benefits,
34 under any workers' compensation law, the arbitrator shall not proceed with the
35 arbitration until the insured's physical condition is stationary and ratable. In those
36 cases in which the insured claims a permanent disability, the claims shall, unless
37 good cause be shown, be adjudicated by award or settled by compromise and
38 release before the arbitration may proceed. Any demand or petition for arbitration
39 shall contain a declaration, under penalty of perjury, stating whether (i) the insured
40 has a workers' compensation claim; (ii) the claim has proceeded to findings and
41 award or settlement on all issues reasonably contemplated to be determined in that
42 claim; and (iii) if not, what reasons amounting to good cause are grounds for the
43 arbitration to proceed immediately. The arbitration shall be deemed to be a

1 proceeding and the hearing before the arbitrator shall be deemed to be the trial of
2 an issue therein for purposes of issuance of a subpoena by an attorney of a party to
3 the arbitration under Section 1985 of the Code of Civil Procedure. Article 3
4 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of
5 Civil Procedure shall be applicable to these determinations, and all rights,
6 remedies, obligations, liabilities and procedures set forth in Article 3 shall be
7 available to both the insured and the insurer at any time after the accident, both
8 before and after the commencement of arbitration, if any, with the following
9 limitations:

10 (1) Whenever in Article 3, reference is made to the court in which the action is
11 pending, or provision is made for application to the court or obtaining leave of
12 court or approval by the court, the court that shall have jurisdiction for the
13 purposes of this section shall be the superior court of the State of California, in and
14 for any county that is a proper county for the filing of a suit for bodily injury
15 arising out of the accident, against the uninsured motorist, or any county specified
16 in the policy or an endorsement added thereto as a proper county for arbitration or
17 action thereon.

18 (2) Any proper court to which application is first made by either the insured or
19 the insurer under Article 3 for any discovery or other relief or remedy, shall
20 thereafter be the only court to which either of the parties shall make any
21 applications under Article 3 with respect to the same accident, subject, however, to
22 the right of the court to grant a change of venue after a hearing upon notice, upon
23 any of the grounds upon which change of venue might be granted in an action filed
24 in the superior court.

25 (3) A deposition pursuant to Section ~~2016~~ 2025 of the Code of Civil Procedure
26 may be taken without leave of court, except that leave of court, granted with or
27 without notice and for good cause shown, must be obtained if the notice of the
28 taking of the deposition is served by either party within 20 days after the accident.

29 (4) ~~Paragraph (4) of subdivision (a) of Section 2019~~ Paragraph (1) of subdivision
30 (h) of Section 2025 of the Code of Civil Procedure is not applicable to discovery
31 under this section.

32 (5) For the purposes of discovery under this section, the insured and the insurer
33 shall each be deemed to be “a party to the ~~record of any civil action or proceedings~~
34 action,” where that phrase is used in ~~paragraph (2) of subdivision (b) of Section~~
35 2019 paragraph (3) of subdivision (e) of Section 2025 of the Code of Civil
36 Procedure.

37 (6) Interrogatories under Section 2030 of the Code of Civil Procedure and
38 requests for admission under Section 2033 of the Code of Civil Procedure may be
39 served by either the insured or the insurer upon the other at any time more than 20
40 days after the accident without leave of court.

41 (7) Nothing in this section limits the rights of any party to discovery in any
42 action pending or that may hereafter be pending in any court.

1 (g) The insurer paying a claim under an uninsured motorist endorsement or
2 coverage shall be entitled to be subrogated to the rights of the insured to whom the
3 claim was paid against any person legally liable for the injury or death to the
4 extent that payment was made. The action may be brought within three years from
5 the date that payment was made hereunder.

6 (h) An insured entitled to recovery under the uninsured motorist endorsement or
7 coverage shall be reimbursed within the conditions stated herein without being
8 required to sign any release or waiver of rights to which he or she may be entitled
9 under any other insurance coverage applicable; nor shall payment under this
10 section to the insured be delayed or made contingent upon the decisions as to
11 liability or distribution of loss costs under other bodily injury liability insurance or
12 any bond applicable to the accident. Any loss payable under the terms of the
13 uninsured motorist endorsement or coverage to or for any person may be reduced:

14 (1) By the amount paid and the present value of all amounts payable to him or
15 her, his or her executor, administrator, heirs, or legal representative under any
16 workers' compensation law, exclusive of nonoccupational disability benefits.

17 (2) By the amount the insured is entitled to recover from any other person
18 insured under the underlying liability insurance policy of which the uninsured
19 motorist endorsement or coverage is a part, including any amounts tendered to the
20 insured as advance payment on behalf of the other person by the insurer providing
21 the underlying liability insurance.

22 (i)(1) No cause of action shall accrue to the insured under any policy or
23 endorsement provision issued pursuant to this section unless one of the following
24 actions have been taken within two years from the date of the accident:

25 (A) Suit for bodily injury has been filed against the uninsured motorist, in a
26 court of competent jurisdiction.

27 (B) Agreement as to the amount due under the policy has been concluded.

28 (C) The insured has formally instituted arbitration proceedings by notifying the
29 insurer in writing sent by certified mail, return receipt requested. Notice shall be
30 sent to the insurer or to the agent for process designated by the insurer filed with
31 the department.

32 (2) Any arbitration instituted pursuant to this section shall be concluded either:

33 (A) Within five years from the institution of the arbitration proceeding.

34 (B) If the insured has a workers' compensation claim arising from the same
35 accident, within three years of the date the claim is concluded, or within the five-
36 year period set forth in subparagraph (A), whichever occurs later.

37 (3) The doctrines of estoppel, waiver, impossibility, impracticality, and futility
38 apply to excuse a party's noncompliance with the statutory timeframe, as
39 determined by the court.

40 (4) Parties to the insurance contract may stipulate in writing to extending the
41 time to conclude arbitration.

42 (j) Notwithstanding subdivisions (b) and (i), in the event the accident occurs in
43 any other state or foreign jurisdiction to which coverage is extended under the

1 policy and the insurer of the tortfeasor becomes insolvent, any action authorized
2 pursuant to this section may be maintained within three months of the insolvency
3 of the tortfeasor's insurer, but in no event later than the pertinent period of
4 limitation of the jurisdiction in which the accident occurred.

5 (k) Notwithstanding subdivision (i), any insurer whose insured has made a claim
6 under his or her uninsured motorist coverage, and the claim is pending, shall, at
7 least 30 days before the expiration of the applicable statute of limitation, notify its
8 insured in writing of the statute of limitation applicable to the injury or death.
9 Failure of the insurer to provide the written notice shall operate to toll any
10 applicable statute of limitation or other time limitation for a period of 30 days from
11 the date the written notice is actually given. The notice shall not be required if the
12 insurer has received notice that the insured is represented by an attorney.

13 (l) As used in subdivision (b), "public or livery conveyance," or terms of similar
14 import, shall not include the operation or use of a motor vehicle by the named
15 insured in the performance of volunteer services for a nonprofit charitable
16 organization or governmental agency by providing social service transportation as
17 defined in subdivision (f) of Section 11580.1. This subdivision shall apply only to
18 policies of insurance issued, amended, or renewed on or after January 1, 1976.

19 (m) Coverage provided under an uninsured motorist endorsement or coverage
20 shall be offered with coverage limits equal to the limits of liability for bodily
21 injury in the underlying policy of insurance, but shall not be required to be offered
22 with limits in excess of the following amounts:

23 (1) A limit of thirty thousand dollars (\$30,000) because of bodily injury to or
24 death of one person in any one accident.

25 (2) Subject to the limit for one person set forth in paragraph (1), a limit of sixty
26 thousand dollars (\$60,000) because of bodily injury to or death of two or more
27 persons in any one accident.

28 (n) Underinsured motorist coverage shall be offered with limits equal to the
29 limits of liability for the insured's uninsured motorist limits in the underlying
30 policy, and may be offered with limits in excess of the uninsured motorist
31 coverage. For the purposes of this section, uninsured and underinsured motorist
32 coverage shall be offered as a single coverage. However, an insurer may offer
33 coverage for damages for bodily injury or wrongful death from the owner or
34 operator of an underinsured motor vehicle at greater limits than an uninsured
35 motor vehicle.

36 (o) If an insured has failed to provide an insurer with wage loss information or
37 medical treatment record releases within 15 days of the insurer's request or has
38 failed to submit to a medical examination arranged by the insurer within 20 days
39 of the insurer's request, the insurer may, at any time prior to 30 days before the
40 actual arbitration proceedings commence, request, and the insured shall furnish,
41 wage loss information or medical treatment record releases, and the insurer may
42 require the insured, except during periods of hospitalization, to make himself or
43 herself available for a medical examination. The wage loss information or medical

1 treatment record releases shall be submitted by the insured within 10 days of
2 request and the medical examination shall be arranged by the insurer no sooner
3 than 10 days after request, unless the insured agrees to an earlier examination date,
4 and not later than 20 days after the request. If the insured fails to comply with the
5 requirements of this subdivision, the actual arbitration proceedings shall be stayed
6 for at least 30 days following compliance by the insured. The proceedings shall be
7 scheduled as soon as practicable following expiration of the 30-day period.

8 (p) This subdivision applies only when bodily injury, as defined in subdivision
9 (b), is caused by an underinsured motor vehicle. If the provisions of this
10 subdivision conflict with subdivisions (a) through (o), the provisions of this
11 subdivision shall prevail.

12 (1) As used in this subdivision, “an insured motor vehicle” is one that is insured
13 under a motor vehicle liability policy, or automobile liability insurance policy,
14 self-insured, or for which a cash deposit or bond has been posted to satisfy a
15 financial responsibility law.

16 (2) “Underinsured motor vehicle” means a motor vehicle that is an insured motor
17 vehicle but insured for an amount that is less than the uninsured motorist limits
18 carried on the motor vehicle of the injured person.

19 (3) This coverage does not apply to any bodily injury until the limits of bodily
20 injury liability policies applicable to all insured motor vehicles causing the injury
21 have been exhausted by payment of judgments or settlements, and proof of the
22 payment is submitted to the insurer providing the underinsured motorist coverage.

23 (4) When bodily injury is caused by one or more motor vehicles, whether
24 insured, underinsured, or uninsured, the maximum liability of the insurer
25 providing the underinsured motorist coverage shall not exceed the insured’s
26 underinsured motorist coverage limits, less the amount paid to the insured by or
27 for any person or organization that may be held legally liable for the injury.

28 (5) The insurer paying a claim under this subdivision shall, to the extent of the
29 payment, be entitled to reimbursement or credit in the amount received by the
30 insured from the owner or operator of the underinsured motor vehicle or the
31 insurer of the owner or operator.

32 (6) If the insured brings an action against the owner or operator of an
33 underinsured motor vehicle, he or she shall forthwith give to the insurer providing
34 the underinsured motorist coverage a copy of the complaint by personal service or
35 certified mail. All pleadings and depositions shall be made available for copying
36 or copies furnished the insurer, at the insurer’s expense, within a reasonable time.

37 (7) Underinsured motorist coverage shall be included in all policies of bodily
38 injury liability insurance providing uninsured motorist coverage issued or renewed
39 on or after July 1, 1985. Notwithstanding this section, an agreement to delete
40 uninsured motorist coverage completely, or with respect to a person or persons
41 designated by name, executed prior to July 1, 1985, shall remain in full force and
42 effect.

1 (q) Regardless of the number of vehicles involved whether insured or not,
 2 persons covered, claims made, premiums paid or the number of premiums shown
 3 on the policy, in no event shall the limit of liability for two or more motor vehicles
 4 or two or more policies be added together, combined, or stacked to determine the
 5 limit of insurance coverage available to injured persons.

6 **Comment.** Subdivision (c)(5) of Section 11580.2 is amended to correct the cross-reference to
 7 Vehicle Code Section 16054. See 1974 Cal. Stat. ch. 1409, § 8 (former Veh. Code § 16054(a),
 8 (b), (c)); 1990 Cal. Stat. ch. 314, § 5 (reorganizes Veh. Code § 16054 and adds paragraph on
 9 proof of financial responsibility by owner or driver involved in accident while operating vehicle
 10 of less than four wheels). As amended, subdivision (c)(5) encompasses proof of financial
 11 responsibility by the means formerly set forth in Vehicle Code Section 16054(a), (b), and (c),
 12 which are now codified as Vehicle Code Section 16054(a)(1)-(3). Subdivision (c)(5) also
 13 encompasses proof of financial responsibility by an owner or driver who is involved in an
 14 accident while operating a vehicle of less than four wheels, as provided in Vehicle Code Section
 15 16054(a)(4).

16 Subdivision (f) is amended to reflect revision and relocation of some of the civil discovery
 17 provisions referenced in it. For a case discussing the obsolete cross-references in subdivision (f),
 18 see *Miranda v. 21st Century Ins. Co.* __ Cal. App. 4th __, 2004 WL 772084 (April 13, 2004).

19 Specifically, subdivision (f)(3) is amended to reflect revision and relocation of former Code of
 20 Civil Procedure Section 2016, which pertained to deposition procedure. See 1961 Cal. Stat. ch.
 21 2067, § 1 (former Code Civ. Proc. § 2016); see also 1963 Cal. Stat. ch. 1750, § 1 (earlier version
 22 of Ins. Code § 11580.2 — see subd. (e)(3)). Former Code of Civil Procedure Section 2016 was
 23 repealed in 1986 and its substance relocated with revisions to Code of Civil Procedure Section
 24 2025. 1986 Cal. Stat. ch. 1334, §§ 1, 2.

25 Subdivision (f)(4) is amended to reflect revision and relocation of former Code of Civil
 26 Procedure Section 2019(a)(4), which pertained to attendance of specified persons at a deposition
 27 without service of a subpoena. See 1963 Cal. Stat. ch. 519, § 1 (former Code Civ. Proc. §
 28 2019(a)(4)); see also 1963 Cal. Stat. ch. 1750, § 1 (earlier version of Ins. Code § 11580.2 — see
 29 subd. (e)(4)). Former Code of Civil Procedure Section 2019 was repealed in 1986 and its
 30 substance relocated with revisions to Code of Civil Procedure Section 2025(h)(1). 1986 Cal. Stat.
 31 ch. 1334, §§ 1, 2.

32 Subdivision (f)(5) is amended to reflect revision and relocation of former Code of Civil
 33 Procedure Section 2019(b)(2), which pertained to the location of a deposition of “a party to the
 34 record of any civil action or proceedings.” See 1961 Cal. Stat. ch. 192, § 2 (former Code Civ.
 35 Proc. § 2019(b)(2)); see also 1963 Cal. Stat. ch. 1750, § 1 (earlier version of Ins. Code § 11580.2
 36 — see subd. (e)(5)). Former Code of Civil Procedure Section 2019(b)(2) was repealed in 1986
 37 and its substance relocated with revisions to Code of Civil Procedure Section 2025(e)(3). 1986
 38 Cal. Stat. ch. 1334, §§ 1, 2.

39 Section 11580.2 is also amended to make a stylistic revision in subdivision (b)(2).

40  **Notes.**

41 (1) Insurance Code Section 11580.2(c)(5) cross-refers to subdivisions (a), (b), and (c) of
 42 Vehicle Code Section 16054. The subdivision references are no longer correct; the pertinent
 43 material is now located in subdivisions (a)(1)-(a)(3) of Vehicle Code Section 16054. The
 44 proposed amendment in the attached draft would delete the subdivision references and simply
 45 refer to Vehicle Code Section 16054. This would make it easier to keep the cross-reference up-to-
 46 date in the future.

47 One possible issue regarding the proposed amendment to Insurance Code Section 11580.2(c)(5)
 48 is that it would expand the scope of the cross-reference to include Vehicle Code Section
 49 16054(a)(4) (proof of financial responsibility by an owner or driver who is involved in an
 50 accident while operating a vehicle of less than four wheels). The Commission solicits comment
 51 on whether this proposed expansion of the cross-reference is appropriate.

1 (2) The language that now appears in Insurance Code Section 11580.2(f)(4) was added to the
2 provision in 1963. 1963 Cal. Stat. ch. 1750, § 1 (see subd. (e)(4)). At the time, Code of Civil
3 Procedure Section 2019(a)(4) stated:

4 (4) In the case of depositions of a party to the record of any civil action or proceeding
5 or of any one who at the time of taking the deposition is an officer, director or managing
6 agent of any such party, the service of a subpoena upon any such deponent is not required
7 if proper notice of the taking of such deposition is given to the attorney for such party or
8 to the party, if he has no attorney. In the case of depositions of a person for whose
9 immediate benefit an action or proceeding is prosecuted or defended or of any one who at
10 the time of taking the deposition is an officer, director or managing agent of any such
11 person, the service of a subpoena upon any such deponent is not required if proper notice
12 of the taking of such deposition is given to the attorney of the party prosecuting or
13 defending the action or proceeding for the immediate benefit of the deponent or to such
14 party, if he has no attorney. A notice to take the deposition of a person described in this
15 subdivision (4) cannot require the attendance of such person at a place more than 150
16 miles from the residence of such person, unless the party desiring to take such deposition
17 first obtains an order pursuant to the provisions of Section 2019(b)(2) of this code.

18 Under this provision, a party to the record of any civil action or proceeding or an officer,
19 director, or managing agent of such a party could be compelled to attend a deposition without
20 service of a subpoena, so long as the deponent was given notice of the deposition. The apparent
21 purpose of the language that now appears in Insurance Code Section 11580(f)(4) was to make
22 clear that this special rule *did not* apply to a contractual arbitration mandated by Section 11580.2.

23 Former Code of Civil Procedure Section 2019(a)(4) was repealed by the Civil Discovery Act of
24 1986 and its substance relocated with revisions to Code of Civil Procedure Section 2025(h)(1).
25 1986 Cal. Stat. ch. 1334, §§ 1, 2. Code of Civil Procedure Section 2025(h)(1) now provides:

26 (1) The service of a deposition notice under subdivision (c) is effective to require any
27 deponent who is a party to the action or an officer, director, managing agent, or employee
28 of a party to attend and to testify, as well as to produce any document or tangible thing
29 for inspection and copying.

30 Thus, it appears that a technically faithful update of Insurance Code Section 11580.2(f)(4)
31 would refer to Code of Civil Procedure Section 2025(h)(1). The apparent effect of such a revision
32 would be to continue the rule that in a contractual arbitration mandated by Section 11580.2, a
33 deposition subpoena is necessary even for a deposition of the insured or the insurer.

34 The Commission is not sure, however, whether this would make sense from a substantive
35 standpoint. The reason for requiring a deposition subpoena of the insured and the insurer in this
36 context is not obvious. The Commission solicits comment on whether Insurance Code Section
37 11580.2(f)(4) should be deleted rather than updated.

38 (3) Assembly Bill 3081 (Assem. Judic. Comm.) would implement the Law Revision
39 Commission's recommendation on nonsubstantive reorganization of the Civil Discovery Act.
40 *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003). If that
41 bill is enacted, the Commission will adjust the proposed amendment to Insurance Code Section
42 11580.2 accordingly.