

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Technical and Minor Substantive Corrections: Health and Safety Code Section 131052

October 2018

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make 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 to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN November 21, 2018.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

In 2006, the California Public Health Act of 2006 (2006 Cal. Stat. ch. 241) transferred the jurisdiction of the then-existing Department of Health Services to two newly created entities, the Department of Health Care Services and the Department of Public Health.

A key provision of the act, Health and Safety Code Section 131052, assigns responsibility to the Department of Public Health for numerous programs. It identifies those programs by cross-referring to statutes that govern them.

A number of those cross-references are defective. This tentative recommendation proposes revisions to correct those defects. The Commission solicits public comment on the proposed corrections.

This tentative recommendation was prepared pursuant to Government Code Section 8298.

TECHNICAL AND MINOR SUBSTANTIVE CORRECTIONS:
HEALTH AND SAFETY CODE SECTION 131052

1

BACKGROUND

2 Health and Safety Code Section 131052 was enacted as part of the California
3 Public Health Act of 2006.¹ Among other things, the act did all of the following:

- 4 • Renamed the former Department of Health Services (hereafter, “DHS”) as
5 the Department of Health *Care* Services (hereafter, “DHCS”).²
- 6 • Created a new entity, the Department of Public Health (hereafter, “DPH”).³
- 7 • Divided the responsibilities of the former DHS between DHCS and DPH.⁴

8 Section 131052 is a key component of the transfer of DHS jurisdiction to DPH.
9 The section provides that DPH succeeds to and is vested with “all the statutory
10 duties, powers, purposes, responsibilities, and jurisdiction of the former State
11 Department of Health Services as they relate to public health as provided for or
12 referred to” in over 200 cross-referenced statutory provisions.⁵

13

PROPOSED REVISIONS

14 A number of the cross-references in Section 131052 appear to be defective. As
15 discussed below, the Commission recommends revisions to correct the apparent
16 defects.

17 Unless otherwise indicated, all statutory references below are to the Health and
18 Safety Code.

19 **Sunsetted Provisions**

20 Some of the provisions that are cross-referenced in Section 131052 have been
21 repealed by operation of “sunset” provisions (i.e., a provision that causes the
22 repeal of specified law on a specified date), and do not appear to have been
23 continued elsewhere. Those cross-referenced provisions are as follows:

- 24 • Former Section 116183 (mosquito-borne disease outbreaks), repealed
25 January 1, 2012.⁶

1. See 2006 Cal. Stat. ch. 241.
2. See Health & Safety Code § 100100 (emphasis added).
3. See 2006 Cal. Stat. ch. 241, § 1(b)(1).
4. See Health & Safety Code §§ 20, 100100.
5. Section 131052 is not the only provision that transfers functions to DPH. See, e.g., Health & Safety Code §§ 131050-131051, 131055.1-131055.2.
6. See 2010 Cal Stats. ch. 699, § 29.7; former Section 116183(d).

- 1 • Former Education Code Section 49452.6 (three-year pilot program for
2 screening middle school students for diabetes), repealed January 1, 2008.⁷
3 • Former Penal Code Section 13990 (establishing the California Alliance to
4 Combat Trafficking and Slavery Task Force), repealed January 1, 2008.⁸

5 The Commission recommends that the cross-references to those provisions be
6 deleted.

7 **Contingent Repeal**

8 Some of the provisions that are cross-referenced in Section 131052 appear to
9 have been repealed by operation of contingent repeal provisions (i.e., a provision
10 that causes the repeal of specified law when a specified condition is satisfied).
11 While the Commission could not determine definitively that the specified
12 conditions had been satisfied, other authorities treat the provisions as having been
13 repealed.⁹

14 These provisions are as follows:

- 15 • Former Revenue and Taxation Code Section 18833 (allocation of taxpayer
16 contributions to American Red Cross).¹⁰
17 • Former Revenue and Taxation Code Section 18838 (allocation of taxpayer
18 contributions to Lupus Foundation of America).¹¹
19 • Former Revenue and Taxation Code Section 18845.2 (allocation of taxpayer
20 contributions to California Prostate Cancer Research Fund).¹²
21 • Former Revenue and Taxation Code Section 18846.2 (allocation of taxpayer
22 contributions to California Sexual Violence Victim Services Fund).¹³
23 • Former Revenue and Taxation Code Section 18847.2 (allocation of taxpayer
24 contributions to California Colorectal Cancer Prevention Fund).¹⁴

7. See 2004 Cal. Stat. ch. 183, § 71; former Educ. Code § 49452.6(k).

8. See 2005 Cal. Stat. ch. 240, § 11; former Penal Code § 13990(h).

9. See California Legislative Information <<http://leginfo.legislature.ca.gov/>>; West's Annotated California Codes: Health and Safety Code (2018).

10. The contingent repeal provision applicable to this section is contained in former Rev. & Tax Code § 18833(a). See 2013 Cal. Stat. ch. 451.

11. The contingent repeal provision applicable to this section is contained in former Revenue and Taxation Code § 18840(a). See 2001 Cal. Stat. ch. 455.

12. The contingent repeal provision applicable to this section is contained in former Revenue and Taxation Code § 18845.3(a). See 2004 Cal. Stat. ch. 562.

13. The contingent repeal provision applicable to this section is contained in former Revenue and Taxation Code § 18846.3(a). See 2014 Cal. Stat. ch. 366.

14. The contingent repeal provision applicable to this section is contained in former Revenue and Taxation Code § 18847.3(a). See 2005 Cal. Stat. ch. 697.

1 Further, it appears that none of the substance of any of those provisions has been
2 continued elsewhere in the code. The Commission recommends that the cross-
3 references to those provisions be deleted.

4 **Other Repealed Provision**

5 Section 131052 cross-refers to former Chapter 11 of Division 2 of the Health
6 and Safety Code, a chapter relating to home dialysis. That chapter was repealed
7 effective January 1, 2010.¹⁵ The bill repealing the chapter explained that the home
8 dialysis program had never been implemented, and would not be implemented,
9 due to funding constraints.¹⁶ The Commission has not located any other code
10 provision that continues the substance of the repealed chapter.

11 The Commission recommends that the cross-reference to the chapter be deleted.

12 **Relocated Provision**

13 Section 131052 cross-refers to former Section 115736, a section that related
14 generally to playground safety. That section was repealed by former Section
15 115755 as of January 1, 2008.¹⁷ However, its content was expressly continued by
16 Section 115730.¹⁸

17 The Commission recommends that the cross-reference to former Section 115736
18 be revised to instead refer to Section 115730.

19 **Typographical Error**

20 The cross-reference in Section 131052 to “Section 551017.1 of the Government
21 Code” appears to be a typographical error.¹⁹ That section number does not exist
22 and is beyond the scope of numbering in the Government Code.

23 The Commission believes that Government Code Section 51017.1 was the
24 intended object of the cross-reference. Its number is very similar to “551017.1,” it
25 specifically refers to DHS, and addresses an issue of public health — petroleum
26 pipelines located near drinking water sources. The Commission did not find any
27 other Government Code provision that was likely to have been the intended object
28 of the cross-reference.

29 The Commission recommends that the cross-reference to Government Code
30 Section 551017.1 be revised to instead refer to Government Code Section 51017.1.

15. See 2009 Cal. Stat. ch. 39, § 3.

16. See 2009 Cal. Stat. ch. 39, § 1.

17. See 2006 Cal. Stat. ch. 470, § 1.

18. See Section 115730(f).

19. See Section 131052(7).

1 **Subdivision Designations**

2 Section 131052 is not divided into lettered subdivisions, as is the usual drafting
3 practice. Instead, after an introductory paragraph, it is divided into numbered
4 paragraphs. The proposed law would revise Section 131052 to follow the standard
5 practice for designating subdivisions and paragraphs.

6 **Cross-Reference Order**

7 For the most part, the cross-references in Section 131052 are listed
8 alphabetically, according to the name of the code in which the cross-referenced
9 sections appear. However, some provisions are out of alphabetical order. The
10 proposed law would revise Section 131052 to put all of the cross-references in
11 alphabetical order, by code name.

12 **SUBSEQUENT AMENDMENT OF REFERENCED PROVISIONS**

13 As discussed above, the purpose of Section 131052 is to identify, by cross-
14 reference, programs that have been assigned to DPH. However, after enactment of
15 Section 131052, several of the referenced provisions were revised to instead refer
16 to DHCS (or its director).

17 It is not clear whether these subsequent revisions were technical errors or were
18 intended to supersede the effect of Section 130152 (by reassigning program
19 responsibility to DHCS).

20 A Note following the proposed legislation lists those provisions and requests
21 input on how they should be understood.

22 **REQUEST FOR COMMENT**

23 **The Commission seeks public comment on all of the proposed statutory**
24 **changes included in this tentative recommendation.**

25 Input from knowledgeable persons is critical in the Commission's study process,
26 and may cause the Commission to substantially revise its proposal. Comments
27 supporting the proposed approach are just as important as comments suggesting
28 changes to that approach or expressing other views.

PROPOSED LEGISLATION

1 **Health & Safety Code § 131052 (amended). Jurisdiction of Department of Public Health**

2 SEC. _____. Section 131052 of the Health and Safety Code is amended to read:

3 131052. In implementing the transfer of jurisdiction pursuant to this article, the
4 State Department of Public Health succeeds to and is vested with all the statutory
5 duties, powers, purposes, responsibilities, and jurisdiction of the former State
6 Department of Health Services as they relate to public health as provided for or
7 referred to in all of the following provisions of law:

8 ~~(1)~~ (a) Sections 550, 555, 650, 680, 1241, 1658, 2221.1, 2248.5, 2249, 2259,
9 2259.5, 2541.3, 2585, 2728, 3527, 4017, 4027, 4037, 4191, 19059.5, 19120,
10 22950, 22973.2, and 22974.8 of the Business and Professions Code.

11 ~~(2)~~ (b) Sections 56.17, 1812.508, and 1812.543 of the Civil Code.

12 ~~(3)~~ (c) Sections 8286, 8803, 17613, 32064, 32065, 32066, 32241, 49030, 49405,
13 49414, 49423.5, ~~49452.6~~, 49460, 49464, 49565, 49565.8, 49531.1, 56836.165, and
14 76403 of the Education Code.

15 ~~(4)~~ (d) Sections 405, 6021, 6026, 18963, 30852, 41302, and 78486 of the Food
16 and Agricultural Code.

17 ~~(5)~~ (e) Sections 307, 355, 422, 7572, 7574, 8706, 8817, and 8909 of the Family
18 Code.

19 ~~(6)~~ (f) Sections 1786, 4011, 5523, 5671, 5674, 5700, 5701, 5701.5, 7115, and
20 15700 of the Fish and Game Code.

21 ~~(7)~~ (g) Sections 855, 51010, and ~~551017.1~~ 51017.1 of the Government Code.
22 For purposes of subdivision (s) of Section 6254 of the Government Code, the term
23 “State Department of Health Services” is hereby deemed to refer to the State
24 Department of Public Health.

25 ~~(8)~~ ~~(A)~~ (h)(1) Sections 475, 1180.6, 1418.1, 1422.1, 1428.2, 1457, 1505, 1507.1,
26 1507.5, 1570.7, 1599.2, 1599.60, 1599.75, 1599.87, 2002, 2804, 11362.7, 11776,
27 11839.21, 11839.23, 11839.24, 11839.25, 11839.26, 11839.27, 11839.28,
28 11839.29, 11839.30, 11839.31, 11839.32, 11839.33, 11839.34, 17920.10, 17961,
29 18897.2, 24185, 24186, 24187, 24275, 26101, 26122, 26134, 26155, 26200, and
30 26203.

31 ~~(B)~~ (2) Chapters 1, 2, 2.05, 2.3, 2.35, 2.4, 3.3, 3.9, 3.93, 3.95, 4, 4.1, 4.5, 5, 6,
32 6.5, 8, 8.3, 8.5, 8.6, 9, and 11 of Division 2.

33 ~~(C)~~ (3) Articles 2 and 4 of Chapter 2, Chapter 3, and Chapter 4 of Part 1, Part 2
34 and Part 3 of Division 101.

35 ~~(D)~~ (4) Division 102, including Sections 102230 and 102231.

36 ~~(E)~~ (5) Division 103, including Sections 104145, 104181, 104182, 104182.5,
37 104187, 104191, 104192, 104193, 104316, 104317, 104318, 104319, 104320,
38 104321, 104324.2, 104324.25, 104350, 105191, 105251, 105255, 105280,
39 105340, and 105430.

1 ~~(F)~~ (6) Division 104, including Sections 106615, 106675, 106770, 108115,
2 108855, 109282, 109910, 109915, 112155, 112500, 112650, 113355, ~~114460,~~
3 ~~114475,~~ 114650, 114710, 114850, 114855, 114985, 115061, 115261, 115340,
4 ~~115736,~~ 115730, 115880, 115885, 115915, 116064, ~~116183,~~ 116270, 116365.5,
5 116366, 116375, 116610, 116751, 116760.20, 116825, 117100, 117924, and
6 119300.

7 ~~(G)~~ (7) Division 105, including Sections 120262, 120381, 120395, 120440,
8 120480, 120956, 120966, 121155, 121285, 121340, 121349.1, 121480, 122410,
9 and 122420.

10 ~~(H)~~ (8) Part 1, Part 2 excluding Articles 5, 5.5, 6, and 6.5 of Chapter 3, Part 3
11 and Part 5 excluding Articles 1 and 2 of Chapter 2, Part 7, and Part 8 of Division
12 106.

13 ~~(9)~~ (i) Sections 799.03, 10123.35, 10123.5, 10123.55, 10123.10, 10123.184, and
14 11520 of the Insurance Code.

15 ~~(10)~~ (j) Sections 50.8, 142.3, 144.5, 144.7, 147.2, 4600.6, 6307.1, 6359, 6712,
16 9009, and 9022 of the Labor Code.

17 ~~(11)~~ (k) Sections 4018.1, 5008.1, 7501, 7502, 7510, 7511, 7515, 7518, 7530,
18 7550, 7553, 7575, 7576, 11010, and 11174.34, ~~and 13990~~ of the Penal Code.

19 ~~(12)~~ (l) Section 4806 of the Probate Code.

20 (m) Section 10405 of the Public Contract Code.

21 ~~(13)~~ (n) Sections 15027, 25912, 28004, 30950, 41781.1, 42830, 43210, 43308,
22 44103, and 71081 of the Public Resources Code.

23 ~~(14) Section 10405 of the Public Contract Code.~~

24 ~~(15)~~ (o) Sections 883, 1507, and 7718 of the Public Utilities Code.

25 ~~(16)~~ (p) Sections ~~18833, 18838, 18845.2, 18846.2, 18847.2,~~ 18863, 30461.6,
26 43010.1, and 43011.1 of the Revenue and Taxation Code.

27 ~~(17)~~ (q) Section 11020 of the Unemployment Insurance Code.

28 ~~(18)~~ (r) Sections 22511.55, 23158, 27366, and 33000 of the Vehicle Code.

29 (s) Sections 13176, 13177.5, 13178, 13193, 13390, 13392, 13392.5, 13393.5,
30 13395.5, 13396.7, 13521, 13522, 13523, 13528, 13529, 13529.2, 13550, 13552.4,
31 13552.8, 13553, 13553.1, 13554, 13554.2, 13816, 13819, 13820, 13823, 13824,
32 13825, 13827, 13830, 13834, 13835, 13836, 13837, 13858, 13861, 13862, 13864,
33 13868, 13868.1, 13868.3, 13868.5, 13882, 13885, 13886, 13887, 13891, 13892,
34 13895.1, 13895.6, 13895.9, 13896, 13896.3, 13896.4, 13896.5, 13897, 13897.4,
35 13897.5, 13897.6, 13898, 14011, 14012, 14015, 14016, 14017, 14019, 14022,
36 14025, 14026, 14027, and 14029 of the Water Code.

37 ~~(19)~~ (t) Sections 5326.9, 5328, 5328.15, 14132, 16902, and 16909, and Division
38 24 of the Welfare and Institutions Code. Payment for services provided under the
39 Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program
40 pursuant to subdivision (aa) of Section 14132 and Division 24 shall be made
41 through the State Department of Health Care Services. The State Department of
42 Public Health and the State Department of Health Care Services may enter into an
43 interagency agreement for the administration of those payments. This paragraph,

1 to the extent that it applies to the Family PACT Waiver Program, shall become
2 inoperative on June 30, 2012.

3 ~~(20) Sections 13176, 13177.5, 13178, 13193, 13390, 13392, 13392.5, 13393.5,~~
4 ~~13395.5, 13396.7, 13521, 13522, 13523, 13528, 13529, 13529.2, 13550, 13552.4,~~
5 ~~13552.8, 13553, 13553.1, 13554, 13554.2, 13816, 13819, 13820, 13823, 13824,~~
6 ~~13825, 13827, 13830, 13834, 13835, 13836, 13837, 13858, 13861, 13862, 13864,~~
7 ~~13868, 13868.1, 13868.3, 13868.5, 13882, 13885, 13886, 13887, 13891, 13892,~~
8 ~~13895.1, 13895.6, 13895.9, 13896, 13896.3, 13896.4, 13896.5, 13897, 13897.4,~~
9 ~~13897.5, 13897.6, 13898, 14011, 14012, 14015, 14016, 14017, 14019, 14022,~~
10 ~~14025, 14026, 14027, and 14029 of the Water Code.~~

11 **Comment.** Section 131052 is amended to correct obsolete or otherwise defective cross-
12 references and make other technical revisions.

13 **Note.** Section 131052 uses cross-references to identify programs that were assigned to the
14 Department of Public Health.

15 However, several of the referenced provisions were subsequently amended to refer to either the
16 Department of Health Care Services or its director (rather than the Department of Public Health
17 or its director). It is not clear whether those subsequent amendments were erroneous or were
18 intended to reassign program responsibility to the Department of Health Care Services.

19 Those provisions are as follows: Business and Professions Code Section 1241; Education Code
20 Sections 8286, 8803, 49423.5; Family Code Section 7572; Government Code Section 6254(s);
21 Health and Safety Code Sections 1250.2, 1254, 1254.1, 1266.1, 1268.6, 1275.1, 1275.2, 1275.5,
22 1317.1, 1323.5, 1324.9, 1324.20, 1336.1, 1422.1, 1572, 1580.1, 104150, 104151, 104160,
23 104162.1, 104163, 104314, 104322, 109276, 115340, 11839.26, 120840, 120860, 120971,
24 121026, 123223, 123472; Welfare and Institutions Code Sections 5326.9, 5328, 24000, 24001,
25 24005.

26 **The Commission requests public comment on which agency is currently responsible for**
27 **the programs governed by the listed provisions.**