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CALIFORNIA LAW REVISION COMMISSION

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Recommendations,
and Studies

Volume 44
(2014-16)

California Law Revision Commission
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PREFACE

Bound Volume 44 contains the Commission's *2014-2015 Annual Report*, three Commission recommendations to the Legislature approved in 2015, the Commission's *2015-2016 Annual Report*, three Commission recommendations to the Legislature approved in 2016, and the Commission's *2016-2017 Annual Report*.

Legislative histories of Commission measures enacted in the 2014 legislative year are contained in the *2014-2015 Annual Report*, beginning on page 27.

Legislative histories of Commission measures enacted in the 2015 legislative year are contained in the *2015-2016 Annual Report*, beginning on page 522.

Legislative histories of Commission measures enacted in the 2016 legislative year are contained in the *2016-2017 Annual Report*, beginning on page 782.

The *Cumulative Table of Sections Affected by Commission Recommendations*, following this preface, lists all sections of the Constitution, codes, and session laws that have been adopted, amended, or repealed on recommendation of the Commission, except as otherwise noted.

The annual reports and recommendations contained in Volume 44 are also available on the Commission's website at www.clrc.ca.gov.

CUMULATIVE TABLE OF SECTIONS AFFECTED BY COMMISSION RECOMMENDATIONS

Instructions for Use of Table

The table starting on page T.3 lists constitutional provisions, code sections, and uncodified sections that have been adopted, amended, or repealed as a result of Commission recommendations.¹ The table is cumulative through December 31, 2016.²

For each entry, the table uses the following codes to indicate the legislative action that was taken:

“(A)” for an amendment.

“(N)” for a new provision.

“(R)” for a repealed provision.

“(C)” for a change to a Commission Comment.

“(#)” for a change to Section numbering.

When a code section has been renumbered, both the old and new section numbers appear in the table with a (#) code. If the text of the renumbered section was amended, the old section number also appears as a separate entry, with an (A) code.

Each entry also provides a citation to the Commission report that recommended the listed enactment, followed by a citation to any subsequent Commission report relating to that recommendation.

1. Sections are listed in decimal order regardless of their order within the codes (e.g., Government Code Section 26625.10 precedes Section 26625.2 in the table).

2. The Commission did not publish reports concerning the following codifications enacted on Commission recommendation: *Partial Revision of Education Code* (1955 Cal. Stat. chs. 799 & 877); *Fish and Game Code* (1957 Cal. Stat. ch. 456); *Codification of Laws Relating to Grand Juries* (1959 Cal. Stat. ch. 501). No references to these codifications are contained in the cumulative table. In addition, the repeal of the Probate Code is not indicated for each section of the repealed code. See the note at the beginning of the listing for the repealed Probate Code.

Citations to Commission reports are given in the form “vv:pp,” where “vv” is the volume number and “pp” is the page number (e.g., 32:1 refers to page one of volume 32).³

Example: The table entry for Business and Professions Code Section 4160 reads:

4160 (A) 25:55, 25:636, 25:711

The entry indicates that Section 4160 was amended pursuant to a Commission recommendation. The Commission recommendation that proposed the amendment begins on page 55 of volume 25. Legislative history on the enactment begins on pages 636 and 711 of volume 25.

For a cumulative listing of legislative action on Commission recommendations, see Appendix 3 of the *2016-2017 Annual Report* (at page 799 of this volume).

3. References to “LH” are to the Legislative History section of the cited volume. “AR” refers to the Annual Report for the year and volume cited. Entries such as “N7” are page numbers in early bound volumes.

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8697.6 (R)	16:501, 16:2025	17773.1 (R)	16:501, 16:2025
9533.6 (A)	16:501, 16:2025	17900 (N)	9:601, 10:1019
9547 (A)	16:501, 16:2025	17901 (N)	9:601, 10:1019
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571 (A)	16:501, 16:2025	655 (R)	32:1, 32:601, 32:647, 34:29
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678 (R)	16:501, 16:2025	683.020 (N)	15:2001, 16:2024
678 1/2 (R)	16:501, 16:2025	683.030 (N)	15:2001, 16:2024
679 (R)	16:501, 16:2025	683.040 (N)	15:2001, 16:2024
679 1/2 (R)	16:501, 16:2025	683.050 (N)	15:2001, 16:2024
680 (R)	16:501, 16:2025	683.110 (N)	15:2001, 16:2024
680 1/2 (R)	16:501, 16:2025	683.120 (N)	15:2001, 16:2024
680.010 (N)	15:2001, 16:2024	683.130 (N)	15:2001, 16:2024
680.110 (N)	15:2001, 16:2024	683.130 (A)	22:1, 22:851
680.120 (N)	15:2001, 16:2024	683.130 (N)	29:695, 30:675, 30:717
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680.140 (N)	15:2001, 16:2024	683.150 (N)	15:2001, 16:2024
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680.210 (N)	15:2001, 16:2024	683.210 (N)	15:2001, 16:2024
680.220 (N)	15:2001, 16:2024	683.220 (N)	15:2001, 16:2024
680.230 (N)	15:2001, 16:2024	683.310 (N)	15:2001, 16:2024
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680.360 (N)	15:2001, 16:2024	684.120 (N)	15:2001, 16:2024
680.365 (N)	15:2001, 16:2024	684.130 (N)	15:2001, 16:2024
680.370 (N)	15:2001, 16:2024	684.140 (N)	15:2001, 16:2024
680.380 (N)	15:2001, 16:2024	684.2 (N)	11:701, 12:530
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682a (R)	15:2001, 16:2024	685.080 (N)	15:2001, 16:2024
682a (A)	16:501, 16:2025	685.090 (N)	15:2001, 16:2024
682.1 (R)	15:2001, 16:2024	685.090 (A)	21:135, 22:853
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689c (R)	15:2001, 16:2024	694.010 (N)	15:2001, 16:2024
689d (R)	15:2001, 16:2024	694.020 (N)	15:2001, 16:2024
689.5 (R)	15:2001, 16:2024	694.030 (N)	15:2001, 16:2024
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690 (R)	15:2001, 16:2024	694.050 (N)	15:2001, 16:2024
690.1 (R)	15:2001, 16:2024	694.060 (N)	15:2001, 16:2024
690.10 (R)	15:2001, 16:2024	694.070 (N)	15:2001, 16:2024
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690.12 (R)	15:2001, 16:2024	694.090 (N)	15:2001, 16:2024
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697.060 (N)	15:2001, 16:2024	699.530 (N)	15:2001, 16:2024
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697.330 (N)	15:2001, 16:2024	699.560 (A)	22:1, 22:851
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697.510 (N)	15:2001, 16:2024	700.060 (N)	15:2001, 16:2024
697.520 (N)	15:2001, 16:2024	700.070 (N)	15:2001, 16:2024
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697.540 (N)	15:2001, 16:2024	700.090 (N)	15:2001, 16:2024
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699.030 (N)	15:2001, 16:2024	701.070 (N)	17:975, 18:23
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699.060 (N)	15:2001, 16:2024	701.520 (N)	15:2001, 16:2024
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701.590 (N)	15:2001, 16:2024	704.080 (A)	25:1, 25:636, 25:707
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701.610 (N)	15:2001, 16:2024	704.100 (N)	15:2001, 16:2024
701.620 (N)	15:2001, 16:2024	704.100 (A)	25:1, 25:636, 25:707
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996.530 (N)	16:501, 16:2025	1103 (A)	32:1, 32:601, 32:647, 34:29
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1268.240 (N)	12:1601, 13:2010	1281.2 (N)	3:G5
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1813 (N)	22:1, 22:851	2037 (R)	23:1, 23:922
1814 (N)	22:1, 22:851	2038 (N)	22:1, 22:851
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1817 (N)	22:1, 22:851	2040 (R)	23:1, 23:922
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1820 (N)	22:1, 22:851	2040 (A)	36:103, 44:522, 44:573
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1833 (N)	22:1, 22:851	2042 (R)	23:1, 23:922
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1840 (N)	22:1, 22:851	2052 (N)	22:1, 22:851
1841 (N)	22:1, 22:851	2053 (N)	22:1, 22:851
1842 (N)	22:1, 22:851	2060 (N)	22:1, 22:851
1850 (N)	22:1, 22:851	2061 (N)	22:1, 22:851
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1852 (N)	22:1, 22:851	2065 (N)	22:1, 22:851
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2010 (N)	22:1, 22:851	2071 (N)	22:1, 22:851

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2080 (N)	22:1, 22:851	2343 (N)	22:1, 22:851
2081 (N)	22:1, 22:851	2344 (N)	22:1, 22:851
2082 (N)	22:1, 22:851	2345 (N)	22:1, 22:851
2090 (N)	22:1, 22:851	2346 (N)	22:1, 22:851
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2310 (N)	22:1, 22:851	2623 (N)	22:1, 22:851
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2313 (N)	22:1, 22:851	2625 (N)	22:1, 22:851
2320 (N)	22:1, 22:851	2626 (N)	22:1, 22:851
2321 (N)	22:1, 22:851	2627 (N)	22:1, 22:851
2322 (N)	22:1, 22:851	2628 (N)	22:1, 22:851
2330 (N)	22:1, 22:851	2628 (R)	23:1, 23:922
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2331 (N)	22:1, 22:851	2640 (A)	23:1, 23:922
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2333 (N)	22:1, 22:851	2650 (N)	22:1, 22:851
2334 (N)	22:1, 22:851	2660 (N)	22:1, 22:851
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3013 (R)	23:1, 23:922	3087 (N)	22:1, 22:851
3014 (N)	22:1, 22:851	3088 (N)	22:1, 22:851
3014 (R)	23:1, 23:922	3088 (A)	23:1, 23:922
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3018 (R)	23:1, 23:922	3102 (A)	23:1, 23:922
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3025 (N)	22:1, 22:851	3112 (N)	23:1, 23:922
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3027 (N)	22:1, 22:851	3114 (N)	23:1, 23:922
3027 (A)	23:1, 23:922	3115 (N)	23:1, 23:922
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3029 (N)	23:1, 23:922	3130 (N)	22:1, 22:851
3030 (N)	23:1, 23:922	3131 (N)	22:1, 22:851
3031 (N)	23:1, 23:922	3132 (N)	22:1, 22:851
3040 (N)	22:1, 22:851	3133 (N)	22:1, 22:851
3040 (R)	23:1, 23:922	3134 (N)	22:1, 22:851
3040 (N)	23:1, 23:922	3140 (N)	22:1, 22:851
3041 (N)	22:1, 22:851	3150 (N)	22:1, 22:851
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3041 (N)	23:1, 23:922	3151 (N)	22:1, 22:851
3042 (N)	22:1, 22:851	3152 (N)	22:1, 22:851
3042 (R)	23:1, 23:922	3153 (N)	22:1, 22:851
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3043 (R)	23:1, 23:922	3156 (N)	22:1, 22:851
3043 (N)	23:1, 23:922	3156 (R)	23:1, 23:922
3044 (N)	22:1, 22:851	3157 (N)	22:1, 22:851
3044 (R)	23:1, 23:922	3157 (R)	23:1, 23:922
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3060 (A)	23:1, 23:922	3158 (R)	23:1, 23:922
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3061 (A)	23:1, 23:922	3159 (R)	23:1, 23:922
3062 (N)	22:1, 22:851	3160 (N)	22:1, 22:851
3063 (N)	22:1, 22:851	3160 (R)	23:1, 23:922
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3170 (N)	22:1, 22:851	3408 (A)	23:1, 23:922
3170 (R)	23:1, 23:922	3409 (N)	22:1, 22:851
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3171 (R)	23:1, 23:922	3413 (N)	22:1, 22:851
3171 (N)	23:1, 23:922	3414 (N)	22:1, 22:851
3172 (N)	22:1, 22:851	3415 (N)	22:1, 22:851
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3172 (N)	23:1, 23:922	3417 (N)	22:1, 22:851
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3173 (R)	23:1, 23:922	3419 (N)	22:1, 22:851
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3175 (N)	22:1, 22:851	3424 (N)	22:1, 22:851
3175 (R)	23:1, 23:922	3425 (N)	22:1, 22:851
3175 (N)	23:1, 23:922	3500 (N)	22:1, 22:851
3176 (N)	22:1, 22:851	3515 (N)	22:1, 22:851
3176 (R)	23:1, 23:922	3550 (N)	22:1, 22:851
3176 (N)	23:1, 23:922	3551 (N)	22:1, 22:851
3177 (N)	22:1, 22:851	3552 (N)	22:1, 22:851
3177 (R)	23:1, 23:922	3554 (N)	22:1, 22:851
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3180 (N)	23:1, 23:922	3585 (N)	22:1, 22:851
3181 (N)	22:1, 22:851	3586 (N)	22:1, 22:851
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3181 (N)	23:1, 23:922	3590 (N)	22:1, 22:851
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3182 (R)	23:1, 23:922	3592 (N)	22:1, 22:851
3182 (N)	23:1, 23:922	3593 (N)	22:1, 22:851
3183 (N)	22:1, 22:851	3600 (N)	22:1, 22:851
3183 (R)	23:1, 23:922	3601 (N)	22:1, 22:851
3183 (N)	23:1, 23:922	3601 (A)	23:1, 23:922
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3185 (N)	23:1, 23:922	3603 (N)	22:1, 22:851
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3190 (N)	22:1, 22:851	3621 (N)	22:1, 22:851
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3650 (N)	22:1, 22:851	3805 (R)	23:1, 23:922
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3651 (N)	22:1, 22:851	3807 (N)	22:1, 22:851
3652 (N)	22:1, 22:851	3808 (N)	22:1, 22:851
3653 (N)	22:1, 22:851	3809 (N)	22:1, 22:851
3654 (N)	22:1, 22:851	3810 (N)	22:1, 22:851
3660 (N)	22:1, 22:851	3830 (N)	23:1, 23:922
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3663 (N)	22:1, 22:851	3901 (N)	22:1, 22:851
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3668 (N)	22:1, 22:851	3930 (A)	23:1, 23:922
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3680 (A)	23:1, 23:922	3951 (N)	22:1, 22:851
3681 (N)	22:1, 22:851	3952 (N)	22:1, 22:851
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3684 (N)	22:1, 22:851	4002 (N)	22:1, 22:851
3684 (A)	23:1, 23:922	4003 (N)	22:1, 22:851
3685 (N)	22:1, 22:851	4003 (A)	23:1, 23:922
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3687 (A)	23:1, 23:922	4005 (R)	23:1, 23:922
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3694 (N)	22:1, 22:851	4012 (N)	22:1, 22:851
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3752 (N)	22:1, 22:851	4050 (R)	23:1, 23:922
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3761 (A)	23:1, 23:922	4051 (N)	23:1, 23:922
3762 (N)	22:1, 22:851	4052 (N)	22:1, 22:851
3763 (N)	22:1, 22:851	4052 (R)	23:1, 23:922
3764 (N)	22:1, 22:851	4052 (N)	23:1, 23:922
3765 (N)	22:1, 22:851	4053 (N)	22:1, 22:851
3766 (N)	22:1, 22:851	4053 (R)	23:1, 23:922
3767 (N)	22:1, 22:851	4053 (N)	23:1, 23:922
3768 (N)	22:1, 22:851	4054 (N)	22:1, 22:851
3769 (N)	22:1, 22:851	4054 (R)	23:1, 23:922
3770 (N)	22:1, 22:851	4054 (N)	23:1, 23:922
3771 (N)	22:1, 22:851	4055 (N)	22:1, 22:851
3772 (N)	22:1, 22:851	4055 (R)	23:1, 23:922
3780 (N)	22:1, 22:851	4055 (N)	23:1, 23:922
3781 (N)	22:1, 22:851	4056 (N)	22:1, 22:851
3782 (N)	22:1, 22:851	4056 (R)	23:1, 23:922
3800 (N)	22:1, 22:851	4056 (N)	23:1, 23:922
3801 (N)	22:1, 22:851	4057 (N)	22:1, 22:851

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4058 (R)	23:1, 23:922	4321 (N)	22:1, 22:851
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4059 (N)	22:1, 22:851	4322 (N)	22:1, 22:851
4059 (R)	23:1, 23:922	4323 (N)	22:1, 22:851
4059 (N)	23:1, 23:922	4330 (N)	22:1, 22:851
4060 (N)	22:1, 22:851	4331 (N)	22:1, 22:851
4060 (R)	23:1, 23:922	4331 (A)	33:789, 34:29, 34:75
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4061 (N)	22:1, 22:851	4333 (N)	22:1, 22:851
4061 (R)	23:1, 23:922	4334 (N)	22:1, 22:851
4061 (N)	23:1, 23:922	4335 (N)	22:1, 22:851
4062 (N)	22:1, 22:851	4336 (N)	22:1, 22:851
4062 (R)	23:1, 23:922	4337 (N)	22:1, 22:851
4062 (N)	23:1, 23:922	4338 (N)	22:1, 22:851
4063 (N)	22:1, 22:851	4339 (N)	22:1, 22:851
4063 (R)	23:1, 23:922	4350 (N)	22:1, 22:851
4063 (N)	23:1, 23:922	4351 (N)	22:1, 22:851
4064 (N)	22:1, 22:851	4352 (N)	22:1, 22:851
4064 (R)	23:1, 23:922	4360 (N)	22:1, 22:851
4064 (N)	23:1, 23:922	4400 (N)	22:1, 22:851
4065 (N)	22:1, 22:851	4401 (N)	22:1, 22:851
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4066 (N)	22:1, 22:851	4404 (N)	22:1, 22:851
4066 (R)	23:1, 23:922	4405 (N)	22:1, 22:851
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4067 (N)	22:1, 22:851	4411 (N)	22:1, 22:851
4067 (R)	23:1, 23:922	4412 (N)	22:1, 22:851
4067 (N)	23:1, 23:922	4413 (N)	22:1, 22:851
4068 (N)	22:1, 22:851	4414 (N)	22:1, 22:851
4068 (R)	23:1, 23:922	4500 (N)	22:1, 22:851
4068 (N)	23:1, 23:922	4501 (N)	22:1, 22:851
4069 (N)	23:1, 23:922	4502 (N)	22:1, 22:851
4070 (N)	23:1, 23:922	4502 (R)	23:1, 23:922
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4103 (R)	23:1, 23:922	4554 (N)	22:1, 22:851
4104 (N)	22:1, 22:851	4560 (N)	22:1, 22:851
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4105 (N)	22:1, 22:851	4562 (N)	22:1, 22:851
4105 (R)	23:1, 23:922	4563 (N)	22:1, 22:851
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4203 (N)	22:1, 22:851	4572 (N)	22:1, 22:851
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4604 (N)	22:1, 22:851	4840 (N)	22:1, 22:851
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4611 (N)	22:1, 22:851	4843 (N)	22:1, 22:851
4612 (N)	22:1, 22:851	4844 (N)	22:1, 22:851
4613 (N)	22:1, 22:851	4845 (N)	22:1, 22:851
4614 (N)	22:1, 22:851	4846 (N)	22:1, 22:851
4614 (A)	23:1, 23:922	4847 (N)	22:1, 22:851
4615 (N)	22:1, 22:851	4848 (N)	22:1, 22:851
4616 (N)	22:1, 22:851	4849 (N)	22:1, 22:851
4617 (N)	22:1, 22:851	4849 (A)	23:1, 23:922
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4630 (N)	22:1, 22:851	4851 (N)	22:1, 22:851
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4701 (N)	22:1, 22:851	5100 (A)	29:695, 30:675, 30:717
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4722 (N)	22:1, 22:851	5102 (N)	22:1, 22:851
4723 (N)	22:1, 22:851	5102 (R)	29:695, 30:675, 30:717
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4725 (N)	22:1, 22:851	5104 (N)	22:1, 22:851
4726 (N)	22:1, 22:851	5200 (N)	22:1, 22:851
4727 (N)	22:1, 22:851	5202 (N)	22:1, 22:851
4728 (N)	22:1, 22:851	5204 (N)	22:1, 22:851
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4729 (A)	23:1, 23:922	5206 (A)	23:1, 23:922
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4730 (A)	23:1, 23:922	5210 (N)	22:1, 22:851
4731 (N)	22:1, 22:851	5212 (N)	22:1, 22:851
4732 (N)	22:1, 22:851	5214 (N)	22:1, 22:851
4733 (N)	23:1, 23:922	5216 (N)	22:1, 22:851
4800 (N)	22:1, 22:851	5220 (N)	22:1, 22:851
4801 (N)	22:1, 22:851	5230 (N)	22:1, 22:851
4802 (N)	22:1, 22:851	5231 (N)	22:1, 22:851
4803 (N)	22:1, 22:851	5232 (N)	22:1, 22:851
4804 (N)	22:1, 22:851	5233 (N)	22:1, 22:851
4805 (N)	22:1, 22:851	5234 (N)	22:1, 22:851
4810 (N)	22:1, 22:851	5235 (N)	22:1, 22:851
4811 (N)	22:1, 22:851	5236 (N)	22:1, 22:851
4820 (N)	22:1, 22:851	5237 (N)	22:1, 22:851
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4822 (N)	22:1, 22:851	5239 (N)	22:1, 22:851
4824 (N)	22:1, 22:851	5240 (N)	22:1, 22:851
4825 (N)	22:1, 22:851	5241 (N)	22:1, 22:851
4826 (N)	22:1, 22:851	5242 (N)	22:1, 22:851
4827 (N)	22:1, 22:851	5243 (N)	22:1, 22:851
4828 (N)	22:1, 22:851	5244 (N)	22:1, 22:851
4829 (N)	22:1, 22:851	5245 (N)	22:1, 22:851
4830 (N)	22:1, 22:851	5245 (A)	23:1, 23:922
4831 (N)	22:1, 22:851	5250 (N)	22:1, 22:851
4832 (N)	22:1, 22:851	5251 (N)	22:1, 22:851
4833 (N)	22:1, 22:851	5252 (N)	22:1, 22:851
4834 (N)	22:1, 22:851	5253 (N)	22:1, 22:851
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5271 (N)	22:1, 22:851	5651 (R)	23:1, 23:922
5272 (N)	22:1, 22:851	5652 (N)	22:1, 22:851
5280 (N)	22:1, 22:851	5652 (R)	23:1, 23:922
5281 (N)	22:1, 22:851	5700 (N)	22:1, 22:851
5282 (N)	22:1, 22:851	5700 (R)	23:1, 23:922
5283 (N)	22:1, 22:851	5701 (N)	22:1, 22:851
5290 (N)	22:1, 22:851	5701 (R)	23:1, 23:922
5295 (N)	22:1, 22:851	5702 (N)	22:1, 22:851
5500 (N)	22:1, 22:851	5702 (R)	23:1, 23:922
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5501 (N)	22:1, 22:851	5703 (R)	23:1, 23:922
5501 (R)	23:1, 23:922	5750 (N)	22:1, 22:851
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5510 (N)	22:1, 22:851	5751 (R)	23:1, 23:922
5510 (R)	23:1, 23:922	5752 (N)	22:1, 22:851
5511 (N)	22:1, 22:851	5752 (R)	23:1, 23:922
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5512 (N)	22:1, 22:851	5753 (R)	23:1, 23:922
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5514 (N)	22:1, 22:851	5755 (R)	23:1, 23:922
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5515 (N)	22:1, 22:851	5756 (R)	23:1, 23:922
5515 (R)	23:1, 23:922	5800 (N)	22:1, 22:851
5516 (N)	22:1, 22:851	5800 (R)	23:1, 23:922
5516 (R)	23:1, 23:922	5801 (N)	22:1, 22:851
5517 (N)	22:1, 22:851	5801 (R)	23:1, 23:922
5517 (R)	23:1, 23:922	5802 (N)	22:1, 22:851
5518 (N)	22:1, 22:851	5802 (R)	23:1, 23:922
5518 (R)	23:1, 23:922	5803 (N)	22:1, 22:851
5519 (N)	22:1, 22:851	5803 (R)	23:1, 23:922
5519 (R)	23:1, 23:922	5804 (N)	22:1, 22:851
5520 (N)	22:1, 22:851	5804 (R)	23:1, 23:922
5520 (R)	23:1, 23:922	5805 (N)	22:1, 22:851
5530 (N)	22:1, 22:851	5805 (R)	23:1, 23:922
5530 (R)	23:1, 23:922	5806 (N)	22:1, 22:851
5531 (N)	22:1, 22:851	5806 (R)	23:1, 23:922
5531 (R)	23:1, 23:922	5807 (N)	22:1, 22:851
5550 (N)	22:1, 22:851	5807 (R)	23:1, 23:922
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5552 (N)	22:1, 22:851	6205 (N)	23:1, 23:922
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5600 (N)	22:1, 22:851	6211 (N)	23:1, 23:922
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6271 (N)	23:1, 23:922	6921 (N)	22:1, 22:851
6272 (N)	23:1, 23:922	6922 (N)	22:1, 22:851
6273 (N)	23:1, 23:922	6924 (N)	22:1, 22:851
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6305 (N)	23:1, 23:922	6950 (N)	22:1, 22:851
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6324 (N)	23:1, 23:922	7051 (N)	22:1, 22:851
6325 (N)	23:1, 23:922	7052 (N)	22:1, 22:851
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6326 (A)	23:1, 23:922	7111 (N)	22:1, 22:851
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6343 (A)	23:1, 23:922	7122 (N)	22:1, 22:851
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6387 (N)	23:1, 23:922	7142 (N)	22:1, 22:851
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6600 (N)	22:1, 22:851	7503 (N)	23:1, 23:922
6601 (N)	22:1, 22:851	7504 (N)	23:1, 23:922
6602 (N)	22:1, 22:851	7505 (N)	23:1, 23:922
6700 (N)	22:1, 22:851	7506 (N)	23:1, 23:922
6701 (N)	22:1, 22:851	7507 (N)	23:1, 23:922
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6712 (N)	22:1, 22:851	7550 (N)	22:1, 22:851
6713 (N)	22:1, 22:851	7550 (A)	23:1, 23:922
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This table does not include citations to 1990 legislation repealing sections that are continued in the new Probate Code. Accordingly, citations to sections repealed by the following are omitted: 1990 Cal. Stat. ch. 79, § 13 (1851 sections), 1990 Cal. Stat. ch. 140, §§ 19-34 (16 sections), 1990 Cal. Stat. ch. 324, § 4 (1 section), 1990 Cal. Stat. ch. 1307, § 6 (11 sections).

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267 (N)	16:207, 17:823	296.3 (R)	16:2301, 17:822
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2524 (N)	20:1001, 20:2218	2623 (N)	20:1001, 20:2218
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2526 (N)	20:1001, 20:2218	2625 (N)	20:1001, 20:2218
2527 (N)	20:1001, 20:2218	2626 (N)	20:1001, 20:2218
2528 (N)	20:1001, 20:2218	2627 (N)	20:1001, 20:2218
2540 (N)	20:1001, 20:2218	2628 (N)	20:1001, 20:2218
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2680 (N)	20:1001, 20:2218	3080 (N)	20:1001, 20:2218
2681 (N)	20:1001, 20:2218	3081 (N)	20:1001, 20:2218
2682 (N)	20:1001, 20:2218	3082 (N)	20:1001, 20:2218
2683 (N)	20:1001, 20:2218	3083 (N)	20:1001, 20:2218
2684 (N)	20:1001, 20:2218	3084 (N)	20:1001, 20:2218
2685 (N)	20:1001, 20:2218	3085 (N)	20:1001, 20:2218
2686 (N)	20:1001, 20:2218	3086 (N)	20:1001, 20:2218
2687 (N)	20:1001, 20:2218	3087 (N)	20:1001, 20:2218
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2702 (N)	20:1001, 20:2218	3091 (N)	20:1001, 20:2218
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2922 (N)	20:1001, 20:2218	3143 (N)	20:1001, 20:2218
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6325 (N)	20:1001, 20:2218	6540 (N)	20:1001, 20:2218
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6805 (N)	20:1001, 20:2218	8111 (N)	20:1001, 20:2218
6806 (N)	20:1001, 20:2218	8112 (N)	20:1001, 20:2218
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7622 (N)	20:1001, 20:2218	8404 (N)	20:1001, 20:2218

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8424 (N)	20:1001, 20:2218	8804 (N)	20:1001, 20:2218
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8460 (N)	20:1001, 20:2218	8870 (N)	20:1001, 20:2218
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8541 (N)	20:1001, 20:2218	9050 (A)	20:507, 20:2220
8542 (N)	20:1001, 20:2218	9050 (N)	20:1001, 20:2218
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8572 (A)	23:963	9102 (N)	20:1001, 20:2218
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8574 (N)	20:1001, 20:2218	9103 (N)	20:1001, 20:2218
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8575 (N)	20:1001, 20:2218	9103 (A)	22:895, 22:852
8575 (A)	20:2907	9104 (N)	20:1001, 20:2218

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9254 (N)	20:1001, 20:2218	9760 (N)	20:1001, 20:2218
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9300 (N)	20:1001, 20:2218	9762 (N)	20:1001, 20:2218
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9391 (A)	20:507, 20:2220	9803 (N)	20:1001, 20:2218
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9391 (A)	22:895, 22:852	9805 (N)	20:1001, 20:2218
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9392 (A)	22:895, 22:852	9807 (N)	20:1001, 20:2218
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9653 (A)	21:73	9867 (N)	20:1001, 20:2218
9654 (N)	20:1001, 20:2218	9868 (N)	20:1001, 20:2218
9655 (N)	20:1001, 20:2218	9880 (N)	20:1001, 20:2218

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9948 (N)	20:1001, 20:2218	10304 (N)	20:1001, 20:2218
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10151 (A)	33:145, 33:598	10382 (N)	20:1001, 20:2218
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10204 (N)	20:1001, 20:2218	10501 (A)	21:209, 22:852
10205 (N)	20:1001, 20:2218	10502 (N)	20:1001, 20:2218

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10520 (N)	21:209, 22:852	10831 (A)	20:2118
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10534 (N)	20:1001, 20:2218	10901 (N)	20:1001, 20:2218
10534 (A)	33:145, 33:598	10902 (N)	20:1001, 20:2218
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10556 (N)	20:1001, 20:2218	11003 (N)	20:1001, 20:2218
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10582 (N)	20:1001, 20:2218	11423 (N)	20:1001, 20:2218
10583 (N)	20:1001, 20:2218	11424 (N)	20:1001, 20:2218
10584 (N)	20:1001, 20:2218	11425 (N)	20:1001, 20:2218
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10587 (N)	20:1001, 20:2218	11427 (R)	20:2707, 21:20
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10589 (N)	20:1001, 20:2218	11429 (A)	20:507, 20:2220
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10590 (N)	20:1001, 20:2218	11440 (N)	20:1001, 20:2218
10591 (N)	20:1001, 20:2218	11441 (N)	20:1001, 20:2218
10592 (N)	20:1001, 20:2218	11442 (N)	20:1001, 20:2218
10800 (N)	20:1001, 20:2218	11443 (N)	20:1001, 20:2218
10800 (A)	20:2912	11444 (N)	20:1001, 20:2218
10801 (N)	20:1001, 20:2218	11445 (N)	20:1001, 20:2218
10801 (A)	20:2913	11446 (N)	20:1001, 20:2218
10802 (N)	20:1001, 20:2218	11460 (N)	20:2707, 21:20
10803 (N)	20:1001, 20:2218	11461 (N)	20:2707, 21:20
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11466 (N)	20:2707, 21:20	12205 (N)	20:1001, 20:2218
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11601 (N)	20:1001, 20:2218	12250 (N)	20:1001, 20:2218
11602 (N)	20:1001, 20:2218	12251 (N)	20:1001, 20:2218
11603 (N)	20:1001, 20:2218	12252 (N)	20:1001, 20:2218
11603 (A)	29:743, 30:675	12252 (A)	38:163, 39:27
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11605 (N)	20:1001, 20:2218	12401 (N)	20:1001, 20:2218
11620 (N)	20:1001, 20:2218	12402 (N)	20:1001, 20:2218
11621 (N)	20:1001, 20:2218	12403 (N)	20:1001, 20:2218
11622 (N)	20:1001, 20:2218	12404 (N)	20:1001, 20:2218
11623 (N)	20:1001, 20:2218	12405 (N)	20:1001, 20:2218
11623 (A)	20:2123	12406 (N)	20:1001, 20:2218
11623 (A)	21:68	12407 (N)	20:1001, 20:2218
11624 (N)	20:1001, 20:2218	12408 (N)	20:1001, 20:2218
11640 (N)	20:1001, 20:2218	12500 (N)	20:1001, 20:2218
11640 (A)	31:167, 32:601, 32:641	12501 (N)	20:1001, 20:2218
11641 (N)	20:1001, 20:2218	12502 (N)	20:1001, 20:2218
11642 (N)	20:1001, 20:2218	12503 (N)	20:1001, 20:2218
11700 (N)	20:1001, 20:2218	12504 (N)	20:1001, 20:2218
11701 (N)	20:1001, 20:2218	12505 (N)	20:1001, 20:2218
11702 (N)	20:1001, 20:2218	12506 (N)	20:1001, 20:2218
11703 (N)	20:1001, 20:2218	12507 (N)	20:1001, 20:2218
11704 (N)	20:1001, 20:2218	12510 (N)	20:1001, 20:2218
11705 (N)	20:1001, 20:2218	12511 (N)	20:1001, 20:2218
11750 (N)	20:1001, 20:2218	12512 (N)	20:1001, 20:2218
11751 (N)	20:1001, 20:2218	12513 (N)	20:1001, 20:2218
11752 (N)	20:1001, 20:2218	12520 (N)	20:1001, 20:2218
11753 (N)	20:1001, 20:2218	12521 (N)	20:1001, 20:2218
11801 (N)	20:1001, 20:2218	12522 (N)	20:1001, 20:2218
11802 (N)	20:1001, 20:2218	12523 (N)	20:1001, 20:2218
11850 (N)	20:1001, 20:2218	12524 (N)	20:1001, 20:2218
11851 (N)	20:1001, 20:2218	12530 (N)	20:1001, 20:2218
11852 (N)	20:1001, 20:2218	12540 (N)	20:1001, 20:2218
11853 (N)	20:1001, 20:2218	12541 (N)	20:1001, 20:2218
11854 (N)	20:1001, 20:2218	12542 (N)	20:1001, 20:2218
11900 (N)	20:1001, 20:2218	12570 (N)	20:1001, 20:2218
11901 (N)	20:1001, 20:2218	12571 (N)	20:1001, 20:2218
11902 (N)	20:1001, 20:2218	12572 (N)	20:1001, 20:2218
11903 (N)	20:1001, 20:2218	12573 (N)	20:1001, 20:2218
11904 (N)	20:1001, 20:2218	12590 (N)	20:1001, 20:2218
11950 (N)	20:1001, 20:2218	12591 (N)	20:1001, 20:2218
11951 (N)	20:1001, 20:2218	13000 (N)	20:1001, 20:2218
11952 (N)	20:1001, 20:2218	13002 (N)	20:1001, 20:2218
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11955 (N)	20:1001, 20:2218	13006 (N)	20:1001, 20:2218
11956 (N)	20:1001, 20:2218	13006 (A)	20:2737, 21:20
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12001 (N)	20:1001, 20:2218	13050 (A)	26:21, 26:132
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12003 (N)	20:1001, 20:2218	13051 (A)	20:2737, 21:20
12004 (N)	20:1001, 20:2218	13052 (N)	20:1001, 20:2218
12005 (N)	20:1001, 20:2218	13053 (N)	20:1001, 20:2218
12006 (N)	20:1001, 20:2218	13054 (N)	20:1001, 20:2218
12007 (N)	20:1001, 20:2218	13100 (N)	20:1001, 20:2218
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12201 (N)	20:1001, 20:2218	13101 (A)	21:73

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13105 (N)	20:1001, 20:2218	13540 (A)	20:2769, 21:20
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13107 (N)	20:1001, 20:2218	13542 (N)	20:1001, 20:2218
13107.5 (N)	20:2737, 21:20	13545 (N)	20:2769, 21:20
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13108 (A)	20:2737, 21:20	13552 (N)	20:1001, 20:2218
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13109 (A)	22:895, 22:852	13554 (N)	20:1001, 20:2218
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13115 (N)	20:1001, 20:2218	13601 (N)	20:1001, 20:2218
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13150 (N)	20:1001, 20:2218	13602 (N)	20:1001, 20:2218
13150 (A)	20:2737, 21:20	13603 (N)	20:1001, 20:2218
13151 (N)	20:1001, 20:2218	13604 (N)	20:1001, 20:2218
13151 (A)	20:2737, 21:20	13605 (N)	20:1001, 20:2218
13152 (N)	20:1001, 20:2218	13606 (N)	20:1001, 20:2218
13152 (A)	20:2737, 21:20	13650 (N)	20:1001, 20:2218
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13154 (N)	20:1001, 20:2218	13652 (N)	20:1001, 20:2218
13154 (A)	20:2737, 21:20	13653 (N)	20:1001, 20:2218
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13155 (A)	20:2737, 21:20	13655 (N)	20:1001, 20:2218
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15308 (N)	20:1001, 20:2218	16005 (C)	25:673
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15400 (N)	20:1001, 20:2218	16006 (C)	25:673
15401 (N)	20:1001, 20:2218	16007 (N)	20:1001, 20:2218
15402 (N)	20:1001, 20:2218	16007 (C)	25:673
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15404 (N)	20:1001, 20:2218	16008 (R)	25:673
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15406 (N)	20:1001, 20:2218	16009 (C)	25:673
15407 (N)	20:1001, 20:2218	16010 (N)	20:1001, 20:2218
15408 (N)	20:1001, 20:2218	16010 (C)	25:673
15409 (N)	20:1001, 20:2218	16011 (N)	20:1001, 20:2218
15410 (N)	20:1001, 20:2218	16011 (C)	25:673
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15600 (N)	20:1001, 20:2218	16014 (N)	20:1001, 20:2218
15601 (N)	20:1001, 20:2218	16014 (C)	25:673
15602 (N)	20:1001, 20:2218	16015 (N)	20:1001, 20:2218
15603 (N)	20:1001, 20:2218	16040 (N)	20:1001, 20:2218
15620 (N)	20:1001, 20:2218	16040 (A)	25:673
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15645 (N)	20:1001, 20:2218	16053 (N)	25:673
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15680 (N)	20:1001, 20:2218	16060 (N)	20:1001, 20:2218
15681 (N)	20:1001, 20:2218	16061 (N)	20:1001, 20:2218
15682 (N)	20:1001, 20:2218	16062 (N)	20:1001, 20:2218
15683 (N)	20:1001, 20:2218	16062 (A)	38:107, 39:27, 40:28, 40:45
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15686 (N)	20:279, 20:2218	16080 (N)	20:1001, 20:2218
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15802 (N)	20:1001, 20:2218	16103 (N)	20:1001, 20:2218
15803 (N)	20:1001, 20:2218	16104 (N)	20:1001, 20:2218
15804 (N)	20:1001, 20:2218	16105 (N)	20:1001, 20:2218
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15805 (N)	20:1001, 20:2218	16200 (C)	25:673
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16000 (C)	25:673	16201 (N)	20:1001, 20:2218
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16223 (N)	20:1001, 20:2218	16307 (R)	29:245, 29:604, 29:643
16223 (C)	25:673	16308 (N)	20:1001, 20:2218
16223 (R)	25:673	16308 (R)	29:245, 29:604, 29:643
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16224 (C)	25:673	16309 (R)	29:245, 29:604, 29:643
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16226 (N)	20:1001, 20:2218	16310 (R)	29:245, 29:604, 29:643
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16228 (C)	25:673	16312 (R)	29:245, 29:604, 29:643
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16239 (N)	20:1001, 20:2218	16338 (N)	29:245, 29:604, 29:643
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16241 (N)	20:1001, 20:2218	16345 (N)	29:245, 29:604, 29:643
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16242 (N)	20:1001, 20:2218	16347 (N)	29:245, 29:604, 29:643
16242 (C)	25:673	16350 (N)	29:245, 29:604, 29:643
16243 (N)	20:1001, 20:2218	16351 (N)	29:245, 29:604, 29:643
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16246 (N)	20:1001, 20:2218	16356 (N)	29:245, 29:604, 29:643
16247 (N)	20:1001, 20:2218	16357 (N)	29:245, 29:604, 29:643
16247 (C)	25:673	16358 (N)	29:245, 29:604, 29:643
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4673 (R)	12:1001, 12:534	8301 (R)	15:1137, 15:1429
4674 (R)	12:1001, 12:534	8301 (N)	15:1137, 15:1429
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§ 15 (A)	12:1101, 13:2010		12:1101, 13:2010
1962 (1st Ex. Sess.) Cal. Stat. ch. 28,		1969 Cal. Stat. ch. 916, § 260 (A)	
§ 23 (A)	4:1001		12:1101, 13:2010
1962 (1st Ex. Sess.) Cal. Stat. ch. 28,		1969 Cal. Stat. ch. 916, § 650 (A)	
§ 24 (R)	4:1601		12:1101, 13:2010
1962 (1st Ex. Sess.) Cal. Stat. ch. 40,		1969 Cal. Stat. ch. 916, § 651 (R)	
§ 11 (A)	12:1101, 13:2010		12:1101, 13:2010
1962 (1st Ex. Sess.) Cal. Stat. ch. 40,		1970 Cal. Stat. ch. 1283, § 30 (A)	12:2007
§ 25 (A)	4:1001	1972 Cal. Stat. ch. 1560,	
1962 (1st Ex. Sess.) Cal. Stat. ch. 40,		§ 141 (A)	12:1101, 13:2010
§ 26 (R)	4:1601	1983 Cal. Stat. ch. 342, § 4 (A)	
1962 (1st Ex. Sess.) Cal. Stat. ch. 67,			18:383, 18:1717
§ 27 (A)	12:1101, 13:2010	1988 Cal. Stat. ch. 280, § 2 (R)	20:231
1964 (1st Ex. Sess.) Cal. Stat. ch. 104,		1989 Cal. Stat. ch. 397, § 40 (N)	20:95, 20:202
§ 6.6 (A)	12:1101, 13:2010	1989 Cal. Stat. ch. 397, § 40 (A)	20:2220
1966 (1st Ex. Sess.) Cal. Stat. ch. 55,		1999 Cal. Stat. ch. 1141, § 4 (R)	22:1, 22:851
§ 39 (R)	12:1101, 13:2010	1999 Cal. Stat. ch. 1141, § 5 (R)	22:1, 22:85
1966 (1st Ex. Sess.) Cal. Stat. ch. 55,		2010 Cal. Stat. ch. 711, § 7 (N)	
§ 6 (A)	12:1101, 13:2010		38:217, 40:27, 40:43, 40:107
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.....	12:1101, 13:2010		43:93, 44:27, 44:77
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.....	12:1101, 13:2010		
1969 Cal. Stat. ch. 1149, § 5 (A)			
.....	12:1101, 13:2010		

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

2014-2015 Annual Report

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
www.clrc.ca.gov

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Comm'n Reports 1 (2014).

SUMMARY OF WORK OF COMMISSION

Recommendations to the 2014 Legislature

In 2014, bills effectuating three Commission recommendations were enacted, relating to the following subjects:

- Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
- Deadly Weapons: Minor Clean-Up Issues
- Technical and Minor Substantive Statutory Corrections

Recommendation to the 2015 Legislature

In 2015, the Commission plans to seek the introduction of legislation effectuating a Commission recommendation on the following subject:

- Fish and Game Law: Technical Revisions and Minor Substantive Improvements: Part 1

Commission Activities Planned for 2015

During 2015, the Commission intends to work on the following major topics: mediation confidentiality, revision of the Fish and Game Code, state and local agency access to customer information held by communications service providers, publication of legal notice in a county with a unified superior court, and recognition of tribal and foreign court money judgments.

The Commission will work on other topics as time permits.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

c/o King Hall Law School
Davis, CA 95616

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February 12, 2015

To: The Honorable Edmund G. Brown, Jr.
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 2014 and its plans for 2015.

Three Commission recommendations considered by the Legislature in 2014 were enacted into law.

The Commission is grateful to the members of the Legislature who carried Commission-recommended legislation in 2014:

- Senator Hannah-Beth Jackson (Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act)
- Assembly Committee on Public Safety (Deadly Weapons: Minor Clean-Up Issues)
- Assembly Committee on Judiciary (Technical and Minor Substantive Statutory Corrections)

The Commission held five one-day meetings in 2014. Meetings were held in Sacramento, Los Angeles, and Davis.

Respectfully submitted,

Victor King
Chairperson

2014-2015 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 a 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 study only topics that the Legislature has authorized.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., 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

The Commission has submitted 407 recommendations to the Legislature, of which 374 (more than 90%) have been enacted in whole or in substantial part.⁵ Commission recommendations have resulted in the enactment of legislation affecting 24,984 sections of California law: 5,067 sections amended, 10,979 sections added, and 8,938 sections repealed.

The Commission's recommendations, reports, and other selected materials are published annually in hardcover volumes. Recent materials are also available through the Internet. A list of past publications and information on obtaining printed or electronic versions of Commission material can be found at the end of this Annual Report.⁶

2015 Legislative Program

In 2015, the Commission plans to seek the introduction of legislation effectuating a Commission recommendation on the following subject:

- Fish and Game Law: Technical Revisions and Minor Substantive Improvements: Part 1

Major Studies in Progress

During 2015, the Commission intends to work on the following major topics: mediation confidentiality, revision of the Fish and Game Code, state and local agency access to customer information held by communications service providers, publication of legal notice in a county with a unified superior court, and recognition of tribal and foreign court money judgments.

The Commission will work on other topics as time permits.

of weapon statutes); 2006 Cal. Stat. ch. 216 [AB 2034] (donative transfer restrictions).

5. See *Legislative Action on Commission Recommendations*, Appendix 3 *infra*.

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

Mediation Confidentiality

The Commission will continue to analyze the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, including the purposes for and impact of mediation confidentiality on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, the effectiveness of mediation, and other relevant issues.⁷

Revision of the Fish and Game Code

The Commission will continue to study the revision of the Fish and Game Code and related statutory law to improve organization, clarify meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law.⁸

State and Local Agency Access to Customer Information Held by Communications Service Providers

The Commission will continue to study revision of statutes that govern state and local agency access to customer information held by communications service providers.⁹

Publication of Legal Notice

The Commission will continue its study of statutes that require the publication of legal notice in a particular “judicial district.”¹⁰

Recognition of Tribal and Foreign Court Money Judgments

The Commission has been directed to conduct a study of the standards for recognition of a tribal court or foreign court money

7. See 2012 Cal. Stat. res. ch. 108.

8. See 2012 Cal. Stat. res. ch. 108.

9. See 2013 Cal. Stat. res. ch. 115.

10. Gov’t Code § 70219; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 86 (1998).

judgment, under the Trial Court Civil Money Judgment Act¹¹ and the Uniform Foreign-Country Money Judgments Recognition Act.¹² The Commission's report on this matter is due on or before January 1, 2017. The Commission will give this matter high priority in the coming year.

Other Subjects

The major studies described above will dominate the Commission's time and resources during 2015. As time permits, the Commission will continue its work on trial court restructuring and consider other subjects authorized for study.

Calendar of Topics for Study

The Commission's calendar includes 23 topics 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

11. Title 11.5 (commencing with Section 1730) of Part 3 of the Code of Civil Procedure.

12. Chapter 2 (commencing with Section 1713) of Title 11 of Part 3 of the Code of Civil Procedure.

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

14. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See 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 § 8261.

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

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 requires a concurrent resolution authorizing the Commission to study topics contained in the calendar of topics set forth in the Commission's regular report to the Legislature. 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.

19. For an example of a concurrent resolution referring a specific topic to the Commission for study, see 2006 Cal. Stat. res. ch. 128 [ACR 73] (nonsubstantive reorganization of deadly weapon statutes).

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

Background Studies

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, expert consultants are also retained to advise the Commission at meetings.²¹

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 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.²² When

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 may be uncoded. See, e.g., 2005 Cal. Stat. ch. 422 (beneficiary deeds).

21. The Commission has retained Professor Katherine J. Florey, University of California, Davis, School of Law, as a consultant on its study of Recognition of Tribal and Foreign Court Money Judgments.

22. 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

the Commission has reached a conclusion on the matter,²³ 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.²⁴

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).

23. 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.

24. 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 (1988); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986);

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.²⁵

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.²⁶ Receipt of a recommendation by the Legislature is noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.²⁷

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.²⁸ 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

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).

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

26. See Gov't Code §§ 8291, 9795, 11094-11099; see also *Reynolds v. Superior Court*, 12 Cal. 3d 834, 847 n.18, 528 P.2d 45, 53 n.18, 117 Cal. Rptr. 437, 445 n.18 (1974) (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

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

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

rely on the recommendation in analyzing the bill and making recommendations to the Legislature concerning it.²⁹

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.³⁰ 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.³¹

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

29. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 542, 28 P.3d 151, 166, 110 Cal. Rptr. 2d 412, 430 (2001), 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 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.").

30. See, e.g., *Baldwin v. State*, 6 Cal. 3d 424, 433, 491 P.2d 1121, 1126, 99 Cal. Rptr. 145, 150 (1972). For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

31. 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).

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.³²

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,³³ and are entitled to great weight in construing statutes.³⁴ The materials are a key interpretive aid for practitioners as well as courts,³⁵ and courts may judicially notice

32. Commission reports have in the past been published as well in the legislative journals. See, e.g., *In re Marriage of Neal*, 153 Cal. App. 3d 117, 124, 200 Cal. Rptr. 341, 345 (1984) (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).

33. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 657, 51 Cal. Rptr. 3d 871, 875 (2006) ("The Commission's official comments are deemed to express the Legislature's intent."); *People v. Williams*, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) ("The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it.").

34. See, e.g., *Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 12-13 n.9, 145 P.3d 462, 469 n.9, 50 Cal. Rptr. 3d 585, 593 n.9 (2006) (Commission's official comments are persuasive evidence of Legislature's intent); *Hale v. S. Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

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].)

35. Cf. 7 B. Witkin, *Summary of California Law Constitutional Law* § 123, at 230 (10th ed. 2005) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

and rely on them.³⁶ Courts at all levels of the state³⁷ and federal³⁸ judicial systems depend on Commission materials to construe statutes enacted on Commission recommendation.³⁹ Appellate courts have cited Commission materials in more than a thousand published opinions.⁴⁰

36. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale*, 86 Cal. App. 4th at 927; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

37. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 298, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Admin. Mgmt. Services, Inc. v. Fid. Deposit Co. of Md.*, 129 Cal. App. 3d 484, 488, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

38. See, e.g., *California v. Green*, 399 U.S. 149, 154 n.3 (1970) (United States Supreme Court); *S. Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950, 953 (9th Cir. 1997) (federal court of appeals); *Williams v. Townsend*, 283 F. Supp. 580, 582 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)*, 204 B.R. 976, 978-79 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289, 292-93 (Bankr. S.D. Cal. 1984) (bankruptcy court).

39. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to substantial weight in construing statute); *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature's intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence clear legislative intent of law); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight), overruled on other grounds by *Privette v. Superior Court*, 5 Cal. 4th 689, 854 P.2d 721, 21 Cal. Rptr. 2d 72 (1993); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission).

40. In this connection 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*, 185 F. Supp. 2d 1128, 1132 (E.D. Cal. 2002) (Law Revision "Committee"); *Ryan v. Garcia*, 27 Cal.

Commission materials have been used as direct support for a court's interpretation of a statute,⁴¹ as one of several indicia of legislative intent,⁴² to explain the public policy behind a statute,⁴³ and on occasion to demonstrate (by their silence) the Legislature's intention not to change the law.⁴⁴ The Legislature's failure to adopt a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.⁴⁵

Commission materials are entitled to great weight, but they are not conclusive.⁴⁶ While the Commission endeavors in Comments to 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,⁴⁷ nor can it anticipate judicial

App. 4th 1006, 1010 n.2, 33 Cal. Rptr. 2d 158, 160 n.2 (1994) (Law "Review" Commission).

41. See, e.g., *People v. Ainsworth*, 45 Cal. 3d 984, 1015, 755 P.2d 1017, 1036, 248 Cal. Rptr. 568, 586 (1988).

42. See, e.g., *Heieck & Moran v. City of Modesto*, 64 Cal. 2d 229, 233 n.3, 411 P.2d 105, 108 n.3, 49 Cal. Rptr. 377, 380 n.3 (1966).

43. See, e.g., *Southern Cal. Gas Co. v. Public Utils. Comm'n*, 50 Cal. 3d 31, 38 n.8, 784 P.2d 1373, 1376 n.8, 265 Cal. Rptr. 801, 804 n.8 (1990).

44. See, e.g., *State ex rel. State Pub. Works Bd. v. Stevenson*, 5 Cal. App. 3d 60, 64-65, 84 Cal. Rptr. 742, 745-46 (1970) (finding that 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).

45. See, e.g., *McWilliams v. City of Long Beach*, 56 Cal. 4th 613, 623-24, 300 P.3d 886, 155 Cal. Rptr. 3d 817 (2013); *Nestle v. City of Santa Monica*, 6 Cal. 3d 920, 935-36, 496 P.2d 480, 490, 101 Cal. Rptr. 568, 578 (1972).

46. See, e.g., *Redevelopment Agency v. Metropolitan Theatres Corp.*, 215 Cal. App. 3d 808, 812, 263 Cal. Rptr. 637, 639 (1989) (Comment does not override clear and unambiguous statute). Commission materials are but one indicium of legislative intent. See, e.g., *Estate of Joseph*, 17 Cal. 4th 203, 216, 949 P.2d 472, 480, 70 Cal. Rptr. 2d 619, 627 (1998). The accuracy of a Comment may also be questioned. See, e.g., *Buzgheia v. Leasco Sierra Grove*, 30 Cal. App. 4th 766, 774, 36 Cal. Rptr. 2d 144, 149 (1994); *In re Thomas*, 102 B.R. 199, 202 (Bankr. E.D. Cal. 1989).

47. *Cf. People v. Coleman*, 8 Cal. App. 3d 722, 731, 87 Cal. Rptr. 554, 559 (1970) (Comments make clear intent to reflect existing law even if not all supporting cases are cited).

conclusions as to the significance of existing case authorities.⁴⁸ 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.⁴⁹

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.⁵⁰ 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.⁵¹

48. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 885, 109 Cal. Rptr. 421, 426-27 (1973) (noting that decisional law cited in Comment was distinguished by the California Supreme Court in a case decided after enactment of the Commission recommendation).

49. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). 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.

50. See, e.g., *Rojas v. Superior Court*, 33 Cal. 4th 407, 93 P.3d 260, 15 Cal. Rptr. 3d 643 (2005) (tentative recommendation, correspondence, and staff memorandum and draft); *Yamaha Corp. v. State Bd. of Equalization*, 19 Cal. 4th 1, 12-13, 960 P.2d 1031, 1037, 78 Cal. Rptr. 2d 1, 7 (1998) (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*, 193 Cal. App. 3d 238, 243, 239 Cal. Rptr. 137, 140 (1987). In that event, reliance on the tentative recommendation is proper.

See also *Ilkhchooyi v. Best*, 37 Cal. App. 4th 395, 406, 45 Cal. Rptr. 2d 766, 772-73 (1995) (letter responding to tentative recommendation); D. Henke, *California Legal Research Handbook* § 3.51 (1971) (background studies).

51. *Cf. Rittenhouse v. Superior Court*, 235 Cal. App. 3d 1584, 1589, 1 Cal. Rptr. 2d 595, 598 (1991) (linking Commission's intent and Legislature's intent); *Guthman v. Moss*, 150 Cal. App. 3d 501, 508, 198 Cal. Rptr. 54, 58 (1984) (determination of Commission's intent used to infer Legislature's intent).

Unless preliminary 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.⁵²

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.⁵³ 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.⁵⁴

Publications

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.⁵⁵ 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, it is believed, are a valuable

52. The Commission concurs with the opinion of the court in *Juran v. Epstein*, 23 Cal. App. 4th 882, 894 n.5, 28 Cal. Rptr. 2d 588, 594 n.5 (1994), that staff memoranda to the Commission should not be considered as legislative history.

53. See, e.g., *Duarte v. Chino Community Hosp.*, 72 Cal. App. 4th 849, 856 n.3, 85 Cal. Rptr. 2d 521, 525 n.3 (1999).

54. See, e.g., *Sierra Club v. San Joaquin Local Agency Formation Comm'n*, 21 Cal. 4th 489, 502-03, 981 P.2d 543, 551-52, 87 Cal. Rptr. 2d 702, 712 (1999) (unenacted Commission recommendation useful as "opinion of a learned panel"); *Hall v. Hall*, 222 Cal. App. 3d 578, 585, 271 Cal. Rptr. 773, 777 (1990) (Commission staff report most detailed analysis of statute available); *W.E.J. v. Superior Court*, 100 Cal. App. 3d 303, 309-10, 160 Cal. Rptr. 862, 866 (1979) (law review article prepared for Commission provides insight into development of law); *Schonfeld v. City of Vallejo*, 50 Cal. App. 3d 401, 407 n.4, 123 Cal. Rptr. 669, 673 n.4 (1975) (court indebted to many studies of Commission for analytical materials).

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

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.⁵⁶ Publications that are out of print are available as electronic files.⁵⁷

Electronic Publication and Internet Access

Since 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.⁵⁸ 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. Recent publications and memoranda may be downloaded from the Commission's website. Files that are not on the website are available on request.⁵⁹

Electronic Mail

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence, if the email message includes the name and regular mailing address of the sender. 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.

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

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

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

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

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 Internet⁶⁰ or may be purchased in advance from the Commission.

Personnel of Commission⁶¹

As of December 11, 2014, the following persons were members of the Law Revision Commission:

Legislative Members⁶²

Vacant
Vacant

Members Appointed by Governor⁶³	<i>Term Expires</i>
Victor King, La Crescenta <i>Chairperson</i>	October 1, 2015
Crystal Miller-O’Brien, Los Angeles <i>Vice-Chairperson</i>	October 1, 2017
Damian Capozzola, Hermosa Beach	October 1, 2017
Xochitl Carrion, Oakland	October 1, 2015

60. See “Electronic Publication and Internet Access” *supra*.

61. See also *Biographies of 2014 Commissioners*, Appendix 5 *infra*.

62. 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.

63. 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).

Judge Patricia Cowett (ret.), San Diego	October 1, 2015
Taras Kihiczak, Pacific Palisades	October 1, 2017
Susan Duncan Lee, San Francisco	October 1, 2015

Legislative Counsel⁶⁴

Diane F. Boyer-Vine, Sacramento

The following persons are on the Commission's staff:

Legal

BRIAN HEBERT
Executive Director

BARBARA S. GAAL
Chief Deputy Counsel

KRISTIN BURFORD
Staff Counsel

STEVE COHEN
Staff Counsel

Administrative-Secretarial

DEBORA LARRABEE
*Associate Governmental
Program Analyst*

VICTORIA V. MATIAS
Secretary

In addition, Tyler Sonksen, Anthony Hoisington, Emily Jeng, and Heather Zimmerman, all from the University of California, Davis, School of Law, worked for the Commission in 2013 and 2014.

Commission Budget

The Commission's operations for the 2014-15 fiscal year have been funded through a reimbursement from the California Office of Legislative Counsel, in the amount of \$814,000.

That reimbursement is supplemented by \$15,000 budgeted for income generated from the sale of documents to the public, to recover the cost of the documents.

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

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 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 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.

In addition, retired Executive Secretary Nathaniel Sterling, who previously established a fellowship program at the University of California, Davis, School of Law to pay the salary of a summer student employee of the Commission, has made another sizeable donation to the program. The Commission expresses its appreciation to Mr. Sterling for his continuing support.

The Commission also received valuable assistance from the Law and Public Policy Lab at Stanford 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.⁶⁵

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.⁶⁶ Legislative Counsel and Commission member Diane F. Boyer-Vine is a member of the California Commission on Uniform State

65. Gov't Code § 8296.

66. Gov't Code § 8289.

Laws and the National Conference. The Commission's Executive Director, Brian Hebert, is an associate member of the National Conference.

Legislative History of Recommendations in the 2014 Legislative Session

In 2014, bills to effectuate three Commission recommendations were introduced. All of the proposals were enacted.

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

Senate Bill 940 (2014 Cal. Stat. ch. 553) was introduced in 2014 by Senator Hannah-Beth Jackson. The bill effectuated the Commission's recommendation on *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, 43 Cal. L. Revision Comm'n Reports 93 (2013).

The measure was enacted, with amendments. See *Report of the California Law Revision Commission on Chapter 553 of the Statutes of 2014 (Senate Bill 940)*, 44 Cal. L. Revision Comm'n Reports 77 (2014) (Appendix 4, *infra*).

Deadly Weapons: Minor Clean-Up Issues

Assembly Bill 1798 (2014 Cal. Stat. ch. 103) was introduced in 2014 by the Assembly Committee on Public Safety to effectuate the Commission's recommendation on *Deadly Weapons: Minor Clean-Up Issues*, 43 Cal. L. Revision Comm'n Reports 63 (2013).

The measure was enacted.

Technical and Minor Substantive Statutory Corrections

Assembly Bill 2747 (2014 Cal. Stat. ch. 913) was introduced in 2014 by the Assembly Committee on Judiciary to effectuate the Commission's recommendation on *Technical and Minor Substantive Statutory Corrections*, 43 Cal. L. Revision Comm'n Reports 35 (2013).

The revisions recommended by the Commission were enacted.

Resolution Authorizing Topics for Study

Senate Concurrent Resolution 83 (2014 Cal. Stat. res. ch. 63) was introduced by Senator Bill Monning. It authorizes the Commission's continued study of 23 previously authorized topics.

The measure also directs the Commission, before commencing work on any project within the Commission's calendar of topics, to submit a detailed description of the scope of work, as well of any major change to the scope of that work that occurs during the course of the project, to the chairs and vice chairs of the Assembly Committee on Judiciary and the Senate Committee on Judiciary, and of any other legislative policy committee that has jurisdiction over the subject matter of the study.

The measure further requests that the Commission provide a copy of a Commission recommendation to each member of a policy committee hearing a bill that would implement the recommendation.

The measure also invites the staff of the Commission to appear and testify at any committee hearing of a bill to implement a Commission recommendation, for the purpose of explaining the recommendation and answering questions posed by committee members, provided that the staff may not advocate for the passage or defeat of the legislation.

**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 prepared⁶⁷ and has the following to report:

- No decision holding a state statute repealed by implication has been found.
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.
- No decision of the California Supreme Court holding a state statute unconstitutional have been found.

Recommendations

The Commission respectfully recommends that the Legislature authorize the Commission to continue its study of the topics previously authorized.⁶⁸

67. This study has been carried through opinions published on or before November 6, 2014.

68. See discussion under "Calendar of Topics for Study" *supra*; *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

APPENDIX 1

STATUTE GOVERNING THE CALIFORNIA LAW REVISION COMMISSION (Government Code Sections 8280-8298*)

§ 8280. Creation

8280. There is created in the State Government the California Law Revision Commission.

§ 8281. Membership

8281. The commission consists of one Member of the Senate appointed by the Committee on Rules, one Member of the Assembly appointed by the Speaker, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel shall be an ex officio member of the commission.

The Members of the Legislature appointed to the commission shall serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this article, those Members of the Legislature shall constitute a joint interim investigating committee on the subject of this article and as a joint interim investigating committee shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

The members appointed by the Governor shall be appointed for a term of four years and shall hold office until the appointment and qualification of their successors. The terms of the members first appointed shall not commence earlier than October 1, 1953, and

*Added by 1984 Cal. Stat. ch. 1335, § 2; see also 1985 Cal. Stat. ch. 106, § 45 (amending Section 8295); 1989 Cal. Stat. ch. 152, § 1 (adding Section 8298), 2004 Cal. Stat. ch. 193, § 33 (amending Section 8293). Formerly Gov't Code §§ 10300-10340, added by 1953 Cal. Stat. ch. 1445, § 2; amended by 1960 Cal. Stat. ch. 61, § 1 (1st Ex. Sess.); 1965 Cal. Stat. ch. 371, § 110; 1978 Cal. Stat. ch. 228, § 1; 1981 Cal. Stat. ch. 1106, § 2.

shall expire as follows: four on October 1, 1955, and three on October 1, 1957. When a vacancy occurs in any office filled by appointment by the Governor, he or she shall appoint a person to the office, who shall hold office for the balance of the unexpired term of his or her predecessor.

Note. The provision in the third paragraph to the effect that Commission members appointed by the Governor hold office until appointment and qualification of their successors is 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).

§ 8282. Compensation and expenses

8282. (a) The members of the commission shall serve without compensation, except that each member appointed by the Governor shall receive fifty dollars (\$50) for each day's attendance at a meeting of the commission.

(b) In addition, each member shall be allowed actual expenses incurred in the discharge of his or her duties, including travel expenses.

Note. Government Code Section 11564.5 provides a per diem compensation of \$100, notwithstanding any other provision of law.

§ 8283. Chairperson

8283. The commission shall select one of its members chairperson.

§ 8284. Executive secretary

8284. The commission may appoint an executive secretary and fix his or her compensation, in accordance with law.

§ 8285. Employees

8285. The commission may employ and fix the compensation, in accordance with law, of such professional, clerical and other assistants as may be necessary.

§ 8286. Assistance of state

8286. The material of the State Library shall be made available to the commission. All state agencies, and other official state organizations, and all persons connected therewith shall give the commission full information, and reasonable assistance in any matters of research requiring recourse to them, or to data within their knowledge or control.

§ 8287. Assistance of bar

8287. The Board of Governors of the State Bar shall assist the commission in any manner the commission may request within the scope of its powers or duties.

§ 8288. Political activities of commissioners and staff

8288. No employee of the commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature as to such matters unless requested to do so by the committee or its chairperson. In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his or her official capacity as an employee or member.

§ 8289. Duties of commission

8289. The commission shall, within the limitations imposed by Section 8293:

(a) Examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

(c) Receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(d) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state into harmony with modern conditions.

§ 8290. Unconstitutional and impliedly repealed statutes

8290. 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.

§ 8291. Submission and distribution of reports

8291. The commission shall submit its reports, and its recommendations as to revision of the laws, to the Governor and the Legislature, and shall distribute them to the Governor, the Members of the Legislature, and the heads of all state departments.

Note. Section 8291 is limited by later-enacted rules governing distribution of state reports set out in Government Code Sections 9795 and 11094-11099.

§ 8292. Contents of reports

8292. The commission may, within the limitations imposed by Section 8293, include in its report the legislative measures proposed by it to effect the adoption or enactment of the proposed revision. The reports may be accompanied by exhibits of various changes, modifications, improvements, and suggested enactments prepared or proposed by the commission with a full and accurate index thereto.

§ 8293. Calendar of topics

8293. The commission shall file a report at each regular session of the Legislature that shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. The commission shall confine its studies to those topics set forth in the calendar

contained in its last preceding report that have been or are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic that the Legislature, by concurrent resolution or statute, refers to it for study.

§ 8294. Printing of reports

8294. The reports, exhibits, and proposed legislative measures shall be printed by the State Printing Office under the supervision of the commission. The exhibits shall be so printed as to show in the readiest manner the changes and repeals proposed by the commission.

§ 8295. Cooperation with legislative committees

8295. The commission shall confer and cooperate with any legislative committee on revision of the law and may contract with any committee for the rendition of service, by either for the other, in the work of revision.

§ 8296. Cooperation with bar and other associations

8296. The commission may cooperate with any bar association or other learned, professional, or scientific association, institution or foundation in any manner suitable for the fulfillment of the purposes of this article.

§ 8297. Research contracts

8297. The commission may, with the approval of the Director of General Services, enter into, amend and terminate contracts with colleges, universities, schools of law or other research institutions, or with qualified individuals for the purposes of research.

§ 8298. Recommendations concerning minor revisions

8298. The commission may study and recommend revisions to correct technical or minor substantive defects in the statutes of the state without a prior concurrent resolution of the Legislature referring the matter to it for study.

APPENDIX 2

CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission's calendar of topics authorized for study includes the subjects listed below.¹ Each of these topics has been authorized for Commission study by the Legislature. For the current authorizing resolution, see 2014 Cal. Stat. res. ch. 63.

1. Creditors' remedies. Whether the law should be revised that relates to creditors' remedies, including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code provisions on repossession of property), confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, insolvency, and related matters.²

2. Probate Code. Whether the California Probate Code should be revised, including, but not limited to, the issue of whether California should adopt, in whole or in part, the Uniform Probate Code, and related matters.³

1. The calendar of topics lists only those topics selected by the Commission for study and authorized by the Legislature. The Commission also studies topics specifically directed to it by concurrent resolution of the Legislature or by statute. See, e.g., 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communication service providers); 2014 Cal. Stat. ch. 243 [SB 406] (recognition of tribal and foreign court money judgments). The Commission may also study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution. Gov't Code § 8298.

2. See also 1983 Cal. Stat. res. ch. 40; 1974 Cal. Stat. res. ch. 45; 1972 Cal. Stat. res. ch. 27; 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957, at 15-16 (1957). Revised in 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 661 (2000).

3. See also 1980 Cal. Stat. res. ch. 37. Revised in 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 661 (2000).

3. Real and personal property. Whether the law should be revised that relates to real and personal property, including, but not limited to, a marketable title act, covenants, servitudes, conditions, and restrictions on land use or relating to land, powers of termination, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant on assignment, subletting, termination, or abandonment of a lease, and related matters.⁴

4. Family law. Whether the law should be revised that relates to family law, including, but not limited to, community property, the adjudication of child and family civil proceedings, child custody, adoption, guardianship, freedom from parental custody and control, and related matters, including other subjects covered by the Family Code.⁵

5. Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised.⁶

6. Rights and disabilities of minors and incompetent persons. Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised.⁷

7. Evidence. Whether the Evidence Code should be revised.⁸

4. See 1983 Cal. Stat. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic. Expanded in 1988 Cal Stat. res. ch. 81. Revised in 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 661 (2000).

5. See 1997 Cal. Stat. res. ch. 102, consolidating Family Code authority, child custody, adoption, and guardianship authority, and family law proceedings authority. See also 1995 Cal. Stat. res. ch. 87; 1989 Cal. Stat. res. ch. 70; 1983 Cal. Stat. res. ch. 40; 1978 Cal. Stat. res. ch. 65; 1972 Cal. Stat. res. ch. 27; 1956 Cal. Stat. res. ch. 42.

6. See also 1975 Cal. Stat. res. ch. 15; 12 Cal. L. Revision Comm'n Reports 526-28 (1974).

7. See also 1979 Cal. Stat. res. ch. 19; 14 Cal. L. Revision Comm'n Reports 217-18 (1978).

8. See also 1965 Cal. Stat. res. ch. 130.

8. Alternative Dispute Resolution. Whether the law relating to arbitration, mediation, and other alternative dispute resolution techniques should be revised.⁹

9. Administrative law. Whether there should be changes to administrative law.¹⁰

10. Attorney's fees. Whether the law relating to the payment and the shifting of attorney's fees between litigants should be revised.¹¹

11. Uniform Unincorporated Nonprofit Association Act. Whether the Uniform Unincorporated Nonprofit Association Act, or parts of that uniform act, and related provisions should be adopted in California.¹²

12. Trial court unification. Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification.¹³

13. Contract law. Whether the law of contracts should be revised, including the law relating to the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters.¹⁴

14. Common interest developments. Whether the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, establish a clear, consistent, and unified policy with regard to formation and management of these developments and transaction of real property interests located within

9. See also 1968 Cal. Stat. res. ch. 110; 8 Cal. L. Revision Comm'n Reports 1325-26 (1967). Revised in 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 661-62 (2000).

10. See also 1987 Cal. Stat. res. ch. 47.

11. See also 1995 Cal. Stat. res. ch. 87; 1988 Cal. Stat. res. ch. 20.

12. See also 1993 Cal. Stat. res. ch. 31; 22 Cal. L. Revision Comm'n Reports 846 (1992).

13. See also 1995 Cal. Stat. res. ch. 87; 1993 Cal. Stat. res. ch. 96.

14. See also 1996 Cal. Stat. res. ch. 38; 25 Cal. L. Revision Comm'n Reports 628-29 (1995).

them, and to determine to what extent they should be subject to regulation.¹⁵

15. Legal malpractice statutes of limitation. Whether the statutes of limitation for legal malpractice actions should be revised to recognize equitable tolling or other adjustment for the circumstances of simultaneous litigation, and related matters.¹⁶

16. Coordination of public records statutes. Whether the law governing disclosure of public records and the law governing protection of privacy in public records should be revised to better coordinate them, including consolidation and clarification of the scope of required disclosure and creation of a single set of disclosure procedures, to provide appropriate enforcement mechanisms, and to ensure that the law governing disclosure of public records adequately treats electronic information, and related matters.¹⁷

17. Criminal sentencing. Whether the law governing criminal sentences for enhancements relating to weapons or injuries should be revised to simplify and clarify the law and eliminate unnecessary or obsolete provisions.¹⁸

18. Subdivision Map Act and Mitigation Fee Act. Whether the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) and the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) of Division 1 of Title 7 of the Government Code) should

15. See also 1999 Cal. Stat. res. ch. 81; 28 Cal. L. Revision Comm'n Reports 693-94 (1998).

16. See also 1999 Cal. Stat. res. ch. 81; 28 Cal. L. Revision Comm'n Reports 696 (1998).

17. See also 1999 Cal. Stat. res. ch. 81; 28 Cal. L. Revision Comm'n Reports 695-96 (1998).

18. See also 1999 Cal. Stat. res. ch. 81; 28 Cal. L. Revision Comm'n Reports 695 (1998). Revised in 2002 Cal. Stat. res. ch. 166.

be revised to improve their organization, resolve inconsistencies, and clarify and rationalize provisions, and related matters.¹⁹

19. Uniform Statute and Rule Construction Act. Whether the Uniform Statute and Rule Construction Act (1995) should be adopted in California in whole or in part, and related matters.²⁰

20. Place of trial in a civil case. Whether the law governing the place of trial in a civil case should be revised.²¹

21. Charter schools and the Government Claims Act. Analysis of the legal and policy implications of treating a charter school as a public entity for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.²²

22. Fish and Game Code. Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law.²³

23. Mediation Confidentiality. (a) Analysis of the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, and the purposes for, and impact of, those laws on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, and the effectiveness of mediation, as well as any other issues that the commission deems relevant. Among other matters, the commission shall consider the following:

19. See also 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 662 (2000).

20. See also 2003 Cal. Stat. res. ch. 92; 33 Cal. L. Revision Comm'n Reports 599 (2003).

21. See also 2007 Cal. Stat. res. ch. 100; 38 Cal. L. Revision Comm'n Reports 30 (2008).

22. See also 2009 Cal. Stat. res. ch. 98; 39 Cal. L. Revision Comm'n Reports 28 (2009).

23. See also 2012 Cal. Stat. res. ch. 108; 42 Cal. L. Revision Comm'n Reports 361 (2012).

(1) Sections 703.5, 958, and 1119 of the Evidence Code and predecessor provisions, as well as California court rulings, including, but not limited to, *Cassel v. Superior Court* (2011) 51 Cal. 4th 113, *Porter v. Wyner* (2010) 183 Cal. App. 4th 949, and *Wimsatt v. Superior Court* (2007) 152 Cal. App. 4th 137.

(2) The availability and propriety of contractual waivers.

(3) The law in other jurisdictions, including the Uniform Mediation Act, as it has been adopted in other states, other statutory acts, scholarly commentary, judicial decisions, and any data regarding the impact of differing confidentiality rules on the use of mediation.

(b) In studying this matter, the commission shall request input from experts and interested parties, including, but not limited to, representatives from the California Supreme Court, the State Bar of California, legal malpractice defense counsel, other attorney groups and individuals, mediators, and mediation trade associations. The commission shall make any recommendations that it deems appropriate for the revision of California law to balance the competing public interests between confidentiality and accountability.²⁴

24. See also 2012 Cal. Stat. res. ch. 108; 42 Cal. L. Revision Comm'n Reports 361 (2012).

APPENDIX 3

LEGISLATIVE ACTION ON COMMISSION RECOMMENDATIONS

(Cumulative)

Note. The “Action by Legislature” column may include references to relevant legislative history in the Commission’s Reports, following the italicized “*See.*” These references are to pages in Commission bound volumes (e.g., “35:73” refers to bound volume 35, page 73).

Recommendation	Action by Legislature
1. <i>Partial Revision of Education Code</i> , 1 Cal. L. Revision Comm’n Reports, Annual Report for 1954, at 12 (1957)	Enacted. 1955 Cal. Stat. chs. 799, 877
2. <i>Summary Distribution of Small Estates Under Probate Code Sections 640 to 646</i> , 1 Cal. L. Revision Comm’n Reports, Annual Report for 1954, at 50 (1957)	Enacted. 1955 Cal. Stat. ch. 1183
3. <i>Fish and Game Code</i> , 1 Cal. L. Revision Comm’n Reports, Annual Report for 1956, at 13-14 (1957)	Enacted. 1957 Cal. Stat. ch. 456
4. <i>Maximum Period of Confinement in a County Jail</i> , 1 Cal. L. Revision Comm’n Reports, at A-1 (1957)	Enacted. 1957 Cal. Stat. ch. 139
5. <i>Notice of Application for Attorney’s Fees and Costs in Domestic Relations Actions</i> , 1 Cal. L. Revision Comm’n Reports, at B-1 (1957)	Enacted. 1957 Cal. Stat. ch. 540
6. <i>Taking Instructions to Jury Room</i> , 1 Cal. L. Revision Comm’n Reports, at C-1 (1957)	Not enacted; but see Code Civ. Proc. § 612.5, enacting substance of this recommendation.
7. <i>The Dead Man Statute</i> , 1 Cal. L. Revision Comm’n Reports, at D-1 (1957)	Not enacted; but recommendation accomplished in enactment of Evidence Code. See Evid. Code § 1261 Comment
8. <i>Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere</i> , 1 Cal. L. Revision Comm’n Reports, at E-1 (1957)	Enacted. 1957 Cal. Stat. ch. 490

Recommendation	Action by Legislature
9. <i>The Marital “For and Against” Testimonial Privilege</i> , 1 Cal. L. Revision Comm’n Reports, at F-1 (1957)	Not enacted; but recommendation accomplished in enactment of Evidence Code. See Evid. Code § 970 Comment
10. <i>Suspension of the Absolute Power of Alienation</i> , 1 Cal. L. Revision Comm’n Reports, at G-1 (1957); 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 14 (1959)	Enacted. 1959 Cal. Stat. ch. 470
11. <i>Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378</i> , 1 Cal. L. Revision Comm’n Reports, at H-1 (1957)	Enacted. 1957 Cal. Stat. ch. 102
12. <i>Judicial Notice of the Law of Foreign Countries</i> , 1 Cal. L. Revision Comm’n Reports, at I-1 (1957)	Enacted. 1957 Cal. Stat. ch. 249
13. <i>Choice of Law Governing Survival of Actions</i> , 1 Cal. L. Revision Comm’n Reports, at J-1 (1957)	No legislation recommended.
14. <i>Effective Date of Order Ruling on a Motion for New Trial</i> , 1 Cal. L. Revision Comm’n Reports, at K-1 (1957); 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 16 (1959)	Enacted. 1959 Cal. Stat. ch. 468
15. <i>Retention of Venue for Convenience of Witnesses</i> , 1 Cal. L. Revision Comm’n Reports, at L-1 (1957)	Not enacted.
16. <i>Bringing New Parties Into Civil Actions</i> , 1 Cal. L. Revision Comm’n Reports, at M-1 (1957)	Enacted. 1957 Cal. Stat. ch. 1498
17. <i>Grand Juries</i> , 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 20 (1959)	Enacted. 1959 Cal. Stat. ch. 501
18. <i>Procedure for Appointing Guardians</i> , 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 21 (1959)	Enacted. 1959 Cal. Stat. ch. 500
19. <i>Appointment of Administrator in Quiet Title Action</i> , 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 29 (1959)	No legislation recommended.

Recommendation	Action by Legislature
20. <i>Presentation of Claims Against Public Entities</i> , 2 Cal. L. Revision Comm'n Reports, at A-1 (1959)	Enacted. 1959 Cal. Stat. chs. 1715, 1724, 1725, 1726, 1727, 1728; Cal. Const., art. XI, § 10 (1960)
21. <i>Right of Nonresident Aliens to Inherit</i> , 2 Cal. L. Revision Comm'n Reports, at B-1 (1959); 11 Cal. L. Revision Comm'n Reports 421 (1973)	Enacted. 1974 Cal. Stat. ch. 425
22. <i>Mortgages to Secure Future Advances</i> , 2 Cal. L. Revision Comm'n Reports, at C-1 (1959)	Enacted. 1959 Cal. Stat. ch. 528
23. <i>Doctrine of Worthier Title</i> , 2 Cal. L. Revision Comm'n Reports, at D-1 (1959)	Enacted. 1959 Cal. Stat. ch. 122
24. <i>Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving</i> , 2 Cal. L. Revision Comm'n Reports, at E-1 (1959)	Not enacted; but see 1972 Cal. Stat. ch. 92, enacting substance of a portion of recommendation relating to drunk driving.
25. <i>Time Within Which Motion for New Trial May Be Made</i> , 2 Cal. L. Revision Comm'n Reports, at F-1 (1959)	Enacted. 1959 Cal. Stat. ch. 469
26. <i>Notice to Shareholders of Sale of Corporate Assets</i> , 2 Cal. L. Revision Comm'n Reports, at G-1 (1959)	Not enacted; but see Corp. Code §§ 1001, 1002, enacting substance of recommendation.
27. <i>Evidence in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at A-1 (1961)	Not enacted; but see Evid. Code § 810 <i>et seq.</i> , enacting substance of recommendation.
28. <i>Taking Possession and Passage of Title in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at B-1 (1961)	Enacted. 1961 Cal. Stat. chs. 1612, 1613
29. <i>Reimbursement for Moving Expenses When Property Is Acquired for Public Use</i> , 3 Cal. L. Revision Comm'n Reports, at C-1 (1961)	Not enacted; but see Gov't Code § 7260 <i>et seq.</i> , enacting substance of recommendation.
30. <i>Rescission of Contracts</i> , 3 Cal. L. Revision Comm'n Reports, at D-1 (1961)	Enacted. 1961 Cal. Stat. ch. 589

Recommendation	Action by Legislature
31. <i>Right to Counsel and Separation of Delinquent From Nondelinquent Minor in Juvenile Court Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at E-1 (1961)	Enacted. 1961 Cal. Stat. ch. 1616
32. <i>Survival of Actions</i> , 3 Cal. L. Revision Comm'n Reports, at F-1 (1961)	Enacted. 1961 Cal. Stat. ch. 657
33. <i>Arbitration</i> , 3 Cal. L. Revision Comm'n Reports, at G-1 (1961)	Enacted. 1961 Cal. Stat. ch. 461
34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 Cal. L. Revision Comm'n Reports, at H-1 (1961)	Not enacted 1961; but see recommendation to 1963 session (item 39 <i>infra</i>), which was enacted.
35. <i>Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere</i> , 3 Cal. L. Revision Comm'n Reports, at I-1 (1961)	Enacted. 1961 Cal. Stat. ch. 636
36. <i>Notice of Alibi in Criminal Actions</i> , 3 Cal. L. Revision Comm'n Reports, at J-1 (1961)	Not enacted.
37. <i>Discovery in Eminent Domain Proceedings</i> , 4 Cal. L. Revision Comm'n Reports 701 (1963); 8 Cal. L. Revision Comm'n Reports 19 (1967)	Enacted. 1967 Cal. Stat. ch. 1104
38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 801 (1963)	Enacted. 1963 Cal. Stat. ch. 1681 <i>See 4:211, 219</i>
39. <i>Claims, Actions and Judgments Against Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1001 (1963)	Enacted. 1963 Cal. Stat. ch. 1715 <i>See 4:211, 222</i>
40. <i>Insurance Coverage for Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1201 (1963)	Enacted. 1963 Cal. Stat. ch. 1682 <i>See 4:212, 223</i>
41. <i>Defense of Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1301 (1963)	Enacted. 1963 Cal. Stat. ch. 1683 <i>See 4:212, 224</i>
42. <i>Liability of Public Entities for Ownership and Operation of Motor Vehicles</i> , 4 Cal. L. Revision Comm'n Reports 1401 (1963); 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 1527

Recommendation	Action by Legislature
43. <i>Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer</i> , 4 Cal. L. Revision Comm'n Reports 1501 (1963)	Enacted. 1963 Cal. Stat. ch. 1684 <i>See 4:212, 224</i>
44. <i>Sovereign Immunity — Amendments and Repeals of Inconsistent Statutes</i> , 4 Cal. L. Revision Comm'n Reports 1601 (1963)	Enacted. 1963 Cal. Stat. chs. 1685, 1686, 2029 <i>See 4:213</i>
45. <i>Evidence Code</i> , 7 Cal. L. Revision Comm'n Reports 1 (1965)	Enacted. 1965 Cal. Stat. ch. 299 <i>See 7:912, 923</i>
46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 653 <i>See 7:914, 928</i>
47. <i>Evidence Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 101 (1967)	Enacted in part. 1967 Cal. Stat. ch. 650 Balance enacted. 1970 Cal. Stat. ch. 69 <i>See 8:1315</i>
48. <i>Evidence — Agricultural Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 201 (1967)	Enacted. 1967 Cal. Stat. ch. 262
49. <i>Evidence — Commercial Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 301 (1967)	Enacted. 1967 Cal. Stat. ch. 703
50. <i>Whether Damage for Personal Injury to a Married Person Should Be Separate or Community Property</i> , 8 Cal. L. Revision Comm'n Reports 401 (1967); 8 Cal. L. Revision Comm'n Reports 1385 (1967)	Enacted. 1968 Cal. Stat. chs. 457, 458 <i>See 8:1318; 9:18</i>
51. <i>Vehicle Code Section 17150 and Related Sections</i> , 8 Cal. L. Revision Comm'n Reports 501 (1967)	Enacted. 1967 Cal. Stat. ch. 702 <i>See 8:1317</i>
52. <i>Additur</i> , 8 Cal. L. Revision Comm'n Reports 601 (1967)	Enacted. 1967 Cal. Stat. ch. 72 <i>See 8:1317</i>
53. <i>Abandonment or Termination of a Lease</i> , 8 Cal. L. Revision Comm'n Reports 701 (1967); 9 Cal. L. Revision Comm'n Reports 401 (1969); 9 Cal. L. Revision Comm'n Reports 153 (1969)	Enacted. 1970 Cal. Stat. ch. 89 <i>See 8:1319; 10:1018</i>

Recommendation	Action by Legislature
54. <i>Good Faith Improver of Land Owned by Another</i> , 8 Cal. L. Revision Comm'n Reports 801 (1967); 8 Cal. L. Revision Comm'n Reports 1373 (1967)	Enacted. 1968 Cal. Stat. ch. 150 <i>See 8:2319; 9:19</i>
55. <i>Suit By or Against an Unincorporated Association</i> , 8 Cal. L. Revision Comm'n Reports 901 (1967)	Enacted. 1967 Cal. Stat. ch. 1324 <i>See 8:1317</i>
56. <i>Escheat</i> , 8 Cal. L. Revision Comm'n Reports 1001 (1967)	Enacted. 1968 Cal. Stat. chs. 247, 356 <i>See 9:16</i>
57. <i>Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding</i> , 8 Cal. L. Revision Comm'n Reports 1361 (1967)	Enacted. 1968 Cal. Stat. ch. 133 <i>See 9:19</i>
58. <i>Service of Process on Unincorporated Associations</i> , 8 Cal. L. Revision Comm'n Reports 1403 (1967)	Enacted. 1968 Cal. Stat. ch. 132 <i>See 9:18</i>
59. <i>Sovereign Immunity — Statute of Limitations</i> , 9 Cal. L. Revision Comm'n Reports 49 (1969); 9 Cal. L. Revision Comm'n Reports 175 (1969)	Enacted. 1970 Cal. Stat. ch. 104 <i>See 9:98</i>
60. <i>Additur and Remittitur</i> , 9 Cal. L. Revision Comm'n Reports 63 (1969)	Enacted. 1969 Cal. Stat. ch. 115 <i>See 9:99</i>
61. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 71 (1969)	Enacted. 1969 Cal. Stat. ch. 114 <i>See 9:98</i>
62. <i>Quasi-Community Property</i> , 9 Cal. L. Revision Comm'n Reports 113 (1969)	Enacted. 1970 Cal. Stat. ch. 312 <i>See 10:1019</i>
63. <i>Arbitration of Just Compensation</i> , 9 Cal. L. Revision Comm'n Reports 123 (1969)	Enacted. 1970 Cal. Stat. ch. 417 <i>See 10:1018</i>
64. <i>Revisions of Evidence Code</i> , 9 Cal. L. Revision Comm'n Reports 137 (1969)	Enacted in part. 1970 Cal. Stat. ch. 69 <i>See also</i> 1970 Cal. Stat. chs. 1396, 1397; 1972 Cal. Stat. ch. 888 <i>See 10:1018</i>
65. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 Cal. L. Revision Comm'n Reports 201 (1969)	Enacted. 1969 Cal. Stat. ch. 156 <i>See 9:99</i>
66. <i>Powers of Appointment</i> , 9 Cal. L. Revision Comm'n Reports 301 (1969)	Enacted. 1969 Cal. Stat. chs. 113, 155 <i>See 9:98</i>

Recommendation	Action by Legislature
67. <i>Evidence Code — Revisions of Privileges Article</i> , 9 Cal. L. Revision Comm'n Reports 501 (1969)	Vetoed; but see 1970 Cal. Stat. chs. 1396, 1397 <i>See 9:98</i>
68. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 601 (1969)	Enacted. 1970 Cal. Stat. ch. 618 <i>See 10:1019</i>
69. <i>Representation as to the Credit of Third Persons and the Statute of Frauds</i> , 9 Cal. L. Revision Comm'n Reports 701 (1969)	Enacted. 1970 Cal. Stat. ch. 720 <i>See 10:1021</i>
70. <i>Revisions of Governmental Liability Act</i> , 9 Cal. L. Revision Comm'n Reports 801 (1969)	Enacted in part. 1970 Cal. Stat. chs. 662, 1099 <i>See 10:1020</i>
71. <i>"Vesting" of Interests Under Rule Against Perpetuities</i> , 9 Cal. L. Revision Comm'n Reports 901 (1969)	Enacted. 1970 Cal. Stat. ch. 45 <i>See 10:1021</i>
72. <i>Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions</i> , 10 Cal. L. Revision Comm'n Reports 501 (1971)	Enacted. 1971 Cal. Stat. chs. 244, 950; see also 1973 Cal. Stat. ch. 828 <i>See 10:1125</i>
73. <i>Wage Garnishment and Related Matters</i> , 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601 (1976); 13 Cal. L. Revision Comm'n Reports 1703 (1976); 14 Cal. L. Revision Comm'n Reports 261 (1978)	Enacted in part. 1978 Cal. Stat. ch. 1133; see also 1979 Cal. Stat. ch. 66 <i>See 11:1024; 11:1123; 12:530; 13:2012; 14:13, 223; 15:1024</i>
74. <i>Proof of Foreign Official Records</i> , 10 Cal. L. Revision Comm'n Reports 1022 (1971)	Enacted. 1970 Cal. Stat. ch. 41
75. <i>Inverse Condemnation — Insurance Coverage</i> , 10 Cal. L. Revision Comm'n Reports 1051 (1971)	Enacted. 1971 Cal. Stat. ch. 140 <i>See 10:1126</i>
76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 Cal. L. Revision Comm'n Reports 1147 (1971)	Enacted. 1971 Cal. Stat. ch. 1607 <i>See 10:1126</i>
77. <i>Civil Arrest</i> , 11 Cal. L. Revision Comm'n Reports 1 (1973)	Enacted. 1973 Cal. Stat. ch. 20 <i>See 11:1123</i>
78. <i>Claim and Delivery Statute</i> , 11 Cal. L. Revision Comm'n Reports 301 (1973)	Enacted. 1973 Cal. Stat. ch. 526 <i>See 11:1124</i>

Recommendation	Action by Legislature
79. <i>Unclaimed Property</i> , 11 Cal. L. Revision Comm'n Reports 401 (1973); 12 Cal. L. Revision Comm'n Reports 609 (1974)	Proposed resolution enacted. 1973 Cal. Stat. res. ch. 76 Legislation enacted. 1975 Cal. Stat. ch. 25 <i>See 11:1124; 12:530; 13:2012</i>
80. <i>Enforcement of Sister State Money Judgments</i> , 11 Cal. L. Revision Comm'n Reports 451 (1973)	Enacted. 1974 Cal. Stat. ch. 211 <i>See 12:534</i>
81. <i>Prejudgment Attachment</i> , 11 Cal. L. Revision Comm'n Reports 701 (1973)	Enacted. 1974 Cal. Stat. ch. 1516 <i>See also 1975 Cal. Stat. ch. 200</i> <i>See 12:530</i>
82. <i>Landlord-Tenant Relations</i> , 11 Cal. L. Revision Comm'n Reports 951 (1973)	Enacted. 1974 Cal. Stat. chs. 331, 332 <i>See 12:536</i>
83. <i>Pleading</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1024 (1973)	Enacted. 1972 Cal. Stat. ch. 73
84. <i>Evidence — Judicial Notice</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1025 (1973)	Enacted. 1972 Cal. Stat. ch. 764
85. <i>Evidence — "Criminal Conduct" Exception</i> , 11 Cal. L. Revision Comm'n Reports 1147 (1973)	Not enacted 1974; see recommendation to 1975 session (item 90 <i>infra</i>), which was enacted. <i>See 12:535</i>
86. <i>Erroneously Compelled Disclosure of Privileged Information</i> , 11 Cal. L. Revision Comm'n Reports 1163 (1973)	Enacted. 1974 Cal. Stat. ch. 227 <i>See 12:535</i>
87. <i>Liquidated Damages</i> , 11 Cal. L. Revision Comm'n Reports 1201 (1973); 13 Cal. L. Revision Comm'n Reports 1735 (1976); 13 Cal. L. Revision Comm'n Reports 2139 (1976)	Enacted. 1977 Cal. Stat. ch. 198 <i>See 12:535; 13:1616; 14:13</i>
88. <i>Payment of Judgments Against Local Public Entities</i> , 12 Cal. L. Revision Comm'n Reports 575 (1974)	Enacted. 1975 Cal. Stat. ch. 285 <i>See 13:2011</i>
89. <i>View by Trier of Fact in a Civil Case</i> , 12 Cal. L. Revision Comm'n Reports 587 (1974)	Enacted. 1975 Cal. Stat. ch. 301 <i>See 13:2011</i>
90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 Cal. L. Revision Comm'n Reports 601 (1974)	Enacted. 1975 Cal. Stat. ch. 318 <i>See 13:2012</i>

Recommendation	Action by Legislature
91. <i>Improvement Acts</i> , 12 Cal. L. Revision Comm'n Reports 1001 (1974)	Enacted. 1974 Cal. Stat. ch. 426 <i>See 12:534</i>
92. <i>Condemnation Law and Procedure: Conforming Changes in Special District Statutes</i> , 12 Cal. L. Revision Comm'n Reports 1101 (1974); 12 Cal. L. Revision Comm'n Reports 2004 (1974)	Enacted. 1975 Cal. Stat. chs. 581, 582, 584, 585, 586, 587, 1176, 1276
93. <i>The Eminent Domain Law</i> , 12 Cal. L. Revision Comm'n Reports 1601 (1974)	Enacted. 1975 Cal. Stat. chs. 1239, 1240, 1275 <i>See 13:2010</i>
94. <i>Oral Modification of Written Contracts</i> , 13 Cal. L. Revision Comm'n Reports 301 (1976); 13 Cal. L. Revision Comm'n Reports 2129 (1976)	Enacted. 1975 Cal. Stat. ch. 7; 1976 Cal. Stat. ch. 109 <i>See 13:2011; 13:1616</i>
95. <i>Partition of Real and Personal Property</i> , 13 Cal. L. Revision Comm'n Reports 401 (1976)	Enacted. 1976 Cal. Stat. ch. 73 <i>See 13:2013, 1610</i>
96. <i>Revision of the Attachment Law</i> , 13 Cal. L. Revision Comm'n Reports 801 (1976)	Enacted. 1976 Cal. Stat. ch. 437 <i>See 13:1612</i>
97. <i>Undertakings for Costs</i> , 13 Cal. L. Revision Comm'n Reports 901 (1976)	Not enacted 1976; but see recommendation to 1979 session (item 118 <i>infra</i>), which was enacted. <i>See 13:1614</i>
98. <i>Service of Process on Unincorporated Associations</i> , 13 Cal. L. Revision Comm'n Reports 1657 (1976)	Enacted. 1976 Cal. Stat. ch. 888 <i>See 13:1616</i>
99. <i>Sister State Money Judgments</i> , 13 Cal. L. Revision Comm'n Reports 1669 (1976)	Enacted. 1977 Cal. Stat. ch. 232 <i>See 14:12</i>
100. <i>Damages in Action for Breach of Lease</i> , 13 Cal. L. Revision Comm'n Reports 1679 (1976)	Enacted. 1977 Cal. Stat. ch. 49 <i>See 14:13</i>
101. <i>Admissibility of Copies of Business Records in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2051 (1976)	Not enacted. <i>See 13:2012</i>
102. <i>Turnover Orders Under the Claim and Delivery Law</i> , 13 Cal. L. Revision Comm'n Reports 2079 (1976)	Enacted. 1976 Cal. Stat. ch. 145 <i>See 13:1614</i>

Recommendation	Action by Legislature
103. <i>Relocation Assistance by Private Condemnors</i> , 13 Cal. L. Revision Comm'n Reports 2085 (1976)	Enacted. 1976 Cal. Stat. ch. 143 <i>See 13:1614</i>
104. <i>Condemnation for Byroads and Utility Easements</i> , 13 Cal. L. Revision Comm'n Reports 2091 (1976)	Enacted in part (utility easements). 1976 Cal. Stat. ch. 994 <i>See 13:1615</i>
105. <i>Transfer of Out-of-State Trusts to California</i> , 13 Cal. L. Revision Comm'n Reports 2101 (1976)	Enacted. 1976 Cal. Stat. ch. 144 <i>See 13:1615</i>
106. <i>Admissibility of Duplicates in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2115 (1976)	Enacted in bill not sponsored by Commission. See 1985 Cal. Stat. ch. 100 <i>For original history, see 13:1615</i>
107. <i>Nonprofit Corporation Law</i> , 13 Cal. L. Revision Comm'n Reports 2201 (1976)	Not enacted.; legislation on this subject, not sponsored by Commission, was enacted in 1978. <i>For original history, see 14:11</i>
108. <i>Use of Keepers Pursuant to Writs of Execution</i> , 14 Cal. L. Revision Comm'n Reports 49 (1978)	Enacted. 1977 Cal. Stat. ch. 155 <i>See 14:12</i>
109. <i>Attachment Law: Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> , 14 Cal. L. Revision Comm'n Reports 61 (1978)	Enacted. 1977 Cal. Stat. ch. 499 <i>See 14:12</i>
110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 Cal. L. Revision Comm'n Reports 83 (1978)	Enacted. 1978 Cal. Stat. ch. 286 <i>See 14:224</i>
111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 Cal. L. Revision Comm'n Reports 93 (1978)	Enacted. 1978 Cal. Stat. ch. 151 <i>See 14:224</i>
112. <i>Evidence of Market Value of Property</i> , 14 Cal. L. Revision Comm'n Reports 105 (1978)	Enacted in part. 1978 Cal. Stat. ch. 294 Substance of remainder enacted in 1980. See item 123 <i>infra</i> <i>See 14:225</i>
113. <i>Psychotherapist-Patient Privilege</i> , 14 Cal. L. Revision Comm'n Reports 127 (1978); 15 Cal. L. Revision Comm'n Reports 1307 (1980)	Enacted in part. 1985 Cal. Stat. chs. 545 (licensed educational psychologist), 1077 (repeal of Evid. Code § 1028) <i>See 14:225</i>

Recommendation	Action by Legislature
114. <i>Parol Evidence Rule</i> , 14 Cal. L. Revision Comm'n Reports 143 (1978)	Enacted. 1978 Cal. Stat. ch. 150 <i>See 14:224</i>
115. <i>Attachment Law — Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action,"</i> 14 Cal. L. Revision Comm'n Reports 241 (1978)	Enacted. 1978 Cal. Stat. ch. 273 <i>See 14:224</i>
116. <i>Powers of Appointment</i> (technical changes), 14 Cal. L. Revision Comm'n Reports 257 (1978)	Enacted. 1978 Cal. Stat. ch. 266
117. <i>Ad Valorem Property Taxes in Eminent Domain Proceedings</i> , 14 Cal. L. Revision Comm'n Reports 291 (1978)	Enacted. 1979 Cal. Stat. ch. 31 <i>See 15:1025</i>
118. <i>Security for Costs</i> , 14 Cal. L. Revision Comm'n Reports 319 (1978)	Enacted. 1980 Cal. Stat. ch. 114 <i>See 15:1025</i>
119. <i>Guardianship-Conservatorship Law</i> , 14 Cal. L. Revision Comm'n Reports 501 (1978); 15 Cal. L. Revision Comm'n Reports 451 (1980)	Enacted. 1979 Cal. Stat. chs. 165, 726, 730 <i>See 15:1024, 1427</i>
120. <i>Interest Rate on Judgments</i> , 15 Cal. L. Revision Comm'n Reports 7 (1980)	Enacted. 1982 Cal. Stat. ch. 150 <i>See 15:1427; 16:2025</i>
121. <i>Married Women as Sole Traders</i> , 15 Cal. L. Revision Comm'n Reports 21 (1980)	Enacted. 1980 Cal. Stat. ch. 123 <i>See 15:1426</i>
122. <i>State Tax Liens</i> , 15 Cal. L. Revision Comm'n Reports 29 (1980)	Enacted. 1980 Cal. Stat. ch. 600 <i>See 15:1427</i>
123. <i>Application of Evidence Code Property Valuation Rules in Noncondemnation Cases</i> , 15 Cal. L. Revision Comm'n Reports 301 (1980)	Enacted. 1980 Cal. Stat. ch. 381 <i>See 15:1429</i>
124. <i>Uniform Durable Power of Attorney Act</i> , 15 Cal. L. Revision Comm'n Reports 351 (1980)	Enacted. 1981 Cal. Stat. ch. 511 <i>See 16:25</i>
125. <i>Probate Homestead</i> , 15 Cal. L. Revision Comm'n Reports 401 (1980)	Enacted. 1980 Cal. Stat. ch. 119 <i>See 15:1428</i>
126. <i>Effect of New Bankruptcy Law on the Attachment Law</i> , 15 Cal. L. Revision Comm'n Reports 1043 (1980)	Enacted. 1979 Cal. Stat. ch. 177 <i>See 15:1024</i>
127. <i>Confessions of Judgment</i> , 15 Cal. L. Revision Comm'n Reports 1053 (1980)	Enacted. 1979 Cal. Stat. ch. 568 <i>See 15:1024</i>

Recommendation	Action by Legislature
128. <i>Special Assessment Liens on Property Taken for Public Use</i> , 15 Cal. L. Revision Comm'n Reports 1101 (1980)	Enacted. 1980 Cal. Stat. ch. 122 <i>See 15:1428</i>
129. <i>Assignments for the Benefit of Creditors</i> , 15 Cal. L. Revision Comm'n Reports 1117 (1980)	Enacted. 1980 Cal. Stat. ch. 135 <i>See 15:1427</i>
130. <i>Vacation of Public Streets, Highways, and Service Easements</i> , 15 Cal. L. Revision Comm'n Reports 1137 (1980)	Enacted. 1980 Cal. Stat. ch. 1050 <i>See 15:1429</i>
131. <i>Quiet Title Actions</i> , 15 Cal. L. Revision Comm'n Reports 1187 (1980)	Enacted. 1980 Cal. Stat. ch. 44 <i>See 15:1428</i>
132. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 Cal. L. Revision Comm'n Reports 1237 (1980)	Enacted. 1980 Cal. Stat. ch. 682 <i>See 15:1426</i>
133. <i>Enforcement of Claims and Judgments Against Public Entities</i> , 15 Cal. L. Revision Comm'n Reports 1257 (1980)	Enacted. 1980 Cal. Stat. ch. 215 <i>See 15:1426</i>
134. <i>Uniform Veterans Guardianship Act</i> , 15 Cal. L. Revision Comm'n Reports 1289 (1980)	Enacted. 1980 Cal. Stat. ch. 89 <i>See 15:1428</i>
135. <i>Enforcement of Obligations After Death</i> , 15 Cal. L. Revision Comm'n Reports 1327 (1980)	Enacted. 1980 Cal. Stat. ch. 124 <i>See 15:1426</i>
136. <i>Guardianship-Conservatorship</i> (technical change), 15 Cal. L. Revision Comm'n Reports 1427 (1980)	Enacted. 1980 Cal. Stat. ch. 246
137. <i>Revision of Guardianship-Conservatorship Law</i> , 15 Cal. L. Revision Comm'n Reports 1463 (1980)	Enacted. 1981 Cal. Stat. ch. 9 <i>See 16:24</i>
138. <i>Non-Probate Transfers</i> , 15 Cal. L. Revision Comm'n Reports 1605 (1980); 16 Cal. L. Revision Comm'n Reports 129 (1982)	Enacted in part (pay-on-death accounts). 1982 Cal. Stat. ch. 269; (credit unions and industrial loan companies) 1983 Cal. Stat. ch. 92 Substance of balance enacted. 1989 Cal. Stat. ch. 397 (banks and savings and loan associations) (item 229 <i>infra</i>) <i>See 16:2026; 17:823</i>
139. <i>Revision of the Powers of Appointment Statute</i> , 15 Cal. L. Revision Comm'n Reports 1667 (1980)	Enacted. 1981 Cal. Stat. ch. 63 <i>See 16:25</i>

Recommendation	Action by Legislature
140. <i>The Enforcement of Judgments Law</i> , 15 Cal. L. Revision Comm'n Reports 2001 (1980)	Enacted. 1982 Cal. Stat. chs. 497, 1364 <i>See 16:2024</i>
141. <i>State Tax Liens</i> (technical change), 16 Cal. L. Revision Comm'n Reports 24 (1982)	Enacted. 1981 Cal. Stat. ch. 217
142. <i>Assessment Liens on Property Taken for Public Use</i> (technical change), 16 Cal. L. Revision Comm'n Reports 25 (1982)	Enacted. 1981 Cal. Stat. ch. 139
143. <i>Federal Pensions as Community Property</i> , 16 Cal. L. Revision Comm'n Reports 47 (1982)	Proposed resolution adopted. 1982 Cal. Stat. res. ch. 44 <i>See 16:2027</i>
144. <i>Missing Persons</i> , 16 Cal. L. Revision Comm'n Reports 105 (1982)	Enacted. 1983 Cal. Stat. ch. 201 <i>See 17:822</i>
145. <i>Escheat</i> (technical change), 16 Cal. L. Revision Comm'n Reports 124 (1982)	Enacted. 1982 Cal. Stat. ch. 182
146. <i>Emancipated Minors</i> , 16 Cal. L. Revision Comm'n Reports 183 (1982)	Enacted. 1983 Cal. Stat. ch. 6 <i>See 17:823</i>
147. <i>Notice in Limited Conservatorship Proceedings</i> , 16 Cal. L. Revision Comm'n Reports 199 (1982)	Enacted. 1983 Cal. Stat. ch. 72 <i>See 17:823</i>
148. <i>Disclaimer of Testamentary and Other Interests</i> , 16 Cal. L. Revision Comm'n Reports 207 (1982)	Enacted. 1983 Cal. Stat. ch. 17 <i>See 17:823</i>
149. <i>Holographic and Nuncupative Wills</i> , 16 Cal. L. Revision Comm'n Reports 301 (1982)	Enacted. 1982 Cal. Stat. ch. 187 <i>See 16:2026</i>
150. <i>Marketable Title of Real Property</i> , 16 Cal. L. Revision Comm'n Reports 401 (1982)	Enacted. 1982 Cal. Stat. ch. 1268 <i>See 16:2026</i>
151. <i>Statutory Bonds and Undertakings</i> , 16 Cal. L. Revision Comm'n Reports 501 (1982)	Enacted. 1982 Cal. Stat. chs. 517, 998 <i>See 16:2025</i>
152. <i>Attachment</i> , 16 Cal. L. Revision Comm'n Reports 701 (1982)	Enacted. 1982 Cal. Stat. ch. 1198 <i>See 16:2025</i>
153. <i>Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage</i> , 16 Cal. L. Revision Comm'n Reports 2165 (1982), 17 Cal. L. Revision Comm'n Reports 863 (1984)	Enacted. 1983 Cal. Stat. ch. 342 <i>See 17:823</i>

Recommendation	Action by Legislature
154. <i>Creditors' Remedies</i> , 16 Cal. L. Revision Comm'n Reports 2175 (1982)	Enacted. 1983 Cal. Stat. ch. 155 <i>See 17:824</i>
155. <i>Conforming Changes to the Bond and Undertaking Law</i> , 16 Cal. L. Revision Comm'n Reports 2239 (1982)	Enacted. 1983 Cal. Stat. ch. 18 <i>See 17:825</i>
156. <i>Notice of Rejection of Late Claim Against Public Entity</i> , 16 Cal. L. Revision Comm'n Reports 2251 (1982)	Enacted. 1983 Cal. Stat. ch. 107 <i>See 17:824</i>
157. <i>Wills and Intestate Succession</i> , 16 Cal. L. Revision Comm'n Reports 2301 (1982)	Enacted. 1983 Cal. Stat. ch. 842 <i>See 17:822</i>
158. <i>Liability of Marital Property for Debts</i> , 17 Cal. L. Revision Comm'n Reports 1 (1984)	Enacted. 1984 Cal. Stat. ch. 1671 <i>See 18:20</i>
159. <i>Durable Power of Attorney for Health Care Decisions</i> , 17 Cal. L. Revision Comm'n Reports 101 (1984)	Enacted. 1983 Cal. Stat. ch. 1204 <i>See 17:822</i>
160. <i>Marital Property Presumptions and Transmutations</i> , 17 Cal. L. Revision Comm'n Reports 205 (1984)	Enacted in part (transmutations). 1984 Cal. Stat. ch. 1733 <i>See 18:21</i>
161. <i>Reimbursement of Educational Expenses</i> , 17 Cal. L. Revision Comm'n Reports 229 (1984)	Enacted. 1984 Cal. Stat. ch. 1661 <i>See 18:22</i>
162. <i>Special Appearance in Family Law Proceedings</i> , 17 Cal. L. Revision Comm'n Reports 243 (1984)	Enacted. 1984 Cal. Stat. ch. 156 <i>See 18:21</i>
163. <i>Liability of Stepparent for Child Support</i> , 17 Cal. L. Revision Comm'n Reports 251 (1984)	Enacted. 1984 Cal. Stat. ch. 249 <i>See 18:21</i>
164. <i>Awarding Temporary Use of Family Home</i> , 17 Cal. L. Revision Comm'n Reports 261 (1984)	Enacted. 1984 Cal. Stat. ch. 463 <i>See 18:21</i>
165. <i>Disposition of Community Property</i> , 17 Cal. L. Revision Comm'n Reports 269 (1984)	Not enacted. <i>See 18:22</i>
166. <i>Statutes of Limitation for Felonies</i> , 17 Cal. L. Revision Comm'n Reports 301 (1984)	Enacted. 1984 Cal. Stat. ch. 1270 <i>See 18:23; 20:2305</i>

Recommendation	Action by Legislature
167. <i>Independent Administration of Decedent's Estate</i> , 17 Cal. L. Revision Comm'n Reports 405 (1984)	Enacted. 1984 Cal. Stat. ch. 451 <i>See 18:19</i>
168. <i>Distribution of Estates Without Administration</i> , 17 Cal. L. Revision Comm'n Reports 421 (1984)	Enacted. 1984 Cal. Stat. ch. 451 <i>See 18:19</i>
169. <i>Simultaneous Deaths</i> , 17 Cal. L. Revision Comm'n Reports 443 (1984)	Enacted in part. See 1989 Cal. Stat. ch. 544 (intestate succession) (item 227 <i>infra</i>); 1990 Cal. Stat. ch. 710 (statutory will) (item 240 <i>infra</i>) <i>See 18:20</i>
170. <i>Notice of Will</i> , 17 Cal. L. Revision Comm'n Reports 461 (1984)	Not enacted. <i>See 18:20</i>
171. <i>Garnishment of Amounts Payable to Trust Beneficiary</i> , 17 Cal. L. Revision Comm'n Reports 471 (1984)	Enacted. 1984 Cal. Stat. ch. 493 <i>See 18:19</i>
172. <i>Bonds for Personal Representatives</i> , 17 Cal. L. Revision Comm'n Reports 483 (1984)	Enacted. 1984 Cal. Stat. ch. 451 <i>See 18:19</i>
173. <i>Recording Affidavits of Death</i> , 17 Cal. L. Revision Comm'n Reports 493 (1984)	Enacted. 1984 Cal. Stat. ch. 527 <i>See 18:20</i>
174. <i>Execution of Witnessed Will</i> , 17 Cal. L. Revision Comm'n Reports 509 (1984)	Not enacted. <i>See 18:20</i>
175. <i>Revision of Wills and Intestate Succession Law</i> , 17 Cal. L. Revision Comm'n Reports 537 (1984)	Enacted. 1984 Cal. Stat. ch. 892 <i>See 18:19</i>
176. <i>Uniform Transfers to Minors Act</i> , 17 Cal. L. Revision Comm'n Reports 601 (1984)	Enacted. 1984 Cal. Stat. ch. 243 <i>See 18:19</i>
177. <i>Statutory Forms for Durable Powers of Attorney</i> , 17 Cal. L. Revision Comm'n Reports 701 (1984)	Enacted. 1984 Cal. Stat. chs. 312 (health care), 602 (general power of attorney) <i>See 18:18</i>
178. <i>Vacation of Streets</i> (technical change), 17 Cal. L. Revision Comm'n Reports 825 (1984)	Enacted. 1983 Cal. Stat. ch. 52

Recommendation	Action by Legislature
179. <i>Effect of Death of Support Obligor</i> , 17 Cal. L. Revision Comm'n Reports 897 (1984)	Enacted in part. 1984 Cal. Stat. ch. 19. Balance enacted. 1985 Cal. Stat. ch. 362 (item 186 <i>infra</i>) <i>See 18:21</i>
180. <i>Dismissal for Lack of Prosecution</i> , 17 Cal. L. Revision Comm'n Reports 905 (1984)	Enacted. 1984 Cal. Stat. ch. 1705 <i>See 18:23</i>
181. <i>Severance of Joint Tenancy</i> , 17 Cal. L. Revision Comm'n Reports 941 (1984)	Enacted. 1984 Cal. Stat. ch. 519 <i>See 18:23</i>
182. <i>Quiet Title and Partition Judgments</i> , 17 Cal. L. Revision Comm'n Reports 947 (1984)	Enacted. 1984 Cal. Stat. ch. 20 <i>See 18:22</i>
183. <i>Dormant Mineral Rights</i> , 17 Cal. L. Revision Comm'n Reports 957 (1984)	Enacted. 1984 Cal. Stat. ch. 240 <i>See 18:22</i>
184. <i>Creditors' Remedies</i> , 17 Cal. L. Revision Comm'n Reports 975 (1984)	Enacted. 1984 Cal. Stat. ch. 538 <i>See 18:23</i>
185. <i>Rights Among Cotenants</i> , 17 Cal. L. Revision Comm'n Reports 1023 (1984)	Enacted. 1984 Cal. Stat. ch. 241 <i>See 18:23</i>
186. <i>Provision for Support if Support Obligor Dies</i> , 18 Cal. L. Revision Comm'n Reports 119 (1986)	Enacted. 1985 Cal. Stat. ch. 362 <i>See 18:217</i>
187. <i>Transfer of State Registered Property Without Probate</i> , 18 Cal. L. Revision Comm'n Reports 129 (1986)	Enacted. 1985 Cal. Stat. ch. 982 <i>See 18:216</i>
188. <i>Dividing Jointly Owned Property Upon Marriage Dissolution</i> , 18 Cal. L. Revision Comm'n Reports 147 (1986)	Enacted. 1985 Cal. Stat. ch. 362 <i>See 18:217</i>
189. <i>Probate Law</i> (clarifying revisions), 18 Cal. L. Revision Comm'n Reports 216 (1986)	Enacted. 1985 Cal. Stat. ch. 359
190. <i>Creditors' Remedies</i> (technical change), 18 Cal. L. Revision Comm'n Reports 217 (1986)	Enacted. 1985 Cal. Stat. ch. 41
191. <i>Uniform Transfers to Minors Act</i> (technical change), 18 Cal. L. Revision Comm'n Reports 218 (1986)	Enacted. 1985 Cal. Stat. ch. 90
192. <i>Protection of Mediation Communications</i> , 18 Cal. L. Revision Comm'n Reports 241 (1986)	Enacted. 1985 Cal. Stat. ch. 731 <i>See 18:218</i>

Recommendation	Action by Legislature
193. <i>Recording Severance of Joint Tenancy</i> , 18 Cal. L. Revision Comm'n Reports 249 (1986)	Enacted. 1985 Cal. Stat. ch. 157 <i>See 18:217</i>
194. <i>Abandoned Easements</i> , 18 Cal. L. Revision Comm'n Reports 257 (1986)	Enacted. 1985 Cal. Stat. ch. 157 <i>See 18:217</i>
195. <i>Distribution Under a Will or Trust</i> , 18 Cal. L. Revision Comm'n Reports 269 (1986)	Enacted. 1985 Cal. Stat. ch. 982 <i>See 18:216</i>
196. <i>Effect of Adoption or Out of Wedlock Birth on Rights at Death</i> , 18 Cal. L. Revision Comm'n Reports 289 (1986)	Enacted. 1985 Cal. Stat. ch. 982 <i>See 18:216</i>
197. <i>Durable Powers of Attorney</i> , 18 Cal. L. Revision Comm'n Reports 305 (1986)	Enacted. 1985 Cal. Stat. ch. 403 <i>See 18:216</i>
198. <i>Litigation Expenses in Family Law Proceedings</i> , 18 Cal. L. Revision Comm'n Reports 351 (1986)	Enacted. 1985 Cal. Stat. ch. 362 <i>See 18:217</i>
199. <i>Civil Code Sections 4800.1 and 4800.2</i> , 18 Cal. L. Revision Comm'n Reports 383 (1986)	One of two recommended measures enacted (<i>Application of Civil Code §§ 4800.1 and 4800.2</i>). 1986 Cal. Stat. ch. 49 <i>See 18:1717</i>
200. <i>The Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 501 (1986)	Enacted. 1986 Cal. Stat. ch. 820 <i>See 18:1718</i>
201. <i>Disposition of Estate Without Administration</i> , 18 Cal. L. Revision Comm'n Reports 1005 (1986)	Enacted. 1986 Cal. Stat. ch. 783 <i>See 18:1717</i>
202. <i>Small Estate Set-Aside</i> , 18 Cal. L. Revision Comm'n Reports 1101 (1986)	Enacted. 1986 Cal. Stat. ch. 783 <i>See 18:1717</i>
203. <i>Proration of Estate Taxes</i> , 18 Cal. L. Revision Comm'n Reports 1127 (1986)	Enacted. 1986 Cal. Stat. ch. 783 <i>See 18:1717</i>
204. <i>Notice in Guardianship and Conservatorship</i> , 18 Cal. L. Revision Comm'n Reports 1793 (1986)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:516</i>
205. <i>Preliminary Provisions and Definitions</i> , 18 Cal. L. Revision Comm'n Reports 1807 (1986)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:516</i>
206. <i>Technical Revisions in the Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 1823 (1986)	Enacted. 1987 Cal. Stat. ch. 128 <i>See 19:517</i>

Recommendation	Action by Legislature
207. <i>Supervised Administration</i> , 19 Cal. L. Revision Comm'n Reports 5 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:516</i>
208. <i>Independent Administration</i> , 19 Cal. L. Revision Comm'n Reports 205 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
209. <i>Creditor Claims Against Decedent's Estate</i> , 19 Cal. L. Revision Comm'n Reports 299 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
210. <i>Notice in Probate Proceedings</i> , 19 Cal. L. Revision Comm'n Reports 357 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
211. <i>Marital Deduction Gifts</i> , 19 Cal. L. Revision Comm'n Reports 615 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
212. <i>Estates of Missing Persons</i> , 19 Cal. L. Revision Comm'n Reports 637 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
213. <i>Public Guardians and Administrators</i> , 19 Cal. L. Revision Comm'n Reports 707 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
214. <i>Inventory and Appraisal</i> , 19 Cal. L. Revision Comm'n Reports 741 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
215. <i>Opening Estate Administration</i> , 19 Cal. L. Revision Comm'n Reports 787 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
216. <i>Abatement</i> , 19 Cal. L. Revision Comm'n Reports 865 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
217. <i>Accounts</i> , 19 Cal. L. Revision Comm'n Reports 877 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
218. <i>Litigation Involving Decedents</i> , 19 Cal. L. Revision Comm'n Reports 899 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
219. <i>Rules of Procedure in Probate</i> , 19 Cal. L. Revision Comm'n Reports 917 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
220. <i>Distribution and Discharge</i> , 19 Cal. L. Revision Comm'n Reports 953 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
221. <i>Nondomiciliary Decedents</i> , 19 Cal. L. Revision Comm'n Reports 993 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
222. <i>Interest and Income During Administration</i> , 19 Cal. L. Revision Comm'n Reports 1019 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>

Recommendation	Action by Legislature
223. <i>Authority of the Law Revision Commission</i> , 19 Cal. L. Revision Comm'n Reports 1162 (1988)	Enacted. 1989 Cal. Stat. ch. 152
224. <i>1988 Probate Cleanup Bill</i> , see 19 Cal. L. Revision Comm'n Reports 1167, 1191–1200 (1988)	Enacted. 1988 Cal. Stat. ch. 113
225. <i>Creditors' Remedies</i> , 19 Cal. L. Revision Comm'n Reports 1251 (1988)	Enacted. 1989 Cal. Stat. ch. 1416 <i>See 20:201</i>
226. <i>No Contest Clauses</i> , 20 Cal. L. Revision Comm'n Reports 7 (1990)	Enacted. 1989 Cal. Stat. ch. 544 <i>See 20:201</i>
227. <i>120-Hour Survival Requirement</i> , 20 Cal. L. Revision Comm'n Reports 21 (1990)	Enacted. 1989 Cal. Stat. ch. 544 <i>See 20:201</i>
228. <i>Compensation of Attorneys and Personal Representatives</i> , 20 Cal. L. Revision Comm'n Reports 31 (1990)	Enacted except for portion relating to compensation of attorneys. 1990 Cal. Stat. ch. 79 <i>See 20:2218</i>
229. <i>Multiple-Party Accounts</i> , 20 Cal. L. Revision Comm'n Reports 95 (1990)	Enacted. 1989 Cal. Stat. ch. 397 <i>See 20:202</i>
230. <i>Notice to Creditors</i> , 20 Cal. L. Revision Comm'n Reports 165 (1990); 20 Cal. L. Revision Comm'n Reports 507 (1990)	Enacted in part. 1989 Cal. Stat. ch. 544 Balance enacted. 1990 Cal. Stat. ch. 140 <i>See 20:201</i>
231. <i>1989 Probate Cleanup Bill</i> , see 20 Cal. L. Revision Comm'n Reports 201, 227 (1990)	Enacted. 1989 Cal. Stat. ch. 21
232. <i>Bonds of Guardians and Conservators</i> , 20 Cal. L. Revision Comm'n Reports 235 (1990)	Enacted. 1989 Cal. Stat. ch. 544
233. <i>Brokers' Commissions on Probate Sales</i> , 20 Cal. L. Revision Comm'n Reports 237-42 (1990)	Enacted. 1989 Cal. Stat. ch. 544
234. <i>Commercial Real Property Leases</i> , 20 Cal. L. Revision Comm'n Reports 251 (1990)	Enacted. 1989 Cal. Stat. ch. 982 <i>See 20:202</i>
235. <i>Trustees' Fees</i> , 20 Cal. L. Revision Comm'n Reports 279 (1990)	Enacted. 1990 Cal. Stat. ch. 79 <i>See 20:2218</i>
236. <i>Springing Powers of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 405 (1990)	Enacted. 1990 Cal. Stat. ch. 986 <i>See 20:2220</i>

Recommendation	Action by Legislature
237. <i>Uniform Statutory Form Powers of Attorney Act</i> , 20 Cal. L. Revision Comm'n Reports 415 (1990)	Enacted. 1990 Cal. Stat. ch. 986 <i>See 20:2220</i>
238. <i>Disposition of Small Estate by Public Administrator</i> , 20 Cal. L. Revision Comm'n Reports 529 (1990)	Enacted. 1990 Cal. Stat. ch. 324 <i>See 20:2220</i>
239. <i>Court-Authorized Medical Treatment</i> , 20 Cal. L. Revision Comm'n Reports 537 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
240. <i>Survival Requirement for Beneficiary of Statutory Will</i> , 20 Cal. L. Revision Comm'n Reports 549 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
241. <i>Execution or Modification of Lease Without Court Order</i> , 20 Cal. L. Revision Comm'n Reports 557 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
242. <i>Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding</i> , 20 Cal. L. Revision Comm'n Reports 565 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
243. <i>Repeal of Probate Code Section 6402.5 (In-Law Inheritance)</i> , 20 Cal. L. Revision Comm'n Reports 571 (1990)	Not enacted. <i>See 20:2220</i>
244. <i>Access to Decedent's Safe Deposit Box</i> , 20 Cal. L. Revision Comm'n Reports 597 (1990); 20 Cal. L. Revision Comm'n Reports 2859 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 20:2219; 21:20</i>
245. <i>Priority of Conservator or Guardian for Appointment as Administrator</i> , 20 Cal. L. Revision Comm'n Reports 607 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
246. <i>New Probate Code</i> , 20 Cal. L. Revision Comm'n Reports 1001 (1990)	Enacted. 1990 Cal. Stat. ch. 79 <i>See 20:2218</i>
247. <i>Notice in Probate Where Address Unknown</i> , 20 Cal. L. Revision Comm'n Reports 2245 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
248. <i>Jurisdiction of Superior Court in Trust Matters</i> , 20 Cal. L. Revision Comm'n Reports 2253 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
249. <i>Uniform Management of Institutional Funds Act</i> , 20 Cal. L. Revision Comm'n Reports 2265 (1990)	Enacted. 1990 Cal. Stat. ch. 1307 <i>See 20:2220</i>

Recommendation	Action by Legislature
250. <i>Remedies for Breach of Assignment or Sublease Covenant</i> , 20 Cal. L. Revision Comm'n Reports 2405 (1990)	Enacted. 1991 Cal. Stat. ch. 67 <i>See 21:22</i>
251. <i>Use Restrictions</i> , 20 Cal. L. Revision Comm'n Reports 2421 (1990)	Enacted. 1991 Cal. Stat. ch. 67 <i>See 21:22</i>
252. <i>Uniform Statutory Rule Against Perpetuities</i> , 20 Cal. L. Revision Comm'n Reports 2501 (1990)	Enacted. 1991 Cal. Stat. ch. 156 <i>See 21:21</i>
253. <i>Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care</i> , 20 Cal. L. Revision Comm'n Reports 2605 (1990)	Enacted. 1991 Cal. Stat. ch. 896 <i>See 21:22</i>
254. <i>Recognition of Agent's Authority Under Statutory Form Power of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 2629 (1990); 22 Cal. L. Revision Comm'n Reports 965 (1992)	Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i>
255. <i>Debts That Are Contingent, Disputed, or Not Due</i> , 20 Cal. L. Revision Comm'n Reports 2707 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
256. <i>Remedies of Creditor Where Personal Representative Fails to Give Notice</i> , 20 Cal. L. Revision Comm'n Reports 2719 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
257. <i>Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)</i> , 20 Cal. L. Revision Comm'n Reports 2729 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
258. <i>Disposition of Small Estate Without Probate</i> , 20 Cal. L. Revision Comm'n Reports 2737 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
259. <i>Right of Surviving Spouse to Dispose of Community Property</i> , 20 Cal. L. Revision Comm'n Reports 2769 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
260. <i>Litigation Involving Decedents</i> , 20 Cal. L. Revision Comm'n Reports 2785 (1990); 22 Cal. L. Revision Comm'n Reports 895 (1992)	Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i>

Recommendation	Action by Legislature
261. <i>Compensation in Guardianship and Conservatorship Proceedings</i> , 20 Cal. L. Revision Comm'n Reports 2837 (1990); 21 Cal. L. Revision Comm'n Reports 227 (1991)	Enacted. 1992 Cal. Stat. ch. 572 <i>See</i> 22:853
262. <i>Recognition of Trustees' Powers</i> , 20 Cal. L. Revision Comm'n Reports 2849 (1990)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
263. <i>Gifts in View of Impending Death</i> , 20 Cal. L. Revision Comm'n Reports 2869 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See</i> 21:20
264. <i>TOD Beneficiary Designation for Vehicles and Certain Other State Registered Property</i> , 20 Cal. L. Revision Comm'n Reports 2883 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See</i> 21:20
265. <i>1991 General Probate Bill</i> (miscellaneous provisions), see 20 Cal. L. Revision Comm'n Reports 2907 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See</i> 21:20
266. <i>1991 Probate Urgency Clean-up Bill</i> , see 20 Cal. L. Revision Comm'n Reports 2909 (1990)	Enacted. 1991 Cal. Stat. ch. 82 <i>See</i> 21:21
267. <i>Application of Marketable Title Statute to Executory Interests</i> , 21 Cal. L. Revision Comm'n Reports 53 (1991)	Enacted. 1991 Cal. Stat. ch. 156 <i>See</i> 21:21
268. <i>Relocation of Powers of Appointment Statute</i> , 21 Cal. L. Revision Comm'n Reports 91 (1991)	Enacted. 1992 Cal. Stat. ch. 30 <i>See</i> 22:853
269. <i>Miscellaneous Creditors' Remedies</i> , 21 Cal. L. Revision Comm'n Reports 135 (1991)	Enacted. 1992 Cal. Stat. ch. 283 <i>See</i> 22:853
270. <i>Nonprobate Transfers of Community Property</i> , 21 Cal. L. Revision Comm'n Reports 163 (1991)	Enacted. 1992 Cal. Stat. ch. 51 <i>See</i> 22:852
271. <i>Notice of Trustees' Fees</i> , 21 Cal. L. Revision Comm'n Reports 191 (1991)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
272. <i>Nonprobate Transfer to Trustee Named in Will</i> , 21 Cal. L. Revision Comm'n Reports 201 (1991)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852

Recommendation	Action by Legislature
273. <i>Preliminary Distribution Without Court Supervision</i> , 21 Cal. L. Revision Comm'n Reports 209 (1991)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
274. <i>Transfer of Conservatorship Property to Trust</i> , 21 Cal. L. Revision Comm'n Reports 227 (1991)	Enacted. 1992 Cal. Stat. ch. 572 <i>See</i> 22:853
275. <i>Family Code</i> , 22 Cal. L. Revision Comm'n Reports 1 (1992)	Enacted. 1992 Cal. Stat. chs. 162, 163 <i>See</i> 22:851
276. <i>Standing To Sue for Wrongful Death</i> , 22 Cal. L. Revision Comm'n Reports 955 (1992)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
277. <i>1992 General Probate Bill</i> (miscellaneous provisions), see 22 Cal. L. Revision Comm'n Reports 977 (1990)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
278. <i>Special Needs Trust for Disabled Minor or Incompetent Person</i> , 22 Cal. L. Revision Comm'n Reports 989 (1992)	Enacted. 1992 Cal. Stat. ch. 355 <i>See</i> 22:853
279. <i>1994 Family Code</i> , 23 Cal. L. Revision Comm'n Reports 1, 5 (1993)	Enacted. 1993 Cal. Stat. ch. 219 <i>See</i> 23:922
280. <i>Family Code: Child Custody</i> , 23 Cal. L. Revision Comm'n Reports 1, 15 (1993)	Enacted. 1993 Cal. Stat. ch. 219 <i>See</i> 23:922
281. <i>Family Code: Reorganization of Domestic Violence Provisions</i> , 23 Cal. L. Revision Comm'n Reports 1, 23 (1993)	Enacted. 1993 Cal. Stat. ch. 219 <i>See</i> 23:922
282. <i>Deposit of Estate Planning Documents with Attorney</i> , 23 Cal. L. Revision Comm'n Reports 965 (1993)	Enacted. 1993 Cal. Stat. ch. 519 <i>See</i> 23:923
283. <i>Parent and Child Relationship for Intestate Succession</i> , 23 Cal. L. Revision Comm'n Reports 991 (1993)	Enacted. 1993 Cal. Stat. ch. 529 <i>See</i> 23:923
284. <i>Effect of Joint Tenancy Title on Marital Property</i> , 23 Cal. L. Revision Comm'n Reports 1013 (1993)	Not enacted. <i>See</i> 24:568

Recommendation	Action by Legislature
285. <i>Trial Court Unification: Constitutional Revision (SCA 3)</i> , 24 Cal. L. Revision Comm'n Reports 1 (1994); <i>Trial Court Unification: Transitional Provisions for SCA 3</i> , 24 Cal. L. Revision Comm'n Reports 627 (1994)	Not enacted; Commission recommendations adopted in SCA 3 (1993-94), but SCA 3 not approved by Assembly. Commission recommendations largely enacted in SCA 4 (1996 Cal. Stat. res. ch. 36). <i>See 24:568; 28:707</i>
286. <i>Comprehensive Power of Attorney Law</i> , 24 Cal. L. Revision Comm'n Reports 111 (1994); <i>1995 Comprehensive Power of Attorney Law</i> , 24 Cal. L. Revision Comm'n Reports 323 (1994)	Enacted. 1994 Cal. Stat. ch. 307 <i>See 24:567</i>
287. <i>Orders To Show Cause and Temporary Restraining Orders</i> , 24 Cal. L. Revision Comm'n Reports 603 (1994)	Enacted. 1994 Cal. Stat. ch. 587 <i>See 24:567</i>
288. <i>Family Code Technical Amendments</i> . See 24 Cal. L. Revision Comm'n Reports 621 (1994); 26 Cal. L. Revision Comm'n Reports 175 (1996)	Enacted. 1994 Cal. Stat. ch. 1269; 1996 Cal. Stat. ch. 1061 <i>See 24:567; 26:132</i>
289. <i>Debtor-Creditor Relations</i> , 25 Cal. L. Revision Comm'n Reports 1 (1995)	Enacted in part. 1995 Cal. Stat. ch. 196 <i>See 25:636, 707</i>
290. <i>Administrative Adjudication by State Agencies</i> , 25 Cal. L. Revision Comm'n Reports 55 (1995)	Enacted. 1995 Cal. Stat. ch. 938 <i>See 25:636, 711</i>
291. <i>Uniform Prudent Investor Act</i> , 25 Cal. L. Revision Comm'n Reports 543 (1995). See also 25 Cal. L. Revision Comm'n Reports 673 (1995)	Enacted. 1995 Cal. Stat. ch. 63 <i>See 25:636, 673</i>
292. <i>Power of Attorney Law Technical Amendments</i> . See 25 Cal. L. Revision Comm'n Reports 709 (1995)	Enacted. 1995 Cal. Stat. ch. 300 <i>See 25:637</i>
293. <i>Statute of Limitations in Trust Matters: Probate Code Section 16460</i> , 26 Cal. L. Revision Comm'n Reports 1 (1996)	Enacted. 1996 Cal. Stat. ch. 862 <i>See 26:132</i>
294. <i>Inheritance From or Through Child Born Out of Wedlock</i> , 26 Cal. L. Revision Comm'n Reports 13 (1996)	Enacted. 1996 Cal. Stat. ch. 862 <i>See 26:132</i>
295. <i>Collecting Small Estate Without Administration</i> , 26 Cal. L. Revision Comm'n Reports 21 (1996)	Enacted. 1996 Cal. Stat. ch. 563 <i>See 26:132</i>

Recommendation	Action by Legislature
296. <i>Repeal of Civil Code Section 1464: The First Rule in Spencer's Case</i> , 26 Cal. L. Revision Comm'n Reports 29 (1996)	Enacted. 1998 Cal. Stat. ch. 14 <i>See</i> 28:706
297. <i>Homestead Exemption</i> , 26 Cal. L. Revision Comm'n Reports 37 (1996)	Not enacted. <i>See</i> 26:133
298. <i>Tolling Statute of Limitations When Defendant Is Out of State</i> , 26 Cal. L. Revision Comm'n Reports 83 (1996)	Enacted in part (technical amendments). 1997 Cal. Stat. ch. 1012, §§ 13, 14 <i>See</i> 27:555, 623
299. <i>Administrative Adjudication Technical Amendments</i> , 26 Cal. L. Revision Comm'n Reports 171 (1996)	Enacted. 1996 Cal. Stat. ch. 390 <i>See</i> 26:132
300. <i>Unfair Competition Litigation</i> , 26 Cal. L. Revision Comm'n Reports 191 (1996)	Not enacted. <i>See</i> 27:555
301. <i>Administrative Adjudication by Quasi-Public Entities</i> , 26 Cal. L. Revision Comm'n Reports 277 (1996)	Enacted. 1997 Cal. Stat. ch. 220 <i>See</i> 27:554, 593
302. <i>Marketable Title: Enforceability of Land Use Restrictions</i> , 26 Cal. L. Revision Comm'n Reports 289 (1996)	Enacted in part. 1998 Cal. Stat. ch. 14 <i>See</i> 28:706
303. <i>Attachment by Undersecured Creditors</i> , 26 Cal. L. Revision Comm'n Reports 307 (1996)	Enacted. 1997 Cal. Stat. ch. 222 <i>See</i> 27:554
304. <i>Ethical Standards for Administrative Law Judges</i> , 26 Cal. L. Revision Comm'n Reports 335 (1996)	Enacted. 1998 Cal. Stat. ch. 95 <i>See</i> 28:706
305. <i>Best Evidence Rule</i> , 26 Cal. L. Revision Comm'n Reports 369 (1996)	Enacted. 1998 Cal. Stat. ch. 100 <i>See</i> 28:706
306. <i>Mediation Confidentiality</i> , 26 Cal. L. Revision Comm'n Reports 407 (1996)	Enacted. 1997 Cal. Stat. ch. 772 <i>See</i> 27:554, 595
307. <i>Judicial Review of Agency Action</i> , 27 Cal. L. Revision Comm'n Reports 1 (1997)	Not enacted. <i>See</i> 28:708
308. <i>Inheritance by Foster Child or Stepchild</i> , 27 Cal. L. Revision Comm'n Reports 625 (1997)	Not enacted. <i>See</i> 28:721
309. <i>Business Judgment Rule</i> , 28 Cal. L. Revision Comm'n Reports 1 (1998)	Not enacted. <i>See</i> 28:708

Recommendation	Action by Legislature
310. <i>Trial Court Unification: Revision of Codes</i> , 28 Cal. L. Revision Comm'n Reports 51 (1998)	Enacted. 1998 Cal. Stat. ch. 931 <i>See 28:707</i>
311. <i>Response to Demand for Production of Documents in Discovery</i> , 28 Cal. L. Revision Comm'n Reports 561 (1998)	Enacted. 1998 Cal. Stat. ch. 932 <i>See 28:708</i>
312. <i>Uniform TOD Security Registration Act</i> , 28 Cal. L. Revision Comm'n Reports 577 (1998)	Enacted. 1998 Cal. Stat. ch. 242 <i>See 28:707</i>
313. <i>Effect of Dissolution of Marriage on Nonprobate Transfers</i> , 28 Cal. L. Revision Comm'n Reports 599 (1998)	Enacted. 2001 Cal. Stat. ch. 417 <i>See 31:26</i>
314. <i>Administrative Rulemaking: Consent Regulations and Other Noncontroversial Regulations</i> , 28 Cal. L. Revision Comm'n Reports 625 (1998)	Vetoed. <i>See 29:605</i>
315. <i>Administrative Rulemaking: Advisory Interpretations</i> , 28 Cal. L. Revision Comm'n Reports 657 (1998)	Vetoed. <i>See 29:605</i>
316. <i>Health Care Decisions for Adults Without Decisionmaking Capacity</i> , 29 Cal. L. Revision Comm'n Reports 1 (1999)	Enacted. 1999 Cal. Stat. ch. 658 <i>See 29:604</i>
317. <i>Uniform Principal and Income Act</i> , 29 Cal. L. Revision Comm'n Reports 245 (1999)	Enacted. 1999 Cal. Stat. ch. 145 <i>See 29:604</i>
318. <i>Admissibility, Discoverability, and Confidentiality of Settlement Negotiations</i> , 29 Cal. L. Revision Comm'n Reports 345 (1999)	Not enacted. <i>See 30:676</i>
319. <i>Air Resources Technical Revisions</i> , 29 Cal. L. Revision Comm'n Reports 409 (1999)	Enacted. 2000 Cal. Stat. ch. 890 <i>See 30:676</i>
320. <i>Administrative Rulemaking</i> , 29 Cal. L. Revision Comm'n Reports 459 (1999)	Enacted. 2000 Cal. Stat. ch. 1060 <i>See 30:676</i>
321. <i>Trial Court Unification Follow-Up</i> , 29 Cal. L. Revision Comm'n Reports 657 (1999)	Enacted. 1999 Cal. Stat. ch. 344 <i>See 29:604</i>

Recommendation	Action by Legislature
322. <i>Enforcement of Judgments Under the Family Code: Technical Revisions</i> , 29 Cal. L. Revision Comm'n Reports 695 (1999)	Enacted. 2000 Cal. Stat. ch. 808 <i>See 30:675</i>
323. <i>Eminent Domain Valuation Evidence: Clarification of Evidence Code Section 822</i> , 29 Cal. L. Revision Comm'n Reports 733 (1999)	Enacted. 2000 Cal. Stat. ch. 948 <i>See 30:676</i>
324. <i>Alternate Distributee for Unclaimed Distribution</i> , 29 Cal. L. Revision Comm'n Reports 743 (1999)	Enacted. 2000 Cal. Stat. ch. 17 <i>See 30:675</i>
325. <i>Jurisdictional Classification of Good Faith Improver Claims</i> , 30 Cal. L. Revision Comm'n Reports 281 (2000)	Enacted. 2000 Cal. Stat. ch. 688 <i>See 30:675</i>
326. <i>Authority to Appoint Receivers</i> , 30 Cal. L. Revision Comm'n Reports 291 (2000)	Enacted. 2001 Cal. Stat. ch. 44 <i>See 31:25</i>
327. <i>Stay of Mechanic's Lien Enforcement Pending Arbitration</i> , 30 Cal. L. Revision Comm'n Reports 307 (2000); 31 Cal. L. Revision Comm'n Reports 333 (2002)	2000 Recommendation enacted. 2003 Cal. Stat. ch. 113 <i>See 33:641</i>
328. <i>Trout Affidavit</i> , 30 Cal. L. Revision Comm'n Reports 319 (2000)	Enacted. 2000 Cal. Stat. ch. 167 <i>See 30:675</i>
329. <i>Expired Pilot Projects</i> , 30 Cal. L. Revision Comm'n Reports 327 (2000)	Enacted. 2001 Cal. Stat. ch. 115 <i>See 31:25</i>
330. <i>Law Library Board of Trustees</i> , 30 Cal. L. Revision Comm'n Reports 429 (2000)	Enacted. 2001 Cal. Stat. ch. 52 <i>See 31:25</i>
331. <i>Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases</i> , 30 Cal. L. Revision Comm'n Reports 443 (2000)	Enacted. 2001 Cal. Stat. ch. 812 <i>See 31:27</i>
332. <i>Civil Procedure: Technical Corrections</i> , 30 Cal. L. Revision Comm'n Reports 479 (2000)	Enacted. 2001 Cal. Stat. ch. 44 <i>See 31:25</i>
333. <i>Improving Access to Rulemaking Information Under the Administrative Procedure Act</i> , 30 Cal. L. Revision Comm'n Reports 517 (2000)	Enacted. 2000 Cal. Stat. ch. 1060 <i>See 30:676</i>

Recommendation	Action by Legislature
334. <i>Administrative Rulemaking Cleanup</i> , 30 Cal. L. Revision Comm'n Reports 533 (2000)	Enacted. 2001 Cal. Stat. ch. 59 <i>See 31:25</i>
335. <i>Rulemaking Under Penal Code Section 5058</i> , 30 Cal. L. Revision Comm'n Reports 545 (2000)	Enacted. 2001 Cal. Stat. ch. 141 <i>See 31:26</i>
336. <i>Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain</i> , 30 Cal. L. Revision Comm'n Reports 567 (2000)	Enacted. 2001 Cal. Stat. ch. 428 <i>See 31:26</i>
337. <i>Estate Planning During Marital Dissolution</i> , 30 Cal. L. Revision Comm'n Reports 603 (2000)	Enacted. 2001 Cal. Stat. ch. 417 <i>See 31:26</i>
338. <i>Health Care Decisions Law: Miscellaneous Revisions</i> , 30 Cal. L. Revision Comm'n Reports 621 (2000)	Enacted. 2001 Cal. Stat. ch. 230 <i>See 31:26</i>
339. <i>Evidence of Prejudgment Deposit Appraisal in Eminent Domain</i> , 31 Cal. L. Revision Comm'n Reports 109 (2001)	Enacted. 2002 Cal. Stat. ch. 293 <i>See 32:601</i>
340. <i>Debtor-Creditor Law: Technical Revisions</i> , 31 Cal. L. Revision Comm'n Reports 123 (2001)	Enacted. 2002 Cal. Stat. ch. 68 <i>See 32:600</i>
341. <i>Municipal Bankruptcy</i> , 31 Cal. L. Revision Comm'n Reports 143 (2001)	Enacted. 2002 Cal. Stat. ch. 94 <i>See 32:600</i>
342. <i>Rules of Construction for Trusts and Other Instruments</i> , 31 Cal. L. Revision Comm'n Reports 167 (2001)	Enacted. 2002 Cal. Stat. ch. 138 <i>See 32:601</i>
343. <i>Cases in Which Court Reporter Is Required</i> , 31 Cal. L. Revision Comm'n Reports 223 (2001)	Enacted. 2002 Cal. Stat. ch. 71 <i>See 32:600</i>
344. <i>Electronic Communications and Evidentiary Privileges</i> , 31 Cal. L. Revision Comm'n Reports 245 (2001)	Enacted. 2002 Cal. Stat. ch. 72 <i>See 32:600</i>
345. <i>Administrative Rulemaking Refinements</i> , 31 Cal. L. Revision Comm'n Reports 259 (2001)	Enacted. 2002 Cal. Stat. ch. 389 <i>See 32:601</i>
346. <i>The Double Liability Problem in Home Improvement Contracts</i> , 31 Cal. L. Revision Comm'n Reports 281 (2001)	Not enacted. <i>See 32:602.</i>

Recommendation	Action by Legislature
347. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 1</i> , 32 Cal. L. Revision Comm'n Reports 1 (2002)	Enacted. 2002 Cal. Stat. ch. 784 (statutory revision); 2002 Cal. Stat. res. ch. 88 (proposed constitutional amendment) <i>See 32:601</i>
348. <i>Common Interest Developments: Organization of Davis-Stirling Common Interest Development Act</i> , 33 Cal. L. Revision Comm'n Reports 1 (2003).	Enacted. 2003 Cal. Stat. ch. 557 <i>See 33:645</i>
349. <i>Common Interest Developments: Association Rulemaking and Decisionmaking</i> , 33 Cal. L. Revision Comm'n Reports 81 (2003).	Enacted in part. 2003 Cal. Stat. ch. 557 <i>See 33:645</i>
350. <i>Exemptions from Enforcement of Money Judgments: Second Decennial Review</i> , 33 Cal. L. Revision Comm'n Reports 113 (2003).	Enacted. 2003 Cal. Stat. ch. 379
351. <i>Probate Code Technical Corrections</i> , 33 Cal. L. Revision Comm'n Reports 145 (2003).	Enacted. 2003 Cal. Stat. ch. 32
352. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 2</i> , 33 Cal. L. Revision Comm'n Reports 169 (2003).	Enacted. 2003 Cal. Stat. ch. 149 <i>See 33:643</i>
353. <i>Obsolete Reporting Requirements</i> , 33 Cal. L. Revision Comm'n Reports 267 (2003)	Enacted. 2004 Cal. Stat. ch. 193
354. <i>Authority of Court Commissioner</i> , 33 Cal. L. Revision Comm'n Reports 673 (2003)	Enacted. 2004 Cal. Stat. ch. 49
355. <i>Alternative Dispute Resolution in Common Interest Developments</i> , 33 Cal. L. Revision Comm'n Reports 689 (2003)	Enacted. 2004 Cal. Stat. ch. 754 <i>See 34:81</i>
356. <i>Unincorporated Associations</i> , 33 Cal. L. Revision Comm'n Reports 729 (2003)	Enacted. 2004 Cal. Stat. ch. 178 <i>See 34:71</i>
357. <i>Civil Discovery: Nonsubstantive Reform</i> , 33 Cal. L. Revision Comm'n Reports 789 (2003)	Enacted. 2004 Cal. Stat. ch. 182 <i>See 34:75</i>
358. <i>Common Interest Development Law: Architectural Review and Decisionmaking</i> , 34 Cal. L. Revision Comm'n Reports 107 (2004)	Enacted. 2004 Cal. Stat. ch. 346 <i>See 34:77</i>

Recommendation	Action by Legislature
359. <i>Preemption of CID Architectural Restrictions</i> , 34 Cal. L. Revision Comm'n Reports 117 (2004)	Enacted. 2005 Cal. Stat. ch. 37 <i>See 35:30</i>
360. <i>Obsolete Cross-References to Former Code of Civil Procedure Section 383</i> , 34 Cal. L. Revision Comm'n Reports 127 (2004)	Enacted. 2005 Cal. Stat. ch. 37 <i>See 35:30</i>
361. <i>Civil Discovery: Statutory Clarification and Minor Substantive Improvements</i> , 34 Cal. L. Revision Comm'n Reports 137 (2004)	Enacted. 2005 Cal. Stat. ch. 294 <i>See 35:77</i>
362. <i>Civil Discovery: Correction of Obsolete Cross-References</i> , 34 Cal. L. Revision Comm'n Reports 161 (2004)	Enacted. 2005 Cal. Stat. ch. 294 <i>See 35:77</i>
363. <i>Ownership of Amounts Withdrawn from Joint Account</i> , 34 Cal. L. Revision Comm'n Reports 199 (2004)	Enacted. 2012 Cal. Stat. ch. 235 <i>See 42:361</i>
364. <i>Emergency Rulemaking Under the Administrative Procedure Act</i> , 34 Cal. L. Revision Comm'n Reports 221 (2004)	Enacted. 2006 Cal. Stat. ch. 713 <i>See 36:31</i>
365. <i>Unincorporated Association Governance</i> , 34 Cal. L. Revision Comm'n Reports 231 (2004)	Enacted. 2005 Cal. Stat. ch. 116 <i>See 35:73</i>
366. <i>Nonprofit Association Tort Liability</i> , 34 Cal. L. Revision Comm'n Reports 257 (2004)	Enacted. 2005 Cal. Stat. ch. 116 <i>See 35:73</i>
367. <i>Waiver of Privilege by Disclosure</i> , 34 Cal. L. Revision Comm'n Reports 265 (2004)	Not enacted. <i>See 36:31 n. 62</i>
368. <i>Financial Privacy</i> , 34 Cal. L. Revision Comm'n Reports 401 (2004)	Not enacted. <i>See 36:31 n. 62</i>
369. <i>Common Interest Development Ombudsperson</i> , 35 Cal. L. Revision Comm'n Reports 123 (2005)	Vetoed. <i>See 36:31 n. 62</i>
370. <i>Enforcement of Judgments Under the Family Code</i> , 35 Cal. L. Revision Comm'n Reports 161 (2005)	Enacted. 2006 Cal. Stat. ch. 86 <i>See 36:31</i>
371. <i>Oral Argument in Civil Procedure</i> , 35 Cal. L. Revision Comm'n Reports 181 (2005)	No legislation recommended.

Recommendation	Action by Legislature
372. <i>Technical and Minor Substantive Statutory Corrections</i> , 35 Cal. L. Revision Comm'n Reports 219 (2006)	Enacted. 2007 Cal. Stat. ch. 263 <i>See 37:28, 37:71</i>
373. <i>Time Limits for Discovery in an Unlawful Detainer Case</i> , 36 Cal. L. Revision Comm'n Reports 271 (2006).	Enacted. 2007 Cal. Stat. ch. 113 <i>See 37:28</i>
374. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 3</i> , 36 Cal. L. Revision Comm'n Reports 341 (2006).	Enacted. 2007 Cal. Stat. ch. 43 <i>See 37:29</i>
375. <i>Revocable Transfer on Death (TOD) Deed</i> , 36 Cal. L. Revision Comm'n Reports 103 (2006).	Not enacted. <i>See 38:28, n. 66</i>
376. <i>Deposition in Out-of-State Litigation</i> , 37 Cal. L. Revision Comm'n Reports 99 (2007).	Enacted. 2008 Cal. Stat. ch. 231 <i>See 38:29, 38:77</i>
377. <i>Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture</i> , 37 Cal. L. Revision Comm'n Reports 149 (2007).	Not enacted. But see 2012 Cal. Stat. ch. 470 (item 395 <i>infra</i>) <i>See 38:28 n. 66</i>
378. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 4</i> , 37 Cal. L. Revision Comm'n Reports 171 (2007).	Enacted. 2008 Cal. Stat. ch. 56 <i>See 38:29</i>
379. <i>Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction</i> , 37 Cal. L. Revision Comm'n Reports 195 (2007).	Enacted. 2008 Cal. Stat. ch. 56 <i>See 38:29</i>
380. <i>Technical and Minor Substantive Statutory Corrections: References to Recording Technology</i> , 37 Cal. L. Revision Comm'n Reports 211 (2007).	Enacted. 2009 Cal. Stat. ch. 88 <i>See 39:27, 39:71</i>
381. <i>Revision of No Contest Clause Statute</i> , 37 Cal. L. Revision Comm'n Reports 359 (2007).	Enacted. 2008 Cal. Stat. ch. 174 <i>See 38:29, 38:75</i>
382. <i>Miscellaneous Hearsay Exceptions: Present Sense Impression</i> , 37 Cal. L. Revision Comm'n Reports 407 (2007).	No legislation introduced.
383. <i>Miscellaneous Hearsay Exceptions: Forfeiture by Wrongdoing</i> , 37 Cal. L. Revision Comm'n Reports 443 (2007).	No legislation introduced; but see 2010 Cal. Stat. ch. 537, enacting a similar amendment of Evid. C. § 240.

Recommendation	Action by Legislature
384. <i>Mechanics Lien Law</i> , 37 Cal. L. Revision Comm'n Reports 527 (2007).	Enacted. 2010 Cal. Stat. ch. 697 <i>See 39:27, 40:28, 40:49</i>
385. <i>Donative Transfer Restrictions</i> , 38 Cal. L. Revision Comm'n Reports 107 (2007).	Enacted. 2009 Cal. Stat. ch. 348, 2010 Cal. Stat. ch. 620 <i>See 39:27, 40:28, 40:45</i>
386. <i>Attorney-Client Privilege After Client's Death</i> , 38 Cal. L. Revision Comm'n Reports 163 (2008).	Enacted. 2009 Cal. Stat. ch. 8 <i>See 39:27</i>
387. <i>Revision of No Contest Clause Statute: Conforming Revisions</i> , 38 Cal. L. Revision Comm'n Reports 203 (2008).	Enacted. 2009 Cal. Stat. ch. 348 <i>See 39:27</i>
388. <i>Nonsubstantive Reorganization of Deadly Weapon Statutes</i> , 38 Cal. L. Revision Comm'n Reports 217 (2009).	Enacted. 2010 Cal. Stat. ch. 178, 2010 Cal. Stat. ch. 711 <i>See 40:27, 40:43, 40:107</i>
389. <i>Marketable Record Title: Notice of Option</i> , 39 Cal. L. Revision Comm'n Reports 99 (2009).	Enacted. 2011 Cal. Stat. ch. 46 <i>See 41:28</i>
390. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 5</i> , 39 Cal. L. Revision Comm'n Reports 109 (2009).	Enacted. 2010 Cal. Stat. ch. 212 <i>See 40:28, 42:360</i>
391. <i>Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part I)</i> , 39 Cal. L. Revision Comm'n Reports 157 (2009).	Enacted. 2012 Cal. Stat. ch. 470 <i>See 42:360</i>
392. <i>Obsolete Cross-References to Former Code of Civil Procedure Section 116.780(d)</i> , 39 Cal. L. Revision Comm'n Reports 223 (2009).	Enacted. 2011 Cal. Stat. ch. 308 <i>See 41:28</i>
393. <i>Statutory Clarification and Simplification of CID Law</i> , 40 Cal. L. Revision Comm'n Reports 235 (2010).	Enacted. 2012 Cal. Stat. ch. 180 <i>See 42:360</i>
394. <i>Mechanics Lien Law: Clean-Up Legislation</i> , 41 Cal. L. Revision Comm'n Reports 103 (2011).	Enacted. 2011 Cal. Stat. ch. 44 <i>See 41:28</i>

Recommendation	Action by Legislature
395. <i>Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation</i> , 41 Cal. L. Revision Comm'n Reports 135 (2011).	Enacted. 2011 Cal. Stat. ch. 285; see also 2012 Cal. Stat. ch. 162, §§ 12-14, 203, 207; 2013 Cal. Stat. ch. 76, §§ 145.5, 145.7, 147.3, 147.5, 153.5; 2013 Cal. Stat. ch. 291, § 52 <i>See 41:28, 43:279</i>
396. <i>Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture</i> , 41 Cal. L. Revision Comm'n Reports 265 (2011).	Enacted. 2012 Cal. Stat. ch. 470 <i>See 42:360</i>
397. <i>Statutory Cross-References to "Tort Claims Act,"</i> 41 Cal. L. Revision Comm'n Reports 285 (2011).	Enacted. 2012 Cal. Stat. ch. 759 <i>See 42:360-61</i>
398. <i>Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case</i> , 41 Cal. L. Revision Comm'n Reports 315 (2011).	Enacted. 2012 Cal. Stat. ch. 470 <i>See 42:360</i>
399. <i>Commercial and Industrial Common Interest Developments</i> , 42 Cal. L. Revision Comm'n Reports 1 (2012).	Enacted. 2013 Cal. Stat. ch. 605 <i>See 43:279-80</i>
400. <i>Charter Schools and the Government Claims Act</i> , 42 Cal. L. Revision Comm'n Reports 225 (2012).	No legislation recommended.
401. <i>Third Decennial Review of Exemptions from Enforcement of Money Judgments</i> , 42 Cal. L. Revision Comm'n Reports 297 (2012).	Enacted. 2013 Cal. Stat. ch. 15 <i>See 43:279</i>
402. <i>Statutory Clarification and Simplification of CID Law: Clean-Up Legislation</i> , 42 Cal. L. Revision Comm'n Reports 311 (2012).	Enacted. 2013 Cal. Stat. ch. 183 <i>See 43:279</i>
403. <i>Commercial and Industrial Subdivisions</i> , 43 Cal. L. Revision Comm'n Reports 1 (2013).	Enacted. 2013 Cal. Stat. ch. 605 <i>See 43:279-80</i>
404. <i>Statutory Clarification and Simplification of CID Law: Further Clean-Up Legislation</i> , 43 Cal. L. Revision Comm'n Reports 23 (2013).	Enacted. 2013 Cal. Stat. ch. 183 <i>See 43:279</i>
405. <i>Technical and Minor Substantive Statutory Corrections</i> , 43 Cal. L. Revision Comm'n Reports 35 (2013).	Enacted. 2014 Cal. Stat. ch. 913 <i>See 44:27</i>

Recommendation	Action by Legislature
406. <i>Deadly Weapons: Minor Clean-Up Issues</i> , 43 Cal. L. Revision Comm'n Reports 63 (2013).	Enacted. 2014 Cal. Stat. ch. 103 <i>See 44:27</i>
406. <i>Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act</i> , 43 Cal. L. Revision Comm'n Reports 93 (2013).	Enacted. 2014 Cal. Stat. ch. 553 <i>See 44:27, 44:77</i>
407. <i>Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1)</i> , 44 Cal. L. Revision Comm'n Reports 115 (2015).	Enacted. 2015 Cal. Stat. ch. 154 <i>See 44:522; 44:571</i>

APPENDIX 4

REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION
ON CHAPTER 553 OF THE STATUTES OF 2014
(SENATE BILL 940)

Uniform Adult Guardianship and
Protective Proceedings Jurisdiction Act

Chapter 553 of the Statutes of 2014 was introduced as Senate Bill 940, authored by the Senator Hannah-Beth Jackson. The measure implements the Commission's recommendation on *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, 43 Cal. L. Revision Comm'n Reports 93 (2013).

The new and revised Comments set out below reflect amendments made to Senate Bill 940 in the legislative process. The revised Comments supersede the comparable Comments in the recommendation.

**Article 4 (commencing with Section 2011) of Chapter 8 of Part 3 of
Division 4 (added). Registration and Recognition of Orders from
Other States**

Background from Uniform Act

Article 4 is designed to facilitate the enforcement of [conservatorship] orders in other states. This article does not make distinctions among the types of orders that can be enforced.... While some states have expedited procedures for sales of real estate by [a conservator of the estate] appointed in [another state], few states have enacted statutes dealing with enforcement of [an order appointing a conservator of the person], such as when a care facility questions the authority of a [conservator of the person] appointed in another state. Sometimes, these sorts of refusals necessitate that the proceeding be transferred to the other state or that an entirely new petition be filed, problems that could often be avoided if [conservatorship] orders were entitled to recognition in other states.

Article 4 provides for such recognition. The key concept is registration. Section [2011] provides for registration of [an order appointing a conservator of the person], and Section [2012] for

registration of [an order appointing a conservator of the estate]. Following registration of the order in the appropriate county of the other state, and after giving notice to the [supervising] court of the intent to register the order in the other state, Section [2016] authorizes the ... conservator to thereafter exercise all powers authorized in the order of appointment except as prohibited under the laws of the registering state.

The drafters of the Act concluded that the registration of certified copies provides sufficient protection and that it was not necessary to mandate the filing of authenticated copies.

[Adapted from the Uniform Law Commission's General Comment to Article 4 of UAGPPJA.]

Prob. Code § 2011 (added). Registration of order appointing conservator of person [UAGPPJA § 401]

Comment. Section 2011 is similar to Section 401 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment. Revisions have also been made to clarify the proper filing procedure under California law.

For further information on the effect of a registration under this article, see Section 2016 (effect of registration). For the applicable filing fee, see Gov't Code § 70663 (fee for registration under California Conservatorship Jurisdiction Act). For recordation with a county recorder, see Section 2018 (recordation of registration documents). For guidance regarding third party reliance on a conservatorship order registered under this section, see Section 2017 (good faith reliance on registration). For a special rule applicable to a California tribe, see Section 2019 (California tribal court conservatorship order). For limitations on the scope of this chapter, see Section 1981 & Comment.

Prob. Code § 2012 (added). Registration of order appointing conservator of estate [UAGPPJA § 402]

Comment. Section 2012 is similar to Section 402 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment. Revisions have also been made to clarify the proper filing procedure under California law.

For further information on the effect of a registration under this article, see Section 2016 (effect of registration). For the applicable filing fee, see Gov't Code § 70663 (fee for registration under California Conservatorship Jurisdiction Act). For recordation with a county recorder, see Section 2018 (recordation of registration documents). For guidance regarding third party reliance on a conservatorship order registered under this section, see Section 2017 (good faith reliance on registration). For a special rule applicable to a California tribe, see Section 2019 (California tribal court conservatorship order). For limitations on the scope of this chapter, see Section 1981 & Comment.

Prob. Code § 2013 (added). Registration of order appointing conservator of person and estate

Comment. Section 2013 is included for the sake of completeness. It serves to clarify the registration procedure applicable to a conservatorship of the person and estate.

For further information on the effect of a registration under this article, see Section 2016 (effect of registration). For the applicable filing fee, see Gov't Code § 70663 (fee for registration under California Conservatorship Jurisdiction Act). For recordation with a county recorder, see Section 2018 (recordation of registration documents). For guidance regarding third party reliance on a conservatorship order registered under this section, see Section 2017 (good faith reliance on registration). For a special rule applicable to a California tribe, see Section 2019 (California tribal court conservatorship order). For limitations on the scope of this chapter, see Section 1981 & Comment.

See Section 1982 (definitions).

Prob. Code § 2014 (added). Notice of intent to register

Comment. Section 2014 requires notice to specified persons as a prerequisite to registration under this article.

Paragraph (1) of subdivision (a) is similar to the notice requirements in UAGPPJA Sections 401 and 402. The reference to the “appointing court” has been replaced with a reference to the “court supervising the conservatorship,” because the court currently supervising a conservatorship might not be the same court that originally appointed the conservator. See Article 3 (transfer of conservatorship).

Paragraphs (2) and (3) of subdivision (a) provide for additional notice, so as to alert interested persons that the conservatorship is being registered in California and the conservator might take action in California. If a person has concerns about such action, the person can

either challenge a proposed action directly in a California court, or seek redress in the court supervising the conservatorship.

Under subdivisions (b) and (c), a notice under this section must prominently inform the recipient about key limitations on the effect of registering a conservatorship in this state. The notice must also provide other information on the applicable law and procedures.

Prob. Code § 2015 (added). Information on conservator’s rights, duties, limitations, and responsibilities

Comment. Section 2015 requires that specified information be provided to a conservator as a prerequisite to registration under this article.

Prob. Code § 2016 (added). Effect of registration [UAGPPJA § 403]

Comment. Subdivision (a) of Section 2016 is similar to Section 403(a) of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment. Revisions have also been made to:

- (1) Underscore that any conservatorship registered in California is fully subject to California law while the conservator is acting in the state. For example, if a conservatorship is registered in California and the conservator seeks to exercise a power specified in Section 2356.5 (conservatee with dementia) within the state, the requirements of that section must be satisfied. Similarly, if the conservator of a registered conservatorship wishes to sell the conservatee’s personal residence located in California, the transaction must comply with California’s special requirements for such a sale (see, e.g., Sections 2540(b), 2543, 2591.5).
- (2) Emphasize that registration of an out-of-state conservatorship in one county is sufficient; it is not necessary to register in every county in which the conservator seeks to act.
- (3) Make clear that a registration is only effective if the conservator files an acknowledgment of receipt of the written information required by Section 2015.
- (4) Make clear that a registration is only effective while the conservatee resides in another state. If the conservatee

becomes a California resident, the conservator cannot act pursuant to a registration under this article, but can petition for transfer of the conservatorship to California under Article 3. For an exception to the rule that a registration is only effective while the conservatee resides in another state, see Section 2019 (California tribal court conservatorship order).

Paragraph (1) of subdivision (b) provides guidance on which court is the appropriate forum for purposes of complying with California procedures as required under subdivision (a). Paragraphs (2) and (3) make clear that those entitled to notice under Section 2014 are also entitled to notice and an opportunity to be heard in the proceedings specified in paragraph (1).

Subdivision (c) further underscores that a registration is only effective while the conservatee resides in another jurisdiction. For an exception to this rule, see Section 2019 (California tribal court conservatorship order).

Subdivision (d) is the same as Section 403(b) of UAGPPJA.

For limitations on the scope of this chapter, see Section 1981 & Comment.

Prob. Code § 2017 (added). Good faith reliance on registration

Comment. Section 2017 is modeled on Section 4303 (good faith reliance on power of attorney).

For the effect of registration under this article, see Section 2016 & Comment. For a special rule applicable to a conservatorship order of a court of a California tribe, see Section 2019 & Comment.

Prob. Code § 2018 (added). Recordation of registration documents

Comment. Section 2018 makes clear that registration documents under this chapter are recordable in county property records.

Prob. Code § 2019 (added). California tribal court conservatorship order

Comment. Section 2019 provides that the residence-based limitations on registration of a conservatorship order, in Sections 2014 and 2017, do not apply to a conservatorship order of a court of a California tribe. See Section 2031(a) (“California tribe” defined).

Prob. Code § 2023 (added). Court rules and forms

Comment. Section 2023 directs the Judicial Council to prepare any court rules and forms that are necessary to implement this chapter before it becomes operative.

Subdivision (c) requires that the materials prepared by the Judicial Council be consistent with Section 2019, relating to the registration of a conservatorship order of a court of a California tribe.

Prob. Code § 2352 (amended). Residence of ward or conservatee

Comment. Subdivision (d) of Section 2352 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Subdivision (e) is amended to replace an erroneous reference to “conservatee” with a reference to “conservator.”

APPENDIX 5

BIOGRAPHIES OF 2014 COMMISSIONERS

Victor King, of La Crescenta, serves as the Chairperson of the Commission, and 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.

Crystal Miller-O'Brien, of Los Angeles, serves as the Vice-Chairperson of the Commission, and has been corporate counsel for Medical Management Consultants, Inc. since 2006. She was previously an associate with the law firm of Anderson McPharlin and Connors LLP, an associate with the law firm of Robie and Matthai PC, an associate with the law firm of Bullivant Houser Bailey PC, and a judicial clerk to the Washington State Supreme Court. She also served on the board of directors of the Conference of California Bar Associations from 2009 to 2012, and is a member of Corporate Counsel Women of Color, the Black Women Lawyers Association of Los Angeles, and the National Association of Women Business Owners. Commissioner Miller-O'Brien received a Juris Doctor degree and a Joint Certificate in Alternative Dispute Resolution from Willamette University College of Law.

Diane Boyer-Vine, of Sacramento, has been Legislative Counsel for the State of California since 2002. She was previously a deputy and thereafter a chief deputy in the Legislative Counsel's office from 1988 to 2002, and before that an associate with the law firm of Martorana and Stockman. She also serves as a member of the California Commission on Uniform State Laws. Commissioner

Boyer-Vine received a Juris Doctor degree from the University of California, Davis School of Law.

Damian Capozzola, of Hermosa Beach, is the founder of the Law Offices of Damian D. Capozzola. He was previously a partner with the law firm of Crowell and Moring LLP from 2011 to 2013, an attorney with the law firm of Epstein Becker and Green P.C. from 2007 to 2011, and an attorney with the law firm of Kirkland and Ellis LLP from 1996 to 2007. Commissioner Capozzola received a Juris Doctor degree from the University of Virginia School of Law.

Xochitl Carrion, of San Francisco and Oakland, has been an attorney with the law firm of Goldfarb and Lipman LLP since 2007. She is also the Northern District Vice President of the California La Raza Lawyers Association, a Super Lawyers 2013 and 2014 Northern California Rising Star and one of Super Lawyers 2013 and 2014 Northern California Top Women Attorneys, a member of San Francisco La Raza Lawyers Association (SFLRLA), and has served as president of the SFLRLA. Commissioner Carrion received a Juris Doctor degree from the University of California, Hastings College of the Law.

Judge Patricia Cowett (ret.), of San Diego, has been a mediator with Alternative Dispute Resolution Services, Inc. and the American Arbitration Association since 2009. She was previously a judge on the San Diego Superior Court from 1998 to 2008, a judge on the San Diego Municipal Court from 1979 to 1998, and presiding judge of the San Diego Municipal Court in 1991. She is a past president of Lawyers Club of San Diego and founding president of Pan Asian Lawyers of San Diego. She is also a former member of the California Asian-Pacific Judges Association, the San Diego County Judges Association, and a current member of the Planning Committee for the National Association of Women Judges Annual Conference in San Diego, October 2014. Commissioner Cowett received a Juris Doctor degree from the University of California, Davis School of Law.

Assembly Member Roger Dickinson, of Sacramento, was a member of the Assembly from 2010 to 2014. He previously helped form the law firm of Kemnitzer, Dickinson, Anderson & Barron. He also served on the Sacramento County Board of Supervisors from 1994 to 2010, was a member and board chair of the Sacramento Housing and Redevelopment Commission, a board member and president of the American Lung Association of Sacramento, chair of the Sacramento Transportation Coalition, president of the Friends of Light Rail, board member of the Sacramento Tree Foundation, and member of the Regional Transit Board of Directors, the Sacramento County Air Pollution Control Advisory Board, and the North Sacramento Community Plan Citizens Advisory Committee. Commissioner Dickinson received a Juris Doctor degree from the University of California, Los Angeles School of Law.

Taras Peter Kihiczak, of Pacific Palisades, has been a lawyer with and shareholder of The Kick Law Firm APC since 1991. He was previously a lawyer with the law firm of Thelen Marrin Johnson and Bridges from 1989 to 1990. Commissioner Kihiczak received a Juris Doctor degree from the University of Pennsylvania Law School.

Susan Duncan Lee, of Tiburon, has been a deputy attorney general and thereafter a supervising deputy attorney general with the California Department of Justice since 1989. Commissioner Lee received a Juris Doctor degree from the University of California, Hastings College of the Law.

Senator Ted Lieu, of Torrance, has been a member of the Senate since 2011, and a member of the Assembly from 2005 to 2010. He was previously an attorney with the law firm of Munger, Tolles & Olson, clerked for the Ninth Circuit Court of Appeals, and served as a prosecutor in the JAG Corps of the United States Air Force. He has also served on the Torrance City Council, the Torrance Environmental Quality and Energy Conservation Commission, and the Rampart Independent Review Panel.

Commissioner Lieu received a Juris Doctor degree from Georgetown University Law Center.

APPENDIX 6

COMMISSION PUBLICATIONS

From 1955 until 2009, the California Law Revision Commission's annual reports, recommendations, and studies were published in separate pamphlets, which were later bound in a small edition of hard-cover volumes. Beginning with the Commission's 2009-2010 Annual Report, the printing of separate pamphlets was generally discontinued. As a general rule, only the hard-cover volumes are now published. (The Commission may occasionally publish a separate report for ease of reference.)

Commission publications are assigned sequential publication numbers to facilitate cataloging and ordering. Beginning with publication #189, the publication number is printed on the reverse of the title page of each publication.

All Commission reports are available as electronic files, at no cost. Procedures for obtaining printed or electronic versions of Commission publications are described below.

How To Obtain Printed Publications

Commission publications may be obtained from:

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
Tel: (650) 494-1335

Payment in advance is generally required for publications that are available only by purchase. Checks or money orders should be made payable to the "California Law Revision Commission."

Orders should include the titles of the requested publications, the quantity desired, and the street address to which the order is to be sent (*not* a post office box number).

Prices

With the following two exceptions, the price for a hardcover volume of the Commission's *Reports*, *Recommendations*, and *Studies* is \$75.00:

(1) Volume 15 is printed in two separately bound books. The price for each of these books is \$75.00.

(2) Volumes 21 and 22 are combined in a single bound book. The price for this book is \$75.00.

California residents must also add sales tax.

Reports that were printed in pamphlet form are usually available on request. The first copy is free; additional copies are available for the price indicated below. On occasion, special reports may be available only for purchase, such as where the Commission needs to cover costs of producing a particular publication.

Where applicable, the price of Commission pamphlets is determined by the number of pages, unless a special price has been set:

10 or fewer pages:	\$5.50
11-50 pages:	\$8.50
51-100 pages:	\$18.00
101 or more pages:	\$25.00

Whether a charge will be imposed and the amount of the charge are subject to change without notice. When a charge is imposed, special discounts may be available for large orders.

Publication Table

The bound volumes and separate pamphlets listed below are available unless noted as being out of print. For some years, only a few copies remain. If a bound volume is out of print, individual pamphlets from that volume may still be available. Conversely, some pamphlets are unavailable on an individual basis, but can be found in available bound volumes. Note that all publications are now available as electronic files (see below).

Prices are indicated only for individual pamphlets that are still in print.

A frequently updated version of the publication list is available on the Internet at www.clrc.ca.gov — the Commission's website.

How To Obtain Publications in Electronic Form

All Commission publications may be downloaded from the Commission's website at www.clrc.ca.gov.

Key to Publication Table

The first column lists the publication number, if any.

The second column gives the publication title, and includes a list of the recommendations and studies included within a pamphlet that contains more than one item.

In the third column, the first line lists the month and year of the report, followed by a citation to the volume and page number of the report and any supplement to the report (in the format vol:page).

Through Volume 38, the second line in the third column lists the number of pages in a publication and gives its standard price, unless it is out of print (indicated by OOP).

Volume 1 (1957)		[Hardcover Volume Out of Print]	
#1	1955 [Annual] Report [for 1954] — includes: • Homestead Law and Probate Code Sections 640 to 646 • Summary Disposition of Small Estates Under Probate Code Sections 640 to 646	1/55 59 pp	1:1-1 OOP
#2	1956 [Annual] Report [for 1955] — includes: • Comparative Survey of the California Inheritance and Gift Tax Laws and the Federal Estate and Gift Tax Laws	3/56 63 pp	1:2-1 OOP
#3	1957 [Annual] Report [for 1956]	1/57 28 pp	1:3-1 OOP
#4	Maximum Period of Confinement in a County Jail — includes: • Maximum Period of Confinement in a County Jail (Rec) • Penal Code Section 19a and Related Code Sections (Study)	10/56 34 pp	1:A-1 OOP
#5	Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions — includes: • Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions (Rec) • Use of Motions and Orders To Show Cause in Connection with Awards of Attorney's Fees and Costs Pursuant to Civil Code Section 137.3 (Study)	11/56 13 pp	1:B-1 OOP
#6	Taking Instructions to the Jury Room — includes: • Taking Instructions to the Jury Room (Rec) • Whether the Jury Should Be Given a Copy of the Court's Instructions To Take into the Jury Room (Study)	11/56 17 pp	1:C-1 OOP
#7	Dead Man Statute — includes: • Dead Man Statute (Rec) • Whether the Dead Man Statute Should Be Modified or Repealed (Study)	2/57 54 pp	1:D-1 OOP

#8	Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere — includes: • Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere (Rec) • Whether Section 201.5 of the Probate Code Should Be Revised (Study)	12/56 39 pp	1:E-1 OOP
#9	Marital “For and Against” Testimonial Privilege — includes: • Marital “For and Against” Testimonial Privilege (Rec) • Whether the “For and Against” Testimonial Privilege of Married Persons Should Be Revised (Study)	11/56 20 pp	1:F-1 OOP
#10	Suspension of the Absolute Power of Alienation — includes: • Suspension of the Absolute Power of Alienation (Rec) • Whether the Sections of the Civil Code Prohibiting Suspension of the Absolute Power of Alienation Should Be Repealed (Study)	11/56 32 pp	1:G-1 OOP
#11	Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378	10/56 4 pp	1:H-1 \$5.50
#12	Judicial Notice of the Law of Foreign Countries — includes: • Judicial Notice of the Law of Foreign Countries (Rec) • Whether California Courts Should Take Judicial Notice of the Law of Foreign Countries (Study)	2/57 24 pp	1:I-1 OOP
#13	Choice of Law Governing Survival of Actions — includes: • Choice of Law Governing Survival of Actions (Rec) • Law Which Should Govern Survival of Actions Arising in Another State When Suit Is Brought in California (Study)	2/57 20 pp	1:J-1 OOP
#14	Effective Date of an Order Ruling on a Motion for New Trial — includes: • Effective Date of an Order Ruling on a Motion for New Trial (Rec) • Effective Date of New Trial Orders in Relation to Section 660 of the Code of Civil Procedure (Study)	2/57 27 pp	1:K-1 OOP
#15	Retention of Venue for Convenience of Witnesses — includes: • Retention of Venue for Convenience of Witnesses (Rec) • California Law Relating to Retention of Venue for Convenience of Witnesses (Study)	2/57 29 pp	1:L-1 OOP
#16	Bringing New Parties into Civil Actions — includes: • Bringing New Parties into Civil Actions (Rec) • California Law Relating to Bringing in New Parties in Civil Actions (Study)	2/57 24 pp	1:M-1 OOP

Volume 2 (1959)

[Hardcover Volume Out of Print]

#17	1958 [Annual] Report [for 1957]	3/58 25 pp	2:1-1 \$8.50
#18	1959 [Annual] Report [for 1958] — includes: • Procedure for Appointing Guardians	1/59 29 pp	2:2-1 \$8.50

#19	Presentation of Claims Against Public Entities — includes:	1/59	2:A-1
	• Presentation of Claims Against Public Entities (Rec)	128 pp	\$25.00
	• Presentation of Claims Against Public Entities (Study)		
#20	Right of Nonresident Aliens To Inherit — includes:	1/59	2:B-1
	• Right of Nonresident Aliens To Inherit (Rec)	32 pp	\$8.50
	• Right of Nonresident Aliens To Inherit (Study)		
#21	Mortgages To Secure Future Advances — includes:	11/58	2:C-1
	• Mortgages To Secure Future Advances (Rec)	26 pp	\$8.50
	• Mortgages To Secure Future Advances (Study)		
#22	Doctrine of Worthier Title — includes:	1/59	2:D-1
	• Doctrine of Worthier Title (Rec)	38 pp	\$8.50
	• Whether the Doctrine of Worthier Title Should Be Abolished in California (Study)		
#23	Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving — includes:	11/58	2:E-1
	• Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving (Rec)	22 pp	\$8.50
	• Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Driving While Intoxicated (Study)		
#24	Time Within Which Motion for New Trial May Be Made — includes:	11/58	2:F-1
	• Time Within Which Motions for New Trial and To Vacate Judgment May Be Made (Rec)	16 pp	\$8.50
	• Time Within Which a Motion for a New Trial May Be Made When Notice of Entry of Judgment Has Not Been Given (Study)		
#25	Notice to Shareholders of Sale of Corporate Assets — includes:	1/59	2:G-1
	• Notice to Shareholders of Sale of Corporate Assets (Rec)	18 pp	\$8.50
	• Notice to Shareholders of a Sale of All or Substantially All of the Assets of a Corporation (Study)		

Volume 3 (1961)

[Hardcover Volume Out of Print]

#26	1960 [Annual] Report [for 1959]	3/60	3:1-1
		15 pp	OOP
#27	1961 [Annual] Report [for 1960]	1/61	3:2-1
		15 pp	OOP
#28	Evidence in Eminent Domain Proceedings — includes:	10/60	3:A-1
	• Evidence in Eminent Domain Proceedings (Rec)	65 pp	\$18.00
	• Evidence in Eminent Domain Proceedings (Study)		
#29	Taking Possession and Passage of Title in Eminent Domain Proceedings — includes:	10/60	3:B-1
	• Taking Possession and Passage of Title in Eminent Domain Proceedings (Rec)	66 pp	OOP
	• Taking Possession and Passage of Title in Eminent Domain Proceedings (Study)		

#30	Reimbursement for Moving Expenses when Property Is Acquired for Public Use — includes:	10/60 36 pp	3:C-1 OOP
	• Reimbursement for Moving Expenses when Property Is Acquired for Public Use (Rec)		
	• Reimbursement for Moving Expenses when Property Is Acquired for Public Use (Study)		
#31	Rescission of Contracts — includes:	10/60 35 pp	3:D-1 OOP
	• Rescission of Contracts (Rec)		
	• Rescission of Contracts (Study)		
#32	Right to Counsel and the Separation of the Delinquent Minor from the Nondelinquent Minor in Juvenile Court Proceedings — includes:	10/60 43 pp	3:E-1 OOP
	• Right to Counsel and the Separation of the Delinquent Minor from the Nondelinquent Minor in Juvenile Court Proceedings (Rec)		
	• Juvenile's Right to Counsel and the Designation of Nondelinquent Minor As "Ward of the Juvenile Court" (Study)		
#33	Survival of Actions — includes:	10/60 26 pp	3:F-1 OOP
	• Survival of Actions (Rec)		
	• Survival of Tort Actions (Study)		
#34	Arbitration — includes:	12/60 64 pp	3:G-1 OOP
	• Arbitration (Rec)		
	• Arbitration (Study)		
#35	Presentation of Claims Against Public Officers and Employees — includes:	10/60 36 pp	3:H-1 OOP
	• Presentation of Claims Against Public Officers and Employees (Rec)		
	• Presentation of Claims Against Public Officers and Employees (Study)		
#36	Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere — includes:	10/60 35 pp	3:I-1 OOP
	• Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere (Rec)		
	• Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere (Study)		
#37	Notice of Alibi in Criminal Actions — includes:	10/60 22 pp	3:J-1 \$8.50
	• Notice of Alibi in Criminal Actions (Rec)		
	• Notice of Alibi in Criminal Actions (Study)		

Volume 4 (1963)

[Hardcover Volume Out of Print]

#38	1962 Annual Report [for 1961]	3/62 23 pp	4:1 \$8.50
#39	1963 Annual Report [for 1962]	1/63 18 pp	4:101 \$8.50
#40	1964 Annual Report [for 1963]	12/63 46 pp	4:201 \$8.50

#41	Uniform Rules of Evidence: Article VIII. Hearsay Evidence — includes:	8/62 319 pp	4:301 OOP
	• Uniform Rules of Evidence: Article VIII. Hearsay Evidence (Rec)		
	• Hearsay Evidence Article of the Uniform Rules of Evidence (Study)		
#42	Condemnation Law and Procedure: Number 4 — Discovery in Eminent Domain Proceedings [The first three pamphlets (unnumbered) in Volume 3 also deal with the subject of condemnation law and procedure.] — includes:	1/63 74 pp	4:701 \$18.00
	• Condemnation Law and Procedure: Number 4 — Discovery in Eminent Domain Proceedings (Rec)		
	• Pretrial Conferences and Discovery in Eminent Domain Proceedings (Study)		
#43	Sovereign Immunity: Number 1 — Tort Liability of Public Entities and Public Employees	1/63 86 pp	4:801 \$18.00
#44	Sovereign Immunity: Number 2 — Claims, Actions and Judgments Against Public Entities and Public Employees	1/63 94 pp	4:1001 \$18.00
#45	Sovereign Immunity: Number 3 — Insurance Coverage for Public Entities and Public Employees	1/63 14 pp	4:1201 \$8.50
#46	Sovereign Immunity: Number 4 — Defense of Public Employees	1/63 22 pp	4:1301 \$8.50
#47	Sovereign Immunity: Number 5 — Liability of Public Entities for Ownership and Operation of Motor Vehicles	1/63 8 pp	4:1401 \$5.50
#48	Sovereign Immunity: Number 6 — Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers	1/63 8 pp	4:1501 \$5.50
#49	Sovereign Immunity: Number 7 — Amendments and Repeals of Inconsistent Special Statutes	3/63 11 pp	4:1601 OOP

Volume 5 (1963)

[Hardcover Volume Out of Print]

#50	Study Relating to Sovereign Immunity [Softcover publication has entire contents of hardcover volume except for the title page and some other front matter.]	1/63 568 pp	5:1 \$25.00

Volume 6 (1964)

[Hardcover Volume Out of Print]

#51	Uniform Rules of Evidence: Article 1. General Provisions — includes:	4/64 74 pp	6:1 \$18.00
	• Uniform Rules of Evidence: Article 1. General Provisions (Rec)		
	• General Provisions Article of the Uniform Rules of Evidence (Study)		

#52	Uniform Rules of Evidence: Article IX. Authentication and Content of Writings — includes: • Uniform Rules of Evidence: Article IX. Authentication and Content of Writings (Rec) • Authentication Article of the Uniform Rules of Evidence (Study)	1/64 70 pp	6:101 \$18.00
#53	Uniform Rules of Evidence: Article V. Privileges — includes: • Uniform Rules of Evidence: Article V. Privileges (Rec) • Privileges Article of the Uniform Rules of Evidence (Study)	2/64 301 pp	6:201 OOP
#54	Uniform Rules of Evidence: Article VI. Extrinsic Policies Affecting Admissibility — includes: • Uniform Rules of Evidence: Article VI. Extrinsic Policies Affecting Admissibility (Rec) • Uniform Rules of Evidence — Extrinsic Policies Affecting Admissibility (Study)	3/64 80 pp	6:601 OOP
#55	Uniform Rules of Evidence: Article IV. Witnesses — includes: • Uniform Rules of Evidence: Article IV. Witnesses (Rec) • The Witnesses Article of the Uniform Rules of Evidence (Study)	3/64 72 pp	6:701 \$18.00
#56	Uniform Rules of Evidence: Article II. Judicial Notice — includes: • Uniform Rules of Evidence: Article II. Judicial Notice (Rec) • The Judicial Notice Article of the Uniform Rules of Evidence (Study)	4/64 60 pp	6:801 \$18.00
#57	Uniform Rules of Evidence: Article VII. Expert and Other Opinion Testimony — includes: • Uniform Rules of Evidence: Article VII. Expert and Other Opinion Testimony (Rec) • The Uniform Rules of Evidence — Expert and Other Opinion Testimony (Study)	3/64 49 pp	6:901 \$8.50
#58	Uniform Rules of Evidence: Burden of Producing Evidence, Burden of Proof, and Presumptions (Replacing Article III of the Uniform Rules of Evidence) — includes: • Uniform Rules of Evidence: Burden of Producing Evidence, Burden of Proof, and Presumptions (Replacing Article III of the Uniform Rules of Evidence) (Rec) • Uniform Rules of Evidence — Burden of Producing Evidence, Burden of Proof, and Presumptions (Study)	6/64 148 pp	6:1001 \$25.00
#59	Uniform Rules of Evidence: Article VIII. Hearsay Evidence [same as 4:301] — includes: • Uniform Rules of Evidence: Article VIII. Hearsay Evidence (Rec) • Hearsay Evidence Article of the Uniform Rules of Evidence (Study)	10/62 272 pp	6:ff-1150 OOP

Volume 7 (1965)

[Hardcover Volume Out of Print]

#60	Evidence Code	1/65 394 pp	7:1 OOP
#61	Sovereign Immunity: Number 8 — Revisions of the Governmental Liability Act: Liability of Public Entities for Ownership and Operation of Motor Vehicles; Claims and Actions Against Public Entities and Public Employees	1/65 30 pp	7:401 \$8.50
#62	1965 Annual Report [for 1964]	1/65 16 pp	7:801 OOP
#63	1966 Annual Report [for 1965]	12/65 28 pp	7:901 OOP
#64	Evidence Code with Official Comments	8/65 338 pp	7:1001 \$25.00

Volume 8 (1967)

[Hardcover Volume Out of Print]

#65	Annual Report [for 1966] — includes: • Discovery in Eminent Domain Proceedings	12/66 29 pp	8:1 \$8.50
#66	Evidence Code: Number 1 — Evidence Code Revisions	10/66 28 pp	8:101 \$8.50
#67	Evidence Code: Number 2 — Agricultural Code Revisions	10/66 34 pp	8:201 \$8.50
#68	Evidence Code: Number 3 — Commercial Code Revisions	10/66 13 pp	8:301 \$8.50
#69	Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property — includes: • Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property (Rec) • California Personal Injury Damage Awards to Married Persons [reprinted from 13 UCLA L. Rev. 587 (1966)] (Study)	10/66 43 pp	8:401 \$8.50
#70	Vehicle Code Section 17150 and Related Sections — includes: • Vehicle Code Section 17150 and Related Sections (Rec) • Imputed Contributory Negligence: The Anomaly in California Vehicle Code Section 17150 [reprinted from 17 Stan. L. Rev. 55 (1964)] (Study)	10/66 48 pp	8:501 \$8.50
#71	Additur — includes: • Additur (Rec) • Power of the Trial Court to Deny a New Trial on the Condition that Damages Be Increased [reprinted from 3 Cal. W. L. Rev. 1 (1966)] (Study)	10/66 58 pp	8:601 \$18.00
#72	Abandonment or Termination of a Lease — includes: • Abandonment or Termination of a Lease (Rec) • Whether the Rights and Duties Attendant upon the Termination of a Lease Should Be Revised [reprinted from 54 Cal. L. Rev. 1141 (1966)] (Study)	10/66 74 pp	8:701 \$18.00

#73	Good Faith Improver of Land Owned by Another — includes:	10/66	8:801
	• Good Faith Improver of Land Owned by Another (Rec)	62 pp	\$18.00
	• Improving the Lot of the Trespassing Improver [reprinted from 11 Stan. L. Rev. 456 (1959)] (Study)		
#74	Suit By or Against an Unincorporated Association — includes:	10/66	8:901
	• Suit By or Against an Unincorporated Association (Rec)	42 pp	\$8.50
	• Suit By Or Against An Unincorporated Association (Study)		
#75	Escheat	9/67	8:1001
		70 pp	\$18.00
#76	Condemnation Law and Procedure: Number 1 — Possession Prior to Final Judgment and Related Problems — includes:	9/67	8:1101
	• Condemnation Law and Procedure: Number 1 — Possession Prior to Final Judgment and Related Problems (Rec)	149 pp	\$25.00
	• Possession Prior To Final Judgment in California Condemnation Procedure [reprinted from 7 Santa Clara Law. 1 (1966)] (Study)		
#77	Annual Report [for 1967] — includes:	12/67	8:1301
	• Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding	110 pp	\$25.00
	• Improvements Made in Good Faith Upon Land Owned by Another		
	• Damages for Personal Injuries to a Married Person as Separate or Community Property		
	• Service of Process on Unincorporated Associations		

Volume 9 (1969)

[Hardcover Volume Out of Print]

#78	Annual Report [for 1968] — includes:	12/68	9:1
	• Sovereign Immunity: Number 9 — Statute of Limitations in Actions Against Public Entities and Public Employees	76 pp	\$18.00
	• Additur and Remittitur		
	• Fictitious Business Names		
#79	Annual Report [for 1969] — includes:	12/69	9:81
	• Quasi-Community Property	102 pp	OOP
	• Arbitration of Just Compensation		
	• Evidence Code: Number 5 — Revisions of the Evidence Code		
	• Real Property Leases		
	• Statute of Limitations in Actions Against Public Entities and Public Employees		
#80	Mutuality of Remedies in Suits for Specific Performance — includes:	9/68	9:201
	• Mutuality of Remedies in Suits for Specific Performance	32 pp	\$8.50
	• Mutuality of Remedies in California Under Civil Code Section 3386 (Cox) [reprinted from 19 Hastings L.J. 1430 (1968)]		
#81	Powers of Appointment — includes:	10/68	9:301
	• Powers of Appointment	52 pp	\$18.00
	• Powers of Appointment in California [reprinted from 19 Hastings L.J. 1281 (1968)]		

#82	Real Property Leases	10/68 24 pp	9:401 \$8.50
#83	Evidence Code: Number 4 — Revision of the Privileges Article	11/68 13 pp	9:501 \$8.50
#84	Fictitious Business Names — includes:	10/69 80 pp	9:601 \$18.00
	• Fictitious Business Names		
	• Fictitious Business Names Legislation — Modernizing California's Pioneer Statute [reprinted from 19 Hastings L.J. 1349 (1968)]		
#85	Representations as to the Credit of Third Persons and the Statute of Frauds — includes:	10/69 33 pp	9:701 \$8.50
	• Representations as to the Credit of Third Persons and the Statute of Frauds		
	• Statute of Frauds and Misrepresentations as to the Credit of Third Persons: Should California Repeal Its Lord Tenterden's Act? [reprinted from 16 UCLA L. Rev 603 (1969)]		
#86	Sovereign Immunity: Number 10 — Revisions of the Governmental Liability Act: Nuisance; Entries for Survey and Examination; Immunity for Plan or Design of Public Improvement; Police and Correctional Activities; Medical, Hospital, and Public Health Activities; Ultrahazardous Activities; Liability for the Use of Pesticides	9/69 57 pp	9:801 \$18.00
#87	"Vesting" of Interests Under the Rule Against Perpetuities — includes:	10/69 20 pp	9:901 \$8.50
	• "Vesting" of Interests Under the Rule Against Perpetuities (Rec)		
	• "Vesting" of Interests Under the Rule Against Perpetuities (Study)		

Volume 10 (1971)

[Hardcover Volume Out of Print]

#88	California Inverse Condemnation Law — includes:	6/71 433 pp	10:1 OOP
	• Ch. 1: The Scope of Legislative Power (Van Alstyne) [reprinted from 29 Stan. L. Rev. 727 (1967)]		
	• Ch. 2: Inverse Condemnation Goals and Policy Criteria (Van Alstyne) [reprinted from 8 Santa Clara Law. 1 (1967)]		
	• Ch. 3: Deliberately Inflicted Injury or Destruction (Van Alstyne) [reprinted from 20 Stan. L. Rev. 617 (1968)]		
	• Ch. 4: Unintended Physical Damage (Van Alstyne) [reprinted from 20 Hastings L.J. 421 (1969)]		
	• Ch. 5: Intangible Detriment (Van Alstyne) [reprinted from 16 UCLA L. Rev. 491 (1969)]		
	• Ch. 6: Taking or Damaging by Police Power (Van Alstyne) [reprinted from 44 S. Cal. L. Rev. 1 (1970)]		
	• Ch. 7: Recent Developments in California Inverse Condemnation Law (Sterling)		

#89	Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions — includes:	10/70 126 pp	10:501 \$25.00
	• Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions (Rec)		
	• Joinder of Claims, Counterclaims, and Cross-Complaints: Suggested Revision of the California Provisions (Study) [reprinted from 23 Stan. L. Rev. 1 (1970)]		
#90	Attachment, Garnishment, and Exemptions from Execution: Employees' Earnings Protection Law	11/71 101 pp	10:701 OOP
#91	Annual Report [for 1970] — includes:	12/70 56 pp	10:1001 \$18.00
	• Inverse Condemnation: Insurance Coverage		
#92	Annual Report [for 1971] — includes:	12/71 68 pp	10:1101 OOP
	• Attachment, Garnishment, and Exemptions from Execution: Discharge from Employment		

Volume 11 (1973)

#93	Civil Arrest — includes:	7/72 37 pp	11:1 \$8.50
	• Civil Arrest (Rec)		
	• Civil Arrest in California (Study)		
#94	Wage Garnishment and Related Matters	10/72 114 pp	11:101 \$25.00
#95	Claim and Delivery Statute	12/72 45 pp	11:301 \$8.50
#96	Unclaimed Property	3/73 17 pp	11:401 \$8.50
#97	Inheritance Rights of Nonresident Aliens — includes:	9/73 28 pp	11:421 \$8.50
	• Inheritance Rights of Nonresident Aliens (Rec)		
	• Inheritance Rights of Nonresident Aliens: A Look at California's Reciprocity Statute [reprinted from 3 Pacific L.J. 551 (1972)] (Study)		
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#99	Prejudgment Attachment (Tent. Rec.)	3/73 200 pp	11:501 \$25.00
#100	Prejudgment Attachment	12/73 205 pp	11:701 \$25.00
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	• Abandonment of Leased Real Property		
	• Personal Property Left on Premises Vacated by Tenant		
#102	Annual Report [for 1972]	12/72 38 pp	11:1001 \$8.50
#103	Annual Report [for 1973] — includes:	12/73 96 pp	11:1101 \$18.00
	• Evidence Code Section 999 — The "Criminal Conduct" Exception to the Physician-Patient Privilege		
	• Erroneously Ordered Disclosure of Privileged Information		

#104	Liquidated Damages — includes:	12/73	11:1201
	• Liquidated Damages	92 pp	\$18.00
	• Liquidated Damages in California [reprinted from 60 Cal. L. Rev. 84 (1972)]		

Volume 12 (1974)

#105	Condemnation Law and Procedure: The Eminent Domain Law	1/74 496 pp	12:1 OOP
#106	Annual Report [for 1974] — includes:	12/74	12:501
	• Payment of Judgments Against Local Public Entities	132 pp	\$25.00
	• View by Trier of Fact in a Civil Case		
	• Good Cause Exception to the Physician-Patient Privilege		
	• Escheat of Amounts Payable on Travelers Checks, Money Orders and Similar Instruments		
#107	Wage Garnishment Exemptions	12/74 26 pp	12:901 \$8.50
#108	Condemnation Law and Procedure: Conforming Changes in Improvement Acts	1/74 50 pp	12:1001 \$8.50
#109	Condemnation Law and Procedure: Condemnation Authority of State Agencies	1/74 47 pp	12:1051 \$8.50
#110	Condemnation Law and Procedure: Conforming Changes in Special District Statutes	1/74 429 pp	12:1101 \$35.00
#111	Eminent Domain Law	12/74 523 pp	12:1601 \$35.00

Volume 13 (1976)

#112	Selected Legislation Relating to Creditors' Remedies	1/75 220 pp	13:1 OOP
#113	Oral Modification of Written Contracts — includes:	1/75	13:301
	• Oral Modification of Written Contracts (Rec)	52 pp	\$18.00
	• Modification of Written Contracts in California [reprinted from 23 Hastings L.J. 1549 (1972)] (Study)		
#114	Partition of Real and Personal Property	1/75 102 pp	13:401 \$25.00
#115	Wage Garnishment Procedure	4/75 102 pp	13:601 \$25.00
#116	Revision of the Attachment Law	11/75 73 pp	13:801 \$18.00
#117	Undertakings for Costs	11/75 45 pp	13:901 \$8.50
#118	Eminent Domain Law with Conforming Changes in Codified Sections and Official Comments — includes:	12/75 512 pp	13:1001 \$35.00
	• Relocation Assistance by Private Condemnors		
	• Condemnation for Byroads and Utility Easements		

#119	Annual Report [for 1976] — includes:	12/76	13:1601
	• Service of Process on Unincorporated Associations	172 pp	\$25.00
	• Sister State Money Judgments		
	• Damages in Action for Breach of Lease		
	• Wage Garnishment		
	• Liquidated Damages		
#120	Annual Report [for 1975] — includes:	12/75	13:2001
	• Admissibility of Copies of Business Records in Evidence	170 pp	\$35.00
	• Turnover Orders Under the Claim and Delivery Law		
	• Relocation Assistance by Private Condemnors		
	• Condemnation for Byroads and Utility Easements		
	• Transfer of Out-of-State Trusts to California		
	• Admissibility of Duplicates in Evidence		
	• Oral Modification of Contracts		
	• Liquidated Damages		
#121	Nonprofit Corporation Law	11/76	13:2201
		548 pp	\$35.00

Volume 14 (1978)

#122	Annual Report [for 1977] — includes:	12/77	14:1
	• Use of Keepers Pursuant to Writs of Execution	160 pp	\$25.00
	• Attachment Law: Effect of Bankruptcy Proceedings; Effect of General Assignments for Benefit of Creditors		
	• Review of Resolution of Necessity by Writ of Mandate		
	• Use of Court Commissioners Under the Attachment Law		
	• Evidence of Market Value of Property		
	• Psychotherapist-Patient Privilege		
	• Parol Evidence Rule		
#123	Annual Report [for 1978] — includes:	12/78	14:201
	• Technical Revisions in the Attachment Law: Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of “Chose in Action”	150 pp	\$25.00
	• Ad Valorem Property Taxes in Eminent Domain Proceedings		
	• Security for Costs		
#124	Guardianship-Conservatorship Law	11/78	14:501
		488 pp	\$35.00

Volume 15 (1980) – Part I [Hardcover Volume Out of Print]

#125	Enforcement of Judgments — includes:	1/80	15.1:1
	• Interest Rate on Judgments	128 pp	\$25.00
	• Married Women as Sole Traders		
	• State Tax Liens		
#126	Application of Evidence Code Property Valuation Rules in Noncondemnation Cases	3/79	15.1:301
		39 pp	\$8.50
#127	Uniform Durable Power of Attorney Act	12/80	15.1:351
		34 pp	\$8.50
#128	Probate Homestead	11/79	15.1:401
		36 pp	\$8.50

#129	Guardianship-Conservatorship Law with Official Comments	6/80 529 pp	15.1:451 \$25.00
#130	Annual Report [for 1979] — includes:	12/79	15.1:1001
	• Effect of New Bankruptcy Law on the Attachment Law	354 pp	\$25.00
	• Confessions of Judgment		
	• Special Assessment Liens on Property Taken for Public Use		
	• Assignments for the Benefit of Creditors		
	• Vacation of Public Streets, Highways, and Service Easements		
	• Quiet Title Actions		
	• Agreements for Entry of Paternity and Support Judgments		
	• Enforcement of Claims and Judgments Against Public Entities		
	• Uniform Veterans Guardianship Act		
	• Psychotherapist-Patient Privilege		
	• Enforcement of Obligations After Death		

Volume 15 (1980) – Part II [Hardcover Volume Out of Print]

#131	Annual Report [for 1980] — includes:	12/80	15.2:1401
	• Revision of the Guardianship-Conservatorship Law:	102 pp	\$25.00
	Appointment of Successor Guardian or Conservator;		
	Support of Conservatee Spouse from Community Property;		
	Appealable Orders		
#132	Probate and Estate Planning — includes:	12/80	15.2:1601
	• Non-Probate Transfers	96 pp	\$18.00
	• Revision of the Powers of Appointment Statute		
#133	Enforcement of Judgments Law	10/80	15.2:2001
		686 pp	\$25.00

Volume 16 (1982) [Hardcover Volume Out of Print]

#134	Annual Report [for 1981] — includes:	12/81	16:1
	• Federal Military and Other Federal Pensions as Community	62 pp	\$18.00
	Property		
#135	Probate Law and Procedure — includes:	9/82	16:101
	• Missing Persons	132 pp	\$25.00
	• Nonprobate Transfers		
	• Emancipated Minors		
	• Notice in Limited Conservatorship Proceedings		
	• Disclaimer of Testamentary and Other Interests		
#136	Holographic and Nuncupative Wills	11/81	16:301
		44 pp	\$8.50
#137	Marketable Title of Real Property	11/81	16:401
		52 pp	\$18.00
#138	Statutory Bonds and Undertakings	11/81	16:501
		120 pp	\$25.00
#139	Attachment	9/81	16:701
		122 pp	\$25.00

#140	1982 Creditors' Remedies Legislation — includes:	9/82	16:1001
	• Enforcement of Judgments Law	876 pp	OOP
	• Attachment Law		
#141	Annual Report [for 1982] — includes:	12/82	16:2001
	• Division of Joint Tenancy and Tenancy in Common	264 pp	\$25.00
	Property at Dissolution of Marriage		
	• Creditors' Remedies: Amount Secured by Attachment;		
	Execution of Writs by Registered Process Servers;		
	Technical Amendments		
	• Dismissal for Lack of Prosecution		
	• Conforming Changes to the Bond and Undertaking Law		
	• Notice of Rejection of Late Claim Against Public Entity		
#142	Wills and Intestate Succession	11/82	16:2301
		210 pp	\$25.00

Volume 17 (1984)

[Hardcover Volume Out of Print]

#143	Liability of Marital Property for Debts	1/83	17:1
		44 pp	\$8.50
#144	Durable Power of Attorney for Health Care Decisions	3/83	17:101
		24 pp	\$8.50
#145	Family Law — includes:	11/83	17:201
	• Marital Property Presumptions and Transmutations	100 pp	\$18.00
	• Disposition of Community Property		
	• Reimbursement of Educational Expenses		
	• Special Appearance in Family Law Proceedings		
	• Liability of Stepparent for Child Support		
	• Awarding Temporary Use of Family Home		
#146	Statutes of Limitation for Felonies	1/84	17:301
		30 pp	\$8.50
#147	Probate Law — includes:	11/83	17:401
	• Independent Administration of Decedent's Estates	184 pp	\$25.00
	• Distribution of Estates Without Administration		
	• Execution of Witnessed Wills		
	• Simultaneous Deaths		
	• Notice of Will		
	• Garnishment of Amounts Payable to Trust Beneficiary		
	• Bonds for Personal Representatives		
	• Revision of Wills and Intestate Succession Law		
	• Recording Affidavit of Death		
#148	Uniform Transfers to Minors Act	1/84	17:601
		86 pp	\$18.00
#149	Statutory Forms for Durable Powers of Attorney	9/83	17:701
		84 pp	OOP

#150	Annual Report [for 1983] — includes:	12/83	17:801
	• Effect of Death of Support Obligor	238 pp	\$25.00
	• Dismissal for Lack of Prosecution		
	• Severance of Joint Tenancy		
	• Effect of Quiet Title and Partition Judgments		
	• Dormant Mineral Rights		
	• Creditors' Remedies: Levy on Joint Deposit Accounts; Issuance of Earnings Withholding Orders by Registered Process Servers; Protection of Declared Homestead After Owner's Death; Jurisdiction of Condominium Assessment Lien Enforcement; Technical Amendments		
	• Rights Among Cotenants in Possession and Out of Possession of Real Property		

Volume 18 (1986)

#151	Annual Report [for 1984] — includes:	3/85	18:1
	• Provision for Support If Support Obligor Dies	164 pp	\$25.00
	• Transfer Without Probate of Certain Property Registered by the State		
	• Dividing Jointly Owned Property Upon Marriage Dissolution		
#152	Annual Report [for 1985] — includes:	12/85	18:201
	• Protection of Mediation Communications	204 pp	\$25.00
	• Recording Severance of Joint Tenancy		
	• Abandoned Easements		
	• Distribution Under a Will or Trust		
	• Effect of Adoption or Out of Wedlock Birth on Rights at Death		
	• Durable Powers of Attorney		
	• Litigation Expenses in Family Law Proceedings		
	• Civil Code Sections 4800.1 and 4800.2		
#153	Trust Law	12/85	18:501
		308 pp	OOP
#154	Probate Law — includes:	12/85	18:1001
	• Disposition of Estates Without Administration	148 pp	\$25.00
	• Small Estate Set-Aside		
	• Proration of Estate Taxes		
#155	Selected 1986 Trust and Probate Legislation — includes:	9/86	18:1201
	• Trust Law	446 pp	OOP
	• Disposition of Estate Without Administration		
	• Small Estate Set-Aside		
	• Proration of Estate Taxes		
#156	Annual Report [for 1986] — includes:	12/86	18:1701
	• Notice in Guardianship and Conservatorship Proceedings	148 pp	\$25.00
	• Preliminary Provisions and Definitions of the Probate Code		
	• Technical Revisions in the Trust Law		

Volume 19 (1988)

#157	Probate Law — includes:	1/87	19:1
	• Supervised Administration of Decedent's Estate	452 pp	\$25.00
	• Independent Administration of Estates Act		
	• Creditor Claims Against Decedent's Estate		
	• Notice in Probate Proceedings		
#158	Annual Report [for 1987] — includes:	12/87	19:501
	• Marital Deduction Gifts	162 pp	\$25.00
	• Administration of Estates of Missing Persons		
#159	Probate Law — includes:	12/87	19:701
	• Public Guardians and Administrators	408 pp	\$25.00
	• Inventory and Appraisal		
	• Opening Estate Administration		
	• Abatement		
	• Accounts		
	• Litigation Involving Decedents		
	• Rules of Procedure in Probate		
	• Distribution and Discharge		
	• Nondomiciliary Decedents		
	• Interest and Income During Administration		
#160	Annual Report [for 1988] — includes:	12/88	19:1151
	• Creditors' Remedies: Revival of Junior Liens Where	120 pp	\$25.00
	Execution Sale Set Aside; Time for Setting Sale Aside;		
	Enforcement of Judgment Lien on Transferred Property After		
	Death of Transferor-Debtor		

Volume 20 (1990)

#161	Probate Law — includes:	2/89	20:1
	• No Contest Clauses	184 pp	\$25.00
	• 120-Hour Survival Requirement		
	• Hiring and Paying Attorneys, Advisors and Others;		
	Compensation of Personal Representative		
	• Multiple-Party Accounts in Financial Institutions		
	• Notice to Creditors in Probate Proceedings		
#162	Annual Report [for 1989] — includes:	12/89	20:185
	• Commercial Lease Law: Assignment and Sublease	118 pp	\$25.00
	• Trustees' Fees		
#163	Powers of Attorney — includes:	12/89	20:401
	• Springing Powers of Attorney	60 pp	\$18.00
	• Uniform Statutory Form Power of Attorney		
#164	Probate Law — includes:	12/89	20:501
	• Notice to Creditors in Estate Administration	116 pp	\$25.00
	• Disposition of Small Estate by Public Administrator		
	• Court-Authorized Medical Treatment		
	• Survival Requirement for Beneficiary of Statutory Will		

• Execution or Modification of Lease Without Court Order • Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding • Repeal of Probate Code Section 6402.5 (In-Law Inheritance) • Access to Decedent's Safe Deposit Box • Priority of Conservator or Guardian for Appointment as Administrator		
#165	New Probate Code	12/89 20:1001 996 pp \$35.00
#166	Revised and Supplemental Comments to the New Probate Code	9/90 20:2001 138 pp \$25.00
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#171	Probate Law — includes: • 1991 Probate Urgency Clean-Up Bill • Debts That Are Contingent, Disputed, or Not Due • Remedies of Creditor Where Personal Representative Fails to Give Notice • Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death) • Disposition of Small Estate Without Probate • Right of Surviving Spouse to Dispose of Community Property • Litigation Involving Decedents • Compensation in Guardianship and Conservatorship Proceedings • Recognition of Trustees' Powers • Access to Decedent's Safe Deposit Box • Gifts in View of Impending Death • TOD Registration of Vehicles and Certain Other State Registered Property	11/90 20:2701 220 pp \$25.00

Volume 21 (1991)

[Bound with Volume 22]

#172	Annual Report for 1991 — includes: • Application of Marketable Title Statute to Executory Interests	12/91 21:1 90 pp \$18.00

#173	Recommendations — includes:	11/91	21:91
	• Relocation of Powers of Appointment Statute	148 pp	\$25.00
	• Miscellaneous Creditors' Remedies Matters		
	• Nonprobate Transfers of Community Property		
	• Notice of Trustees' Fees		
	• Nonprobate Transfer to Trustee Named in Will		
	• Preliminary Distribution Without Court Supervision		
	• Transfer of Conservatorship Property to Trust		
	• Compensation in Guardianship and Conservatorship Proceedings		

#174	Cumulative Tables for Bound Volumes 21-22 (1991-92)	7/93	21:T-1
		146 pp	\$10.00

Volume 22 (1992)

[Bound with Volume 21]

#175	Family Code	7/92	22:1
		830 pp	\$35.00
#176	Annual Report for 1992 — includes:	10/92	22:831
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	• Standing to Sue for Wrongful Death		
	• Recognition of Agent's Authority Under Statutory Form Power of Attorney (Revised)		
	• Special Needs Trust for Disabled Minor or Incompetent Person		

Volume 23 (1993)

#177	1994 Family Code with Official Comments — includes:	11/93	23:1
	• 1994 Family Code	848 pp	\$25.00
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	• Reorganization of Domestic Violence Provisions		
#178	Annual Report for 1993 — includes:	11/93	23:901
	• Deposit of Estate Planning Documents	150 pp	\$25.00
	• Parent and Child Relationship for Intestate Succession		
	• Effect of Joint Tenancy Title on Marital Property		
#179	Cumulative Tables for Bound Volume 23 (1993)	3/94	23:T-1
		154 pp	\$10.00

Volume 24 (1994)

#180	Trial Court Unification: Constitutional Revision (SCA 3)	1/94	24:1
		110 pp	\$25.00
#181	Comprehensive Power of Attorney Law	2/94	24:111
		212 pp	\$25.00
#182	1995 Comprehensive Power of Attorney Law	11/94	24:323
		222 pp	\$25.00
#183	Annual Report for 1994 — includes:	11/94	24:547
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#184	Cumulative Tables for Bound Volume 24 (1994)	2/95	24:T-1
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Volume 26 (1996)

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	• A Modern Judicial Review Statute to Replace Administrative Mandamus (Study)		
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	• Stay of Mechanic's Lien Foreclosure Pending Arbitration		
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	• Law Library Board of Directors		
	• Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases		
	• Civil Procedure: Technical Corrections		
	• Trial Court Unification: Issues Identified for Future Study		
	• Administrative Rulemaking:		
	• Improving Access to Rulemaking Information Under the Administrative Procedure Act		
	• Administrative Rulemaking Cleanup		
	• Rulemaking Under Penal Code Section 5058		
	• Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain		
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	• The Double Liability Problem in Home Improvement Contracts		
	• Stay of Mechanic's Lien Enforcement Pending Arbitration (Revised)		
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	• Procedural Fairness in Association Rulemaking and Decisionmaking		
	• Exemptions from Enforcement of Money Judgments: Second Decennial Review		
	• Probate Code Technical Corrections		
	• Statutes Made Obsolete by Trial Court Restructuring: Part 2		
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	• Architectural Review and Decisionmaking		
	• Preemption of CID Architectural Restrictions		
	• Obsolete Cross-References to Former Code of Civil Procedure Section 383		
	• Civil Discovery:		
	• Statutory Clarification and Minor Substantive Improvements		
	• Correction of Obsolete Cross-References		
	• Ownership of Amounts Withdrawn from Joint Account		
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	• Unincorporated Association Governance		
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#225	2006-2007 Annual Report	10/06 102 pp	36:1 \$25.00
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	• Revision of No Contest Clause Statute		
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#233	Nonsubstantive Reorganization of Deadly Weapon Statutes	6/09	38:217
		1100 pp	\$25.00

#234	Volume 39 (2009)	[Hardcover Volume Out of Print]

	2009-2010 Annual Report	12/09	39:1
	Marketable Record Title: Notice of Option	10/09	39:99
	Statutes Made Obsolete by Trial Court Restructuring: Part 5	12/09	39:109
	Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)	12/10	39:157
	Obsolete Cross-References to Former Code of Civil Procedure Section 116.780(d)	12/10	39:223

#235	Volume 40 (2010)

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	Statutory Clarification and Simplification of CID Law	2/11	40:235

#236	Volume 41 (2011)

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	Mechanics Lien Law: Clean-Up Legislation	2/11	41:103

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Statutory Cross-References to “Tort Claims Act”	6/11	41:285
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#237 **Volume 42 (2012)**

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#238 **Volume 43 (2013)**

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#239 **Volume 44 (2014-)**

2014-2015 Annual Report	2/15	44:1

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

**Fish and Game Law:
Technical Revisions and Minor
Substantive Improvements (Part 1)**

February 2015

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1)*, 44 Cal. L. Revision Comm'n Reports 115 (2015).

STATE OF CALIFORNIA

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February 12, 2015

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

The Law Revision Commission is preparing draft legislation to recodify the Fish and Game Code, in order to improve its organization and clarity, remove obsolete or redundant material, and correct technical errors. Because that work will involve the reorganization of the entire code, the recodification legislation will not be ready for presentation to the Legislature until the study is completed.

However, some beneficial changes can be made more quickly. As the larger study proceeds, the Law Revision Commission will make note of technical corrections and minor substantive improvements that can be made to the existing code, without waiting for completion of the entire study. Such improvements will be periodically compiled into recommendations for submission to the Legislature. This recommendation is the first such proposal.

This recommendation was prepared pursuant to Resolution Chapter 63 of the Statutes of 2014.

Respectfully submitted,

Victor King
Chairperson

FISH AND GAME LAW: TECHNICAL REVISIONS AND MINOR SUBSTANTIVE IMPROVEMENTS (PART 1)

BACKGROUND

In 2010, the Legislature directed the Natural Resources Agency to develop and submit a “strategic vision” for the Fish and Game Commission and what is now the Department of Fish and Wildlife.¹

Among other things, the Strategic Vision report recommended that the Law Revision Commission review and recommend “clean-up” of the Fish and Game Code, to “(1) resolve inconsistencies; (2) eliminate redundancies; (3) eliminate unused and outdated code sections; (4) consolidate sections creating parallel systems and processes; and (5) restructure codes to group similar statutes....”²

Based on a draft of the Strategic Vision report, Senator Fran Pavley and Assembly Member Jared Huffman (then Chairs of the Senate Natural Resources and Water Committee and the Assembly Water, Parks, and Wildlife Committee) requested that the Law Revision Commission conduct a comprehensive review of the Fish and Game Code, and recommend changes to the Legislature that would “update, clarify, and improve” the code.³

Authority to conduct such a study was enacted by concurrent resolution in 2012:

[The] Legislature approves for study by the California
Law Revision Commission the new topic listed below:

....

1. 2010 Cal. Stat. ch. 424 (AB 2376 (Huffman)).

2. *California Fish & Wildlife Strategic Vision, Recommendations for Enhancing the State’s Fish and Wildlife Management Agencies* (April 2012), p. A13, Law Revision Commission Staff Memorandum 2012–41, Exhibit p. 45.

3. Law Revision Commission Staff Memorandum 2012–5, Exhibit pp. 32–33.

Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law[.]⁴

Pursuant to that authority, the Law Revision Commission is analyzing the entire Fish and Game Code for the purpose of preparing recodification legislation that would improve the code's organization and clarity, remove obsolete or redundant material, and correct technical errors. Because that work will involve the reorganization of the entire code, the recodification legislation will not be ready for presentation to the Legislature until the study is completed.

However, some beneficial changes can be made more quickly. As the larger study proceeds, the Law Revision Commission will make note of technical corrections and minor substantive improvements that can be made to the existing code, without waiting for completion of the entire study. Such improvements will be periodically compiled into recommendations for submission to the Legislature. This recommendation is the first such proposal.

The revisions proposed in this recommendation are summarized below.

ANIMAL PARTS

The Fish and Game Code contains express definitions of the terms “bird,”⁵ “mammal,”⁶ and “fish” (which is defined to include amphibians).⁷ In each case, the defined term does not just include a whole animal of the specified type. It also expressly includes *parts*

4. 2012 Cal. Stat. res. ch. 108 (ACR 98 (Wagner)).

5. Fish & Game Code § 22.

6. Fish & Game Code § 54.

7. Fish & Game Code § 45.

of those animals. This means that the numerous provisions regulating the defined classes of animals also apply to parts of those animals.

That treatment seems most relevant in provisions that regulate the possession or transfer of specified types of animals. In such provisions, the possession or transfer of a whole animal is treated in the same way as part of the animal. This makes policy sense. The regulation of possession or transfer of animals would be ineffective if it could be avoided simply by reducing an animal to parts.

There are three features of the existing code that undermine the general rule that statutory references to animals should be construed to also refer to parts of those animals. They are discussed below.

Superfluous References to “Parts”

Notwithstanding the definitions discussed above, there are a number of provisions of the code that expressly state their application to parts of an animal.⁸ For example, Section 4150 provides (with emphasis added):

All mammals occurring naturally in California which are not game mammals, fully protected mammals, or fur-bearing mammals, are nongame mammals. Nongame mammals *or parts thereof* may not be taken or possessed except as provided in this code or in accordance with regulations adopted by the commission.

8. A review of similar provisions discloses no apparent pattern suggesting when the additional “parts” reference is included in a provision, and when it is not. For example, compare Fish & Game Code § 2001(b) (possession of “fish, reptiles, or amphibians” unlawful, except during specified time period) with Section 2002 (possession of “bird, mammal, fish, reptile, or amphibian, *or parts thereof*” unlawful, if unlawfully taken) (emphasis added); Section 2348(a) (package in which birds, mammals, fish, reptiles, or amphibians, *or parts thereof*” transported must meet certain requirements) (emphasis added) with Section 2349 (except as provided, no “bird, mammal, fish, reptile, or amphibian” may be shipped by parcel post).

That reference to parts of a nongame mammal is superfluous, because every reference to a mammal includes parts of that mammal, pursuant to the governing definition of “mammal.”

Such unnecessary references to “parts” could cause misunderstanding, by creating an inference that provisions that do not expressly refer to parts do not apply to parts.

Omission of Reptiles

There is no statutory definition of “reptile” in the code. Nor is there any other provision expressly stating that a reference to a “reptile” includes a part of a reptile.

That appears to be an inadvertent omission. The Law Revision Commission sees no policy reason to regulate parts of reptiles differently than parts of all other types of regulated animals.

Class-Based Definitions

The definitions discussed above define terms used in referring to broad classes of animals: birds, fish, and mammals. Strictly construed, those definitions do not apply to provisions that do not use the defined words. For example, while a quail is a bird, the statutory definition of the word “bird” does not govern the meaning of the word “quail.” This could create uncertainty as to whether a reference to a quail includes a part of the quail.

That technical interpretation seems at odds with the general policy embodied in the definitions of “bird,” “fish,” and “mammal.” It seems likely that the Legislature intended any reference to a type of bird, fish, or mammal to include a part of the referenced animal.

Recommendation

The Law Revision Commission recommends the enactment of a general rule of construction, providing that a reference to an animal includes a reference to parts of that animal.⁹ For the most part, individual provisions that contain language expressly stating

9. See proposed Fish & Game Code § 80; *cf.* Fish & Game Code § 2.

their application to parts of animals would be revised to delete the unnecessary language.¹⁰ Those revisions would address all of the problems described above, by providing a single clear and comprehensive rule and removing unnecessary language that could cause confusion.

REGULATION OF REPTILES AND AMPHIBIANS

Many provisions in the Fish and Game Code expressly apply to all vertebrates (fish, mammals, birds, amphibians, and reptiles).¹¹

Other provisions of the code apply only to fish, mammals, and birds. They do not apply to reptiles or amphibians.¹² There may be good policy reasons to exclude reptiles and amphibians from those provisions. The Law Revision Commission does not presume otherwise.

10. The Law Revision Commission does not recommend deletion of any statutory reference to an animal part where it appears the animal part is intended to be a distinct subject of regulation. See, e.g., Fish & Game Code §§ 2401 (requiring identification of transported animal parts), 7704(c) (regulating shark parts), 12005 (regulating bear parts). The Law Revision Commission also does not recommend deletion of any statutory reference to a “part thereof” that may include a part of a plant within that reference (e.g., Fish & Game Code §§ 2080, 6700, 10667, 12159), or deletion of a reference in a provision that identifies specific parts of animals (e.g., Fish & Game Code §§ 3087, 3212, 4034, 4304). In each of these instances, the reference may have independent substantive meaning that would not be adequately preserved by substituting the overarching general principle proposed in this recommendation.

In addition, the Commission does not recommend deletion of references to animal parts in selected provisions that form the basis for frequently used jury instructions in criminal prosecutions. See Fish & Game Code §§ 22, 45, 54, 2000, 2002, 7370, and 12012.

11. See, e.g., Fish & Game Code §§ 19, 62, 200, 308, 2000, 2014, 2353, 12162, 13001.

12. See, e.g., Fish & Game Code §§ 855, 1007, 1008, 1502, 1525, 3406, 3407, 4004, 5501, 12003.1.

However, there are also provisions that expressly apply to all vertebrates except either reptiles *or* amphibians.¹³ In most cases, these omissions appear to be inadvertent. In general, the Law Revision Commission sees no policy rationale for excluding reptiles or amphibians from a provision that otherwise applies to all vertebrates.

For example, Section 240(a)(1) allows the Fish and Game Commission to promulgate an emergency regulation “for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish.” Similarly, Section 10502(d) allows the Fish and Game Commission to make regulations “for the protection of birds, mammals, fish, amphibia, and marine life within any refuge.” Those provisions omit amphibians and reptiles, respectively. There is no obvious reason why these broad protective provisions would exclude those types of animals.

The Law Revision Commission generally recommends that provisions that apply to all vertebrates, with the exception of either amphibians or reptiles, be revised to apply to all vertebrates.¹⁴

13. See Fish & Game Code §§ 29, 307, 312, 2005(c), 2015, 10502, 10503, 10510, 10513, 10514, 10653, 12300 (omitting reptiles); Sections 240(a)(1), 1000, 1003, 1245, 2000, 13220 (omitting amphibians).

14. The Law Revision Commission does not recommend adding a reference to amphibians or reptiles in a provision where there appears to be a logical basis for non-inclusion. See, e.g., Fish & Game Code § 96 (referencing “all wild mammals, birds, reptiles, fish, and plants that normally occur in or are associated with salt water”). It is the Law Revision Commission’s understanding that, in general, amphibians are not found in salt water.

DOCUMENT TRANSLATION

Fish and Game Code Section 7 provides:

Whenever any statement or report is required to be made, it shall be made in the English language.

The Law Revision Commission recommends that the provision be revised to make clear that it does not prohibit the unofficial translation of statements and reports into other languages. Such translations would be in addition to the original English language document.

A similar statute in the Code of Civil Procedure requires written proceedings in a justice court to be conducted in the English language, but expressly allows for the unofficial translation of certain court documents into other languages.¹⁵

TECHNICAL CORRECTIONS

The Law Revision Commission also recommends revisions to correct technical errors, including cross-reference errors, obsolete agency names, and grammatical errors. Other revisions are recommended to restate confusing language, to make its meaning clearer without changing its substance.

15. Code Civ. Proc. § 185.

PROPOSED LEGISLATION

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PROPOSED LEGISLATION

Fish & Game Code § 7 (amended). Use of English in statements and reports

SEC. _____. Section 7 of the Fish and Game Code is amended to read:

7. Whenever ~~any~~ a statement or report is required to be made, it shall be made in the English language. Nothing in this section shall prohibit the department from providing an unofficial translation of a statement or report in a language other than English.

Comment. Section 7 is amended to make clear that the section does not preclude unofficial translations.

See also Code. Civ. Proc. § 185; Gov't Code §§ 7290-7299.8 (Dymally-Alatorre Bilingual Services Act).

Fish & Game Code § 22 (amended). “Bird”

SEC. _____. Section 22 of the Fish and Game Code is amended to read:

22. “Bird” means ~~any~~ a wild bird or ~~any part thereof~~ of a wild bird.

Comment. Section 22 is amended to make nonsubstantive stylistic changes.

The reference to a “part” of an animal in this section is superfluous. See Section 80 (reference to animal generally includes part of animal). It is retained solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to a “part” of an animal.

Fish & Game Code § 27 (amended). “Chumming”

SEC. _____. Section 27 of the Fish and Game Code is amended to read:

27. “Chumming” means the placing in the water of fish, ~~parts of fish,~~ or other material upon which fish feed, for the purpose of attracting fish to a particular area in order that they may be taken.

Comment. Section 27 is amended to delete a superfluous reference to a “part” of a fish. See Section 80 (reference to animal generally includes part of animal).

Fish & Game Code § 29 (amended). “Closed season”

SEC. _____. Section 29 of the Fish and Game Code is amended to read:

29. “Closed season” means that period of time during which the taking of birds, mammals, fish, ~~or amphibians~~ amphibians, or reptiles is prohibited.

Comment. Section 29 is amended to add reptiles, and to make a nonsubstantive stylistic change.

Fish & Game Code § 45 (amended). “Fish”

SEC. _____. Section 45 of the Fish and Game Code is amended to read:

45. “Fish” means a wild fish, mollusks, crustaceans, invertebrates, or amphibians, including any mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ova thereof ovum of any of those animals.

Comment. Section 45 is amended to make nonsubstantive stylistic changes.

The reference to a “part” of an animal in this section is superfluous. See Section 80 (reference to animal generally includes part of animal). It is retained solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to a “part” of an animal.

Fish & Game Code § 54 (amended). “Mammal”

SEC. _____. Section 54 of the Fish and Game Code is amended to read:

54. “Mammal” means ~~any~~ a wild or feral mammal or any part thereof of a wild or feral mammal, but not ~~any~~ a wild, feral, or undomesticated burro.

Comment. Section 54 is amended to make nonsubstantive stylistic changes.

The reference to a “part” of an animal in this section is superfluous. See Section 80 (reference to animal generally includes part of animal). It is retained solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to a “part” of an animal.

Fish & Game Code § 57 (amended). “Nonresident”

SEC. _____. Section 57 of the Fish and Game Code is amended to read:

57. “Nonresident” means ~~any a person who has not resided continuously in the State of California for six months immediately prior to the date of his application for a license or permit is not a~~ resident as defined in Section 70.

Comment. Section 57 is amended to reconcile the definition of the term “nonresident” with the definition of the term “resident” in Section 70.

Fish & Game Code § 80 (added). Animal parts

SEC. _____. Section 80 is added to the Fish and Game Code, to read:

80. Unless the provision or context otherwise requires, a provision of this code that applies to a whole animal also applies to a part of the animal.

Comment. Section 80 generalizes an existing rule of construction. See Sections 22 (“bird”), 45 (“fish”), and 54 (“mammal”).

Fish & Game Code § 89.5 (added). “Wildlife”

SEC. _____. Section 89.5 is added to Chapter 1 of Division 0.5 of the Fish and Game Code to read:

89.5. “Wildlife” means and includes all wild animals, birds, plants, fish, amphibians, reptiles, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability.

Comment. Section 89.5 continues a former portion of Section 711.2(a) that defined the term “wildlife.”

See also Section 2 (definitions in Chapter 1 govern the construction of all code provisions and all regulations adopted under the code, unless provision or context otherwise requires).

Fish & Game Code § 210 (amended). Distribution of regulations

SEC. _____. Section 210 of the Fish and Game Code is amended to read:

210. (a) The commission shall provide copies of the regulations added, amended, or repealed pursuant to ~~subdivision (e) of Section 206, subdivision (e) of Section 207, and subdivision (d) of Section 208~~ to each county clerk, each district attorney, and each judge of the superior court in the state.

(b) The commission and the department may do anything that is deemed necessary and proper to publicize and distribute regulations so that persons likely to be affected will be informed of them. The failure of the commission to provide any notice of its regulations, other than by filing them in accordance with Section 215, shall not impair the validity of the regulations.

(c) The department or the license agent may give a copy of the current applicable published regulations to each person issued a license at the time the license is issued.

(d) Notwithstanding any other provision of law, the commission and the department may contract with private entities to print regulations and other regulatory and public information. Printing contracts authorized by this subdivision and for which no state funds are expended are not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, except for Article 2 (commencing with Section 10295) of Chapter 2.

Comment. Section 210 is amended to correct obsolete cross-references. See 2006 Cal. Stat. ch. 667.

Fish & Game Code § 240 (amended). Emergency regulation or order of repeal

SEC. _____. Section 240 of the Fish and Game Code is amended to read:

240. (a) Notwithstanding any other ~~provisions~~ provision of this code, the commission, when promulgating ~~regulations~~ a regulation pursuant to any authority otherwise vested in it by this code, may, after at least one hearing, adopt an emergency regulation or order of repeal pursuant to Section 11346.1 of the Government Code if it makes either of the following findings:

(1) That the adoption of a regulation or order of repeal of a regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, amphibians, or fish, ~~including, but not limited to, any or their nests or eggs thereof.~~

(2) That the adoption of a regulation or order of repeal of a regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(b) Except as provided herein, ~~any~~ a regulation or order of repeal adopted pursuant to the provisions of this section shall be otherwise subject to review by the Office of Administrative Law conducted pursuant to Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 240 is amended to add amphibians, and to make nonsubstantive stylistic changes.

The reference to amphibians in this section is superfluous. See Section 45 (“fish” includes amphibians). It is added solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to amphibians.

Fish & Game Code § 300 (amended). Filing of regulations

SEC. _____. Section 300 of the Fish and Game Code is amended to read:

300. ~~Any~~ A regulation ~~issued under any subsequent provisions of adopted pursuant to~~ this code shall be filed with the Secretary of State, as required by ~~Chapter 4~~ Chapter 3.5 (commencing with Section ~~11370~~ 11340), of Part 1, of Division 3, of Title 2, of the Government Code.

Comment. Section 300 is amended to correct an erroneous cross-reference, and to make nonsubstantive stylistic changes. This amendment is not intended to have any effect on the application of Fish and Game Code Section 215 or Government Code Section 11343.4.

Fish & Game Code § 301 (amended). Disposition of accidentally killed birds and mammals

SEC. _____. Section 301 of the Fish and Game Code is amended to read:

301. The commission may ~~make such~~ adopt regulations as ~~that~~ it deems necessary for the disposition of birds or mammals ~~and parts thereof which~~ that are killed accidentally.

Comment. Section 301 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

Section 301 is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 307 (amended). Reduced limits based on scarcity

SEC. _____. Section 307 of the Fish and Game Code is amended to read:

307. (a) Whenever after due investigation the commission ~~shall find~~ finds that game fish, resident or migratory birds, game or fur-bearing mammals, ~~or amphibia~~ amphibians, or ~~reptiles~~ have decreased in numbers in ~~any areas, districts, or portions thereof~~ an area, district, or portion of an area or district to such an extent that a scarcity exists, the commission may reduce the daily bag limit and the possession limit on ~~such~~ those game fish, birds, mammals, ~~or amphibia as~~ amphibians, or ~~reptiles that~~ are in danger of depletion, for ~~such a period of time as may be specified that the commission may specify~~, or until ~~such time as~~ new legislation thereon enacted by the Legislature may become addressing the scarcity becomes effective.

(b) ~~Any A~~ A regulation ~~issued under the provisions of~~ adopted pursuant to this section shall be filed with the Secretary of State, and ~~such that~~ that filing shall be deemed a legal notice thereof.

(c) ~~Such~~ The regulation shall be published twice in at least one newspaper of general circulation in ~~any~~ every county affected by ~~such the~~ the order. The publications shall be separated by a period of not less than one week and not more than two weeks. ~~Such~~ The

regulation shall be posted in such public places in each county as the director may direct.

Comment. Section 307 is amended to add reptiles, add subdivision designations, and make nonsubstantive stylistic changes.

Fish & Game Code § 312 (amended). Survival training course

SEC. _____. Section 312 of the Fish and Game Code is amended to read:

312. (a) The commission may issue a permit authorizing any member of the armed forces of the United States or any student or faculty member of an elementary or secondary school in the public school system actually assigned to, and participating in, an organized survival training course to take fish, ~~amphibia~~ amphibians, reptiles, birds, or mammals, except rare or endangered species, notwithstanding any other law or regulation, pursuant to the terms and conditions of ~~such that~~ permit. A permit involving training by the armed forces of the United States shall be issued to the commanding officer of the unit having jurisdiction over the conduct of the survival training course. A permit involving training by an elementary or secondary school in the public school system shall be issued to the governing board or superintendent of the district having jurisdiction over ~~such that~~ school and the conduct of the survival training course. A permit shall be applicable only to the area established for ~~such that~~ survival training as designated by the commission in the permit and for the species and numbers designated in the permit.

(b) The commission may revise ~~any conditions~~ a condition of a permit if it finds ~~such~~ revision is necessary to properly protect the fish, ~~amphibia~~ amphibians, reptiles, birds, or mammals in the area.

(c) The term of ~~such~~ a permit issued pursuant to subdivision (a) shall be for not more than a calendar year.

(d) A report shall be submitted on the expiration of the permit period specified pursuant to subdivision (c), or as otherwise required by the commission, of all fish, ~~amphibia~~ amphibians, reptiles, birds, or mammals taken during the period covered by the report in each permit area. ~~No~~ A new permit ~~may~~ shall not be issued until ~~such the~~ report has been submitted and ~~any an~~ an existing

permit may be canceled if ~~such~~ a report is not submitted when required by the commission.

(e) ~~No~~ A person engaged in survival training taking ~~fish, amphibians, reptiles, birds, or mammals~~ a fish, amphibian, reptile, bird, or mammal pursuant to ~~such~~ a permit ~~issued under this section~~ may shall not use ~~any~~ a firearm, bow and arrow, steel trap, explosive, chemical, poison, drug, net, or fish tackle, except ~~that~~ hooks or, handlines or, and improvised poles and lines ~~for the taking of~~ may be used to take fish.

Comment. Section 312 is amended to add reptiles.

The section is also amended to add subdivision designations, and make nonsubstantive stylistic changes.

Fish & Game Code § 326 (amended). Required hearing

SEC. _____. Section 326 of the Fish and Game Code is amended to read:

~~326. Prior to the making of such a regulation the commission at an open meeting shall publicly announce the contents of the proposed regulation and fix a time and place at which a hearing on the proposed order shall be held. The time shall be not less than 21 days from the day of the meeting and the place shall be the county seat of each of the counties affected. Before adopting a regulation pursuant to Section 325, the commission at an open meeting shall publicly announce the contents of the proposed regulation, and fix a time and place for a hearing on the proposed regulation in each county that would be affected by the regulation. The time for each hearing shall be at least 21 days after the announcement, and the places shall be the county seat of the affected county.~~

Comment. Section 326 is amended to improve its clarity without making any substantive change.

Fish & Game Code § 330 (amended). Cooperative hunting areas

SEC. _____. Section 330 of the Fish and Game Code is amended to read:

330. Cooperative hunting areas, as described in ~~Sections 1570 to 1572~~ Section 1575, may be established in connection with any area opened to hunting under the ~~foregoing~~ provisions of this article.

Comment. Section 330 is amended to correct obsolete cross-references. See 2003 Cal. Stat. ch. 758; 2007 Cal. Stat. ch. 285.

The section is also amended to make a nonsubstantive stylistic change.

Fish & Game Code § 393 (amended). Out-of-state law enforcement officers

SEC. _____. Section 393 of the Fish and Game Code is amended to read:

393. (a) ~~Any~~ A regularly employed law enforcement officer of an Oregon, Nevada, or Arizona state law enforcement agency, including, but not limited to, the Oregon State Police, the Nevada Department of Wildlife, or the Arizona Game and Fish Department, is a peace officer in this state, if all of the following conditions are met:

(1) The officer is providing, or attempting to provide, law enforcement services within this state, within a distance of up to 50 statute miles of the contiguous border of this state and the state employing the officer, or within waters offshore of this state in the Exclusive Economic Zone.

(2) The officer is providing, or attempting to provide, law enforcement services pursuant to either of the following:

(A) In response to a request for services initiated by a member of the department.

(B) In response to a reasonable belief that emergency law enforcement services are necessary for the preservation of life, and a request for services by a member of the ~~Department of Fish and Game~~ department is impractical to obtain under the circumstances. In those situations, the officer shall obtain authorization as soon as practical.

(3) The officer is providing, or attempting to provide, law enforcement services for the purpose of assisting a member of the ~~Department of Fish and Game~~ department in response to misdemeanor or felony criminal activity, pursuant to the authority of a peace officer as provided in subdivision (e) of Section 830.2

of the Penal Code, or, in the event of an emergency incidents incident or other similar public safety problems problem, whether or not a member of the department is present at the scene of the event.

(4) An agreement pursuant to Section 392 is in effect between the ~~Department of Fish and Game~~ department and the agency of the adjoining state employing the officer, the officer acts in accordance with that agreement, and the agreement specifies that the officer and employing agency of the adjoining state shall be subject to the same civil immunities and liabilities as a peace officer and his or her employing agency in this state.

(5) The officer receives no separate compensation from this state for providing law enforcement services within this state.

(6) The adjoining state employing the officer confers similar rights and authority upon a member of the department who renders assistance within that state.

(b) Notwithstanding any other provision of law, ~~any~~ a person who is acting as a peace officer in this state in the manner described in this section shall be deemed to have met the requirements of Section 1031 of the Government Code and the selection and training standards of the Commission on Peace Officer Standards and Training, if the officer has completed the basic training required for peace officers in his or her state.

(c) A peace officer of an adjoining state shall not provide services within a California jurisdiction during ~~any~~ a period in which officers of the department are involved in a labor dispute that results in a formal work slowdown or stoppage.

Comment. Section 393 is amended to update obsolete references to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

The section is also amended to make nonsubstantive stylistic changes.

**Fish & Game Code § 400 (amended). Assent to Public Law 415,
Seventy-Fifth Congress**

SEC. _____. Section 400 of the Fish and Game Code is amended to read:

400. The State of California hereby assents to the provisions of the act of Congress entitled “An act to provide that the United States shall aid the states in wildlife-restoration projects, and for other purposes,” approved September 2, 1937 (Public Law 415, ~~Seventy fifth~~ 75th Congress), ~~and the~~. The department, with the approval of the commission, shall perform ~~such any~~ such any acts ~~as may be necessary to the conduct and establishment of~~ needed to conduct or establish cooperative wildlife-restoration projects, as defined in ~~such that~~ that act of Congress, in compliance with ~~such that~~ that act and rules and regulations ~~promulgated thereunder; adopted under that act,~~ and ~~no~~ funds accruing to the State of California from license fees paid by hunters shall not be diverted for ~~any other purpose~~ a purpose other than the administration of the Department of Fish and Game department and ~~for~~ the protection, propagation, preservation, and investigation of fish and ~~game~~ wildlife.

Comment. Section 400 is amended to correct an obsolete reference to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 401 (amended). Assent to Public Law 681, Eighty-First Congress

SEC. _____. Section 401 of the Fish and Game Code is amended to read:

401. The State of California hereby assents to the provisions of the act of Congress entitled “An act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes,” approved August 9, 1950 (Public Law 681, ~~Eighty first~~ 81st Congress), ~~and the~~. The department, with the approval of the commission, may perform ~~such any~~ such any acts ~~as may be necessary to the conduct and establishment of~~ needed to conduct or establish cooperative fish restoration projects, as defined in ~~said that~~ that act of Congress, in compliance with ~~said that~~ that act and rules and regulations ~~promulgated thereunder; adopted under that act,~~ and ~~no~~ funds accruing to the State of California from license fees paid by fishermen shall not be diverted for ~~any other purpose~~ a purpose other than the administration of the

~~Department of Fish and Game~~ department and for the protection, propagation, preservation, and investigation of fish and ~~game~~ wildlife.

Comment. Section 401 is amended to correct an obsolete reference to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

The section is also amended to make nonsubstantive stylistic changes.

Heading of Division 2 (commencing with Section 700) (amended).

Department of Fish and Wildlife

SEC. _____. The heading of Division 2 (commencing with Section 700) of the Fish and Game Code is amended to read:

Division 2. Department of Fish and ~~Game~~ Wildlife

Comment. The heading of Division 2 is amended to update an obsolete reference to the Department of Fish and Game.

Fish & Game Code § 706 (amended). Incorporation of general law on state agencies

SEC. _____. Section 706 of the Fish and Game Code is amended to read:

706. The provisions of Chapter 2 (commencing at Section 11150), ~~of Part 1, of Division 3, of Title 2 of the Government Code shall govern and apply to the conduct of the department in every respect the same as if such provisions were herein set forth at length, and wherever. Whenever~~ in that chapter the term “head of the department” or similar designation occurs, for the purposes of this section it shall mean the director.

Comment. Section 706 is amended to make stylistic changes and improve its clarity, without making any substantive change.

Fish & Game Code § 711.2 (amended). Definitions

SEC. _____. Section 711.2 of the Fish and Game Code is amended to read:

711.2. (a) For purposes of this code, unless the context otherwise requires, ~~“wildlife” means and includes all wild animals, birds, plants, fish, amphibians, reptiles, and related ecological~~

~~communities, including the habitat upon which the wildlife depends for its continued viability and~~ “project” has the same meaning as defined in Section 21065 of the Public Resources Code.

(b) For purposes of this article, “person” includes any individual, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, city, county, city and county, town, the state, and any of the agencies of those entities.

Comment. Subdivision (a) of Section 711.2 is amended to relocate the part of the subdivision defining the term “wildlife” to Section 89.5.

Fish & Game Code § 716.3 (amended). Definitions

SEC. _____. Section 716.3 of the Fish and Game Code is amended to read:

716.3. For purposes of this chapter, the following terms have the following meanings:

(a) “Board” means the board of compact administrators established pursuant to Section 716.8.

(b) “Citation” means any summons, complaint, ticket, penalty assessment, or other official document issued to a person by a wildlife officer or other peace officer for a wildlife violation pertaining to sport fishing, hunting, or trapping, which contains an order requiring the person to respond.

(c) “Collateral” means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(d) “Compact manual” is a manual used and adopted by the participating states that prescribes the procedures to be followed in administering the wildlife violator compact in participating states.

(e) “Compliance,” with respect to a citation, means the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, penalties, costs, and surcharges, if any.

(f) “Conviction” means a conviction, including, but not limited to, any court conviction for an offense related to sport fishing,

hunting, or trapping, that is prohibited by statute, ordinance, or administrative rule or regulation, that involves the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere, and the imposition of a deferred or suspended sentence by the court.

(g) “Court” means a court of law, including magistrate’s court and the justice of the peace court.

(h) “Home state” means the state of primary residence of a person.

(i) “Issuing state” means the participating state that issues a wildlife citation to the violator.

(j) “License” means any license, permit, entitlement to use, or other public document that conveys to the person to whom it is issued the privilege of sport fishing, hunting, or trapping, that is regulated by statute, ordinance, or administrative rule or regulation of a participating state.

(k) “Licensing authority,” with reference to this state, means the ~~Department of Fish and Game~~ department, which is the state agency authorized by law to issue or approve licenses or permits to sport fish, hunt, or trap.

(l) “Participating state” means any state that enacts legislation to become a member of the wildlife compact.

(m) “Personal recognizance” means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of the citation.

(n) “State” means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Provinces of Canada, and other countries.

(o) “Suspension” means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license for sport fishing, hunting, or trapping.

(p) “Terms of the citation” means those conditions and options expressly stated upon a citation.

(q) “Wildlife” means all species of animals including, but not limited to, mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as “wildlife” and are protected or otherwise regulated by statute, ordinance, or administrative rule or regulation in a participating state. The species included in the definition of “wildlife” vary from state to state and the determination of whether a species is “wildlife” for the purposes of this compact shall be based on the law of the participating state.

(r) “Wildlife law” means any statute, regulation, ordinance, or administrative rule or regulation developed and enacted for the management of wildlife resources and the uses thereof.

(s) “Wildlife officer” means any individual authorized in this state to issue a citation for a wildlife violation.

(t) “Wildlife violation” means the violation of a statute, ordinance, or administrative rule or regulation developed and enacted for the management of wildlife resources and the uses thereof pertaining to sport fishing, hunting, and trapping and for which a prosecution is initiated.

Comment. Subdivision (k) of Section 716.3 is amended to correct an obsolete reference to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

The reference to “justice of the peace courts” in subdivision (g) is retained, notwithstanding the elimination of such courts in California, based on the existence of such courts in other states that are members of the Interstate Violator Compact.

Fish & Game Code § 853 (amended). Employee deputized to check sport fishing licenses

SEC. _____. Section 853 of the Fish and Game Code is amended to read:

853. (a) The director may deputize any employee of the department to check persons for licenses required under Section 7145 and to enforce any violation of that section.

(b) Before a person is deputized pursuant to this section for the first time, the person shall have satisfactorily completed a training course meeting the minimum standards of, and comparable to, the training for “level III reserve” as set forth in the regulations of the Commission on Peace Officer Standards and Training.

(c) ~~Any~~ A person who is deputized for ~~this~~ the limited purpose ~~pursuant to this section, stated in subdivision (a) may shall~~ not enforce any other provision of this code, ~~and is not~~. Being deputized under this section does not make a person a peace officer subject to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

Comment. Section 853 is amended to add subdivision designations, make stylistic changes, and otherwise improve its clarity, without making any substantive change.

Fish & Game Code § 854 (amended). Minimum age of wildlife officer

SEC. _____. Section 854 of the Fish and Game Code is amended to read:

854. Notwithstanding Section 18932 of the Government Code, the minimum age limit for appointment to the position of fish and game warden of the ~~Department of Fish and Game~~ department shall be 18 years. ~~Any~~ An examination for the position of warden shall require a demonstration of the physical ability to effectively carry out the duties and responsibilities of the position in a manner that would not inordinately endanger the health or safety of ~~any a~~ a warden or ~~the health and safety of others~~ any other person.

Comment. Section 854 is amended to correct an obsolete reference to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 857 (amended). Entry onto private land

SEC. _____. Section 857 of the Fish and Game Code is amended to read:

857. (a) Notwithstanding any other provision of law, the status of a person as an employee, agent, or licensee of the department does not confer upon that person a special right or privilege to knowingly enter private land without ~~either~~ the consent of the ~~owner or~~ owner, a search warrant, or an inspection warrant.

(b)(4) Subdivision (a) does not apply to employees, agents, or licensees of the department in the event of an emergency. For purposes of this section, “emergency” means a sudden, unexpected occurrence, involving a clear and imminent danger demanding immediate action to prevent or mitigate loss of, or damage to, wildlife, wildlife resources, or wildlife habitat.

(2) (c) Subdivision (a) does not apply to a sworn peace officer authorized pursuant to subdivision (e) of Section 830.2 of the Penal Code or, if necessary for law enforcement purposes, to other departmental personnel accompanying a sworn peace officer. Subdivision (a) shall not be construed to define or alter any authority conferred on those peace officers by any other law or court decision.

(3) (d) Subdivision (a) does not apply to, or interfere with, the authority of employees or licensees to enter and inspect land in conformance with Section 4604 of the Public Resources Code.

(e) This section is not intended to expand or constrain the authority, if any, of employees, agents, or licensees of the department to enter private land to conduct inspections pursuant to Section 7702 of this code or Section 8670.5, 8670.7, or 8670.10 of the Government Code.

(e) (f) If the department conducts a survey or evaluation of private land that results in the preparation of a document or report, the department shall, upon request and without undue delay, provide either a copy of the report or a written explanation of the department’s legal authority for denying the request. The department may charge a fee for each copy, not to exceed the direct costs of duplication.

Comment. Section 857 is amended to correct a grammatical error in subdivision (a), revise subdivision and paragraph designations, and make nonsubstantive stylistic changes.

Fish & Game Code § 1000 (amended). Expenditure of funds

SEC. _____. Section 1000 of the Fish and Game Code is amended to read:

1000. The department shall expend ~~such~~ funds ~~as may be~~ necessary for biological research and field investigation and for the

collection and diffusion of ~~such~~ statistics and information ~~as shall~~ that pertain to the conservation, propagation, protection, and perpetuation of birds and ~~the~~ their nests and eggs ~~thereof~~, and of mammals, reptiles, amphibians, and fish.

Comment. Section 1000 is amended to add amphibians.

The section is also amended to make nonsubstantive stylistic changes.

The reference to amphibians in this section is superfluous. See Section 45 (“fish” includes amphibians). It is added solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to amphibians.

Fish & Game Code § 1003 (amended). Transportation pursuant to permit

SEC. _____. Section 1003 of the Fish and Game Code is amended to read:

1003. Mammals, birds, ~~and the nest~~ their nests and eggs ~~thereof~~, fish and their eggs ~~thereof~~, reptiles, amphibians, mollusks, crustaceans, or any other form of plant or animal life taken under the provisions of ~~such~~ a scientific or propagation permit issued pursuant to Section 1002 may be shipped or transported anywhere within or without the state if prior written approval is obtained from the department and ~~each such~~ the shipment is accompanied by the name, address, and permit number of the person holding the scientific or propagation permit.

Comment. Section 1003 is amended to add amphibians.

The section is also amended to make nonsubstantive stylistic changes.

The reference to amphibians in this section is superfluous. See Section 45 (“fish” includes amphibians). It is added solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to amphibians.

The amendment of this section is not intended to affect the meaning of any other provision that governs scientific or propagation permits, or transportation of animals taken pursuant to such permits.

Fish & Game Code § 1014 (amended). Administration of facilities

SEC. _____. Section 1014 of the Fish and Game Code is amended to read:

1014. ~~In the event~~ If the Department of Parks and Recreation contracts with the federal government pursuant to Public Law 89-161 for the administration of recreation development or fish and wildlife enhancement facilities, as authorized by Section 5006.6 of the Public Resources Code, the Department of Fish and ~~Game~~ Wildlife is authorized to operate, maintain, and replace those facilities designated as fish and wildlife enhancement facilities and to assume all costs of ~~such~~ that operation, maintenance, and replacement, subject to appropriation of funds by the Legislature.

Comment. Section 1014 is amended to correct an obsolete reference to the Department of Fish and Game.

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 1053.5 (amended). Hunter education

SEC. _____. Section 1053.5 of the Fish and Game Code is amended to read:

1053.5. Applicants for hunting licenses ~~pursuant to subdivision (a) of Section 1053~~ shall first satisfactorily complete a hunter education equivalency examination and obtain a certificate of equivalency as provided by regulations adopted by the commission, or show proof of completion of a hunter education training course, or show a previous year's hunting license.

Comment. Section 1053.5 is amended to correct an erroneous cross-reference.

Fish & Game Code § 1055.3 (amended). Wildlife area passes and native species stamps

SEC. _____. Section 1055.3 of the Fish and Game Code is amended to read:

1055.3. The department may authorize any person, ~~except other than~~ a commissioner or an officer or employee of the department, to issue, as an agent of the department, annual wildlife area passes and native species stamps, and to sell promotional materials and nature study aids pursuant to, and subject to the requirements of, this article. ~~Any~~ An agent thus authorized may add a handling charge pursuant to ~~subdivision (b)~~ subdivisions (f), (g), and (h) of Section 1055 or subdivisions (d), (e), and (f) of Section 1055.1 to

the fee prescribed in Article 3 (commencing with Section 1760) of Chapter 7.5 of Division 2 for each annual wildlife area pass or native species stamp issued.

Comment. Section 1055.3 is amended to correct an erroneous cross-reference.

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 1058 (amended). Preferred claim

SEC. _____. Section 1058 of the Fish and Game Code is amended to read:

1058. In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state shall have a preferred claim against the license agent's assignee, receiver, or trustee for all moneys owing the state for the issuing of licenses, permits, reservations, tags, and other entitlements as provided in this code and shall not be estopped from asserting that claim by reason of the commingling of funds or otherwise.

Comment. Section 1058 is amended to add an inadvertently omitted word.

Fish & Game Code § 1061 (amended). License voucher

SEC. _____. Section 1061 of the Fish and Game Code is amended to read:

1061. (a) The department may allow a person to purchase a license voucher as a gift for a licensee when the licensee's complete and accurate personal information, as defined in regulation, is not provided by the license buyer at the time of purchase.

(b) A license purchase voucher entitles the holder of the voucher to redeem it for the specific license, permit, tag, or other privilege or entitlement, and license year for which it was purchased.

(c) A license purchase voucher shall expire and be considered void if not redeemed within the license year for which it was purchased.

(d) A license purchase voucher may be issued and redeemed by ~~any~~ a person authorized by the department to issue licenses.

(e) The license agent handling fee, as provided under ~~subdivision (b)~~ subdivisions (d), (e), and (f) of Section 1055.1, shall only apply to the sale of the license purchase voucher.

(f) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

Comment. Section 1061 is amended to correct an erroneous cross-reference.

The section is also amended to make a nonsubstantive stylistic change.

Fish & Game Code § 1227 (amended). Funding agreements

SEC. _____. Section 1227 of the Fish and Game Code is amended to read:

1227. Notwithstanding any other ~~provision~~ of law, the department may enter into one or more agreements with ~~any~~ a person, nonprofit organization, or other public or private entity, as may be appropriate, to assist the department in its efforts to secure long-term private funding sources for purposes relating to conservation programs, projects, and activities by the department. The authority to enter into ~~agreements for the purposes of an agreement under~~ this section shall include, but not be limited to, ~~for the purposes of securing the authority to secure~~ donations, memberships, corporate and individual sponsorships, and marketing and licensing agreements.

Comment. Section 1227 is amended to improve its clarity without making any substantive change.

Fish & Game Code § 1348.3 (amended). Condemnation

SEC. _____. Section 1348.3 of the Fish and Game Code is amended to read:

1348.3. (a) No governmental entity may condemn any wildlife conservation easement acquired by a state agency, except as provided in subdivision (b). As used in this section, the following terms have the following meanings:

(1) “Public use” as used in Article 6 (commencing with Section 1240.510) and Article 7 (commencing with Section 1240.610) of

Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure means privately owned lands managed for habitat in public trust.

(2) “Wildlife” has the same meaning as set forth in Section ~~711.2~~ 89.5.

(3) “Wildlife conservation easement” means a recorded conservation easement, as defined in Section 815.1 of the Civil Code, that exists or will exist for at least 10 years and that is acquired and held by a state agency and administered primarily for the benefit of wildlife.

(b) Prior to the initiation by a governmental entity of condemnation proceedings against a wildlife conservation easement acquired by a state agency, the governmental entity shall give notice to the holder of the easement, provide an opportunity for the holder of the easement to consult with the governmental agency, provide the holder of the easement the opportunity to state its objections to the condemnation, and provide a response to the objections. Article 6 (commencing with Section 1240.510) and Article 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure shall apply to condemnation proceedings initiated by a governmental entity against a wildlife conservation easement acquired by a state agency. In those proceedings, the condemning governmental entity shall be required to prove by clear and convincing evidence that its proposed use satisfies the requirements of Article 6 (commencing with Section 1240.510) or Article 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure.

Comment. Paragraph (2) of subdivision (a) of Section 1348.3 is amended to revise a cross-reference.

Fish & Game Code § 1505 (amended). Management of spawning areas

SEC. _____. Section 1505 of the Fish and Game Code is amended to read:

1505. (a) ~~In addition to any other powers vested in the department, it~~ The department may manage, control, and protect

~~such~~ the portions of the following spawning areas ~~which~~ that occupy state-owned lands, to the extent necessary to protect fishlife in these areas: :

~~In the event of any conflict under this section with the action of another department or agency of the state or any other public agency, the action of the Department of Fish and Game taken pursuant to this section shall prevail except for: (a) action of the state or regional water quality control boards in establishing waste discharge requirements, (b) action as required for commerce and navigation, (c) action by public agencies reasonably necessary for bridge crossings, water conservation or utilization, or flood protection projects, including the construction, maintenance, and operation thereof. The exceptions in subdivision (c) shall not extend to the depositing of materials, other than necessary structural materials, in, or the removing of materials from the streambeds in the areas designated in this section, other than as necessary for the installation of structures. These areas are:~~

(1) The Sacramento River between Keswick and Squaw Hill Bridge, near Vina.

(2) The Feather River between Oroville and the mouth of Honcut Creek.

(3) The Yuba River between Englebright Dam and a point approximately four miles east of Marysville.

(4) The American River between Nimbus Dam and a point one mile downstream from Arden Way.

(5) The Mokelumne River between Pardee Dam and Lockeford.

(6) The Stanislaus River between Goodwin Dam and Riverbank.

(7) The Tuolumne River between La Grange Dam and the Geer Road (J14) Bridge.

(8) The Merced River between Crocker Huffman Dam and Cressey.

(9) The Trinity River between Lewiston Dam and the confluence of the North Fork Trinity, near Helena.

(10) The Eel River, from Fort Seward to Lake Pillsbury.

(11) The South Fork Eel River.

(12) The Middle Fork Smith River, from its mouth to Knopti Creek.

(13) The South Fork Smith River, from its mouth to Harrington Creek.

(14) The Salmon River, from its mouth to Rush Creek on the South Fork Salmon River, to Carter Meadow on the east fork of the South Fork Salmon River, and to Finley Camp on the North Fork Salmon River.

(15) Battle Creek, from its mouth to Coleman Powerhouse.

(16) The Cosumnes River, from Meiss Road Bridge to Latrobe Road Bridge.

(17) The Van Duzen River, from Yager Creek to the falls 1½ miles above Bloody Run Creek.

(18) The Mad River, from Blue Lake Bridge to Bug Creek.

(19) The Middle Fork Eel River.

(20) The Mattole River.

(21) The Noyo River.

(22) The Big River, Mendocino County.

(23) The Gualala River.

(24) The Garcia River, Mendocino County.

(b) In the event of a conflict between an action of the department pursuant to this section and the action of another department or agency of the state or another public agency, the action of the Department of Fish and Wildlife taken pursuant to this section shall prevail, except in the event of conflict with the following actions:

(1) An action of the state or regional water quality control boards in establishing waste discharge requirements.

(2) An action required for commerce and navigation.

(3) An action by a public agency that is reasonably necessary for bridge crossings, water conservation or utilization, or flood protection projects, including the construction, maintenance, and operation thereof. This paragraph shall not apply to the depositing of materials, other than necessary structural materials, in, or the removing of materials from the streambeds in the areas designated in this section, other than as necessary for the installation of structures.

~~(c) Until ownership of any land in these areas has been legally determined, the~~ The director shall disapprove ~~any a~~ a stream ~~alterations~~ alteration of ~~any~~ a prime salmon ~~and or~~ and steelhead spawning ~~areas~~ area on land of which ownership has not been legally determined, when in ~~his~~ the director's opinion ~~such alterations~~ the alteration would prove deleterious to fishlife.

Comment. Section 1505 is amended to update an obsolete reference to the Department of Fish and Game.

The section is also amended to improve its clarity, add subdivision designations, and make stylistic changes, without making any substantive change.

Fish & Game Code § 1930 (amended). Legislative declarations

SEC. _____. Section 1930 of the Fish and Game Code is amended to read:

1930. The Legislature finds and declares that:

(a) Areas containing diverse ecological and geological characteristics are vital to the continual health and well being of the state's natural resources and of its citizens.

(b) Many habitats and ecosystems that constitute the state's natural diversity are in danger of being lost.

(c) Connectivity between wildlife habitats is important to the long-term viability of the state's biodiversity.

(d) Increasingly fragmented habitats threaten the state's wildlife species.

(e) There is insufficient incentive for private landowners to maintain and perpetuate significant local natural areas in their natural state.

(f) Efforts to preserve natural areas have been fragmented between federal, state, local, and private sectors.

(g) Analysis of the state's habitat connectivity benefits from the consideration of all relevant data, including information from private and public landowners.

~~(h) The Department of Fish and Game's~~ department's existing mapping activities and products should be developed and sustained.

Comment. Section 1930 is amended to update an obsolete reference to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

Fish & Game Code § 1932 (amended). Program administration

SEC. _____. Section 1932 of the Fish and Game Code is amended to read:

1932. There is hereby established the Significant Natural Areas Program which shall be administered by the department. The department, in administering this program, shall do all of the following:

(a) Obtain access to the most recent information with respect to natural resources. In order to accomplish this, the department shall maintain, expand, and keep current a data management system, designated the California Natural Diversity Data Base, designed to document information on these resources. That data shall be made available to interested parties on request.

(b) Develop and maintain a spatial data system that identifies those areas in the state that are most essential for maintaining habitat connectivity, including wildlife corridors and habitat linkages. This data should include information essential for evaluating the needs of wildlife species, as defined in Section ~~711.2~~ 89.5, that require habitat connectivity for their long-term conservation, including distribution and movement patterns.

(c) As appropriate, develop and maintain the database by incorporating mapping products and data developed by other state agencies.

(d) Make all of the data sets, and associated analytical products, available to the public and other government entities.

(e) Ensure cost sharing by all who use the data management system and develop an appropriate schedule of compensation to be paid by individuals using the data management system, not to exceed the actual costs for use of the data management system.

(f) Ensure recognition of the state’s most significant natural areas, including those affected by climate change. The department shall, after consultation with federal, state, and local agencies,

education institutions, civic and public interest organizations, private organizations, landowners, and other private individuals, identify by means of periodic reports those natural areas deemed to be most significant.

(g) Seek the maintenance and perpetuation of the state's most significant natural areas for present and future generations in the most feasible manner. The department shall consider alternative approaches for that maintenance, including alternatives to fee acquisition such as incentives, leasing, and dedication.

(h) Reduce unnecessary duplication of effort. The department shall provide coordinating services to federal, state, local, and private interests wishing to aid in the maintenance and perpetuation of significant natural areas.

(i) Actively pursue grants and cost-sharing opportunities with local, state, or federal agencies, or private entities that use the data sets and benefit from their creation and maintenance.

Comment. Subdivision (b) of Section 1932 is amended to revise a cross-reference.

Fish & Game Code § 1940 (amended). Vegetation mapping standard

SEC. _____. Section 1940 of the Fish and Game Code is amended to read:

1940. (a) The ~~Department of Fish and Game~~ department shall undertake the development of a vegetation mapping standard for the state.

(b) The development of a state vegetation mapping standard by the department shall be done in consultation with interested stakeholders, including, but not limited to, government agencies, nongovernmental conservation organizations, landowners, agriculture, recreation, scientific entities, and industry. Components of the standard shall include the following:

(1) A published classification system for all natural and seminatural vegetation communities present in California with sufficient detail to meet the analytical needs of government and nongovernment entities. The classification shall be consistent with national standards adopted by the Federal Geographic Data Committee.

(2) Methods for field data collection, image interpretation, and digital map production and attribution.

(3) Manuals, training materials, tools, and database structures for use by parties interested in performing vegetation mapping according to the standard.

(4) Documented methods for performing postproject accuracy assessments to quantify ~~that~~ the validity of the work. Private and public landowners shall be given reasonable opportunity to review, and comment on the accuracy of, the data collected on their lands.

(5) Mechanisms for integrating new map products that meet the standard into a cohesive database with the intent of eventually completing statewide coverage.

(c) The department shall submit a report to the budget committee of each house of the Legislature no later than January 10, 2008, providing its mapping standard and advising how the department will ensure that its standard will be updated to reflect changing technology and serve as the state's center of expertise on vegetation mapping.

(d) The department may adopt regulations to implement this section.

Comment. Section 1940 is amended to update an obsolete reference to the Department of Fish and Game. See Section 37 ("department" means Department of Fish and Wildlife).

The section is also amended to correct a grammatical error.

Fish & Game Code § 2000 (amended). Unauthorized take

SEC. _____. Section 2000 of the Fish and Game Code is amended to read:

2000. (a) It is unlawful to take ~~any~~ a bird, mammal, fish, reptile, or amphibian except as provided in this code or ~~regulations made pursuant thereto~~ in a regulation adopted pursuant to this code.

(b) Possession of a bird, mammal, fish, ~~or~~ reptile, amphibian, or parts thereof part of any of those animals, in or on the fields, forests, or waters of this state, or while returning therefrom with fishing or hunting equipment, is prima facie evidence the possessor

took the bird, mammal, fish, ~~or reptile, amphibian, or parts thereof~~
part of that animal.

Comment. Subdivision (b) of Section 2000 is amended to add amphibians.

Section 2000 is also amended to add subdivision designations and make nonsubstantive stylistic changes.

The references to a “part” of an animal in this section are superfluous. See Section 80 (reference to animal generally includes part of animal). They are retained solely for clarity, and are not intended to affect the meaning of any other provision of this code that includes or omits a reference to a “part” of an animal.

The reference to amphibians in this section is superfluous. See Section 45 (“fish” includes amphibians). It is added solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to amphibians.

Fish & Game Code § 2001 (amended). Season and possession limits

SEC. _____. Section 2001 of the Fish and Game Code is amended to read:

2001. (a) It is unlawful to take ~~mammals, birds, fish, reptiles, and amphibians~~ a mammal, bird, fish, reptile, or amphibian outside of an established ~~seasons~~ season or to exceed ~~any~~ a bag limit or possession limit established in this code or by ~~regulations~~ a regulation adopted by the commission. Violation of ~~any~~ an established season, bag limit, or possession limit may be charged as a violation of this section or of the specific code section or regulation that establishes the season or limit.

(b) ~~Unless otherwise provided, it is unlawful to possess fish, reptiles, or amphibians except during the open season where taken and for 10 days thereafter; and not more than the possession limit thereof may be possessed during the period after the close of the open season.~~ Unless otherwise provided, it is unlawful to possess a fish, reptile, or amphibian, except during the open season where the fish, reptile, or amphibian was taken or during the 10-day period immediately following that open season. A possession limit applicable during the open season applies during that 10-day period.

(c) Except as provided in Section 3080, it is unlawful to possess ~~game birds~~ a game bird or ~~mammals~~ mammal except during the open season where taken.

Comment. Section 2001 is amended to improve its clarity and make stylistic changes, without making any substantive change.

Fish & Game Code § 2002 (amended). Unlawful possession

SEC. _____. Section 2002 of the Fish and Game Code is amended to read:

2002. It is unlawful to possess ~~any~~ a bird, mammal, fish, reptile, ~~or~~ amphibian, or ~~parts thereof~~ part of any of those animals, taken in violation of ~~any of the provisions of this code, or of any or~~ regulation made under it adopted pursuant to this code.

Comment. Section 2002 is amended to make nonsubstantive stylistic changes.

The reference to a “part” of an animal in this section is superfluous. See Section 80 (reference to animal generally includes part of animal). It is retained solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to a “part” of an animal.

Fish & Game Code § 2003 (amended). Reward for taking

SEC. _____. Section 2003 of the Fish and Game Code is amended to read:

2003. (a) Except as specified in subdivisions (b), (c), and (d), it is unlawful to offer ~~any~~ a prize or other inducement as a reward for the taking of ~~any~~ a game ~~birds, mammals, fish, reptiles, or amphibians~~ bird, mammal, fish, reptile, or amphibian in an individual contest, tournament, or derby.

(b) The department may issue a permit to ~~any~~ a person authorizing that person to offer a prize or other inducement as a reward for the taking of ~~any~~ a game fish, as defined by the commission by regulation, if it finds that there would be no detriment to the resource. The permit is subject to regulations adopted by the commission. The application for the permit shall be accompanied by a fee in the amount determined by the department

as necessary to cover the reasonable administrative costs incurred by the department in issuing the permit. However, the department may waive the permit fee if the contest, tournament, or derby is for persons who are under the age of 16 years, of age or who are physically or mentally challenged, have a physical or mental disability, and the primary purpose of the contest, tournament, or derby is to introduce ~~young~~ those anglers to, or educate them about fishing. All permits for which the fee is waived pursuant to this subdivision shall comply with all other requirements set forth in this section.

(c) This section does not apply to ~~any~~ a person conducting what ~~are~~ is generally known as a frog-jumping ~~contests~~ contest, or, in waters of the Pacific Ocean, what is generally known as a fish contests ~~contest conducted in waters of the Pacific Ocean~~.

(d) This section does not apply to ~~any~~ a person conducting an individual contest, tournament, or derby for the taking of a game ~~birds and mammals~~ bird or mammal, if the total value of all prizes or other inducements is less than five hundred dollars (\$500) for the individual contest, tournament, or derby.

Comment. Section 2003 is amended to improve its clarity and make stylistic changes, without making any substantive change. In subdivision (b), the word “disability” is not used in any defined sense.

Fish & Game Code § 2005 (amended). Lights

SEC. _____. Section 2005 of the Fish and Game Code is amended to read:

2005. (a) Except as otherwise authorized by this section, it is unlawful to use an artificial light to assist in the taking of a game birds ~~bird~~, game ~~mammals~~ mammal, or game fish, ~~except that this section shall not apply to sport fishing in ocean waters or other waters where night fishing is permitted if the lights are not used on or as part of the fishing tackle, commercial fishing, nor to the taking of mammals, the taking of which is governed by Article 2 (commencing with Section 4180) of Chapter 3 of Part 3 of Division 4.~~

(b) It is unlawful for ~~any person, or~~ one or more persons, to throw or cast the rays of ~~any~~ a spotlight, headlight, or other

artificial light on ~~any~~ a highway or in ~~any~~ a field, woodland, or forest where game mammals, fur-bearing mammals, or nongame mammals are commonly found, or upon ~~any~~ a game mammal, fur-bearing mammal, or nongame mammal, while having in his or her possession or under his or her control ~~any~~ a firearm or weapon with which that mammal could be killed, even though the mammal is not killed, injured, shot at, or otherwise pursued.

~~(c) It is unlawful to use or possess at any time any infrared or similar light used in connection with an electronic viewing device or any night vision equipment, optical devices, including, but not limited to, binoculars or scopes, that use light amplifying circuits that are electrical or battery powered, to assist in the taking of birds, mammals, amphibians, or fish.~~

(c) It is unlawful to use or possess night vision equipment to assist in the taking of a bird, mammal, amphibian, reptile, or fish. For purposes of this subdivision, "night vision equipment" includes, but is not limited to, the following:

(1) An infrared or similar light, used in connection with an electronic viewing device.

(2) An optical device, including, but not limited to, binoculars or a scope, that uses electrical or battery powered light amplifying circuits.

~~(d) The provisions of this section do not apply to any of the following:~~

~~(1) The use of a hand held flashlight no larger, nor emitting more light, than a two cell, three volt flashlight, provided that light is not affixed in any way to a weapon, or to the use of a lamp or lantern that does not cast a directional beam of light.~~

~~(2) Headlights of a motor vehicle operated in a usual manner where there is no attempt or intent to locate a game mammal, fur-bearing mammal, or nongame mammal.~~

~~(3) To the owner, or his or her employee, of land devoted to the agricultural industry while on that land, or land controlled by such an owner and in connection with the agricultural industry.~~

~~(4) To those other uses as the commission may authorize by regulation.~~

(d) This section does not apply to any of the following:

(1) Sport fishing in ocean waters, or other waters where night fishing is permitted, if an artificial light is not used on or as part of the fishing tackle.

(2) Commercial fishing.

(3) The taking of mammals governed by Article 2 (commencing with Section 4180) of Chapter 3 of Part 3 of Division 4.

(4) The use of a hand-held flashlight that is no larger and emits no more light than a two-cell, three-volt flashlight, and is not affixed to a weapon.

(5) The use of a lamp or lantern that does not cast a directional beam of light.

(6) Headlights of a motor vehicle that are operated in a usual manner and without attempt or intent to locate a game mammal, fur-bearing mammal, or nongame mammal.

(7) An owner of land devoted to the agricultural industry, or the owner's employee, while on that land.

(8) An owner of land devoted to the agricultural industry, or the owner's employee, while on land controlled by the owner in connection with the agricultural industry.

(9) Other uses as the commission may authorize by regulation.

(e) A person shall not be arrested for violation of this section except by a peace officer.

Comment. Subdivision (c) of Section 2005 is amended to add reptiles.

Section 2005 is further amended to improve its clarity and make stylistic changes, without making any substantive change.

Fish & Game Code § 2010 (amended). Prohibited shotguns

SEC. _____. Section 2010 of the Fish and Game Code is amended to read:

2010. (a) It is unlawful to use or possess a shotgun larger than 10-gauge, or to use or possess a shotgun capable of holding more than six cartridges at one time, to take ~~any~~ a mammal or bird. ~~However, the commission may, after public hearing, adopt regulations relative to the ammunition capacity of shotguns for taking mammals or birds that are further restrictive or that it determines may be needed to conform to federal law.~~

~~Shotguns that have~~ (b) A shotgun that has been modified with the insertion of a plug ~~are~~ is deemed, for the purpose of this section, to have a cartridge capacity equal to the number of cartridges that can be loaded into the weapon as modified.

(c) After a public hearing, the commission may adopt regulations relative to the ammunition capacity of shotguns for taking mammals or birds that are more restrictive than the limits provided in subdivision (a), or that it determines may be needed to conform to federal law.

Comment. Section 2010 is amended to add subdivision designations and improve its clarity, without making any substantive change.

Fish & Game Code § 2013 (amended). Possession of animals taken out of state

SEC. _____. Section 2013 of the Fish and Game Code is amended to read:

2013. Unless otherwise provided, the provisions of this code relating to the possession of birds, mammals, fish, reptiles, ~~amphibia, or parts thereof~~ or amphibians apply to birds, mammals, fish, reptiles, ~~amphibia, or parts thereof~~ or amphibians taken either in or outside of this state.

Comment. Section 2013 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 2015 (amended). Possession in restaurant

SEC. _____. Section 2015 of the Fish and Game Code is amended to read:

2015. ~~It~~ (a) Except as otherwise provided in this section, it is unlawful to possess any a bird, mammal, fish, or amphibian, or reptile, which that may not be legally sold, in ~~any a~~ any a restaurant or other eating establishment ~~unless the possession is by the person who lawfully took or otherwise legally possessed the bird, mammal, fish, or amphibian or is by a person preparing the bird, mammal, fish or amphibian for consumption by the person who~~

~~lawfully took or possessed it, or such person and others, and the person who took or possessed it is present on the premises.~~

~~This section does not apply to birds, mammals, fish or amphibia in a restaurant or other eating establishment which are tagged with a signed statement of the name and address of the person who took them, the date taken, and the total number and kind of birds, mammals, fish or amphibia.~~

(b) This section does not apply to any of the following:

(1) A person who lawfully took or otherwise legally possessed the bird, mammal, fish, amphibian, or reptile.

(2) A person preparing the bird, mammal, fish, amphibian, or reptile for consumption by the person who lawfully took or possessed it, or by that person and others, if the person who took or possessed it is present on the premises.

(3) A bird, mammal, fish, amphibian, or reptile tagged with a signed statement of the person who took the bird, mammal, fish, amphibian, or reptile, stating that person's name and address, the date taken, and the total number and kind taken.

Comment. Section 2015 is amended to add reptiles.

The section is also amended to add subdivision and paragraph designations and otherwise improve its clarity, without making any substantive change.

Fish & Game Code § 2016 (amended). Unlawful entry onto land

SEC. _____. Section 2016 of the Fish and Game Code is amended to read:

~~2016. It is unlawful to enter any lands under cultivation or enclosed by a fence, belonging to, or occupied by, another, or to enter any uncultivated or unenclosed lands, including lands temporarily inundated by waters flowing outside the established banks of a river, stream, slough, or other waterway, where signs forbidding trespass or hunting, or both, are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering those lands, for the purpose of discharging any firearm or taking or destroying any mammal or bird, including any waterfowl, on those lands without having first obtained written permission from the owner, or his or her agent, or~~

~~the person in lawful possession of, those lands. Signs may be of any size and wording that will fairly advise persons about to enter the land that the use of the land is so restricted.~~

It is unlawful to enter land for the purpose of discharging a firearm or taking or destroying a mammal or bird, including waterfowl, on that land, without having first obtained written permission from the owner, the owner's agent, or the person in lawful possession of that land, if either of the following is true:

(a) The land belongs to or is occupied by another person and is either under cultivation or enclosed by a fence.

(b) There are signs of any size and wording forbidding trespass or hunting or both displayed along all exterior boundaries of the land, at intervals not less than three to the mile, and at all roads and trails entering the land, including land temporarily inundated by water flowing outside the established banks of a river, stream, slough, or other waterway, which fairly advise a person about to enter the land that the use of the land is so restricted.

Comment. Section 2016 is amended to add subdivision designations and otherwise improve its clarity, without making any substantive change.

Fish & Game Code § 2069 (amended). Mitigation actions

SEC. _____. Section 2069 of the Fish and Game Code is amended to read:

2069. (a) For purposes of this section, the following terms have the following meanings:

(1) "Desert Renewable Energy Conservation Plan" means the completed conservation plan in the Mojave and Colorado Desert regions adopted pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800)), and covers the geographical area described in the Draft Planning Agreement, as amended by, and among, the ~~Department of Fish and Game~~ department, California Energy Commission, United States Bureau of Land Management, and United States Fish and Wildlife Service for the Desert Renewable Energy Conservation Plan.

(2) “Energy Commission” means the State Energy Resources Conservation and Development Commission.

(b) The department, in consultation with the Energy Commission and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, may design and implement actions, including the purchase of land and conservation easements, to protect, restore, or enhance the habitat of plants and wildlife that can be used to fully mitigate the impacts of the take of endangered species, threatened species, or candidate species, for purposes of paragraph (2) of subdivision (b) of Section 2081 and Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, resulting from solar thermal, photovoltaic, wind, and geothermal powerplants in the Desert Renewable Energy Conservation Plan planning area that meet either of the following requirements:

(1) Either the Energy Commission determines that the application for certification is complete by December 31, 2011, or the lead agency for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) has determined the project permit application is complete or has issued a notice of preparation of an environmental impact report by December 31, 2011.

(2) The developer or owner of the proposed powerplant or generation facility has applied for, and would qualify for, funding under the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5). For purposes of this paragraph, “funding” means a loan guarantee made pursuant to Section 406 of the act (42 U.S.C. Sec. 16516) or a grant for specified energy property in lieu of a tax credit provided pursuant to Section 1603 of Division B of the act, which division is titled the American Recovery and Reinvestment Tax Act of 2009.

(c) A mitigation action may only be used for the mitigation purposes described in subdivision (b) if it meets one of the following conditions:

(1) The department has implemented the mitigation action and determined that the action has resulted in the protection, restoration, or enhancement of the habitat of one or more species

that are proposed to be covered by the Desert Renewable Energy Conservation Plan, and that are located in the planning area, and, based upon that determination, can be used, for purposes of paragraph (2) of subdivision (b) of Section 2081, to fully mitigate for the impacts of the take of those species from one or more projects that meet the requirement of subdivision (b).

(2) The mitigation action is included in an interim mitigation strategy for projects that meet the requirement of subdivision (b). An interim mitigation strategy pursuant to this paragraph shall be developed by the department, in consultation with the Energy Commission and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, and shall include all of the following:

(A) A description of specific mitigation areas and specific actions on public or private land within the Desert Renewable Energy Conservation Plan planning area that are to be implemented, including a focus on habitat preservation, while also including enhancement or restoration actions that will do all of the following:

(i) Contribute to the conservation of each candidate species, threatened species, or endangered species for which a permit is issued.

(ii) Adopt a regional planning perspective that provides a foundation for, or that will complement, any conservation strategy to be developed for the Desert Renewable Energy Conservation Plan.

(iii) Implement mitigation actions within a reasonable period of time relative to the impact to the affected candidate species, threatened species, or endangered species, including, where feasible, advance mitigation. For purposes of this clause, “advance mitigation” means mitigation implemented before, and in anticipation of, future impacts to natural resources.

(iv) Include a description of the species that would be benefited by each mitigation action and how it would be benefited.

(B) A cost estimate for each action, whether on public or private land, using total cost accounting, including, as applicable, land

acquisition costs, conservation easement costs, monitoring costs, transaction costs, restoration costs, the amount of a perpetual endowment account for land management or easement stewardship costs by the department or other management entity, and administrative costs.

(d) The interim mitigation strategy shall be based on best available science and shall be reviewed by the Desert Renewable Energy Conservation Plan independent science advisers. The department shall seek and consider comments from the Desert Renewable Energy Conservation Plan independent science advisers in the design and location of each mitigation action implemented pursuant to this section. If the department elects to not incorporate comments of the independent science advisers into mitigation actions, the department shall explain the reasons for that decision in writing.

(e) The interim mitigation strategy shall be completed by the department no later than 60 days following the operative date of the act adding this section.

(f)(1) This section does not modify the requirements of Section 2081, including the requirement to avoid and minimize impacts, where feasible, or the requirements of Division 13 (commencing with Section 21000) of, or Chapter 6 (commencing with Section 25500) of Division 15 of, the Public Resources Code, or affect the existing authority of the department to authorize mitigation actions to comply with this chapter.

(2) With respect to the Energy Commission, in the case of an applicant seeking certification for a solar thermal or geothermal powerplant pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, or a lead agency, as defined in Section 21067 of the Public Resources Code, in the case of an applicant seeking approval of a renewable energy powerplant not subject to the Energy Commission's jurisdiction, the sole effect of a mitigation action described in subdivision (c), and paid for through the deposit of fees as described in Section 2099, is to relieve an applicant of the obligation to directly take actions that are taken instead by the department or its contractor or designee pursuant to subdivision (b) to meet the applicant's

obligations with respect to mitigating the powerplant's impacts to species and habitat. The mitigation action and deposit of fees shall not relieve the applicant of any other obligation, or the Energy Commission or the lead agency of any of its existing requirements of Division 13 (commencing with Section 21000) of, or the requirements of Chapter 6 (commencing with Section 25500) of Division 15 of, the Public Resources Code to analyze, avoid, minimize, or mitigate impacts to species and habitat, or make the findings required by those statutes.

(g) The mitigation actions implemented pursuant to this section shall be incorporated into the Desert Renewable Energy Conservation Plan upon the finalization of the plan, to the extent the mitigation actions are consistent with the plan's conservation strategy.

Comment. Section 2069 is amended to update an obsolete reference to the Department of Fish and Game. See Section 37 ("department" means Department of Fish and Wildlife).

The section is also amended to make a nonsubstantive stylistic change.

Fish & Game Code § 2119 (amended). List of prohibited animals

SEC. _____. Section 2119 of the Fish and Game Code is amended to read:

2119. The ~~Department of Fish and Game~~ department shall publish from time to time as changes arise, a list of animals ~~which that may not be imported or transported into this State~~ state.

Comment. Section 2119 is amended to update an obsolete reference to the Department of Fish and Game. See Section 37 ("department" means Department of Fish and Wildlife).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 2348 (amended). Packaging of transported animals

SEC. _____. Section 2348 of the Fish and Game Code is amended to read:

2348. (a) ~~Any package in which birds, mammals, fish, reptiles, or amphibians, or parts thereof, are offered for transportation to, or~~

~~are transported or received for transportation by, a common carrier or his or her agent shall bear the name and address of the shipper and of the consignee and an accurate description of the numbers and kinds of birds, mammals, fish, reptiles, or amphibians contained therein clearly and conspicuously marked on the outside thereof.~~

The outside of a package offered to or received by a common carrier or the carrier's agent for transportation, or transported by a common carrier or agent, that contains a bird, mammal, fish, reptile, or amphibian, shall clearly and conspicuously indicate the following:

(1) The name and address of the shipper.

(2) The name and address of the consignee.

(3) The number and kind of bird, mammal, fish, reptile, and amphibian contained in the package.

(b) Licensed commercial fishermen and licensed commercial fish dealers are subject to all of the provisions of this section, except that commercial shipments of fish may be indicated by total net weight of each species instead of by numbers.

Comment. Section 2348 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to add paragraph designations and otherwise improve its clarity, without making any substantive change.

Fish & Game Code § 2350 (amended). Export of deer or game bird

SEC. _____. Section 2350 of the Fish and Game Code is amended to read:

2350. It is unlawful to transport or carry a deer or game bird out of this ~~State~~ state ~~any deer or game bird, or parts thereof~~, except by the holder of a nonresident hunting license or under a written permit issued by the department.

Comment. Section 2350 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 2363 (amended). Import of striped bass, sturgeon, or shad

SEC. _____. Section 2363 of the Fish and Game Code is amended to read:

2363. Striped bass, sturgeon, or shad ~~or parts thereof~~ legally taken in another state, ~~which that~~ permits the sale of that fish, may be imported into ~~the~~ this state under regulations of the commission. Before the commission adopts any regulation pursuant to this section, a public hearing shall be held in the San Francisco or Sacramento area.

Comment. Section 2363 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 2400 (amended). Transportation of dead birds and mammals

SEC. _____. Section 2400 of the Fish and Game Code is amended to read:

2400. (a) ~~Common carriers~~ A common carrier may transport ~~at any time the carcasses or parts thereof~~ carcass of ~~a~~ a dead domesticated game ~~birds and mammals~~ bird or mammal tagged with a domesticated game breeder's tag as provided in Article 1 (commencing with Section 3200); ~~of Chapter 2; of Part 1; of Division 4.~~

~~In addition, a~~ (b) A tag or label shall be affixed to every package containing ~~such carcass or part, which shall~~ a carcass transported pursuant to subdivision (a), which shall state all of the following:

~~(a) (1) Give the~~ The names of the person to whom the game breeder's license was issued, ~~of the person by whom such game was killed~~ the person who killed the game bird or mammal, ~~of the person to whom such game~~ the game bird or mammal is consigned, and ~~of the person by whom such game was tagged~~ who tagged the game bird or mammal.

~~(b) Give the~~ (2) The number of carcasses or portions thereof contained in the package.

~~(e) State that~~ (3) That the game birds or mammals were killed and tagged in accordance with the provisions of Article 1 (commencing with Section 3200), of Chapter 2, of Part 1, of Division 4.

Comment. Section 2400 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to revise subdivision designations, and make nonsubstantive stylistic changes.

Fish & Game Code § 2701 (amended). Statement of purpose

SEC. _____. Section 2701 of the Fish and Game Code is amended to read:

2701. (a) The fundamental requirement for healthy, vigorous populations of fish and wildlife is habitat. Without adequate habitat, efforts to conserve and manage fish and wildlife resources will have limited success. Further, California contains the greatest diversity of wildlife and plant species of virtually any state in the nation. This rich natural heritage enables Californians to enjoy a great variety of recreational, aesthetic, ecological, and other uses and benefits of these biological resources. The public interest is served only by ensuring that these resources are preserved, protected, and propagated for this and future generations.

(b) Many of California's wildlife, fish, and plant species and biological communities are found nowhere else on earth. Without adequate protection and management, rare native species and communities could easily become extinct. In ~~such an~~ that event, the benefits they provide to the people of California, whether presently realized or which remain to be discovered, will be lost forever, and California will be significantly poorer as a result.

(c) The people of California have vested in the ~~Department of Fish and Game~~ department the principal responsibility for protecting, conserving, and perpetuating native fish, plants, and wildlife, including endangered species and game animals, for their aesthetic, ~~intrinsic~~ intrinsic, ecological, educational, and economic values. To help accomplish this goal, the people of California have further established a significant natural areas program and a natural

diversity ~~data-base~~ database in the ~~Department of Fish and Game~~ department, which is charged with maintaining and perpetuating California's most significant natural areas for present and future generations. To ensure the perpetuation of areas containing uncommon elements of natural diversity and to ensure the continued abundance of habitat for more common species, especially examples of those ~~which~~ that are presently threatened with destruction, the purchase of land is often necessary.

(d) Accordingly, the purpose of this chapter is to provide the Wildlife Conservation Board and the ~~Department of Fish and Game~~ department the financial means to correct the most severe deficiencies in wildlife habitat and in the statewide system of areas designated for the preservation of California's natural diversity through a program of acquisition, enhancement, restoration, and protection of areas that are most in need of proper conservation.

Comment. Section 2701 is amended to update obsolete references to the Department of Fish and Game. See Section 37 ("department" means Department of Fish and Wildlife).

The section is also amended to correct a spelling error, and make nonsubstantive stylistic changes.

Fish & Game Code § 2729 (amended). Augmenting of staff

SEC. _____. Section 2729 of the Fish and Game Code is amended to read:

2729. (a) For the purpose of administering this chapter, the Wildlife Conservation Board and the ~~Department of Fish and Game~~ department shall augment its existing staff, whenever possible, by contracting for those services necessary for the administration of this chapter. Any contract shall, however, be entered into only pursuant to Sections 19130 to 19132, inclusive, of the Government Code and shall be only for the minimum period necessary for completion of the particular project or projects for which the contract was entered into.

(b) Due to the limited duration of the program authorized by this chapter, in the event some services cannot be provided by contract, any personnel directly hired by the Wildlife Conservation Board

for the administration of this chapter shall be hired, to the extent permitted by Article 2 (commencing with Section 19080) of Chapter 6 5 of Part 2 of Division 5 of Title 2 of the Government Code, as limited-term appointments.

Comment. Section 2729 is amended to update an obsolete reference to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

Fish & Game Code § 2805 (amended). Definitions

SEC. _____. Section 2805 of the Fish and Game Code is amended to read:

2805. The definitions in this section govern the construction of this chapter:

(a) “Adaptive management” means to use the results of new information gathered through the monitoring program of the plan and from other sources to adjust management strategies and practices to assist in providing for the conservation of covered species.

(b) “Candidate species” has the same meaning as defined in Section 2068.

(c) “Changed circumstances” are reasonably foreseeable circumstances that could affect a covered species or geographic area covered by the plan.

(d) “Conserve,” “conserving,” and “conservation” mean to use, and the use of, methods and procedures within the plan area that are necessary to bring any covered species to the point at which the measures provided pursuant to Chapter 1.5 (commencing with Section 2050) are not necessary, and for covered species that are not listed pursuant to Chapter 1.5 (commencing with Section 2050), to maintain or enhance the condition of a species so that listing pursuant to Chapter 1.5 (commencing with Section 2050) will not become necessary.

(e) “Covered species” means those species, both listed pursuant to Chapter 1.5 (commencing with Section 2050) and nonlisted, conserved and managed under an approved natural community conservation plan and that may be authorized for take. Notwithstanding Sections 3511, 4700, 5050, or 5515, fully

protected species may be covered species pursuant to this subdivision, and taking of fully protected species may be authorized pursuant to Section 2835 for any fully protected species conserved and managed as a covered species under an approved natural community conservation plan.

(f) "Department assurance" means the department's commitment pursuant to subdivision (f) of Section 2820.

(g) "Monitoring program" means a program within an approved natural community conservation plan that provides periodic evaluations of monitoring results to assess the adequacy of the mitigation and conservation strategies or activities and to provide information to direct the adaptive management program. The monitoring program shall, to the extent practicable, also be used to meet the monitoring requirements of Section 21081.6 of the Public Resources Code. A monitoring program includes all of the following:

(1) Surveys to determine the status of biological resources addressed by the plan, including covered species.

(2) Periodic accountings and assessment of authorized take.

(3) Progress reports on all of the following matters:

(A) Establishment of habitat reserves or other measures that provide equivalent conservation of covered species and providing funding where applicable.

(B) Compliance with the plan and the implementation agreement by the wildlife agencies, local governments, and landowners who have responsibilities under the plan.

(C) Measurements to determine if mitigation and conservation measures are being implemented roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan.

(D) Evaluation of the effectiveness of the plan in meeting the conservation objectives of the plan.

(E) Maps of land use changes in the plan area that may affect habitat values or covered species.

(4) A schedule for conducting monitoring activities.

(h) “Natural community conservation plan” or “plan” means the plan prepared pursuant to a planning agreement entered into in accordance with Section 2810. The plan shall identify and provide for those measures necessary to conserve and manage natural biological diversity within the plan area while allowing compatible and appropriate economic development, growth, and other human uses.

(i) “Person” has the same meaning as defined in Section 711.2.

(j)(1) “Plan participant,” prior to approval of a natural community conservation plan and execution of an implementation agreement, means a signatory to the planning agreement.

(2) Upon approval of a natural community conservation plan and execution of an implementation agreement, “plan participant” means the permittees and any local agency that is a signatory to the implementing agreement.

(k) “Unforeseen circumstances” means changes affecting one or more species, habitat, natural community, or the geographic area covered by a conservation plan that could not reasonably have been anticipated at the time of plan development, and that result in a substantial adverse change in the status of one or more covered species.

(l) “Wildlife” has the same meaning as defined in Section ~~711.2~~ 89.5.

(m) “Wildlife agencies” means the department and one or both of the following:

(1) United States Fish and Wildlife Service.

(2) National Marine Fisheries Service.

Comment. Subdivision (l) of Section 2805 is amended to revise a cross-reference.

Fish & Game Code § 3003 (amended). Remote use of computer or other device

SEC. _____. Section 3003 of the Fish and Game Code is amended to read:

3003. (a) It is unlawful for ~~any~~ a person to shoot, shoot at, or kill ~~any~~ a bird or mammal with ~~any~~ a gun or other device accessed via an Internet connection in this state.

(b) It is ~~further~~ unlawful for ~~any~~ a person, firm, corporation, partnership, limited liability company, association, or other business entity to do either of the following:

(1) Own or operate a shooting range, site, or gallery located in the state for ~~purposes of the~~ the purpose of online shooting or spearing of ~~any~~ a bird or mammal.

(2) Create, maintain, or utilize an Internet Web site, ~~or a~~ or other service or business ~~via any other means, from any location within the state~~ in this state, for ~~purposes of the~~ the purpose of online shooting or spearing of ~~any~~ a bird or mammal ~~for the purposes of this section~~.

(c) It is unlawful to possess or confine ~~any~~ a bird or mammal in furtherance of an activity prohibited by this section.

(d) It is unlawful for ~~any~~ a person in this state to import into, or export from, this state ~~any~~ a bird or mammal, ~~or any part thereof~~, that is killed by ~~any~~ a device accessed via an Internet connection.

(e) ~~Any~~ A bird or mammal, ~~or any part thereof~~, that is possessed in violation of this section shall be subject to seizure by the department.

(f) For the purposes of this section, “online shooting or spearing” means the use of a computer or ~~any~~ other device, equipment, software, or technology; to remotely control the aiming and discharge of ~~any~~ a weapon, including, but not limited to, ~~any~~ a firearm, bow and arrow, spear, slingshot, harpoon, or ~~any~~ other projectile device.

Comment. Section 3003 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 3004 (amended). Use of weapon near occupied building or public way

SEC. _____. Section 3004 of the Fish and Game Code is amended to read:

3004. (a) It is unlawful for ~~any~~ a person, other than the owner, person in possession of the premises, or a person having the

express permission of the owner or person in possession of the premises, ~~to hunt or to discharge while hunting, any firearm or other deadly weapon within 150 yards of any occupied dwelling house, residence, or other building or any barn or other outbuilding used in connection therewith~~ while within 150 yards of an occupied dwelling house, residence, or other building, or within 150 yards of a barn or other outbuilding used in connection with an occupied dwelling house, residence, or other building, to either hunt or discharge a firearm or other deadly weapon while hunting. The 150-yard area is a “safety zone.”

(b) It is unlawful for ~~any~~ a person to intentionally discharge ~~any~~ a firearm or release ~~any~~ an arrow or crossbow bolt over or across ~~any~~ a public road or other established way open to the public in an unsafe and reckless manner.

Comment. Subdivision (a) of Section 3004 is amended to improve its clarity, without making any substantive change.

Fish & Game Code § 3006 (amended). Deer, elk, or bear

SEC. _____. Section 3006 of the Fish and Game Code is amended to read:

3006. Except as authorized under a domesticated game breeder’s license, ~~any~~ a deer, elk, or bear kept in captivity may be killed only with the approval of the department, and ~~under such regulations as pursuant to any regulation that the commission may prescribe adopt.~~ The carcass, or any part thereof, of any such mammal of a deer, elk, or bear kept in captivity may not be sold, and shall be disposed of in such manner as directed by the department may direct.

Comment. Section 3006 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 3007 (amended). Required license or entitlement

SEC. _____. Section 3007 of the Fish and Game Code is amended to read:

3007. ~~Except as provided in this code or regulations adopted pursuant thereto, every person who takes any bird or mammal shall procure a license or entitlement therefor. Except as provided in this code or regulations adopted pursuant to this code, it is unlawful to take a bird or mammal without a license or entitlement to do so.~~

Comment. Section 3007 is amended to improve its clarity, without making any substantive change.

Fish & Game Code § 3033 (amended). Disabled veteran or recovering service member

SEC. ____ . Section 3033 of the Fish and Game Code is amended to read:

3033. ~~(a) The department shall, upon application and payment of a fee, issue a reduced fee hunting license, that authorizes the licensee to take any bird or mammal as otherwise authorized pursuant to this code and regulations adopted pursuant thereto, to a disabled veteran, as defined in subdivision (b), or to a recovering service member, as defined in subdivision (c), who has not been convicted of any violation of this code. The base license fee for a reduced fee hunting license shall be four dollars (\$4) for the hunting license year beginning on July 1, 1995, and, for the following years, this license fee may be annually reviewed and adjusted in accordance with Section 713.~~

~~(b) “Disabled veteran” means a person having a 50 percent or greater service connected disability and an honorable discharge from military service. The person shall be eligible upon presentation of proof of an honorable discharge from military service and proof of the disability. Proof of the disability shall be by certification from the United States Department of Veterans Affairs or by presentation of a license issued pursuant to this section in the preceding license year.~~

~~(c) “Recovering service member” means a member of the military who meets the definition of “recovering service member” in Section 1602(7) of the federal National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181). A person shall be eligible for a reduced fee hunting license pursuant to this~~

~~subdivision upon the submission of a letter, online or in hardcopy, to the department from that person's commanding officer or from a military medical doctor stating that the person is a recovering service member.~~

(a) Pursuant to this section, the department shall issue to a disabled veteran or recovering service member who has not been convicted of a violation of this code a reduced fee hunting license that authorizes the licensee to take a bird or mammal as authorized by this code and regulations adopted pursuant to this code.

(b) The base license fee for a reduced fee hunting license shall be four dollars (\$4) for the hunting license year beginning on July 1, 1995, and, for the following years, this license fee may be annually reviewed and adjusted in accordance with Section 713.

(c) For the purposes of this section, the following terms have the following meanings:

(1) "Disabled veteran" means a person having a 50 percent or greater service-connected disability and an honorable discharge from military service.

(2) "Recovering service member" means a member of the military who meets the definition of "recovering service member" in Section 1602(7) of the federal National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

(d) A person applying for a reduced fee hunting license shall submit to the department adequate documentation for the department to determine whether the person is, in fact, eligible for a reduced fee hunting license. The department shall not issue a reduced fee hunting license to ~~any~~ a person unless it is satisfied that the person has provided adequate documentation of eligibility for that license.

(e) A disabled veteran must submit the following documentation:

(1) Proof of an honorable discharge from military service.

(2) Proof of the disability described in paragraph (1) of subdivision (c), either by certification from the United States Department of Veterans Affairs or by presentation of a license issued pursuant to this section in the preceding license year.

(f) A recovering service member shall submit a letter to the department stating that the person is a recovering service member as defined in subdivision (d), from either that person's commanding officer or a military medical doctor. The letter may be submitted either in hard copy form or online.

Comment. Section 3033 is amended to improve its clarity, without making any substantive change.

Fish & Game Code § 3039 (amended). Purchase or sale of birds or mammals

SEC. _____. Section 3039 of the Fish and Game Code is amended to read:

3039. (a) Except as otherwise provided in this section ~~and Sections, Section 3087 and, Section 4303, or any other~~ another provision of this code, or ~~regulations~~ a regulation adopted pursuant ~~thereto to a provision of this code~~, it is unlawful to sell or purchase ~~any species of a bird or mammal or part thereof~~ found in the wild in California.

(b) Products or handicraft items made from furbearing mammals and nongame mammals, ~~their carcass or parts thereof~~, lawfully taken under the authority of a trapping license, may be purchased or sold at any time.

(c) Shed antlers, or antlers taken from domestically reared animals that have been manufactured into products or handicraft items, or that have been cut into blocks or units which are to be handcrafted or manufactured into those articles may be purchased or sold at any time. However, complete antlers, whole heads with antlers, antlers that are mounted for display, or antlers in velvet may not be sold or purchased at any time, except as authorized by Section 3087.

(d) Notwithstanding Section 3504, inedible parts of domestically raised game birds may be sold or purchased at any time.

(e) ~~Any~~ A person who illegally takes any bird or mammal for profit or for personal gain by engaging in ~~any~~ an activity authorized by this section is subject to civil liability pursuant to Section 2582.

Comment. Section 3039 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 3051 (amended). Hunter instruction

SEC. _____. Section 3051 of the Fish and Game Code is amended to read:

3051. (a) The department shall provide for a course of instruction in hunter education, principles of conservation, and sportsmanship, and for this purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of hunter safety, principles of conservation, and sportsmanship.

(b) The department may designate as a hunter education instructor any person found by it to be competent to give instruction in the courses required in this article. ~~A person so appointed shall give that course of instruction, and, upon completion thereof, shall issue to the person instructed a certificate of completion as provided by the department in hunter safety, principles of conservation, and sportsmanship.~~

(c) A hunter education instructor shall issue a certificate of completion as provided by the department to a person who completes a course of instruction in hunter safety, principles of conservation, and sportsmanship.

~~(e)~~ (d) The department shall prescribe a minimum level of skill and knowledge to be required of all hunter education instructors, and may limit the number of students per instructor in all required classes.

~~(d)~~ (e) The department may revoke the certificate of ~~any~~ an instructor when, in the opinion of the department, it is in the best interest of the state to do so.

~~(e)(1)~~ (f) In order to recruit and retain hunter education instructors, the department shall offer special hunting opportunities to qualified hunter education instructors by providing a limited number of existing tags and other hunting opportunities. The

department may provide these tags and hunting opportunities through any of the following methods:

~~(A)~~ (1) The private lands management program described in Article 5 (commencing with Section 3400) of Chapter 2.

~~(B)~~ (2) The Shared Habitat Alliance for Recreational Enhancement (SHARE) program described in Article 3 (commencing with Section 1570) of Chapter 5 of Division 2.

~~(C)~~ (3) Entering into cooperative agreements with federal, state, and local agencies that hold title to, or administer, lands or waters.

~~(D)~~ (4) Entering into cooperative agreements with landowners or tenants seeking depredation permits for game mammals as described in Section 4188.

~~(E)~~ (5) Authorizing a maximum of 15 tags from the annual tag quota, as determined by the department.

(2) (g) The department shall determine eligibility criteria for hunter education instructors seeking the hunting opportunities offered pursuant to this subdivision (f). The department shall select hunter education instructors who meet these criteria for opportunities pursuant to this subdivision only by random drawing. The department shall offer hunting opportunities to eligible hunter education instructors only by random drawing.

~~(F)~~ (h) The department may adopt regulations to implement this section.

Comment. Section 3051 is amended to improve its clarity, revise subdivision designations, delete paragraph designations, and make other stylistic changes without making any substantive change.

Fish & Game Code § 3052 (amended). Fees and expenses

SEC. _____. Section 3052 of the Fish and Game Code is amended to read:

~~3052. No fee shall be charged for the instructor's service, however, a fee to cover the cost of giving such instructions may be charged each person participating and receiving such instructions. A record of such expenses shall be kept for inspection by the department. Such expenses may include, but not be limited to, such items as range fees, ammunition and transportation of students.~~

A person receiving instruction from a hunter education instructor shall not be charged a fee for service provided by the instructor, but may be charged a fee to cover the costs incurred by the instructor in teaching the class. A record of these costs shall be kept for inspection by the department. Costs may include, but are not limited to, range fees, ammunition, and transportation of students.

Comment. Section 3052 is amended to improve its clarity, without making any substantive change.

Fish & Game Code § 3080 (amended). Possession in excess of possession limit

SEC. _____. Section 3080 of the Fish and Game Code is amended to read:

3080. (a) For the purposes of this section, “donor intermediary” means a recipient who receives a game birds or mammals bird or mammal from a donor to give to a charitable organization or charitable entity. ~~A donor intermediary possessing game birds or mammals during a period other than the open season shall have the documentation described in paragraph (2) or (3) of subdivision (b). There is no required format for the documentation. Any written documentation containing the required information shall be deemed to comply with this section.~~

~~(b) The possession limit of any game bird or mammal may be possessed during a period other than the open season if one of the following conditions apply:~~

~~(1) The person has in his or her possession a hunting license and validated tag or tags for the species possessed, or copies of the license and tag or tags. The license and tag or tags shall have been issued to that person for the current or immediate past license year.~~

~~(2) The person received the game bird or mammal from a person described in paragraph (1), and the recipient has a photocopy of the donor’s hunting license and the applicable validated tag or tags that has been signed and dated by the donor confirming the donation. The photocopied license and tag or tags shall be from the current or immediate past license year.~~

~~(3) The person received the game bird or mammal from a person described in paragraph (1), and the recipient has a signed and dated document confirming the donation that includes the donor's name, address, hunting license number, and applicable tag numbers for the species possessed. The license and tag or tags shall be for the current or immediate past license year.~~

(b) A person may possess a game bird or mammal during a period other than the open season for that game bird or mammal, up to the possession limit allowed for that game bird or mammal during the open season, in any of the following circumstances:

(1) The person possesses a hunting license and a validated tag or tags for the species possessed, or a copy of the license and tag or tags. The license and tag or tags shall have been issued to that person for the current or immediate past license year.

(2) The person is a donor intermediary who received the game bird or mammal from a donor described in paragraph (1), has a written confirmation of the donation that is signed and dated by the donor, and a photocopy of the donor's hunting license and the applicable validated tag or tags from the current or immediate past license year.

(3) The person is a donor intermediary who received the game bird or mammal from a donor described in paragraph (1), has a written confirmation of the donation signed and dated by the donor, which includes the donor's name, address, hunting license number, and applicable tag numbers for the species possessed. The license and tag or tags shall be for the current or immediate past license year.

(c) The documentation required by subdivision (b) shall be made available to the department as described in Section 2012. There is no required format for the documentation. Any written documentation containing the required information shall be deemed to comply with this section. ~~Charitable organizations or charitable entities~~ A charitable organization or charitable entity receiving and distributing ~~game birds or mammals~~ a game bird or mammal for a charitable or humane purposes, purpose shall

maintain the documentation described in paragraph (2) or (3) of subdivision (b) for one year from the date of disposal.

(d) This section does not authorize the possession of ~~game birds or carcasses or parts~~ of a game bird ~~or carcass~~ contrary to regulations ~~issued~~ adopted pursuant to the federal Migratory Bird Treaty Act (16 U.S.C. Sec. 703 et seq.).

(e) On or before January 1, 2015, and subject to the requirements of subdivision (d), the commission shall recommend legislation or adopt regulations to clarify when a possession limit is not violated by processing into food lawfully taken game birds or mammals.

Comment. Subdivision (d) of Section 3080 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

Section 3080 is also amended to improve its clarity and make stylistic changes, without making any substantive change.

Fish & Game Code § 3240.5 (amended). Commercial hunting club license

SEC. _____. Section 3240.5 of the Fish and Game Code is amended to read:

3240.5. (a) ~~As used in this article, “property” means a number of contiguous legal parcels held by an owner or a combination of owners and held out for a common purpose.~~

(b) ~~A person, including, but not limited to, a renter or lessee, in possession or control of property on or with respect to which a fee for the privilege of taking birds or mammals is imposed or collected, or on or with respect to which a fee for any type of entry or use permit that includes the privilege of taking birds or mammals on the property is imposed or collected, is maintaining a commercial hunting club if birds or mammals are taken on the property, and shall procure a “commercial hunting club license” before birds or mammals are taken.~~

(c) ~~This article does not apply if the property meets any of the following conditions:~~

(1) ~~The landowner, or the renter or lessee, of the property receives less than one hundred dollars (\$100) per entrant and receives less than a total of one thousand dollars (\$1,000) between~~

~~July 1 and the following June 30 for permission, entry access, or use fees that include the privilege of hunting on the property in his or her possession or control. The department may adjust the threshold amounts established in this paragraph pursuant to Section 713.~~

~~(2) The property is used by a hunting club or program licensed under regulations adopted pursuant to this code.~~

~~(3) The property is used for an officially sanctioned field trial event pursuant to regulations adopted pursuant to this code.~~

~~(4) The property is used in conjunction with the Shared Habitat Alliance for Recreational Enhancement (SHARE) program under Article 3 (commencing with Section 1570) of Chapter 5 of Division 2.~~

~~(5) A domesticated game bird hunting club licensed under Article 3 (commencing with Section 3270) operates on the property.~~

~~(6) A domesticated migratory game bird shooting area licensed under Article 4 (commencing with Section 3300) operates on the property.~~

~~(7) The property is used in conjunction with the private wildlife habitat enhancement and management program under Article 5 (commencing with Section 3400).~~

~~(8) The property is subject to a recorded state, federal, or nonprofit wildlife conservation or agricultural easement or any property enrolled in a habitat protection or enhancement program under this code, including, but not limited to, Article 7 (commencing with Section 3460).~~

(a) For purposes of this article, the following terms have the following meanings:

(1) "Commercial hunting club" means property with respect to which a fee is imposed or collected for either of the following:

(A) Taking or attempting to take birds or mammals on the property.

(B) A type of entry or use permit that includes permission to take birds or mammals on the property.

(2) “Property” means a number of contiguous legal parcels owned by one or more owners and held out for a common purpose.

(b) A person, including, but not limited to, an owner, renter, or lessee, who is in possession or control of a commercial hunting club, shall procure a commercial hunting club license before a bird or mammal may be taken on the property.

(c) This article does not apply under any of the following circumstances:

(1) The fees described in paragraph (1) of subdivision (a) that are received by the owner, renter, or lessee of the property are less than one hundred dollars (\$100) per entrant and total less than one thousand dollars (\$1,000) between July 1 and the following June 30. Pursuant to Section 713, the department may adjust the threshold amounts established in this paragraph.

(2) The property is used in conjunction with the Shared Habitat Alliance for Recreational Enhancement (SHARE) program under Article 3 (commencing with Section 1570) of Chapter 5 of Division 2.

(3) A domesticated game bird hunting club licensed under Article 3 (commencing with Section 3270) operates on the property.

(4) A domesticated migratory game bird shooting area licensed under Article 4 (commencing with Section 3300) operates on the property.

(5) The property is used by a hunting club or program licensed under regulations adopted pursuant to this code.

(6) The property is used in conjunction with the private wildlife habitat enhancement and management program under Article 5 (commencing with Section 3400).

(7) The property is used for an officially sanctioned field trial event pursuant to regulations adopted pursuant to this code.

(8) The property is subject to a recorded state, federal, or nonprofit wildlife conservation or agricultural easement or is enrolled in a habitat protection or enhancement program under this code, including, but not limited to, Article 7 (commencing with Section 3460).

~~(d) This article does not apply to a landowner who rents or leases his or her property to the commercial hunting club and is not involved in the operation of the club, if the club is licensed in accordance with this article. This chapter does not apply to an owner of property that is rented or leased to a commercial hunting club, if the owner is not involved in the operation of the club and the club is licensed in accordance with this chapter.~~

Comment. Section 3240.5 is amended to improve its clarity, without making any substantive change.

Fish & Game Code § 3243.5 (amended). Transfer of license

SEC. _____. Section 3243.5 of the Fish and Game Code is amended to read:

~~3243.5. The commission may transfer a license to land owned or controlled by the licensee, other than that land specified in the original application, located in the same county as the original land, without any additional fee, if it finds the new land is suitable for the purposes of the license and such a transfer is not in conflict with the public interest. The commission may transfer a commercial hunting club license to other land owned or controlled by the licensee, in the same county as the originally licensed land, without an additional fee, if the commission finds the new land suitable for the purposes of the license and the transfer does not conflict with the public interest.~~

Comment. Section 3243.5 is amended to improve its clarity, without making any substantive change.

Fish & Game Code § 3504 (amended). Sale or purchase of birds

SEC. _____. Section 3504 of the Fish and Game Code is amended to read:

3504. Subject to the provisions of this code permitting the sale of domestically raised game birds, it is unlawful to sell or purchase any a game bird or nongame bird ~~or part thereof~~.

Comment. Section 3504 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make a nonsubstantive stylistic change.

Fish & Game Code § 3511 (amended). Fully protected birds

SEC. _____. Section 3511 of the Fish and Game Code is amended to read:

3511. (a)(1) Except as provided in this section, Section 2081.7, or 2835, a fully protected bird ~~birds or parts thereof bird~~ may not be taken or possessed at any time. No provision of this code or ~~any~~ other law shall be construed to authorize the issuance of ~~permits or licenses~~ a permit or license to take ~~any~~ a fully protected bird, and no ~~permits or licenses heretofore~~ permit or license previously issued shall have any force or effect for that purpose. However, the department may authorize the taking of ~~those species~~ a fully protected bird for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species, and may authorize the live capture and relocation of ~~those species~~ a fully protected bird pursuant to a permit for the protection of livestock. ~~Prior to~~ Before authorizing the take of ~~any of those species~~ a fully protected bird, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide ~~any~~ relevant information and comments on the proposed authorization.

(2) As used in this subdivision, “scientific research” does not include ~~any actions~~ an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) ~~Legally~~ A legally imported fully protected ~~birds or parts thereof~~ bird may be possessed under a permit issued by the department.

(b) The following are fully protected birds:

- (1) American peregrine falcon (*Falco peregrinus anatum*).
- (2) Brown pelican.
- (3) California black rail (*Laterallus jamaicensis coturniculus*).
- (4) California clapper rail (*Rallus longirostris obsoletus*).
- (5) California condor (*Gymnogyps californianus*).
- (6) California least tern (*Sterna albifrons browni*).
- (7) Golden eagle.
- (8) Greater sandhill crane (*Grus canadensis tabida*).
- (9) Light-footed clapper rail (*Rallus longirostris levipes*).
- (10) Southern bald eagle (*Haliaeetus leucocephalus leucocephalus*).
- (11) Trumpeter swan (*Cygnus buccinator*).
- (12) White-tailed kite (*Elanus leucurus*).
- (13) Yuma clapper rail (*Rallus longirostris yumanensis*).

Comment. Section 3511 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

**Fish & Game Code § 4150 (amended). Taking or possessing
nongame mammals**

SEC. _____. Section 4150 of the Fish and Game Code is amended to read:

4150. ~~All mammals~~ A mammal occurring naturally in California ~~which that are is not a game mammals mammal, fully protected mammals mammal, or fur-bearing mammals mammal,—are is a~~ nongame mammal. ~~Nongame mammals or parts thereof~~ A nongame mammal may not be taken or possessed except as provided in this code or in accordance with regulations adopted by the commission.

Comment. Section 4150 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 4155 (amended). Trap, sale, or export of bobcat

SEC. _____. Section 4155 of the Fish and Game Code is amended to read:

4155. (a) Beginning January 1, 2014, it shall be unlawful to trap ~~any a~~ bobcat, or attempt to do so, or to sell or export ~~any a~~ bobcat ~~or part of any bobcat~~ taken in the area surrounding Joshua Tree National Park, defined as follows: East and South of State Highway 62 from the intersection of Interstate 10 to the intersection of State Highway 177; West of State Highway 177 from the intersection of State Highway 62 to the intersection with Interstate 10; North of Interstate 10 from State Highway 177 to State Highway 62.

(b)(1) Through the commission's next regularly scheduled mammal hunting and trapping rulemaking process occurring after January 1, 2014, the commission shall amend its regulations to prohibit the trapping of bobcats adjacent to the boundaries of each national or state park and national monument or wildlife refuge in which bobcat trapping is prohibited.

(2) Commencing January 1, 2016, the commission shall consider whether to prohibit bobcat trapping within, and adjacent to, preserves, state conservancies, and any additional public or private conservation areas identified to the commission by the public as warranting protection. The commission, as necessary, shall amend its regulations through its next subsequently scheduled mammal hunting and trapping rulemaking process to prohibit bobcat trapping in any area determined by the commission to warrant protection.

(3) The commission shall delineate the boundaries of an area in which bobcat trapping is prohibited pursuant to paragraph (1) or (2) using readily identifiable features, such as highways or other major roads, such as those delineated for Joshua Tree National Park in subdivision (a).

(c) The prohibition on the trapping of bobcats in the areas designated pursuant to subdivisions (a) and (b) shall not apply to the taking of ~~any a~~ bobcat by ~~employees~~ an employee of the department acting in an official capacity, to a taking in accordance

with the conditions of a scientific, educational, or propagation permit pursuant to Section 1002 by the holder of that permit, or to the lawful taking of ~~bobeats~~ a bobcat found to be injuring crops or other property, pursuant to Section 4152, ~~or other provisions~~ another provision of this code, or ~~regulations~~ a regulation adopted pursuant to this code.

(d) Notwithstanding Section 2016 or any other ~~provisions~~ provision of this code, on and after January 1, 2014, it shall be unlawful to trap ~~any~~ a bobcat, or attempt to do so, on ~~any~~ private land not belonging to the trapper without the express written consent of the owner of that property. The placing or possession of ~~any~~ a trap or the possession of a bobcat ~~or part thereof~~ on ~~any~~ land is prima facie evidence of a violation of this subdivision.

(e) Consistent with the requirements of subdivision (c) of Section 4006, the commission shall set trapping license fees and associated fees, including, but not limited to, shipping tags required pursuant to Section 479 of Chapter 6 of Subdivision 2 of Division 1 of Title 14 of the California Code of Regulations, for the 2014–15 season, and any subsequent seasons in which bobcat trapping is allowed, at the levels necessary to fully recover all reasonable administrative and implementation costs of the department and the commission associated with the trapping of bobcats in the state, including, but not limited to, enforcement costs.

(f) This section does not limit the ability of the department or the commission to impose additional requirements, restrictions, or prohibitions related to the taking of bobcats, including a complete prohibition on the trapping of bobcats pursuant to this code.

Comment. Section 4155 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 4700 (amended). Fully protected mammals

SEC. _____. Section 4700 of the Fish and Game Code is amended to read:

4700. (a)(1) Except as provided in this section, Section 2081.7, or Section 2835, a fully protected ~~mammals or parts thereof~~ mammal may not be taken or possessed at any time. No provision of this code or ~~any~~ other law shall be construed to authorize the issuance of ~~permits or licenses~~ a permit or license to take ~~any~~ a fully protected mammal, and no ~~permits or licenses heretofore~~ permit or license previously issued shall have any force or effect for that purpose. However, the department may authorize the taking of ~~those species~~ a fully protected mammal for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. ~~Prior to~~ Before authorizing the take of ~~any of those species~~ a fully protected mammal, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide ~~any~~ relevant information and comments on the proposed authorization.

(2) As used in this subdivision, “scientific research” does not include ~~any~~ an ~~actions~~ action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) ~~Legally~~ A legally imported fully protected ~~mammals or parts thereof~~ mammal may be possessed under a permit issued by the department.

(b) The following are fully protected mammals:

(1) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).

(2) Bighorn sheep (*Ovis canadensis*), except Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) as provided by subdivision (b) of Section 4902.

(3) Northern elephant seal (*Mirounga angustirostris*).

(4) Guadalupe fur seal (*Arctocephalus townsendi*).

(5) Ring-tailed cat (genus *Bassariscus*).

(6) Pacific right whale (*Eubalaena sieboldi*).

(7) Salt-marsh harvest mouse (*Reithrodontomys raviventris*).

(8) Southern sea otter (*Enhydra lutris nereis*).

(9) Wolverine (*Gulo luscus*).

Comment. Section 4700 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 4800 (amended). Mountain lions

SEC. _____. Section 4800 of the Fish and Game Code is amended to read:

4800. (a) The mountain lion (genus *Puma*) is a specially protected mammal under the laws of this state.

(b)(1) It is unlawful to take, injure, possess, transport, import, or sell ~~any a~~ a mountain lion or ~~any part of a~~ product thereof of a mountain lion, except as specifically provided in this chapter or in Chapter 2 (commencing with Section 2116) of Division 3.

(2) This chapter does not prohibit the sale or possession of ~~any a~~ a mountain lion or ~~any part of a~~ product thereof of a mountain lion, when the owner can demonstrate that the mountain lion, or ~~part of~~ product thereof of a mountain lion, was in the person's possession on June 6, 1990.

(3) This chapter does not prohibit the possession of a mountain lion carcass or ~~any part of a~~ a product of a mountain lion carcass, if all of the following requirements are met:

(A) The carcass or carcass ~~part of~~ a product is prepared or being prepared for display, exhibition, or storage, for a bona fide scientific or educational purpose, at a nonprofit museum or government-owned facility generally open to the public or at an

educational institution, including a public or private postsecondary institution.

(B) The mountain lion was taken in California consistent with the requirements of this chapter and any other applicable law.

(C) The department has authorized the possession of the carcass or carcass ~~part or~~ product for the purposes of this paragraph.

(c) ~~Any~~ A violation of this section is a misdemeanor punishable by imprisonment in the county jail for not more than one year, or a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment. An individual is not guilty of a violation of this section if it is demonstrated that, in taking or injuring a mountain lion, the individual was acting in self-defense or in defense of others.

(d) Section 219 does not apply to this chapter. Neither the commission nor the department shall adopt any regulation that conflicts with or supersedes ~~any of the provisions~~ a provision of this chapter.

Comment. Section 4800 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 4810 (amended). Mountain lion research project

SEC. _____. Section 4810 of the Fish and Game Code is amended to read:

4810. (a) As used in this section:

(1) “Authorized research project” means a research project involving mountain lions subject to a Scientific Collecting Permit issued in accordance with this section.

(2) “Permitholder” means a person to whom the department has issued a Scientific Collecting Permit in accordance with this section.

(3) “Scientific Collecting Permit” or “permit” means a permit issued pursuant to Section 1002 for a research project involving mountain lions in accordance with this section.

(b) The department may authorize qualified individuals, educational institutions, governmental agencies, or nongovernmental organizations to conduct scientific research involving mountain lions pursuant to a Scientific Collecting Permit as provided in Section 1002.

(c) The department may authorize ~~permitholders~~ a permitholder to pursue, capture, temporarily possess, temporarily injure, mark, ~~attach to or surgically implant a monitoring or recognition devices~~ device in; or attach such a device to, provide veterinary care to, and transport, ~~a mountain lions, lion or any part of~~ a product of a mountain lion.

(d) In addition to the requirements in Section 1002, an authorized research project shall be designed to do the following:

(1) Contribute to the knowledge of natural wildlife ecosystems.

(2) Minimize disruptions in the lives and movements of mountain lions and other wildlife, as well as impacts to mountain lion or other wildlife habitat, while maintaining the permitholder's research objectives.

(3) Directly or indirectly support the sustainability and survival of mountain lion populations and healthy ecosystems.

(4) Prevent the permanent injury or killing of ~~any~~ a mountain lion.

(e) An authorized research project shall be governed by the Scientific Collecting Permit. The permit shall include, at a minimum, proposed research methods and recordkeeping procedures that address the following:

(1) The capture of, anesthetization of, collection of diagnostic samples from, and transport of, ~~a mountain lions or parts and products thereof lion or a product of a mountain lion, and the attaching.~~

(2) ~~Attaching to or surgically implanting~~ monitoring or recognition devices to, surgically implanting those devices in, or markings in, and providing marking, animals affected by the research project.

(3) Providing ~~Providing~~ veterinary care as required for the health, safety, and humane treatment of, animals affected by the research project.

(2) (4) The recording of the adverse effects of authorized research procedures on mountain lions and other wildlife.

(3) (5) The qualifications of onsite personnel necessary for carrying out authorized research procedures. A permit applicant shall submit verifiable documentation demonstrating that at least one onsite staff person has at least one year of experience in proposed research methods that involve activities described in subdivision (c).

(4) (6) Annual and final reports to the department.

(f) The department shall notify the public at least 30 days prior to the issuance of a permit, and, upon request, shall make available to the public copies of the permit and annual and final reports.

(g) The department shall handle ~~any~~ mortality or permanent injury to a mountain lion as a result of research authorized pursuant to this section in a manner consistent with the reporting and processing requirements imposed in Section 4807.

Comment. Section 4810 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 5000 (amended). Tortoises

SEC. _____. Section 5000 of the Fish and Game Code is amended to read:

5000. It is unlawful to sell, purchase, harm, take, possess, ~~or~~ transport ~~any tortoise (Gopherus) or parts thereof~~, or to shoot ~~any a~~ projectile at, a tortoise (Gopherus). This section does not apply to the taking of ~~any a~~ tortoise when authorized by the department.

Comment. Section 5000 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 5002 (amended). Permit allowing possession of tortoise

SEC. _____. Section 5002 of the Fish and Game Code is amended to read:

5002. The department may issue permits, subject to ~~such any~~ terms and conditions as prescribed by the commission ~~may prescribe~~, authorizing the possession of ~~any a~~ a tortoise (Gopherus) or ~~any part or product thereof of a~~ tortoise by an educational or scientific institution or a public zoological garden.

Comment. Section 5002 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 5050 (amended). Fully protected reptiles and amphibians

SEC. ____ . Section 5050 of the Fish and Game Code is amended to read:

5050. (a)(1) Except as provided in this section, Section 2081.7, Section 2081.9, or Section 2835, a fully protected reptile or amphibian ~~reptiles and amphibians or parts thereof reptile or amphibian~~ may not be taken or possessed at any time. No provision of this code or ~~any~~ other law shall be construed to authorize the issuance of ~~permits or licenses~~ a permit or license to take ~~any a~~ a fully protected reptile or amphibian, and no ~~permits or licenses heretofore permit or license~~ previously issued shall have any force or effect for that purpose. However, the department may authorize the taking of ~~those species~~ a fully protected reptile or amphibian for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. ~~Prior to~~ Before authorizing the take of ~~any of those species a fully protected reptile or amphibian~~, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an email address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published

in the California Regulatory Notice Register to provide ~~any~~ relevant information and comments on the proposed authorization.

(2) As used in this subdivision, “scientific research” does not include ~~any actions~~ an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) ~~Legally~~ A legally imported fully protected ~~reptiles or amphibians or parts thereof~~ reptile or amphibian may be possessed under a permit issued by the department.

(b) The following are fully protected reptiles and amphibians:

(1) Blunt-nosed leopard lizard (*Crotaphytus wislizenii silus*).

(2) San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).

(3) Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*).

(4) Limestone salamander (*Hydromantes brunus*).

(5) Black toad (*Bufo boreas exsul*).

Comment. Section 5050 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 5515 (amended). Fully protected fish

SEC. _____. Section 5515 of the Fish and Game Code is amended to read:

5515. (a)(1) Except as provided in this section, Section 2081.7, or Section 2835, a fully protected fish ~~or parts thereof~~ may not be taken or possessed at any time. No provision of this code or ~~any~~ other law shall be construed to authorize the issuance of ~~permits or licenses~~ a permit or license to take ~~any~~ a fully protected fish, and no ~~permits or licenses heretofore~~ permit or license previously issued shall have any force or effect for that purpose. However, the department may authorize the taking of ~~those species~~ a fully protected fish for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. ~~Prior to~~ Before authorizing the take of ~~any of those species~~ a fully protected fish, the department shall make an effort to notify all affected and interested parties to solicit information and comments

on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide ~~any~~ relevant information and comments on the proposed authorization.

(2) As used in this subdivision, “scientific research” does not include ~~any actions~~ an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) ~~Legally~~ A legally imported fully protected fish ~~or parts thereof~~ may be possessed under a permit issued by the department.

(b) The following are fully protected fish:

- (1) Colorado River squawfish (*Ptychocheilus lucius*).
- (2) Thicktail chub (*Gila crassicauda*).
- (3) Mohave chub (*Gila mohavensis*).
- (4) Lost River sucker (*Catostomus luxatus*).
- (5) Modoc sucker (*Catostomus microps*).
- (6) Shortnose sucker (*Chasmistes brevirostris*).
- (7) Humpback sucker (*Xyrauchen texanus*).
- (8) Owens River pupfish (*Cyprinodon radiosus*).
- (9) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).
- (10) Rough sculpin (*Cottus asperimus*).

Comment. Section 5515 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 6440 (amended). Management of carp

SEC. _____. Section 6440 of the Fish and Game Code is amended to read:

6440. The Legislature finds and declares that triploid grass carp have the potential to control aquatic nuisance plants in non-public waters allowing for reduced chemical control but that the threat that grass carp pose to aquatic habitat may outweigh its benefits. It is the intent of this section to allow the ~~Department of Fish and Game~~ department to use its management authority to provide for the long-term health of the ecosystem in the state including the aquatic ecosystem, and in that context, manage grass carp either through control of movement, eradication of populations, acquisition of habitat and any other action that the department finds will maintain the biological diversity and the long term, overall health of the state's environment. The department shall undertake the management of grass carp in a manner that is consistent with provisions of this code and for the purposes of this section the department shall define management as handling, controlling, destroying, or moving species. The Legislature does not intend for this section to provide a right for the use of triploid grass carp if the department finds that use of the species poses an unacceptable risk to the state's existing ecosystem.

Comment. Section 6440 is amended to update an obsolete reference to the Department of Fish and Game. See Section 37 ("department" means Department of Fish and Wildlife).

Fish & Game Code § 6901 (amended). Legislative findings

SEC. _____. Section 6901 of the Fish and Game Code is amended to read:

6901. The Legislature, for purposes of this chapter, finds as follows:

(a) According to the department, the natural production of salmon and steelhead trout in California has declined to approximately 1,000,000 adult chinook or king salmon, 100,000 coho or silver salmon, and 150,000 steelhead trout.

(b) The naturally spawning salmon and steelhead trout resources of the state have declined dramatically within the past four decades, primarily as a result of lost stream habitat on many streams in the state.

(c) Much of the loss of salmon and steelhead trout and anadromous fish in the state has occurred in the central valley.

(d) Protection of, and an increase in, the naturally spawning salmon and steelhead trout resources of the state would provide a valuable public resource to the residents, a large statewide economic benefit, and would, in addition, provide employment opportunities not otherwise available to the citizens of this state, particularly in rural areas of present underemployment.

(e) Proper salmon and steelhead trout resource management requires maintaining adequate levels of natural, as compared to hatchery, spawning and rearing.

(f) Reliance upon hatchery production of salmon and steelhead trout in California is at or near the maximum percentage that it should occupy in the mix of natural and artificial hatchery production in the state. Hatchery production may be an appropriate means of protecting and increasing salmon and steelhead in specific situations; however, when both are feasible alternatives, preference shall be given to natural production.

(g) The protection of, and increase in, the naturally spawning salmon and steelhead trout of the state must be accomplished primarily through the improvement of stream habitat.

(h) Funds provided by the Legislature since 1978 to further the protection and increase of the fisheries of the state have been administered by the ~~Department of Fish and Game~~ department in a successful program of contracts with local government and nonprofit agencies and private groups in ways that have attracted substantial citizen effort.

(i) The department's contract program has demonstrated that California has a large and enthusiastic corps of citizens that are eager to further the restoration of the stream and fishery resources of this state and that are willing to provide significant amounts of time and labor to that purpose.

(j) There is need for a comprehensive salmon, steelhead trout, and anadromous fisheries plan, program, and state government organization to guide the state's efforts to protect and increase the

naturally spawning salmon, steelhead trout, and anadromous fishery resources of the state.

Comment. Section 6901 is amended to update an obsolete reference to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

Fish & Game Code § 7183 (amended). Issuance of Arizona and California licenses

SEC. _____. Section 7183 of the Fish and Game Code is amended to read:

7183. (a) The Arizona Game and Fish Commission shall handle California sportfishing licenses and California special use stamps and issue them to Arizona license dealers. Prior to August 31 of each year, that commission shall make an audit report and send a remittance for those sales to the ~~California Department of Fish and Game~~ department.

(b) The ~~California Department of Fish and Game~~ department shall handle Arizona special use stamps and issue them to California license dealers. Prior to August 31 of each year, that department shall make an audit report and send a remittance for those sales to the Arizona Game and Fish Commission.

(c) This section does not apply to licenses, permits, reservations, tags, or other entitlements issued through the Automated License Data System.

Comment. Section 7183 is amended to update obsolete references to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

Fish & Game Code § 7183.1 (amended). Issuance of Arizona and California ALDS licenses

SEC. _____. Section 7183.1 of the Fish and Game Code is amended to read:

7183.1. (a) The Arizona Game and Fish Commission shall handle California sportfishing licenses and California special use validations and issue them through Arizona license dealers. Prior to August 31 of each year, that commission shall make an audit

report and send a remittance for those issued to the ~~California Department of Fish and Game~~ department.

(b) The ~~California Department of Fish and Game~~ department shall handle Arizona special use validations and issue them through California license dealers. Prior to August 31 of each year that department shall make an audit report and send a remittance for those issued to the Arizona Game and Fish Commission.

(c) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

Comment. Section 7183.1 is amended to update obsolete references to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

Fish & Game Code § 7370 (amended). Sturgeon

SEC. _____. Section 7370 of the Fish and Game Code is amended to read:

7370. (a) It is unlawful to take or possess for commercial purposes, buy or sell, or ~~to~~ offer to buy or sell, ~~any~~ a whole sturgeon, or any part thereof of a sturgeon, including, but not limited to, its eggs, except as follows:

(1) A sturgeon, ~~or parts thereof~~ part of a sturgeon, or sturgeon eggs that is taken or possessed by, and is the cultured progeny of, an aquaculturist who is registered under Section 15101, may be bought or sold ~~or purchased~~ subject to regulations of the commission.

(2) A sturgeon, ~~or parts thereof~~ part of a sturgeon, or sturgeon eggs that is taken commercially in another state that permits the sale of ~~the fish~~ sturgeon, and lawfully imported under Section 2363, may be possessed, bought, or sold, ~~or purchased~~.

(3) Sturgeon, ~~or parts thereof~~ part of a sturgeon, taken pursuant to a sport fishing license, that is processed in accordance with Section 7230.

(b) For purposes of this section, it is prima facie evidence that a sturgeon, ~~or parts thereof~~ or part of a sturgeon, is possessed for

commercial purposes, if the possession of ~~sturgeon~~ is more than two times the sport bag limit.

Comment. Section 7370 is amended to make nonsubstantive stylistic changes.

The references to a “part” of an animal in this section are superfluous. See Section 80 (reference to animal generally includes part of animal). They are retained solely for clarity, and are not intended to affect the meaning of any other provision of this code that includes or omits a reference to a “part” of an animal.

Fish & Game Code § 7704 (amended). Waste or reduction of fish or sharks

SEC. _____. Section 7704 of the Fish and Game Code is amended to read:

7704. (a) It is unlawful to cause or permit ~~any~~ deterioration or waste of ~~any~~ a fish taken in the waters of this state, or brought into this state, or to take, receive or agree to receive more fish than can be used without deterioration, waste, or spoilage.

(b) Except as permitted by this code, it is unlawful to use ~~any~~ a fish, ~~or part thereof~~, except fish offal, in a reduction plant or by a reduction process.

(c) Except as permitted by this code or by regulation of the commission, it is unlawful to sell, purchase, deliver for a commercial ~~purposes~~ purpose, or possess on any commercial fishing vessel registered pursuant to Section 7881, ~~any~~ a shark fin or ~~shark~~ tail or ~~portion thereof~~ part of a shark fin or tail that has been removed from the carcass. However, a ~~thresher shark~~ thresher shark ~~tails~~ fin or tail that ~~have~~ has been removed from the carcass and whose original shape ~~remain~~ remains unaltered may be possessed on a registered commercial fishing vessel if the ~~corresponding carcass is in possession for each tail and fin carcass~~ corresponding to the fin or tail is also possessed.

Comment. Section 7704 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 7856 (amended). Fish on commercial fishing vessel

SEC. _____. Section 7856 of the Fish and Game Code is amended to read:

7856. Notwithstanding any other provision of this division, except as provided in subdivision (f) and except when prohibited by federal law, fish may be prepared for human consumption aboard a commercial fishing vessel only under the following conditions:

(a) The fish are taken under all existing commercial fishing laws and regulations and, except as provided in subdivision (f), the fish is of a species and size that can be lawfully taken under sportfishing regulations in the area where taken and are taken incidental to normal commercial fishing operations.

(b) The fish is separated from other fish and stored with other foodstuff for consumption by the crew and passengers aboard the vessel.

(c) The fish, ~~or parts thereof~~, shall not be bought, sold, offered for sale, transferred to ~~any other~~ another person, landed, brought ashore, or used for ~~any a purpose except for~~ other than consumption by the crew and passengers.

(d)(1) All fish shall be maintained in ~~such~~ a condition that the species can be determined, and the size or weight can be determined if a size or weight limit applies, until the fish is prepared for immediate consumption.

(2) If the fish is filleted, a patch of skin shall be retained on each fillet as prescribed by the commission in the sportfishing regulations until the fish is prepared for immediate consumption.

(3) Fillets from fish possessed under sportfishing regulations shall be of the minimum length prescribed by commission regulations.

(e) ~~No A~~ fish ~~which~~ that may be possessed under sportfishing regulations ~~may~~ shall not be possessed in excess of the sport bag limit for each crew member and passenger on board the vessel.

(f) Notwithstanding other provisions of this section, kelp bass, sand bass, spotted bass, yellowfin croaker, spotfin croaker,

California corbina, and marlin, shall not be possessed aboard a commercial fishing vessel while that vessel is on a commercial fishing trip. Lobster, salmon, or abalone shall not be possessed aboard a commercial fishing vessel while that vessel is on a commercial fishing trip for preparation for human consumption pursuant to this section unless that lobster, salmon, or abalone is taken and possessed in compliance with all applicable laws pertaining to commercial fishing methods of take, licenses, permits, and size limits. Sturgeon or striped bass shall not be possessed aboard a commercial fishing vessel. ~~No~~ A person shall not take or possess ~~any~~ a fish on a commercial fishing vessel under a sportfishing license while that vessel is engaged in a commercial fishing activity, including going to or from an area where fish are taken for commercial purposes.

Comment. Section 7856 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 7880 (amended). Display of registration number

SEC. _____. Section 7880 of the Fish and Game Code is amended to read:

7880. (a) ~~Every~~ A person owning or operating ~~any~~ a vessel used in connection with fishing operations for profit who has been issued a commercial boat registration pursuant to Section 7881 shall display, for the purpose of identification, a ~~Department of Fish and Game~~ department registration number on the vessel in a manner designated by the department.

(b) The method of displaying the registration number on the vessel shall be determined by the department after consultation with the ~~Department~~ Division of Boating and Waterways, taking into consideration the responsibilities and duties of the ~~Department~~ Division of Boating and Waterways as prescribed in the Harbors and Navigation Code.

(c) The registration number is not transferable, and it is a permanent fixture upon the vessel for which it is originally issued.

Comment. Section 7880 is amended to update obsolete references to the Division of Boating and Waterways, and to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 8079.1 (amended). Emergency license to dispose of fish

SEC. _____. Section 8079.1 of the Fish and Game Code is amended to read:

8079.1. Notwithstanding any other provision of this code or regulation ~~enacted pursuant thereto~~ adopted pursuant to this code, the ~~Director of the Department of Fish and Game~~ director, or a representative appointed by ~~him~~ the director, may, without notice or a hearing, grant a license to a fish reduction ~~plants~~ plant to dispose of dead or dying fish. The license may be immediately issued by the director or ~~his~~ the director’s representative whenever ~~such~~ that person determines, in ~~his~~ that person’s discretion, that an emergency situation exists. The estimated tonnage to be reduced shall be specified as a limit in the license.

Comment. Section 8079.1 is amended to update an obsolete reference to the director of the Department of Fish and Game. See Section 39 (“director” means Director of Fish and Wildlife).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 8182 (amended). Display of registration number

SEC. _____. Section 8182 of the Fish and Game Code is amended to read:

8182. The operator of ~~any~~ a boat engaged in taking anchovies in waters south of the line described in Section 8180 shall at all times while operating ~~such~~ the boat identify it by displaying on an exposed part of the superstructure, amidships on each side and on top of the house visible from the air, the ~~Department of Fish and Game~~ department registration number of the boat, in 14-inch black numerals on white background.

Comment. Section 8182 is amended to update an obsolete reference to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 8281 (amended). Crab

SEC. _____. Section 8281 of the Fish and Game Code is amended to read:

8281. Crab meat and frozen ~~whole crabs or parts thereof, which are~~ crab taken during the open season, may be possessed, transported, and sold at any time, subject to the regulations of the commission. The cost of inspection and marking, under the regulations of the commission, shall be paid by the owner or seller of ~~such crab meat, crabs, or parts thereof~~ the crab or crab meat.

Comment. Section 8281 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 8371 (amended). Striped bass and salmon

SEC. _____. Section 8371 of the Fish and Game Code is amended to read:

8371. Striped bass ~~or and~~ salmon, ~~or parts thereof~~, may be sold or offered for sale only under the following conditions:

(a) If the striped bass, ~~or parts thereof~~, is taken or possessed by, and is the cultured progeny of, an aquaculturist who is registered under Section 15101, that striped bass may be sold or purchased subject to regulations of the commission.

(b) If the striped bass, ~~or parts thereof~~, is taken legally in another state that permits the sale of that fish and if the fish is lawfully imported under Section 2363, the striped bass, ~~or parts thereof~~, may be possessed, sold, or purchased.

(c) If the salmon, ~~or parts thereof~~, is taken legally in another state that permits the sale of salmon, and is lawfully imported consistent with Section 2361, the salmon, ~~or parts thereof~~, may be possessed, sold, or purchased.

(d) If the salmon, ~~or parts thereof~~, is taken in accordance with Article 4 (commencing with Section 8210.2), the salmon, ~~or parts thereof~~, may be possessed, sold, or purchased.

Comment. Section 8371 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make a nonsubstantive stylistic change.

Fish & Game Code § 8393 (amended). Purchase or sale of marlin meat

SEC. _____. Section 8393 of the Fish and Game Code is amended to read:

8393. (a) Except where subdivision (b) has been complied with, marlin meat, whether fresh, smoked, canned, or preserved by any means, shall not be bought or sold, or possessed or transported for the purpose of sale.

(b) Notwithstanding the provisions of subdivision (a) of this section, black marlin (*Makaira Indica*) may be imported into this state for the purpose of processing (manufacturing) a product commonly known as fish cakes for human consumption. All ~~such~~ black marlin (*Makaira Indica*) imported into this state must be in an identifiable condition and accompanied by a bill of lading, showing the name of the consignor, the consignee, and the weight or number of fish shipped. A copy of the bill of lading must be delivered to the nearest office of the ~~Department of Fish and Game~~ department either prior to or no later than two days after receipt of the fish. No ~~such~~ black marlin (*Makaira Indica*) imported into California may leave the premises of the original consignee unless written permission is received from the ~~Department of Fish and Game~~ department, or unless processed into the form of the product commonly known as fish cakes.

Comment. Section 8393 is amended to update obsolete references to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 8563 (amended). Responsibilities of permittee

SEC. _____. Section 8563 of the Fish and Game Code is amended to read:

8563. (a) Except as provided in subdivision (b), the permittee shall be aboard the vessel and shall be in possession of a valid drift gill net shark and swordfish permit when engaged in operations authorized by the permit.

(b) A permittee may have ~~any~~ a person serve in ~~his or her~~ the permittee's place on the permittee's vessel and engage in fishing under ~~his or her~~ the permittee's drift gill net shark and swordfish permit for not more than 15 ~~calendar~~ days ~~any one~~ in a calendar year, except that a longer period may be allowed in the event of serious illness. A permittee shall notify the department's Long Beach office of a substitution of 15 days or less per calendar year, by certified letter or telegram at least 24 hours ~~prior to~~ before the commencement of the trip. Written authorization for a substitution of greater than 15 days shall be obtained from the director and shall be given only on the director's finding that the permittee will not be available to engage in the activity due to serious illness, supported by medical evidence. An application for a substitution of greater than 15 days shall be made to the ~~Department of Fish and Game, Headquarters Office~~ department's headquarters office, in Sacramento, and shall contain ~~such~~ any information ~~as the director may require~~ requires. ~~Any~~ A denial of the substitution may be appealed to the commission.

Comment. Section 8563 is amended to update an obsolete reference to the Department of Fish and Game. See Section 37 ("department" means Department of Fish and Wildlife).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 10500 (amended). Prohibited actions

SEC. _____. Section 10500 of the Fish and Game Code is amended to read:

10500. Except under a permit or specific authorization, it is unlawful to do any of the following:

(a) To take or possess ~~any~~ a bird or mammal, ~~or part thereof~~, in ~~any~~ a game refuge.

(b) To use or have in possession in a game refuge, ~~any~~ a firearm, BB device as defined in Section 16250 of the Penal Code, crossbow, bow and arrow, or ~~any~~ a trap or other contrivance designed to be, or capable of being, used to take birds or mammals, or to discharge ~~any~~ a firearm or BB device or to release ~~any~~ an arrow or crossbow bolt into ~~any~~ a game refuge.

(c) To take or possess ~~any species of~~ a fish or amphibian, ~~or part thereof,~~ in ~~any~~ a fish refuge, or to use or have in possession in that refuge ~~any~~ a contrivance designed to be used for catching fish.

(d) To take or possess ~~any~~ a bird in, ~~or to~~ discharge ~~any~~ a firearm or BB device, or ~~to~~ release ~~any~~ an arrow or crossbow bolt, within or into, ~~any~~ a waterfowl refuge.

(e) To take or possess ~~any~~ a quail in a quail refuge.

(f) To take or possess ~~any~~ an invertebrate or specimen of marine plant life in a marine life refuge.

(g) To take or possess ~~any~~ a clam ~~in a clam refuge or to possess in such a refuge~~ ~~any~~ or an instrument or apparatus capable of being used to dig clams in a clam refuge.

Comment. Section 10500 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 10502 (amended). Powers of Commission

SEC. _____. Section 10502 of the Fish and Game Code is amended to read:

10502. The commission may:

(a) Exercise control over all mammals and birds in ~~any~~ a game refuge, and exercise control over all fish in ~~any~~ a fish refuge.

(b) Authorize the department to issue, under such ~~any~~ restrictions ~~as it may deem it deems~~ best, permits ~~which~~ that authorize the person named therein to carry, use, and possess, within ~~any~~ a refuge, firearms, traps or other contrivances for taking birds, mammals, fish, ~~or amphibia~~ amphibians, or reptiles.

(c) Except as provided in Sections 10502.5, 10502.8, 10655, and 10657, authorize the department to issue permits ~~which shall~~ that

authorize the person named therein to take birds, mammals, fish, ~~and amphibia~~ amphibians, or reptiles within ~~any~~ a refuge.

(d) ~~Make~~ Adopt additional regulations not in conflict with any law for the protection of birds, mammals, fish, ~~amphibia~~ amphibians, reptiles, ~~and~~ or marine life within ~~any~~ a refuge.

Comment. Section 10502 is amended to add reptiles.

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 10503 (amended). Donations, grants, and acquisition

SEC. _____. Section 10503 of the Fish and Game Code is amended to read:

10503. For the purposes of propagating, feeding, and protecting birds, mammals, fish, ~~and amphibia~~ amphibians, and reptiles, the commission may do all of the following:

(a) Accept, on behalf of the state, donations of ~~any~~ an interest in ~~lands~~ land within ~~any~~ a refuge.

(b) Accept, on behalf of the state, from ~~any~~ a person owning and in possession of patented ~~lands~~ land, ~~except lands that are other than land~~ covered and uncovered by the ordinary daily tide of the Pacific Ocean, the right to preserve and protect all birds, mammals, fish, ~~and amphibia~~ amphibians, and reptiles on the patented ~~lands~~ land.

(c) Accept, on behalf of the state, donations of birds, mammals, fish, ~~and amphibia~~ amphibians, and reptiles, and of money given or appropriated. Those donations shall be used for the purposes for which they are accepted, and, as nearly as may be, for any purpose indicated by the donor.

(d) Acquire, by purchase, lease, rental, or otherwise, and occupy, develop, maintain, use, and administer land, or land and nonmarine water, or land and nonmarine water rights, suitable for state game farms or game refuges.

Comment. Section 10503 is amended to add reptiles.

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 10507 (amended). Open transport

SEC. _____. Section 10507 of the Fish and Game Code is amended to read:

10507. It is lawful for ~~any~~ a person who has given the notice provided for in Section 10506 to transport ~~any~~ a bird or mammal, ~~or part thereof~~, through a game refuge, if lawfully taken outside the refuge, and if the bird or mammal ~~or part thereof~~ is carried openly and during the time between one hour before sunrise and one hour after sunset.

Comment. Section 10507 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 10510 (amended). Effect of open season

SEC. _____. Section 10510 of the Fish and Game Code is amended to read:

10510. No specification of an open season in any area authorizes the taking of ~~any~~ a bird, mammal, fish ~~or amphibian~~, amphibian, or reptile from ~~any~~ a refuge within that area from which the taking is ~~elsewhere in this code prohibited by this code~~.

Comment. Section 10510 is amended to add reptiles.

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 10513 (amended). Navigable water

SEC. _____. Section 10513 of the Fish and Game Code is amended to read:

10513. Nothing in this chapter shall be construed as prohibiting or preventing ~~any~~ a person from taking ~~birds, mammals~~ a bird, mammal, fish, ~~or amphibian~~ amphibian, or reptile from or on navigable water in ~~any~~ a state game refuge.

Comment. Section 10513 is amended to add reptiles.

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 10514 (amended). Department control and management

SEC. _____. Section 10514 of the Fish and Game Code is amended to read:

10514. All state game refuges shall, for all purposes of protecting birds, mammals, fish, ~~or amphibia~~ amphibians, or reptiles thereon, be under the control and management of the department, and the officers and employees of the department, all game wardens, and law enforcement officers may at all times enter in and upon ~~such~~ state game refuges in the performance of their duties.

Comment. Section 10514 is amended to add reptiles.

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 10653 (amended). San Francisco Game Refuge

SEC. _____. Section 10653 of the Fish and Game Code is amended to read:

10653. In the San Francisco Game Refuge, birds, mammals, fish, ~~and amphibia~~ amphibians, and reptiles legally possessed may be carried openly by persons traveling through the refuge on public roads, between one-half hour before sunrise and one-half hour after sunset.

Comment. Section 10653 is amended to add reptiles.

The section is also amended to make a nonsubstantive stylistic change.

Fish & Game Code § 11020 (amended). Fish and Game District 12

SEC. _____. Section 11020 of the Fish and Game Code is amended to read:

11020. The following constitutes Fish and Game District 12:

The waters and tidelands of San Francisco Bay to high-water mark not included in Districts 11 and 13, the waters and tidelands to high-water mark of San Leandro Bay, Oakland Creek or estuary, San Antonio Creek in Alameda County, ~~Raccoon Straits~~ Raccoon Strait, ~~and~~ San Pablo Bay, ~~and~~ the Carquinez ~~Straits~~ Strait to the Carquinez Bridge, and all lands and waters included within the exterior boundaries of these districts and excluding all tributary

sloughs, creeks, bays, rivers, and overflowed areas not specifically described herein.

Comment. Section 11020 is amended to reflect the official names of two waterways, and make nonsubstantive stylistic changes.

Fish & Game Code § 11032 (amended). Fish and Game District 21

SEC. _____. Section 11032 of the Fish and Game Code is amended to read:

11032. The following constitutes Fish and Game District 21:

The waters and tidelands to high water mark of San Diego Bay lying inside of a straight line drawn from the ~~southernly~~ southerly extremity of Point Loma to the offshore end of the San Diego breakwater.

Comment. Section 11032 is amended to correct a typographical error.

Fish & Game Code § 12002.9 (amended). Additional license suspension

SEC. _____. Section 12002.9 of the Fish and Game Code is amended to read:

12002.9. In addition to any other penalty prescribed in this code, the license issued pursuant to Sections 8032 to 8036, inclusive, to ~~any~~ a person who is convicted of a violation of Section 7121, 7364, 7370, 8372, or 8373 shall be suspended for not less than seven days nor more than 30 days. Each day ~~any~~ a fish of the species designated in any of those sections, ~~or any part thereof~~, is unlawfully possessed and each unlawful transaction involving the purchase or sale of ~~any~~ a fish of those species, ~~or any part thereof~~, by a wholesale fish dealer is a separate violation.

Comment. Section 12002.9 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 12012 (amended). Punishment for illegal action

SEC. _____. Section 12012 of the Fish and Game Code is amended to read:

12012. (a) ~~Any~~ A person who illegally takes, possesses, imports, exports, sells, purchases, barter, trades, or exchanges ~~any amphibian~~, a bird, fish, mammal, ~~or~~ reptile, amphibian, or part ~~thereof~~ of any of those animals, for profit or personal gain, is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000); nor more than forty thousand dollars (\$40,000), or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) If a person is convicted of a second or subsequent violation of subdivision (a), that person shall be punished by a fine of not less than ten thousand dollars (\$10,000); nor more than fifty thousand dollars (\$50,000), or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(c) If a second or subsequent violation of subdivision (a) also involves a violation of Section 8685.5, 8685.6, 8685.7, or 8688 that is punishable by subdivision (b) of Section 12004, the offense shall be punishable by a fine of not more than fifty thousand dollars (\$50,000), or by imprisonment pursuant to subdivision (b) of Section 12004, or by both that fine and imprisonment.

(d) Notwithstanding Section 802 of the Penal Code, prosecution of an offense punishable under this section shall be commenced within three years after commission of the offense.

(e) This section does not apply to fish taken pursuant to a commercial fishing license issued pursuant to Section 7852, or fish sold pursuant to a commercial fish business license issued in accordance with Article 7 (commencing with Section 8030) of Chapter 1 of Part 3 of Division 6.

(f) This section does not supersede Section 12005 or 12009.

(g)(1) Moneys equivalent to 50 percent of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the department, and used for law enforcement purposes.

(2) Moneys equivalent to 50 percent of the revenue from any fine collected pursuant to this section shall be paid to the county in which the offense was committed, pursuant to Section 13003. The board of supervisors shall first use revenues pursuant to this

subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 13103.

Comment. Section 12012 is amended to make nonsubstantive stylistic changes.

The reference to a “part” of an animal is superfluous. See Section 80 (reference to animal generally includes part of animal). It is retained in this section solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to a “part” of an animal.

Fish & Game Code § 12013.3 (amended). Punishment for action involving specific animals

SEC. _____. Section 12013.3 of the Fish and Game Code is amended to read:

12013.3. (a) Notwithstanding Section 12002, 12003.2, 12008, or 12008.5, the punishment for ~~any~~ a person who knowingly violated and has been convicted of the following provisions where the violation involved a trophy deer, elk, antelope, or bighorn sheep shall be a fine of not less than five thousand dollars (\$5,000), nor more than forty thousand dollars (\$40,000), and where the violation involved a wild turkey, a fine of not less than two thousand dollars (\$2,000), nor more than five thousand dollars (\$5,000), or imprisonment in the county jail for not more than one year, or both that fine and imprisonment:

(1) Section 2001, if the person took an animal outside the established season.

(2) Section 2005.

(3) Section 257.5 of Title 14 of the California Code of Regulations.

(4) Section 4304.

(5) Section 4330.

(6) Section 1054.2, if the person failed to procure the required license or tag prior to taking a deer, elk, antelope, or bighorn sheep.

(b) The commission shall adopt regulations to implement this section, including establishing a trophy designation and monetary value based on the size or related characteristics of deer, elk, antelope, bighorn sheep, and wild turkeys ~~or parts thereof~~.

(c) All revenue from fines imposed pursuant to this section for deer, elk, antelope, and bighorn sheep violations shall be deposited in the Big Game Management Account established in Section 3953 and shall be used for the big game management purposes described in that section.

(d) All revenue from fines imposed pursuant to this section for wild turkey violations shall be deposited in the Upland Game Bird Account established in Section 3684 and shall be used for the upland game bird conservation purposes described in that section.

(e) Moneys equivalent to 50 percent of the revenue from any fine collected pursuant to this section shall be paid to the county in which the offense was committed, pursuant to Section 13003. The county board of supervisors shall first use revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 13103.

Comment. Subdivision (b) of Section 12013.3 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make a nonsubstantive stylistic change.

Fish & Game Code § 12151.5 (amended). Report of hunting injury

SEC. _____. Section 12151.5 of the Fish and Game Code is amended to read:

12151.5. ~~Any~~ A person who, while hunting, kills or wounds or witnesses the killing or wounding of ~~any~~ a human being, or domestic animal belonging to another, shall, within 48 hours after the incident, forward a complete written report to the Department of Fish and ~~Game~~ Wildlife, 1416 Ninth Street, Sacramento, California 95814, ~~giving his~~ providing the reporter's full name and address and all facts relating to the incident.

Comment. Section 12151.5 is amended to update an obsolete reference to the Department of Fish and Game.

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 12155 (amended). Punishment for third and subsequent convictions

SEC. _____. Section 12155 of the Fish and Game Code is amended to read:

12155. (a) Upon the third conviction of ~~any~~ a person of a violation of ~~any~~ a provision of this code or regulation adopted pursuant ~~thereto~~ to this code relating to the taking or possession of ~~birds or mammals, or parts thereof,~~ a bird or mammal in ~~any~~ a five-year period, and upon ~~any~~ a conviction subsequent to the three convictions during a five-year period, that person shall be prohibited from taking ~~any birds or mammals~~ a bird or mammal in the state for three years from the date of the last conviction. The commission shall revoke ~~the~~ a hunting license of ~~the person who is~~ a person prohibited from taking ~~birds or mammals~~ a bird or mammal in this state, ~~if he or she has one,~~ for the period of prohibition.

(b) It shall be unlawful for ~~any~~ a person to obtain, or attempt to obtain, a hunting license during a period of prohibition.

Comment. Section 12155 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to add subdivision designations and make nonsubstantive stylistic changes.

Fish & Game Code § 12162 (amended). Sale or donation of seized take

SEC. _____. Section 12162 of the Fish and Game Code is amended to read:

12162. ~~Any seizure of any birds, mammals, fish, reptiles, or amphibia or parts thereof made~~ A bird, mammal, fish, reptile, or amphibian seized under circumstances ~~wherein~~ in which it cannot be determined who took, possessed, sold, imported, or transported ~~them~~ the bird, mammal, fish, reptile, or amphibian contrary to law

may be sold or donated to a state, county, city, city and county, or ~~any~~ charitable institution.

Comment. Section 12162 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 12163 (amended). Purchase of seized take

SEC. _____. Section 12163 of the Fish and Game Code is amended to read:

12163. ~~Any~~ A person who purchases birds, mammals, fish, reptiles, or ~~amphibia~~, amphibians ~~or parts thereof~~, from the department pursuant to the preceding sections shall, upon delivery ~~to him~~, pay to the department, for deposit in the Fish and Game Preservation Fund, the prevailing market price for legal birds, mammals, fish, reptiles, or ~~amphibia~~ amphibians in effect on the date of seizure.

Comment. Section 12163 is amended to delete a superfluous reference to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 12164 (amended). Confiscation and disposal of bird or mammal

SEC. _____. Section 12164 of the Fish and Game Code is amended to read:

12164. The court before whom ~~any~~ a person has been convicted of trespassing under Section 602 of the Penal Code shall, in addition to any other fine or forfeiture imposed, confiscate any bird or mammal ~~or parts thereof~~ taken while trespassing, and shall dispose of the bird or mammal ~~or parts thereof~~ to a charitable institution or cause it to be destroyed if unfit for human consumption.

Comment. Section 12164 is amended to delete superfluous references to animal parts. See Section 80 (reference to animal generally includes part of animal).

The section is also amended to make a nonsubstantive stylistic change.

Fish & Game Code § 12300 (amended). California Indians

SEC. _____. Section 12300 of the Fish and Game Code is amended to read:

12300. ~~Irrespective of~~ (a) Notwithstanding any other provision of law, the provisions of this code are not applicable to California Indians whose names are inscribed upon the tribal rolls, while on the reservation of ~~such that~~ tribe and under those circumstances in this ~~State—state~~ where the code was not applicable to them immediately ~~prior to~~ before the effective date of Public Law 280, Chapter 505, First Session, 1953, 83d Congress of the United States.

(b) No ~~such~~ Indian described in subdivision (a) shall be prosecuted for the violation of ~~any a~~ provision of this code occurring in the places and under the circumstances ~~hereinabove referred to~~ described in subdivision (a). Nothing in this section, however, prohibits or restricts the prosecution of ~~any an~~ Indian for the violation of ~~any a~~ provision of this code prohibiting the sale of ~~any a~~ bird, mammal, fish, ~~or amphibia~~ amphibian, or reptile.

Comment. Subdivision (b) of Section 12300 is amended to add reptiles.

The section is also amended to add subdivision designations and make nonsubstantive stylistic changes.

Fish & Game Code § 13200 (amended). Accounting method

SEC. _____. Section 13200 of the Fish and Game Code is amended to read:

13200. The department shall account for revenues and expenditures of the money in the Fish and Game Preservation ~~Account Fund~~ in a manner consistent with the laws and applicable policies governing state departments generally for each activity or program in which the department is engaged.

Comment. Section 13200 is amended to conform an incorrect reference to the “Fish and Game Preservation Account” to refer to the “Fish and Game Preservation Fund.”

Fish & Game Code § 13220 (amended). Fish and Game Preservation Fund

SEC. _____. Section 13220 of the Fish and Game Code is amended to read:

13220. Except as provided in Section 13230, the money in the Fish and Game Preservation Fund, commencing with the 2005–06 fiscal year, is available for expenditure, upon appropriation by the Legislature, for all of the following purposes:

(a) To the department for payment of refunds of sums determined by it to have been erroneously deposited in the fund, including, but not limited to, money received or collected in payment of fees, licenses, permits, taxes, fines, forfeitures, or services.

(b) To the department for expenditure in accordance with law for the payment of all necessary expenses incurred in carrying out this code and any other laws for the protection and preservation of birds, mammals, reptiles, amphibians, and fish.

(c) To the commission for expenditure in accordance with law for the payment of the compensation and expenses of the commissioners and employees of the commission.

Comment. Subdivision (b) of Section 13220 is amended to add amphibians.

The reference to amphibians in this section is superfluous. See Section 45 (“fish” includes amphibians). It is added solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to amphibians.

Fish & Game Code § 14102 (amended). Compensation

SEC. _____. Section 14102 of the Fish and Game Code is amended to read:

14102. Each commissioner who is not also a state officer shall receive ~~ten one hundred~~ dollars ~~(\$10)~~ (\$100) for each day of ~~actual service performed in carrying out his performing~~ official duties pursuant to the ~~directions~~ direction of the commission, and each commissioner shall receive ~~his~~ actual and necessary travel expenses incurred in ~~the performance of his performing~~ official duties ~~in~~ on behalf of the commission.

Comment. Section 14102 is amended to correct a reference to an obsolete per diem allowance. See Gov't Code § 11564.5.

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 16500 (amended). Findings

SEC. _____. Section 16500 of the Fish and Game Code is amended to read:

16500. The Legislature finds:

(a) Jurisdiction over the protection and development of natural resources, especially the fish resource, is of great importance to both the State of California and California Indian tribes.

(b) To California Indian tribes, control over their minerals, lands, water, wildlife, and other resources within Indian country is crucial to their economic self-sufficiency and the preservation of their heritage. On the other hand, the State of California is concerned about protecting and developing its resources; protecting, restoring, and developing its commercial and recreational salmon fisheries; ensuring public access to its waterways; and protecting the environment within its borders.

(c) More than any other issue confronting the State of California and California Indian tribes, the regulation of natural resources, especially fish, transcends political boundaries.

(d) In many cases, the State of California and California Indian tribes have differed in their respective views of the nature and extent of state versus tribal jurisdiction in areas where Indians have historically fished. Despite these frequent and often bitter disputes, both the state and the tribes seek, as their mutual goal, the protection and preservation of the fish resource. This division is an attempt to provide a legal mechanism, other than protracted and expensive litigation over unresolved legal issues, for achieving that mutual goal on the Klamath River.

(e) ~~That the Department of Fish and Game~~ The department has exercised jurisdiction over the Klamath River from the mouth of the river through the Yurok Reservation and the Hoopa Valley Reservation, but ~~that~~ the Bureau of Indian Affairs and the Indian tribes thereon have also asserted jurisdiction over that river. The

river itself lies within a disputed area and proper management of the resource presents, therefore, unique and difficult problems in the exercise of fishing practices by all ~~users~~ user groups.

(f) Although commercial fishing may not be a traditional practice of the tribes existing along the Klamath River within the boundaries of the land of the Yurok Reservation and the Hoopa Valley Reservation, nevertheless, the ~~Department of Fish and Game~~ department has historically supported the concept of tribal fishing, including a tribal commercial fishing industry where the industry is consistent with the need to preserve the species, sound management, and where ~~such~~ that usage would not adversely effect other user groups, including sportfishing and the ocean commercial fishery.

(g) ~~That a~~ A commercial fishery existed on the Klamath River in the late 19th century and early 20th century, in which the Indian tribes existing along the river participated, but ~~that the~~ commercial fishing was abolished in 1933 with the passage of the predecessor to Section 8434, and, further, that salmon resources have declined historically due to past water developmental policies and timber harvesting practices. With a reduced number of fish available, special laws are needed to protect those resources and allocate them fairly among the various user groups.

(h) This division is not only enacted to provide the legal mechanism described above, but is also intended to encourage cooperative agreements to allow protection of the resource among all of the user groups. In so doing, the Legislature recognizes the unique status of the Klamath River and the fishing therein.

Comment. Section 16500 is amended to update obsolete references to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

The section is also amended to make nonsubstantive stylistic changes.

Fish & Game Code § 16520 (amended). “Klamath Fishery Management Council”

SEC. ____ . Section 16520 of the Fish and Game Code is amended to read:

16520. “Klamath Fishery Management Council” means that council created pursuant to Section ~~46055~~ I of Title 16 of the United States Code ~~which~~ that is composed of one representative each from the department, the Pacific Fishery Management Council, National Marine Fisheries Service, Department of the Interior, Oregon Department of Fish and Wildlife, ~~California Department of Fish and Game~~, the Hoopa Valley Business Council, non-Hoopa Indians, the California commercial salmon fishing industry, the Oregon commercial salmon fishing industry, the Klamath River in-river sportfishing community, and the California offshore recreational fishing industry.

Comment. Section 16520 is amended to update an obsolete reference to the Department of Fish and Game. See Section 37 (“department” means Department of Fish and Wildlife).

The section is also amended to make nonsubstantive stylistic changes.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

REPORT

State and Local Agency Access to Electronic Communications: Constitutional and Statutory Requirements

August 2015

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *State and Local Agency Access to Electronic Communications: Constitutional and Statutory Requirements*, 44 Cal. L. Revision Comm'n Reports 229 (2015).

STATE OF CALIFORNIA

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August 7, 2015

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

The California Law Revision Commission has been directed to prepare proposed legislation on state and local agency access to customer records of communication service providers. In doing so, the Commission was expressly directed to protect customers' existing constitutional rights.

As a first step in complying with that mandate, the Commission researched the relevant constitutional and statutory requirements for government access to electronic communications and related records. This report summarizes the Commission's findings regarding controlling federal and state constitutional rights and federal statutory law. A two-page explanation of the Commission's conclusions appears at the end of the report.

This report was prepared pursuant to Resolution Chapter 115 of the Statutes of 2013.

Respectfully submitted,

Taras Kihiczak
Chairperson

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STATE AND LOCAL AGENCY ACCESS TO ELECTRONIC COMMUNICATIONS: CONSTITUTIONAL AND STATUTORY REQUIREMENTS

SCOPE OF REPORT

The Commission has been directed to prepare comprehensive legislation on state and local agency access to customer information that the agency obtains from a communication service provider.¹

The purpose of the proposed legislation is to clarify and modernize the law, while preserving existing constitutional rights, enabling law enforcement to protect public safety, and providing clear procedures to be followed when government requests access to information held by communication service providers.²

As a first step in this study, the Commission examined the existing constitutional law on the matter. Both the United States and California Constitutions were examined. This report describes the Commission's findings regarding constitutional limitations on government access to electronic communications.

The Commission also examined relevant federal and state statutory law. Federal law that is binding on the states is also described in this report. The report does not comprehensively discuss relevant California statutory law, because the Legislature can revise such law (with the Governor's approval or acquiescence).

The scope of this report is bounded by the extent of the authority conferred by the Legislature. The Commission is authorized to study *state and local government* access to electronic communication information that is *obtained from communication service providers*. Pursuant to that limited mandate, this report does not address any of the following matters:

1. 2013 Cal. Stat. res. ch. 115 (SCR 54 (Padilla)).

2. *Id.*

- Information obtained by the federal government.
- Information obtained by private persons.
- Information obtained directly from a communication customer, rather than from that person's service provider (e.g., by means of eavesdropping, searching a person's computer or cell phone, or directly intercepting radio transmissions).

In addition, this report does not address access to information through discovery in a civil, criminal, or administrative adjudicative proceeding. Such access is supervised by the court, which can hear and address any constitutional or statutory objections to the disclosure of information. For that reason, discovery does not present the same issues as surveillance conducted as part of a pre-trial investigation.

CONSTITUTIONAL LAW

There are a number of constitutional rights that could be affected by government access to information about a person's electronic communications.

The most obvious is the constitutional protection against unreasonable search and seizure, afforded by the Fourth Amendment of the United States Constitution and Article I, Section 13 of the California Constitution.

Electronic communication surveillance could also unconstitutionally interfere with the rights of privacy and free expression.

Those constitutional rights are discussed below.

Search and Seizure

Fourth Amendment of the United States Constitution

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

When the Fourth Amendment was ratified, electronic communications did not exist. Searches and seizures were material and involved some kind of trespass against a person or that person's property.

With the advent of telephones and electronic microphones, it became possible to listen in on private conversations remotely, without any physical touching of the person or property of the subject of the surveillance. This presented a novel question: Does the Fourth Amendment protect the general privacy of communications against government intrusion? Or does it only protect the security of one's person and property?

The Supreme Court answered that question in *Olmstead v. United States*,³ the first wiretapping case decided by the Court. In *Olmstead*, federal prohibition agents tapped the office and home telephones of persons they suspected of illegally importing and distributing liquor. In establishing the wiretaps, the federal agents did not enter the suspects' property. Instead, they tapped wires in the basement of an office building and on roadside telephone poles. Because there had been no physical intrusion on a suspect's person or property, the Court held that there was no "search" within the meaning of the Fourth Amendment:

3. 277 U.S. 438 (1928).

The amendment itself shows that the search is to be of material things — the person, the house, his papers, or his effects. The description of the warrant necessary to make the proceeding lawful is that it must specify the place to be searched and the person or *things* to be seized.

...
The amendment does not forbid what was done here. There was no searching. There was no seizure. The evidence was secured by the use of the sense of hearing, and that only. There was no entry of the houses or offices of the defendants.

By the invention of the telephone fifty years ago and its application for the purpose of extending communications, one can talk with another at a far distant place. The language of the Amendment cannot be extended and expanded to include telephone wires reaching to the whole world from the defendant's house or office. The intervening wires are not part of his house or office any more than are the highways along which they are stretched.

...
Congress may, of course, protect the secrecy of telephone messages by making them, when intercepted, inadmissible in evidence in federal criminal trials by direct legislation, and thus depart from the common law of evidence. But the courts may not adopt such a policy by attributing an enlarged and unusual meaning to the Fourth Amendment. The reasonable view is that one who installs in his house a telephone instrument with connecting wires intends to project his voice to those quite outside, and that the wires beyond his house and messages while passing over them are not within the protection of the Fourth Amendment. Here, those who intercepted the projected voices were not in the house of either party to the conversation.⁴

Justice William Brandeis wrote a prescient dissent, which is worth quoting at some length:

4. *Id.* at 464-65 (emphasis in original).

“Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had theretofore taken. Time works changes, brings into existence new conditions and purposes. Therefore, a principle, to be vital, must be capable of wider application than the mischief which gave it birth. This is peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall ‘designed to approach immortality as nearly as human institutions can approach it.’ The future is their care, and provision for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been, but of what may be. Under any other rule, a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality.”

When the Fourth and Fifth Amendments were adopted, “the form that evil had theretofore taken” had been necessarily simple. Force and violence were then the only means known to man by which a Government could directly effect self-incrimination. It could compel the individual to testify — a compulsion effected, if need be, by torture. It could secure possession of his papers and other articles incident to his private life — a seizure effected, if need be, by breaking and entry. Protection against such invasion of “the sanctities of a man’s home and the privacies of life” was provided in the Fourth and Fifth Amendments by specific language. ... But “time works changes, brings into existence new conditions and purposes.” Subtler and more far-reaching means of invading privacy have become available to the Government. Discovery and invention have made it possible for the Government, by means far more effective

than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet.

Moreover, “in the application of a constitution, our contemplation cannot be only of what has been but of what may be.” The progress of science in furnishing the Government with means of espionage is not likely to stop with wiretapping....⁵

The narrow trespass-based approach taken to wiretapping in *Olmstead* prevailed until 1967, when the Supreme Court decided *Katz v. United States*.⁶

Reasonable Expectation of Privacy

Strictly speaking, *Katz* was not a wiretap case. In *Katz*, FBI agents had placed a listening device on the outside of a public telephone booth. They used it to listen to one end of the telephone calls made by the defendant. There was no direct electronic interception of the calls as they passed through the telephone company’s network.

Because the calls were placed in a public telephone booth, and the listening device was positioned on the outside of the telephone booth, there was no trespass against the defendant’s person or property. Under the reasoning adopted in *Olmstead*, it seems clear that the Fourth Amendment would be inapplicable. (In fact, the Supreme Court had applied the same reasoning to a non-wiretap case in *Goldman v. United States*,⁷ which involved the use of a listening device pressed against a wall to eavesdrop on conversations in the next room. Because the device did not involve any trespass there was no search within the meaning of the Fourth Amendment.)

In *Katz*, the court abandoned the narrow trespass-based view of eavesdropping:

5. *Id.* at 473-75 (Brandeis, J., dissenting), *quoting* *Weems v. United States*, 217 U.S. 349 (1910) (citations omitted).

6. 389 U.S. 347 (1967).

7. 316 U.S. 129 (1942).

We conclude that the underpinnings of *Olmstead* and *Goldman* have been so eroded by our subsequent decisions that the “trespass” doctrine there enunciated can no longer be regarded as controlling. The Government’s activities in electronically listening to and recording the petitioner’s words violated the privacy upon which he justifiably relied while using the telephone booth, and thus constituted a “search and seizure” within the meaning of the Fourth Amendment. The fact that the electronic device employed to achieve that end did not happen to penetrate the wall of the booth can have no constitutional significance.⁸

In a concurring opinion, Justice Harlan set out the now-familiar standard for determining the application of the Fourth Amendment — whether one has a “reasonable expectation of privacy.”

As the Court’s opinion states, “the Fourth Amendment protects people, not places.” The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a “place.” My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as “reasonable.” Thus, a man’s home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the “plain view” of outsiders are not “protected,” because no intention to keep them to himself has been exhibited. On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable. ...

The critical fact in this case is that “[o]ne who occupies it, [a telephone booth] shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume” that his conversation is not being intercepted. ...

8. *Katz*, 389 U.S. at 353.

The point is not that the booth is “accessible to the public” at other times..., but that it is a temporarily private place whose momentary occupants’ expectations of freedom from intrusion are recognized as reasonable. ...⁹

As indicated, a “reasonable expectation of privacy” is two-pronged: It requires (1) a subjective expectation of privacy that (2) society considers to be objectively reasonable.¹⁰

It is now well-established that the Fourth Amendment applies to private conversations, including those that are conducted electronically. However, the Fourth Amendment does not protect conversations that are conducted in such a way as to defeat any reasonable expectation of privacy. As discussed below, an important example of this involves information that is voluntarily disclosed to a third party.

Third Parties and the Fourth Amendment

The Supreme Court has held that there is no reasonable expectation of privacy with regard to information that is voluntarily disclosed to a third party. Consequently, government access to such information is not a search for the purposes of the Fourth Amendment. This “third party doctrine” is important in evaluating the Fourth Amendment’s application to modern electronic communications (e.g., electronic mail, text messages, social media postings), most of which involve the voluntary disclosure of information to a third party (the communication service provider).

9. *Katz*, 389 U.S. at 361 (Harlan, J., concurring).

10. See also *Burrows v. Super. Ct.*, 13 Cal. 3d 238 (1974) (applying reasonable expectation of privacy test to Cal. Const. art. I, § 13). The reasonable expectation of privacy standard supplements the historical trespass-based standard; it does not displace the historical standard. Consequently, the Fourth Amendment may apply to a search that involves either a trespass against a person or their property or a violation of a reasonable expectation of privacy. *United States v. Jones*, 565 U.S. ___, 132 S. Ct. 945, 952 (2012).

The third party doctrine developed out of two cases decided in the 1970s, *United States v. Miller*¹¹ and *Smith v. Maryland*.¹²

United States v. Miller

In *United States v. Miller*, federal agents used subpoenas prepared by the United States Attorney's office to require bank officials to produce a suspect's bank records. The Supreme Court held that this was not an "intrusion into any area in which respondent had a protected Fourth Amendment interest..."¹³

In reaching that conclusion, the Court first rejected the argument, grounded in *Boyd v. United States*,¹⁴ that the Fourth Amendment protects against "compulsory production of a man's private papers."¹⁵

Unlike the claimant in *Boyd*, respondent can assert neither ownership nor possession. Instead, these are the business records of the banks.¹⁶

The Court then considered whether defendant had a reasonable expectation of privacy with regard to his bank records. The Court quoted *Katz* for the proposition that "[w]hat a person knowingly exposes to the public ... is not a subject of Fourth Amendment protection."¹⁷ It then held that defendant had no "legitimate expectation of privacy" in his bank records, which contained only "information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business."¹⁸

11. 425 U.S. 435 (1976).

12. 442 U.S. 735 (1979).

13. *Miller*, 425 U.S. at 440.

14. 116 U.S. 622 (1886).

15. *Id.* at 440.

16. *Id.*

17. *Id.* at 442.

18. *Id.*

The depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the Government. ... This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.

Smith v. Maryland

In *Smith v. Maryland*, the police, acting without a warrant, attached a pen register to defendant's telephone line (a pen register is a device that records all numbers dialed by a telephone).

The Court held that this was not a search within the ambit of the Fourth Amendment, because defendant had no reasonable expectation of privacy as to the numbers that he dialed:

First, we doubt that people in general entertain any actual expectation of privacy in the numbers they dial. All telephone users realize that they must "convey" phone numbers to the telephone company, since it is through telephone company switching equipment that their calls are completed. All subscribers realize, moreover, that the phone company has facilities for making permanent records of the numbers they dial, for they see a list of their long-distance (toll) calls on their monthly bills. ... Telephone users, in sum, typically know that they must convey numerical information to the phone company; that the phone company has facilities for recording this information; and that the phone company does in fact record this information for a variety of legitimate business purposes. Although subjective expectations cannot be scientifically gauged, it is too much to believe that telephone subscribers, under these circumstances, harbor

any general expectation that the numbers they dial will remain secret.¹⁹

...

[The analysis in *Miller*] dictates that petitioner can claim no legitimate expectation of privacy here. When he used his phone, petitioner voluntarily conveyed numerical information to the telephone company and “exposed” that information to its equipment in the ordinary course of business. In so doing, petitioner assumed the risk that the company would reveal to police the numbers he dialed. The switching equipment that processed those numbers is merely the modern counterpart of the operator who, in an earlier day, personally completed calls for the subscriber. Petitioner concedes that if he had placed his calls through an operator, he could claim no legitimate expectation of privacy. ... We are not inclined to hold that a different constitutional result is required because the telephone company has decided to automate.²⁰

Because the Court found no “reasonable expectation of privacy” with regard to the telephone numbers dialed, government access to such information was not a search within the meaning of the Fourth Amendment.

Communication Content v. Metadata

There is some support for the proposition that the third party doctrine does not apply to the content of communications — it only applies to non-content information *about* communications (hereafter “metadata”). Under this theory, the Fourth Amendment protects the content of an email message, but not the address to which the email was delivered (which can be analogized to a

19. *Smith*, 442 U.S. at 742-43.

20. *Id.* at 744-45 (citations omitted).

telephone number dialed or the address on the outside of a mailed envelope).²¹

The Supreme Court noted the distinction between content and metadata in explaining why the use of a pen register is not a Fourth Amendment search:

[A] pen register differs significantly from the listening device employed in *Katz*, for pen registers do not acquire the *contents* of communications. This Court recently noted:

“Indeed, a law enforcement official could not even determine from the use of a pen register whether a communication existed. These devices do not hear sound. They disclose only the telephone numbers that have been dialed — a means of establishing communication. Neither the purport of any communication between the caller and the recipient of the call, their identities, nor whether the call was even completed is disclosed by pen registers.” *United States v. New York Tel. Co.*, 434 U. S. 159, 167 (1977).

But the Court did not expressly condition its holding on the content-metadata distinction. Instead, the Court analyzed whether a person has a reasonable expectation of privacy with regard to information that is voluntarily disclosed to a third party (a question which could be asked as readily about content as about metadata).

Another obstacle to the theory discussed above is that one of the seminal third party doctrine cases did not involve metadata. In *Miller*, the government accessed the *content* of a person’s bank records. The theory could perhaps be salvaged by drawing a further distinction between the content of transactional records (e.g., a check register or monthly statement) and the content of communications (e.g., a phone call or email), with the Fourth Amendment only protecting the latter. But there is no discussion of such a distinction in the cases.

21. For an extended analysis of this proposition, see O. Kerr, *Applying the Fourth Amendment to the Internet: A General Approach*, 62 Stan. L. Rev. 1005 (2010).

In sum, there does not appear to be any clear Supreme Court authority for limiting the third party doctrine to metadata. Nonetheless, there is one appellate decision that seems to adopt such a rule. In *United States v. Forrester*,²² the Ninth Circuit Court of Appeals held that the third party doctrine applies to government collection of Internet metadata (including the addresses of all email messages sent and received and all websites visited). In explaining its decision, the court asserted that the Fourth Amendment protects content but does not protect metadata:

[Email] to/from addresses and IP addresses constitute addressing information and do not necessarily reveal any more about the underlying contents of communication than do phone numbers. When the government obtains the to/from addresses of a person's e-mails or the IP addresses of websites visited, it does not find out the contents of the messages or know the particular pages on the websites the person viewed. At best, the government may make educated guesses about what was said in the messages or viewed on the websites based on its knowledge of the e-mail to/from addresses and IP addresses — but this is no different from speculation about the contents of a phone conversation on the basis of the identity of the person or entity that was dialed. Like IP addresses, certain phone numbers may strongly indicate the underlying contents of the communication; for example, the government would know that a person who dialed the phone number of a chemicals company or a gun shop was likely seeking information about chemicals or firearms. Further, when an individual dials a pre-recorded information or subject-specific line, such as sports scores, lottery results or phone sex lines, the phone number may even show that the caller had access to specific content information. Nonetheless, the Court in *Smith* and *Katz* drew a clear line between

22. 512 F.3d 500 (9th Cir. 2008).

unprotected addressing information and protected content information that the government did not cross here.²³

Finally, in *United States v. Warshak*,²⁴ the Sixth Circuit Court of Appeals held that the Fourth Amendment protects the content of email messages, just as it does the content of telephone calls and mailed letters. The court rejected an argument that the third party doctrine defeats any reasonable expectation of privacy as to the content of email. In doing so, the court did not discuss the distinction between content and metadata. Instead, it emphasized that emails are voluntarily disclosed to an Internet Service Provider solely for the purpose of transmission. The ISP acts as a communication intermediary (which the court analogized to a telephone company or the post office). It is not the intended recipient of the information.

That argument is sufficient to distinguish email from the bank records at issue in *Miller* (where the bank was the intended recipient of the information contained in the records). But it does not suffice to distinguish *Smith* (where the phone company received telephone dialing information solely as a communication intermediary).

In conclusion, there is an argument to be made that the third party doctrine does not apply to the content of electronic communications, just as it does not apply to the content of a telephone call. But the Supreme Court has not yet squarely endorsed that position.

Recent Supreme Court Developments

Although the Supreme Court has not modified the application of the third party doctrine to modern electronic communications, there are some indications that it may be prepared to do so.

23. *Id.* at 510-11 (emphasis added) (footnotes omitted).

24. 631 F.3d 266 (6th Cir. 2010).

In *United States v. Jones*,²⁵ a recent case involving location tracking devices, Justice Sotomayor raised that possibility:

[I]t may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties. ... This approach is ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks. People disclose the phone numbers that they dial or text to their cellular providers; the URLs that they visit and the e-mail addresses with which they correspond to their Internet service providers; and the books, groceries, and medications they purchase to online retailers. Perhaps, as Justice Alito notes, some people may find the “tradeoff” of privacy for convenience “worthwhile,” or come to accept this “diminution of privacy” as “inevitable,” ... and perhaps not. I for one doubt that people would accept without complaint the warrantless disclosure to the Government of a list of every Web site they had visited in the last week, or month, or year. But whatever the societal expectations, they can attain constitutionally protected status only if our Fourth Amendment jurisprudence ceases to treat secrecy as a prerequisite for privacy. I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection.²⁶

In the same case, a concurrence joined by five justices strongly suggested that there can be a reasonable expectation of privacy, for Fourth Amendment purposes, with respect to location tracking information that is generated by a mobile communication device.²⁷ That conclusion seems incompatible with the third party doctrine;

25. 565 U.S. ___, 132 S. Ct. 945 (2012).

26. *Id.* (Sotomayor, J., concurring).

27. *Id.* (Alito, J., concurring).

location tracking information is metadata that is disclosed voluntarily to a third party service provider. If, as the concurrence maintains, the Fourth Amendment applies to such information, then the third party doctrine must be inapplicable.

More recently, the Court held that the Fourth Amendment applies to a police search of the contents of a cell phone, incident to a lawful arrest.²⁸ As part of its analysis, the Court analyzed the privacy expectations that a person has with respect to the contents of a cell phone. In its analysis, the Court does not mention that much of the information contained within a cell phone has been voluntarily shared with third parties. Nor did it draw a clear distinction between content and metadata. Significantly, the Court expressly rejected a government-proposed exception to the warrant requirement for phone dialing information. Such an exception would be easily administered and would seem to fall squarely within the ambit of the existing third party doctrine. Importantly, such an exception would have changed the results in one of the cases under review, which primarily involved access to phone dialing information. The fact that the Court chose not to adopt the proposed exception casts doubt on the continued force of the third party doctrine when applied to modern electronic communication information.

Third Parties and Article I, Section 13 of the California Constitution

As noted above, Article I, Section 13 of the California Constitution provides protection that is very similar to the Fourth Amendment. However, there is one important difference. The California Supreme Court has held that Article I, Section 13 is not limited by an equivalent of the federal third party doctrine.

Before discussing that point further, it is worth discussing how Article I, Section 13 was affected by Proposition 8.

28. *Riley v. California*, 573 U.S. ___, 134 S. Ct. 2473 (2014).

Proposition 8 — “Right to Truth-in-Evidence”

In 1982, the voters approved Proposition 8, which added Article I, Section 28 of the California Constitution. Among other things, Section 28 provides that the People of California have the following right:

Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.²⁹

As a consequence of that new right, relevant evidence that is obtained in violation of the California Constitution is nonetheless admissible in a criminal proceeding, unless it falls within an exception to Section 28 or it was also obtained in violation of the United States Constitution.³⁰ Consequently, evidence that is obtained in violation of Article I, Section 13 cannot be excluded at trial, unless it also violated the Fourth Amendment.

The California Supreme Court has made clear that Proposition 8 did not eliminate the substantive right that is provided in Article I, Section 13.³¹ It simply narrowed the remedies that are available to address a violation of that right:

29. Cal. Const. art 1, § 28(f)(2).

30. *In re Lance W.*, 37 Cal. 3d 873 (1985).

31. Proposition 115 (June 5, 1990), would have directly limited the scope of the rights provided by Article I, Section 13. The California Supreme Court held that it was improperly adopted and without effect. See *Raven v. Deukmejian*, 52 Cal. 3d 336 (1990).

What would have been an unlawful search or seizure in this state before the passage of that initiative would be unlawful today, and this is so even if it would pass muster under the federal constitution. What Proposition 8 does is to eliminate a judicially created remedy for violations of the federal or state constitutions, through the exclusion of the evidence so obtained, except to the extent that exclusion remains federally compelled.³²

For that reason, Article I, Section 13 continues to provide an independent constitutional constraint on government searches. As discussed below, the protection afforded by Article I, Section 13 is significantly greater than that afforded by the Fourth Amendment.

Article I, Section 13 Is Not Subject to Third Party Doctrine

In construing Article I, Section 13, the California Supreme Court has rejected the federal third party doctrine.

In *Burrows v. Superior Court*,³³ the Court held that a person can have a reasonable expectation of privacy with regard to that person's bank records.

It cannot be gainsaid that the customer of a bank expects that the documents, such as checks, which he transmits to the bank in the course of his business operations, will remain private, and that such an expectation is reasonable. The prosecution concedes as much, although it asserts that this expectation is not constitutionally cognizable. Representatives of several banks testified at the suppression hearing that information in their possession regarding a customer's account is deemed by them to be confidential.

... A bank customer's reasonable expectation is that, absent compulsion by legal process, the matters he reveals to the bank will be utilized by the bank only for internal banking purposes. Thus, we hold petitioner had a reasonable expectation that the bank would maintain the

32. *Id.* at 886-87.

33. 13 Cal. 3d 238 (1974).

confidentiality of those papers which originated with him in check form and of the bank statements into which a record of those same checks had been transformed pursuant to internal bank practice.³⁴

The fact that the bank has a proprietary interest in its own records does not affect the customer's reasonable expectation of privacy:

The mere fact that the bank purports to own the records which it provided to the detective is not, in our view, determinative of the issue at stake. The disclosure by the depositor to the bank is made for the limited purpose of facilitating the conduct of his financial affairs; it seems evident that his expectation of privacy is not diminished by the bank's retention of a record of such disclosures.³⁵

Furthermore, records of a customer's financial transactions are an unavoidable part of modern life, which provide a "virtual current biography" of the customer:

For all practical purposes, the disclosure by individuals or business firms of their financial affairs to a bank is not entirely volitional, since it is impossible to participate in the economic life of contemporary society without maintaining a bank account. In the course of such dealings, a depositor reveals many aspects of his personal affairs, opinions, habits and associations. Indeed, the totality of bank records provides a virtual current biography. While we are concerned in the present case only with bank statements, the logical extension of the contention that the bank's ownership of records permits free access to them by any police officer extends far beyond such statements to checks, savings, bonds, loan applications, loan guarantees, and all papers which the customer has supplied to the bank to facilitate the conduct of his financial affairs upon the

34. *Id.* at 243.

35. *Id.* at 244.

reasonable assumption that the information would remain confidential. To permit a police officer access to these records merely upon his request, without any judicial control as to relevancy or other traditional requirements of legal process, and to allow the evidence to be used in any subsequent criminal prosecution against a defendant, opens the door to a vast and unlimited range of very real abuses of police power.

Cases are legion that condemn violent searches and invasions of an individual's right to the privacy of his dwelling. The imposition upon privacy, although perhaps not so dramatic, may be equally devastating when other methods are employed. Development of photocopying machines, electronic computers and other sophisticated instruments have accelerated the ability of government to intrude into areas which a person normally chooses to exclude from prying eyes and inquisitive minds. Consequently judicial interpretations of the reach of the constitutional protection of individual privacy must keep pace with the perils created by these new devices.³⁶

In *California v. Blair*,³⁷ the California Supreme Court extended the reasoning of *Burrows* to records of credit card use and telephone numbers dialed. In both cases, the defendant had a reasonable expectation of privacy under the California Constitution:

The rationale of *Burrows* applies in a comparable manner to information regarding charges made by a credit card holder. As with bank statements, a person who uses a credit card may reveal his habits, his opinions, his tastes, and political views, as well as his movements and financial affairs. No less than a bank statement, the charges made on a credit card may provide "a virtual current biography" of an individual. ...

36. *Id.* at 247-48.

37. 25 Cal. 3d 640 (1979).

A credit card holder would reasonably expect that the information about him disclosed by those charges will be kept confidential unless disclosure is compelled by legal process. The pervasive use of credit cards for an ever-expanding variety of purposes — business, social, personal, familial — and the intimate nature of the information revealed by the charges amply justify this conclusion.³⁸

The same principle was found to be true for telephone number dialing records:

[A] telephone subscriber has a reasonable expectation that the calls he makes will be utilized only for the accounting functions of the telephone company and that he cannot anticipate that his personal life, as disclosed by the calls he makes and receives, will be disclosed to outsiders without legal process. As with bank records, concluded the court, it is virtually impossible for an individual or business entity to function in the modern economy without a telephone, and a record of telephone calls also provides “a virtual current biography.”³⁹

In *People v. Chapman*,⁴⁰ the court reaffirmed its reasoning in *Burrows* and *Blair* and held that a person has a reasonable expectation of privacy with regard to a name and address associated with an unlisted telephone number, notwithstanding the fact that such information was voluntarily provided to the telephone company.

In summary, the cases discussed above state four main reasons why voluntarily providing information to a third party for a limited purpose does not defeat a reasonable expectation of privacy regarding that information:

- It is reasonable to assume that private information provided to a third party will be used only for the

38. *Id.* at 652.

39. *Id.* at 653.

40. 36 Cal. 3d 98 (1984).

limited purpose for which it is provided. The third party will not disclose that information to outsiders (absent legal compulsion).

- The fact that a third party professes a proprietary interest in information provided by a customer does not affect the customer's reasonable expectation of privacy.
- In many cases, providing private information to a third party is "not entirely volitional" because doing so is a practical necessity of modern life.
- Information provided to a third party for a limited purpose may reveal "many aspects of [one's] personal affairs, opinions, habits and associations," providing a "virtual current biography." Such information is deserving of protection from unreasonable government intrusion.

Importantly, these cases find that there can be a reasonable expectation of privacy even with regard to metadata like telephone numbers dialed. If this is true for metadata, then it must also be true for content (which provides a much richer "virtual private biography" than is provided by telephone number dialing records alone). This removes a major obstacle to applying Article I, Section 13 to modern electronic communications.

Additional Considerations in Special Cases

Interception of Communications

In general, the Fourth Amendment requires that a search be authorized in advance by a warrant that is issued by a neutral magistrate, based upon probable cause. In addition, the warrant must particularly describe the place to be searched and the person or things to be seized. The particularity requirements constrain the scope of the search. Law enforcement is not free to search anywhere or to continue searching after the items being sought have been found. Ordinarily, the person whose privacy is invaded by a search receives contemporaneous notice of the search.

Those general requirements pose special problems when applied to the interception of communications (i.e., eavesdropping, wiretapping, or other prospective interception of future communications). Interception involves a broad and indiscriminate invasion of privacy, sweeping in both material and immaterial information. The likelihood that interception will invade areas of privacy unrelated to the purpose of the warrant increases with the duration of the interception, which could be open-ended.

In *Berger v. New York*,⁴¹ the United States Supreme Court held that the particularity requirements for an interception warrant are greater than those for a regular search warrant. It is not sufficient to identify the person whose communications will be intercepted.

[T]his does no more than identify the person whose constitutionally protected area is to be invaded, rather than “particularly describing” the communications, conversations, or discussions to be seized. As with general warrants, this leaves too much to the discretion of the officer executing the order.⁴²

The Court also held that the period of interception must be limited and a new showing of probable cause must be made to justify an extension. Otherwise, an interception warrant would effectively authorize a series of searches, all grounded on the original showing of probable cause.⁴³

Finally, the Court objected to the absence of notice to the target of the interception, without some showing of exigency to justify the unconsented intrusion. “Such a showing of exigency, in order to avoid notice, would appear more important in eavesdropping, with its inherent dangers, than that required when conventional procedures of search and seizure are utilized.”

In summary, an interception warrant must meet the general requirements for issuance of a search warrant under the Fourth

41. 388 U.S. 41 (1967).

42. *Id.* at 59.

43. *Id.* at 59-60.

Amendment, and must also particularly identify the communications that are being sought, limit the duration of the interception (with a new showing of probable cause to justify an extension), and demonstrate sufficient exigency to justify interception without notice to the target of the interception. As discussed later in this report, these so-called “super-warrant” requirements were codified in the federal wiretap statute.⁴⁴

Location Tracking

There are two general ways that communication service providers can track the location of cell phones and other mobile communication devices:

- (1) *Cell tower triangulation.* Cell service providers are able to approximate the location of a cell phone, by applying a triangulation algorithm to data about the phone’s communication with nearby cell towers.⁴⁵
- (2) *Global positioning system (GPS) data.* Many cell phones and other mobile communication devices are capable of determining the precise location of the device by using the GPS satellite system.⁴⁶

44. See discussion of “Federal Statutory Law — Interception of Communications” *infra*.

45. Congressional Research Service, *Governmental Tracking of Cell Phones and Vehicles: The Confluence of Privacy, Technology, and Law* at 8, n.60 (2011) (“There are two distinct technologies used to locate a cell phone through a network: time difference of arrival and the angle of arrival. ... The time difference technology measures the time it takes for a signal to travel from the cell phone to the tower. When multiple towers pick up this signal, an algorithm allows the network to determine the phone’s latitude and longitude. ... The angle of arrival technology uses the angles at which a phone’s signal reaches a station. When more than one tower receives the signal, the network compares this data the multiple angles of arrival and triangulates the location of the cell phone.”).

46. *Id.* (“GPS, or Global Positioning System, is a system of 24 satellites that constantly orbit Earth. ... When hardware inside the cell phone receives signals from at least four of these satellites, the handset can calculate its latitude and longitude to within 10 meters.”).

The information used by service providers to determine the location of a mobile communication device is metadata. It describes the status of the communication device, without disclosing the content of any communication. It is also information that is voluntarily disclosed to the communication provider. Thus, location data would seem to fall squarely within the federal third party doctrine.

This suggests that there is no reasonable expectation of privacy with respect to location data, sufficient to trigger the application of the Fourth Amendment.⁴⁷ However, as discussed above, the protection afforded by Article I, Section 13 of the California Constitution is not limited by the third party doctrine. Therefore, a person could have a reasonable expectation of privacy with regard to location tracking information for the purposes of Article I, Section 13.

However, there is another potential limitation on a person's reasonable expectations of privacy with regard to location tracking. The United States Supreme Court has held that a person does not have a reasonable expectation of privacy as to the person's movements within a public space. Such movements are open to observation by any person, including police. "A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another."⁴⁸ That limitation on privacy does not apply to information about a person's location within private areas.⁴⁹

Notwithstanding the diminished expectation of privacy with regard to movement in public areas, five Supreme Court Justices recently indicated, in *dicta*, that a prolonged period of location

47. However, as discussed under "Recent Supreme Court Developments" *supra*, five justices of the United States Supreme Court have indicated, in *dicta*, that the Fourth Amendment does apply to location tracking of a sufficiently-long duration.

48. United States v. Knotts, 460 U.S. 276, 281 (1983).

49. United States v. Karo, 468 U.S. 705, 714-15 (1984).

tracking can violate reasonable expectations of privacy under the Fourth Amendment.

The best that we can do in this case is to apply existing Fourth Amendment doctrine and to ask whether the use of GPS tracking in a particular case involved a degree of intrusion that a reasonable person would not have anticipated.

Under this approach, relatively short-term monitoring of a person's movements on public streets accords with expectations of privacy that our society has recognized as reasonable. See *Knotts*.... But the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy. For such offenses, society's expectation has been that law enforcement agents and others would not — and indeed, in the main, simply could not secretly monitor and catalogue every single movement of an individual's car for a very long period. In this case, for four weeks, law enforcement agents tracked every movement that respondent made in the vehicle he was driving. We need not identify with precision the point at which the tracking of this vehicle became a search, for the line was surely crossed before the 4-week mark. Other cases may present more difficult questions. But where uncertainty exists with respect to whether a certain period of GPS surveillance is long enough to constitute a Fourth Amendment search, the police may always seek a warrant. ... We also need not consider whether prolonged GPS monitoring in the context of investigations involving extraordinary offenses would similarly intrude on a constitutionally protected sphere of privacy. In such cases, long-term tracking might have been mounted using previously available techniques.

For these reasons, I conclude that the lengthy monitoring that occurred in this case constituted a search under the Fourth Amendment.⁵⁰

50. *United States v. Jones*, 565 U.S. ___, 132 S. Ct. at 964 (Alito, J., concurring); *id.* at 955 (Sotomayor, J., concurring) (“I agree with Justice Alito

Notably, the Court reached that conclusion even though location tracking information is metadata that is voluntarily shared with a third party.

Investigative Subpoena

A warrant is not the only constitutionally sufficient authority to conduct a search that is governed by the Fourth Amendment and Article I, Section 13 of the California Constitution. In some circumstances, a search pursuant to an investigative subpoena *duces tecum*,⁵¹ issued by a grand jury or a government agency, can also be constitutionally reasonable.

The Supreme Court has held that the use of a subpoena by a grand jury is permitted under the Fourth Amendment. There is no need for the grand jury to demonstrate probable cause in order to issue a subpoena:

[T]he Government cannot be required to justify the issuance of a grand jury subpoena by presenting evidence sufficient to establish probable cause because the very purpose of requesting the information is to ascertain whether probable cause exists.⁵²

However, a grand jury subpoena must be reasonable. In *Hale v. Henkel*, the Court held that a grand jury's subpoena *duces tecum* was unreasonable under the Fourth Amendment because it was "too sweeping in its terms" and violated "the general principle of law with regard to the particularity required in the description of documents necessary to a search warrant or subpoena."⁵³

The same general principles apply to a subpoena *duces tecum* issued by a government agency that is investigating a possible violation of the laws that it enforces. The use of such a subpoena to

that, at the very least, 'longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy.'").

51. This report does not consider the use of a subpoena as an instrument of discovery in a pending adjudicative proceeding.

52. *United States v. R. Enterprises, Inc.*, 498 U.S. 292, 297 (1991).

53. 201 U.S. 43, 76-77 (1906).

compel the production of evidence (rather than a warrant) does not violate the Fourth Amendment, so long as the subpoena is authorized, sufficiently definite, and reasonable:

Insofar as the prohibition against unreasonable searches and seizures can be said to apply at all it requires only that the inquiry be one which the agency demanding production is authorized to make, that the demand be not too indefinite, and that the information sought be reasonably relevant.⁵⁴

However, there is a limitation on the constitutional use of an investigative subpoena to compel the production of records: “the subject of the search must be given an opportunity for precompliance review before a neutral decisionmaker.”⁵⁵ The rationale for that requirement is explained in a decision of the Fourth Circuit Court of Appeal:

While the Fourth Amendment protects people “against unreasonable searches and seizures,” it imposes a probable cause requirement only on the issuance of warrants. Thus, unless subpoenas are warrants, they are limited by the general reasonableness standard of the Fourth Amendment (protecting the people against “unreasonable searches and seizures”), not by the probable cause requirement.

A warrant is a judicial authorization to a law enforcement officer to search or seize persons or things. To preserve advantages of speed and surprise, the order is issued without prior notice and is executed, often by force, with an unannounced and unanticipated physical intrusion. Because this intrusion is both an immediate and substantial invasion of privacy, a warrant may be issued only by a judicial

54. *Brovelli v. Superior Court*, 56 Cal. 2d 524, 529 (1961) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 651-54 (1950)); see also *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208 (1946) (“The gist of the protection is in the requirement, expressed in terms, that the disclosure sought shall not be unreasonable.”).

55. *City of Los Angeles v. Patel*, ___ U.S. ___, 135 S. Ct. 2443 (2015).

officer upon a demonstration of probable cause — the safeguard required by the Fourth Amendment.

A subpoena, on the other hand, commences an adversary process during which the person served with the subpoena may challenge it in court before complying with its demands. As judicial process is afforded before any intrusion occurs, the proposed intrusion is regulated by, and its justification derives from, that process.

In short, the immediacy and intrusiveness of a search and seizure conducted pursuant to a warrant demand the safeguard of demonstrating probable cause to a neutral judicial officer before the warrant issues, whereas the issuance of a subpoena initiates an adversary process that can command the production of documents and things only after judicial process is afforded. And while a challenge to a warrant questions the actual search or seizure under the probable cause standard, a challenge to a subpoena is conducted through the adversarial process, questioning the reasonableness of the subpoena's command.⁵⁶

Advance notice and an opportunity for judicial review before records are searched are a routine feature of the procedure for issuance and execution of an investigative subpoena *duces tecum*,⁵⁷ when the subpoena is used to search records that are held by the person whose records are to be searched. But when a subpoena is

56. *In re Subpoena Duces Tecum*, 228 F.3d 341, 347-48 (4th. Cir. 2000) (citations omitted) (emphasis added). See also *People v. West Coast Shows, Inc.*, 10 Cal. App. 3d 462, 470, (1970) (“the Government Code provides an opportunity for adjudication of all claimed constitutional and legal rights before one is required to obey the command of a subpoena *duces tecum* issued for investigative purposes”).

57. See *People v. Blair*, 25 Cal. 3d 640, 651 (1979) (“The issuance of a subpoena *duces tecum* [by a grand jury] pursuant to section 1326 of the Penal Code ... is purely a ministerial act and does not constitute legal process in the sense that it entitles the person on whose behalf it is issued to obtain access to the records described therein until a judicial determination has been made that the person is legally entitled to receive them.”); Gov’t Code § 11188 (judicial hearing to review and enforce administrative subpoena).

instead served on a third party service provider, to search a customer's records, that customer may not receive any notice of the search or an opportunity for judicial review of the constitutionality of the search. In such a situation, only the service provider would have an opportunity for judicial review of the subpoena. Often, the service provider would not be an adequate surrogate to protect the interests of the customer. The service provider may have no reason to object to the search, is sometimes shielded from liability for complying with the subpoena, and in some circumstances, may be legally prohibited from notifying the customer.

It is not clear how common it would be for customer records to be produced pursuant to an investigative subpoena, without prior notice to the customer. Even if notice is not required by statute, a service provider will often have practical incentives to provide notice to its customer before complying with an investigative subpoena that demands the production of the customer's records. For example, the production of a customer's records without notice to the customer could expose the service provider to liability for violating the customer's legally-protected privacy rights or for breaching a service agreement that promises to protect customer privacy. Nonetheless, it is possible that a service provider could comply with an investigative subpoena without notifying the affected customer. Further, in unusual circumstances, a court may require the production of records without prior notice to the customer.⁵⁸

The Commission has not found any case of the United States or California Supreme Courts expressly holding that the use of an investigative subpoena *duces tecum*, without notice to the person whose records are to be searched, would violate the Fourth Amendment or Article I, Section 13 of the California Constitution. However, that conclusion could perhaps be drawn from the cases that explain why the use of a subpoena is constitutionally permissible.

58. See, e.g., 18 U.S.C. § 2705(b), Gov't Code § 7474(b).

Summary of Search and Seizure Requirements

Electronic communications generally protected. The Fourth Amendment and Article I, Section 13 of the California Constitution protect a person's reasonable expectations of privacy with regard to that person's electronic communications.

Third party doctrine limits Fourth Amendment protections. Under the Fourth Amendment, there is no reasonable expectation of privacy with regard to information that is voluntarily provided to a third party. There are some indications that this third party doctrine may only apply to metadata (i.e., it does not apply to the content of communications), but that is not certain. There are also indications that the United States Supreme Court may be moving toward reconsideration of the third party doctrine with regard to modern electronic communications, but it has not yet done so.

Third party doctrine inapplicable to the California Constitution. Article I, Section 13 of the California Constitution is not subject to the third party doctrine. The California Supreme Court has held that there can be a reasonable expectation of privacy with respect to information disclosed to a third party, where the disclosure is not truly volitional (because it is a practical necessity of modern life); where the information was provided for a limited purpose, with an expectation that it will not be shared with others (absent legal compulsion); and where the information would provide details about a person's private life akin to a "virtual current biography." Such information includes bank records, telephone numbers dialed, credit card transaction data, and the identity of a person associated with an unlisted telephone number.

Interception of communications subject to "super-warrant" requirements. The interception of communications poses special problems with respect to the requirements of the Fourth Amendment. Interception could invade the privacy of communications that are beyond the scope of the authority provided in a warrant. An interception of long duration could be the equivalent of a series of searches, with a finding of probable

cause only as to the first. Interception without notice to the subject of the interception requires some showing of exigency. Those problems require the inclusion of special limitations in an interception warrant. Such “super-warrant” limitations have been codified in the federal wiretap statute.⁵⁹

Movement in public areas. A person has a diminished expectation of privacy with regard to the person’s movements in public areas. For that reason, location tracking within public areas may not be a search within the meaning of the Fourth Amendment. However, continuous location tracking for an extended period (e.g., four weeks) would likely be considered a search under the Fourth Amendment.

Investigative subpoena. Under the Fourth Amendment and Article I, Section 13 of the California Constitution, an investigative subpoena *duces tecum* issued by a grand jury or by a government agency may provide sufficient authority to conduct a constitutionally reasonable records search. The standard for review of such a subpoena examines whether it is lawfully issued, whether it is too indefinite, and whether the information sought is reasonably relevant to its purpose. When an investigative subpoena is served on the person whose records will be searched, that person has notice and an opportunity for judicial review of the constitutionality of the search, before any records are seized. That opportunity for precompliance review by a neutral is essential when using an investigative subpoena to conduct a record search, rather than a warrant. However, it is not clear that service of such a subpoena on a third party service provider, without notice to the customer whose records would be searched, is constitutionally sufficient. That issue has not been squarely decided.

59. See discussion of “Federal Statutory Law — Interception of Communications” *infra*.

Freedom of Expression

The First Amendment to the United States Constitution expressly protects the freedom of speech:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The First Amendment is applicable to the states.⁶⁰

The California Constitution also expressly protects freedom of speech, in Article I, Section 2(a):

Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

Government surveillance of electronic communications does not directly restrain speech or association. However, such surveillance could indirectly affect expression, in ways that can violate free expression rights. “Freedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference.”⁶¹

This report discusses five ways in which government surveillance of electronic communications could indirectly restrain free speech or association:

- (1) *Associational privacy*. The Internet enables the formation of private groups for the discussion and

60. *Near v. Minnesota*, 283 U.S. 697, 707 (1931) (“It is no longer open to doubt that the liberty of the press, and of speech, is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action. It was found impossible to conclude that this essential personal liberty of the citizen was left unprotected by the general guaranty of fundamental rights of person and property.”).

61. *Bates v. Little Rock*, 361 U.S. at 523.

advancement of ideas. If the government can determine the identity of the participants in an online discussion forum, it could chill the free association of those who wish to “gather” online for the purpose of private group discussions.

- (2) *Anonymous speech.* The Internet makes it very easy for a person to make public statements anonymously. If the government can determine the identity of a person associated with an anonymous user name on an Internet discussion forum, that could chill the free expression of those who are only comfortable speaking anonymously.
- (3) *Reader privacy.* The Internet is an extremely important source of information and opinion. If the government can access a person’s communication data, it could determine what content a person has been reading or viewing. This invasion of a reader’s privacy could chill the right to read unpopular or embarrassing material.
- (4) *Private speech.* Electronic communications are an increasingly important conduit for protected speech. If government is known to directly monitor electronic communications, that surveillance could have a chilling effect on expressive activity.
- (5) *Press confidentiality.* Increasingly, journalists are using the Internet, both as a place to publish and a tool for research and for confidential communication with sources. Government access to a journalist’s private electronic communications could reveal confidential sources and methods, chilling press freedom.

Associational Privacy

In *National Association for the Advancement of Colored People v. Alabama*,⁶² a discovery order required the NAACP to produce a

62. 357 U.S. 449 (1958) (hereafter “NAACP v. Alabama”).

full list of its Alabama membership. The NAACP refused to do so and was found to be in contempt. The matter was eventually appealed to the United States Supreme Court, which held that compelled production of the group's membership list would unconstitutionally infringe on the members' rights of free association.

The Court first explained that the Constitution protects the right of free association, which is enforceable against the states under the Fourteenth Amendment:

Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. ... It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. ... Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.⁶³

The Court then explained that government invasion of the privacy of group affiliation can indirectly violate the right of free association:

The fact that Alabama, so far as is relevant to the validity of the contempt judgment presently under review, has taken no direct action ... to restrict the right of petitioner's members to associate freely, does not end inquiry into the effect of the production order. ... In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may

63. *NAACP v. Alabama*, 357 U.S. at 460-61.

inevitably follow from varied forms of governmental action. Thus in [*American Communications Assn. v. Douds*, 339 U.S. 382 (1950)], the Court stressed that the legislation there challenged, which on its face sought to regulate labor unions and to secure stability in interstate commerce, would have the practical effect “of discouraging” the exercise of constitutionally protected political rights, ... and it upheld the statute only after concluding that the reasons advanced for its enactment were constitutionally sufficient to justify its possible deterrent effect upon such freedoms. Similar recognition of possible unconstitutional intimidation of the free exercise of the right to advocate underlay this Court’s narrow construction of the authority of a congressional committee investigating lobbying and of an Act regulating lobbying, although in neither case was there an effort to suppress speech. ... The governmental action challenged may appear to be totally unrelated to protected liberties. Statutes imposing taxes upon rather than prohibiting particular activity have been struck down when perceived to have the consequence of unduly curtailing the liberty of freedom of press assured under the Fourteenth Amendment.

It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one’s associations. When referring to the varied forms of governmental action which might interfere with freedom of assembly, it said in *American Communications Assn. v. Douds*...: “A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature.” Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order. Inviolability of privacy in group association may in many circumstances be indispensable to

preservation of freedom of association, particularly where a group espouses dissident beliefs.⁶⁴

Based on that reasoning, the Court held that the state court order compelling production of the NAACP's membership list "must be regarded as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association."⁶⁵ Such a restraint must be justified by a compelling state interest.⁶⁶

It is easy to foresee situations in which government surveillance of electronic communications could invade the right of associational privacy. The Internet has become an important extension of the public square and many advocacy organizations will "meet" to discuss their business in private online groups. A government demand that a communication service provider disclose the identities of the members of an online discussion group could have the same kind of deleterious effect on association and expression that was at issue in *NAACP v. Alabama*.

It is also possible that location tracking data could be used to invade associational privacy. For example, if the government knows that a particular group will be meeting in a certain building at a certain time, location tracking data could be used to determine who is present at the time of the meeting.⁶⁷

64. *Id.* at 461-62.

65. *Id.* at 462.

66. *Id.* at 463.

67. For example, it has been reported that the National Security Agency collects billions of bits of cell phone location data daily, and uses the information to "infer relationships" between co-located persons. <<http://www.washingtonpost.com/blogs/the-switch/wp/2013/12/10/new-documents-show-how-the-nsa-infers-relationships-based-on-mobile-location-data/>>

Anonymous Speech

In *Talley v. California*,⁶⁸ the United States Supreme Court held that the right of free expression includes the right to speak anonymously.⁶⁹ The case involved a municipal ordinance that forbade the distribution of any handbill that did not state the name and address of the person who prepared, distributed, or sponsored it.

The Court first discussed prior cases in which it held that a complete prohibition on the public distribution of printed literature violated the constitutional right of freedom of speech.⁷⁰ It then considered whether a narrower prohibition, on the distribution of *anonymous* literature, would be constitutional.

The Court had “no doubt” that requiring the source of a pamphlet to be identified “would tend to restrict freedom to distribute information and therefore freedom of expression.”⁷¹

Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all. The obnoxious press licensing law of England, which was also enforced on the Colonies, was due in part to the knowledge that exposure of the names of printers, writers and distributors would lessen the circulation of literature critical of the government. The old seditious libel cases in England show the lengths to which government had to go to find out who was responsible for books that were obnoxious to the rulers. John Lilburne was whipped, pilloried and fined for refusing to answer questions designed to get evidence to convict him or someone else for the secret distribution of

68. 362 U.S. 60 (1960).

69. See also *Huntley v. Public Utilities Com.*, 69 Cal. 2d 67 (1968) (invalidating requirement that recorded messages identify their source).

70. *Id.* at 62-63.

71. *Id.* at 64.

books in England. Two Puritan Ministers, John Penry and John Udal, were sentenced to death on charges that they were responsible for writing, printing or publishing books. ... Before the Revolutionary War colonial patriots frequently had to conceal their authorship or distribution of literature that easily could have brought down on them prosecutions by English-controlled courts. Along about that time the Letters of Junius were written and the identity of their author is unknown to this day. ... Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes.

We have recently had occasion to hold in two cases that there are times and circumstances when States may not compel members of groups engaged in the dissemination of ideas to be publicly identified. *Bates v. Little Rock*, 361 U.S. 516; *N. A. A. C. P. v. Alabama*, 357 U.S. 449, 462. The reason for those holdings was that identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance. This broad Los Angeles ordinance is subject to the same infirmity. We hold that it, like the Griffin, Georgia, ordinance [generally prohibiting the public distribution of printed literature], is void on its face.⁷²

The Internet provides an ideal forum for anonymous speech. There are many public and private discussion sites that support the use of pseudonyms. If state or local agencies could access the customer records of the entities that maintain such sites, they could

72. *Id.* at 65 (footnotes omitted). See also *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 357 (1995) (“Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority. ... It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation — and their ideas from suppression — at the hand of an intolerant society.”).

learn the true identity of those who have chosen to speak anonymously. While that would not prohibit or punish anonymous speech, it could well deter it.

Reader Privacy

The right of free speech includes the right to receive and read the speech of others.⁷³ And, just as the Constitution protects anonymous speech, the Constitution also protects a right of privacy as to what one reads.

In *United States v. Rumely*,⁷⁴ the Court was presented with the question of whether a congressional investigating committee could constitutionally compel a publisher to disclose the identities of those who bought certain books. The Court did not ultimately answer that question, deciding the case on other grounds,⁷⁵ but a concurring opinion authored by Justice Douglas provides a cogent argument in favor of constitutional protection of reader privacy:

If the present inquiry were sanctioned, the press would be subjected to harassment that in practical effect might be as serious as censorship. A publisher, compelled to register with the Federal Government, would be subjected to vexatious inquiries. A requirement that a publisher disclose

73. *Stanley v. Georgia*, 394 U.S. 557, 565 (1969) ("If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch."). See also *Lamont v. Postmaster General*, 381 U.S. 301, 307-08 (Brennan, J., concurring) ("I think the right to receive publications is such a fundamental right. The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.").

74. 345 U.S. 41 (1953).

75. *Id.* at 47 ("Grave constitutional questions are matters properly to be decided by this Court but only when they inescapably come before us for adjudication. Until then it is our duty to abstain from marking the boundaries of congressional power or delimiting the protection guaranteed by the First Amendment. Only by such self-restraint will we avoid the mischief which has followed occasional departures from the principles which we profess.").

the identity of those who buy his books, pamphlets, or papers is indeed the beginning of surveillance of the press. True, no legal sanction is involved here. Congress has imposed no tax, established no board of censors, instituted no licensing system. But the potential restraint is equally severe. The finger of government leveled against the press is ominous. Once the government can demand of a publisher the names of the purchasers of his publications, the free press as we know it disappears. Then the spectre of a government agent will look over the shoulder of everyone who reads. The purchase of a book or pamphlet today may result in a subpoena tomorrow. Fear of criticism goes with every person into the bookstall. The subtle, imponderable pressures of the orthodox lay hold. Some will fear to read what is unpopular, what the powers-that-be dislike. When the light of publicity may reach any student, any teacher, inquiry will be discouraged. The books and pamphlets that are critical of the administration, that preach an unpopular policy in domestic or foreign affairs, that are in disrepute in the orthodox school of thought will be suspect and subject to investigation. The press and its readers will pay a heavy price in harassment. But that will be minor in comparison with the menace of the shadow which government will cast over literature that does not follow the dominant party line. If the lady from Toledo can be required to disclose what she read yesterday and what she will read tomorrow, fear will take the place of freedom in the libraries, book stores, and homes of the land. Through the harassment of hearings, investigations, reports, and subpoenas government will hold a club over speech and over the press. Congress could not do this by law.⁷⁶

A few years later, in *Lamont v. Postmaster General*,⁷⁷ the Supreme Court considered the constitutionality of a statute requiring that persons file a formal request with the Postal Service

76. *Id.* at 56-58 (Douglas, J., concurring).

77. 381 U.S. 301 (1965).

as a prerequisite to receiving certain “communist propaganda” by mail. In effect, this required recipients of such material to expressly affirm to the government their interest in reading it.

The Court found the statute to violate the *recipient’s* constitutional right of free speech:

This amounts in our judgment to an unconstitutional abridgment of the addressee’s First Amendment rights. The addressee carries an affirmative obligation which we do not think the Government may impose on him. This requirement is almost certain to have a deterrent effect, especially as respects those who have sensitive positions. Their livelihood may be dependent on a security clearance. Public officials, like schoolteachers who have no tenure, might think they would invite disaster if they read what the Federal Government says contains the seeds of treason. Apart from them, any addressee is likely to feel some inhibition in sending for literature which federal officials have condemned as “communist political propaganda.” The regime of this Act is at war with the “uninhibited, robust, and wide-open” debate and discussion that are contemplated by the First Amendment.⁷⁸

Although the Court did not expressly state that it was concerned about the right to *privacy* as to what one reads, that concern is plainly implicit in the passage quoted above. If citizens must inform the government of the material that they read, that requirement could have a significant chilling effect on the exercise of the right to read unpopular materials.

The Internet is an important source of news and opinion. If the government were able to access customer records of communication service providers, it would in some cases be able to determine what a person has been reading or is interested in reading. For example, access to a customer’s Internet meta-data might reveal:

- What websites the person has visited.

78. *Id.* at 307.

- What search terms a person has used when conducting online searches.
- What PDF files or e-books a person has downloaded.
- What image files or videos a person has viewed.

While government access to that type of information would not directly bar a person from accessing particular Internet content, it could have a chilling effect that would deter a person from fully exercising the constitutionally protected right to read what one pleases. This is especially likely where the content at issue is controversial, unpopular, or embarrassing.

Private Speech

In *White v. Davis*,⁷⁹ the California Supreme Court considered the constitutionality of a Los Angeles Police Department operation that involved the use of undercover agents, posing as college students, who attended classes in order to collect intelligence on student dissidents and their professors. There was no allegation that the police were investigating illegal activity or acts. The undercover surveillance was challenged on a number of grounds, including an assertion that it violated the constitutional rights of free speech and association.⁸⁰

While the Court recognized that the surveillance program did not directly prohibit speech or association, nonetheless “such surveillance may still run afoul of the constitutional guarantee if the effect of such activity is to chill constitutionally protected activity.”⁸¹ The Court found that the police surveillance at issue could have such an effect:

As a practical matter, the presence in a university classroom of undercover officers taking notes to be preserved in police dossiers must inevitably inhibit the

79. 13 Cal. 3d 757 (1975).

80. For a discussion of whether the undercover operation violated the right of privacy under the California Constitution, see Memorandum 2014-21, pp. 12-14.

81. *White v. Davis*, 13 Cal. 3d at 767.

exercise of free speech both by professors and students. In a line of cases stretching over the past two decades, the United States Supreme Court has repeatedly recognized that to compel an individual to disclose his political ideas or affiliations to the government is to deter the exercise of First Amendment rights.⁸²

The fact that the students and professors were sharing their ideas in a setting that was partially accessible to the public did not alter the Court's conclusion:

Although defendant contends that the "semi-public" nature of a university classroom negates any claim of "First Amendment privacy," the controlling Supreme Court rulings refute this assertion. For example, in both *N.A.A.C.P.* and *Talley*, the fact that the private individuals involved had revealed their associations or beliefs to many people was not viewed by the court as curtailing their basic interest in preventing *the government* from prying into such matters. Although if either a teacher or student speaks in class he takes the "risk" that another class member will take note of the statement and perhaps recall it in the future, such a risk is qualitatively different than that posed by a governmental surveillance system involving the filing of reports in permanent police records. The greatly increased "chilling effect" resulting from the latter *governmental* activity brings constitutional considerations into play.⁸³

The Court held that the surveillance of protected speech could pose "such a grave threat to freedom of expression" that the "government bears the responsibility of demonstrating a compelling state interest which justifies such impingement and of showing that its purposes cannot be achieved by less restrictive means."⁸⁴

82. *Id.* at 767-68.

83. *Id.* at 768 n.4 (emphasis in original).

84. *Id.* at 760-61.

Subsequent federal appellate decisions suggest that a “legitimate law enforcement purpose” can be sufficient to justify the surveillance of protected speech, provided that the government is acting in good faith, without the actual purpose of violating First Amendment rights.⁸⁵

Press Confidentiality

Government surveillance of a journalist’s electronic communications could indirectly chill press freedoms. For example, in *Zurcher v. Stanford Daily*⁸⁶ police searched a college newspaper’s offices for photographs that might reveal the identity of demonstrators who had assaulted police. The *Stanford Daily* objected to the search, in part on the ground that it violated its First Amendment rights in a number of ways:

First, searches will be physically disruptive to such an extent that timely publication will be impeded. Second, confidential sources of information will dry up, and the press will also lose opportunities to cover various events because of fears of the participants that press files will be readily available to the authorities. Third, reporters will be deterred from recording and preserving their recollections for future use if such information is subject to seizure. Fourth, the processing of news and its dissemination will be chilled by the prospects that searches will disclose internal editorial deliberations. Fifth, the press will resort to self-censorship to conceal its possession of information of potential interest to the police.⁸⁷

The Court seems to have conceded the seriousness of those concerns. But it held that the Fourth Amendment provides adequate protection, balancing the government’s legitimate interest

85. *United States v. Mayer*, 503 F.3d 740 (9th Cir. 2007); *United States v. Aguilar*, 883 F.2d 662 (9th Cir. 1989).

86. 436 U.S. 547 (1978).

87. *Id.* at 563-64.

in conducting a search based on a narrowly drawn criminal warrant against the effects that such a search could have on press freedom:

Properly administered, the preconditions for a warrant — probable cause, specificity with respect to the place to be searched and the things to be seized, and overall reasonableness — should afford sufficient protection against the harms that are assertedly threatened by warrants for searching newspaper offices.

...

The hazards of such warrants can be avoided by a neutral magistrate carrying out his responsibilities under the Fourth Amendment, for he has ample tools at his disposal to confine warrants to search within reasonable limits.⁸⁸

The *Zurcher* decision was controversial.⁸⁹ It was quickly superseded by legislation, at both the federal and state level, strictly limiting government's ability to search journalist records.⁹⁰

Conclusion

There are a number of ways in which government surveillance of electronic communications could indirectly restrain free expression. It could breach the privacy of group affiliation, the right to speak anonymously, and the right to reader privacy. Surveillance of electronic communications could also chill unpopular speech and could adversely affect press freedoms by revealing confidential information about press sources and methods.

88. *Id.* at 565-67.

89. See, e.g., Erburu, *Zurcher v. Stanford Daily: the Legislative Debate*, 17 Harv. J. on Legis. 152 (1980) ("Few decisions in the modern history of the Supreme Court have engendered as vociferous and uniformly unfavorable a response from advocates of a free press as the 1978 decision in *Zurcher v. Stanford Daily*.").

90. See 42 U.S.C. § 2000aa (Privacy Protection Act of 1980, discussed at text accompanying notes 319-27 *infra*); Penal Code § 1524(g) (discussed under "Brief List of California Privacy Statutes" *infra*).

Although *Zurcher* was superseded by legislation, the holding in that case suggests one way that surveillance of electronic communications could be conducted without violating First Amendment rights — through use of a search warrant that satisfies the requirements of the Fourth Amendment. As discussed above, such a warrant is already required when police conduct surveillance of communications.

Privacy

“Penumbral” Privacy Right in the United States Constitution

The United States Constitution does not contain express language guaranteeing a general right of privacy. However, there are several cases in which the Supreme Court has found a constitutional right of privacy, either in the “penumbra” of other enumerated constitutional rights, as a liberty interest protected as a matter of substantive due process, or as a right that preceded the Constitution and is preserved by the Ninth Amendment.

For example, in *Griswold v. Connecticut*,⁹¹ the court found that a state law criminalizing the use of birth control violated a constitutional right of marital privacy. In reaching that conclusion, the Court noted earlier decisions that had found unexpressed constitutional rights in the “penumbras” of specifically enumerated rights:

The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents’ choice — whether public or private or parochial — is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights.

...

The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations

91. 381 U.S. 479 (1965).

from those guarantees that help give them life and substance. ... Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers “in any house” in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”⁹²

The exact character and scope of the federal constitutional privacy right is difficult to describe with certainty. One source of difficulty is the inconsistency in discussing the source of the privacy right. Another is the fact that the term “privacy” has been used to describe two distinctly different concepts:

The cases sometimes characterized as protecting “privacy” have in fact involved at least two different kinds of interests. One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions.⁹³

Said another way:

The former interest is informational or data-based; the latter involves issues of personal freedom of action and autonomy in individual encounters with government. The distinction between the two interests is not sharply drawn

92. *Id.* at 482-84.

93. *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977) (footnotes omitted).

— disclosure of information, e.g., information about one’s financial affairs, may have an impact on personal decisions and relationships between individuals and government.⁹⁴

The California Supreme Court has described those two types of privacy interests as “informational privacy” and “autonomy privacy,” respectively:

Legally recognized privacy interests are generally of two classes: (1) interests in precluding the dissemination or misuse of sensitive and confidential information (“informational privacy”); and (2) interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference (“autonomy privacy”).⁹⁵

Autonomy Privacy

Most of the Supreme Court decisions finding a constitutional privacy right involve autonomy privacy. They address an individual’s right to make decisions about important personal matters, free from government interference:

Although “[t]he Constitution does not explicitly mention any right of privacy,” the Court has recognized that one aspect of the “liberty” protected by the Due Process Clause of the Fourteenth Amendment is “a right of personal privacy, or a guarantee of certain areas or zones of privacy.” *Roe v. Wade*, 410 U.S. 113, 152 (1973). This right of personal privacy includes “the interest in independence in making certain kinds of important decisions.” *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). While the outer limits of this aspect of privacy have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions “relating to marriage, *Loving v. Virginia*, 388 U.S. 1, 12 (1967);

94. *Hill v. Nat. Collegiate Athletic Ass’n*, 7 Cal. 4th 1, 30 (1994).

95. *Id.* at 35.

procreation, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541-542 (1942); contraception, *Eisenstadt v. Baird*, 405 U.S., at 453-454; *id.*, at 460, 463-465 (WHITE, J., concurring in result); family relationships, *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); and child rearing and education, *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, [262 U.S. 390, 399 (1923)].” *Roe v. Wade*, *supra*, at 152-153.⁹⁶

The right of autonomy privacy does not seem to have direct relevance to government surveillance of electronic communications, because surveillance does not prohibit or restrict choice in the areas protected by autonomy privacy.

However, electronic surveillance could have an indirect effect on autonomy privacy, if government collection of private information would deter the exercise of personal liberty. For example, in *Whalen v. Roe*,⁹⁷ a New York statute authorized the government to collect information about medical prescriptions for specified drugs. Appellees argued that this program would violate both informational privacy rights (by collecting private information about a person’s medical care) *and* autonomy privacy (because the potential for exposure of stigmatizing private information could have a chilling effect on important choices about medical care).

On the facts before it, the Court was not persuaded:

Nor can it be said that any individual has been deprived of the right to decide independently, with the advice of his physician, to acquire and to use needed medication. Although the State no doubt could prohibit entirely the use of particular Schedule II drugs, it has not done so. This case is therefore unlike those in which the Court held that a total prohibition of certain conduct was an impermissible deprivation of liberty. Nor does the State require access to these drugs to be conditioned on the consent of any state official or other third party. Within dosage limits which

96. *Carey v. Population Services Int’l*, 431 U.S. 678, 684-85 (1977).

97. *Whalen v. Roe*, 429 U.S. 589 (1977).

appellees do not challenge, the decision to prescribe, or to use, is left entirely to the physician and the patient.

We hold that neither the immediate nor the threatened impact of the patient-identification requirements in the New York State Controlled Substances Act of 1972 on either the reputation or the independence of patients for whom Schedule II drugs are medically indicated is sufficient to constitute an invasion of any right or liberty protected by the Fourteenth Amendment.⁹⁸

Moreover, an invasion of autonomy privacy of the type described above will only arise if there has also been an invasion of informational privacy. If informational privacy is protected, then any ancillary invasion of autonomy privacy would also be avoided.

As discussed below, it is not entirely clear that the United States Constitution protects informational privacy. In contrast, the California Constitution clearly does provide such protection.

Informational Privacy

It is not certain that a federal constitutional right of informational privacy exists. There are cases that discuss such a right, but they do not clearly hold that the right exists.

In *Whalen v. Roe* (discussed above),⁹⁹ the Court considered the constitutionality of a state statute requiring that prescriptions for certain drugs be reported to law enforcement. While the Court seemed to assume the existence of a constitutional right of informational privacy, it did not expressly hold that such a right exists. Nor did it articulate a standard for determining whether any constitutional right had been violated.

However, the Court did recognize, in *dicta*, that government data collection could, if conducted on a “massive” scale, implicate a duty to protect the privacy of the collected information that “arguably has roots in the Constitution.”

98. *Id.* at 603-04 (footnotes omitted).

99. *Id.*

We are not unaware of the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files. The collection of taxes, the distribution of welfare and social security benefits, the supervision of public health, the direction of our Armed Forces, and the enforcement of the criminal laws all require the orderly preservation of great quantities of information, much of which is personal in character and potentially embarrassing or harmful if disclosed. The right to collect and use such data for public purposes is typically accompanied by a concomitant statutory or regulatory duty to avoid unwarranted disclosures. Recognizing that in some circumstances that duty arguably has its roots in the Constitution, nevertheless New York's statutory scheme, and its implementing administrative procedures, evidence a proper concern with, and protection of, the individual's interest in privacy. We therefore need not, and do not, decide any question which might be presented by the unwarranted disclosure of accumulated private data — whether intentional or unintentional — or by a system that did not contain comparable security provisions. We simply hold that this record does not establish an invasion of any right or liberty protected by the Fourteenth Amendment.¹⁰⁰

In *Nixon v. Administrator of General Services*,¹⁰¹ the Court considered a statute that required former President Richard Nixon to turn his presidential papers over to government archivists for review (for the purpose of segregating public documents, which would be archived, from private papers, which would be returned to the President). President Nixon objected to the statutory obligation, arguing in part that it would unconstitutionally invade his informational privacy.

The Court acknowledged that “[o]ne element of privacy has been characterized as ‘the individual interest in avoiding disclosure

100. *Id.* at 605-06 (footnote omitted).

101. 433 U.S. 425 (1977).

of personal matters”¹⁰² and found that the President had a legitimate expectation of privacy with respect to some of his papers. However, “the merit of appellant’s claim of invasion of his privacy cannot be considered in the abstract; rather the claim must be considered in light of the specific provisions of the Act, and any intrusion must be weighed against the public interest in subjecting the presidential materials of appellant’s administration to archival screening.”¹⁰³ The court concluded that the statutory procedures governing the screening and archiving of presidential papers were sufficient to protect any privacy interest at issue (whatever its source).¹⁰⁴

Much more recently, in *National Aeronautics and Space Administration v. Nelson*,¹⁰⁵ the Court considered whether certain pre-employment background questionnaires violated a constitutional right of informational privacy. The Court noted that most (but not all) circuit courts have found that there is a constitutional right of informational privacy:

State and lower federal courts have offered a number of different interpretations of *Whalen* and *Nixon* over the years. Many courts hold that disclosure of at least some kinds of personal information should be subject to a test that balances the government’s interests against the individual’s interest in avoiding disclosure. *E.g.*, *Barry v. New York*, 712 F.2d 1554, 1559 (CA2 1983); *Fraternal Order of Police v. Philadelphia*, 812 F.2d 105, 110 (CA3 1987); *Woodland v. Houston*, 940 F.2d 134, 138 (CA5 1991) (*per curiam*); *In re Crawford*, 194 F.3d 954, 959 (CA9 1999); *State v. Russo*, 259 Conn. 436, 459-464, 790 A.2d 1132, 1147-1150 (2002). The Sixth Circuit has held that the right to informational privacy protects only intrusions upon interests “that can be deemed fundamental

102. *Id.* at 457.

103. *Id.* at 458.

104. *Id.* at 465.

105. 562 U.S. 134 (2011).

or implicit in the concept of ordered liberty.” *J. P. v. DeSanti*, 653 F.2d 1080, 1090 (1981) (internal quotation marks omitted). The D. C. Circuit has expressed “grave doubts” about the existence of a constitutional right to informational privacy. *American Federation of Govt. Employees v. HUD*, 118 F.3d 786, 791 (1997).¹⁰⁶

Nonetheless, the Court made clear that it was not deciding whether a constitutional right of informational privacy exists. Instead, the Court *assumed* the existence of a privacy interest of the type “mentioned” in *Whalen* and *Nixon*. It then went on to explain why the statute at issue would not violate any informational privacy interest that may “arguably” have its roots in the Constitution:

In two cases decided more than 30 years ago, this Court referred broadly to a constitutional privacy “interest in avoiding disclosure of personal matters.” *Whalen v. Roe*, 429 U.S. 589, 599-600, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977); *Nixon v. Administrator of General Services*, 433 U.S. 425, 457, 97 S. Ct. 2777, 53 L. Ed. 2d 867 (1977). ...

We assume, without deciding, that the Constitution protects a privacy right of the sort mentioned in *Whalen* and *Nixon*. We hold, however, that the challenged portions of the Government’s background check do not violate this right in the present case. The Government’s interests as employer and proprietor in managing its internal operations, combined with the protections against public dissemination provided by the Privacy Act of 1974, 5 U.S.C. § 552a, satisfy any “interest in avoiding disclosure” that may “arguably ha[ve] its roots in the Constitution.” *Whalen*, *supra*, at 599, 605, 97 S. Ct. 869, 51 L. Ed. 2d 64.¹⁰⁷

Later in the opinion, the Court reemphasized that it was merely assuming the existence of the informational privacy right.

106. *Id.* at 147 n. 9.

107. *Id.* at 138.

Moreover, it characterized *Whalen* as having employed the same approach:

As was our approach in *Whalen*, we will assume for present purposes that the Government's challenged inquiries implicate a privacy interest of constitutional significance.¹⁰⁸

To summarize, there is no United States Supreme Court precedent that clearly recognizes a federal constitutional right of informational privacy. If such a right does exist, it is not clear what test the Court would apply to determine whether it has been violated.

Informational Privacy and the Fourth Amendment

Even if a constitutional right of informational privacy exists, it might not have much relevance to the surveillance of electronic communications, because any unenumerated right of informational privacy may be subsumed within the express protections of the Fourth Amendment.

[T]he Government's collection of private information is regulated by the Fourth Amendment, and "[w]here a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing those claims."¹⁰⁹

Concerns about the effect of electronic surveillance on privacy would seem to fall squarely within the ambit of the Fourth

108. *Id.* at 147.

109. *NASA v. Nelson*, 562 U.S. at 162 (Scalia, J., dissenting), *quoting* *County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998) ("if a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process."). See also *Graham v. Connor*, 490 U.S. 386, 395 (1989).

Amendment. Under the principle discussed above, one could argue that the “explicit textual source of constitutional protection” provided in the Fourth Amendment should be used to test the constitutionality of such searches, rather than a generalized notion of privacy (whether grounded in substantive due process or in the penumbra of other enumerated rights). If that is correct, then a federal constitutional right of informational privacy would not be independently relevant in evaluating the constitutionality of electronic surveillance.

Summary of Federal Constitutional Privacy Right

There is a federal constitutional right of autonomy privacy. It protects the right to make certain private decisions free from government interference. The cases discussing autonomy privacy involve fundamentally private matters such as child-rearing, procreation, marriage, and sexuality. Those types of concerns are unlikely to have much direct relevance to electronic surveillance. To the extent that they are indirectly relevant, that relevance would be a secondary effect of an invasion of informational privacy.

It is not clear that there is a federal constitutional right of informational privacy. The early cases on this issue seem to assume that such a right exists, but they do not expressly hold that this is so. The more recent decision in *NASA v. Nelson* is carefully framed to be noncommittal on the issue (and it claims that the same noncommittal posture was employed in the earlier decisions).

If such a right does exist, it does not appear to be absolute. In all of the cases discussed above, the Court found that important governmental efforts to collect data, with sufficient safeguards against improper disclosure of private information, did not violate any constitutional right.

Moreover, there is precedent suggesting that any invasion of privacy falling within the sphere of the Fourth Amendment must be analyzed under that constitutional provision, rather than under a general liberty interest asserted as a matter of substantive due process. The current study involves government collection of information, which is susceptible to Fourth Amendment analysis. It is thus unclear whether a privacy right grounded in substantive due

process would ever be applicable to the matters addressed in this study.

Express Privacy Right in the California Constitution

Unlike the United States Constitution, the California Constitution includes an express right of privacy. Article I, Section 1 provides:

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

That privacy right was added by initiative in 1972.¹¹⁰

The first California Supreme Court case to construe the constitutional privacy right was *White v. Davis*.¹¹¹ That case concerned a Los Angeles Police Department operation employing undercover officers who posed as college students in order to attend class discussions and build dossiers on student activists and their professors. Suit was filed to enjoin the practice. Among other grounds, the challengers alleged that the police activities violated California's constitutional right of privacy.

The California Supreme Court found prima facie evidence that the program violated constitutional rights of speech and assembly. It also found a prima facie violation of the new privacy right:

[T]he surveillance alleged in the complaint also constitutes a prima facie violation of the explicit "right of privacy" recently added to our state Constitution. As we point out, a principal aim of the constitutional provision is to limit the infringement upon personal privacy arising from the government's increasing collection and retention of data relating to all facets of an individual's life. The alleged accumulation in "police dossiers" of information

110. Prop. 11 (Nov. 7, 1972).

111. 13 Cal. 3d 757 (1975).

gleaned from classroom discussions or organization meetings presents one clear example of activity which the constitutional amendment envisions as a threat to personal privacy and security.¹¹²

The Court held that the Constitution does not invalidate all information gathering, but instead requires that the government show a “compelling justification for such conduct.”¹¹³

In considering the effect of the new privacy right, the Court looked to the election brochure materials for the proposition that created the right, stating that such materials represent “in essence, the only ‘legislative history’ of the constitutional amendment available to us.”¹¹⁴ The Court noted that it had “long recognized the propriety of resorting to election brochure arguments as an aid in construing legislative measures and constitutional amendments adopted pursuant to a vote of the people.”¹¹⁵

The Court discussed the election brochure at some length:

In November 1972, the voters of California specifically amended article I, section 1 of our state Constitution to include among the various “inalienable” rights of “all people” the right of “privacy.” Although the general concept of privacy relates, of course, to an enormously broad and diverse field of personal action and belief, the moving force behind the new constitutional provision was a more [focused] privacy concern, relating to the accelerating encroachment on personal freedom and security caused by increased surveillance and data collection activity in contemporary society. The new provision’s primary purpose is to afford individuals some measure of protection against this most modern threat to personal privacy.

The principal objectives of the newly adopted provision are set out in a statement drafted by the proponents of the

112. *Id.* at 761.

113. *Id.*

114. *Id.* at 775.

115. *Id.* at n. 11.

provision and included in the state's election brochure. The statement begins: "The proliferation of government snooping and data collecting is threatening to destroy our traditional freedoms. Government agencies seem to be competing to compile the most extensive sets of dossiers of American citizens. Computerization of records makes it possible to create "cradle-to-grave" profiles of every American. [para.] *At present there are no effective restraints on the information activities of government and business. This amendment creates a legal and enforceable right of privacy for every Californian.*" (Italics in original.)

The argument in favor of the amendment then continues: "The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion and our freedom to associate with the people we choose. It prevents government and business interests from collecting and stockpiling unnecessary information about us and from misusing information gathered for one purpose in order to serve other purposes or to embarrass us.

"Fundamental to our privacy is the ability to control circulation of personal information. [Italics in original.] This is essential to social relationships and personal freedom. The proliferation of government and business records over which we have no control limits our ability to control our personal lives. Often we do not know that these records even exist and we are certainly unable to determine who has access to them.

"Even more dangerous is the loss of control over the accuracy of government and business records of individuals. Obviously if the person is unaware of the record, he or she cannot review the file and correct inevitable mistakes. . . . [para.] The average citizen . . . does not have control over what information is collected about him. Much is secretly collected. . . ."

The argument concludes: "The right of privacy is an important American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth,

Fifth and Ninth Amendments to the U.S. Constitution. This right should be abridged only when there is a compelling public need. . . .”¹¹⁶

Some important points can be drawn from that discussion:

- The focus on “government snooping and data collecting” are directly germane to the propriety of electronic surveillance, which is specifically noted as a concern. This is especially true given the modern capacity to easily collect very large amounts of electronic data. For example, the National Security Agency’s “Bulk Telephony Metadata Program” is reported to have been collecting telephone dialing information from virtually every phone in the country, for several years.¹¹⁷ Regardless of whether such data collection is a “search” under the Fourth Amendment, it seems to be the sort of “government snooping and data collecting” that prompted the creation of California’s constitutional privacy right.
- The privacy right is “fundamental” and “compelling.” These are familiar constitutional terms of art that imply a high level of dignity and protection.
- There is particular concern about data collection without notice. Such secrecy makes it difficult for a person to “control circulation of personal information” and to correct any errors in information the government has gathered.

In another decision made later the same year, *Valley Bank of Nevada v. Superior Court of San Joaquin County*,¹¹⁸ the Court considered a privacy-based objection to a civil discovery order requiring the production of non-party bank records.

116. *Id.* at 773-75 (footnotes omitted).

117. See *Klayman v. Obama*, 957 F. Supp. 2d 1, 14-20 (D.D.C. 2013).

118. 15 Cal. 3d 652 (1975).

The Court found that the privacy right applies to confidential bank records:

Although the amendment is new and its scope as yet is neither carefully defined nor analyzed by the courts, we may safely assume that the right of privacy extends to one's confidential financial affairs as well as to the details of one's personal life.¹¹⁹

Consequently, there must be a “careful balancing of the right of civil litigants to discover relevant facts, on the one hand, with the right of bank customers to maintain reasonable privacy regarding their financial affairs, on the other.”¹²⁰ While private bank records “should not be wholly privileged and insulated from scrutiny by civil litigants,” neither should they be disclosed without the subject of the records having notice and an opportunity to object.¹²¹ The Court put it this way:

Striking a balance between the competing considerations, we conclude that before confidential customer information may be disclosed in the course of civil discovery proceedings, the bank must take reasonable steps to notify its customer of the pendency and nature of the proceedings and to afford the customer a fair opportunity to assert his interests by objecting to disclosure, by seeking an appropriate protective order, or by instituting other legal proceedings to limit the scope or nature of the matters sought to be discovered.¹²²

Private Action

In *Hill v. National Collegiate Athletic Association*,¹²³ the California Supreme Court considered a constitutional privacy-

119. *Id.* at 656.

120. *Id.* at 657.

121. *Id.* at 658.

122. *Id.*

123. 7 Cal. 4th 1 (1994).

based challenge to an NCAA drug testing program for college athletes. Because the NCAA is a nongovernmental association, the Court was required to consider whether the constitutional privacy right applies to private action.

In addressing that question, the Court noted that the ballot arguments were “replete with references to information-amassing practices of both ‘government’ and ‘business.’” The Court also referred to a string of court of appeal decisions finding that the privacy right applies to private action. In light of those authorities, the Court held that California’s constitutional right of privacy creates a right of action against private as well as government entities.

Private action is not directly relevant to government surveillance of electronic communications, but it could have some indirect relevance. In California, all communication service providers are constitutionally obliged to protect their customers’ privacy. The existence of that obligation may have an effect on reasonable expectations of privacy.

Elements of the Privacy Right

In *Hill v. NCAA*, the California Supreme Court took the opportunity to conduct a fairly thorough review of California’s constitutional privacy right and its antecedents in the United States Constitution and the common law. After discussing those foundations, the Court set out the elements of a cause of action for a breach of privacy under Article I, Section 1 of the California Constitution:

- (1) The identification of a specific legally protected privacy interest.
- (2) A reasonable expectation of privacy on the part of the plaintiff.
- (3) A “serious” invasion of the protected privacy interest.

Those elements are discussed further below.

Legally Protected Privacy Interest. In discussing the scope of legally protected privacy interests sufficient to trigger

constitutional protection, the Court first drew a distinction between informational privacy and autonomy privacy. It then observed that the constitutional privacy right was primarily aimed at protecting informational privacy:

Informational privacy is the core value furthered by the Privacy Initiative. (*White v. Davis, supra*, 13 Cal. 3d at p. 774.) A particular class of information is private when well-established social norms recognize the need to maximize individual control over its dissemination and use to prevent unjustified embarrassment or indignity. Such norms create a threshold reasonable expectation of privacy in the data at issue. As the ballot argument observes, the California constitutional right of privacy “prevents government and business interests from [1] collecting and stockpiling unnecessary information about us and from [2] misusing information gathered for one purpose in order to serve other purposes or to embarrass us.”¹²⁴

This clear statement that protection of informational privacy is a “core” value furthered by the California Constitution is important because of the uncertainty (discussed above) about whether the United States Constitution affords any protection to informational privacy.

The Court recognized that the ballot arguments also expressed concern about the types of intimate and personal decisions at issue in autonomy privacy. It pointed out, however, that the ballot arguments “do not purport to create any unbridled right of personal freedom of action that may be vindicated in lawsuits against either government agencies or private persons or entities.”¹²⁵

The Court concludes by noting that legally protected privacy rights are derived from social norms, which must themselves be grounded in sources of positive law:

124. *Id.* at 35-36.

125. *Id.* at 36.

Whether established social norms safeguard a particular type of information or protect a specific personal decision from public or private intervention is to be determined from the usual sources of positive law governing the right to privacy — common law development, constitutional development, statutory enactment, and the ballot arguments accompanying the Privacy Initiative.¹²⁶

Reasonable Expectation of Privacy. Even when a legally recognized privacy interest exists, the reasonableness of the expectation of privacy may affect any claim that the interest has been unconstitutionally invaded:

The extent of [a privacy] interest is not independent of the circumstances.” (*Plante v. Gonzalez, supra*, 575 F.2d at p. 1135.) Even when a legally cognizable privacy interest is present, other factors may affect a person’s reasonable expectation of privacy. For example, advance notice of an impending action may serve to “‘limit [an] intrusion upon personal dignity and security’” that would otherwise be regarded as serious. (*Ingersoll v. Palmer, supra*, 43 Cal.3d at p. 1346 [upholding the use of sobriety checkpoints].)

In addition, customs, practices, and physical settings surrounding particular activities may create or inhibit reasonable expectations of privacy. (See, e.g., *Whalen, supra*, 429 U.S. at p. 602 [51 L.Ed.2d at p. 75] [reporting of drug prescriptions to government was supported by established law and “not meaningfully distinguishable from a host of other unpleasant invasions of privacy that are associated with many facets of health care”]; *Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia* (3d Cir. 1987) 812 F.2d 105, 114 [no invasion of privacy in requirement that applicants for promotion to special police unit disclose medical and financial information in part because of applicant awareness that such disclosure “has historically been required by those in similar positions”].)

126. *Id.*

A “reasonable” expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms. (See, e.g., Rest.2d Torts, *supra*, § 652D, com. c [“The protection afforded to the plaintiff’s interest in his privacy must be relative to the customs of the time and place, to the occupation of the plaintiff and to the habits of his neighbors and fellow citizens.”]¹²⁷

The Court also noted that advance voluntary consent can affect a person’s reasonable expectation of privacy: “the presence or absence of opportunities to consent voluntarily to activities impacting privacy interests obviously affects the expectations of the participant.”¹²⁸

Serious Invasion of Privacy. Finally, the Court held that a constitutional privacy claim must involve a “serious” violation of a legally protected privacy interest. The Court’s discussion of this element is short:

No community could function if every intrusion into the realm of private action, no matter how slight or trivial, gave rise to a cause of action for invasion of privacy. “Complete privacy does not exist in this world except in a desert, and anyone who is not a hermit must expect and endure the ordinary incidents of the community life of which he is a part.” (Rest.2d Torts, *supra*, § 652D, com. c.) Actionable invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right. Thus, the extent and gravity of the invasion is an indispensable consideration in assessing an alleged invasion of privacy.¹²⁹

This might seem to set a fairly high bar for an actionable claim, with the right of privacy only protecting against “an egregious

127. *Id.* at 36-37.

128. *Id.*

129. *Id.* at 37.

breach of social norms.” However, the Court quickly revisited the elements described in *Hill v. NCAA* and made clear that they are not as strict as it might appear.

In *Loder v. City of Glendale*,¹³⁰ the Court explained that the elements “should not be understood as establishing significant *new* requirements or hurdles that a plaintiff must meet in order to demonstrate a violation of the right to privacy under the state Constitution....”¹³¹

Under such an interpretation, *Hill* would constitute a radical departure from *all* of the earlier state constitutional decisions of this court cited and discussed in *Hill*..., decisions that uniformly hold that when a challenged practice or conduct intrudes upon a constitutionally protected privacy interest, the interests or justifications supporting the challenged practice must be weighed or balanced against the intrusion on privacy imposed by the practice.¹³²

Instead, the elements laid out in *Hill* are merely “threshold elements” that serve to “screen out claims that do not involve a significant intrusion on a privacy interest protected by the state constitutional privacy protection.”¹³³ The Court went on to make clear that this threshold screening is actually fairly modest:

These elements do not eliminate the necessity for weighing and balancing the justification for the conduct in question against the intrusion on privacy resulting from the conduct in any case that raises a genuine, nontrivial invasion of a protected privacy interest.¹³⁴

130. 14 Cal. 4th 846 (1997).

131. *Id.* at 891 (emphasis in original).

132. *Id.* (emphasis in original).

133. *Id.* at 893.

134. *Id.*

Regarding the requirement that an invasion of privacy be “serious” in order to qualify for constitutional protection, the Court explained that the requirement sets a low standard:

Although in discussing the “serious invasion of privacy interest” element, the opinion in *Hill* states at one point that “[a]ctionable invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right”..., the opinion’s application of the element makes it clear that this element is intended simply to screen out intrusions on privacy that are de minimis or insignificant.¹³⁵

Standard of Review

In *White v. Davis* the Court held that the government must demonstrate a “compelling” public need in order to justify its invasion of the California Constitution’s privacy right.¹³⁶ The Court quoted the part of the ballot brochure asserting that “[t]he right of privacy ... should be abridged only when there is a compelling public need.”¹³⁷

In *Hill v. NCAA*, however, the Court made clear that the decision in *White v. Davis* was limited to the facts of that case:

White signifies only that some aspects of the state constitutional right to privacy — those implicating obvious government action impacting freedom of expression and association — are accompanied by a “compelling state interest” standard.¹³⁸

After reviewing a number of appellate decisions relating to the privacy right, the Court found that the compelling state interest

135. *Id.* at 895 n.22.

136. *White v. Davis*, 13 Cal. 3d at 776.

137. *Id.* at 775.

138. *Hill*, 7 Cal. 4th at 34.

standard only applies in cases involving particularly serious invasions of important privacy interests:

The particular context, i.e., the specific kind of privacy interest involved and the nature and seriousness of the invasion and any countervailing interests, remains the critical factor in the analysis. Where the case involves an obvious invasion of an interest fundamental to personal autonomy, e.g., freedom from involuntary sterilization or the freedom to pursue consensual familial relationships, a “compelling interest” must be present to overcome the vital privacy interest. If, in contrast, the privacy interest is less central, or in bona fide dispute, general balancing tests are employed.

For the reasons stated above, we decline to hold that every assertion of a privacy interest under article I, section 1 must be overcome by a “compelling interest.” Neither the language nor history of the Privacy Initiative unambiguously supports such a standard. In view of the far-reaching and multifaceted character of the right to privacy, such a standard imports an impermissible inflexibility into the process of constitutional adjudication.¹³⁹

In other circumstances, a court need only consider whether an invasion of a legally protected privacy interest is justified by a “legitimate” and “important” competing interest:

Invasion of a privacy interest is not a violation of the state constitutional right to privacy if the invasion is justified by a competing interest. Legitimate interests derive from the legally authorized and socially beneficial activities of government and private entities. Their relative importance is determined by their proximity to the central functions of a particular public or private enterprise. Conduct alleged to be an invasion of privacy is to be evaluated based on the extent to which it furthers legitimate and important competing interests.

139. *Id.* at 34-35 (footnote omitted).

Confronted with a defense based on countervailing interests, the plaintiff may undertake the burden of demonstrating the availability and use of protective measures, safeguards, and alternatives to defendant's conduct that would minimize the intrusion on privacy interests.¹⁴⁰

Importantly, the Court in *Hill* held that the standard of review may differ depending on whether a privacy claim is brought against a public or private actor:

Judicial assessment of the relative strength and importance of privacy norms and countervailing interests may differ in cases of private, as opposed to government, action.

First, the pervasive presence of coercive government power in basic areas of human life typically poses greater dangers to the freedoms of the citizenry than actions by private persons. "The government not only has the ability to affect more than a limited sector of the populace through its actions, it has both economic power, in the form of taxes, grants, and control over social welfare programs, and physical power, through law enforcement agencies, which are capable of coercion far beyond that of the most powerful private actors." (Sundby, *Is Abandoning State Action Asking Too Much of the Constitution?* (1989) 17 Hastings Const. L. Q. 139, 142-143 [hereafter Sundby].)

Second, "an individual generally has greater choice and alternatives in dealing with private actors than when dealing with the government." (Sundby, *supra*, 17 Hastings Const.L.Q. at p. 143.) Initially, individuals usually have a range of choice among landlords, employers, vendors and others with whom they deal. To be sure, varying degrees of competition in the marketplace may broaden or narrow the range. But even in cases of limited or no competition, individuals and groups may turn to the Legislature to seek a statutory remedy against a specific business practice

140. *Id* at 38.

regarded as undesirable. State and federal governments routinely engage in extensive regulation of all aspects of business. Neither our Legislature nor Congress has been unresponsive to concerns based on activities of nongovernment entities that are perceived to affect the right of privacy. (See, e.g., Lab. Code, § 432.2, subd. (a) ["No employer shall demand or require any applicant for employment or prospective employment or any employee to submit to or take a polygraph, lie detector or similar test or examination as a condition of employment or continued employment"]; 29 U.S.C. § 2001 [regulating private employer use of polygraph examination].)

Third, private conduct, particularly the activities of voluntary associations of persons, carries its own mantle of constitutional protection in the form of freedom of association. Private citizens have a right, not secured to government, to communicate and associate with one another on mutually negotiated terms and conditions. The ballot argument recognizes that state constitutional privacy protects in part "our freedom of communion and our freedom to associate with the people we choose." (Ballot Argument, *supra*, at p. 27.) Freedom of association is also protected by the First Amendment and extends to all legitimate organizations, whether popular or unpopular. (*Britt v. Superior Court* (1978) 20 Cal. 3d 844, 854 [143 Cal. Rptr. 695, 574 P.2d 766]; see also Tribe, *American Constitutional Law* (2d ed. 1988) § 18-2, p. 1691 [noting rationale of federal constitutional requirement of state action protects "the freedom to make certain choices, such as choices of the persons with whom [one associates]" which is "basic under any conception of liberty"].)¹⁴¹

The *Hill* argument focuses on explaining why a lower standard might be appropriate when reviewing the action of private groups. Yet it also contains a strong inference that the converse is true as well. When the *government* invades a privacy interest, the standard

141. *Id.* at 38-39.

of review should arguably be stricter than when a private party engages in similar behavior.

For example, this report examines government surveillance of electronic communications. In that context, the government is acting with the full coercive power of the state, there are no choices that a citizen could make to avoid the government's actions, and the government deserves no special consideration that might be due to protect the association rights of private voluntary groups. Thus, none of the rationales offered in the passage quoted above would seem to justify applying a lower standard when reviewing electronic surveillance.

Informational Privacy and Article I, Section 13 of the California Constitution

As discussed above, any unenumerated federal constitutional right of informational privacy may be subsumed within the express protections of the Fourth Amendment.¹⁴² A similar principle has been applied to California's express privacy right, with regard to cases that involve a government search and seizure.

In *People v. Crowson*,¹⁴³ two men were arrested and placed into the back of a locked police car. While left alone in the vehicle, the two conversed. Their conversation was secretly recorded and the recording was introduced as evidence at trial. Mr. Crowson challenged the recording on the grounds that police had violated his right to privacy under Article I, Section 1 of the California Constitution.

The Court found that there had been no violation of the constitutional privacy right, because the defendant had no "reasonable expectation of privacy" under the circumstances. The Court expressly applied the same test that is used to determine whether there has been a "search" under the Fourth Amendment of the United States Constitution, or Article I, Section 13 of the California Constitution. It explained:

142. See *supra* notes 24-26 & accompanying text.

143. 33 Cal. 3d 623 (1983).

In the search and seizure context, the article I, section 1 “privacy” clause has never been held to establish a broader protection than that provided by the Fourth Amendment of the United States Constitution or article I, section 13 of the California Constitution. “[The] search and seizure and privacy protections [are] coextensive when applied to police surveillance in the criminal context.” (*People v. Owens* (1980) 112 Cal.App.3d 441, 448-449 [169 Cal. Rptr. 359].) “[Article I, section 1, article I, section 13 and the Fourth Amendment] apply only where parties to the [conversation] have a ‘reasonable expectation of privacy’ with respect to what is said....” (*People v. Estrada* (1979) 93 Cal.App.3d 76, 98 [155 Cal. Rptr. 731].)¹⁴⁴

The defendant argued that *White v. Davis* had established stronger protections for the constitutional privacy right. The Court responded:

Crowson argues that in *White v. Davis* ... we held that article I, section 1 establishes an expanded right of privacy which may be abridged only where there is a compelling state interest. *White*, however, was not a traditional search and seizure case, but rather involved alleged police surveillance of noncriminal activity on a university campus. In that context, we held that the alleged police conduct implicated First Amendment as well as right to privacy principles.¹⁴⁵

The holding and reasoning in *Crowson* suggest that any case involving a “traditional search and seizure” should be analyzed under the Fourth Amendment and Article I, Section 13 of the California Constitution, rather than under the Article I, Section 1 privacy right.

The California Supreme Court made that point expressly in *In re York*,¹⁴⁶ in which petitioners objected to a rule requiring drug

144. *Id.* at 629.

145. *Id.* at n.5.

146. 9 Cal. 4th 1133 (1995).

testing as a condition of releasing a criminal suspect on the suspect's own recognizance pending trial. The practice was claimed to violate the suspect's Article I, Section 1 right to privacy, as well as constitutional protections against unreasonable search and seizure under the Fourth Amendment and Article I, Section 13. The Court set aside the privacy claim, and analyzed the case solely under search and seizure principles, in express reliance on *Crowson*:

We also observe that, “[i]n the search and seizure context, the article I, section 1 ‘privacy’ clause [of the California Constitution] has never been held to establish a broader protection than that provided by the Fourth Amendment of the United States Constitution or article I, section 13 of the California Constitution.” (*People v. Crowson* (1983) 33 Cal.3d 623, 629 [190 Cal. Rptr. 165, 660 P.2d 389].)¹⁴⁷

Summary of California Constitutional Privacy Right

The California Constitution contains an express privacy right. That right applies to both public and private action. The privacy right protects both informational privacy and autonomy privacy.

In order to “weed out” trivial, insignificant, and de minimis privacy violations, courts first determine whether a privacy right claim meets the following threshold elements: (1) an identifiable privacy interest, (2) a reasonable expectation of privacy, and (3) a serious violation of the privacy interest.

If an actionable claim is presented, the invasion of privacy may be justified by demonstrating a legitimate and important competing interest. This requires a balancing analysis, which takes into account the kind of privacy interest involved, the nature and seriousness of the invasion, and the nature of the countervailing interests. The level of protection may be lower when private party action is at issue. This implies that the converse may also be true, that stricter standards apply when reviewing government action.

147. *Id.* at 1149.

In cases involving a traditional search and seizure (e.g., “police surveillance in the criminal context”), the protection afforded by the privacy right is no greater than that afforded by the Fourth Amendment or Article I, Section 13 of the California Constitution.

FEDERAL SURVEILLANCE STATUTES

In addition to complying with federal and state constitutional constraints, state legislation on government access to electronic communications must comply with any controlling federal statutory law. In that regard, it is important to examine and consider the requirements of the Electronic Communications Privacy Act of 1986 (“ECPA”). ECPA is a federal bill, enacted in 1986, which modernized federal statutory law governing electronic surveillance.¹⁴⁸ The official name of the bill is commonly used as a shorthand, to refer to the statutes that were amended or added by the bill. For the purposes of this study, the most relevant effects of ECPA are as follows:

- ECPA amended an existing statute on the interception of wire and oral communications (Chapter 119 of Title 18, also known as the “Wiretap Act” or “Title III”) to make that statute applicable to electronic communications.
- ECPA added a new statute on access to stored electronic communications (Chapter 121 of Title 18, also known as the “Stored Communications Act” or “SCA”).
- ECPA added a new statute on the use of pen registers and trap and trace devices (Chapter 206 of Title 18, hereafter “Pen Register Act”).

ECPA is relevant to the conduct of electronic surveillance in California for two reasons: It expressly applies to the states and it

148. P.L. 99-508; 100 Stat. 1848 (1986).

has been held to preempt less protective state laws.¹⁴⁹ Federal preemption is a consequence of the “Supremacy Clause” of the United States Constitution.¹⁵⁰

Interception of Communication Content

As amended by ECPA, the Wiretap Act governs the interception¹⁵¹ of wire,¹⁵² oral,¹⁵³ and electronic

149. See *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963) (federal preemption doctrine generally); *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4th 95, 105-06 (2006) (federal Wiretap Act does not preempt more stringent protections of California law); *People v. Conklin*, 12 Cal. 3d 259 (1974) (“[T]he Senate Report indicates that Congress anticipated state regulation of electronic surveillance. As we discussed ... the report refers to numerous areas touching upon the field of electronic surveillance which state law may control. Thus, in referring to a need for uniform nationwide standards, it appears that Congress was not expressing an intent to preempt the entire field; rather, it was emphasizing the need to ensure nationwide compliance with the newly declared standards in *Berger* and *Katz*. Accordingly, we conclude that Congress did not intend to occupy the entire field of electronic surveillance to the exclusion of state regulation.”). See also CLRC Staff Memorandum 2014-33, pp. 38-51.

150. U.S. Const. art VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

151. 18 U.S.C. § 2510(4) (“‘intercept’ means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.”)

152. 18 U.S.C. § 2510(1) (“‘wire communication’ means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce”).

communications.¹⁵⁴ The statute generally prohibits the interception of communications and the use of intercepted communications, subject to a number of statutory exceptions. The major elements of the statute are described below.

Meaning of “Interception”

Although the definition of “intercept” is not expressly limited to the acquisition of communication contents during transmission, that was the practical meaning of the term when it was first used in the original wiretap law. At that time, telephone calls and oral conversations were necessarily intercepted while they were occurring, because such communications were not routinely recorded and stored for later access.

Modern electronic communications are different. They are routinely stored and the stored copies can be accessed long after the process of transmission has been completed. Access to such “stored” communications is not considered to be an interception for the purposes of the Wiretap Act. Instead, it is regulated under the Stored Communications Act, which is discussed later in this report.

However, it is possible to “intercept” an electronic communication during transmission, and such interceptions are governed by the Wiretap Act. The fact that the process of sending

153. 18 U.S.C. § 2510(2) (“‘oral communication’ means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication”).

154. 18 U.S.C. § 2510(12) (“‘electronic communication’ means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include — (A) any wire or oral communication; (B) any communication made through a tone-only paging device; (C) any communication from a tracking device (as defined in section 3117 of this title); or (D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds”).

an electronic communication necessarily creates a stored copy of the communication does not bar application of the Wiretap Act:

The term “electronic communication” includes transient electronic storage intrinsic to the transmission of such communications. Thus, an e-mail message continued to be an electronic communication during momentary intervals, intrinsic to the communication process, when the message is in transient electronic storage. Interception of electronic communication occurs with reading of transmissions as they are sent....¹⁵⁵

Prohibitions and Exceptions

It is generally unlawful to intentionally intercept a wire, oral, or electronic communication.¹⁵⁶ It is also generally unlawful to disclose or use the contents¹⁵⁷ of communications that are known to have been obtained through an unlawful interception or that are disclosed in order to obstruct a criminal investigation.¹⁵⁸ In addition, electronic communication service providers are generally prohibited from divulging the contents of communications, while they are in transmission, to anyone other than the sender or intended recipient.¹⁵⁹ Finally, it is unlawful to manufacture, sell, advertise, or deliver devices designed for surreptitious interception of wire, oral, or electronic communications.¹⁶⁰

Those general prohibitions are subject to a number of exceptions. Many of the exceptions relate to matters that are not

155. J. Carr & P. Bellia, *The Law of Electronic Surveillance*, 3:7 (Feb. 2014) (footnotes omitted) (hereafter “*Electronic Surveillance*”).

156. 18 U.S.C. § 2511(1)(a)-(b).

157. In Chapter 119, “contents” is a defined term. See 18 U.S.C. § 2510(8) (“‘contents’, when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication...”).

158. 18 U.S.C. § 2511(1)(c)-(e).

159. 18 U.S.C. § 2511(3)(a).

160. 18 U.S.C. § 2512(1).

germane to state and local agency surveillance, such as exceptions for the interception of publicly accessible information,¹⁶¹ interception with the consent of a participant,¹⁶² and interception pursuant to the legitimate business needs of the service provider.¹⁶³ There are also exceptions for interception for specified federal purposes.¹⁶⁴ Federal interception is beyond the scope of this report.

Government Interception Pursuant to Warrant

Notwithstanding the general prohibitions of the Wiretap Act, government may intercept wire, oral, and electronic communications pursuant to a lawfully issued warrant.¹⁶⁵

As discussed earlier, a warrant authorizing the interception of communications is subject to stricter requirements than a routine search warrant. This reflects the special Fourth Amendment concerns that arise when government intercepts communications.¹⁶⁶ The main requirements for issuance of the so-called “super-warrant” are as follows:

- Interception can only be authorized to investigate specified serious felonies.¹⁶⁷

161. 18 U.S.C. § 2512(2)(g).

162. 18 U.S.C. § 2512(2)(c)-(d), (3)(b)(ii).

163. 18 U.S.C. § 2512(2)(a)(i)-(ii); (3)(b)(iii).

164. 18 U.S.C. § 2512(2)(b) (Federal Communications Commission); (2)(e)-(f) (foreign intelligence gathering).

165. 18 U.S.C. § 2517. There are also specific exceptions for the disclosure of intercepted content to law enforcement, in situations other than government surveillance. See 18 U.S.C. § 2511(2)(i) (computer trespasser), (3)(b)(iv) (inadvertently obtained evidence of crime).

166. See text accompanying notes 42-44 (discussing *New York v. Berger*).

167. 18 U.S.C. § 2516(1) (federal government), (2) (state government). The standard is lower when the federal government intercepts electronic communications in the former situation than when a state government intercepts electronic communications. Any federal felony is sufficient. *Id.* at (3).

- The court must find that other investigative procedures were tried and failed, were unlikely to succeed if tried, or would be too dangerous to try.¹⁶⁸
- Authorization to intercept communications may not continue “longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days.”¹⁶⁹ However, based on a new showing of probable cause, the court can extend the authorization for one or more additional periods of the same duration.¹⁷⁰
- The interception must be “conducted in such a way as to minimize the interception of communications not otherwise subject to interception” under the Wiretap Act.¹⁷¹
- The warrant must describe the person whose communications will be intercepted (if known), the communication facilities to be used, the type of communication to be intercepted and the criminal offense to which it relates.¹⁷²
- In addition to finding probable cause for belief that an individual is committing, has committed, or is about to commit a predicate crime, the court must also find “probable cause for belief that particular communications concerning that offense will be obtained through such interception” and “probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the

168. 18 U.S.C. § 2518(3)(c).

169. 18 U.S.C. § 2518(5).

170. *Id.*

171. *Id.*

172. 18 U.S.C. § 2518(4).

commission of such offense, or are leased to, listed in the name of, or commonly used by such person.”¹⁷³

- The contents of intercepted communications are required to be recorded in a form that will prevent alteration. On expiration of the period of authorization, the recordings must be made available to the judge.¹⁷⁴
- Within a reasonable time (not to exceed 90 days) after an authorizing order and any extension of the order has terminated, an “inventory” shall be served on the persons named in the order and on any other party to an intercepted communication as the judge orders, in the interests of justice. The inventory document must provide notice of the interception, including the date and period of interception, and whether any communications were actually intercepted. The judge may also order, in the interests of justice, that portions of the intercepted communications be provided. However, on an ex parte showing of good cause, a judge may postpone service of the inventory.¹⁷⁵

Exception to Warrant Requirement for Exigent Circumstances

In certain circumstances, law enforcement may intercept a wire, oral, or electronic communication without first obtaining an authorizing court order. This may be done if (1) law enforcement determines that there is an emergency that requires the interception to occur before an order could be obtained with due diligence, (2) there are grounds upon which an authorizing order could be entered, and (3) an application for an authorizing order is made within 48 hours after the interception begins.¹⁷⁶

173. 18 U.S.C. § 2518(3).

174. 18 U.S.C. § 2518(8)(a).

175. 18 U.S.C. § 2518 (8)(d).

176. 18 U.S.C. § 2518(7).

For this purpose, an emergency situation must involve one or more of the following:

- Immediate danger of death or serious physical injury to any person.
- Conspiratorial activities threatening the national security interest.
- Conspiratorial activities characteristic of organized crime.¹⁷⁷

An interception conducted pursuant to this emergency exception must end immediately when the communication being sought has been obtained or the court denies the requested order, whichever comes first.¹⁷⁸

If the court denies the application for authority, or the application is never made, the interception is treated as a violation of the chapter.¹⁷⁹

Use of Lawfully Intercepted Communications

An investigative or law enforcement officer who lawfully obtains the contents of an interception of a wire, oral, or electronic communication can disclose those contents to another investigative or law enforcement officer to the extent appropriate to the proper performance of official duties.¹⁸⁰ Such contents can also be used by the investigative or law enforcement officer in the proper performance of official duties.¹⁸¹ The same is true even if the officer intercepts communications relating to offenses other than those specified in the order authorizing interception.¹⁸²

177. *Id.*

178. *Id.*

179. *Id.*

180. 18 U.S.C. § 2517(1).

181. 18 U.S.C. § 2517(2).

182. 18 U.S.C. § 2517(5).

Any person who lawfully received the contents of an intercepted communication or evidence derived from the interception may disclose the contents or derivative evidence while giving testimony under oath or affirmation in any proceeding under the authority of the federal government, a state, or a political subdivision of a state.¹⁸³ However, if an officer intercepts communications relating to offenses other than those specified in the order authorizing interception, the contents of the interception and derivative evidence can only be introduced into evidence in a proceeding if a judge determines, on subsequent application, that the contents were otherwise intercepted in accordance with the Wiretap Act.¹⁸⁴

There are also provisions authorizing use of lawfully intercepted communication contents in foreign intelligence, counter-intelligence, and foreign intelligence sharing, and to counter a grave threat from foreign powers, saboteurs, terrorists, or foreign intelligence agents.¹⁸⁵ Such use is beyond the scope of this report.

Limitations on Use of Intercepted Communications

The contents of a lawfully intercepted communication cannot be introduced into evidence in a proceeding unless all parties receive a copy of the application, as well as the order authorizing the interception, at least 10 days before the proceeding.¹⁸⁶ The judge may waive the 10-day period if it was not possible to provide notice to a party in that time period and the party was not prejudiced.¹⁸⁷

A privileged communication does not lose its privileged status as a consequence of being lawfully intercepted.¹⁸⁸

183. 18 U.S.C. § 2517(3).

184. 18 U.S.C. § 2517(5).

185. 18 U.S.C. § 2517(6)-(8).

186. 18 U.S.C. § 2518(9).

187. *Id.*

188. 18 U.S.C. § 2517(4).

Remedies for Violations

The remedies provided in the Wiretap Act are the exclusive remedies for a violation of that act. However, this does not limit the remedies that might be available if a statutory violation also violates the Constitution.¹⁸⁹

The act provides for the following types of relief:

- *Injunction.* The United States Attorney General may bring an action to enjoin a felony violation of the Wiretap Act.¹⁹⁰
- *Suppression of Evidence.* Before any “trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof,” an “aggrieved person”¹⁹¹ may move to suppress the contents of an interception or evidence derived from those contents.¹⁹²
- *Civil Action Generally.* In general, a person whose communication is intercepted, disclosed, or intentionally used in violation of the Wiretap Act, by a person other than the United States, may bring a civil action seeking preliminary or declaratory relief, damages, fees, and costs.
- *Civil Action Against United States.* Any person who is aggrieved by a willful violation of the Wiretap Act by the United States may bring a civil action against the United States for money damages.¹⁹³

189. 18 U.S.C. § 2518(10)(c).

190. 18 U.S.C. § 2521.

191. 18 U.S.C. § 2510(11) (“‘aggrieved person’ means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed...”).

192. 18 U.S.C. § 2518(10)(a).

193. 18 U.S.C. § 2712(a).

- *Administrative Discipline.* An officer of the United States who willfully or intentionally violates the chapter may be subject to administrative discipline.¹⁹⁴
- *Criminal Penalty.* A person who violates the general prohibitions in the Wiretap Act may be punished by a fine, imprisoned for not more than five years, or both.¹⁹⁵
- *Contempt.* A violation of certain procedures governing law enforcement interception pursuant to court authorization is punishable as contempt.¹⁹⁶
- *Confiscation of Devices.* Devices that are used, sent, carried, manufactured, assembled, possessed, sold or advertised in violation of the relevant provisions of the Wiretap Act can be seized and forfeited to the United States.¹⁹⁷

A person has a complete defense to civil and criminal liability under the Wiretap Act if the person acted in good faith reliance on a court order or warrant, an emergency request, or a good faith determination that the law permitted the conduct that is alleged to be a violation of the act.¹⁹⁸

Access to Stored Communications

The Stored Communications Act, an important component of ECPA, governs the disclosure of stored electronic communications, including both content and metadata. Access to and disclosure of such information is generally prohibited, unless it falls within a statutory exception. There are a series of exceptions for government access pursuant to lawful process (with the type of

194. 18 U.S.C. § 2520(f). See also 18 U.S.C. § 2712(c).

195. 18 U.S.C. § 2511(4)(a).

196. 18 U.S.C. § 2518(8)(c).

197. 18 U.S.C. § 2513.

198. 18 U.S.C. § 2520(d).

process required varying with the type of information sought). The major elements of the statute are described below.

Prohibitions and Exceptions

It is generally unlawful to do any of the following:

- Intentionally access an electronic communication service¹⁹⁹ facility, without authorization or in excess of authorization, to obtain, alter, or prevent authorized access to a wire or electronic communication that is in electronic storage.²⁰⁰
- For an electronic communication service provider to knowingly divulge, to any person or entity, the contents of a communication that is in electronic storage.²⁰¹
- For a remote computing service²⁰² provider to knowingly divulge, to any person or entity, the contents of any communication that is “carried or maintained” on the remote computing service on behalf of a customer or subscriber.²⁰³
- For an electronic communication service provider or a remote computing service provider to knowingly divulge, to any person or entity, a record or other information pertaining to a customer or subscriber.²⁰⁴

199. See 18 U.S.C. § 2510(14) (“‘electronic communication service’ means any service which provides to users thereof the ability to send or receive wire or electronic communications.”). See also 18 U.S.C. § 2711(1) (expressly making definitions in Section 2510 applicable to Chapter 121).

200. 18 U.S.C. § 2701(a).

201. 18 U.S.C. § 2702(a)(1).

202. 18 U.S.C. § 2711(2) (“remote computing service” is defined as “the provision to the public of computer storage or processing services by means of an electronic communications system”).

203. 18 U.S.C. § 2702(a)(2).

204. 18 U.S.C. § 2702(a)(3).

Furthermore, any willful disclosure of a record lawfully obtained by law enforcement pursuant to the Stored Communications Act is deemed to be a violation of the Act, unless (1) the disclosure was made in the proper performance of official functions or (2) the disclosed information had previously been lawfully disclosed by the government or by the plaintiff in a civil action relating to the disclosure.²⁰⁵

Those general prohibitions are subject to a number of exceptions. Many of the exceptions relate to matters that are not germane to government surveillance, such as exceptions for disclosure of intercepted information with the consent of a communication participant,²⁰⁶ disclosure pursuant to the legitimate business needs of the service provider,²⁰⁷ and disclosure to federal intelligence agencies.²⁰⁸

Government Interception Pursuant to Lawful Process

There are a number of exceptions for government access to stored data. In each of these exceptions, a provider is compelled to provide information when a government entity presents the requisite authorization. The form of authorization required varies, based on the following factors:

- Whether the information sought is held in connection with an “electronic communication service” (hereafter “ECS”) or a “remote computing service” (hereafter “RCS”).
- If the information is held in connection with an RCS service, whether that service is provided to the general public.
- Whether the information is content or metadata.

205. 18 U.S.C. § 2707(g).

206. 18 U.S.C. §§ 2701(c)(2); 2702(b)(1) & (3), (c)(2).

207. 18 U.S.C. § 2702(b)(4)-(5), (c)(3).

208. 18 U.S.C. § 2709.

- Whether the information has been stored for 180 days or more.

Those distinctions, and the system of requirements based on those distinctions, are discussed further below.

ECS v. RCS

In very general terms, an ECS is a system used to send and receive communications on behalf of a customer (e.g., an email service), while an RCS is a system used to store or process customer data (e.g., an online cloud storage service).

One potential difficulty with the ECS-RCS dichotomy is that the delivery and receipt of electronic communications also involves the creation and storage of copies. To partially resolve that difficulty, the Stored Communications Act provides that ECS can include a copy of a message that is in “electronic storage.”²⁰⁹ That term is defined narrowly:

(17) “electronic storage” means—

(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication

Any stored communication that does not fall within the above definition of “electronic storage” would instead be deemed to be in the kind of storage provided by an RCS.

Applying those concepts, some courts have held that an email message remains in “electronic storage” (i.e., within ECS status) only until it has been opened. Once the message has been opened, any further storage is no longer “temporary” or “incidental to ...

209. See, e.g., 18 U.S.C. § 2702(a) (prohibiting ECS disclosure of message content “while in electronic storage by that service”).

transmission.” At that point, any further storage of the opened message is the sort of storage provided by an RCS.²¹⁰

However, there is a split of authority on that issue. In *Theofel v. Farey-Jones*, the court held that a copy of an opened email had been retained by the ISP as a “backup.” Consequently, the message was in “electronic storage” under the backup clause in the governing definition. Thus, access to the opened email was governed by the provisions that apply to an ECS service.²¹¹

RCS Service to the “Public”

The definition of “remote computing service” is limited to an entity that provides service to the “public.” This includes any entity that offers services to the public generally (e.g., Gmail).

It does not include an entity that provides service solely on the basis of a special relationship between the entity and the users of the service. For example, a company that provides email service to its employees as an incident of employment would not be providing service to the “public” and so would not be an RCS with regard to its employees.²¹²

Some commentators have expressed concern that the definition of “RCS” may exclude universities that provide Internet services to their students, because those services are not being provided to the public generally.²¹³ If so, the privacy protections afforded to RCS data could be denied to those who receive Internet service from a university or similar entity.

210. Office of Legal Education, Executive Office for United States Attorneys, *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations* 120 (2009) (and cases cited therein).

211. 359 F.3d 1066, 1075-77 (9th Cir. 2004).

212. Office of Legal Education, Executive Office for United States Attorneys, *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations* 119-20 (2009).

213. Kerr, *A User’s Guide to the Stored Communications Act — and a Legislator’s Guide to Amending It*, 72 Geo. Wash. L. Rev. 1, 22 (2004).

Content and Metadata

The Stored Communications Act draws an express distinction between the content of a communication and related non-content information.²¹⁴

The SCA also draws a distinction between non-content information generally²¹⁵ and a specific subset of non-content information (identifying the customer and detailing the customer’s telephone use).²¹⁶

Required Legal Process

Depending on the circumstances, the Stored Communications Act may require a warrant, a grand jury subpoena, an administrative subpoena, or a court order issued under 18 U.S.C. § 2703(d) when government seeks to compel the production of stored communications.

The forms of legal process that government must use to access different types of information are summarized in the table below:

Information Sought	Required Process
ECS Content Stored 180 Days or Less	• Search warrant ²¹⁷
ECS Content Stored More Than 180 Days	• Search warrant, ²¹⁸ or • Administrative subpoena, or • Grand jury or trial subpoena, or • Court order per § 2703(d) ²¹⁹
RCS Content	• Search warrant, ²²⁰ or • Administrative subpoena, or

214. See generally 18 U.S.C. § 2703.

215. 18 U.S.C. § 2703(c)(1).

216. 18 U.S.C. § 2703(c)(2)

217. 18 U.S.C. § 2703(a).

218. 18 U.S.C. § 2703(a) & (b)(1)(A).

219. 18 U.S.C. § 2703(b)(1)(B)(i).

220. 18 U.S.C. § 2703(a) & (b)(1)(A).

	• Grand jury or trial subpoena, or • Court order per § 2703(d)²²¹
Non-Content Information Generally	• Search warrant,²²² or • Court order per § 2703(d)²²³
Specified Subset of Non-Content Information (“Subscriber Information”)	• Search warrant,²²⁴ or • Administrative subpoena, or • Grand jury or trial subpoena, or • Court order per § 2703(d)²²⁵
RCS that is not Provided to the Public Generally	• No protection under the SCA

In addition, the Stored Communications Act provides an exception for the disclosure of stored communications to address an emergency²²⁶ and miscellaneous other exceptions relating to specific law enforcement situations.²²⁷

Noteworthy Implications of Existing Statutory Rules

A few aspects of the legal process requirements described above warrant further discussion.

Possible Unconstitutionality of Section 2703(d) Order

As noted above, the Stored Communications Act sometimes authorizes the use of a court order issued under Section 2703(d) to compel the production of stored electronic records. To obtain such an order, the government must offer “specific and articulable facts showing that there are reasonable grounds to believe that the

221. 18 U.S.C. § 2703(b)(1)(B)(i).

222. 18 U.S.C. § 2703(c)(1)(A).

223. 18 U.S.C. § 2703(c)(1)(B).

224. 18 U.S.C. § 2703(c)(2).

225. *Id.*

226. 18 U.S.C. § 2702(b)(8) & (c)(4).

227. 18 U.S.C. § 2702(b)(6) (reporting to National Center for Missing and Exploited Children); (7) (inadvertently obtained evidence of crime).

contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.”²²⁸

That standard is lower than the probable cause standard that governs warrants under the Fourth Amendment and Article I, Section 13 of the California Constitution. Nonetheless, the lower standard used for a Section 2703(d) order may be constitutionally permissible if the Fourth Amendment and Article I, Section 13 do not apply.

A Section 2703(d) order can be used to obtain a wide range of stored communications, including stored voice messages, email, text messages, and other writings. The general principle that there is a reasonable expectation of privacy with regard to private conversations would seem to encompass those forms of communications. The only obstacle to there being a reasonable expectation of privacy with respect to those forms of communication is the third party doctrine.

As discussed above, it is not clear that the third party doctrine applies to the content of communications. Moreover, there is one decision of the Sixth Circuit Court of Appeals holding that the Stored Communications Act violates the Fourth Amendment to the extent that it permits access to stored email content without a warrant. Finally, recall that Article I, Section 13 of the California Constitution is not subject to a third party exception. Therefore, the use of a Section 2703(d) order would likely violate Article I, Section 13.

In light of the foregoing, there is reason to believe that the use of a Section 2703(d) order to obtain stored communications is unconstitutional.

Prohibitions on Use of Investigative Subpoenas

As discussed above, the courts have held that the use of an investigative subpoena *duces tecum* to obtain records does not

228. 18 U.S.C. § 2703(d).

necessarily violate the Fourth Amendment or Article I, Section 13 of the California Constitution.

Nonetheless, the Stored Communications Act does not permit the use of such subpoenas to obtain two types of stored information:

- (1) ECS content that has been stored for 180 days or less.
- (2) General non-content information.

The prohibition on use of these subpoenas should not affect police searches in criminal cases, because police are authorized to obtain warrants. The only effect is to prohibit access to such records by grand juries and government agencies investigating regulatory and civil law violations. It is likely that grand juries can instead access such records by means of a warrant obtained by a district attorney on the grand jury's behalf. But government agencies investigating non-criminal matters have no way to obtain a general search warrant. This means that such agencies are effectively barred from accessing these types of information.

The purpose of such a prohibition is not clear. In particular, it is counter-intuitive to allow the use of an investigative subpoena to obtain the content of communications but not allow use of a subpoena to obtain non-content information.

Delayed Notice

Under the Stored Communications Act the use of an investigative subpoena is contingent on giving prior notice to the affected customer.²²⁹ Prior notice to the customer is consistent with the notion, discussed above, that the constitutionality of an investigative subpoena *duces tecum* depends on the fact that the person whose privacy is to be invaded will have notice and an opportunity to be heard before the subpoena operates.

Although notice to the customer before enforcement of an investigative subpoena is generally required, the Stored Communications Act allows such notice to be delayed, by

229. 18 U.S.C. § 2703(b)(1)(B).

successive 90 day periods, if a court finds that prior notification would produce any of the following “adverse results:”

- (A) endangering the life or physical safety of an individual;
- (B) flight from prosecution;
- (C) destruction of or tampering with evidence;
- (D) intimidation of potential witnesses; or
- (E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.²³⁰

In addition, the government may obtain a court order commanding a service provider not to notify its customer of a warrant, court order, or subpoena issued under the SCA.²³¹

It is not clear whether use of an investigative subpoena *duces tecum*, without prior notice to the customer and an opportunity for the customer to object to the reasonableness of the search, is sufficient to satisfy the requirements of the Fourth Amendment and Article I, Section 13 of the California Constitution.

Preservation of Evidence

The Stored Communications Act provides two ways in which the government can require a communication service provider to secure evidence against destruction by a customer, while the government obtains the necessary authorization for access.

First, the government can simply “request” that an ECS or RCS provider “preserve records and other evidence in its possession pending the issuance of a court order or other process.”²³² The provider is obliged to do so, for a period of 90 days (subject to extension for another 90-day period on the request of the government).²³³

230. 18 U.S.C. § 2705(a)(2).

231. 18 U.S.C. § 2705(b).

232. 18 U.S.C. § 2703(f)(1).

233. 18 U.S.C. § 2703(f)(2).

Second, if the government is using an administrative subpoena or court order to request access to ECS data that is in electronic storage for more than 180 days, or to request RCS data, it may include in the authorizing instrument a requirement that the service provider create a backup copy of the requested data.²³⁴ Ordinarily, the customer is given notice of the creation of the backup within three days after the backup copy is created.²³⁵ However, that notice can be delayed if notice would lead to the sort of “adverse results” previously described in the discussion of “Delayed Notice.”²³⁶

A customer who receives notice of the creation of a backup may move to quash or vacate the underlying subpoena or order.²³⁷

Cost Reimbursement

In general, the government is required to reimburse a service provider for reasonably necessary costs incurred in “searching for, assembling, reproducing, or otherwise providing” customer information that the provider is compelled to provide.²³⁸

Remedies for Violations

The remedies provided in the Stored Communications Act are the exclusive remedies for a violation of the Act.²³⁹ Notably, the Stored Communications Act does *not* provide for suppression of evidence derived from a violation of the Act (suppression may be available if a violation of the Act is also a violation of the Fourth Amendment).

The Act provides for the following types of relief:

234. 18 U.S.C. § 2704(a)(1). See also 18 U.S.C. § 2704(a)(1)(a)(3) (retention of backup), (4) (release of backup), (5) (authority to order backup creation to avoid destruction of evidence).

235. 18 U.S.C. § 2704(a)(2).

236. *Id.*

237. 18 U.S.C. § 2704(b).

238. 18 U.S.C. § 2706.

239. 18 U.S.C. § 2708. See also 18 U.S.C. § 2712(d).

- *Civil Action Generally.* Any person who is aggrieved by a knowing or intentional violation of the Stored Communications Act may bring an action against the violator (other than the United States), seeking preliminary, equitable, or declaratory relief, damages, and attorneys fees and costs.²⁴⁰
- *Civil Action Against the United States.* Any person who is aggrieved by a willful violation of the Stored Communications Act by the United States may bring a civil action against the United States for money damages.²⁴¹
- *Criminal Penalty.* A person who intentionally accesses a communication facility without sufficient authorization and obtains, alters, or prevents authorized access to a wire or electronic communication may be fined, imprisoned, or both.²⁴²
- *Administrative Discipline.* If a court or federal agency finds that an officer or agent of the United States violated the Act, the department may take disciplinary action against the violator.²⁴³

There is no cause of action against a provider, in any court, if the provider acted in accordance with a court order, warrant, subpoena, statutory authorization, or certification pursuant to the Stored Communications Act.²⁴⁴

In addition, good faith reliance on any of the following is a complete defense to any civil or criminal action brought under the Stored Communications Act or any other law:

- (1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization

240. 18 U.S.C. § 2707(a)-(b).

241. 18 U.S.C. § 2712(a).

242. 18 U.S.C. § 2701(b).

243. 18 U.S.C. § 2707(d).

244. 18 U.S.C. § 2703(e).

(including a request of a governmental entity under section 2703(f) of this title);

(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of...²⁴⁵

Video Privacy Protection Act

In 1988, the SCA was amended to add a section that protects the privacy of consumer video rental histories.²⁴⁶ That statute (known as the “Video Privacy Protection Act”) establishes civil liability if a “video tape service provider” discloses customer information that “identifies a person as having requested or obtained specific video materials or services.”²⁴⁷

By its terms, this provision applies to “prerecorded video cassette tapes *or similar audio visual materials*,” “video tapes or *other audio visual material*,” and to both “*goods and services*.”²⁴⁸ That language seems designed to extend the section’s protections to audio visual content regardless of medium. In fact, there is case law that seems to accept that the statute applies to DVDs.²⁴⁹ Similarly, a district court recently held that the statute applies to video content streamed over the Internet.²⁵⁰

There are exceptions to the statute’s prohibition on disclosure where law enforcement obtains a warrant based on probable cause, where a court orders discovery in a civil proceeding, in the ordinary course of business, and where the customer consents to disclosure.²⁵¹ Moreover, a provider can disclose a customer’s

245. 18 U.S.C. § 2707(e).

246. 18 U.S.C. § 2710.

247. *Id.*

248. 18 U.S.C. § 2710(a)(1), (3)–(4), (b)(2)(D)(ii).

249. *Sterk v. Redbox Automated Retail, LLC*, 672 F.3d 535 (7th Cir. 2012).

250. *In re Hulu Privacy Litig.*, 2014 U.S. Dist. LEXIS 59479 (N.D. Cal. 2014).

251. 18 U.S.C. § 2710(b).

identifying information to any person, so long as the disclosed information does not identify “the title, description, or subject matter of the video” provided to the customer.²⁵²

Disclosure to law enforcement pursuant to a warrant can only be made with prior notice to the customer.²⁵³ There is no provision for delayed notice.

An aggrieved customer can bring a civil action for damages against a provider who makes an unlawful disclosure.²⁵⁴

Illegally obtained video history information “shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision of a State.”²⁵⁵

Finally, the statute imposes a duty on providers to destroy customer history information “as soon as practicable,” but in no case more than one year from the date it is no longer needed for the purpose for which it was collected.²⁵⁶

Pen Register Act

Another component of ECPA is the Pen Register Act, which governs the use of “pen registers”²⁵⁷ and “trap and trace devices”²⁵⁸ to collect non-content “dialing, routing, addressing, or signaling information” about wire and electronic communications. A pen register tracks outgoing communications. A trap and trace device tracks incoming communications.

252. 18 U.S.C. § 2710(b)(2)(D).

253. 18 U.S.C. § 2710(b)(3).

254. 18 U.S.C. § 2710(c).

255. 18 U.S.C. § 2710(d).

256. 18 U.S.C. § 2710(e).

257. 18 U.S.C. § 3127(3).

258. 18 U.S.C. § 3127(4).

Prohibition and Exceptions

It is generally unlawful for any person to install and use a pen register or trap and trace device.²⁵⁹

That general prohibition is subject to a number of exceptions. Some of the exceptions relate to matters that are not germane to state and local agency surveillance, such as exceptions for the collection of information pursuant to the legitimate business needs of a service provider²⁶⁰ and foreign intelligence gathering.²⁶¹ An exception for use of a pen register or trap and trace device by federal and state law enforcement is discussed further below.

Government Surveillance Pursuant to Court Order

The federal and state governments can apply to a court of competent jurisdiction for an order authorizing the use of a pen register or a trap and trace device.²⁶² A warrant is not required.

To apply for an order authorizing the use of a pen register or a trap and trace device, the government must certify that the “information likely to be obtained” pursuant to the order is “relevant to an ongoing criminal investigation being conducted by that agency.”²⁶³

If the court finds that the officer submitting the application has made the required certification, the court *shall* issue the order.²⁶⁴ Consequently, “judicial review is ministerial, and the issuing judge does not conduct an independent inquiry into the facts attested to by the applicant.”²⁶⁵

259. 18 U.S.C. § 3121(a).

260. 18 U.S.C. § 3121(b).

261. 18 U.S.C. § 3121(a).

262. *Id.*

263. 18 U.S.C. § 3122(b)(2).

264. 18 U.S.C. § 3123(a)(1)-(2).

265. *Electronic Surveillance*, *supra* note 154, at 4:84 (footnotes omitted).

The statute protects the secrecy of the use of a pen register or a trap and trace device, in two ways:²⁶⁶

- The court order authorizing use is sealed.
- The court order prohibits any service provider from disclosing the use of the pen register or trap and trace device to any person.

A government agency that is authorized to use a pen register or a trap and trace device must use reasonably available technology to prevent the acquisition of communication content.²⁶⁷

If a government agency is authorized to use a pen register or a trap and trace device and the agency requests (and the court orders) assistance from a communication service provider, landlord, custodian, or other person, that person is required to provide any information, facilities, and technical assistance necessary to accomplish the installation of the device unobtrusively and with a minimum of service disruption.²⁶⁸

Persons who are required to provide assistance are entitled to compensation of their reasonable expenses.²⁶⁹

Emergency Exception

A government agency is not required to obtain an authorizing court order before using a pen register or trap and trace device if (1) there is an emergency situation that requires such use before an order could, with due diligence, be obtained, and (2) there are grounds for issuance of such an order.²⁷⁰ For the purposes of this exception, an emergency situation is one that involves any of the following:

266. 18 U.S.C. § 3123(d).

267. 18 U.S.C. § 3121(c).

268. 18 U.S.C. § 3124(a)-(b).

269. 18 U.S.C. § 3124(c). See also 18 U.S.C. § 3125(d).

270. 18 U.S.C. § 3125(a).

- (A) immediate danger of death or serious bodily injury to any person;
- (B) conspiratorial activities characteristic of organized crime;
- (C) an immediate threat to a national security interest; or
- (D) an ongoing attack on a protected computer (as defined in section 1030) that constitutes a crime punishable by a term of imprisonment greater than one year ²⁷¹

If an agency proceeds under this exception, it is required to obtain a court order within 48 hours after the installation of the device.²⁷² In the absence of such an order, use of the device must end at the earliest of the 48-hour period, the refusal of the court to grant the order, or the acquisition of the information sought.²⁷³

The knowing failure to apply for an order authorizing emergency use within the 48-hour period specified above is a violation of the statute.²⁷⁴

Remedy for Violation

A person who knowingly violates the prohibition on installation and use of a pen register or a trap and trace device may be fined, imprisoned for not more than one year, or both.²⁷⁵ There does not appear to be any civil remedy.

Moreover, if an investigative or law enforcement officer willfully discloses a record obtained with a pen register or a trap and trace device, other than in the official performance of duties, the disclosure is deemed to be a violation of the Stored

271. 18 U.S.C. § 3125(a)(1).

272. 18 U.S.C. § 3125(a).

273. 18 U.S.C. § 3125(b).

274. 18 U.S.C. § 3125(c).

275. 18 U.S.C. § 3121(d).

Communications Act.²⁷⁶ The remedies for a violation of the Stored Communication Act are discussed earlier in this report.

There is no cause of action in any court against a communication provider (or its personnel) for providing assistance in accordance with a court order or request pursuant to the statute.²⁷⁷ Good faith reliance on a court order or request under The Pen Register Act is a complete defense against any civil or criminal action brought under any law.²⁷⁸

Pen Register Act and Article I, Section 13 of the California Constitution

Pen registers and trap and trace devices collect telephone number dialing information. This is exactly the kind of metadata that was at issue in *Smith v. Maryland*.²⁷⁹ In that case, the court held that there was no reasonable expectation of privacy with respect to such information, because it had been voluntarily disclosed to a third party.

Telephone number dialing information was also at issue in *California v. Blair*,²⁸⁰ a case in which the California Supreme Court did not apply the federal third party doctrine to Article I, Section 13 of the California Constitution. It held that there can be a reasonable expectation of privacy with regard to telephone dialing information for the purposes of Article I, Section 13. Consequently, it appears that the use of a pen register or trap and trace device without a warrant would violate the California Constitution.²⁸¹

276. 18 U.S.C. § 2707(g). This rule does not apply to records that were previously lawfully disclosed by the government or by the plaintiff in a civil suit. *Id.*

277. 18 U.S.C. § 3124(d).

278. 18 U.S.C. § 3124(e).

279. 442 U.S. 735 (1979).

280. 25 Cal. 3d 640 (1979).

281. That was also the opinion of the California Attorney General in two opinions addressing the matter. See 69 Ops. Cal. Atty. Gen. 55 (1986). See also

Location Tracking

Can the ECPA statutes discussed above be used by the government to access customer location data? The answer is complicated and somewhat uncertain.

First, a distinction must be drawn between *historical* location data and data that is *real-time or prospective*. Most of the reported cases focus on the latter, but there are cases holding that *historical* data can be accessed under the Stored Communication Act.²⁸² The argument seems to be that cell phone location data is “a record or other information pertaining to a subscriber to or customer of” an ECS or RCS provider.²⁸³ However, the general purpose of the Stored Communications Act is to obtain existing stored records, not to gather information prospectively.²⁸⁴

In most cases, the government would use a pen register or a trap and trace device to gather prospective non-content data about customer communications. The statute governing such devices specifically provides for the collection of “signaling information,”²⁸⁵ which appears to encompass cell site location

86 Ops. Cal. Atty. Gen. 198 (2003) (“Search warrants issued by a court and subpoenas issued either by a court or grand jury are normally available to authorize the placement of pen registers and trap and trace devices in California.”).

282. See, e.g., *In re Application of the United States for Historical Cell Site Data*, 724 F.3d 600 (5th Cir. 2013).

283. 18 U.S.C. § 2703(c).

284. See, e.g., *In re Application for Pen Register and Trap/Trace Device With Cell Site Location and Auth.*, 396 F. Supp. 2d 747, 760 (S.D. Tex. 2005) (“[T]he entire focus of the [Stored Communications Act] is to describe the circumstances under which the government can compel disclosure of existing communications and transaction records in the hands of third party service providers. Nothing in the [Stored Communications Act] contemplates a new form of ongoing surveillance in which law enforcement uses co-opted service provider facilities.”).

285. 18 U.S.C. § 3127(3)-(4).

data.²⁸⁶ On its face, that language suggests that a pen register could be used to track real-time and prospective cell site location data.

However, the Communications Assistance for Law Enforcement Act includes language that presents an obstacle to such use of a pen register. That statute, which requires telecommunication providers to make their systems technically accessible to government surveillance, provides in part:

(a) Capability requirements . . . [A] telecommunications carrier shall ensure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of -

. . .

(2) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access call-identifying information that is reasonably available to the carrier -

(A) before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and

(B) in a manner that allows it to be associated with the communication to which it pertains, *except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of Title 18), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number).*²⁸⁷

In response to that apparent restriction on the use of a pen register to gather location information, the government has

286. See, e.g., *In re Application of the United States for an Order Authorizing the Installation and Use of a Pen Register*, 415 F. Supp. 2d 211, 214 (W.D.N.Y. 2006) (“cell site location data is encompassed by the term ‘signaling information.’”).

287. 47 U.S.C. § 1002 (emphasis added).

emphasized the use of the word “solely” in the phrase “information acquired *solely* pursuant to the authority for pen registers and trap and trace devices.” The government has argued that use of a pen register to acquire such information is permissible if coupled with some other source of authority. Specifically, it has been argued that a pen register can be used to gather location information if the applicant obtains an order to obtain non-content information under the Stored Communications Act. This requires a higher evidentiary showing than under the Pen Register Act, but does not require a warrant based on probable cause. The federal courts have split on whether the government’s “hybrid” or “converged” authority argument is plausible. Most courts have rejected it, holding that there is no authority under ECPA to gather prospective location data.²⁸⁸ But a few courts have accepted the argument and have issued orders accordingly.²⁸⁹

The statutory arguments discussed above may have been partially superseded by the United States Supreme Court. In the fairly recent case of *United States v. Jones*,²⁹⁰ the Court held that the use of a GPS tracking device without a warrant violated the Fourth Amendment of the United States Constitution. Although the Court did not decide how the Fourth Amendment would apply to location tracking using cell site or GPS location data that is obtained from a communication service provider, five concurring Justices indicated, in *dicta*, that such tracking could be a Fourth Amendment search.²⁹¹ The Fourth Amendment status of such a search would depend on the duration of tracking and the severity of the crime.²⁹² The concurring Justices did not offer a bright line standard, but did state that warrantless location tracking conducted on the facts before the Court (four weeks of tracking in a routine

288. See generally Allowable Use of Federal Pen Register and Trap and Trace Device to Trace Cell Phones and Internet Use, 15 A.L.R. Fed. 2d 537 (2014).

289. *Id.*

290. 565 U.S. ___, 132 S. Ct. 945 (2012).

291. See generally CLRC Staff Memorandum 2014-13, pp. 35-39.

292. *Id.*

drug trafficking case) would have violated the Fourth Amendment.²⁹³

OTHER FEDERAL PRIVACY STATUTES

There are a number of federal statutes that do not directly regulate government surveillance practices, but that restrict the disclosure of certain information in order to protect personal privacy. If such statutes apply to the states, they can operate as an additional restriction on government access to customer information of communication service providers. The most important statutes of that type are discussed below.

Health Insurance Portability and Accountability Act of 1996

The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”),²⁹⁴ addresses a number of issues relating to health insurance and healthcare administration. HIPAA requires the Secretary of Health and Human Services to adopt regulations protecting the privacy of individual healthcare information.²⁹⁵ The key requirements of those regulations (hereafter the “HIPAA Privacy Rule”²⁹⁶) are discussed below.

The HIPAA Privacy Rule generally prohibits the disclosure of protected health information by covered entities and their business associates.²⁹⁷ “Protected health information” is a defined term, which is in turn comprised of a series of other nested definitions.²⁹⁸ For present purposes, it is sufficient to say that protected health

293. *Id.*

294. P.L. 104-191 (1996).

295. *Id.* at § 264.

296. 45 C.F.R. § 164.500 *et seq.* See also 45 C.F.R. § 160.101 *et seq.*

297. 45 C.F.R. § 164.502(a).

298. See C.F.R. § 160.103 (defining “protected health information,” “individually identifiable health information,” and “health information”).

information generally means information, in any form, created or received by specified entities, that relates to health condition, treatment, or payment for treatment, and that either identifies the subject of the information or makes it reasonably possible to determine that person's identity.²⁹⁹

The general prohibition is subject to a number of exceptions. Many of the exceptions relate to health care administration. Exceptions for government access that appear to be relevant to this study include the following:

- *Disclosure required by law.*³⁰⁰ Information may be disclosed if the disclosure is required by law (e.g., legally required disclosure of suspected abuse, neglect, domestic violence,³⁰¹ certain serious wounds,³⁰² or communicable disease exposure³⁰³).
- *Use in adjudicative proceeding.* Information may be disclosed pursuant to a court order (or order of an administrative tribunal) in the course of a judicial or administrative proceeding.³⁰⁴ Disclosure is also authorized pursuant to a subpoena, discovery request, or other lawful process, without a court order, provided that notice was given to the subject of the requested information or the disclosed information is subject to a protective order that limits its use.³⁰⁵
- *Court-ordered law enforcement access.*³⁰⁶ Information may be disclosed to law enforcement

299. *Id.*

300. 45 C.F.R. § 164.512(a).

301. 45 C.F.R. § 164.512(c).

302. 45 C.F.R. § 164.512(f)(1)(i).

303. 45 C.F.R. § 164.512(b)(1)(iv).

304. 45 C.F.R. § 164.512(e)(i).

305. 45 C.F.R. § 164.512(e)(ii).

306. 45 C.F.R. § 164.512(f)(1)(ii)(A).

pursuant to a court order, court-ordered warrant, or subpoena or summons issued by a judicial officer.

- *Grand jury subpoena.*³⁰⁷
- *Administrative request.*³⁰⁸ An administrative subpoena (or similar investigative instrument) can be used to authorize disclosure where the information sought is “relevant and material to a legitimate law enforcement inquiry,” the request is specific and limited, and “de-identified” information could not be used.
- *Incapacitated person suspected of being victim of crime.*³⁰⁹
- *Decedent suspected of being victim of crime.*³¹⁰
- *Evidence of crime on disclosing entity’s premises.*³¹¹
- *Information regarding patient identity and location.*³¹²
- *Healthcare emergency.*³¹³ In a healthcare emergency, information may be disclosed to law enforcement if necessary to alert law enforcement to the commission of a crime, the location of a victim, or the identity, description, or location of the perpetrator.
- *Serious threat to health and safety.*³¹⁴ Information may be disclosed based on a good faith belief that disclosure will prevent or lessen a serious and imminent threat to health or safety, or to identify or

307. 45 C.F.R. § 164.512(f)(1)(ii)(B).

308. 45 C.F.R. § 164.512(f)(1)(ii)(C)

309. 45 C.F.R. § 164.512(f)(3)(ii).

310. 45 C.F.R. § 164.512(f)(4).

311. 45 C.F.R. § 164.512(f)(5).

312. 45 C.F.R. § 164.512(f)(2).

313. 45 C.F.R. § 164.512(f)(6).

314. 45 C.F.R. § 164.512(j).

apprehend a violent criminal or a person who has escaped from a correctional facility.

Cable Communication Policy Act of 1984

The Cable Communication Policy Act of 1984 (“CCPA”)³¹⁵ is another important federal privacy statute. It generally forbids a cable operator from disclosing personally identifiable information about a subscriber, without the subscriber’s consent.³¹⁶

The CCPA’s general prohibition on the disclosure of subscriber information is subject to exceptions, the most relevant being an exception for disclosure to law enforcement pursuant to a court order.³¹⁷

A showing of probable cause is not required for the issuance of such an order. Instead, the government need only show “clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case....”³¹⁸ However, the subject of the order must be given an opportunity to appear and oppose the issuance of the order.³¹⁹

Privacy Protection Act of 1980

The Privacy Protection Act of 1980 (“PPA”)³²⁰ is a federal privacy statute that restricts police searches of the work product and other documentary materials of a journalist.

The PPA generally prohibits the following:

Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the

315. 47 U.S.C. ch. 5, subch. V–A.

316. 47 U.S.C. § 551(c).

317. 47 U.S.C. § 551(c)(2)(B), (h).

318. 47 U.S.C. § 551(h)(1).

319. 47 U.S.C. § 551(h)(2).

320. 42 U.S.C. § 2000aa.

investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce...³²¹

A similar prohibition applies to “documentary materials, other than work product materials.”³²²

The PPA’s general prohibitions do not apply if there is “probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate....”³²³

That exception is subject to a further narrowing exception. It does not apply if the crime being investigated “consists of the receipt, possession, communication, or withholding of such materials or the information contained therein.”³²⁴ However, that limitation is itself subject to exceptions. It does not apply if the information sought relates to national defense, classified data, specified restricted data, or child pornography.³²⁵

There is also an exigency exception if there is reason to believe that immediate seizure is necessary to prevent death or serious bodily injury.³²⁶ If the material to be seized is not work product, the general prohibition is also subject to exceptions where disclosure is sought for the following purposes:

- To prevent the destruction, alteration, or concealment of the documents.³²⁷

321. 42 U.S.C. § 2000aa(a).

322. 42 U.S.C. § 2000aa(b).

323. 42 U.S.C. § 2000aa(a)-(b).

324. *Id.*

325. *Id.*

326. 42 U.S.C. § 2000aa(a)(2), (b)(2).

327. 42 U.S.C. § 2000aa(b)(3).

- To seize materials that have not been produced in response to a lawful subpoena, after the exhaustion of all appellate remedies.³²⁸

Family Education Rights and Privacy Act of 1974

The Family Education Rights and Privacy Act of 1974 (“FERPA”)³²⁹ is another federal privacy statute that states must comply with in drafting legislation on government access to electronic communications. Among other things, FERPA protects the privacy of student education records.³³⁰

Schools that are subject to FERPA must have written permission from a student’s parent in order to release any information from a student’s educational record.³³¹

That general restriction is subject to a number of exceptions, including several that involve a disclosure to government. Those exceptions address:

- Disclosure to the juvenile justice system, to serve the student’s needs.³³²
- Disclosure to respond to an emergency.³³³
- Disclosure pursuant to a grand jury subpoena.³³⁴
- Disclosure pursuant to a subpoena issued for law enforcement purposes.³³⁵
- Disclosure to a child welfare agency.³³⁶

328. 42 U.S.C. § 2000aa(b)(4).

329. 20 U.S.C. § 1232g.

330. *Id.*

331. *Id.*

332. 20 U.S.C. § 1232g(b)(1)(E)(ii).

333. 20 U.S.C. § 1232g(b)(1)(I).

334. 20 U.S.C. § 1232g(b)(1)(J)(i).

335. 20 U.S.C. § 1232g(b)(1)(J)(ii).

336. 20 U.S.C. § 1232g(b)(1)(L).

- Disclosure pursuant to a court order or lawfully issued subpoena, with advance notice to the student's parents (except in cases of suspected child abuse).³³⁷

BRIEF LIST OF CALIFORNIA PRIVACY STATUTES

As noted earlier, this report does not closely examine California statutes that protect information privacy. Such statutes are subject to change by the Legislature and Governor and so do not constrain the preparation of reform legislation in California.

However, in the interest of completeness, it is worth briefly noting some of the more significant California privacy statutes:

- The California Invasion of Privacy Act,³³⁸ which includes a number of important protections of communication privacy, including a general prohibition on wiretapping and a warrant requirement for location tracking.
- The California Wiretap Act,³³⁹ which is analogous to the federal Wiretap Act.
- Penal Code Section 1524(c), which provides a special procedure for the issuance of a warrant that is used to obtain records that are “in the possession or under the control of” an attorney, doctor, psychotherapist, or clergy member.
- Penal Code Section 1524(g), which provides that no warrant may be issued for records described in Evidence Code Section 1070. That Evidence Code provision protects specified members of the press from contempt for refusing to disclose sources or “unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.”

337. 20 U.S.C. § 1232g(b)(2).

338. Penal Code § 630 *et seq.*

339. Penal Code § 629.50 *et seq.*

- The Reader Privacy Act,³⁴⁰ which protects against government access to user records of a library or other “book service” (including an online provider).
- Civil Code Section 1799.3, which restricts the disclosure of video sale or rental records.
- California Right to Financial Privacy Act,³⁴¹ which restricts government access to customer financial records.
- The Confidentiality of Medical Information Act,³⁴² which regulates the use and disclosure of patient information by a provider of health care.
- Public Utilities Code Sections 2891 to 2894.10, which provide miscellaneous protections for the privacy of telephone and telegraph company customers.
- Education Code Sections 49061 to 49085, which regulate the maintenance, use, and disclosure of student records.
- The Information Privacy Act of 1977,³⁴³ which regulates state agency collection and use of personal information.
- Vehicle Code Section 9951, which regulates the use of a vehicle “recording device.”

These statutes should be taken into account, and adjusted if necessary, when revising the laws governing state and local agency access to customer information from a communication service provider.

340. Civ. Code §§ 1798.90-1798.90.05; 2011 Cal. Stat. ch. 424.

341. Gov’t Code §§ 7460-7493.

342. Civ. Code §§ 56-56.37. See also Penal Code §§ 1543-1545.

343. Civ. Code § 1798 *et seq.*

SUMMARY OF FINDINGS

The privacy of one's communications and the protection of that privacy against invasion by the government is a fundamental civil liberty. That right is at the heart of multiple provisions of the federal and state constitutions.

The most direct protection of communication privacy can be found in the Fourth Amendment and Article I, Section 13 of the California Constitution. Those provisions protect reasonable expectations of privacy by requiring that any government surveillance of communications be reasonable and providing that any warrant authorizing surveillance be based on a neutral magistrate's finding of probable cause, with a particular description of the place to be searched and the things to be seized. When surveillance involves an ongoing interception, additional special protections apply.

While the search and seizure jurisprudence is still evolving with respect to modern methods of communication, it appears that the Fourth Amendment and Article I, Section 13, *when taken together*, apply to almost all types of electronic communication information, including both content and metadata. The only exception is that there might not be a reasonable expectation of privacy when government tracks a person's movements within public places for a relatively brief period of time. However, California statutory law was recently amended to require a warrant for all location tracking. **Consequently, in California, it appears that a warrant is generally required for state and local agency access to any type of electronic communication information.**

In some circumstances, electronic surveillance could also violate the express right of privacy that is protected in the California Constitution. However, there is authority suggesting that, in the context of a police investigation, the privacy right is coextensive with the right against unreasonable search and seizure. While protection of the constitutional privacy right is undoubtedly important, the application of constitutional search and seizure protections may be sufficient to protect the privacy right. **This provides an independent rationale for applying the**

requirements of the Fourth Amendment and Article I, Section 13 of the California Constitution to government surveillance of electronic communications.

The same is likely true with regard to the chilling of free expression that government surveillance of communications could cause in some circumstances. Notwithstanding the obvious importance of protecting the right of free expression from government curtailment, the Supreme Court's decision in *Zurcher v. Stanford Daily* suggests that the protections of the Fourth Amendment may be sufficient to safeguard against such harms. **This too provides an independent rationale for applying the requirements of the Fourth Amendment and Article I, Section 13 of the California Constitution to government surveillance of electronic communications.**

Federal statutory law on communication surveillance applies to the states. Those statutes appear to provide a minimum level of privacy protection, preempting any less protective state regulation. The federal surveillance statutes are largely consistent with federal and California constitutional requirements, with three possible exceptions:

- The use of a Section 2703(d) order to obtain stored communications may violate the Fourth Amendment and is likely to violate Article I, Section 13 of the California Constitution.
 - The use of a pen register or trap and trace device without a warrant appears to violate Article I, Section 13 of the California Constitution. The same is probably true with regard to any collection of Internet metadata.
 - The use of an investigative subpoena to obtain communications, without advance notice to the person whose communications are to be seized and an opportunity for judicial review before the subpoena operates, may violate the Fourth Amendment and Article I, Section 13 of the California Constitution.
-

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

**Fish and Game Law:
Technical Revisions and Minor
Substantive Improvements (Part 2)**

October 2015

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 2)*, 44 Cal. L. Revision Comm'n Reports 349 (2015).

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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October 8, 2015

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

The Law Revision Commission is preparing draft legislation to recodify the Fish and Game Code, in order to improve its organization and clarity, remove obsolete or redundant material, and correct technical errors. Because that work will involve the reorganization of the entire code, the recodification legislation will not be ready for presentation to the Legislature until the study is completed.

However, some beneficial changes can be made more quickly. As the larger study proceeds, the Law Revision Commission will make note of technical corrections and minor substantive improvements that can be made to the existing code, without waiting for completion of the entire study. Such improvements will be periodically compiled into recommendations for submission to the Legislature.

This recommendation is the second such proposal. It proposes a largely nonsubstantive modernization and reorganization of provisions of the Fish and Game Code relating to the regulatory authority of the Fish and Game Commission.

This recommendation was prepared pursuant to Resolution Chapter 63 of the Statutes of 2014.

Respectfully submitted,

Taras Kihiczak
Chairperson

FISH AND GAME LAW: TECHNICAL REVISIONS AND MINOR SUBSTANTIVE IMPROVEMENTS (PART 2)

BACKGROUND

In 2010, the Legislature directed the Natural Resources Agency to develop and submit a “strategic vision” for the Fish and Game Commission and what is now the Department of Fish and Wildlife.¹

Among other things, the Strategic Vision report recommended that the Law Revision Commission review and recommend “clean-up” of the Fish and Game Code, to “(1) resolve inconsistencies; (2) eliminate redundancies; (3) eliminate unused and outdated code sections; (4) consolidate sections creating parallel systems and processes; and (5) restructure codes to group similar statutes....”²

Based on a draft of the Strategic Vision report, Senator Fran Pavley and Assembly Member Jared Huffman (then Chairs of the Senate Natural Resources and Water Committee and the Assembly Water, Parks, and Wildlife Committee) requested that the Law Revision Commission conduct a comprehensive review of the Fish and Game Code, and recommend changes to the Legislature that would “update, clarify, and improve” the code.³

Authority to conduct such a study was enacted by concurrent resolution in 2012:

[The] Legislature approves for study by the California
Law Revision Commission the new topic listed below:

....

1. 2010 Cal. Stat. ch. 424 (AB 2376 (Huffman)).

2. *California Fish & Wildlife Strategic Vision, Recommendations for Enhancing the State’s Fish and Wildlife Management Agencies* (April 2012), p. A13, Law Revision Commission Staff Memorandum 2012–41, Exhibit p. 45.

3. Law Revision Commission Staff Memorandum 2012–5, Exhibit pp. 32–33.

Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law[.]⁴

Pursuant to that authority, the Law Revision Commission is analyzing the entire Fish and Game Code for the purpose of preparing recodification legislation that would improve the code's organization and clarity, remove obsolete or redundant material, and correct technical errors. Because that work will involve the reorganization of the entire code, the recodification legislation will not be ready for presentation to the Legislature until the study is completed.

However, some beneficial changes can be made more quickly. As the larger study proceeds, the Law Revision Commission has made note of minor substantive improvements that can be made to the existing code without waiting for completion of the entire study. Such improvements will be periodically compiled into recommendations for submission to the Legislature.

The Law Revision Commission's first such recommendation⁵ has been submitted to the Legislature, and a bill that would implement the recommendation is presently pending.⁶ This recommendation is the Law Revision Commission's second such proposal.

The revisions proposed in the recommendation are summarized below.⁷

4. 2012 Cal. Stat. res. ch. 108 (ACR 98 (Wagner)).

5. *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1)*, 45 Cal. L. Revision Comm'n Reports 1 (2015).

6. See AB 1527 (Committee on Water, Parks, and Wildlife).

7. Some of the provisions in the proposed legislation could be affected by pending legislation. See, e.g., AB 665 (Frazier), SB 798 (Committee on Natural Resources and Water).

REGULATION OF TAKE AND POSSESSION

One of the central functions of the Fish and Game Commission (hereafter, “Commission”) is to adopt regulations governing the take and possession of wild animals. General authority to adopt such regulations is granted in Fish and Game Code Section 200, subject to certain express limitations.⁸

The article that contains Section 200 (hereafter, “Article 1”) also contains a number of provisions that prescribe procedures for Commission rulemaking.⁹

Article 1 and most of the sections within it were enacted in 1957, as part of the last recodification of the Fish and Game Code.¹⁰ Since that time, there have been significant changes in the law, which Article 1 has not been revised to properly reflect. Those changes include:

- (1) The enactment of new provisions that authorize Commission regulation of take or possession in specific circumstances.
- (2) Abandonment of the original procedure prescribed in Article 1 for Commission rulemaking.
- (3) Enactment of the modern Administrative Procedure Act (“APA”),¹¹ which provides a uniform and

8. See Fish & Game Code §§ 200 (commercial fishing), 201 (natural resources), 204(d) (spike bucks and spotted fawns).

9. See Fish & Game Code §§ 202 (exemptions from time periods in Administrative Procedure Act provisions), 206, 207, and 220(b) (meeting procedure), 210 and 211 (distribution of regulations), 215 (effective date of regulations), 218 (judicial review), 219 (effect on other code sections) 220(a) (effective time period of regulation).

10. 1957 Cal. Stat. ch. 456.

11. Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As a state agency, the Fish and Game Commission is required to comply with all applicable procedural provisions of the APA when promulgating regulations, unless expressly exempted by legislation enacted after 1947. Gov’t Code § 11346; see also *Voss v. Superior*

comprehensive procedure for state agency rulemaking.

This recommendation proposes to modernize Article 1 and related law, by conforming procedural rules to current practices, and by eliminating obsolete language and distinctions.

Generalized Application of Rulemaking Procedure

When Article 1 was first enacted in 1957, Section 200 provided nearly all of the authority for Commission regulation of take and possession. In accord with that fact, the procedural rules in Article 1 were largely drafted to apply to rulemaking “pursuant to this article” — i.e., pursuant to the article that contained Section 200. Consequently, the rulemaking procedures in Article 1 applied to every regulation adopted by the Commission under its general authority to regulate take and possession.

Since 1957, the Legislature has enacted a number of new code sections that authorize the Commission to regulate the take or possession of specific animals, or in specified circumstances. Those provisions have been located in the Fish and Game Code near the subjects to which they relate, and not in Article 1. For example, in 1986 the Legislature enacted Fish and Game Code Section 4902, authorizing the Commission to regulate Nelson Bighorn Sheep.¹² That provision is located in the Fish and Game Code among other provisions governing specific mammals, rather than in Article 1.

This placement of new rulemaking authority outside of Article 1 creates potential for confusion.

By their terms, the procedural provisions of Article 1 apply to rulemaking “pursuant to this article,” i.e., pursuant to the general authority conferred by Section 200. So, when the Commission regulates Nelson Bighorn Sheep pursuant to Section 4902, is it

Court, 46 Cal. App. 4th 900, 909, 54 Cal. Rptr. 2d 225 (1996). However, the APA specifies only a “floor” of regulatory procedure, and agencies may be subjected to additional regulatory responsibilities as the Legislature provides.

12. See, e.g., Fish & Game Code § 4902(a).

subject to the procedural provisions in Article 1? A literal reading of the Article 1 provisions would suggest that it is not.

But Nelson Bighorn Sheep are mammals. As such, one could also argue that a regulation of Nelson Bighorn Sheep is concurrently authorized by Section 200. In that case, the regulation would be subject to the procedures in Article 1.

The Law Revision Commission sees no policy reason to distinguish between the regulation of wild animals generally, and the regulation of those same animals specifically, with regard to the rulemaking procedures provided in Article 1. To the contrary, it seems likely that the Legislature intended for the procedures in Article 1 to apply to nearly every Commission regulation of take or possession (as was the case when those procedural provisions were enacted). The later decisions to locate more specific grants of regulatory authority (like Section 4902) according to subject matter were likely driven only by organizational concerns, rather than an intention to exclude those grants of authority from general rulemaking procedures.

The proposed legislation would therefore generalize the rulemaking procedures in Article 1 so that they would apply to all Commission regulations governing take or possession of wild animals, with one exception.¹³ The procedures would not apply to matters that are expressly excluded from the general rulemaking authority provided in Section 200.¹⁴ Those exclusions were enacted together with the rulemaking procedures, creating a strong inference that the Legislature intended to exclude those matters from the procedures that governed rulemaking under Section 200. Out of caution, the proposed legislation would not disturb that inference.

13. See proposed Fish & Game Code § 250 *infra*.

14. See *supra* note 8.

Modernization of Procedure for Conducting Rulemaking at Public Meetings

As originally enacted, Article 1 required the Commission to conduct its rulemaking according to a fixed calendar. At its January and February meetings, it was to adopt regulations governing fish, amphibians, and reptiles; at its April and May meetings, it was to adopt regulations governing birds and mammals.¹⁵

Over time, that calendaring approach was abandoned and replaced with a more relaxed requirement that the Commission adopt regulations at a series of no fewer than three public meetings.¹⁶ However, the procedure specified for the conduct of those meetings is fairly loose, and is not well-coordinated with existing requirements of the APA.

The proposed legislation would revise the existing meeting provision in Article 1 to make it fully consistent with the Commission's current practice and the requirements of the APA.¹⁷

The proposed legislation would also repeal Fish and Game Code Section 220(b). That provision gave the Commission flexibility to deviate from the former statutory rulemaking calendar based on new information presented in the interval between scheduled rulemaking meetings. With the abandonment of the calendared meetings, that flexibility is no longer required.

Continuity of Regulations Adopted Pursuant to Section 200

When Article 1 was first enacted, it included Section 221. Section 221 was a "sunset provision," providing for the repeal of Article 1, by operation of law, on a specified date.¹⁸

15. See 1957 Cal. Stat. ch. 456, §§ 206-213.

16. See Fish & Game Code § 207.

17. See proposed Fish & Game Code § 255 *infra*. See also Gov't Code §§ 11346.2, 11346.4, 11346.5, 11346.8, 11346.9.

18. See 1957 Cal. Stat. ch. 456, § 221.

Section 250 was added to account for that possible repeal.¹⁹ Section 250 provides that in the event of a repeal of Article 1, any existing regulation that had been adopted pursuant to that article would remain in effect after the repeal.

In the years following the enactment of Article 1, Section 221 was repeatedly amended to extend its sunset date.²⁰ In 2001, Section 221 was finally repealed.²¹ As a result, the Commission's general rulemaking authority under Article 1 is no longer subject to a sunset provision, and there is no need for the special continuity rule provided in Section 250.

The proposed legislation would therefore repeal Section 250.

Other Obsolete or Misplaced Provisions

The proposed legislation would also repeal or amend other Fish and Game Code provisions, to remove obsolete language and distinctions.²² Other provisions would be relocated, to better reflect their function.²³

19. See 1957 Cal. Stat. ch. 456, § 250.

20. See 1957 Cal. Stat. ch. 1549; 1959 Cal. Stat. ch. 1568; 1961 Cal. Stat. ch. 1245; 1963 Cal. Stat. ch. 7 (1st Ex. Sess.); 1965 Cal. Stat. ch. 748; 1969 Cal. Stat. ch. 110; 1973 Cal. Stat. ch. 723; 1975 Cal. Stat. ch. 1083; 1979 Cal. Stat. ch. 1076; 1984 Cal. Stat. ch. 229; 1989 Cal. Stat. ch. 564; 1994 Cal. Stat. ch. 935; 1999 Cal. Stat. ch. 483.

21. See 2001 Cal. Stat. ch. 398.

22. See proposed repeal of Fish & Game Code §§ 215, 218, and 300 *infra*.

23. Fish and Game Code Section 206 would be relocated with other Fish and Game Commission organizational provisions, as Section 110. Fish and Game Code Sections 205.1, 217.5, and 217.6 would be relocated to a new article among other general sport fishing provisions. See proposed Fish & Game Code §§ 7110 and 7115 *infra*.

Conforming Revisions

The proposed legislation would also make conforming revisions as necessary to accommodate the changes described above.²⁴

24. See proposed revisions to Fish & Game Code §§ 460 and 7120, Gov't Code § 11343.4, and Health & Safety Code § 131052 *infra*.

PROPOSED LEGISLATION

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PROPOSED LEGISLATION

FISH AND GAME CODE

Heading of Chapter 2 (commencing with Section 200) (amended)

SEC. _____. The heading of Chapter 2 of Division 1 of the Fish and Game Code is amended to read:

CHAPTER 2. ~~GENERAL REGULATORY POWERS~~ REGULATION OF TAKE AND POSSESSION GENERALLY

Heading of Article 1 (commencing with Section 200) (amended)

SEC. _____. The heading of Article 1 of Chapter 2 of Division 1 of the Fish and Game Code is amended to read:

Article 1. ~~Regulations~~ Authority

Fish & Game Code § 200 (amended). General authority

SEC. _____. Section 200 of the Fish and Game Code is amended to read:

200. (a) There is hereby delegated to the commission the power to regulate the taking or possession of birds, mammals, fish, ~~amphibia~~ amphibians, and reptiles ~~to the extent and in the manner prescribed in this article.~~

(b) No power is delegated to the commission by this ~~article~~ section to regulate ~~the~~ either of the following:

(1) The taking, possessing, processing, or use of fish, amphibians, kelp, or other aquatic plants for commercial purposes; ~~and no provision of this code relating or applying thereto, nor any regulation of the commission made pursuant to such provision, shall be affected by this article or any regulation made under this article.~~

(2) The taking or possession of a spike buck or spotted fawn. “Spotted fawn” means a deer one year of age or less that has

spotted pelage. “Spike buck” means a male deer with unbranched antlers on both sides that are more than three inches in length.

(c) This section and any regulations adopted pursuant to this section have no effect on any provision of this code or any regulation adopted pursuant to this code that relates to a matter described in paragraph (1) of subdivision (b).

Comment. Section 200 is amended to delete a reference to the “extent and manner” of regulations. Rules formerly located in this article have been repealed or relocated. See Sections 250-285 (procedure).

The section is also amended to add subdivision and paragraph designations, and make other nonsubstantive changes.

Subdivision (a) restates the first paragraph of Section 200.

Subdivision (b)(1) continues the first part of the second paragraph of Section 200 without substantive change.

Subdivision (b)(2) continues former Section 204(d) without substantive change.

Subdivision (c) restates the second part of the second paragraph of Section 200 without substantive change.

Fish & Game Code §§ 250-285 (added). Special rulemaking procedures

SEC. _____. Article 2 of Chapter 2 of Division 1 is added to the Fish and Game Code, to read:

Article 2. Procedure

§ 250. Application of article

250. (a) Except as provided in subdivision (b), this article applies to a commission regulation that governs the take or possession of any bird, mammal, fish, amphibian, or reptile.

(b) This article does not apply to a regulation governed by subdivision (b) of Section 200 or Section 201.

(c) Except as expressly provided, this article does not supersede any other applicable law that governs the adoption, amendment, or repeal of a regulation.

Comment. Section 250 is new. It makes clear that this article applies to any Fish and Game Commission regulation that governs the take or

possession of any bird, mammal, fish, amphibian, or reptile, except for a regulation that falls within the scope of Section 200(b) or 201. For example, rulemaking under Section 331 (take of antelope) is governed by this article, because it governs the take of a mammal and is not described by Section 200(b) or 201. By contrast, rulemaking under Section 8213 (sale of salmon) is not governed by this article, because regulation of the commercial take of fish is described by Section 200(b).

Subdivision (c) makes clear that, except as expressly indicated (see, e.g., Section 265), the rules in this article do not displace any other law that governs commission rulemaking. Other law may impose additional requirements, either in specific circumstances or generally. See, e.g., Sections 307 (animal scarcity), 325-327 (animal surplus); Gov't Code § 11340 *et seq.* (general state agency rulemaking procedure).

§ 255. General rulemaking procedure

255. (a) When adopting, amending, or repealing a regulation governed by this article, the commission shall conduct the following steps at separate public meetings:

(1) Approve the submission of a notice of proposed action to the Office of Administrative Law.

(2) Consider public comment on the proposed action. The department shall participate in this process by reviewing and responding to all public comment.

(3) Make a final decision on the proposed action.

(b) The meetings required by this section may be regular or special meetings.

(c) The meetings required by this section shall be duly noticed to the public in accordance with subdivision (c) of Section 110 and the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(d) Within 45 days after the Commission makes a final decision to adopt, amend, or repeal a regulation governed by this article, the department shall publish and distribute the regulation to each county clerk, each district attorney, and each judge of the superior court in the state.

Comment. Subdivisions (a) through (c) of Section 255 restate and generalize the provisions of former Section 207(a)-(d) to conform to the

rulemaking procedures of the Administrative Procedure Act. See Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Language requiring the Commission to “receive recommendations for regulations” is obsolete and has not been continued. See Gov’t Code § 11340.6 (public submission of rulemaking proposals).

Subdivision (d) combines and generalizes former Sections 207(e) and 210(a).

§ 260. Distribution of regulations

260. (a) The commission and the department may do anything that is deemed necessary and proper to publicize and distribute a regulation governed by this article so that persons likely to be affected will be informed of them. The failure of the commission to provide any notice of a regulation governed by this article, beyond what is required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, shall not impair the validity of the regulations.

(b) Notwithstanding any other provision of law, the commission and the department may contract with private entities to print regulations governed by this article, and other public information. The printing contract shall include criteria to ensure that the public information provided in the publication is easy to reference, read, and understand.

(c) Printing contracts authorized by this section for which no state funds are expended are not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, except for Article 2 (commencing with Section 10295) of Chapter 2.

(d) Material printed pursuant to subdivision (b) that contains advertisements shall meet all specifications prescribed by the department. The printed material shall not contain advertisements for tobacco products, alcohol, firearms and devices prohibited pursuant to Section 32625 of the Penal Code, Article 2 (commencing with Section 30600) of Chapter 2 of Division 10 of Title 4 of Part 6 of the Penal Code, or any provision listed in Section 16590 of the Penal Code, or firearms not authorized by the

commission as a legal method of sport-hunting, political statements, solicitations for membership in organizations, or any other statement, solicitation, or product advertisement that is in conflict with the purposes for which the material is produced, as determined by the commission.

(e) Neither the department nor the commission shall contract with private entities to print the materials described in subdivision (b) if the letting of those contracts will result in the elimination of civil service positions.

(f) The department or the license agent may give a copy of the current applicable published regulations governed by this article to each person issued a license, at the time the license is issued.

Comment. Section 260 restates former Sections 210(b)-(d) and 211.

§ 265. Exemption from time requirements

265. A regulation governed by this article is not subject to the time periods for the adoption, amendment, or repeal of a regulation prescribed in Sections 11343.4, 11346.4, 11346.8, and 11347.1 of the Government Code.

Comment. Section 265 generalizes the second sentence of former Section 202.

§ 270. Effective date of regulation

270. The adoption, amendment, or repeal of a regulation governed by this article shall become effective at the time specified in the regulation, but not sooner than the date of the filing.

Comment. Section 270 generalizes a part of former Section 215 (effective date of regulation).

§ 275. Effective period

275. A regulation governed by this article shall remain in effect for the period specified in the regulation or until superseded by subsequent regulation of the commission or by statute.

Comment. Section 275 generalizes former Section 220(a).

CONFORMING REVISIONS

Fish & Game Code § 110 (added). Meetings

SEC. _____. Section 110 is added to the Fish and Game Code, to read:

110. (a) The commission shall hold no fewer than eight regular meetings per calendar year, if the commission has adequate funding for related travel, including funding for department travel. The commission may also hold special meetings or hearings to receive additional input from the department and the public.

(b) The commission shall announce the dates and locations of meetings for the year by January 1 of that year, or 60 days prior to the first meeting, whichever comes first. Meeting locations shall be accessible to the public and located throughout the state. To the extent feasible, meetings shall be held in state facilities. In setting the dates and locations for regular meetings, the commission shall also consider the following factors:

(1) Recommendations of the department.

(2) Opening and closing dates of fishing and hunting seasons.

(3) The schedules of other state and federal regulatory agencies whose regulations affect the management of fish and wildlife of this state.

(c) The commission shall cause the notice of the schedule for regular meetings, and notice of any change in the date and location of a meeting, to be disseminated to the public in a manner that will result in broad dissemination and that complies with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

Comment. Section 110 continues former Section 206 without change.

Fish & Game Code § 202 (repealed). Procedure

SEC. _____. Section 202 of the Fish and Game Code is repealed.

~~202. The commission shall exercise its powers under this article by regulations made and promulgated pursuant to this article. Regulations adopted pursuant to this article shall not be subject to~~

~~the time periods for the adoption, amendment, or repeal of regulations prescribed in Sections 11343.4, 11346.4, 11346.8, and 11347.1 of the Government Code.~~

Comment. The second sentence of former Section 202 is continued by Section 265.

Fish & Game Code § 204 (repealed). Limitation of authority

SEC. ____ . Section 204 of the Fish and Game Code is repealed.

~~204. The commission has no power under this article to make any regulation authorizing or permitting the taking of:~~

~~(a) Any bird or mammal in any refuge heretofore or hereafter established by statute, the taking or possession of which shall be regulated pursuant to Sections 10500 to 10506, inclusive.~~

~~(b) Elk, the taking or possession of which shall be regulated pursuant to Section 332.~~

~~(c) Antelope, the taking or possession of which shall be regulated pursuant to Section 331.~~

~~(d) Any spike buck or spotted fawn. "Spotted fawn" means a young deer born that year which has spotted pelage. "Spike buck" means a male deer with unbranched antlers on both sides which are more than three inches in length.~~

~~Any regulation establishing a season to compensate for closure of an area due to extreme fire hazard shall be made pursuant to Section 306.~~

~~Any regulation setting a special hunting season for mammals, except deer, or game birds which have increased in number to such an extent that a surplus exists or which are damaging property or are overgrazing their range shall be made pursuant to Section 325.~~

Comment. Former Section 204(d) is continued by Section 200(b)(3). The remainder of former Section 204 is superfluous and is not continued. See Sections 306, 325, 331, 332, and 10500 to 10506.

Fish & Game Code § 205.1 (repealed). Automatic process to conform sport fishing regulations

SEC. _____. Section 205.1 of the Fish and Game Code is repealed.

~~205.1. (a) The commission may establish by regulation an automatic process to conform its sport fishing regulations to federal regulations.~~

~~(b) The department shall provide public notice of any conforming action implemented pursuant to this section.~~

Comment. Former Section 205.1 is continued by Section 7110.

Fish & Game Code § 206 (repealed). Meetings

SEC. _____. Section 206 of the Fish and Game Code is repealed.

~~206. (a) The commission shall hold no fewer than eight regular meetings per calendar year, if the commission has adequate funding for related travel, including funding for department travel. The commission may also hold special meetings or hearings to receive additional input from the department and the public.~~

~~(b) The commission shall announce the dates and locations of meetings for the year by January 1 of that year, or 60 days prior to the first meeting, whichever comes first. Meeting locations shall be accessible to the public and located throughout the state. To the extent feasible, meetings shall be held in state facilities. In setting the dates and locations for regular meetings, the commission shall also consider the following factors:~~

~~(1) Recommendations of the department.~~

~~(2) Opening and closing dates of fishing and hunting seasons.~~

~~(3) The schedules of other state and federal regulatory agencies whose regulations affect the management of fish and wildlife of this state.~~

~~(c) The commission shall cause the notice of the schedule for regular meetings, and notice of any change in the date and location of a meeting, to be disseminated to the public in a manner that will result in broad dissemination and that complies with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).~~

Comment. Former Section 206 is continued without change by Section 110.

Fish & Game Code § 207 (repealed). General rulemaking procedure

SEC. _____. Section 207 of the Fish and Game Code is repealed.

~~207. (a) Except for emergency regulations, the commission shall consider and adopt regulations pursuant to Sections 203 and 205 at a series of no fewer than three meetings. These meetings may be regular or special meetings that are duly noticed to the public in accordance with subdivision (c) of Section 206 and the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).~~

~~(b) At the first meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.~~

~~(c) At the second meeting, the commission shall devote time for open public discussion of proposed regulations presented at the first meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the commission shall announce, prior to adjournment of the meeting, the regulations it intends to add, amend, or repeal.~~

~~(d) At the third meeting, the commission may choose to hear additional public discussion regarding the regulations it intends to adopt. At the meeting, the commission shall add, amend, or repeal regulations relating to any recommendation received at the initial meeting it deems necessary to preserve, properly utilize, and maintain each species or subspecies.~~

~~(e) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.~~

Comment. Former Section 207 is generally restated in Section 255.

Fish & Game Code § 210 (repealed). Distribution of regulations

SEC. _____. Section 210 of the Fish and Game Code is repealed.

~~210. (a) The commission shall provide copies of the regulations added, amended, or repealed pursuant to subdivision (e) of Section 207 to each county clerk, each district attorney, and each judge of the superior court in the state.~~

~~(b) The commission and the department may do anything that is deemed necessary and proper to publicize and distribute regulations so that persons likely to be affected will be informed of them. The failure of the commission to provide any notice of its regulations, other than by filing them in accordance with Section 215, shall not impair the validity of the regulations.~~

~~(c) The department or the license agent may give a copy of the current applicable published regulations to each person issued a license at the time the license is issued.~~

~~(d) Notwithstanding any other provision of law, the commission and the department may contract with private entities to print regulations and other regulatory and public information. Printing contracts authorized by this subdivision and for which no state funds are expended are not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, except for Article 2 (commencing with Section 10295) of Chapter 2.~~

Comment. Former Section 210(a) is continued by Section 255(d).
Former Section 210(b)-(d) is continued by Section 260.

Fish & Game Code § 211 (repealed). Printing of regulations

SEC. _____. Section 211 of the Fish and Game Code is repealed.

~~211. (a) Material printed pursuant to subdivision (d) of Section 210 that contains advertisements shall meet all specifications prescribed by the department. The printed material shall not contain advertisements for tobacco products, alcohol, firearms and devices prohibited pursuant to Section 32625 of the Penal Code, Article 2 (commencing with Section 30600) of Chapter 2 of Division 10 of Title 4 of Part 6 of the Penal Code, or any provision listed in Section 16590 of the Penal Code, or firearms not~~

~~authorized by the commission as a legal method of sport hunting, political statements, solicitations for membership in organizations, or any other statement, solicitation, or product advertisement that is in conflict with the purposes for which the material is produced, as determined by the commission. The printing contract shall include criteria to ensure that the public information provided in the publication is easy to reference, read, and understand.~~

~~(b) Neither the department nor the commission shall contract with private entities to print the materials described in subdivision (d) of Section 210 if the letting of those contracts will result in the elimination of civil service positions.~~

Comment. Former Section 211 is continued by Section 260.

Fish & Game Code § 215 (repealed). Filing of regulations

SEC. ____ . Section 215 of the Fish and Game Code is repealed.

~~215. Every regulation of the commission made pursuant to this article shall be filed with the Secretary of State, and shall become effective at the time specified therein, but not sooner than the date of the filing.~~

Comment. The second clause of former Section 215 (effective date of regulation) is continued by Section 270.

The first clause of former Section 215 (required filing of regulation with Secretary of State) is superfluous and not continued. See Gov't Code § 11343.

Fish & Game Code § 217.5 (repealed). Persons with disabilities

SEC. ____ . Section 215 of the Fish and Game Code is repealed.

~~217.5. (a) The department shall identify property it owns or manages that includes areas for sport fishing which are accessible to disabled persons.~~

~~(b) Commencing with the booklet of sport fishing regulations published by the commission in 1986, the availability of sport fishing areas, identified by the department as accessible to disabled persons under subdivision (a), shall be noted in the booklet of regulations, together with telephone numbers and instructions for obtaining a list of those areas from regional department offices.~~

Comment. Former Section 217.5 is continued by Section 7115(a)-(b).

Fish & Game Code § 217.6 (repealed). Human health advisories

SEC. _____. Section 215 of the Fish and Game Code is repealed.

~~217.6. Commencing with the booklet of sportfishing regulations published in 1987, the booklet shall also contain any human health advisories relating to fish which are formally issued by the State Department of Health Services or summaries of those human health advisories. The summaries shall be prepared in consultation with the State Department of Health Services.~~

Comment. Former Section 217.6 is continued by Section 7115(c).

Fish & Game Code § 218 (repealed). Judicial review

SEC. _____. Section 218 of the Fish and Game Code is repealed.

~~218. Any regulation of the commission made pursuant to this article shall be subject to review in accordance with law by any court of competent jurisdiction.~~

Comment. Former Section 218 is obsolete and is not continued. See Gov't Code § 11350.

Fish & Game Code § 220 (repealed). Special rules

SEC. _____. Section 220 of the Fish and Game Code is repealed.

~~220. (a) Any regulation of the commission added or amended pursuant to this article shall remain in effect for the period specified therein or until superseded by subsequent regulation of the commission or by statute.~~

~~(b) Notwithstanding this article, the commission may add, amend, or repeal regulations at any regular or special meeting if facts are presented to the commission which were not presented at the time the original regulations were adopted and if the commission determines that those regulations added, amended, or repealed are necessary to provide proper utilization, protection, or conservation of fish and wildlife species or subspecies.~~

Comment. Former Section 220(a) is continued without substantive change by Section 275. Former Section 220(b) is obsolete and is not continued.

Fish & Game Code § 240 (repealed). Emergency regulations

SEC. _____. Article 1.5 of Chapter 2 of Division 1 of the Fish and Game Code is repealed.

Comment. Former Section 240 is continued by Section 399.

Fish & Game Code § 250 (repealed). Continuance of regulations

SEC. _____. Article 2 of Chapter 2 of Division 1 of the Fish and Game Code is repealed.

Comment. Former Section 250 is repealed as obsolete. Section 250 was originally enacted when the Fish and Game Commission's authority to regulate the take and possession of wildlife was subject to a series of sunset provisions set forth in Section 221. See 1957 Cal. Stat. ch. 1549; 1959 Cal. Stat. ch. 1568; 1961 Cal. Stat. ch. 1245; 1963 Cal. Stat. ch. 7 (1st Ex. Sess.); 1965 Cal. Stat. ch. 748; 1969 Cal. Stat. ch. 110; 1973 Cal. Stat. ch. 723; 1975 Cal. Stat. ch. 1083; 1979 Cal. Stat. ch. 1076; 1984 Cal. Stat. ch. 229; 1989 Cal. Stat. ch. 564; 1994 Cal. Stat. ch. 935; 1999 Cal. Stat. ch. 483.

The purpose of Section 250 was to provide for the continuity of adopted regulations in the event that the Fish and Game Commission's rulemaking authority were to be repealed by operation of law. That possibility is no longer a concern, as Section 221 was itself repealed in 2001. See 2001 Cal. Stat. ch. 398.

Fish & Game Code § 300 (repealed). Filing with Secretary of State

SEC. _____. Section 300 of the Fish and Game Code is repealed.

~~300. A regulation adopted pursuant to this code shall be filed with the Secretary of State, as required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

Comment. Former Section 300 is superfluous and is not continued. See Gov't Code § 11343.

Fish & Game Code § 399 (added). Emergency regulations

SEC. _____. Chapter 3.5 is added to Division 1 of the Fish and Game Code, to read:

CHAPTER 3.5. EMERGENCY REGULATIONS

Fish & Game Code § 399. Emergency regulations

399. Notwithstanding any other provision of this code, the commission, when adopting, amending, or repealing a regulation pursuant to authority vested in it by this code, may, after at least one hearing, adopt, amend, or repeal that regulation pursuant to Section 11346.1 of the Government Code, if it makes either of the following findings:

(a) That the adoption, amendment, or repeal is necessary for the immediate conservation, preservation, or protection of birds, mammals, fish, amphibians, or reptiles, including, but not limited to, their nests or eggs.

(b) That the adoption, amendment, or repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Comment. Section 399 restates former Section 240(a) without substantive change, except to add a reference to amphibians.

Former Section 240(b) is redundant and is not continued. See Gov't Code Sections 11346.1(a)(1) & 11349.6 (review of proposed emergency regulation).

Fish & Game Code § 460 (amended). Recommendations relating to deer

SEC. _____. Section 460 of the Fish and Game Code is amended to read:

460. Prior to ~~the February~~ each meeting of the commission ~~as required in~~ at which the commission considers the regulation of deer and takes action pursuant to paragraph (1) of subdivision (a) of Section 207 255, the department shall recommend to the commission those deer herd units to be placed under a general deer hunting season. At the same time, the department shall recommend to the commission, subject to the provisions of Sections 458 and 459, whether any antlerless deer should be taken and in what deer herd units antlerless deer are to be taken. If in the judgment of the department there are deer herd units in which hunting pressure

would adversely affect the deer herd, impair the hunting experience, or endanger the public safety, the department shall also recommend to the commission those deer herd units where hunter numbers should be restricted and which should be removed from the general deer hunting season designation. The department shall inform the commission of the condition of each deer herd unit. Upon receipt of the recommendations and information required in this section, the commission shall make that material known to the public and its determinations regarding proposed regulations. The recommendations of the department shall, in accordance with the provisions of Sections 458 and 459, include the number, if any, of antlerless deer that should be taken in deer herd units, whether the permits should be either-sex permits, the proposed dates for the taking, and the number of permits proposed for each deer herd unit. At the same time, the department shall recommend the establishment of any hunter-restricted quota units, if needed, and the number of the quota and manner in which the quota permits should be issued.

Comment. Section 460 is amended to correct an obsolete cross-reference.

Fish & Game Code §§ 7110-7115 (added). Sport fishing regulations

SEC. _____. Article 1.5 is added to Chapter 1 of Part 2 of Division 6 of the Fish and Game Code, to read:

Article 1.5. Sport Fishing Regulations

Fish & Game Code § 7110. Automatic process to conform sport fishing regulations

7110. (a) The commission may establish by regulation an automatic process to conform its sport fishing regulations to federal regulations.

(b) The department shall provide public notice of any conforming action implemented pursuant to this section.

Comment. Section 7110 continues former Section 205.1 without change.

Fish & Game Code § 7115. Required information in regulation booklet

7115. (a) The department shall identify property it owns or manages that includes areas for sport fishing accessible to persons with disabilities.

(b) Commencing with the booklet of sport fishing regulations published by the commission in 1986, the availability of sport fishing areas, identified by the department as accessible to persons with disabilities under subdivision (a), shall be noted in the booklet of regulations, together with telephone numbers and instructions for obtaining a list of those areas from regional department offices.

(c) Commencing with the booklet of sportfishing regulations published in 1987, the booklet shall also contain any human health advisories relating to fish that are formally issued by the State Department of Public Health, or summaries of those human health advisories. The summaries shall be prepared in consultation with the State Department of Public Health.

Comment. Subdivisions (a) and (b) of Section 7115 continue former Section 217.5 without substantive change.

Subdivision (c) continues former Section 217.6 without substantive change.

Fish & Game Code § 7120 (amended). Bag limit

SEC. _____. Section 7120 of the Fish and Game Code is amended to read:

7120. It is unlawful for any person to possess more than one daily bag limit of any fish taken under a license issued pursuant to Section 714 or Article 3 (commencing with Section 7145) unless authorized by regulations adopted by the commission ~~pursuant to Section 206~~.

Comment. Section 7120 is amended to update a cross-reference.

Government Code § 11343.4 (amended). Effective date of regulation

SEC. _____. Section 11343.4 of the Government Code is amended to read:

11343.4. (a) Except as otherwise provided in subdivision (b), a regulation or an order of repeal required to be filed with the Secretary of State shall become effective on a quarterly basis as follows:

(1) January 1 if the regulation or order of repeal is filed on September 1 to November 30, inclusive.

(2) April 1 if the regulation or order of repeal is filed on December 1 to February 29, inclusive.

(3) July 1 if the regulation or order of repeal is filed on March 1 to May 31, inclusive.

(4) October 1 if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

(b) The effective dates in subdivision (a) shall not apply in all of the following:

(1) The effective date is specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by the statute.

(2) A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(3) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date.

(4)(A) A regulation adopted by the Fish and Game Commission ~~pursuant to~~ that is governed by Article 4 2 (commencing with Section ~~200~~ 250) of Chapter 2 of Division 1 of the Fish and Game Code.

(B) A regulation adopted by the Fish and Game Commission that requires a different effective date in order to conform to a federal regulation.

Comment. Section 11343.4 is amended to update a cross-reference.

Health and Safety Code § 131052 (amended). Transfer of jurisdiction

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

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

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

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

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

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

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

(6) Sections ~~217.6, 1507~~, 1786, 4011, 5671, 5674, 5700, 5701, 5701.5, 7115, 7715, and 15700 of the Fish and Game Code.

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

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

(B) 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, 6.5, 8, 8.3, 8.5, 8.6, 9, and 11 of Division 2.

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

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

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

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

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

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

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

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

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

(12) Section 4806 of the Probate Code.

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

(14) Section 10405 of the Public Contract Code.

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

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

(17) Section 11020 of the Unemployment Insurance Code.

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

(19) Sections 5326.9, 5328, 5328.15, 14132, 16902, and 16909, and Division 24 of the Welfare and Institutions Code. Payment for services provided under the Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program pursuant to subdivision (aa) of Section 14132 and Division 24 shall be made through the State Department of Health Care Services. The State Department of Public Health and the State Department of Health Care Services may enter into an interagency agreement for the administration of those payments. This paragraph, to the extent that it applies to the Family PACT Waiver Program, shall become inoperative on June 30, 2012.

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

Comment. Section 131052 is amended to update a cross-reference to former Fish and Game Code Section 217.6, which is continued by Fish and Game Code Section 7115. The section is also amended to delete a cross-reference to Fish and Game Code Section 1507, which has been repealed.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

**Trial Court Unification:
Publication of Legal Notice**

October 2015

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Trial Court Unification: Publication of Legal Notice*, 44 Cal. L. Revision Comm'n Reports 385 (2015).

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

c/o King Hall Law School
Davis, CA 95616

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October 8, 2015

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

Some statutes call for publication of a legally required notice (such as a notice of a foreclosure sale) in a newspaper that is circulated within a particular judicial district. The purpose of such a requirement is to target notice to the local community. This recommendation proposes modifications to clarify the location of these districts.

Originally, judicial districts were established for the business and elections of the courts of limited jurisdiction. However, the Legislature later made use of these districts in notice publication statutes as a means of targeting such notices locally.

Over time, courts consolidated and the corresponding judicial districts became larger. In 1967, the Legislature enacted Government Code Section 71042.5 to, upon consolidation, retain the former judicial districts for notice publication purposes. In the absence of this provision, notice publication would have been less localized as judicial districts consolidated and became larger.

The trend of court consolidation culminated with trial court unification, in which the remaining trial courts unified into a countywide superior court. Trial court unification eliminated the

trial courts of limited jurisdiction and thus eliminated the function of their judicial districts in court administration and elections.

When the courts unified, the Law Revision Commission recommended continuing to use the former judicial districts for notice publication. The Commission viewed that as a temporary solution. Accordingly, the Legislature directed the Commission to revisit the matter when appropriate.

Enough time has now elapsed for courts, newspapers, and others to gain experience with the functioning of the notice publication statutes post-unification. The Commission thus studied the situation to assess the need for change. It found that the existing requirements are cumbersome and confusing. In particular, accessing relevant district descriptions and boundary information is quite difficult.

This recommendation addresses that problem. Consistent with the scope of the Commission's authority, the proposed legislation would revise the statutes to ensure that they continue to operate effectively, while preserving existing expectations and legislative policy choices.

Specifically, the revisions contained in this recommendation would:

- (1) Redesignate the districts used for publishing legal notice as "public notice districts."
- (2) Codify simplified "public notice district" descriptions, which are based on the areas comprising former judicial districts.
- (3) Authorize a newspaper certified to publish notice in a particular judicial district to publish notice in the successor public notice district.

Respectfully submitted,

Taras Kihiczak
Chairperson

TRIAL COURT UNIFICATION: PUBLICATION OF LEGAL NOTICE

In 1997, given the significant statutory changes required to accommodate trial court unification, the Legislature requested that the Commission make recommendations “pertaining to statutory changes that may be necessitated by court unification.”¹ The Commission did so through its 1998 recommendation on *Trial Court Unification: Revision of Codes*.²

When the Commission prepared that recommendation, it addressed the many references to a “judicial district” in the codes.³ Generally, the Commission concluded that a statutory reference to a “judicial district” should be treated as a reference to the county after the courts unified. However, this rule was subject to exceptions. One exception related to the use of judicial districts to define the boundaries for publishing a legally required notice, such as a notice of a foreclosure sale or a sale of stored property.⁴ The Commission recommended, and the Legislature enacted, a provision that continued the status quo, retaining former judicial district boundaries for that purpose.⁵ However, the Commission recognized that this provision would need to be revisited and identified the matter as appropriate for future study.⁶ The

1. 1997 Cal. Stat. res. ch. 102; see also 1998 Cal. Stat. res. ch. 91.

2. 28 Cal. L. Revision Comm’n Reports 51 (1998) (hereafter, “*Revision of Codes*”).

3. “Statutes refer to ‘judicial districts’ for various purposes. The references generally intend the ‘municipal court district’ in a county. On unification of the municipal and superior courts in a county, the former municipal court districts have little relevance for most purposes.” *Id.* at 70 (footnote omitted).

4. *Id.* at 70, 72; see also Bus. & Prof. Code § 21707; Civ. Code § 2924f.

5. See Gov’t Code § 71042.5 (retaining former municipal court districts for publication purposes if municipal and superior courts unify); see also 1998 Cal. Stat. ch. 931, § 263 (former Gov’t Code § 71042.5); *Revision of Codes*, *supra* note 2, at 72, 349.

6. *Revision of Codes*, *supra* note 2, at 86, n. 131.

Legislature assigned that issue to the Commission, along with several other projects identified in the Commission's recommendation.⁷

Since then, the Commission has completed work on all of the other projects.⁸ This recommendation addresses the final, outstanding issue identified for future work by the Commission in its 1998 recommendation: "[p]ublication of legal notice in a county with a unified superior court."⁹

The Commission has conducted extensive research on that matter and solicited input from key stakeholders. From that work, it is clear that the statutes requiring publication of notice in judicial districts are posing practical challenges. In particular, it has become quite difficult for affected persons to ascertain the relevant district boundaries.

The proposed legislation contained in this recommendation is intended to address those challenges. Specifically, the proposal is intended to ensure that the notice publication requirements are clear and the districts used for notice publication are easily determinable, without disrupting the current legislative policy requiring publication of notice locally. The proposed legislation

7. Gov't Code § 70219; see also 1998 Cal. Stat. ch. 931, § 257 (former Gov't Code § 70219).

8. See *Trial Court Unification: Issues Identified for Future Study*, 30 Cal. L. Revision Comm'n Reports 507 (2000); see also *Authority to Appoint Receivers*, 30 Cal. L. Revision Comm'n Reports 291 (2000); 2001 Cal. Stat. ch. 44 (SB 562 (Morrow)) (implementing Commission recommendation on authority to appoint receivers); *Cases in Which Court Reporter Is Required*, 31 Cal. L. Revision Comm'n Reports 223 (2001); 2002 Cal. Stat. ch. 71 (SB 1371 (Morrow)) (implementing Commission recommendation on cases in which court reporter is required); *Stay of Mechanic's Lien Enforcement Pending Arbitration*, 30 Cal. L. Revision Comm'n Reports 307 (2000); 2003 Cal. Stat. ch. 22 (SB 113 (Ackerman)) (implementing Commission recommendation on stay of mechanic's lien enforcement pending arbitration); *Obsolete Reporting Requirements*, 33 Cal. L. Revision Comm'n Reports 267 (2003); 2004 Cal. Stat. ch. 193 (SB 111 (Knight)) (implementing Commission recommendation on obsolete reporting requirements).

9. *Revision of Codes*, *supra* note 2, at 86.

would also preserve existing rights of a newspaper of general circulation that is eligible to publish notice in a judicial district. The proposal would thus conform to existing expectations and legislative policy choices, while making the law more workable and readily understandable.

Scope of the Commission's Study

In studying this issue, the Commission was mindful of the narrow scope of its original task, addressing statutory changes necessitated by trial court unification. Throughout its work on that topic, the Commission took great care to preserve existing statutory rights and procedures, while making the statutes workable in a unified court system.¹⁰

The Commission took a similarly restrained approach in studying the issue of judicial district notice publication, purposefully avoiding broader questions of policy related to legal notice. Specifically, the Commission did not address questions regarding the best medium for providing notice, the appropriate timing of notice, the required content for notice, or the remedies for inadequate notice.

The Commission recognizes that legal notice policy questions have been the subject of legislative attention in recent years.¹¹ In this study, the Commission takes no position on those policy questions.

Rather, the Commission focused solely on determining what, if any, changes to the existing requirements for notice publication in a judicial district are necessary to ensure that the statutes continue to achieve the publication of the relevant notices locally, with minimal disruption of existing rights and expectations.

10. *Revision of Codes*, *supra* note 2, at 60.

11. See, e.g., AB 642 (Rendon), as introduced February 20, 2013; SB 617 (Evans), as amended May 28, 2013; SB 1199 (Hancock), as introduced February 20, 2014.

Background on Judicial Districts

Historically, California had several different kinds of trial courts with limited jurisdiction, as well as countywide superior courts with unlimited jurisdiction. In the 1950s, in an effort to standardize the trial court system, California voters approved a constitutional amendment reducing the types of limited jurisdiction trial courts to just two: justice courts and municipal courts.¹²

Counties often had multiple municipal and/or justice courts. In such cases, the county was divided up into multiple judicial districts, each of which corresponded with a municipal or justice court. In general, a county's Board of Supervisors was responsible for establishing and adjusting the boundaries of the judicial districts.¹³

Initially, the counties created 400 judicial districts statewide.¹⁴ By the late 1960s, there were roughly 325 judicial districts statewide.¹⁵ Over time, there was a clear trend of consolidating courts and reducing the number of judicial districts. The trend of court consolidation continued with the statewide elimination of the justice courts,¹⁶ and culminated with trial court unification in the late 1990s. By that time, the number of judicial districts statewide had decreased to just over 100.¹⁷

In 1998, the voters approved a measure authorizing, under specified conditions, unification of the remaining trial courts in

12. See generally Judicial Council of California, Fourteenth Biennial Report to the Governor and the Legislature 13-28 (Jan. 31, 1953).

13. See California Courts and Judges 32 (James Publishing, 1998 ed.); see also 1953 Cal. Stat. ch. 1130, § 1 (former Gov't Code § 71040); 1967 Cal. Stat. ch. 1226, § 1 (former Gov't Code § 71042).

14. See Judicial Council Fourteenth Biennial Report, *supra* note 12, at 16.

15. See Judicial Council of California, Annual Report of the Administrative Office of the California Courts 195-98, 246-55 (Jan. 6, 1969).

16. 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994).

17. See Judicial Council of California, Administrative Office of the Courts, 1997 Judicial Council Report on Court Statistics 73-77.

each county to form a single, countywide superior court.¹⁸ By early 2001, the trial courts in every county had unified.¹⁹ Upon the vote to unify, the trial courts in a county combined their operations in a unified, countywide superior court.²⁰

Trial court unification eliminated all of the trial courts of limited jurisdiction and thus eliminated the function of their judicial districts in court administration and elections. Upon unification, the former judicial districts had “little relevance for most purposes.”²¹ Notice publication is a notable exception to that rule.

Use of Judicial Districts for Notice Publication

Several California statutes have relied and continue to rely on judicial districts as defining the location for the publication of legal notice.²² These include, for example, the statute governing notice of a home foreclosure sale made under a power of sale,²³ and the

18. Proposition 220, authorizing “unification of the municipal and superior courts in a county on a vote of a majority of the municipal court judges and a majority of the superior court judges in that county,” was approved by California voters at the June 2, 1998 statewide election, and became operative the day after the election. See 1996 Cal. Stat. res. ch. 36; *Revision of Codes*, *supra* note 2, at 59 (citing Cal. Const. XVIII, § 4).

19. Judicial Council of California, *Trial Court Unification Factsheet* (February 2005) (available at <http://www.courts.ca.gov/documents/tcunif.pdf>) (“By January 2001, all 58 California counties had voted to unify their municipal and superior court operations.”).

20. See former Cal. Const. art. VI, § 5(e) (1996 Cal. Stat. res. ch. 36), approved by the voters June 2, 1998 (Proposition 220).

21. *Revision of Codes*, *supra* note 2, at 70.

22. Bus. & Prof. Code § 21707; Civ. Code §§ 2924f, 3440.1, 3440.5; Code Civ. Proc. §§ 701.540, 1208.5; Com. Code § 6105; Rev. & Tax. Code §§ 3381, 3702. Cf. Code Civ. Proc. § 38 (“judicial district” defined, subject to contrary statute). At the time of trial court unification, Commercial Code Section 7210(b)(5) required publication of notice in a judicial district, but has since been amended to remove the judicial district reference. See 2006 Cal. Stat. ch. 254, §§ 48, 49.

23. Civ. Code § 2924f.

statute governing notice of a sale of stored goods conducted by a self-storage facility when a customer fails to pay rent.²⁴

In 1967, the Legislature enacted Government Code Section 71042.5, presumably in response to the trend of court consolidation.²⁵ This section sought to preserve the judicial districts for purposes of notice publication. It provided that upon consolidation of two or more judicial districts, the prior component districts would remain separate judicial districts for the purpose of notice publication.²⁶

This rule applied prospectively, to future consolidations of judicial districts.²⁷ If it had not been enacted, such consolidations could have resulted in notice being provided less locally, because the territory of the resulting, consolidated judicial district would

24. Bus. & Prof. Code § 21707.

25. See generally Judicial Council of California, Annual Report of the Administrative Office of the California Courts 58-59 (January 8, 1968) (“In the period since June 30, 1958 there has been a net decrease of 54 judicial districts, reflecting a decline of 66 justice court districts which was partly offset by an increase of 12 municipal court districts.

...

The trend towards fewer justice courts principally reflects two factors: (1) population growth which results in the creation of municipal courts as district populations increase to levels exceeding the 40,000 constitutional limit for justice courts; and (2) local redistricting resulting in the consolidation of separate justice court districts into either municipal court districts or larger justice court districts.”).

26. As originally enacted, Section 71042.5 read as follows:

71042.5. Notwithstanding any other provision of law, upon consolidation of judicial districts, the territory embraced within the respective prior component judicial districts shall be separate judicial districts for the purpose of publication within a judicial district.

1967 Cal. Stat. ch. 1066, § 1.

27. See 1967 Cal. Stat. ch. 1066, § 2 (As enacted in that legislation, Government Code Section 71042.6 provided in part “[s]uch map and boundaries shall be applicable to any consolidation which becomes effective on or after the effective date of this section.”).

have encompassed the territories of all of the prior component judicial districts.

When the concept of trial court unification was gaining momentum, the Legislature tasked the Law Revision Commission with revising California's laws to accommodate that reform. As part of that effort, the Commission recommended, and the Legislature enacted, an amendment to Government Code Section 71042.5 to continue the status quo. The amendment preserved the former judicial districts for notice publication purposes after the courts in a county unified, not just when districts were consolidated.²⁸

The Commission recognized, however, that retaining the former judicial districts to serve as the location for the publication of legal notice "may be unsatisfactory in the long-term"²⁹ The Legislature assigned the issue of "[p]ublication of legal notice in a county with a unified superior court" for future work by the Commission, as the Commission itself proposed.³⁰

The Commission's Current Study

Over a decade has passed since all counties in California unified their trial courts.³¹ Sufficient time has thus elapsed for newspapers, courts, and other affected persons to gain experience with notice publication in the post-unification environment.

28. Section 71042.5 currently reads:

71042.5. Notwithstanding any other provision of law, where judicial districts in a county have been consolidated, or where the municipal and superior courts in a county have unified, the territory embraced within the respective prior component judicial districts shall be separate judicial districts for the purpose of publication within a judicial district.

2002 Cal. Stat. ch. 784, § 344; see also 1998 Cal. Stat. ch. 931, § 263.

29. *Revision of Codes*, *supra* note 2, at 86, n. 131.

30. *Id.* at 86, Gov't Code § 70219; see also 1998 Cal. Stat. ch. 931, § 257 (former Gov't Code § 70219).

31. Judicial Council Trial Court Unification Factsheet, *supra* note 19.

Accordingly, the Commission commenced a study reexamining the statutes that rely on former judicial districts to define boundaries for publishing legally required notices. More specifically, the Commission has been assessing whether those statutes need any revisions to accomplish their underlying objectives.

Function of Judicial District References in Notice Publication Statutes

As an initial matter, the Commission considered the function of the references to judicial districts in the notice publication statutes prior to trial court unification.

At that time, judicial districts provided a set of geographical boundaries that circumscribed areas for the publication of legal notice. Based on the constitutional requirements for judicial districts, the geographical area of a judicial district necessarily was contained within a single county.³² In general, each city was fully contained within a single judicial district.³³

Thus, the requirements for the publication of legal notice within a judicial district offered a means to target a notice to a less-than-countywide, local population. In proposing this recommendation, the Commission sought to respect that legislative preference for targeting the publication of notice to a local community.

Challenges Posed by Notice Publication Requirements

Based on the information the Commission has obtained, the statutes requiring the publication of notice in judicial districts

32. Former Cal. Const. art. VI, § 5(a) (as amended June 8, 1976). (“Each county shall be divided into municipal court and justice court districts as provided by statute...”).

33. *Id.* (“...[A] city may not be divided into more than one district.”); but see *id.* § 5(b) (“Notwithstanding the provisions of subdivision (a), any city in San Diego County may be divided into more than one municipal court or justice court district if the Legislature determines that unusual geographic conditions warrant such division.”).

appear to be posing practical challenges. Those practical challenges are discussed below.

Confusing Terminology

The term “judicial district” is itself a potential source of confusion, particularly after trial court unification. In the absence of judicial districts actively maintained for municipal or justice court purposes, a person required to publish notice in a judicial district must first determine what the judicial district reference means. Currently, it is not readily apparent that a reference to a “judicial district” in a statute requiring publication of legal notice is meant to refer to a *former* judicial district, as per Government Code Section 71042.5. Consequently, it may be difficult for a person to correctly publish legal notice in accordance with the statutory requirements.

For instance, a person required to publish notice in a judicial district could easily overlook Government Code Section 71042.5, which preserves the former judicial districts for purposes of publication. Such a person could mistakenly conclude that, under Code of Civil Procedure Section 38, the reference to “judicial district” means “the county.”³⁴ Thus, in this situation, a person might erroneously publish notice in a county newspaper, as opposed to a newspaper in the former judicial district.

Given the possibility of confusion regarding the term “judicial district,” a statutory requirement that legal notice be published in a judicial district may not give sufficient guidance to persons who must comply with this obligation.

Difficulty of Ascertaining Notice Boundaries

Under Government Code Section 71042.5, a “judicial district” reference in a statute governing publication of legal notice means either (1) a judicial district that existed prior to pre-unification consolidation of two or more judicial districts, or (2) a judicial

34. Subdivision (d) of Code of Civil Procedure Section 38 provides that, “[a]s it relates to a county in which there is no municipal court,” judicial district means “the county.”

district that existed prior to trial court unification. Because trial court unification was completed in early 2001, the relevant judicial district boundaries have been frozen for at least thirteen years. If the judicial districts were consolidated prior to unification, the relevant boundaries may be much older.

For notice publication to comport with Section 71042.5, the historic district boundaries must be retained and made available to the public. The Legislature enacted a companion provision, Government Code Section 71042.6, that appears tailored to address this issue. Section 71042.6 requires each county recorder to maintain a map showing the boundaries of former judicial districts “[f]or the purpose of establishing boundaries under Section 71042.5.” Unfortunately, such maps do not appear to be readily available to the public at this point.

In preparing this recommendation, the Commission received stakeholder input suggesting that determining the relevant boundaries for judicial district notice publication poses practical difficulties.³⁵ For instance, one stakeholder sought judicial district maps from several counties and found that those maps were often difficult to access. In at least one case, no map was available.³⁶ In addition, when a map was available, it was generally difficult to read, impeding the ability to ascertain the exact boundaries.³⁷

The Commission directed its staff to seek maps from a sample of county recorders. The Commission staff similarly found that the maps were difficult to access and, when available, did not appear to include all of the relevant districts.³⁸

These practical difficulties in ascertaining judicial district boundaries place a significant burden on parties required to publish notice in a judicial district.

35. See Commission Staff Memorandum 2014-15 (March 28, 2014), p. 10, Exhibit pp. 1-3.

36. *Id.* at Exhibit pp. 1, 3.

37. *Id.* at Exhibit p. 1.

38. See First Supplement to Commission Staff Memorandum 2014-56 (Jan. 29, 2015), pp. 1, 3.

Potentially Serious Consequences of Publishing Notice in the Wrong Location

If notice is mistakenly published in the wrong location, the underlying action could be challenged by an interested party. Resolving a challenge to the adequacy of notice could require litigation and considerable public and private expense.

Changes Recommended by the Commission

In light of the difficulties in ascertaining the boundaries used for notice publication and the potentially serious consequences of an error, the Commission recommends a number of statutory revisions. Generally, the Commission recommends preserving the status quo for notice publication requirements, but making changes to ensure that the requirements are clear and understandable. The proposed approach is described in further detail below.

While the proposed legislation may appear lengthy, the structure of the legislation is designed to allow the public to quickly and easily determine the appropriate district in which to publish a notice. This would be a significant improvement over the current system, in which the public does not have ready access to the district information.

Redesignate the Districts Used for Notice Publication as “Public Notice Districts”

Since Government Code Section 71042.5 took effect, the set of judicial districts used for notice publication became increasingly dissociated from the set of judicial districts used for court administration and business as courts consolidated.

Using the same term – “judicial district” – in the codes to refer to both the districts preserved by operation of Government Code Section 71042.5 and the districts formerly used for court administration and business is confusing.

Therefore, the Commission recommends redesignating the districts used for notice publication as “public notice districts.”

Codify Simplified Descriptions of the Public Notice Districts

The Commission's work revealed that the boundaries of the former judicial districts are difficult to determine. Often, information about the boundaries is not readily accessible and can be unclear or otherwise hard to understand.

In order to improve accessibility and usability of the boundary information, the Commission recommends codifying the district descriptions. This would make it possible to cross-refer to the district descriptions in the code sections that require notice publication in a judicial district. Codification of the district descriptions would thus facilitate public access to those descriptions.

Many of the historic district descriptions are lengthy and rely on descriptors that are not readily known or available.³⁹ To address this problem, the Commission recommends describing the districts in a simplified manner, by referring to the population centers (cities and census designated places⁴⁰) in each district.

Under this approach, each public notice district is based on a former judicial district.⁴¹ Each public notice district description

39. Commission Staff Memorandum 2014-56, p. 13 (Nov. 24, 2014). Among the problematic features are township and range designations, references to prior component districts, and boundaries shown on particular maps held by the county recorder.

40. A census designated place or "CDP" is "the statistical counterpart[] of [an] incorporated place[], and [is] delineated to provide data for settled concentrations of population that are identifiable by name but are not legally incorporated under the laws of the state in which they are located." See https://www.census.gov/geo/reference/gtc/gtc_place.html.

For Los Angeles County, the situation was more complicated. To alleviate potential confusion, it was necessary to use some neighborhood names and islands in describing the districts, as well as cities and CDPs. For further explanation of the treatment of Los Angeles County, see Commission Staff Memorandum 2015-11, pp. 8-9 (April 2, 2015).

41. Generally, the historical judicial districts used in developing the Commission's proposal were those existing on the effective date of Section 71042.5. See Commission Staff Memorandum 2015-11, *supra* note 40, at 4-5. In two counties, San Bernardino and San Diego, the public notice districts were

consists of one or more population centers, depending on the composition of the relevant historical judicial district.⁴² For the most part, the historical judicial district names would continue to apply to the successor public notice districts.⁴³

Not every location in the state would be included in a public notice district. Thus, a notice requirement might sometimes be triggered for a location outside such a district (such as when a home in a rural area is subject to a foreclosure sale). The proposed legislation would establish a rule⁴⁴ to cover these situations:

- If the location in question is within a specified number of miles from a district, the notice must be published in the nearest district.
- If the location in question is beyond the specified mileage range, notice shall be given as if the location is in a district without a newspaper of general circulation.⁴⁵

Using population centers as district descriptors allows the districts to be described concisely, in a manner that will be easily understood by the public. It will largely achieve the same result as

based instead on a 1984 court directory prepared by the Association of Municipal Court Clerks of California. See Ass’n of Municipal Court Clerks of Cal., California Courts Directory and Fee Schedule (1984 ed.). The Commission received input that, for these counties, the 1984 Directory reflects the districts “currently recognized by newspapers in these areas.” Letter to the Commission from the California Newspaper Publishers Association (Aug. 28, 2015), p. 2 (attached to Commission Staff Memorandum 2015-44 (Sept. 21, 2015)).

42. For further detail on the methodology that the Commission used in drafting district descriptions, see Commission Staff Memorandum 2015-11, *supra* note 40, at 4-9.

43. In some instances, the Commission deviated from this naming convention where there was a judicial district name change or the historical name might be confusing in the new framework. See *id.* at 5.

44. See, e.g., proposed Gov’t Code §§ 6085.100(b), 6085.130(b), 6085.140(b) *infra*.

45. For further detail on this rule for locations outside of the districts (the “plus rule”), see Commission Staff Memorandum 2015-11, *supra* note 40, at 9.

the existing lengthy, complicated, and difficult-to-access descriptions.

Safe Harbor

Although the Commission crafted the public notice district descriptions so as to provide clear direction and minimize confusion, the Commission recognized that the possibility of a reasonable, good faith mistake still remains. Therefore, the proposed legislation includes a safe harbor provision.⁴⁶ This provision provides that if a person makes a reasonable, good faith error in determining the proper district for publication of a notice, the error shall not be grounds for invalidating the notice.

Grandfather Clause to Preserve Existing Rights of Newspapers

One aspect of preserving the status quo is avoiding disruption of the existing rights of newspapers.

In order to publish a legally required notice in a judicial district, a newspaper must have a judicial decree establishing it as a newspaper of general circulation in the relevant district.⁴⁷

Rather than requiring each newspaper to seek a new court decree to continue publishing notices in the proposed public notice district that succeeds the newspaper's judicial district, the Commission recommends preserving a newspaper's existing rights by expressly "grandfathering" them into the new framework. Thus, an existing judicial decree for a newspaper in a former judicial district would be treated as a "decree establishing the newspaper as a newspaper of general circulation in the successor public notice district."⁴⁸

46. See proposed Gov't Code § 6081 *infra*.

47. See Gov't Code § 6040 ("Whenever any official advertising, notice, resolution, order, or other matter of any nature whatsoever is required by law to be published in a newspaper, such publication shall be made only in a newspaper of general circulation.").

48. See proposed Gov't Code § 6082 *infra*.

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GOVERNMENT CODE

Gov't Code §§ 6080-6085.670 (added). Publication of notice in public notice districts

SEC. ____ Chapter 1.1 (commencing with Section 6080) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 1.1. PUBLICATION OF NOTICE IN PUBLIC NOTICE DISTRICT

Comment. Chapter 1.1 is new. This chapter establishes public notice districts as a place for the publication of notice. Public notice districts replace the former judicial districts preserved for publication by former Section 71042.5.

Article 1. Public Notice Districts, Generally

§ 6080. Application of chapter

6080. This chapter governs any statute requiring publication of notice in a public notice district.

Comment. Section 6080 is new. This section establishes the application of this chapter.

§ 6081. Safe harbor for notice error

6081. A notice published or posted in a manner that is contrary to the provisions of this chapter shall not be invalidated as a consequence of a reasonable, good faith error as to the applicable public notice district.

Comment. Section 6081 is new. This section provides a safe harbor for a person who makes a reasonable, good faith error in identifying the applicable public notice district under this chapter.

§ 6082. Status of newspaper of general circulation in judicial district

6082. (a) Notwithstanding Section 6027, a judicial decree establishing a newspaper as a newspaper of general circulation in a former judicial district shall be treated as a judicial decree establishing the newspaper as a newspaper of general circulation in the successor public notice district.

(b) For the purposes of this section, the “successor public notice district” is the public notice district, described in Article 2, that contains substantially the same population centers as the applicable, former judicial district preserved for notice publication by former Section 71042.5.

Comment. Section 6082 is new. It makes clear that a newspaper that was adjudicated to be a newspaper of general circulation in a former judicial district is not required to seek a new judicial decree solely because the former judicial district has been replaced with a public notice district.

Article 2. Public Notice Districts by County

§ 6085.100. Alameda County

6085.100. (a) Alameda County contains the following public notice districts:

- (1) Alameda District, which is comprised of the city of Alameda.
- (2) Berkeley-Albany District, which is comprised of the cities of Albany and Berkeley.
- (3) Fremont-Newark-Union City District, which is comprised of the cities of Fremont, Newark, and Union City.
- (4) Livermore District, which is comprised of the city of Livermore.
- (5) Oakland-Piedmont District, which is comprised of the cities of Emeryville, Oakland, and Piedmont.
- (6) Pleasanton District, which is comprised of the cities of Dublin and Pleasanton.
- (7) San Leandro-Hayward District, which is comprised of the cities of Hayward and San Leandro and the unincorporated areas known as Ashland, Castro Valley, Cherryland, Fairview, and San Lorenzo.

(b) For the purpose of publishing notice arising from a location within Alameda County that is not within one of the districts described in subdivision (a):

(1) If the location is within five miles of a district, notice shall be published in the nearest district.

(2) If the location is not within five miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.100 is new. This section establishes public notice districts for Alameda County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.110. Alpine County

6085.110. Alpine County contains a single, countywide public notice district.

Comment. Section 6085.110 is new. This section establishes a public notice district for Alpine County. This district is the successor to the former countywide judicial district that was preserved for notice publication in accordance with former Section 71042.5.

§ 6085.120. Amador County

6085.120. Amador County contains a single, countywide public notice district.

Comment. Section 6085.120 is new. This section establishes a public notice district for Amador County. This district is the successor to the former countywide judicial district that was preserved for notice publication in accordance with former Section 71042.5.

§ 6085.130. Butte County

6085.130. (a) Butte County contains the following public notice districts:

- (1) Biggs District, which is comprised of the city of Biggs.
- (2) Chico District, which is comprised of the city of Chico.
- (3) Gridley District, which is comprised of the city of Gridley.
- (4) Oroville District, which is comprised of the city of Oroville.

(5) Paradise District, which is comprised of the city of Paradise and the unincorporated area known as Magalia.

(b) For the purpose of publishing notice arising from a location within Butte County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.130 is new. This section establishes public notice districts for Butte County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.140. Calaveras County

6085.140. (a) Calaveras County contains the following public notice districts:

(1) Angels-Murphys District, which is comprised of the city of Angels Camp and the unincorporated area known as Murphys.

(2) San Andreas District, which is comprised of the unincorporated areas known as Rancho Calaveras, San Andreas, and Valley Springs.

(b) For the purpose of publishing notice arising from a location within Calaveras County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.140 is new. This section establishes public notice districts for Calaveras County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.150. Colusa County

6085.150. (a) Colusa County contains the following public notice districts:

(1) Colusa District, which is comprised of the city of Colusa.

(2) Williams District, which is comprised of the city of Williams.

(b) For the purpose of publishing notice arising from a location within Colusa County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.150 is new. This section establishes public notice districts for Colusa County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.160. Contra Costa County

6085.160. (a) Contra Costa County contains the following public notice districts:

(1) Antioch District, which is comprised of the city of Antioch.

(2) Brentwood-Byron District, which is comprised of the city of Brentwood and the unincorporated areas known as Byron and Discovery Bay.

(3) El Cerrito-Kensington District, which is comprised of the city of El Cerrito and the unincorporated area known as Kensington.

(4) Mount Diablo District, which is comprised of the cities of Clayton, Concord, Martinez, and Pleasant Hill.

(5) Oakley District, which is comprised of the city of Oakley and the unincorporated area known as Knightsen.

(6) Pinole-Hercules-Rodeo District, which is comprised of the cities of Pinole and Hercules and the unincorporated area known as Rodeo.

(7) Pittsburg District, which is comprised of the city of Pittsburg and the unincorporated area known as Bay Point.

(8) Richmond District, which is comprised of the city of Richmond.

(9) San Pablo District, which is comprised of the city of San Pablo and the unincorporated areas known as Bayview, East Richmond Heights, El Sobrante, Montalvin Manor, North Richmond, Rollingwood, and Tara Hills.

(10) Walnut Creek-Danville District, which is comprised of the cities of Danville, Lafayette, Moraga, Orinda, San Ramon, and Walnut Creek and the unincorporated areas known as Alamo, Contra Costa Centre, and Reliez Valley.

(b) For the purpose of publishing notice arising from a location within Contra Costa County that is not within one of the districts described in subdivision (a):

(1) If the location is within five miles of a district, notice shall be published in the nearest district.

(2) If the location is not within five miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.160 is new. This section establishes public notice districts for Contra Costa County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.170. Del Norte County

6085.170. (a) Del Norte County contains the following public notice district:

(1) Crescent District, which is comprised of Crescent City.

(b) For the purpose of publishing notice arising from a location within Del Norte County that is not within the district described in subdivision (a):

(1) If the location is within ten miles of the district, notice shall be published in the district.

(2) If the location is not within ten miles of the district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.170 is new. This section establishes public notice districts for Del Norte County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.180. El Dorado County

6085.180. (a) El Dorado County contains the following public notice districts:

(1) El Dorado District, which is comprised of the unincorporated areas known as Cameron Park, Diamond Springs, and El Dorado Hills.

(2) Lake Valley District, which is comprised of the city of South Lake Tahoe.

(3) Placerville District, which is comprised of the city of Placerville.

(b) For the purpose of publishing notice arising from a location within El Dorado County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.180 is new. This section establishes public notice districts for El Dorado County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.190. Fresno County

6085.190. (a) Fresno County contains the following public notice districts:

(1) Clovis District, which is comprised of the city of Clovis and the unincorporated area known as Tarpey Village.

(2) Coalinga District, which is comprised of the cities of Coalinga and Huron.

(3) Firebaugh District, which is comprised of the cities of Firebaugh and Mendota.

(4) Fowler District, which is comprised of the city of Fowler.

(5) Fresno District, which is comprised of the city of Fresno.

(6) Kerman District, which is comprised of the cities of Kerman and San Joaquin.

(7) Kingsburg District, which is comprised of the city of Kingsburg.

(8) Parlier District, which is comprised of the city of Parlier and the unincorporated area known as Del Rey.

(9) Reedley District, which is comprised of the cities of Orange Cove and Reedley.

(10) Sanger District, which is comprised of the city of Sanger.

(11) Selma District, which is comprised of the city of Selma.

(b) For the purpose of publishing notice arising from a location within Fresno County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.190 is new. This section establishes public notice districts for Fresno County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.200. Glenn County

6085.200. (a) Glenn County contains the following public notice districts:

(1) Orland District, which is comprised of the city of Orland.

(2) Willows District, which is comprised of the city of Willows.

(b) For the purpose of publishing notice arising from a location within Glenn County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.200 is new. This section establishes public notice districts for Glenn County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.210. Humboldt County

6085.210. (a) Humboldt County contains the following public notice districts:

(1) Arcata District, which is comprised of the cities of Arcata, Blue Lake, and Trinidad and the unincorporated area known as McKinleyville.

(2) Eureka District, which is comprised of the city of Eureka.

(3) Fortuna District, which is comprised of the cities of Ferndale, Fortuna, and Rio Dell.

(b) For the purpose of publishing notice arising from a location within Humboldt County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.210 is new. This section establishes public notice districts for Humboldt County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.220. Imperial County

6085.220. (a) Imperial County contains the following public notice districts:

- (1) Brawley District, which is comprised of the city of Brawley.
- (2) Calexico District, which is comprised of the city of Calexico.
- (3) Calipatria District, which is comprised of the city of Calipatria.
- (4) El Centro District, which is comprised of the city of El Centro.
- (5) Holtville District, which is comprised of the city of Holtville.
- (6) Imperial District, which is comprised of the city of Imperial.
- (7) Westmoreland District, which is comprised of the city of Westmoreland.

(b) For the purpose of publishing notice arising from a location within Imperial County that is not within one of the districts described in subdivision (a):

- (1) If the location is within ten miles of a district, notice shall be published in the nearest district.
- (2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.220 is new. This section establishes public notice districts for Imperial County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.230. Inyo County

6085.230. (a) Inyo County contains the following public notice district:

- (1) Northern Inyo District, which is comprised of the city of Bishop.

(b) For the purpose of publishing notice arising from a location within Inyo County that is not within the district described in subdivision (a):

- (1) If the location is within ten miles of the district, notice shall be published in the district.

(2) If the location is not within ten miles of the district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.230 is new. This section establishes public notice districts for Inyo County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.240. Kern County

6085.240. (a) Kern County contains the following public notice districts:

(1) Arvin-Lamont District, which is comprised of the city of Arvin and the unincorporated areas known as Lamont and Weedpatch.

(2) Bakersfield District, which is comprised of the city of Bakersfield and the unincorporated areas known as Oildale and Rosedale.

(3) Delano-McFarland District, which is comprised of the cities of Delano and McFarland.

(4) Indian Wells District, which is comprised of the city of Ridgecrest.

(5) Kern River-Rand District, which is comprised of the unincorporated areas known as Bodfish, Kernville, Lake Isabella, Weldon, and Wofford Heights.

(6) Maricopa-Taft District, which is comprised of the cities of Maricopa and Taft.

(7) Mojave District, which is comprised of California City and the unincorporated areas known as Mojave and Rosamond.

(8) Shafter District, which is comprised of the city of Shafter.

(9) Tehachapi District, which is comprised of the city of Tehachapi and the unincorporated area known as Bear Valley Springs.

(10) Wasco District, which is comprised of the city of Wasco.

(b) For the purpose of publishing notice arising from a location within Kern County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.240 is new. This section establishes public notice districts for Kern County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.250. Kings County

6085.250. (a) Kings County contains the following public notice districts:

(1) Avenal District, which is comprised of the city of Avenal.

(2) Corcoran District, which is comprised of the city of Corcoran.

(3) Hanford District, which is comprised of the city of Hanford.

(4) Lemoore District, which is comprised of the city of Lemoore.

(b) For the purpose of publishing notice arising from a location within Kings County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.250 is new. This section establishes public notice districts for Kings County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.260. Lake County

6085.260. (a) Lake County contains the following public notice districts:

(1) Clearlake Highlands District, which is comprised of the city of Clearlake.

(2) Lakeport District, which is comprised of the city of Lakeport.

(b) For the purpose of publishing notice arising from a location within Lake County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.260 is new. This section establishes public notice districts for Lake County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.270. Lassen County

6085.270. (a) Lassen County contains the following public notice district:

(1) Westwood-Honey Lake District, which is comprised of the city of Susanville and the unincorporated area known as Westwood.

(b) For the purpose of publishing notice arising from a location within Lassen County that is not within the district described in subdivision (a):

(1) If the location is within ten miles of the district, notice shall be published in the district.

(2) If the location is not within ten miles of the district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.270 is new. This section establishes public notice districts for Lassen County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.280. Los Angeles County

6085.280. (a) Los Angeles County contains the following public notice districts:

(1) Alhambra District, which is comprised of the cities of Alhambra, Monterey Park, San Gabriel, and Temple City and the unincorporated areas known as East San Gabriel and South San Gabriel.

(2) Antelope District, which is comprised of the cities of Lancaster and Palmdale and the unincorporated areas known as Antelope, Del Sur, Elizabeth Lake, Green Valley, Lake Hughes, Lake Los Angeles, Leona Valley, Little Rock, Llano, Pearblossom, Quartz Hill, Sun Village, and Wilsona.

(3) Beverly Hills District, which is comprised of the cities of Beverly Hills and West Hollywood.

(4) Burbank District, which is comprised of the city of Burbank.

(5) Catalina District, which is comprised of San Clemente Island and Santa Catalina Island.

(6) Citrus District, which is comprised of the cities of Azuza, Baldwin Park, Covina, Glendora, Industry, Irwindale, and West Covina and the unincorporated areas known as Citrus, Charter Oak, Rowland Heights, South San Jose Hills, Valinda, Vincent, and West Puente Valley.

(7) Compton District, which is comprised of the cities of Carson, Compton, Lynwood, and Paramount and the unincorporated areas known as Athens, East Compton, East Rancho Dominguez, West Carson, West Compton, West Rancho Dominguez, and Willowbrook.

(8) Culver District, which is comprised of Culver City and the unincorporated areas known as Centinela, Ladera Heights, Marina Del Rey, View Park, and Windsor Hills.

(9) Downey District, which is comprised of the cities of Downey, La Mirada, and Norwalk.

(10) East Los Angeles District, which is comprised of the cities of Commerce and Montebello and the unincorporated areas known as Belvedere and East Los Angeles.

(11) El Monte-Rio Hondo District, which is comprised of the cities of El Monte, La Puente, Rosemead, and South El Monte and the unincorporated areas known as Avocado Heights, East Arcadia, Hacienda Heights, Mayflower Village, North El Monte, and Rio Hondo.

(12) Glendale District, which is comprised of the cities of Glendale and La Cañada Flintridge and the unincorporated areas known as La Crescenta and Montrose.

(13) Inglewood District, which is comprised of the cities of El Segundo, Hawthorne, and Inglewood and the unincorporated areas known as Del Aire, Lennox, West Athens, and Westmont.

(14) Long Beach District, which is comprised of the cities of Long Beach and Signal Hill.

(15) Los Angeles District, which is comprised of the cities of Los Angeles and San Fernando.

(16) Los Cerritos District, which is comprised of the cities of Artesia, Bell Flower, Cerritos, Hawaiian Gardens, and Lakewood.

(17) Malibu District, which is comprised of the cities of Agoura Hills, Calabasas, Hidden Hills, Malibu, and Westlake Village and the unincorporated areas known as Agoura, Malibu Heights, Topanga, and West Hills.

(18) Newhall-Soledad District, which is comprised of the city of Santa Clarita and the unincorporated areas known as Acton, Agua Dulce, Castaic, Canyon Country, Halsey Canyon, Gorman, Neenach, Newhall, Santa Susana Mountains, Saugus, Stevenson Ranch, Val Verde, and Valencia.

(19) Pasadena District, which is comprised of the cities of Pasadena, San Marino, Sierra Madre, and South Pasadena and the unincorporated areas known as Altadena, East Pasadena, Kinneloa Mesa, and San Pasqual.

(20) Pomona District, which is comprised of the cities of Claremont, Diamond Bar, La Verne, Pomona, San Dimas, and Walnut.

(21) Santa Anita District, which is comprised of the cities of Arcadia, Bradbury, Duarte, and Monrovia and the unincorporated area known as South Monrovia Island.

(22) Santa Monica District, which is comprised of the city of Santa Monica.

(23) Southeast District, which is comprised of the cities of Bell, Bell Gardens, Cudahy, Huntington Park, Maywood, South Gate, and Vernon and the unincorporated areas known as Florence-Graham and Walnut Park.

(24) South Bay District, which is comprised of the cities of Gardena, Hermosa Beach, Lawndale, Lomita, Manhattan Beach, Palos Verdes Estates, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, and Torrance and the unincorporated areas known as Alondra Park and El Camino Village.

(25) Whittier District, which is comprised of the cities of La Habra Heights, Pico Rivera, Santa Fe Springs, and Whittier and the unincorporated areas known as East Whittier, Rose Hills, South Whittier, and West Whittier-Los Nietos.

(b) For the purpose of publishing notice arising from a location within Los Angeles County that is not within one of the districts described in subdivision (a):

(1) If the location is within five miles of a district, notice shall be published in the nearest district.

(2) If the location is not within five miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.280 is new. This section establishes public notice districts for Los Angeles County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.290. Madera County

6085.290. (a) Madera County contains the following public notice districts:

(1) Chowchilla District, which is comprised of the city of Chowchilla.

(2) Madera District, which is comprised of the city of Madera.

(3) Sierra District, which is comprised of the unincorporated areas known as Ahwahnee, Coarsegold, Oakhurst, and Yosemite Lakes.

(b) For the purpose of publishing notice arising from a location within Madera County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.290 is new. This section establishes public notice districts for Madera County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.300. Marin County

6085.300. (a) Marin County contains the following public notice district:

(1) Central District, which is comprised of the cities of Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, Sausalito, and Tiburon and the unincorporated area known as Tamalpais-Homestead Valley.

(b) For the purpose of publishing notice arising from a location within Marin County that is not within the district described in subdivision (a):

(1) If the location is within ten miles of the district, notice shall be published in the district.

(2) If the location is not within ten miles of the district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.300 is new. This section establishes public notice districts for Marin County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.310. Mariposa County

6085.310. Mariposa County contains a single, countywide public notice district.

Comment. Section 6085.310 is new. This section establishes a public notice district for Mariposa County. This district is the successor to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.320. Mendocino County

6085.320. (a) Mendocino County contains the following public notice districts:

- (1) Arena District, which is comprised of the city of Point Arena.
- (2) Little Lake District, which is comprised of the city of Willits.
- (3) Ten Mile River District, which is comprised of the city of Fort Bragg.

- (4) Ukiah District, which is comprised of the city of Ukiah.

(b) For the purpose of publishing notice arising from a location within Mendocino County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.320 is new. This section establishes public notice districts for Mendocino County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.330. Merced County

6085.330. (a) Merced County contains the following public notice districts:

- (1) Atwater District, which is comprised of the city of Atwater and the unincorporated areas known as Cressey, McSwain, and Winton.

(2) Dos Palos District, which is comprised of the city of Dos Palos.

(3) Gustine District, which is comprised of the city of Gustine.

(4) Livingston District, which is comprised of the city of Livingston and the unincorporated areas known as Ballico, Delhi, and Stevenson.

(5) Los Banos District, which is comprised of the city of Los Banos and the unincorporated area known as Santa Nella.

(6) Merced District, which is comprised of the city of Merced and the unincorporated area known as Franklin.

(b) For the purpose of publishing notice arising from a location within Merced County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.330 is new. This section establishes public notice districts for Merced County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.340. Modoc County

6085.340. (a) Modoc County contains the following public notice district:

(1) Alturas District, which is comprised of the city of Alturas.

(b) For the purpose of publishing notice arising from a location within Modoc County that is not within the district described in subdivision (a):

(1) If the location is within ten miles of the district, notice shall be published in the district.

(2) If the location is not within ten miles of the district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.340 is new. This section establishes public notice districts for Modoc County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.350. Mono County

6085.350. Mono County contains a single, countywide public notice district.

Comment. Section 6085.350 is new. This section establishes a public notice district for Mono County. This district is the successor to the former countywide judicial district that was preserved for notice publication in accordance with former Section 71042.5.

§ 6085.360. Monterey County

6085.360. (a) Monterey County contains the following public notice districts:

(1) Castroville-Pajaro District, which is comprised of the unincorporated areas known as Castroville, Pajaro, and Pruneville.

(2) Gonzales District, which is comprised of the city of Gonzales.

(3) Greenfield District, which is comprised of the city of Greenfield.

(4) King City District, which is comprised of King City.

(5) Monterey-Carmel District, which is comprised of the cities of Carmel, Del Rey Oaks, Monterey, Sand City, and Seaside.

(6) Pacific Grove District, which is comprised of the city of Pacific Grove and the unincorporated area known as Del Monte Forest.

(7) Salinas District, which is comprised of the cities of Marina and Salinas.

(8) Soledad District, which is comprised of the city of Soledad.

(b) For the purpose of publishing notice arising from a location within Monterey County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.360 is new. This section establishes public notice districts for Monterey County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.370. Napa County

6085.370. (a) Napa County contains the following public notice districts:

(1) Calistoga District, which is comprised of the city of Calistoga.

(2) Napa District, which is comprised of the cities of American Canyon, Napa, and Yountville.

(3) St. Helena District, which is comprised of the city of St. Helena and the unincorporated areas known as Angwin, Oakville, and Rutherford.

(b) For the purpose of publishing notice arising from a location within Napa County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.370 is new. This section establishes public notice districts for Napa County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.380. Nevada County

6085.380. (a) Nevada County contains the following public notice districts:

(1) Grass Valley District, which is comprised of the city of Grass Valley.

(2) Nevada District, which is comprised of Nevada City.

(3) Truckee District, which is comprised of the city of Truckee.

(b) For the purpose of publishing notice arising from a location within Nevada County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.380 is new. This section establishes public notice districts for Nevada County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.390. Orange County

6085.390. (a) Orange County contains the following public notice districts:

(1) Central Orange County District, which is comprised of the cities of Orange, Santa Ana, Tustin, and Villa Park and the unincorporated area known as North Tustin.

(2) North Orange County District, which is comprised of the cities of Anaheim, Brea, Buena Park, Cypress, Fullerton, Garden Grove, La Habra, La Palma, Placentia, Stanton, and Yorba Linda.

(3) Orange County Harbor District, which is comprised of the cities of Costa Mesa, Irvine, and Newport Beach.

(4) South Orange County District, which is comprised of the cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano and the unincorporated areas known as Coto de Caza and Ladera Ranch.

(5) West Orange County District, which is comprised of the cities of Fountain Valley, Huntington Beach, Los Alamitos, Seal Beach, and Westminster and the unincorporated area known as Rossmoor.

(b) For the purpose of publishing notice arising from a location within Orange County that is not within one of the districts described in subdivision (a):

(1) If the location is within five miles of a district, notice shall be published in the nearest district.

(2) If the location is not within five miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.390 is new. This section establishes public notice districts for Orange County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.400. Placer County

6085.400. (a) Placer County contains the following public notice districts:

(1) Auburn District, which is comprised of the city of Auburn and the unincorporated areas known as Meadow Vista, Newcastle, and North Auburn.

(2) Colfax-Alta-Dutch Flat District, which is comprised of the city of Colfax and the unincorporated areas known as Alta and Dutch Flat.

(3) Lincoln District, which is comprised of the city of Lincoln.

(4) Loomis District, which is comprised of the cities of Loomis and Rocklin and the unincorporated areas known as Granite Bay and Penryn.

(5) Roseville District, which is comprised of the city of Roseville.

(b) For the purpose of publishing notice arising from a location within Placer County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.400 is new. This section establishes public notice districts for Placer County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.410. Plumas County

6085.410. (a) Plumas County contains the following public notice district:

(1) Beckwourth District, which is comprised of the city of Portola and the unincorporated area known as Beckwourth.

(b) For the purpose of publishing notice arising from a location within Plumas County that is not within the district described in subdivision (a):

(1) If the location is within ten miles of the district, notice shall be published in the district.

(2) If the location is not within ten miles of the district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.410 is new. This section establishes public notice districts for Plumas County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.420. Riverside County

6085.420. (a) Riverside County contains the following public notice districts:

(1) Beaumont District, which is comprised of the cities of Beaumont and Calimesa and the unincorporated area known as Cherry Valley.

(2) Coachella District, which is comprised of the city of Coachella and the unincorporated areas known as Thermal and Vista Santa Rosa.

(3) Corona District, which is comprised of the cities of Corona, Eastvale, and Norco and the unincorporated areas known as El Sobrante, Home Gardens, and Temescal Valley.

(4) Desert District, which is comprised of the cities of Cathedral City, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage.

(5) Elsinore District, which is comprised of the cities of Canyon Lake, Lake Elsinore, and Wildomar and the unincorporated areas known as Lakeland Village and Meadowbrook.

(6) Hemet District, which is comprised of the city of Hemet and the unincorporated areas known as East Hemet, Green Acres, Idyllwild-Pine Cove, Valle Vista, and Winchester.

(7) Jurupa District, which is comprised of the city of Jurupa Valley.

(8) Mecca District, which is comprised of the unincorporated areas known as Oasis and Mecca.

(9) Murrieta District, which is comprised of the cities of Murrieta and Temecula and the unincorporated area known as French Valley.

(10) Palo Verde District, which is comprised of the city of Blythe.

(11) Perris District, which is comprised of the cities of Menifee and Perris and the unincorporated areas known as Good Hope, Homeland, Lake Mathews, Mead Valley, and Nuevo.

(12) Riverside District, which is comprised of the cities of Moreno Valley and Riverside and the unincorporated areas known as March AFB and Woodcrest.

(13) San Geronio District, which is comprised of the city of Banning and the unincorporated areas known as Cabazon and Whitewater.

(14) San Jacinto District, which is comprised of the city of San Jacinto.

(b) For the purpose of publishing notice arising from a location within Riverside County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.420 is new. This section establishes public notice districts for Riverside County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.430. Sacramento County

6085.430. (a) Sacramento County contains the following public notice districts:

(1) Elk Grove-Galt District, which is comprised of the cities of Elk Grove and Galt and the unincorporated areas known as Rancho Murieta, Vineyard, and Wilton.

(2) Fair Oaks-Folsom District, which is comprised of the city of Folsom and the unincorporated areas known as Fair Oaks, Gold River, and Orangevale.

(3) Sacramento District, which is comprised of the cities of Citrus Heights, Rancho Cordova, and Sacramento and the unincorporated areas known as Antelope, Arden-Arcade, Carmichael, Florin, Foothill Farms, La Riviera, Lemon Hill, North Highlands, Parkway, Rio Linda, and Rosemont.

(4) Walnut Grove-Isleton District, which is comprised of the city of Isleton and the unincorporated area known as Walnut Grove.

(b) For the purpose of publishing notice arising from a location within Sacramento County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.430 is new. This section establishes public notice districts for Sacramento County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.440. San Benito County

6085.440. (a) San Benito County contains the following public notice districts:

(1) Hollister District, which is comprised of the city of Hollister.

(2) San Juan District, which is comprised of the city of San Juan Bautista.

(b) For the purpose of publishing notice arising from a location within San Benito County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.440 is new. This section establishes public notice districts for San Benito County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.450. San Bernardino County

6085.450. (a) San Bernardino County contains the following public notice districts:

(1) Barstow District, which is comprised of the city of Barstow.

(2) Bear Valley District, which is comprised of the city of Big Bear Lake and the unincorporated area known as Big Bear City.

(3) Bloomington District, which is comprised of the cities of Fontana and Rialto and the unincorporated areas known as Bloomington and Lytle Creek.

(4) Chino District, which is comprised of the cities of Chino and Chino Hills.

(5) Crest Forest District, which is comprised of the unincorporated areas known as Crestline and Lake Arrowhead.

(6) Cucamonga-Etiwanda District, which is comprised of the cities of Montclair, Ontario, Rancho Cucamonga, and Upland.

(7) Needles District, which is comprised of the city of Needles.

(8) San Bernardino District, which is comprised of the cities of Colton, Grand Terrace, Highland, Loma Linda, and San Bernardino and the unincorporated area known as Muscoy.

(9) Twentynine Palms District, which is comprised of the cities of Twentynine Palms and Yucca Valley.

(10) Victorville District, which is comprised of the cities of Adelanto, Apple Valley, Hesperia, and Victorville and the unincorporated areas known as Lucerne Valley and Phelan.

(11) Yucaipa District, which is comprised of the cities of Redlands and Yucaipa and the unincorporated area known as Mentone.

(b) For the purpose of publishing notice arising from a location within San Bernardino County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.450 is new. This section establishes public notice districts for San Bernardino County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.460. San Diego County

6085.460. (a) San Diego County contains the following public notice districts:

(1) El Cajon District, which is comprised of the cities of El Cajon, La Mesa, Lemon Grove, and Santee and the unincorporated areas known as Alpine, Bostonia, Casa de Oro, Jamul, La Presa, Lakeside, Mount Helix, Ramona, Rancho San Diego, San Diego Country Estates, Spring Valley, and Winter Gardens.

(2) North County District, which is comprised of the cities of Carlsbad, Del Mar, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, and Vista and the unincorporated areas known as

Camp Pendleton, Fairbanks Ranch, Fallbrook, and Rancho Santa Fe.

(3) San Diego District, which is comprised of the cities of Poway and San Diego, excluding that part of the City of San Diego that is in the South Bay District.

(4) South Bay District, which is comprised of the cities of Chula Vista, Coronado, Imperial Beach, and National City, the unincorporated area known as Bonita, and that part of the City of San Diego lying south of the City of Chula Vista.

(b) For the purpose of publishing notice arising from a location within San Diego County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.460 is new. This section establishes public notice districts for San Diego County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.470. City and County of San Francisco

6085.470. The City and County of San Francisco contains a single, countywide public notice district.

Comment. Section 6085.470 is new. This section establishes a public notice district for the City and County of San Francisco. This district is the successor to the former countywide judicial district that was preserved for notice publication in accordance with former Section 71042.5.

§ 6085.480. San Joaquin County

6085.480. (a) San Joaquin County contains the following public notice districts:

(1) Lodi District, which is comprised of the city of Lodi.

(2) Manteca-Ripon-Escalon District, which is comprised of the cities of Escalon, Lathrop, Manteca, and Ripon and the unincorporated area known as French Camp.

(3) Stockton District, which is comprised of the city of Stockton and the unincorporated area known as Garden Acres.

(4) Tracy District, which is comprised of the city of Tracy.

(b) For the purpose of publishing notice arising from a location within San Joaquin County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.480 is new. This section establishes public notice districts for San Joaquin County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.490. San Luis Obispo County

6085.490. (a) San Luis Obispo County contains the following public notice districts:

(1) First District, which is comprised of the city of El Paso de Robles.

(2) Second District, which is comprised of the city of Atascadero and the unincorporated area known as Templeton.

(3) Third District, which is comprised of the city of Morro Bay and the unincorporated area known as Los Osos.

(4) Fourth District, which is comprised of the city of San Luis Obispo and the unincorporated areas known as Avila Beach and Los Ranchos.

(5) Fifth District, which is comprised of the cities of Arroyo Grande, Grover Beach, and Pismo Beach and the unincorporated areas known as Edna and Nipomo.

(b) For the purpose of publishing notice arising from a location within San Luis Obispo County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.490 is new. This section establishes public notice districts for San Luis Obispo County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.500. San Mateo County

6085.500. (a) San Mateo County contains the following public notice districts:

(1) Central District, which is comprised of the cities of Belmont, Burlingame, Foster City, Half Moon Bay, Hillsborough, Millbrae, and San Mateo and the unincorporated area known as Montara.

(2) Northern District, which is comprised of the cities of Brisbane, Colma, Daly City, Pacifica, San Bruno, and South San Francisco.

(3) Southern District, which is comprised of the cities of Atherton, East Palo Alto, Menlo Park, Portola Valley, Redwood City, San Carlos, and Woodside and the unincorporated area known as North Fair Oaks.

(b) For the purpose of publishing notice arising from a location within San Mateo County that is not within one of the districts described in subdivision (a):

(1) If the location is within five miles of a district, notice shall be published in the nearest district.

(2) If the location is not within five miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.500 is new. This section establishes public notice districts for San Mateo County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.510. Santa Barbara County

6085.510. Santa Barbara County contains the following public notice districts:

(1) Carpinteria-Montecito District, which is comprised of the city of Carpinteria and the unincorporated area known as Montecito.

(2) Guadalupe District, which is comprised of the city of Guadalupe.

(3) Lompoc District, which is comprised of the city of Lompoc and the unincorporated area known as Vandenberg AFB.

(4) Santa Barbara-Goleta District, which is comprised of the cities of Goleta and Santa Barbara and the unincorporated area known as Isla Vista.

(5) Santa Maria District, which is comprised of the city of Santa Maria and the unincorporated areas known as Los Alamos and Orcutt.

(6) Solvang District, which is comprised of the cities of Buellton and Solvang.

(b) For the purpose of publishing notice arising from a location within Santa Barbara County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.510 is new. This section establishes public notice districts for Santa Barbara County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.520. Santa Clara County

6085.520. (a) Santa Clara County contains the following public notice districts:

(1) Gilroy-Morgan Hill District, which is comprised of the cities of Gilroy and Morgan Hill.

(2) Los Gatos-Campbell-Saratoga District, which is comprised of the cities of Campbell, Los Gatos, Monte Sereno, and Saratoga.

(3) Palo Alto-Mountain View District, which is comprised of the cities of Los Altos, Los Altos Hills, Mountain View, and Palo Alto and the unincorporated areas known as Loyola and Stanford.

(4) San Jose-Milpitas-Alviso District, which is comprised of the cities of Milpitas and San Jose and the unincorporated area known as Alum Rock.

(5) Santa Clara-Cupertino District, which is comprised of the cities of Cupertino and Santa Clara.

(6) Sunnyvale District, which is comprised of the city of Sunnyvale.

(b) For the purpose of publishing notice arising from a location within Santa Clara County that is not within one of the districts described in subdivision (a):

(1) If the location is within five miles of a district, notice shall be published in the nearest district.

(2) If the location is not within five miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.520 is new. This section establishes public notice districts for Santa Clara County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.530. Santa Cruz County

6085.530. Santa Cruz County contains a single, countywide public notice district.

Comment. Section 6085.530 is new. This section establishes a public notice district for Santa Cruz County. This district is the successor to the former countywide judicial district that was preserved for notice publication in accordance with former Section 71042.5.

§ 6085.540. Shasta County

6085.540. (a) Shasta County contains the following public notice districts:

(1) Anderson District, which is comprised of the city of Anderson.

(2) Central Valley District, which is comprised of the city of Shasta Lake.

(3) Redding District, which is comprised of the city of Redding.

(b) For the purpose of publishing notice arising from a location within Shasta County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.540 is new. This section establishes public notice districts for Shasta County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.550. Sierra County

6085.550. Sierra County contains a single, countywide public notice district.

Comment. Section 6085.550 is new. This section establishes a public notice district for Sierra County. This district is the successor to the former countywide judicial district that was preserved for notice publication in accordance with former Section 71042.5.

§ 6085.560. Siskiyou County

6085.560. (a) Siskiyou County contains the following public notice districts:

(1) Dorris District, which is comprised of the city of Dorris.

(2) Dunsmuir-Mount Shasta District, which is comprised of the cities of Dunsmuir and Mount Shasta.

(3) Scott Valley District, which is comprised of the cities of Etna and Fort Jones.

(4) Shasta Valley District, which is comprised of the cities of Montague and Weed.

(5) Tulelake District, which is comprised of the city of Tulelake.

(6) Yreka District, which is comprised of the city of Yreka.

(b) For the purpose of publishing notice arising from a location within Siskiyou County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.560 is new. This section establishes public notice districts for Siskiyou County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.570. Solano County

6085.570. (a) Solano County contains the following public notice districts:

(1) Benicia District, which is comprised of the city of Benicia.

(2) Dixon District, which is comprised of the city of Dixon.

(3) Fairfield-Suisun District, which is comprised of the cities of Fairfield and Suisun City.

(4) Rio Vista District, which is comprised of the city of Rio Vista.

(5) Vacaville District, which is comprised of the city of Vacaville.

(6) Vallejo District, which is comprised of the city of Vallejo.

(b) For the purpose of publishing notice arising from a location within Solano County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.570 is new. This section establishes public notice districts for Solano County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.580. Sonoma County

6085.580. (a) Sonoma County contains the following public notice districts:

(1) Central Sonoma County District, which is comprised of the cities of Cotati, Rohnert Park, Santa Rosa, and Sebastopol and the unincorporated areas known as Bloomfield, Forestville, and Guerneville.

(2) Northern District, which is comprised of the cities of Cloverdale, Healdsburg, and Windsor.

(3) Petaluma District, which is comprised of the city of Petaluma and the unincorporated area known as Penngrove.

(4) Sonoma District, which is comprised of the city of Sonoma and the unincorporated areas known as Boyes Hot Springs and Kenwood.

(b) For the purpose of publishing notice arising from a location within Sonoma County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.580 is new. This section establishes public notice districts for Sonoma County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.590. Stanislaus County

6085.590. (a) Stanislaus County contains the following public notice districts:

(1) Ceres District, which is comprised of the cities of Ceres and Hughson and the unincorporated areas known as Bystrom, Keyes, and Parklawn.

(2) Modesto District, which is comprised of the city of Modesto and the unincorporated areas known as Airport, Del Rio, Empire, and Salida.

(3) Newman District, which is comprised of the city of Newman and the unincorporated area known as Crows Landing.

(4) Oakdale-Waterford District, which is comprised of the cities of Oakdale and Waterford.

(5) Patterson District, which is comprised of the city of Patterson and the unincorporated area known as Grayson.

(6) Riverbank District, which is comprised of the city of Riverbank.

(7) Turlock District, which is comprised of the city of Turlock.

(b) For the purpose of publishing notice arising from a location within Stanislaus County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.590 is new. This section establishes public notice districts for Stanislaus County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.600. Sutter County

6085.600. (a) Sutter County contains the following public notice districts:

(1) Butte District, which is comprised of the city of Live Oak.

(2) Yuba District, which is comprised of Yuba City.

(b) For the purpose of publishing notice arising from a location within Sutter County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.600 is new. This section establishes public notice districts for Sutter County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.610. Tehama County

6085.610. (a) Tehama County contains the following public notice districts:

(1) Corning District, which is comprised of the city of Corning and the unincorporated area known as Los Molinos.

(2) Red Bluff District, which is comprised of the cities of Red Bluff and Tehama and the unincorporated area known as Gerber.

(b) For the purpose of publishing notice arising from a location within Tehama County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.610 is new. This section establishes public notice districts for Tehama County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.620. Trinity County

6085.620. Trinity County contains a single, countywide public notice district.

Comment. Section 6085.620 is new. This section establishes a public notice district for Trinity County. This district is the successor to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.630. Tulare County

6085.630. (a) Tulare County contains the following public notice districts:

(1) Dinuba District, which is comprised of the city of Dinuba and the unincorporated areas known as Cutler and Orosi.

(2) Exeter-Farmersville District, which is comprised of the cities of Exeter and Farmersville.

(3) Lindsay District, which is comprised of the city of Lindsay and the unincorporated area known as Strathmore.

(4) Pixley District, which is comprised of the unincorporated areas known as Earlimart, Pixley, Tipton, and Woodville.

(5) Porterville District, which is comprised of the city of Porterville and the unincorporated areas known as Cotton Center and Poplar.

(6) Tulare District, which is comprised of the city of Tulare.

(7) Visalia District, which is comprised of the city of Visalia and the unincorporated area known as Ivanhoe.

(8) Woodlake District, which is comprised of the city of Woodlake.

(b) For the purpose of publishing notice arising from a location within Tulare County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.630 is new. This section establishes public notice districts for Tulare County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5.

§ 6085.640. Tuolumne County

6085.640. (a) Tuolumne County contains the following public notice district:

(1) Sonora District, which is comprised of the city of Sonora.

(b) For the purpose of publishing notice arising from a location within Tuolumne County that is not within the district described in subdivision (a):

(1) If the location is within ten miles of the district, notice shall be published in the district.

(2) If the location is not within ten miles of the district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.640 is new. This section establishes public notice districts for Tuolumne County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.650. Ventura County

6085.650. Ventura County contains a single, countywide public notice district.

Comment. Section 6085.650 is new. This section establishes a public notice district for Ventura County. This district is the successor to the former countywide judicial district that was preserved for notice publication in accordance with former Section 71042.5.

§ 6085.660. Yolo County

6085.660. (a) Yolo County contains the following public notice districts:

(1) Davis District, which is comprised of the city of Davis.

(2) Washington District, which is comprised of the city of West Sacramento.

(3) Winters District, which is comprised of the city of Winters.

(4) Woodland District, which is comprised of the city of Woodland.

(b) For the purpose of publishing notice arising from a location within Yolo County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.660 is new. This section establishes public notice districts for Yolo County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

§ 6085.670. Yuba County

6085.670. (a) Yuba County contains the following public notice districts:

(1) Marysville District, which is comprised of the city of Marysville and the unincorporated areas known as Linda, Olivehurst, and Plumas Lake.

(2) Wheatland District, which is comprised of the city of Wheatland and the unincorporated area known as Beale AFB.

(b) For the purpose of publishing notice arising from a location within Yuba County that is not within one of the districts described in subdivision (a):

(1) If the location is within ten miles of a district, notice shall be published in the nearest district.

(2) If the location is not within ten miles of a district, notice shall be given as if the location is in a public notice district without a newspaper of general circulation.

Comment. Section 6085.670 is new. This section establishes public notice districts for Yuba County. These districts are the successors to the former judicial districts that were preserved for notice publication in accordance with former Section 71042.5. Not every former judicial district is continued.

CONFORMING REVISIONS

BUSINESS AND PROFESSIONS CODE

Bus. & Prof. Code § 21707 (amended). Notice requirement for self-storage facility lien sale

SEC. _____. Section 21707 of the Business and Professions Code is amended to read:

21707. (a) After the expiration of the time given in the notice of lien sale, pursuant to subdivision (b) of Section 21705, or following the failure of a claimant to pay rent or obtain a court order pursuant to Section 21709, an advertisement of the sale shall be published once a week for two weeks consecutively in a newspaper of general circulation published in the judicial public notice district where the sale is to be held. The advertisement shall include a general description of the goods, the name of the person on whose account they are being stored, and the name and location of the storage facility. If there is no newspaper of general circulation published in the ~~judicial~~ public notice district where the sale is to be held, the advertisement shall be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale. The sale shall be conducted in a commercially reasonable manner. After deducting the amount of the lien and costs of sale, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within one year of the date of sale. Thereafter, the owner shall pay any remaining excess proceeds to the treasury of the county in which the sale was held.

(b) For the purposes of this section, publication of notice in a public notice district is governed by Chapter 1.1 (commencing with Section 6080) of Division 7 of Title 1 of the Government Code.

Comment. Section 21707 is amended to replace “judicial district” with “public notice district” and to refer to the provisions governing publication of notice in a “public notice district.”

CIVIL CODE

Civ. Code § 2924f (amended). Home foreclosure sale made under power of sale

SEC. ____ . Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, “property” means real property or a leasehold estate therein, and “calendar week” means Monday through Saturday, inclusive.

(b)(1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the ~~judicial district in which~~ area of the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks.

(2) The first publication to be at least 20 days before the date of sale, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the ~~judicial~~ public notice district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or ~~judicial~~ public notice district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or ~~judicial~~ public notice district or county, as the case may be, in a newspaper of general

circulation published in the county in this state that is contiguous to the county in which the property or some part thereof is situated and has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. For the purposes of this section, publication of notice in a public notice district is governed by Chapter 1.1 (commencing with Section 6080) of Division 7 of Title 1 of the Government Code.

(3) A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community.

(4) The notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 20 days prior to the date of sale.

(5) The notice of sale shall contain the name, street address in this state, which may reflect an agent of the trustee, and either a toll-free telephone number or telephone number in this state of the trustee, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any, and a county assessor's parcel number; but if the property has no street address or other common designation, the notice shall contain a legal description of the property, the name and address of the beneficiary at whose request the sale is to be conducted, and a statement that directions may be

obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description or a county assessor's parcel number and either a street address or another common designation of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, or directions obtained therefrom are omitted.

(6) The term "newspaper of general circulation," as used in this section, has the same meaning as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

(7) The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount, including any amount provided in good faith by or on behalf of the beneficiary. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(8)(A) On and after April 1, 2012, if the deed of trust or mortgage containing a power of sale is secured by real property containing from one to four single-family residences, the notice of sale shall contain substantially the following language, in addition

to the language required pursuant to paragraphs (1) to (7), inclusive:

NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call [telephone number for information regarding the trustee's sale] or visit this Internet Web site [Internet Web site address for information regarding the sale of this property], using the file number assigned to this case [case file number]. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

(B) A mortgagee, beneficiary, trustee, or authorized agent shall make a good faith effort to provide up-to-date information regarding sale dates and postponements to persons who wish this information. This information shall be made available free of charge. It may be made available via an Internet Web site, a telephone recording that is accessible 24 hours a day, seven days a week, or through any other means that allows 24 hours a day, seven days a week, no-cost access to updated information. A disruption of any of these methods of providing sale date and postponement information to allow for reasonable maintenance or due to a service outage shall not be deemed to be a violation of the good faith standard.

(C) Except as provided in subparagraph (B), nothing in the wording of the notices required by subparagraph (A) is intended to modify or create any substantive rights or obligations for any person providing, or specified in, either of the required notices. Failure to comply with subparagraph (A) or (B) shall not invalidate any sale that would otherwise be valid under Section 2924f.

(D) Information provided pursuant to subparagraph (A) does not constitute the public declaration required by subdivision (d) of Section 2924g.

(9) If the sale of the property is to be a unified sale as provided in subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9108 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale

hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c)(1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A
_____ ,
(Deed of trust or mortgage)
DATED _____. UNLESS YOU TAKE ACTION TO

PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer, following acceptance, according to its terms, by a conveyance of the property to the offeror, shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars (\$50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

(d) With respect to residential real property containing no more than four dwelling units, a separate document containing a summary of the notice of sale information in English and the languages described in Section 1632 shall be attached to the notice of sale provided to the mortgagor or trustor pursuant to Section 2923.3.

Comment. Paragraph (b)(1) of Section 2924f is amended to reflect the elimination of former judicial districts as a location for publication of notice. Paragraph (b)(2) is amended to replace “judicial district” with “public notice district” and refer to the provisions governing publication of notice in a “public notice district.”

Civ. Code § 3440.1 (amended). Exemption of debtor's conveyance of personal property without delivery from fraudulent transfer rules

SEC. ____ . Section 3440.1 of the Civil Code is amended to read:
3440.1. This chapter does not apply to any of the following:

(a) Things in action.

(b) Ships or cargoes if either are at sea or in a foreign port.

(c) The sale of accounts, chattel paper, payment intangibles, or promissory notes governed by the Uniform Commercial Code, security interests, and contracts of bottomry or respondentia.

(d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers or owners of the wines or brandies, or other persons having possession, care, and control of the wines or brandies, and the pipes, casks, and tanks in which the wines or brandies are contained, if the transfers are made in writing and executed and acknowledged, and if the transfers are recorded in the book of official records in the office of the county recorder of the county in which the wines, brandies, pipes, casks, and tanks are situated.

(e) A transfer or assignment made for the benefit of creditors generally or by an assignee acting under an assignment for the benefit of creditors generally.

(f) Property exempt from enforcement of a money judgment.

(g) Standing timber.

(h) Subject to the limitations in Section 3440.3, a transfer of personal property if all of the following conditions are satisfied:

(1) Before the date of the intended transfer, the transferor or the transferee files a financing statement, with respect to the property transferred, authorized in an authenticated record by the transferor. The financing statement shall be filed in the office of the Secretary of State in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, but may use the terms "transferor" in lieu of "debtor" and "transferee" in lieu of "secured party." The provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code shall apply as appropriate to the financing statement.

(2) The transferor or the transferee publishes a notice of the intended transfer one time in a newspaper of general circulation published in the ~~judicial~~ judicial public notice district in which the personal

property is located, if there is one, and if there is none in the ~~judicial~~ public notice district, then in a newspaper of general circulation in the county ~~embracing the judicial district in which~~ the personal property is located. The publication shall be completed not less than 10 days before the date the transfer occurs. The notice shall contain the name and address of the transferor and transferee and a general statement of the character of the personal property intended to be transferred, and shall indicate the place where the personal property is located and a date on or after which the transfer is to be made.

(i) Personal property not located within this state at the time of the transfer or attachment of the lien if the provisions of this subdivision are not used for the purpose of evading this chapter.

(j) A transfer of property that (1) is subject to a statute or treaty of the United States or a statute of this state that provides for the registration of transfers of title or issuance of certificates of title and (2) is so far perfected under that statute or treaty that a bona fide purchaser cannot acquire an interest in the property transferred that is superior to the interest of the transferee.

(k) A transfer of personal property in connection with a transaction in which the property is immediately thereafter leased by the transferor from the transferee provided the transferee purchased the property for value and in good faith pursuant to subdivision (c) of Section 10308 of the Commercial Code.

(l) Water supply property, as defined in Section 849 of the Public Utilities Code.

(m) A transfer of property by any governmental entity.

(n) For the purposes of this section, publication of notice in a public notice district is governed by Chapter 1.1 (commencing with Section 6080) of Division 7 of Title 1 of the Government Code.

Comment. Section 3440.1 is amended to replace “judicial district” with “public notice district” and refer to the provisions governing publication of notice in a “public notice district.”

Civ. Code § 3440.5 (amended). Exemption of certain security agreements from fraudulent transfer rules

SEC. _____. Section 3440.5 of the Civil Code is amended to read:

3440.5 (a) This chapter does not affect the rights of a secured party who, for value and in good faith, acquires a security interest in the transferred personal property from the transferee, or from the transferee's successor in interest, if the transferor is no longer in possession of the personal property at the time the security interest attaches.

(b) Additionally, except as provided in Section 3440.3, this chapter does not affect the rights of a secured party who acquires a security interest from the transferee, or from the transferee's successor in interest, in the personal property, if all of the following conditions are satisfied:

(1) On or before the date the security agreement is executed, the intended debtor or secured party files a financing statement with respect to the property transferred, signed by the intended debtor. The financing statement shall be filed in the office of the Secretary of State in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, but shall use the terms "transferor" in lieu of "debtor," "transferee" in lieu of "secured party," and "secured party" in lieu of "assignee of secured party." The provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code shall apply as appropriate to ~~such a~~ the financing statement. For the purpose of indexing, and in any certification of search, the Secretary of State may refer to any financing statement filed pursuant to this paragraph as a financing statement under the Commercial Code and may describe the transferor as a debtor and the transferee as a secured party.

~~Compliance with this paragraph shall, however, not perfect the security interest of the secured party. Perfection of such a security interest shall be governed by Division 9 (commencing with Section 9101) of the Commercial Code.~~

(2) The intended debtor or secured party publishes a notice of the transfer one time in a newspaper of general circulation published in the judicial public notice district in which the personal

property is located, if there is one, and if there is none in the ~~judicial~~ public notice district, then in a newspaper of general circulation in the county ~~embracing the judicial district in which~~ the personal property is located. The publication shall be completed not less than 10 days before the date of execution by the intended debtor of the intended security agreement. The notice shall contain the names and addresses of the transferor and transferee and of the intended debtor and secured party, a general statement of the character of the personal property transferred and intended to be subject to the security interest, the location of the personal property, and the date on or after which the security agreement is to be executed by the intended debtor.

(c) Compliance with paragraph (1) of subdivision (b) shall not perfect the security interest of the secured party. Perfection of that security interest shall be governed by Division 9 (commencing with Section 9101) of the Commercial Code.

(d) For the purposes of this section, publication of notice in a public notice district is governed by Chapter 1.1 (commencing with Section 6080) of Division 7 of Title 1 of the Government Code.

Comment. Section 3440.5 is amended to replace “judicial district” with “public notice district” and refer to the provisions governing publication of notice in a “public notice district.”

The section is also amended to make technical changes.

CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 701.540 (amended). Notice of sale of interest in real property

SEC. _____. Section 701.540 of the Code of Civil Procedure is amended to read:

701.540. (a) Notice of sale of an interest in real property shall be in writing, shall state the date, time, and place of sale, shall describe the interest to be sold, and shall give a legal description of the real property and its street address or other common designation, if any. If the real property has no street address or other common designation, the notice of sale shall include a

statement that directions to its location may be obtained from the levying officer upon oral or written request or, in the discretion of the levying officer, the notice of sale may contain directions to its location. Directions are sufficient if information as to the location of the real property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If an accurate legal description of the real property is given, the validity of the notice and sale is not affected by the fact that the street address or other common designation, or directions to its location, are erroneous or omitted.

(b) Not less than 20 days before the date of sale, notice of sale of an interest in real property shall be served, mailed, and posted by the levying officer as provided in subdivisions (c), (d), (e), and (f).

(c) Notice of sale shall be served on the judgment debtor. Service shall be made personally or by mail.

(d) Notice of sale shall be posted in the following places:

(1) One public place in the city in which the interest in the real property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the real property is to be sold.

(2) A conspicuous place on the real property.

(e) At the time notice is posted pursuant to paragraph (2) of subdivision (d), notice of sale shall be served or service shall be attempted on one occupant of the real property. Service on the occupant shall be made by leaving the notice with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If the levying officer is unable to serve ~~such~~ an occupant as specified at the time service is attempted, the levying officer is not required to make any further attempts to serve an occupant.

(f) If the property described in the notice of sale consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous,

unbroken tracts, only one service pursuant to subdivision (e) and posting pursuant to paragraph (2) of subdivision (d) need be made as to each continuous, unbroken tract.

(g) Notice of sale shall be published pursuant to Section 6063 of the Government Code, with the first publication at least 20 days prior to the time of sale, in a newspaper of general circulation published in the city in which the real property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the judicial public notice district in which the real property or a part thereof is situated. If no newspaper of general circulation is published in the city or judicial public notice district, notice of sale shall be published in a newspaper of general circulation in the county in which the real property or a part thereof is situated.

(h) Not earlier than 30 days after the date of levy, the judgment creditor shall determine the names of all persons having liens on the real property on the date of levy that are of record in the office of the county recorder and shall instruct the levying officer to mail notice of sale to each ~~such person~~ lienholder at the address used by the county recorder for the return of the instrument creating the ~~person's~~ lien after recording. The levying officer shall mail notice to each ~~such person~~ lienholder, at the address given in the instructions, not less than 20 days before the date of sale.

(i) For the purposes of this section, publication of notice in a public notice district is governed by Chapter 1.1 (commencing with Section 6080) of Division 7 of Title 1 of the Government Code.

Comment. Section 701.540 is amended to replace “judicial district” with “public notice district” and refer to the provisions governing publication of notice in a “public notice district.”

This section is also amended to make technical changes.

COMMERCIAL CODE

Com. Code § 6105 (amended). Notice requirement for bulk sale

SEC. _____. Section 6105 of the Commercial Code is amended to read:

6105. ~~In order to comply with subdivision (b) of Section 6104 each of the following shall be satisfied:~~

(a) ~~The~~ A notice that is governed by this section shall comply with each of the following:

(1) State that a bulk sale is about to be made.

(2) State the name and business address of the seller together with any other business name and address listed by the seller (subdivision (a) of Section 6104) and the name and business address of the buyer.

(3) State the location and general description of the assets.

(4) State the place and the anticipated date of the bulk sale.

(5) State whether or not the bulk sale is subject to Section 6106.2 and, if so subject, the matters required by subdivision (f) of Section 6106.2.

(b) At least 12 business days before the date of the bulk sale, ~~the~~ a notice that is governed by this section shall be:

(1) Recorded in the office of the county recorder in the county or counties in this state in which the tangible assets are located and, if different, in the county in which the seller is located (paragraph (2) of subdivision (a) of Section 6103).

(2) Published at least once in a newspaper of general circulation published in the ~~judicial~~ public notice district in this state in which the tangible assets are located and in the ~~judicial~~ public notice district, if different, in which the seller is located (paragraph (2) of subdivision (a) of Section 6103), if in either case there is one, and if there is none, then in a newspaper of general circulation in the county in which the ~~judicial~~ public notice district is located. If the tangible assets are located in more than one public notice district in this state, the publication shall be in a newspaper of general circulation published in the public notice district in this state in which a greater portion of the tangible assets are located, on the

date the notice is published, than in any other public notice district in this state and, if different, in the public notice district in which the seller is located (paragraph (2) of subdivision (a) of Section 6103).

(3) Delivered or sent by registered or certified mail to the county tax collector in the county or counties in this state in which the tangible assets are located. If delivered during the period from January 1 to May 7, inclusive, the notice shall be accompanied by a completed business property statement with respect to property involved in the bulk sale pursuant to Section 441 of the Revenue and Taxation Code.

~~If the tangible assets are located in more than one judicial district in this state, the publication required in paragraph (2) shall be in a newspaper of general circulation published in the judicial district in this state in which a greater portion of the tangible assets are located, on the date the notice is published, than in any other judicial district in this state and, if different, in the judicial district in which the seller is located (paragraph (2) of subdivision (a) of Section 6103). As used in this subdivision, “business day” means any day other than a Saturday, Sunday, or day observed as a holiday by the state government.~~

(c) For the purposes of this section, publication of notice in a public notice district is governed by Chapter 1.1 (commencing with Section 6080) of Division 7 of Title 1 of the Government Code.

(d) As used in this section, “business day” means any day other than a Saturday, Sunday, or day observed as a holiday by the state government.

Comment. Section 6105 is amended to replace “judicial district” with “public notice district” and refer to the provisions governing publication of notice in a “public notice district.”

This section is also revised to reflect its application to any notice governed by this section. See, e.g., §§ 6103(c)(9)(iv), 6103(c)(15), 6104(b), 6106.2(f), 6108(a)(3).

This section is also amended to make technical changes.

GOVERNMENT CODE

Gov't Code § 6008 (amended). Criteria for establishing standing as newspaper of general circulation

SEC. _____. Section 6008 of the Government Code is amended to read:

6008. (a) Notwithstanding any provision of law to the contrary, a newspaper is a “newspaper of general circulation” if it meets all of the following criteria:

(a) (1) It is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, which has a bona fide subscription list of paying subscribers and has been established and published at regular intervals of not less than weekly in the city, district, or ~~judicial~~ public notice district for which it is seeking adjudication for at least three years preceding the date of adjudication.

(b) (2) It has a substantial distribution to paid subscribers in the city, district, or ~~judicial~~ public notice district in which it is seeking adjudication.

(c) (3) It has maintained a minimum coverage of local or telegraphic news and intelligence of a general character of not less than 25 percent of its total inches during each year of the three-year period.

(d) (4) It has only one principal office of publication and that office is in the city, district, or ~~judicial~~ public notice district for which it is seeking adjudication.

(b) For the purposes of Section 6020, a newspaper meeting the criteria of this section which desires to have its standing as a newspaper of general circulation ascertained and established, may, by its publisher, manager, editor, or attorney, file a verified petition in the superior court of the county in which it is established and published.

(c) As used in this section:

(1) “Established” means in existence under a specified name during the whole of the three-year period, except that a modification of name in accordance with Section 6024, where the

modification of name does not substantially change the identity of the newspaper, shall not affect the status of the newspaper for the purposes of this definition.

(2) “Published” means issued from the place where the newspaper is sold to or circulated among the people and its subscribers during the whole of the three-year period.

(3) “Public notice district” means a public notice district described in Chapter 1.1 (commencing with Section 6080).

Comment. Section 6008 is amended to replace “judicial district” with “public notice district” and refer to the provisions describing public notice districts.

This section is also amended to make technical changes.

Heading of Article 2 (commencing with Section 71042.5) (amended)

SEC. _____. The heading of Article 2 (commencing with Section 71042.5) of Chapter 6 of Title 8 of the Government Code is amended to read:

Article 2: ~~Preservation of~~ Judicial Districts

Gov’t Code § 71042.5 (repealed). Preservation of judicial districts for purpose of publication

SEC. _____. Section 71042.5 of the Government Code is repealed.

Comment. Section 71042.5 is repealed. The former judicial districts designated for the publication of notice are replaced with public notice districts. See Sections 6080-6085.670.

 **Note.** The text of the repealed section is set forth below.

71042.5. Notwithstanding any other provision of law, where judicial districts in a county have been consolidated, or where the municipal and superior courts in a county have unified, the territory embraced within the respective prior component judicial districts shall be separate judicial districts for the purpose of publication within a judicial district.

Gov’t Code § 71042.6 (repealed). Map to establish district boundaries

SEC. _____. Section 71042.6 of the Government Code is repealed.

Comment. Section 71042.6 is repealed. The former judicial districts designated for the publication of notice are replaced with public notice districts. See Sections 6080-6085.670.

Note. The text of the repealed section is set forth below.

71042.6. For the purpose of establishing boundaries under Section 71042.5, a map approved by the county surveyor shall be kept on file with the county recorder showing the boundaries of all consolidated or unified districts and component districts as of the date of consolidation or unification. The map shall be conclusively presumed to be accurate and may be used in evidence in any proceeding involving application of Section 71042.5.

REVENUE AND TAXATION CODE

Rev. & Tax. Code § 3381 (amended). Alternate means of notice of intent to sell property of delinquent taxpayer

SEC. _____. Section 3381 of the Revenue and Taxation Code is amended to read:

3381. (a) In each county where the tax collector or, if the county is a chartered county, the board of supervisors determines that the public interest, convenience and necessity require the local publication of the delinquent list required by Section 3371, or the published notice of power and intent to sell required by Section 3361, in order to afford adequate notice, all items required to be published shall be published as provided in this article.

(b) After the determination, the tax collector or, if the county is a chartered county, the board of supervisors shall divide and distribute the items to be published and cause the same to be published either within ~~(a)~~ (1) the municipal corporations, ~~(b)~~ (2) the elementary, high school, or junior college districts, ~~(c)~~ (3) the supervisorial districts, ~~(d) judicial districts~~ (4) public notice districts described in Chapter 1.1 (commencing with Section 6080) of Division 7 of Title 1 of the Government Code, ~~(e)~~ (5) tax districts, areas included in map books, or tax code areas, or ~~(f)~~ (6) by any annexation or annexations of same, or any combination of same, or any combination of those districts, annexations, areas included in map books, and code areas, within the county as they

shall determine most likely to afford adequate notice to owners of the property.

(c) Except as provided in this article, the publication shall be in the same manner as provided in Article 1.7 (commencing with Section 3371).

(d) The publication provided for in this article shall be made once a week for two successive weeks in a newspaper or newspapers of general circulation. The publication shall be made in a newspaper published not less frequently than once a week.

Comment. Section 3381 is amended to replace “judicial district” with “public notice district” and refer to the Government Code provisions governing publication of notice in a “public notice district.”

This section is also amended to add subdivision designations and make other technical changes.

Rev. & Tax. Code § 3702 (amended). Means of notice of intended sale of property of delinquent taxpayer

SEC. _____. Section 3702 of the Revenue and Taxation Code is amended to read:

3702. (a) The tax collector shall publish the notice of intended sale once a week for three successive weeks in a newspaper of general circulation published in the county seat and in a newspaper of general circulation published in the judicial public notice district in which the property is situated. If the same newspaper of general circulation is published in both the county seat and in ~~such the~~ public notice district, or if the publication of the notice of sale is made in a newspaper which is determined pursuant to Section 3381 as most likely to afford adequate notice of the sale, a publication in ~~such that~~ that paper shall satisfy the requirements for publication set forth in this section. If there is no newspaper of general circulation published in the county seat ~~or in the judicial district~~, then publication may be made by posting notice in three public places in the county seat ~~or in the judicial district, as the case may be, where no such newspaper is published.~~ If there is no newspaper of general circulation published in the public notice district, then publication may be made by posting notice in three public places

in the area of the property. The publication shall be started not less than 21 days prior to the date of the sale.

(b) For the purposes of this section, publication of notice in a public notice district is governed by Chapter 1.1 (commencing with Section 6080) of Division 7 of Title 1 of the Government Code.

Comment. Section 3702 is amended to replace “judicial district” with “public notice district” and refer to the provisions governing publication of notice in a “public notice district.”

This section is also amended to make technical changes.

Rev. & Tax. Code § 3703 (amended). Alternate means of notice if property is lower in value than cost of publication

SEC. _____. Section 3703 of the Revenue and Taxation Code is amended to read:

3703. If in the judgment of the board of supervisors any property to be sold under this chapter will bring at auction less than the cost of publication in a newspaper, the publication of the notice of intended sale may be made in the same manner as if there were no newspaper published in the county seat or in the judicial public notice district.

Comment. Section 3703 is amended to replace “judicial district” with “public notice district.”

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Deadly Weapons: Minor Clean-Up Issues (Part 2)

December 2015

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Deadly Weapons: Minor Clean-Up Issues (Part 2)*, 44 Cal. L. Revision Comm'n Reports 471 (2015).

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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December 10, 2015

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

In June 2009, the Commission completed a recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*. The Legislature implemented the recommendation through its enactment of Chapters 178 and 711 of the Statutes of 2010. This legislation became operative on January 1, 2012.

In the course of its Deadly Weapons study, the Commission identified a number of minor problems that could not be addressed without potentially making a substantive change. Given the nonsubstantive nature of the Commission's initial study, these clean-up issues were not addressed in the June 2009 recommendation, but were instead identified and set aside for future work.

This recommendation proposes amendments to address several of the minor clean-up issues. It also proposes some minor improvements that were not included in the 2009 list of clean-up issues.

This recommendation was prepared pursuant to Resolution Chapter 63 of the Statutes of 2014.

Respectfully submitted,

Taras Kihiczak

Chairperson

DEADLY WEAPONS: MINOR CLEAN-UP ISSUES (PART 2)

In 2006, the Legislature directed the Law Revision Commission to conduct a study and recommend nonsubstantive changes to the statutes relating to control of deadly weapons to simplify and provide better organization to this area of law.¹ The Commission was expressly directed not to make any change that would affect the existing scope of criminal liability.²

In June 2009, the Commission submitted its recommendation on *Nonsubstantive Reorganization of Deadly Weapons Statutes*³ (“Deadly Weapons Recommendation”) to the Legislature. In 2010, the recommendation was enacted, reorganizing the deadly weapons statutes into a new Part 6 of the Penal Code,⁴ structuring the provisions in a more user-friendly form and making conforming revisions to the law.⁵

During the course of the study, the Commission found a number of minor issues that could not be addressed without potentially effecting a substantive change. Consistent with the Commission’s limited mandate, the Commission did not address any of these minor issues in its Deadly Weapons Recommendation. Instead, these minor issues were listed in Appendix B of the Deadly Weapons Recommendation and set aside for possible future work. In the Deadly Weapons Recommendation, the Commission requested authority to study these clean-up issues. The Legislature

1. ACR 73 (McCarthy), 2006 Cal. Stat. res. ch. 128.

2. *Id.*

3. *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217 (2009).

4. All references contained herein are to the Penal Code unless otherwise noted.

5. SB 1080 (Committee on Public Safety), 2010 Cal. Stat. ch. 711; SB 1115 (Committee on Public Safety), 2010 Cal. Stat. ch. 178. See also *Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation*, 41 Cal. L. Revision Comm’n Reports 135 (2011); 2011 Cal. Stat. ch. 285; 2012 Cal. Stat. ch. 162, §§ 12-14, 203, 207; 2013 Cal. Stat. ch. 76, §§ 145.5, 145.7, 147.3, 147.5, 153.5; 2013 Cal. Stat. ch. 291, § 52.

granted the Commission authority to study and make recommendations on the issues identified in Appendix B.⁶

Pursuant to that authority, the Law Revision Commission now recommends minor clean-up amendments to address some of the issues identified in Appendix B of the Deadly Weapons Recommendation.⁷ This recommendation also includes a few minor improvements that were not identified in Appendix B. They are proposed pursuant to the Commission's general authority to recommend minor technical and substantive reforms.⁸

The proposed reforms are described below.

STANDARDIZED TERMINOLOGY

This recommendation addresses a Penal Code provision that uses inconsistent terminology when referring to a single thing. Such inconsistency can create uncertainty as to the meaning of the law, based on the assumption that different terms must have been intended to have different meanings. The Commission recommends that such terminology be standardized, as discussed below.

Written Firearm Safety Test

Penal Code Section 31640 requires the Department of Justice to develop a written firearm safety test to be administered by a certified instructor. The section uses inconsistent terminology.

The word “test” is used in 17 of 18 references in Section 31640 and related provisions.⁹ In only one instance, the word “examination” is used. The Commission could find no evidence that the term “examination” was intended to have a different

6. 2010 Cal. Stat. ch. 711, § 7 (SB 1080 (Committee on Public Safety)).

7. An earlier recommendation addressed some other issues identified in Appendix B of the Deadly Weapons Recommendation. See *Deadly Weapons: Minor Clean-Up Issues*, 43 Cal. L. Revision Comm'n Reports 63 (2013); 2014 Cal. Stat. ch. 103. Additional issues remain to be addressed in the future.

8. Gov't Code § 8298.

9. Sections 31645-31650.

meaning than “test.” The proposed law would replace “examination” with “test.”

In three of four instances, Section 31640 speaks of a test being “administered.” In one instance, the section refers to a test being “applied.” Again, the Commission could find no evidence showing that this inconsistency was intentional. The proposed law would replace “applied” with “administered.”

CLARIFYING REVISIONS

In two sections, the Commission recommends rewording an existing provision to make its meaning easier to understand, without changing its meaning.

Laboratory Testing of Firearms

Penal Code Section 32010 requires that certain firearms be tested by an independent laboratory to ensure that they meet applicable standards. Under subdivision (b) of that section, the Department of Justice is charged with certifying laboratories to perform that function. The proposed law would restate subdivision (b) to make its meaning clearer, without changing its substance.

Firearm Injury to a Child

Penal Code Section 23685 requires law enforcement to report specified information when a child sustains a firearm injury. The proposed law would restate the section to make its meaning clearer, without changing its substance.

TECHNICAL ERRORS

The recommendation would correct some clear drafting errors, as explained below.

Duplicated Language

Penal Code Section 31700(b)(2) contains superfluous duplicated language (as shown in *italics* below):

(b) The following persons who take title or possession of a firearm by operation of law in a representative capacity, until or unless they transfer title ownership of the firearm to themselves in a personal capacity, are exempted from the firearm safety certificate requirement in subdivision (a) of Section 31615:

...

(2) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, *or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of*, a default under a security agreement under the Commercial Code.

The proposed law would delete the duplicated language. Section 31700 would also be revised to correct a typographical error.

Erroneous Cross-Reference

Penal Code Section 25850 establishes the offense of carrying a loaded firearm while in a public place.

Penal Code Section 26045 provides a defense to prosecution for that offense. Section 26045 contains an erroneous cross-reference to a *different* provision, Section 25400, which establishes a different firearm offense. The proposed law would correct that error.

Erroneous Use of “Or”

Penal Code Section 26890 regulates the storage of firearms inventory when a licensed dealer is not open for business.

Subdivision (a) of that section requires that the firearms be stored in a secure facility that is part of the licensee’s business premises or that they be secured with a steel rod and lock. Subdivision (b) allows the licensing authority of an unincorporated area of a county or city to impose stricter security requirements than those in subdivision (a).

Subdivision (d) of Section 26890 provides a limited exemption from the requirements of subdivisions (a) and (b) but erroneously

refers to “subdivision (a) *or* (b).” The proposed law would replace “or” with “and.”

SEIZURE OF WEAPON AT DOMESTIC VIOLENCE INCIDENT

Penal Code Sections 18250-18500 provide for the seizure of a firearm or other deadly weapon at the scene of domestic violence. The Commission has identified a number of problems with these provisions, as explained below.

Terminology

With one exception, the weapon seizure provisions use the defined term “domestic violence.”¹⁰ However, there is one provision, Section 18405(b), that uses the term “family violence.”

The use of the term “family violence” appears to have been an accidental hold-over from an earlier version of the section. Prior to 1999, former Section 12028.5 (which was recodified in Sections 18250-18500) consistently used the term “family violence.” In 1999, that section was amended to replace “family violence” with “domestic violence” throughout.¹¹ The Legislative Counsel’s Digest for that bill explained:

Existing law authorizes specified law enforcement officers who are at the scene of a family violence incident involving a threat to human life or physical assault, to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search. This provision also defines the terms “abuse,” “family violence,” and “family or household member.”

This bill instead would replace the term “family violence” with the term “domestic violence,” would delete the above-mentioned definitions and would replace them with definitions of the terms “abuse” and “domestic violence” that track the definitions of those terms in the Family Code.¹²

10. Section 16490 (“domestic violence” defined).

11. See 1999 Cal. Stat. ch. 662.

12. *Id.*

Despite that intention, the bill left one reference to “family violence” unchanged. The proposed legislation would amend Section 18405 to correct that oversight.

Seizure of “Firearm or Other Deadly Weapon”

In general, the weapon seizure provisions refer to the seizure of a “firearm or other deadly weapon.” However, two of the sections are inconsistent on that point. They initially refer to a “firearm or other deadly weapon,” but later refer only to a “firearm.” That inconsistency could be confusing.

The Commission found no evidence that the inconsistent references were intentional. To avoid any misunderstanding of the effect of the law, the Commission recommends that Sections 18255 and 18260 be amended to consistently include a reference to “other deadly weapons.”

Mailing Address

Section 18405 provides for notice to the owner of a seized weapon, if a petition is filed with the court for forfeiture of the weapon. The notice must be sent to the owner’s last known address. Under Section 18405(b), the last known address is presumed to be the “address provided to the law enforcement officer by that person at the time of the family violence incident.” However, there is nothing in the statutory scheme that expressly provides an opportunity for law enforcement to record the weapon owner’s address.

In order to avoid any confusion on this issue, the proposed law would amend Section 18255 to fill that procedural gap — a police officer would take the weapon owner’s residential mailing address when providing a receipt for a seized weapon.

REFERENCE TO “IMITATION FIREARM” REGULATED BY FEDERAL LAW

Existing Penal Code Section 20155 makes it a California misdemeanor to fail to comply with “any applicable federal law or

regulation governing the marking of a toy, look-alike, or imitation firearm, as defined by federal law or regulation.”

That provision is potentially confusing, because of a mismatch between federal and state definitions of key terms. The governing federal statute defines the term “look-alike firearm,” but does not define the term “imitation firearm.”¹³ California law defines “imitation firearm,” but does not define “look-alike firearm.”

While the state and federal definitions are largely the same, the federal definition of “look-alike firearm” is slightly narrower than the state definition of “imitation firearm.” The federal definition excludes BB guns and certain types of replicas. The state definition includes them. This could lead to confusion as to the scope of the rule in Section 20155.

The purpose of Section 20155 is to provide a state penalty for a violation of federal law. This means that the provision only has effect if federal law has been violated. Consequently, the narrower federal definition should be controlling — conduct involving an object that is excluded from the federal definition can never be a violation of the federal statute.

The Commission recommends that Section 20155 be revised to make clear that the federal terminology is controlling.

LIABILITY FOR MINOR’S USE OF TEAR GAS

Under existing Penal Code Section 22815, it is lawful to sell or furnish tear gas or a tear gas weapon to a minor if the minor’s parent or guardian accompanies the minor or has signed a written authorization. Any civil liability that results from the minor’s use of the tear gas may be imposed on the “person, parent, or guardian” who signed a written consent authorizing the minor’s acquisition of the tear gas.

The Commission recommends that Section 22815 be revised to make two improvements:

13. 15 U.S.C. § 5001.

- (1) Under existing law, a person is only liable for injuries caused by a minor's use of tear gas if that person provided *written* authorization to provide tear gas to the minor. The liability rule does not apply to a person who authorizes the minor's acquisition of tear gas by "accompanying" the minor. The proposed law would extend the liability rule to cover the latter case.
 - (2) The reference to the "person, parent, or guardian" is potentially confusing, because parents and guardians are also "persons." The proposed law would replace "person, parent, or guardian" with "parent, guardian, or other person."
-

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PROPOSED LEGISLATION

Penal Code § 18405 (amended). Notice of proposed forfeiture of seized weapon

SEC. _____. Section 18405 of the Penal Code is amended to read:

18405. (a) If a petition is filed under Section 18400, the law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address, by registered mail, return receipt requested, that the person has 30 days from the date of receipt of the notice to respond to the court clerk to confirm the person's desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon.

(b) For purposes of this section, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the ~~family~~ domestic violence incident.

(c) In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

Comment. Section 18405 is amended to replace an erroneous reference to "family violence" with the defined term "domestic violence." See Section 16490 ("domestic violence" defined). This is a nonsubstantive change.

Penal Code § 18255 (amended). Receipt for seized weapon

SEC. _____. Section 18255 of the Penal Code is amended to read:

18255. (a) Upon taking custody of a firearm or other deadly weapon pursuant to this division, the officer shall give the owner or person who possessed the firearm or other deadly weapon a receipt.

(b) The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm.

(c) The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this division, and the date after which the owner or possessor can recover the firearm or other deadly weapon.

(d) The receipt shall include the name and residential mailing address of the owner or person who possessed the firearm or other deadly weapon.

Comment. Section 18255(a) is amended to add an omitted reference to “other deadly weapon.” This is a nonsubstantive change.

Subdivision (d) is new. It provides an opportunity for law enforcement to take the residential mailing address of a person whose weapon is seized. This information is required for the purposes of Section 18405(b).

Penal Code § 18260 (amended). Seizure of weapon by community college or school district peace officer

SEC. _____. Section 18260 of the Penal Code is amended to read:

18260. Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or other deadly weapon pursuant to this division, shall deliver the firearm or other deadly weapon within 24 hours to the city police department or county sheriff’s office in the jurisdiction where the college or school is located.

Comment. Section 18260 is amended to add a reference to “other deadly weapon.” This is a nonsubstantive change.

Penal Code § 20155 (amended). Violation of federal law governing look-alike firearms

SEC. _____. Section 20155 of the Penal Code is amended to read:

20155. Any manufacturer, importer, or distributor of ~~imitation toy, look-alike, or imitation~~ firearms that fails to comply with any applicable federal law or regulation governing the marking of a toy, look-alike, or imitation firearm, ~~as defined by federal law or regulation~~, is guilty of a misdemeanor. The definition of “imitation firearm” provided in Section 16700 does not apply to this section.

Comment. Section 20155 is amended to make clear that it is governed by the terminology used in the applicable federal law. See 15 U.S.C. § 5001(c) (“look-alike firearm” defined). This is a nonsubstantive change.

Penal Code § 22815 (amended). Providing tear gas weapon to minor

SEC. _____. Section 22815 of the Penal Code is amended to read:

22815. (a) Notwithstanding subdivision (d) of Section 22810, a minor who has attained the age of 16 years may purchase and possess tear gas or a tear gas weapon pursuant to this division if the minor is accompanied by a parent or guardian, or has the written consent of a parent or guardian.

(b) Notwithstanding subdivision (c) of Section 22810, a person may sell or furnish tear gas or a tear gas weapon to a minor who has attained the age of 16 years and who is accompanied by a parent or guardian, or who presents a statement of consent signed by the minor's parent or guardian.

(c) Any civil liability of a minor arising out of the minor's use of tear gas or a tear gas weapon other than for self-defense is imposed upon the ~~person, parent, or guardian, or other person~~ who signed the authorized the provision of tear gas to a minor by signing a statement of consent or accompanying the minor, as specified in subdivision (b). That ~~person, parent, or guardian, or other person~~ shall be jointly and severally liable with the minor for any damages proximately resulting from the negligent or wrongful act or omission of the minor in the use of the tear gas or a tear gas weapon.

Comment. Section 22815 is amended to make clear that civil liability for a minor's use of tear gas or a tear gas weapon may be imposed on any person who authorized the provision of the tear gas or tear gas weapon to the minor.

Penal Code § 23685 (amended). Firearm injury to child

SEC. _____. Section 23685 of the Penal Code is amended to read:

23685. Each law enforcement agency investigating an incident shall report to the State Department of Health Services any information obtained that reasonably supports the conclusion ~~that:~~

~~(a) A~~ that a child 18 years of age or younger suffered an unintentional or self-inflicted gunshot wound inflicted by a firearm that was sold or transferred in this state, or manufactured in this state. The report shall also indicate whether

~~(b) Whether~~ as a result of that incident the child died, suffered serious injury, or was treated for an injury by a medical professional.

Comment. Section 23685 is amended for clarity. This is a nonsubstantive change.

Penal Code § 26045 (amended). Justification for carrying loaded firearm

SEC. _____. Section 26045 of the Penal Code is amended to read:

26045. (a) Nothing in Section 25850 is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that any person or the property of any person is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property.

(b) A violation of Section 25850 is justifiable when a person who possesses a firearm reasonably believes that person is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person who has been found to pose a threat to the life or safety of the person who possesses the firearm. This subdivision may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to a defendant charged with violating Section ~~25400~~ 25850 or committing another similar offense. Upon trial for violating Section 25850, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that the defendant was in grave danger.

(c) As used in this section, "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

Comment. Section 26045 is amended to correct an erroneous cross-reference. This is a nonsubstantive change.

Penal Code § 26890 (amended). Storage of inventory firearms

SEC. _____. Section 26890 of the Penal Code is amended to read:

26890. (a) Except as provided in subdivisions (b) and (c) of Section 26805, any time when the licensee is not open for business, all inventory firearms shall be stored in the licensed location. All firearms shall be secured using one of the following methods as to each particular firearm:

(1) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(2) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(3) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(b) The licensing authority in an unincorporated area of a county or within a city may impose security requirements that are more strict or are at a higher standard than those specified in subdivision (a).

(c) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of subdivision (a) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(d) ~~Subdivision (a) or~~ Subdivisions (a) and (b) shall not apply to a licensee organized as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, or as a mutual benefit corporation pursuant to Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not handguns.

Comment. Section 26890(d) is amended to correct an erroneous use of "or." This is a nonsubstantive change.

Penal Code § 31640 (amended). Firearm safety test

SEC. _____. Section 31640 of the Penal Code is amended to read:

31640. (a) The department shall develop a written objective test, in English and in Spanish, and prescribe its content, form, and manner, to be administered by an instructor certified by the department.

(b) If the person taking the test is unable to read, the ~~examination test~~ shall be administered orally. If the person taking the test is unable to read English or Spanish, the test may be ~~applied~~ administered orally by a translator.

(c) The test shall cover, but not be limited to, all of the following:

(1) The laws applicable to carrying and handling firearms, particularly handguns.

(2) The responsibilities of ownership of firearms, particularly handguns.

(3) Current law as it relates to the private sale and transfer of firearms.

(4) Current law as it relates to the permissible use of lethal force.

(5) What constitutes safe firearm storage.

(6) Issues associated with bringing a firearm into the home.

(7) Prevention strategies to address issues associated with bringing firearms into the home.

(d) The department shall update test materials related to this article every five years.

(e) If a dealer licensed pursuant to Sections 26700 to 26915, inclusive, or his or her employee, or where the managing officer or partner is certified as an instructor pursuant to this article, he or she shall also designate a separate room or partitioned area for a person to take the objective test, and maintain adequate supervision to ensure that no acts of collusion occur while the objective test is being administered.

(f) This section shall become operative on January 1, 2015.

Comment. Section 31640 is amended to use consistent terminology. This is a nonsubstantive change.

Penal Code § 31700 (amended). Exemptions from firearm safety certificate requirement

SEC. ____ . Section 31700 of the Penal Code is amended to read:

31700. (a) The following persons, properly identified, are exempted from the firearm safety certificate requirement in subdivision (a) of Section 31615:

(1) Any active or honorably retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Any active or honorably retired federal officer or law enforcement agent.

(3) Any reserve peace officer, as defined in Section 832.6.

(4) Any person who has successfully completed the course of training specified in Section 832.

(5) A firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, who is acting in the course and scope of that person's activities as a person licensed pursuant to Sections 26700 to 26915, inclusive.

(6) A federally licensed collector who is acquiring or being loaned a firearm that is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, who has a current certificate of eligibility issued by the department pursuant to Section 26710.

(7) A person to whom a firearm is being returned, where the person receiving the firearm is the owner of the firearm.

(8) A family member of a peace officer or deputy sheriff from a local agency who receives a firearm pursuant to Section 50081 of the Government Code.

(9) Any individual who has a valid concealed weapons permit issued pursuant to Chapter 4 (commencing with Section 26150) of Division 5.

(10) An active or honorably retired member of the United States Armed Forces, the National Guard, the Air National Guard, or the active reserve components of the United States, where individuals in those organizations are properly identified. For purposes of this section, proper identification includes the Armed Forces Identification Card or other written documentation certifying that the individual is an active or honorably retired member.

(11) Any person who is authorized to carry loaded firearms pursuant to Section 26025 or 26030.

(12) Persons who are the holders of a special weapons permit issued by the department pursuant to Section 32650 or 33300, pursuant to Article 3 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2, or pursuant to Article 4 (commencing with Section 32700) of Chapter 6 of this division.

(b) The following persons who take title or possession of a firearm by operation of law in a representative capacity, until or unless they transfer title ownership of the firearm to themselves in a personal capacity, are exempted from the firearm safety certificate requirement in subdivision (a) of Section 31615:

(1) The executor or administrator of an estate.

(2) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, ~~or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of,~~ a default under a security agreement under the Commercial Code.

(3) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(4) A receiver performing the functions of a receiver.

(5) A trustee in bankruptcy performing the duties of a trustee.

(6) An assignee for the benefit of creditors performing the functions of an assignee.

(c) A person, validly identified, who has been issued a valid hunting license that is unexpired or that was issued for the hunting season immediately preceding the calendar year in which the person takes title ~~of~~ or possession of a firearm is exempt from the firearm safety certificate requirement in subdivision (a) of Section 31615, except as to handguns.

(d) This section shall become operative on January 1, 2015.

Comment. Section 31700(b)(2) is amended to delete duplicative language. This is a nonsubstantive change.

Subdivision (c) is amended to correct a typographical error.

Penal Code § 32010 (amended). Laboratory testing of firearm

SEC. ____ . Section 32010 of the Penal Code is amended to read:

32010. (a) Any pistol, revolver, or other firearm capable of being concealed upon the person manufactured in this state, imported into the state for sale, kept for sale, or offered or exposed for sale, shall be tested within a reasonable period of time by an independent laboratory certified pursuant to subdivision (b) to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person meets or exceeds the standards defined in Section 31910.

(b) On or before October 1, 2000, the Department of Justice shall certify laboratories to verify compliance with the standards defined in Section 31910. The department may charge ~~any~~ a fee to certify a laboratory that is seeking certification to test any pistol, revolver, or other firearm capable of being concealed upon the person pursuant to Sections 31900 to 32110, inclusive, ~~— a fee not exceeding~~ The fee shall not exceed the costs of certification.

(c) The certified testing laboratory shall, at the manufacturer's or importer's expense, test the firearm and submit a copy of the final test report directly to the Department of Justice along with a prototype of the weapon to be retained by the department. The department shall notify the manufacturer or importer of its receipt

of the final test report and the department's determination as to whether the firearm tested may be sold in this state.

(d)(1) Commencing January 1, 2006, no center-fire semiautomatic pistol may be submitted for testing pursuant to Sections 31900 to 32110, inclusive, if it does not have either a chamber load indicator, or a magazine disconnect mechanism if it has a detachable magazine.

(2) Commencing January 1, 2007, no center-fire semiautomatic pistol may be submitted for testing pursuant to Sections 31900 to 32110, inclusive, if it does not have both a chamber load indicator and a magazine disconnect mechanism.

(3) Commencing January 1, 2006, no rimfire semiautomatic pistol may be submitted for testing pursuant to Sections 31900 to 32110, inclusive, if it has a detachable magazine, and does not have a magazine disconnect mechanism.

Comment. Section 32010(b) is amended for clarity. This is a nonsubstantive change.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

2015-2016 Annual Report

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
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SUMMARY OF WORK OF COMMISSION

Recommendations to the 2015 Legislature

In 2015, bills effectuating two Commission recommendations were enacted, relating to the following subjects:

- Revocable Transfer on Death (TOD) Deed
- Fish and Game Law: Technical Revisions and Minor Substantive Improvements: Part 1

In 2015, the Commission also submitted a report to the Legislature on the following subject, which did not recommend introduction of legislation:

- State and Local Agency Access to Electronic Communications: Constitutional and Statutory Requirements

Recommendation to the 2016 Legislature

In 2016, the Commission plans to seek the introduction of legislation effectuating Commission recommendations on the following subjects:

- Trial Court Unification: Publication of Legal Notice
- Fish and Game Law: Technical Revisions and Minor Substantive Improvements: Part 2
- Deadly Weapons: Minor Clean-Up Issues

Commission Activities Planned for 2016

During 2016, the Commission intends to work on the following major topics: mediation confidentiality, state and local agency access to customer information from communication service providers, government interruption of communication services, revision of the Fish and Game Code, recognition of tribal and foreign court money judgments, and revocable transfer on death deeds.

The Commission will work on other topics as time permits.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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December 10, 2015

To: The Honorable Edmund G. Brown, Jr.
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 2015 and its plans for 2016.

Two Commission recommendations considered by the Legislature in 2015 were enacted into law.

The Commission is grateful to the members of the Legislature who carried Commission-recommended legislation in 2015:

- Assembly Member Mike Gatto (Revocable Transfer on Death (TOD) Deed)
- Assembly Committee on Water, Parks, and Wildlife (Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1))

The Commission held six one-day meetings in 2015. Meetings were held in Sacramento, Los Angeles, and Davis.

Respectfully submitted,
Taras Kihiczak
Chairperson

2015-2016 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 a 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 study only topics that the Legislature has authorized.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., 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

The Commission has submitted 408 recommendations to the Legislature, of which 376 (more than 90%) have been enacted in whole or in substantial part.⁵ Commission recommendations have resulted in the enactment of legislation affecting 25,155 sections of California law: 5,190 sections amended, 11,022 sections added, and 8,943 sections repealed.

The Commission's recommendations, reports, and other selected materials are published annually in hardcover volumes. Recent materials are also available through the Internet. A list of past publications and information on obtaining printed or electronic versions of Commission material can be found at the end of this Annual Report.⁶

2016 Legislative Program

In 2016, the Commission plans to seek the introduction of legislation implementing Commission recommendations on the following subjects:

- Trial Court Unification: Publication of Legal Notice
- Fish and Game Law: Technical Revisions and Minor Substantive Improvements: Part 2
- Deadly Weapons: Minor Clean-Up Issues

Major Studies in Progress

During 2016, the Commission intends to work on the following major topics: mediation confidentiality, state and local agency access to customer information from communication service providers, government interruption of communication services, revision of the Fish and Game Code, recognition of tribal and

of weapon statutes); 2006 Cal. Stat. ch. 216 [AB 2034] (donative transfer restrictions).

5. See *Legislative Action on Commission Recommendations*, Appendix 3 *infra*.

6. See *Commission Publications*, Appendix 7 *infra*.

foreign court money judgments, and revocable transfer on death deeds.

The Commission will work on other topics as time permits.

Mediation Confidentiality

The Commission will continue to analyze the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, including the purposes for and impact of mediation confidentiality on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, the effectiveness of mediation, and other relevant issues.⁷

State and Local Agency Access to Customer Information Held by Communications Service Providers

The Commission will continue to study revision of statutes that govern state and local agency access to customer information held by communications service providers.⁸

Government Interruption of Communication Services

The Commission will continue to study clarification of statutes that govern state and local agency action to restrict communication services.⁹

Revision of the Fish and Game Code

The Commission will continue to study the revision of the Fish and Game Code and related statutory law to improve organization, clarify meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law.¹⁰

7. See 2012 Cal. Stat. res. ch. 108.

8. See 2013 Cal. Stat. res. ch. 115.

9. See 2013 Cal. Stat. res. ch. 115.

10. See 2012 Cal. Stat. res. ch. 108.

Recognition of Tribal and Foreign Court Money Judgments

The Commission has been directed to conduct a study of the standards for recognition of a tribal court or foreign court money judgment, under the Trial Court Civil Money Judgment Act¹¹ and the Uniform Foreign-Country Money Judgments Recognition Act.¹² The Commission's report on this matter is due on or before January 1, 2017. The Commission will give this matter high priority in the coming year.

Revocable Transfer On Death Deeds

The Commission has been directed to study the effect of California's revocable transfer on death deed.¹³ The Commission's report on this matter is due on or before January 1, 2020.

Other Subjects

The major studies described above will dominate the Commission's time and resources during 2016. As time permits, the Commission will continue its work on trial court restructuring and consider other subjects authorized for study.

Calendar of Topics for Study

The Commission's calendar includes 23 topics authorized by the Legislature for study.¹⁴

11. Title 11.5 (commencing with Section 1730) of Part 3 of the Code of Civil Procedure.

12. Chapter 2 (commencing with Section 1713) of Title 11 of Part 3 of the Code of Civil Procedure.

13. 2015 Cal. Stat. ch. 293, § 21 (AB 139 (Gatto)).

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

Function and Procedure of Commission

The principal duties of the Commission are to:¹⁵

- (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,¹⁶ 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.¹⁷

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.¹⁸ However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a

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

16. 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 § 8261.

17. 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*.

18. Gov't Code § 8293. Section 8293 requires a concurrent resolution authorizing the Commission to study topics contained in the calendar of topics set forth in the Commission's regular report to the Legislature. Section 8293 also requires that the Commission study any topic that the Legislature by concurrent resolution or statute refers to the Commission for study.

prior concurrent resolution.¹⁹ Additionally, a concurrent resolution²⁰ or statute²¹ may directly confer authority to study a particular subject.

Background Studies

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, expert consultants are also retained to advise the Commission at meetings.²²

19. Gov't Code § 8298.

20. For an example of a concurrent resolution referring a specific topic to the Commission for study, see 2006 Cal. Stat. res. ch. 128 [ACR 73] (nonsubstantive reorganization of deadly weapon statutes).

21. 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 may be uncoded. See, e.g., 2005 Cal. Stat. ch. 422 (beneficiary deeds).

22. The Commission has retained Professor Katherine J. Florey, University of California, Davis, School of Law, as a consultant on its study of Recognition of Tribal and Foreign Court Money Judgments.

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 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.²³ When the Commission has reached a conclusion on the matter,²⁴ 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.²⁵

23. 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).

24. 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.

25. 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*

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.²⁶

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.²⁷ Receipt of a recommendation by the Legislature is

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 (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).

26. Commission Comments are published by LexisNexis and Thomson Reuters 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.

27. See Gov't Code §§ 8291, 9795, 11094-11099; see also *Reynolds v. Superior Court*, 12 Cal. 3d 834, 847 n.18, 528 P.2d 45, 53 n.18, 117 Cal. Rptr.

noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.²⁸

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.²⁹ 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.³⁰

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

437, 445 n.18 (1974) (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

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

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

30. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 542, 28 P.3d 151, 166, 110 Cal. Rptr. 2d 412, 430 (2001), 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 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.").

intent in approving the bill.³¹ 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.³²

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.³³

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,³⁴ and are entitled to great weight in

31. See, e.g., *Baldwin v. State*, 6 Cal. 3d 424, 433, 491 P.2d 1121, 1126, 99 Cal. Rptr. 145, 150 (1972). For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

32. 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).

33. Commission reports have in the past been published as well in the legislative journals. See, e.g., *In re Marriage of Neal*, 153 Cal. App. 3d 117, 124, 200 Cal. Rptr. 341, 345 (1984) (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).

34. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 657, 51 Cal. Rptr. 3d 871, 875 (2006) ("The Commission's official comments are deemed to express the Legislature's intent."); *People v. Williams*, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) ("The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it.").

construing statutes.³⁵ The materials are a key interpretive aid for practitioners as well as courts,³⁶ and courts may judicially notice and rely on them.³⁷ Courts at all levels of the state³⁸ and federal³⁹ judicial systems depend on Commission materials to construe statutes enacted on Commission recommendation.⁴⁰ Appellate

35. See, e.g., *Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 12-13 n.9, 145 P.3d 462, 469 n.9, 50 Cal. Rptr. 3d 585, 593 n.9 (2006) (Commission's official comments are persuasive evidence of Legislature's intent); *Hale v. S. Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

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].)

36. Cf. 7 B. Witkin, *Summary of California Law Constitutional Law* § 123, at 230 (10th ed. 2005) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

37. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale*, 86 Cal. App. 4th at 927; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

38. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 298, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Admin. Mgmt. Services, Inc. v. Fid. Deposit Co. of Md.*, 129 Cal. App. 3d 484, 488, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

39. See, e.g., *California v. Green*, 399 U.S. 149, 154 n.3 (1970) (United States Supreme Court); *S. Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950, 953 (9th Cir. 1997) (federal court of appeals); *Williams v. Townsend*, 283 F. Supp. 580, 582 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)*, 204 B.R. 976, 978-79 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289, 292-93 (Bankr. S.D. Cal. 1984) (bankruptcy court).

40. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to

courts have cited Commission materials in more than a thousand published opinions.⁴¹

Commission materials have been used as direct support for a court's interpretation of a statute,⁴² as one of several indicia of legislative intent,⁴³ to explain the public policy behind a statute,⁴⁴ and on occasion to demonstrate (by their silence) the Legislature's intention not to change the law.⁴⁵ The Legislature's failure to adopt

substantial weight in construing statute); *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature's intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence clear legislative intent of law); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight), overruled on other grounds by *Privette v. Superior Court*, 5 Cal. 4th 689, 854 P.2d 721, 21 Cal. Rptr. 2d 72 (1993); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission).

41. In this connection 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*, 185 F. Supp. 2d 1128, 1132 (E.D. Cal. 2002) (Law Revision "Committee"); *Ryan v. Garcia*, 27 Cal. App. 4th 1006, 1010 n.2, 33 Cal. Rptr. 2d 158, 160 n.2 (1994) (Law "Review" Commission).

42. See, e.g., *People v. Ainsworth*, 45 Cal. 3d 984, 1015, 755 P.2d 1017, 1036, 248 Cal. Rptr. 568, 586 (1988).

43. See, e.g., *Heieck & Moran v. City of Modesto*, 64 Cal. 2d 229, 233 n.3, 411 P.2d 105, 108 n.3, 49 Cal. Rptr. 377, 380 n.3 (1966).

44. See, e.g., *Southern Cal. Gas Co. v. Public Utils. Comm'n*, 50 Cal. 3d 31, 38 n.8, 784 P.2d 1373, 1376 n.8, 265 Cal. Rptr. 801, 804 n.8 (1990).

45. See, e.g., *State ex rel. State Pub. Works Bd. v. Stevenson*, 5 Cal. App. 3d 60, 64-65, 84 Cal. Rptr. 742, 745-46 (1970) (finding that 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).

a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.⁴⁶

Commission materials are entitled to great weight, but they are not conclusive.⁴⁷ While the Commission endeavors in Comments to 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,⁴⁸ nor can it anticipate judicial conclusions as to the significance of existing case authorities.⁴⁹ 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.⁵⁰

Some types of Commission materials are not properly relied on as evidence of legislative intent. On occasion, courts have cited

46. See, e.g., *McWilliams v. City of Long Beach*, 56 Cal. 4th 613, 623-24, 300 P.3d 886, 155 Cal. Rptr. 3d 817 (2013); *Nestle v. City of Santa Monica*, 6 Cal. 3d 920, 935-36, 496 P.2d 480, 490, 101 Cal. Rptr. 568, 578 (1972).

47. See, e.g., *Redevelopment Agency v. Metropolitan Theatres Corp.*, 215 Cal. App. 3d 808, 812, 263 Cal. Rptr. 637, 639 (1989) (Comment does not override clear and unambiguous statute). Commission materials are but one indicium of legislative intent. See, e.g., *Estate of Joseph*, 17 Cal. 4th 203, 216, 949 P.2d 472, 480, 70 Cal. Rptr. 2d 619, 627 (1998). The accuracy of a Comment may also be questioned. See, e.g., *Buzgheia v. Leasco Sierra Grove*, 30 Cal. App. 4th 766, 774, 36 Cal. Rptr. 2d 144, 149 (1994); *In re Thomas*, 102 B.R. 199, 202 (Bankr. E.D. Cal. 1989).

48. *Cf. People v. Coleman*, 8 Cal. App. 3d 722, 731, 87 Cal. Rptr. 554, 559 (1970) (Comments make clear intent to reflect existing law even if not all supporting cases are cited).

49. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 885, 109 Cal. Rptr. 421, 426-27 (1973) (noting that decisional law cited in Comment was distinguished by the California Supreme Court in a case decided after enactment of the Commission recommendation).

50. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). 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.

preliminary Commission materials such as tentative recommendations, correspondence, and staff memoranda and drafts in support of their construction of a statute.⁵¹ 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.⁵² Unless preliminary 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.⁵³

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.⁵⁴ 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.⁵⁵

51. See, e.g., *Rojas v. Superior Court*, 33 Cal. 4th 407, 93 P.3d 260, 15 Cal. Rptr. 3d 643 (2005) (tentative recommendation, correspondence, and staff memorandum and draft); *Yamaha Corp. v. State Bd. of Equalization*, 19 Cal.4th 1, 12-13, 960 P.2d 1031, 1037, 78 Cal. Rptr. 2d 1, 7 (1998) (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*, 193 Cal. App. 3d 238, 243, 239 Cal. Rptr. 137, 140 (1987). In that event, reliance on the tentative recommendation is proper.

See also *Ilkhchooyi v. Best*, 37 Cal. App. 4th 395, 406, 45 Cal. Rptr. 2d 766, 772-73 (1995) (letter responding to tentative recommendation); D. Henke, *California Legal Research Handbook* § 3.51 (1971) (background studies).

52. *Cf. Rittenhouse v. Superior Court*, 235 Cal. App. 3d 1584, 1589, 1 Cal. Rptr. 2d 595, 598 (1991) (linking Commission's intent and Legislature's intent); *Guthman v. Moss*, 150 Cal. App. 3d 501, 508, 198 Cal. Rptr. 54, 58 (1984) (determination of Commission's intent used to infer Legislature's intent).

53. The Commission concurs with the opinion of the court in *Juran v. Epstein*, 23 Cal. App. 4th 882, 894 n.5, 28 Cal. Rptr. 2d 588, 594 n.5 (1994), that staff memoranda to the Commission should generally not be considered as legislative history.

54. See, e.g., *Duarte v. Chino Community Hosp.*, 72 Cal. App. 4th 849, 856 n.3, 85 Cal. Rptr. 2d 521, 525 n.3 (1999).

55. See, e.g., *Sierra Club v. San Joaquin Local Agency Formation Comm'n*, 21 Cal. 4th 489, 502-03, 981 P.2d 543, 551-52, 87 Cal. Rptr. 2d 702, 712 (1999).

Publications

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.⁵⁶ 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, it is believed, 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.⁵⁷ Publications that are out of print are available as electronic files.⁵⁸

Electronic Publication and Internet Access

Since 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.⁵⁹ 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. Recent publications and

(unenacted Commission recommendation useful as "opinion of a learned panel"); *Hall v. Hall*, 222 Cal. App. 3d 578, 585, 271 Cal. Rptr. 773, 777 (1990) (Commission staff report most detailed analysis of statute available); *W.E.J. v. Superior Court*, 100 Cal. App. 3d 303, 309-10, 160 Cal. Rptr. 862, 866 (1979) (law review article prepared for Commission provides insight into development of law); *Schonfeld v. City of Vallejo*, 50 Cal. App. 3d 401, 407 n.4, 123 Cal. Rptr. 669, 673 n.4 (1975) (court indebted to many studies of Commission for analytical materials).

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

57. See *Commission Publications*, Appendix 7 *infra*.

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

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

memoranda may be downloaded from the Commission's website. Files that are not on the website are available on request.⁶⁰

Electronic Mail

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence, if the email message includes the name and regular mailing address of the sender. 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 Internet⁶¹ or may be purchased in advance from the Commission.

60. See *Commission Publications*, Appendix 7 *infra*.

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

Personnel of Commission⁶²

As of December 10, 2015, the following persons were members of the Law Revision Commission:

Legislative Members⁶³

Assembly Member Ed Chau
Senator Richard Roth

Members Appointed by Governor⁶⁴

Term Expires

Taras Kihiczak, Pacific Palisades <i>Chairperson</i>	October 1, 2017
Crystal Miller-O’Brien, Los Angeles <i>Vice-Chairperson</i>	October 1, 2017
Damian Capozzola, Hermosa Beach	October 1, 2017
Tom Hallinan, Ceres	October 1, 2019
Victor King, La Crescenta	October 1, 2019
Susan Duncan Lee, San Francisco	October 1, 2019
Jane McAllister, Hilmar	October 1, 2019

Legislative Counsel⁶⁵

Diane F. Boyer-Vine, Sacramento

The following persons are on the Commission’s staff:

62. See also *Biographies of 2015 Commissioners*, Appendix 6 *infra*.

63. 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.

64. 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).

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

Legal

BRIAN HEBERT
Executive Director

BARBARA S. GAAL
Chief Deputy Counsel

KRISTIN BURFORD
Staff Counsel

STEVE COHEN
Staff Counsel

Administrative-Secretarial

DEBORA LARRABEE
*Associate Governmental
Program Analyst*

VICTORIA V. MATIAS
Secretary

In addition, Anita Barooni (summer fellow), Andrea Bari, Bryanna Brandalesi, and Maxwell Calehuff, all from the University of California, Davis, School of Law, worked for the Commission in 2015.

Commission Budget

The Commission's operations for the 2015-16 fiscal year have been funded through a reimbursement from the California Office of Legislative Counsel, in the amount of \$845,000.

That reimbursement is supplemented by \$15,000 budgeted for income generated from the sale of documents to the public, to recover the cost of the documents.

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 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 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.

The Commission also received valuable assistance from the Law and Public Policy Lab at Stanford Law School, particularly from Janet Martinez (Senior Lecturer in Law) and students Amelia Green and Jordan Rice.

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

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 Diane F. Boyer-Vine is a member of the California Commission on Uniform State Laws and the National Conference. The Commission's Executive Director, Brian Hebert, is an associate member of the National Conference.

Other Commissioner and Staff Activities

On February 27, 2015, Chairperson Victor King and Executive Director Brian Hebert attended an event, organized by common interest development stakeholder groups, which recognized and honored the Commission for its work to recodify the Davis-Stirling Common Interest Development Act.

On September 22, 2015, Executive Director Brian Hebert participated in a panel discussion at the University of California, Davis, School of Law, on law student opportunities in the

66. Gov't Code § 8296.

67. Gov't Code § 8289.

legislative process, with a focus on the work of the Law Revision Commission.

Legislative History of Recommendations in the 2015 Legislative Session

In 2015, bills to effectuate two Commission recommendations were introduced. Both proposals were enacted.

Revocable Transfer on Death (TOD) Deed

Assembly Bill 139 (2015 Cal. Stat. ch. 293) was introduced in 2015 by Assembly Member Mike Gatto. The bill effectuated the Commission's recommendation on *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103 (2006).

The measure was enacted, with amendments. See *Report of the California Law Revision Commission on Chapter 293 of the Statutes of 2015 (Assembly Bill 139)*, 44 Cal. L. Revision Comm'n Reports 573 (2015) (Appendix 5, *infra*).

Fish and Game Law: Technical Revisions and Minor Substantive Improvements: Part 1

Assembly Bill 1527 (2015 Cal. Stat. ch. 154) was introduced in 2015 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 1*, 44 Cal. L. Revision Comm'n Reports 115 (2015).

The measure was enacted, with amendments. See *Report of the California Law Revision Commission on Chapter 154 of the Statutes of 2015 (Assembly Bill 1527)*, 44 Cal. L. Revision Comm'n Reports 571 (2015) (Appendix 4, *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 prepared⁶⁸ and has the following to report:

- No decision holding a state statute repealed by implication has been found.⁶⁹
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.
- Two decisions of the California Supreme Court holding a state statute unconstitutional have been found.

In *In re Taylor*, 60 Cal. 4th 1019, 343 P.3d 867, 184 Cal. Rptr. 3d 682 (2015), the California Supreme Court held that Penal Code Section 3003.5(b), which makes it unlawful for a person required to register as a sex offender to reside within 2000 feet of any public or private school, was unconstitutional as applied to registered sex offenders on parole in San Diego County. The Court

68. This study has been carried through opinions published on or before November 15, 2015.

69. In *State Dept. of Public Health v. Superior Court*, 60 Cal. 4th 940, 342 P.3d 1217, 184 Cal. Rptr. 3d 60 (2015), the California Supreme Court considered whether Welfare and Institutions Code Section 5328 was affected by the later enactment of the Long-Term Care, Health, Safety, and Security Act of 1973 (Health & Safety Code § 1417 *et seq.*). The Court held that the new enactment superseded the portion of Welfare And Institutions Code Section 5328 requiring the State Department of Health to redact information from citations it discloses in response to a California Public Records Act request (Gov't Code § 6250 *et seq.*), beyond the names of the affected patients or residents.

explained that application of the section to that group violated the due process clause of the Fourteenth Amendment of the United States Constitution, because it impeded the constitutional liberty interests of the parolees, and bore no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators.

In *People v. Trujeque*, 61 Cal. 4th 227, 349 P.3d 103, 188 Cal. Rptr. 3d 1 (2015), the California Supreme Court considered whether it was constitutional for Penal Code Section 1387.1 to authorize a criminal prosecution that had been statutorily barred prior to the enactment of that section. The Court held that this aspect of Section 1387.1 violated the *Ex Post Facto* Clause of Article I, Section 10 of the United States Constitution.

Recommendations

The Commission respectfully recommends that the Legislature authorize the Commission to continue its study of the topics previously authorized.⁷⁰

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provisions referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," *supra*, to the extent they have been held unconstitutional and have not been amended or repealed.

70. See discussion under "Calendar of Topics for Study" *supra*; *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

APPENDIX 1

STATUTE GOVERNING THE CALIFORNIA LAW REVISION COMMISSION (Government Code Sections 8280-8298*)

§ 8280. Creation

8280. There is created in the State Government the California Law Revision Commission.

§ 8281. Membership

8281. The commission consists of one Member of the Senate appointed by the Committee on Rules, one Member of the Assembly appointed by the Speaker, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel shall be an ex officio member of the commission.

The Members of the Legislature appointed to the commission shall serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this article, those Members of the Legislature shall constitute a joint interim investigating committee on the subject of this article and as a joint interim investigating committee shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

The members appointed by the Governor shall be appointed for a term of four years and shall hold office until the appointment and qualification of their successors. The terms of the members first appointed shall not commence earlier than October 1, 1953, and

*Added by 1984 Cal. Stat. ch. 1335, § 2; see also 1985 Cal. Stat. ch. 106, § 45 (amending Section 8295); 1989 Cal. Stat. ch. 152, § 1 (adding Section 8298), 2004 Cal. Stat. ch. 193, § 33 (amending Section 8293). Formerly Gov't Code §§ 10300-10340, added by 1953 Cal. Stat. ch. 1445, § 2; amended by 1960 Cal. Stat. ch. 61, § 1 (1st Ex. Sess.); 1965 Cal. Stat. ch. 371, § 110; 1978 Cal. Stat. ch. 228, § 1; 1981 Cal. Stat. ch. 1106, § 2.

shall expire as follows: four on October 1, 1955, and three on October 1, 1957. When a vacancy occurs in any office filled by appointment by the Governor, he or she shall appoint a person to the office, who shall hold office for the balance of the unexpired term of his or her predecessor.

Note. The provision in the third paragraph to the effect that Commission members appointed by the Governor hold office until appointment and qualification of their successors is 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).

§ 8282. Compensation and expenses

8282. (a) The members of the commission shall serve without compensation, except that each member appointed by the Governor shall receive fifty dollars (\$50) for each day's attendance at a meeting of the commission.

(b) In addition, each member shall be allowed actual expenses incurred in the discharge of his or her duties, including travel expenses.

Note. Government Code Section 11564.5 provides a per diem compensation of \$100, notwithstanding any other provision of law.

§ 8283. Chairperson

8283. The commission shall select one of its members chairperson.

§ 8284. Executive secretary

8284. The commission may appoint an executive secretary and fix his or her compensation, in accordance with law.

§ 8285. Employees

8285. The commission may employ and fix the compensation, in accordance with law, of such professional, clerical and other assistants as may be necessary.

§ 8286. Assistance of state

8286. The material of the State Library shall be made available to the commission. All state agencies, and other official state organizations, and all persons connected therewith shall give the commission full information, and reasonable assistance in any matters of research requiring recourse to them, or to data within their knowledge or control.

§ 8287. Assistance of bar

8287. The Board of Governors of the State Bar shall assist the commission in any manner the commission may request within the scope of its powers or duties.

§ 8288. Political activities of commissioners and staff

8288. No employee of the commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature as to such matters unless requested to do so by the committee or its chairperson. In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his or her official capacity as an employee or member.

§ 8289. Duties of commission

8289. The commission shall, within the limitations imposed by Section 8293:

(a) Examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

(c) Receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(d) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state into harmony with modern conditions.

§ 8290. Unconstitutional and impliedly repealed statutes

8290. 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.

§ 8291. Submission and distribution of reports

8291. The commission shall submit its reports, and its recommendations as to revision of the laws, to the Governor and the Legislature, and shall distribute them to the Governor, the Members of the Legislature, and the heads of all state departments.

Note. Section 8291 is limited by later-enacted rules governing distribution of state reports set out in Government Code Sections 9795 and 11094-11099.

§ 8292. Contents of reports

8292. The commission may, within the limitations imposed by Section 8293, include in its report the legislative measures proposed by it to effect the adoption or enactment of the proposed revision. The reports may be accompanied by exhibits of various changes, modifications, improvements, and suggested enactments prepared or proposed by the commission with a full and accurate index thereto.

§ 8293. Calendar of topics

8293. The commission shall file a report at each regular session of the Legislature that shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. The commission shall confine its studies to those topics set forth in the calendar

contained in its last preceding report that have been or are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic that the Legislature, by concurrent resolution or statute, refers to it for study.

§ 8294. Printing of reports

8294. The reports, exhibits, and proposed legislative measures shall be printed by the State Printing Office under the supervision of the commission. The exhibits shall be so printed as to show in the readiest manner the changes and repeals proposed by the commission.

§ 8295. Cooperation with legislative committees

8295. The commission shall confer and cooperate with any legislative committee on revision of the law and may contract with any committee for the rendition of service, by either for the other, in the work of revision.

§ 8296. Cooperation with bar and other associations

8296. The commission may cooperate with any bar association or other learned, professional, or scientific association, institution or foundation in any manner suitable for the fulfillment of the purposes of this article.

§ 8297. Research contracts

8297. The commission may, with the approval of the Director of General Services, enter into, amend and terminate contracts with colleges, universities, schools of law or other research institutions, or with qualified individuals for the purposes of research.

§ 8298. Recommendations concerning minor revisions

8298. The commission may study and recommend revisions to correct technical or minor substantive defects in the statutes of the state without a prior concurrent resolution of the Legislature referring the matter to it for study.

APPENDIX 2

CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission's calendar of topics authorized for study includes the subjects listed below.¹ Each of these topics has been authorized for Commission study by the Legislature. For the current authorizing resolution, see 2014 Cal. Stat. res. ch. 63.

1. Creditors' remedies. Whether the law should be revised that relates to creditors' remedies, including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code provisions on repossession of property), confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, insolvency, and related matters.²

2. Probate Code. Whether the California Probate Code should be revised, including, but not limited to, the issue of whether California should adopt, in whole or in part, the Uniform Probate Code, and related matters.³

1. The calendar of topics lists only those topics selected by the Commission for study and authorized by the Legislature. The Commission also studies topics specifically directed to it by concurrent resolution of the Legislature or by statute. See, e.g., 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communication service providers); 2014 Cal. Stat. ch. 243 [SB 406] (recognition of tribal and foreign court money judgments). The Commission may also study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution. Gov't Code § 8298.

2. See also 1983 Cal. Stat. res. ch. 40; 1974 Cal. Stat. res. ch. 45; 1972 Cal. Stat. res. ch. 27; 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957, at 15-16 (1957). Revised in 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 661 (2000).

3. See also 1980 Cal. Stat. res. ch. 37. Revised in 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 661 (2000).

3. Real and personal property. Whether the law should be revised that relates to real and personal property, including, but not limited to, a marketable title act, covenants, servitudes, conditions, and restrictions on land use or relating to land, powers of termination, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant on assignment, subletting, termination, or abandonment of a lease, and related matters.⁴

4. Family law. Whether the law should be revised that relates to family law, including, but not limited to, community property, the adjudication of child and family civil proceedings, child custody, adoption, guardianship, freedom from parental custody and control, and related matters, including other subjects covered by the Family Code.⁵

5. Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised.⁶

6. Rights and disabilities of minors and incompetent persons. Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised.⁷

7. Evidence. Whether the Evidence Code should be revised.⁸

8. Alternative Dispute Resolution. Whether the law relating to arbitration, mediation, and other alternative dispute resolution techniques should be revised.⁹

4. See 1983 Cal. Stat. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic. Expanded in 1988 Cal Stat. res. ch. 81. Revised in 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 661 (2000).

5. See 1997 Cal. Stat. res. ch. 102, consolidating Family Code authority, child custody, adoption, and guardianship authority, and family law proceedings authority. See also 1995 Cal. Stat. res. ch. 87; 1989 Cal. Stat. res. ch. 70; 1983 Cal. Stat. res. ch. 40; 1978 Cal. Stat. res. ch. 65; 1972 Cal. Stat. res. ch. 27; 1956 Cal. Stat. res. ch. 42.

6. See also 1975 Cal. Stat. res. ch. 15; 12 Cal. L. Revision Comm'n Reports 526-28 (1974).

7. See also 1979 Cal. Stat. res. ch. 19; 14 Cal. L. Revision Comm'n Reports 217-18 (1978).

8. See also 1965 Cal. Stat. res. ch. 130.

9. Administrative law. Whether there should be changes to administrative law.¹⁰

10. Attorney's fees. Whether the law relating to the payment and the shifting of attorney's fees between litigants should be revised.¹¹

11. Uniform Unincorporated Nonprofit Association Act. Whether the Uniform Unincorporated Nonprofit Association Act, or parts of that uniform act, and related provisions should be adopted in California.¹²

12. Trial court unification. Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification.¹³

13. Contract law. Whether the law of contracts should be revised, including the law relating to the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters.¹⁴

14. Common interest developments. Whether the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, establish a clear, consistent, and unified policy with regard to formation and management of these developments and transaction of real property interests located within them, and to determine to what extent they should be subject to regulation.¹⁵

9. See also 1968 Cal. Stat. res. ch. 110; 8 Cal. L. Revision Comm'n Reports 1325-26 (1967). Revised in 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 661-62 (2000).

10. See also 1987 Cal. Stat. res. ch. 47.

11. See also 1995 Cal. Stat. res. ch. 87; 1988 Cal. Stat. res. ch. 20.

12. See also 1993 Cal. Stat. res. ch. 31; 22 Cal. L. Revision Comm'n Reports 846 (1992).

13. See also 1995 Cal. Stat. res. ch. 87; 1993 Cal. Stat. res. ch. 96.

14. See also 1996 Cal. Stat. res. ch. 38; 25 Cal. L. Revision Comm'n Reports 628-29 (1995).

15. See also 1999 Cal. Stat. res. ch. 81; 28 Cal. L. Revision Comm'n Reports 693-94 (1998).

15. Legal malpractice statutes of limitation. Whether the statutes of limitation for legal malpractice actions should be revised to recognize equitable tolling or other adjustment for the circumstances of simultaneous litigation, and related matters.¹⁶

16. Coordination of public records statutes. Whether the law governing disclosure of public records and the law governing protection of privacy in public records should be revised to better coordinate them, including consolidation and clarification of the scope of required disclosure and creation of a single set of disclosure procedures, to provide appropriate enforcement mechanisms, and to ensure that the law governing disclosure of public records adequately treats electronic information, and related matters.¹⁷

17. Criminal sentencing. Whether the law governing criminal sentences for enhancements relating to weapons or injuries should be revised to simplify and clarify the law and eliminate unnecessary or obsolete provisions.¹⁸

18. Subdivision Map Act and Mitigation Fee Act. Whether the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) and the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) of Division 1 of Title 7 of the Government Code) should be revised to improve their organization, resolve inconsistencies, and clarify and rationalize provisions, and related matters.¹⁹

16. See also 1999 Cal. Stat. res. ch. 81; 28 Cal. L. Revision Comm'n Reports 696 (1998).

17. See also 1999 Cal. Stat. res. ch. 81; 28 Cal. L. Revision Comm'n Reports 695-96 (1998).

18. See also 1999 Cal. Stat. res. ch. 81; 28 Cal. L. Revision Comm'n Reports 695 (1998). Revised in 2002 Cal. Stat. res. ch. 166.

19. See also 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 662 (2000).

19. Uniform Statute and Rule Construction Act. Whether the Uniform Statute and Rule Construction Act (1995) should be adopted in California in whole or in part, and related matters.²⁰

20. Place of trial in a civil case. Whether the law governing the place of trial in a civil case should be revised.²¹

21. Charter schools and the Government Claims Act. Analysis of the legal and policy implications of treating a charter school as a public entity for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.²²

22. Fish and Game Code. Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law.²³

23. Mediation Confidentiality. (a) Analysis of the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, and the purposes for, and impact of, those laws on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, and the effectiveness of mediation, as well as any other issues that the commission deems relevant. Among other matters, the commission shall consider the following:

(1) Sections 703.5, 958, and 1119 of the Evidence Code and predecessor provisions, as well as California court rulings, including, but not limited to, *Cassel v. Superior Court* (2011) 51 Cal. 4th 113, *Porter v. Wyner* (2010) 183 Cal. App. 4th 949, and *Wimsatt v. Superior Court* (2007) 152 Cal. App. 4th 137.

20. See also 2003 Cal. Stat. res. ch. 92; 33 Cal. L. Revision Comm'n Reports 599 (2003).

21. See also 2007 Cal. Stat. res. ch. 100; 38 Cal. L. Revision Comm'n Reports 30 (2008).

22. See also 2009 Cal. Stat. res. ch. 98; 39 Cal. L. Revision Comm'n Reports 28 (2009).

23. See also 2012 Cal. Stat. res. ch. 108; 42 Cal. L. Revision Comm'n Reports 361 (2012).

(2) The availability and propriety of contractual waivers.

(3) The law in other jurisdictions, including the Uniform Mediation Act, as it has been adopted in other states, other statutory acts, scholarly commentary, judicial decisions, and any data regarding the impact of differing confidentiality rules on the use of mediation.

(b) In studying this matter, the commission shall request input from experts and interested parties, including, but not limited to, representatives from the California Supreme Court, the State Bar of California, legal malpractice defense counsel, other attorney groups and individuals, mediators, and mediation trade associations. The commission shall make any recommendations that it deems appropriate for the revision of California law to balance the competing public interests between confidentiality and accountability.²⁴

24. See also 2012 Cal. Stat. res. ch. 108; 42 Cal. L. Revision Comm'n Reports 361 (2012).

APPENDIX 3

LEGISLATIVE ACTION ON COMMISSION RECOMMENDATIONS

(Cumulative)

Note. The “Action by Legislature” column may include references to relevant legislative history in the Commission’s Reports, following the italicized “*See.*” These references are to pages in Commission bound volumes (e.g., “35:73” refers to bound volume 35, page 73).

Recommendation	Action by Legislature
1. <i>Partial Revision of Education Code</i> , 1 Cal. L. Revision Comm’n Reports, Annual Report for 1954, at 12 (1957)	Enacted. 1955 Cal. Stat. chs. 799, 877
2. <i>Summary Distribution of Small Estates Under Probate Code Sections 640 to 646</i> , 1 Cal. L. Revision Comm’n Reports, Annual Report for 1954, at 50 (1957)	Enacted. 1955 Cal. Stat. ch. 1183
3. <i>Fish and Game Code</i> , 1 Cal. L. Revision Comm’n Reports, Annual Report for 1956, at 13-14 (1957)	Enacted. 1957 Cal. Stat. ch. 456
4. <i>Maximum Period of Confinement in a County Jail</i> , 1 Cal. L. Revision Comm’n Reports, at A-1 (1957)	Enacted. 1957 Cal. Stat. ch. 139
5. <i>Notice of Application for Attorney’s Fees and Costs in Domestic Relations Actions</i> , 1 Cal. L. Revision Comm’n Reports, at B-1 (1957)	Enacted. 1957 Cal. Stat. ch. 540
6. <i>Taking Instructions to Jury Room</i> , 1 Cal. L. Revision Comm’n Reports, at C-1 (1957)	Not enacted; but see Code Civ. Proc. § 612.5, enacting substance of this recommendation.
7. <i>The Dead Man Statute</i> , 1 Cal. L. Revision Comm’n Reports, at D-1 (1957)	Not enacted; but recommendation accomplished in enactment of Evidence Code. See Evid. Code § 1261 Comment
8. <i>Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere</i> , 1 Cal. L. Revision Comm’n Reports, at E-1 (1957)	Enacted. 1957 Cal. Stat. ch. 490

Recommendation	Action by Legislature
9. <i>The Marital “For and Against” Testimonial Privilege</i> , 1 Cal. L. Revision Comm’n Reports, at F-1 (1957)	Not enacted; but recommendation accomplished in enactment of Evidence Code. See Evid. Code § 970 Comment
10. <i>Suspension of the Absolute Power of Alienation</i> , 1 Cal. L. Revision Comm’n Reports, at G-1 (1957); 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 14 (1959)	Enacted. 1959 Cal. Stat. ch. 470
11. <i>Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378</i> , 1 Cal. L. Revision Comm’n Reports, at H-1 (1957)	Enacted. 1957 Cal. Stat. ch. 102
12. <i>Judicial Notice of the Law of Foreign Countries</i> , 1 Cal. L. Revision Comm’n Reports, at I-1 (1957)	Enacted. 1957 Cal. Stat. ch. 249
13. <i>Choice of Law Governing Survival of Actions</i> , 1 Cal. L. Revision Comm’n Reports, at J-1 (1957)	No legislation recommended.
14. <i>Effective Date of Order Ruling on a Motion for New Trial</i> , 1 Cal. L. Revision Comm’n Reports, at K-1 (1957); 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 16 (1959)	Enacted. 1959 Cal. Stat. ch. 468
15. <i>Retention of Venue for Convenience of Witnesses</i> , 1 Cal. L. Revision Comm’n Reports, at L-1 (1957)	Not enacted.
16. <i>Bringing New Parties Into Civil Actions</i> , 1 Cal. L. Revision Comm’n Reports, at M-1 (1957)	Enacted. 1957 Cal. Stat. ch. 1498
17. <i>Grand Juries</i> , 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 20 (1959)	Enacted. 1959 Cal. Stat. ch. 501
18. <i>Procedure for Appointing Guardians</i> , 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 21 (1959)	Enacted. 1959 Cal. Stat. ch. 500
19. <i>Appointment of Administrator in Quiet Title Action</i> , 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 29 (1959)	No legislation recommended.

Recommendation	Action by Legislature
20. <i>Presentation of Claims Against Public Entities</i> , 2 Cal. L. Revision Comm'n Reports, at A-1 (1959)	Enacted. 1959 Cal. Stat. chs. 1715, 1724, 1725, 1726, 1727, 1728; Cal. Const., art. XI, § 10 (1960)
21. <i>Right of Nonresident Aliens to Inherit</i> , 2 Cal. L. Revision Comm'n Reports, at B-1 (1959); 11 Cal. L. Revision Comm'n Reports 421 (1973)	Enacted. 1974 Cal. Stat. ch. 425
22. <i>Mortgages to Secure Future Advances</i> , 2 Cal. L. Revision Comm'n Reports, at C-1 (1959)	Enacted. 1959 Cal. Stat. ch. 528
23. <i>Doctrine of Worthier Title</i> , 2 Cal. L. Revision Comm'n Reports, at D-1 (1959)	Enacted. 1959 Cal. Stat. ch. 122
24. <i>Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving</i> , 2 Cal. L. Revision Comm'n Reports, at E-1 (1959)	Not enacted; but see 1972 Cal. Stat. ch. 92, enacting substance of a portion of recommendation relating to drunk driving.
25. <i>Time Within Which Motion for New Trial May Be Made</i> , 2 Cal. L. Revision Comm'n Reports, at F-1 (1959)	Enacted. 1959 Cal. Stat. ch. 469
26. <i>Notice to Shareholders of Sale of Corporate Assets</i> , 2 Cal. L. Revision Comm'n Reports, at G-1 (1959)	Not enacted; but see Corp. Code §§ 1001, 1002, enacting substance of recommendation.
27. <i>Evidence in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at A-1 (1961)	Not enacted; but see Evid. Code § 810 <i>et seq.</i> , enacting substance of recommendation.
28. <i>Taking Possession and Passage of Title in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at B-1 (1961)	Enacted. 1961 Cal. Stat. chs. 1612, 1613
29. <i>Reimbursement for Moving Expenses When Property Is Acquired for Public Use</i> , 3 Cal. L. Revision Comm'n Reports, at C-1 (1961)	Not enacted; but see Gov't Code § 7260 <i>et seq.</i> , enacting substance of recommendation.
30. <i>Rescission of Contracts</i> , 3 Cal. L. Revision Comm'n Reports, at D-1 (1961)	Enacted. 1961 Cal. Stat. ch. 589

Recommendation	Action by Legislature
31. <i>Right to Counsel and Separation of Delinquent From Nondelinquent Minor in Juvenile Court Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at E-1 (1961)	Enacted. 1961 Cal. Stat. ch. 1616
32. <i>Survival of Actions</i> , 3 Cal. L. Revision Comm'n Reports, at F-1 (1961)	Enacted. 1961 Cal. Stat. ch. 657
33. <i>Arbitration</i> , 3 Cal. L. Revision Comm'n Reports, at G-1 (1961)	Enacted. 1961 Cal. Stat. ch. 461
34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 Cal. L. Revision Comm'n Reports, at H-1 (1961)	Not enacted 1961; but see recommendation to 1963 session (item 39 <i>infra</i>), which was enacted.
35. <i>Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere</i> , 3 Cal. L. Revision Comm'n Reports, at I-1 (1961)	Enacted. 1961 Cal. Stat. ch. 636
36. <i>Notice of Alibi in Criminal Actions</i> , 3 Cal. L. Revision Comm'n Reports, at J-1 (1961)	Not enacted.
37. <i>Discovery in Eminent Domain Proceedings</i> , 4 Cal. L. Revision Comm'n Reports 701 (1963); 8 Cal. L. Revision Comm'n Reports 19 (1967)	Enacted. 1967 Cal. Stat. ch. 1104
38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 801 (1963)	Enacted. 1963 Cal. Stat. ch. 1681 <i>See 4:211, 219</i>
39. <i>Claims, Actions and Judgments Against Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1001 (1963)	Enacted. 1963 Cal. Stat. ch. 1715 <i>See 4:211, 222</i>
40. <i>Insurance Coverage for Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1201 (1963)	Enacted. 1963 Cal. Stat. ch. 1682 <i>See 4:212, 223</i>
41. <i>Defense of Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1301 (1963)	Enacted. 1963 Cal. Stat. ch. 1683 <i>See 4:212, 224</i>
42. <i>Liability of Public Entities for Ownership and Operation of Motor Vehicles</i> , 4 Cal. L. Revision Comm'n Reports 1401 (1963); 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 1527

Recommendation	Action by Legislature
43. <i>Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer</i> , 4 Cal. L. Revision Comm'n Reports 1501 (1963)	Enacted. 1963 Cal. Stat. ch. 1684 <i>See</i> 4:212, 224
44. <i>Sovereign Immunity — Amendments and Repeals of Inconsistent Statutes</i> , 4 Cal. L. Revision Comm'n Reports 1601 (1963)	Enacted. 1963 Cal. Stat. chs. 1685, 1686, 2029 <i>See</i> 4:213
45. <i>Evidence Code</i> , 7 Cal. L. Revision Comm'n Reports 1 (1965)	Enacted. 1965 Cal. Stat. ch. 299 <i>See</i> 7:912, 923
46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 653 <i>See</i> 7:914, 928
47. <i>Evidence Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 101 (1967)	Enacted in part. 1967 Cal. Stat. ch. 650 Balance enacted. 1970 Cal. Stat. ch. 69 <i>See</i> 8:1315
48. <i>Evidence — Agricultural Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 201 (1967)	Enacted. 1967 Cal. Stat. ch. 262
49. <i>Evidence — Commercial Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 301 (1967)	Enacted. 1967 Cal. Stat. ch. 703
50. <i>Whether Damage for Personal Injury to a Married Person Should Be Separate or Community Property</i> , 8 Cal. L. Revision Comm'n Reports 401 (1967); 8 Cal. L. Revision Comm'n Reports 1385 (1967)	Enacted. 1968 Cal. Stat. chs. 457, 458 <i>See</i> 8:1318; 9:18
51. <i>Vehicle Code Section 17150 and Related Sections</i> , 8 Cal. L. Revision Comm'n Reports 501 (1967)	Enacted. 1967 Cal. Stat. ch. 702 <i>See</i> 8:1317
52. <i>Additur</i> , 8 Cal. L. Revision Comm'n Reports 601 (1967)	Enacted. 1967 Cal. Stat. ch. 72 <i>See</i> 8:1317
53. <i>Abandonment or Termination of a Lease</i> , 8 Cal. L. Revision Comm'n Reports 701 (1967); 9 Cal. L. Revision Comm'n Reports 401 (1969); 9 Cal. L. Revision Comm'n Reports 153 (1969)	Enacted. 1970 Cal. Stat. ch. 89 <i>See</i> 8:1319; 10:1018

Recommendation	Action by Legislature
54. <i>Good Faith Improver of Land Owned by Another</i> , 8 Cal. L. Revision Comm'n Reports 801 (1967); 8 Cal. L. Revision Comm'n Reports 1373 (1967)	Enacted. 1968 Cal. Stat. ch. 150 <i>See 8:2319; 9:19</i>
55. <i>Suit By or Against an Unincorporated Association</i> , 8 Cal. L. Revision Comm'n Reports 901 (1967)	Enacted. 1967 Cal. Stat. ch. 1324 <i>See 8:1317</i>
56. <i>Escheat</i> , 8 Cal. L. Revision Comm'n Reports 1001 (1967)	Enacted. 1968 Cal. Stat. chs. 247, 356 <i>See 9:16</i>
57. <i>Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding</i> , 8 Cal. L. Revision Comm'n Reports 1361 (1967)	Enacted. 1968 Cal. Stat. ch. 133 <i>See 9:19</i>
58. <i>Service of Process on Unincorporated Associations</i> , 8 Cal. L. Revision Comm'n Reports 1403 (1967)	Enacted. 1968 Cal. Stat. ch. 132 <i>See 9:18</i>
59. <i>Sovereign Immunity — Statute of Limitations</i> , 9 Cal. L. Revision Comm'n Reports 49 (1969); 9 Cal. L. Revision Comm'n Reports 175 (1969)	Enacted. 1970 Cal. Stat. ch. 104 <i>See 9:98</i>
60. <i>Additur and Remittitur</i> , 9 Cal. L. Revision Comm'n Reports 63 (1969)	Enacted. 1969 Cal. Stat. ch. 115 <i>See 9:99</i>
61. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 71 (1969)	Enacted. 1969 Cal. Stat. ch. 114 <i>See 9:98</i>
62. <i>Quasi-Community Property</i> , 9 Cal. L. Revision Comm'n Reports 113 (1969)	Enacted. 1970 Cal. Stat. ch. 312 <i>See 10:1019</i>
63. <i>Arbitration of Just Compensation</i> , 9 Cal. L. Revision Comm'n Reports 123 (1969)	Enacted. 1970 Cal. Stat. ch. 417 <i>See 10:1018</i>
64. <i>Revisions of Evidence Code</i> , 9 Cal. L. Revision Comm'n Reports 137 (1969)	Enacted in part. 1970 Cal. Stat. ch. 69 <i>See also</i> 1970 Cal. Stat. chs. 1396, 1397; 1972 Cal. Stat. ch. 888 <i>See 10:1018</i>
65. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 Cal. L. Revision Comm'n Reports 201 (1969)	Enacted. 1969 Cal. Stat. ch. 156 <i>See 9:99</i>
66. <i>Powers of Appointment</i> , 9 Cal. L. Revision Comm'n Reports 301 (1969)	Enacted. 1969 Cal. Stat. chs. 113, 155 <i>See 9:98</i>

Recommendation	Action by Legislature
67. <i>Evidence Code — Revisions of Privileges Article</i> , 9 Cal. L. Revision Comm'n Reports 501 (1969)	Vetoed; but see 1970 Cal. Stat. chs. 1396, 1397 <i>See</i> 9:98
68. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 601 (1969)	Enacted. 1970 Cal. Stat. ch. 618 <i>See</i> 10:1019
69. <i>Representation as to the Credit of Third Persons and the Statute of Frauds</i> , 9 Cal. L. Revision Comm'n Reports 701 (1969)	Enacted. 1970 Cal. Stat. ch. 720 <i>See</i> 10:1021
70. <i>Revisions of Governmental Liability Act</i> , 9 Cal. L. Revision Comm'n Reports 801 (1969)	Enacted in part. 1970 Cal. Stat. chs. 662, 1099 <i>See</i> 10:1020
71. <i>"Vesting" of Interests Under Rule Against Perpetuities</i> , 9 Cal. L. Revision Comm'n Reports 901 (1969)	Enacted. 1970 Cal. Stat. ch. 45 <i>See</i> 10:1021
72. <i>Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions</i> , 10 Cal. L. Revision Comm'n Reports 501 (1971)	Enacted. 1971 Cal. Stat. chs. 244, 950; see also 1973 Cal. Stat. ch. 828 <i>See</i> 10:1125
73. <i>Wage Garnishment and Related Matters</i> , 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601 (1976); 13 Cal. L. Revision Comm'n Reports 1703 (1976); 14 Cal. L. Revision Comm'n Reports 261 (1978)	Enacted in part. 1978 Cal. Stat. ch. 1133; see also 1979 Cal. Stat. ch. 66 <i>See</i> 11:1024; 11:1123; 12:530; 13:2012; 14:13, 223; 15:1024
74. <i>Proof of Foreign Official Records</i> , 10 Cal. L. Revision Comm'n Reports 1022 (1971)	Enacted. 1970 Cal. Stat. ch. 41
75. <i>Inverse Condemnation — Insurance Coverage</i> , 10 Cal. L. Revision Comm'n Reports 1051 (1971)	Enacted. 1971 Cal. Stat. ch. 140 <i>See</i> 10:1126
76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 Cal. L. Revision Comm'n Reports 1147 (1971)	Enacted. 1971 Cal. Stat. ch. 1607 <i>See</i> 10:1126
77. <i>Civil Arrest</i> , 11 Cal. L. Revision Comm'n Reports 1 (1973)	Enacted. 1973 Cal. Stat. ch. 20 <i>See</i> 11:1123

Recommendation	Action by Legislature
78. <i>Claim and Delivery Statute</i> , 11 Cal. L. Revision Comm'n Reports 301 (1973)	Enacted. 1973 Cal. Stat. ch. 526 <i>See 11:1124</i>
79. <i>Unclaimed Property</i> , 11 Cal. L. Revision Comm'n Reports 401 (1973); 12 Cal. L. Revision Comm'n Reports 609 (1974)	Proposed resolution enacted. 1973 Cal. Stat. res. ch. 76 Legislation enacted. 1975 Cal. Stat. ch. 25 <i>See 11:1124; 12:530; 13:2012</i>
80. <i>Enforcement of Sister State Money Judgments</i> , 11 Cal. L. Revision Comm'n Reports 451 (1973)	Enacted. 1974 Cal. Stat. ch. 211 <i>See 12:534</i>
81. <i>Prejudgment Attachment</i> , 11 Cal. L. Revision Comm'n Reports 701 (1973)	Enacted. 1974 Cal. Stat. ch. 1516 <i>See also 1975 Cal. Stat. ch. 200</i> <i>See 12:530</i>
82. <i>Landlord-Tenant Relations</i> , 11 Cal. L. Revision Comm'n Reports 951 (1973)	Enacted. 1974 Cal. Stat. chs. 331, 332 <i>See 12:536</i>
83. <i>Pleading</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1024 (1973)	Enacted. 1972 Cal. Stat. ch. 73
84. <i>Evidence — Judicial Notice</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1025 (1973)	Enacted. 1972 Cal. Stat. ch. 764
85. <i>Evidence — "Criminal Conduct" Exception</i> , 11 Cal. L. Revision Comm'n Reports 1147 (1973)	Not enacted 1974; see recommendation to 1975 session (item 90 <i>infra</i>), which was enacted. <i>See 12:535</i>
86. <i>Erroneously Compelled Disclosure of Privileged Information</i> , 11 Cal. L. Revision Comm'n Reports 1163 (1973)	Enacted. 1974 Cal. Stat. ch. 227 <i>See 12:535</i>
87. <i>Liquidated Damages</i> , 11 Cal. L. Revision Comm'n Reports 1201 (1973); 13 Cal. L. Revision Comm'n Reports 1735 (1976); 13 Cal. L. Revision Comm'n Reports 2139 (1976)	Enacted. 1977 Cal. Stat. ch. 198 <i>See 12:535; 13:1616; 14:13</i>
88. <i>Payment of Judgments Against Local Public Entities</i> , 12 Cal. L. Revision Comm'n Reports 575 (1974)	Enacted. 1975 Cal. Stat. ch. 285 <i>See 13:2011</i>
89. <i>View by Trier of Fact in a Civil Case</i> , 12 Cal. L. Revision Comm'n Reports 587 (1974)	Enacted. 1975 Cal. Stat. ch. 301 <i>See 13:2011</i>

Recommendation	Action by Legislature
90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 Cal. L. Revision Comm'n Reports 601 (1974)	Enacted. 1975 Cal. Stat. ch. 318 <i>See 13:2012</i>
91. <i>Improvement Acts</i> , 12 Cal. L. Revision Comm'n Reports 1001 (1974)	Enacted. 1974 Cal. Stat. ch. 426 <i>See 12:534</i>
92. <i>Condemnation Law and Procedure: Conforming Changes in Special District Statutes</i> , 12 Cal. L. Revision Comm'n Reports 1101 (1974); 12 Cal. L. Revision Comm'n Reports 2004 (1974)	Enacted. 1975 Cal. Stat. chs. 581, 582, 584, 585, 586, 587, 1176, 1276
93. <i>The Eminent Domain Law</i> , 12 Cal. L. Revision Comm'n Reports 1601 (1974)	Enacted. 1975 Cal. Stat. chs. 1239, 1240, 1275 <i>See 13:2010</i>
94. <i>Oral Modification of Written Contracts</i> , 13 Cal. L. Revision Comm'n Reports 301 (1976); 13 Cal. L. Revision Comm'n Reports 2129 (1976)	Enacted. 1975 Cal. Stat. ch. 7; 1976 Cal. Stat. ch. 109 <i>See 13:2011; 13:1616</i>
95. <i>Partition of Real and Personal Property</i> , 13 Cal. L. Revision Comm'n Reports 401 (1976)	Enacted. 1976 Cal. Stat. ch. 73 <i>See 13:2013, 1610</i>
96. <i>Revision of the Attachment Law</i> , 13 Cal. L. Revision Comm'n Reports 801 (1976)	Enacted. 1976 Cal. Stat. ch. 437 <i>See 13:1612</i>
97. <i>Undertakings for Costs</i> , 13 Cal. L. Revision Comm'n Reports 901 (1976)	Not enacted 1976; but see recommendation to 1979 session (item 118 <i>infra</i>), which was enacted. <i>See 13:1614</i>
98. <i>Service of Process on Unincorporated Associations</i> , 13 Cal. L. Revision Comm'n Reports 1657 (1976)	Enacted. 1976 Cal. Stat. ch. 888 <i>See 13:1616</i>
99. <i>Sister State Money Judgments</i> , 13 Cal. L. Revision Comm'n Reports 1669 (1976)	Enacted. 1977 Cal. Stat. ch. 232 <i>See 14:12</i>
100. <i>Damages in Action for Breach of Lease</i> , 13 Cal. L. Revision Comm'n Reports 1679 (1976)	Enacted. 1977 Cal. Stat. ch. 49 <i>See 14:13</i>
101. <i>Admissibility of Copies of Business Records in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2051 (1976)	Not enacted. <i>See 13:2012</i>

Recommendation	Action by Legislature
102. <i>Turnover Orders Under the Claim and Delivery Law</i> , 13 Cal. L. Revision Comm'n Reports 2079 (1976)	Enacted. 1976 Cal. Stat. ch. 145 <i>See 13:1614</i>
103. <i>Relocation Assistance by Private Condemnors</i> , 13 Cal. L. Revision Comm'n Reports 2085 (1976)	Enacted. 1976 Cal. Stat. ch. 143 <i>See 13:1614</i>
104. <i>Condemnation for Byroads and Utility Easements</i> , 13 Cal. L. Revision Comm'n Reports 2091 (1976)	Enacted in part (utility easements). 1976 Cal. Stat. ch. 994 <i>See 13:1615</i>
105. <i>Transfer of Out-of-State Trusts to California</i> , 13 Cal. L. Revision Comm'n Reports 2101 (1976)	Enacted. 1976 Cal. Stat. ch. 144 <i>See 13:1615</i>
106. <i>Admissibility of Duplicates in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2115 (1976)	Enacted in bill not sponsored by Commission. See 1985 Cal. Stat. ch. 100 <i>For original history, see 13:1615</i>
107. <i>Nonprofit Corporation Law</i> , 13 Cal. L. Revision Comm'n Reports 2201 (1976)	Not enacted.; legislation on this subject, not sponsored by Commission, was enacted in 1978. <i>For original history, see 14:11</i>
108. <i>Use of Keepers Pursuant to Writs of Execution</i> , 14 Cal. L. Revision Comm'n Reports 49 (1978)	Enacted. 1977 Cal. Stat. ch. 155 <i>See 14:12</i>
109. <i>Attachment Law: Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> , 14 Cal. L. Revision Comm'n Reports 61 (1978)	Enacted. 1977 Cal. Stat. ch. 499 <i>See 14:12</i>
110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 Cal. L. Revision Comm'n Reports 83 (1978)	Enacted. 1978 Cal. Stat. ch. 286 <i>See 14:224</i>
111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 Cal. L. Revision Comm'n Reports 93 (1978)	Enacted. 1978 Cal. Stat. ch. 151 <i>See 14:224</i>
112. <i>Evidence of Market Value of Property</i> , 14 Cal. L. Revision Comm'n Reports 105 (1978)	Enacted in part. 1978 Cal. Stat. ch. 294 Substance of remainder enacted in 1980. See item 123 <i>infra</i> <i>See 14:225</i>

Recommendation	Action by Legislature
113. <i>Psychotherapist-Patient Privilege</i> , 14 Cal. L. Revision Comm'n Reports 127 (1978); 15 Cal. L. Revision Comm'n Reports 1307 (1980)	Enacted in part. 1985 Cal. Stat. chs. 545 (licensed educational psychologist), 1077 (repeal of Evid. Code § 1028) <i>See 14:225</i>
114. <i>Parol Evidence Rule</i> , 14 Cal. L. Revision Comm'n Reports 143 (1978)	Enacted. 1978 Cal. Stat. ch. 150 <i>See 14:224</i>
115. <i>Attachment Law — Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action,"</i> 14 Cal. L. Revision Comm'n Reports 241 (1978)	Enacted. 1978 Cal. Stat. ch. 273 <i>See 14:224</i>
116. <i>Powers of Appointment</i> (technical changes), 14 Cal. L. Revision Comm'n Reports 257 (1978)	Enacted. 1978 Cal. Stat. ch. 266
117. <i>Ad Valorem Property Taxes in Eminent Domain Proceedings</i> , 14 Cal. L. Revision Comm'n Reports 291 (1978)	Enacted. 1979 Cal. Stat. ch. 31 <i>See 15:1025</i>
118. <i>Security for Costs</i> , 14 Cal. L. Revision Comm'n Reports 319 (1978)	Enacted. 1980 Cal. Stat. ch. 114 <i>See 15:1025</i>
119. <i>Guardianship-Conservatorship Law</i> , 14 Cal. L. Revision Comm'n Reports 501 (1978); 15 Cal. L. Revision Comm'n Reports 451 (1980)	Enacted. 1979 Cal. Stat. chs. 165, 726, 730 <i>See 15:1024, 1427</i>
120. <i>Interest Rate on Judgments</i> , 15 Cal. L. Revision Comm'n Reports 7 (1980)	Enacted. 1982 Cal. Stat. ch. 150 <i>See 15:1427; 16:2025</i>
121. <i>Married Women as Sole Traders</i> , 15 Cal. L. Revision Comm'n Reports 21 (1980)	Enacted. 1980 Cal. Stat. ch. 123 <i>See 15:1426</i>
122. <i>State Tax Liens</i> , 15 Cal. L. Revision Comm'n Reports 29 (1980)	Enacted. 1980 Cal. Stat. ch. 600 <i>See 15:1427</i>
123. <i>Application of Evidence Code Property Valuation Rules in Noncondemnation Cases</i> , 15 Cal. L. Revision Comm'n Reports 301 (1980)	Enacted. 1980 Cal. Stat. ch. 381 <i>See 15:1429</i>
124. <i>Uniform Durable Power of Attorney Act</i> , 15 Cal. L. Revision Comm'n Reports 351 (1980)	Enacted. 1981 Cal. Stat. ch. 511 <i>See 16:25</i>
125. <i>Probate Homestead</i> , 15 Cal. L. Revision Comm'n Reports 401 (1980)	Enacted. 1980 Cal. Stat. ch. 119 <i>See 15:1428</i>

Recommendation	Action by Legislature
126. <i>Effect of New Bankruptcy Law on the Attachment Law</i> , 15 Cal. L. Revision Comm'n Reports 1043 (1980)	Enacted. 1979 Cal. Stat. ch. 177 <i>See 15:1024</i>
127. <i>Confessions of Judgment</i> , 15 Cal. L. Revision Comm'n Reports 1053 (1980)	Enacted. 1979 Cal. Stat. ch. 568 <i>See 15:1024</i>
128. <i>Special Assessment Liens on Property Taken for Public Use</i> , 15 Cal. L. Revision Comm'n Reports 1101 (1980)	Enacted. 1980 Cal. Stat. ch. 122 <i>See 15:1428</i>
129. <i>Assignments for the Benefit of Creditors</i> , 15 Cal. L. Revision Comm'n Reports 1117 (1980)	Enacted. 1980 Cal. Stat. ch. 135 <i>See 15:1427</i>
130. <i>Vacation of Public Streets, Highways, and Service Easements</i> , 15 Cal. L. Revision Comm'n Reports 1137 (1980)	Enacted. 1980 Cal. Stat. ch. 1050 <i>See 15:1429</i>
131. <i>Quiet Title Actions</i> , 15 Cal. L. Revision Comm'n Reports 1187 (1980)	Enacted. 1980 Cal. Stat. ch. 44 <i>See 15:1428</i>
132. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 Cal. L. Revision Comm'n Reports 1237 (1980)	Enacted. 1980 Cal. Stat. ch. 682 <i>See 15:1426</i>
133. <i>Enforcement of Claims and Judgments Against Public Entities</i> , 15 Cal. L. Revision Comm'n Reports 1257 (1980)	Enacted. 1980 Cal. Stat. ch. 215 <i>See 15:1426</i>
134. <i>Uniform Veterans Guardianship Act</i> , 15 Cal. L. Revision Comm'n Reports 1289 (1980)	Enacted. 1980 Cal. Stat. ch. 89 <i>See 15:1428</i>
135. <i>Enforcement of Obligations After Death</i> , 15 Cal. L. Revision Comm'n Reports 1327 (1980)	Enacted. 1980 Cal. Stat. ch. 124 <i>See 15:1426</i>
136. <i>Guardianship-Conservatorship</i> (technical change), 15 Cal. L. Revision Comm'n Reports 1427 (1980)	Enacted. 1980 Cal. Stat. ch. 246
137. <i>Revision of Guardianship-Conservatorship Law</i> , 15 Cal. L. Revision Comm'n Reports 1463 (1980)	Enacted. 1981 Cal. Stat. ch. 9 <i>See 16:24</i>

Recommendation	Action by Legislature
138. <i>Non-Probate Transfers</i> , 15 Cal. L. Revision Comm'n Reports 1605 (1980); 16 Cal. L. Revision Comm'n Reports 129 (1982)	Enacted in part (pay-on-death accounts). 1982 Cal. Stat. ch. 269; (credit unions and industrial loan companies) 1983 Cal. Stat. ch. 92 Substance of balance enacted. 1989 Cal. Stat. ch. 397 (banks and savings and loan associations) (item 229 <i>infra</i>) <i>See 16:2026; 17:823</i>
139. <i>Revision of the Powers of Appointment Statute</i> , 15 Cal. L. Revision Comm'n Reports 1667 (1980)	Enacted. 1981 Cal. Stat. ch. 63 <i>See 16:25</i>
140. <i>The Enforcement of Judgments Law</i> , 15 Cal. L. Revision Comm'n Reports 2001 (1980)	Enacted. 1982 Cal. Stat. chs. 497, 1364 <i>See 16:2024</i>
141. <i>State Tax Liens</i> (technical change), 16 Cal. L. Revision Comm'n Reports 24 (1982)	Enacted. 1981 Cal. Stat. ch. 217
142. <i>Assessment Liens on Property Taken for Public Use</i> (technical change), 16 Cal. L. Revision Comm'n Reports 25 (1982)	Enacted. 1981 Cal. Stat. ch. 139
143. <i>Federal Pensions as Community Property</i> , 16 Cal. L. Revision Comm'n Reports 47 (1982)	Proposed resolution adopted. 1982 Cal. Stat. res. ch. 44 <i>See 16:2027</i>
144. <i>Missing Persons</i> , 16 Cal. L. Revision Comm'n Reports 105 (1982)	Enacted. 1983 Cal. Stat. ch. 201 <i>See 17:822</i>
145. <i>Escheat</i> (technical change), 16 Cal. L. Revision Comm'n Reports 124 (1982)	Enacted. 1982 Cal. Stat. ch. 182
146. <i>Emancipated Minors</i> , 16 Cal. L. Revision Comm'n Reports 183 (1982)	Enacted. 1983 Cal. Stat. ch. 6 <i>See 17:823</i>
147. <i>Notice in Limited Conservatorship Proceedings</i> , 16 Cal. L. Revision Comm'n Reports 199 (1982)	Enacted. 1983 Cal. Stat. ch. 72 <i>See 17:823</i>
148. <i>Disclaimer of Testamentary and Other Interests</i> , 16 Cal. L. Revision Comm'n Reports 207 (1982)	Enacted. 1983 Cal. Stat. ch. 17 <i>See 17:823</i>
149. <i>Holographic and Nuncupative Wills</i> , 16 Cal. L. Revision Comm'n Reports 301 (1982)	Enacted. 1982 Cal. Stat. ch. 187 <i>See 16:2026</i>

Recommendation	Action by Legislature
150. <i>Marketable Title of Real Property</i> , 16 Cal. L. Revision Comm'n Reports 401 (1982)	Enacted. 1982 Cal. Stat. ch. 1268 <i>See 16:2026</i>
151. <i>Statutory Bonds and Undertakings</i> , 16 Cal. L. Revision Comm'n Reports 501 (1982)	Enacted. 1982 Cal. Stat. chs. 517, 998 <i>See 16:2025</i>
152. <i>Attachment</i> , 16 Cal. L. Revision Comm'n Reports 701 (1982)	Enacted. 1982 Cal. Stat. ch. 1198 <i>See 16:2025</i>
153. <i>Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage</i> , 16 Cal. L. Revision Comm'n Reports 2165 (1982), 17 Cal. L. Revision Comm'n Reports 863 (1984)	Enacted. 1983 Cal. Stat. ch. 342 <i>See 17:823</i>
154. <i>Creditors' Remedies</i> , 16 Cal. L. Revision Comm'n Reports 2175 (1982)	Enacted. 1983 Cal. Stat. ch. 155 <i>See 17:824</i>
155. <i>Conforming Changes to the Bond and Undertaking Law</i> , 16 Cal. L. Revision Comm'n Reports 2239 (1982)	Enacted. 1983 Cal. Stat. ch. 18 <i>See 17:825</i>
156. <i>Notice of Rejection of Late Claim Against Public Entity</i> , 16 Cal. L. Revision Comm'n Reports 2251 (1982)	Enacted. 1983 Cal. Stat. ch. 107 <i>See 17:824</i>
157. <i>Wills and Intestate Succession</i> , 16 Cal. L. Revision Comm'n Reports 2301 (1982)	Enacted. 1983 Cal. Stat. ch. 842 <i>See 17:822</i>
158. <i>Liability of Marital Property for Debts</i> , 17 Cal. L. Revision Comm'n Reports 1 (1984)	Enacted. 1984 Cal. Stat. ch. 1671 <i>See 18:20</i>
159. <i>Durable Power of Attorney for Health Care Decisions</i> , 17 Cal. L. Revision Comm'n Reports 101 (1984)	Enacted. 1983 Cal. Stat. ch. 1204 <i>See 17:822</i>
160. <i>Marital Property Presumptions and Transmutations</i> , 17 Cal. L. Revision Comm'n Reports 205 (1984)	Enacted in part (transmutations). 1984 Cal. Stat. ch. 1733 <i>See 18:21</i>
161. <i>Reimbursement of Educational Expenses</i> , 17 Cal. L. Revision Comm'n Reports 229 (1984)	Enacted. 1984 Cal. Stat. ch. 1661 <i>See 18:22</i>
162. <i>Special Appearance in Family Law Proceedings</i> , 17 Cal. L. Revision Comm'n Reports 243 (1984)	Enacted. 1984 Cal. Stat. ch. 156 <i>See 18:21</i>

Recommendation	Action by Legislature
163. <i>Liability of Stepparent for Child Support</i> , 17 Cal. L. Revision Comm'n Reports 251 (1984)	Enacted. 1984 Cal. Stat. ch. 249 <i>See 18:21</i>
164. <i>Awarding Temporary Use of Family Home</i> , 17 Cal. L. Revision Comm'n Reports 261 (1984)	Enacted. 1984 Cal. Stat. ch. 463 <i>See 18:21</i>
165. <i>Disposition of Community Property</i> , 17 Cal. L. Revision Comm'n Reports 269 (1984)	Not enacted. <i>See 18:22</i>
166. <i>Statutes of Limitation for Felonies</i> , 17 Cal. L. Revision Comm'n Reports 301 (1984)	Enacted. 1984 Cal. Stat. ch. 1270 <i>See 18:23; 20:2305</i>
167. <i>Independent Administration of Decedent's Estate</i> , 17 Cal. L. Revision Comm'n Reports 405 (1984)	Enacted. 1984 Cal. Stat. ch. 451 <i>See 18:19</i>
168. <i>Distribution of Estates Without Administration</i> , 17 Cal. L. Revision Comm'n Reports 421 (1984)	Enacted. 1984 Cal. Stat. ch. 451 <i>See 18:19</i>
169. <i>Simultaneous Deaths</i> , 17 Cal. L. Revision Comm'n Reports 443 (1984)	Enacted in part. See 1989 Cal. Stat. ch. 544 (intestate succession) (item 227 <i>infra</i>); 1990 Cal. Stat. ch. 710 (statutory will) (item 240 <i>infra</i>) <i>See 18:20</i>
170. <i>Notice of Will</i> , 17 Cal. L. Revision Comm'n Reports 461 (1984)	Not enacted. <i>See 18:20</i>
171. <i>Garnishment of Amounts Payable to Trust Beneficiary</i> , 17 Cal. L. Revision Comm'n Reports 471 (1984)	Enacted. 1984 Cal. Stat. ch. 493 <i>See 18:19</i>
172. <i>Bonds for Personal Representatives</i> , 17 Cal. L. Revision Comm'n Reports 483 (1984)	Enacted. 1984 Cal. Stat. ch. 451 <i>See 18:19</i>
173. <i>Recording Affidavits of Death</i> , 17 Cal. L. Revision Comm'n Reports 493 (1984)	Enacted. 1984 Cal. Stat. ch. 527 <i>See 18:20</i>
174. <i>Execution of Witnessed Will</i> , 17 Cal. L. Revision Comm'n Reports 509 (1984)	Not enacted. <i>See 18:20</i>
175. <i>Revision of Wills and Intestate Succession Law</i> , 17 Cal. L. Revision Comm'n Reports 537 (1984)	Enacted. 1984 Cal. Stat. ch. 892 <i>See 18:19</i>

Recommendation	Action by Legislature
176. <i>Uniform Transfers to Minors Act</i> , 17 Cal. L. Revision Comm'n Reports 601 (1984)	Enacted. 1984 Cal. Stat. ch. 243 <i>See 18:19</i>
177. <i>Statutory Forms for Durable Powers of Attorney</i> , 17 Cal. L. Revision Comm'n Reports 701 (1984)	Enacted. 1984 Cal. Stat. chs. 312 (health care), 602 (general power of attorney) <i>See 18:18</i>
178. <i>Vacation of Streets</i> (technical change), 17 Cal. L. Revision Comm'n Reports 825 (1984)	Enacted. 1983 Cal. Stat. ch. 52
179. <i>Effect of Death of Support Obligor</i> , 17 Cal. L. Revision Comm'n Reports 897 (1984)	Enacted in part. 1984 Cal. Stat. ch. 19. Balance enacted. 1985 Cal. Stat. ch. 362 (item 186 <i>infra</i>) <i>See 18:21</i>
180. <i>Dismissal for Lack of Prosecution</i> , 17 Cal. L. Revision Comm'n Reports 905 (1984)	Enacted. 1984 Cal. Stat. ch. 1705 <i>See 18:23</i>
181. <i>Severance of Joint Tenancy</i> , 17 Cal. L. Revision Comm'n Reports 941 (1984)	Enacted. 1984 Cal. Stat. ch. 519 <i>See 18:23</i>
182. <i>Quiet Title and Partition Judgments</i> , 17 Cal. L. Revision Comm'n Reports 947 (1984)	Enacted. 1984 Cal. Stat. ch. 20 <i>See 18:22</i>
183. <i>Dormant Mineral Rights</i> , 17 Cal. L. Revision Comm'n Reports 957 (1984)	Enacted. 1984 Cal. Stat. ch. 240 <i>See 18:22</i>
184. <i>Creditors' Remedies</i> , 17 Cal. L. Revision Comm'n Reports 975 (1984)	Enacted. 1984 Cal. Stat. ch. 538 <i>See 18:23</i>
185. <i>Rights Among Cotenants</i> , 17 Cal. L. Revision Comm'n Reports 1023 (1984)	Enacted. 1984 Cal. Stat. ch. 241 <i>See 18:23</i>
186. <i>Provision for Support if Support Obligor Dies</i> , 18 Cal. L. Revision Comm'n Reports 119 (1986)	Enacted. 1985 Cal. Stat. ch. 362 <i>See 18:217</i>
187. <i>Transfer of State Registered Property Without Probate</i> , 18 Cal. L. Revision Comm'n Reports 129 (1986)	Enacted. 1985 Cal. Stat. ch. 982 <i>See 18:216</i>
188. <i>Dividing Jointly Owned Property Upon Marriage Dissolution</i> , 18 Cal. L. Revision Comm'n Reports 147 (1986)	Enacted. 1985 Cal. Stat. ch. 362 <i>See 18:217</i>

Recommendation	Action by Legislature
189. <i>Probate Law</i> (clarifying revisions), 18 Cal. L. Revision Comm'n Reports 216 (1986)	Enacted. 1985 Cal. Stat. ch. 359
190. <i>Creditors' Remedies</i> (technical change), 18 Cal. L. Revision Comm'n Reports 217 (1986)	Enacted. 1985 Cal. Stat. ch. 41
191. <i>Uniform Transfers to Minors Act</i> (technical change), 18 Cal. L. Revision Comm'n Reports 218 (1986)	Enacted. 1985 Cal. Stat. ch. 90
192. <i>Protection of Mediation Communications</i> , 18 Cal. L. Revision Comm'n Reports 241 (1986)	Enacted. 1985 Cal. Stat. ch. 731 <i>See 18:218</i>
193. <i>Recording Severance of Joint Tenancy</i> , 18 Cal. L. Revision Comm'n Reports 249 (1986)	Enacted. 1985 Cal. Stat. ch. 157 <i>See 18:217</i>
194. <i>Abandoned Easements</i> , 18 Cal. L. Revision Comm'n Reports 257 (1986)	Enacted. 1985 Cal. Stat. ch. 157 <i>See 18:217</i>
195. <i>Distribution Under a Will or Trust</i> , 18 Cal. L. Revision Comm'n Reports 269 (1986)	Enacted. 1985 Cal. Stat. ch. 982 <i>See 18:216</i>
196. <i>Effect of Adoption or Out of Wedlock Birth on Rights at Death</i> , 18 Cal. L. Revision Comm'n Reports 289 (1986)	Enacted. 1985 Cal. Stat. ch. 982 <i>See 18:216</i>
197. <i>Durable Powers of Attorney</i> , 18 Cal. L. Revision Comm'n Reports 305 (1986)	Enacted. 1985 Cal. Stat. ch. 403 <i>See 18:216</i>
198. <i>Litigation Expenses in Family Law Proceedings</i> , 18 Cal. L. Revision Comm'n Reports 351 (1986)	Enacted. 1985 Cal. Stat. ch. 362 <i>See 18:217</i>
199. <i>Civil Code Sections 4800.1 and 4800.2</i> , 18 Cal. L. Revision Comm'n Reports 383 (1986)	One of two recommended measures enacted (<i>Application of Civil Code §§ 4800.1 and 4800.2</i>). 1986 Cal. Stat. ch. 49 <i>See 18:1717</i>
200. <i>The Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 501 (1986)	Enacted. 1986 Cal. Stat. ch. 820 <i>See 18:1718</i>
201. <i>Disposition of Estate Without Administration</i> , 18 Cal. L. Revision Comm'n Reports 1005 (1986)	Enacted. 1986 Cal. Stat. ch. 783 <i>See 18:1717</i>
202. <i>Small Estate Set-Aside</i> , 18 Cal. L. Revision Comm'n Reports 1101 (1986)	Enacted. 1986 Cal. Stat. ch. 783 <i>See 18:1717</i>

Recommendation	Action by Legislature
203. <i>Proration of Estate Taxes</i> , 18 Cal. L. Revision Comm'n Reports 1127 (1986)	Enacted. 1986 Cal. Stat. ch. 783 <i>See 18:1717</i>
204. <i>Notice in Guardianship and Conservatorship</i> , 18 Cal. L. Revision Comm'n Reports 1793 (1986)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:516</i>
205. <i>Preliminary Provisions and Definitions</i> , 18 Cal. L. Revision Comm'n Reports 1807 (1986)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:516</i>
206. <i>Technical Revisions in the Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 1823 (1986)	Enacted. 1987 Cal. Stat. ch. 128 <i>See 19:517</i>
207. <i>Supervised Administration</i> , 19 Cal. L. Revision Comm'n Reports 5 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:516</i>
208. <i>Independent Administration</i> , 19 Cal. L. Revision Comm'n Reports 205 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
209. <i>Creditor Claims Against Decedent's Estate</i> , 19 Cal. L. Revision Comm'n Reports 299 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
210. <i>Notice in Probate Proceedings</i> , 19 Cal. L. Revision Comm'n Reports 357 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
211. <i>Marital Deduction Gifts</i> , 19 Cal. L. Revision Comm'n Reports 615 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
212. <i>Estates of Missing Persons</i> , 19 Cal. L. Revision Comm'n Reports 637 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
213. <i>Public Guardians and Administrators</i> , 19 Cal. L. Revision Comm'n Reports 707 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
214. <i>Inventory and Appraisal</i> , 19 Cal. L. Revision Comm'n Reports 741 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
215. <i>Opening Estate Administration</i> , 19 Cal. L. Revision Comm'n Reports 787 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
216. <i>Abatement</i> , 19 Cal. L. Revision Comm'n Reports 865 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
217. <i>Accounts</i> , 19 Cal. L. Revision Comm'n Reports 877 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>

Recommendation	Action by Legislature
218. <i>Litigation Involving Decedents</i> , 19 Cal. L. Revision Comm'n Reports 899 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
219. <i>Rules of Procedure in Probate</i> , 19 Cal. L. Revision Comm'n Reports 917 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
220. <i>Distribution and Discharge</i> , 19 Cal. L. Revision Comm'n Reports 953 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
221. <i>Nondomiciliary Decedents</i> , 19 Cal. L. Revision Comm'n Reports 993 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
222. <i>Interest and Income During Administration</i> , 19 Cal. L. Revision Comm'n Reports 1019 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
223. <i>Authority of the Law Revision Commission</i> , 19 Cal. L. Revision Comm'n Reports 1162 (1988)	Enacted. 1989 Cal. Stat. ch. 152
224. <i>1988 Probate Cleanup Bill</i> , see 19 Cal. L. Revision Comm'n Reports 1167, 1191–1200 (1988)	Enacted. 1988 Cal. Stat. ch. 113
225. <i>Creditors' Remedies</i> , 19 Cal. L. Revision Comm'n Reports 1251 (1988)	Enacted. 1989 Cal. Stat. ch. 1416 <i>See 20:201</i>
226. <i>No Contest Clauses</i> , 20 Cal. L. Revision Comm'n Reports 7 (1990)	Enacted. 1989 Cal. Stat. ch. 544 <i>See 20:201</i>
227. <i>120-Hour Survival Requirement</i> , 20 Cal. L. Revision Comm'n Reports 21 (1990)	Enacted. 1989 Cal. Stat. ch. 544 <i>See 20:201</i>
228. <i>Compensation of Attorneys and Personal Representatives</i> , 20 Cal. L. Revision Comm'n Reports 31 (1990)	Enacted except for portion relating to compensation of attorneys. 1990 Cal. Stat. ch. 79 <i>See 20:2218</i>
229. <i>Multiple-Party Accounts</i> , 20 Cal. L. Revision Comm'n Reports 95 (1990)	Enacted. 1989 Cal. Stat. ch. 397 <i>See 20:202</i>
230. <i>Notice to Creditors</i> , 20 Cal. L. Revision Comm'n Reports 165 (1990); 20 Cal. L. Revision Comm'n Reports 507 (1990)	Enacted in part. 1989 Cal. Stat. ch. 544 Balance enacted. 1990 Cal. Stat. ch. 140 <i>See 20:201</i>
231. <i>1989 Probate Cleanup Bill</i> , see 20 Cal. L. Revision Comm'n Reports 201, 227 (1990)	Enacted. 1989 Cal. Stat. ch. 21

Recommendation	Action by Legislature
232. <i>Bonds of Guardians and Conservators</i> , 20 Cal. L. Revision Comm'n Reports 235 (1990)	Enacted. 1989 Cal. Stat. ch. 544
233. <i>Brokers' Commissions on Probate Sales</i> , 20 Cal. L. Revision Comm'n Reports 237-42 (1990)	Enacted. 1989 Cal. Stat. ch. 544
234. <i>Commercial Real Property Leases</i> , 20 Cal. L. Revision Comm'n Reports 251 (1990)	Enacted. 1989 Cal. Stat. ch. 982 <i>See 20:202</i>
235. <i>Trustees' Fees</i> , 20 Cal. L. Revision Comm'n Reports 279 (1990)	Enacted. 1990 Cal. Stat. ch. 79 <i>See 20:2218</i>
236. <i>Springing Powers of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 405 (1990)	Enacted. 1990 Cal. Stat. ch. 986 <i>See 20:2220</i>
237. <i>Uniform Statutory Form Powers of Attorney Act</i> , 20 Cal. L. Revision Comm'n Reports 415 (1990)	Enacted. 1990 Cal. Stat. ch. 986 <i>See 20:2220</i>
238. <i>Disposition of Small Estate by Public Administrator</i> , 20 Cal. L. Revision Comm'n Reports 529 (1990)	Enacted. 1990 Cal. Stat. ch. 324 <i>See 20:2220</i>
239. <i>Court-Authorized Medical Treatment</i> , 20 Cal. L. Revision Comm'n Reports 537 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
240. <i>Survival Requirement for Beneficiary of Statutory Will</i> , 20 Cal. L. Revision Comm'n Reports 549 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
241. <i>Execution or Modification of Lease Without Court Order</i> , 20 Cal. L. Revision Comm'n Reports 557 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
242. <i>Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding</i> , 20 Cal. L. Revision Comm'n Reports 565 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
243. <i>Repeal of Probate Code Section 6402.5 (In-Law Inheritance)</i> , 20 Cal. L. Revision Comm'n Reports 571 (1990)	Not enacted. <i>See 20:2220</i>
244. <i>Access to Decedent's Safe Deposit Box</i> , 20 Cal. L. Revision Comm'n Reports 597 (1990); 20 Cal. L. Revision Comm'n Reports 2859 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 20:2219; 21:20</i>

Recommendation	Action by Legislature
245. <i>Priority of Conservator or Guardian for Appointment as Administrator</i> , 20 Cal. L. Revision Comm'n Reports 607 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
246. <i>New Probate Code</i> , 20 Cal. L. Revision Comm'n Reports 1001 (1990)	Enacted. 1990 Cal. Stat. ch. 79 <i>See 20:2218</i>
247. <i>Notice in Probate Where Address Unknown</i> , 20 Cal. L. Revision Comm'n Reports 2245 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
248. <i>Jurisdiction of Superior Court in Trust Matters</i> , 20 Cal. L. Revision Comm'n Reports 2253 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
249. <i>Uniform Management of Institutional Funds Act</i> , 20 Cal. L. Revision Comm'n Reports 2265 (1990)	Enacted. 1990 Cal. Stat. ch. 1307 <i>See 20:2220</i>
250. <i>Remedies for Breach of Assignment or Sublease Covenant</i> , 20 Cal. L. Revision Comm'n Reports 2405 (1990)	Enacted. 1991 Cal. Stat. ch. 67 <i>See 21:22</i>
251. <i>Use Restrictions</i> , 20 Cal. L. Revision Comm'n Reports 2421 (1990)	Enacted. 1991 Cal. Stat. ch. 67 <i>See 21:22</i>
252. <i>Uniform Statutory Rule Against Perpetuities</i> , 20 Cal. L. Revision Comm'n Reports 2501 (1990)	Enacted. 1991 Cal. Stat. ch. 156 <i>See 21:21</i>
253. <i>Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care</i> , 20 Cal. L. Revision Comm'n Reports 2605 (1990)	Enacted. 1991 Cal. Stat. ch. 896 <i>See 21:22</i>
254. <i>Recognition of Agent's Authority Under Statutory Form Power of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 2629 (1990); 22 Cal. L. Revision Comm'n Reports 965 (1992)	Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i>
255. <i>Debts That Are Contingent, Disputed, or Not Due</i> , 20 Cal. L. Revision Comm'n Reports 2707 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
256. <i>Remedies of Creditor Where Personal Representative Fails to Give Notice</i> , 20 Cal. L. Revision Comm'n Reports 2719 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>

Recommendation	Action by Legislature
257. <i>Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)</i> , 20 Cal. L. Revision Comm'n Reports 2729 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
258. <i>Disposition of Small Estate Without Probate</i> , 20 Cal. L. Revision Comm'n Reports 2737 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
259. <i>Right of Surviving Spouse to Dispose of Community Property</i> , 20 Cal. L. Revision Comm'n Reports 2769 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
260. <i>Litigation Involving Decedents</i> , 20 Cal. L. Revision Comm'n Reports 2785 (1990); 22 Cal. L. Revision Comm'n Reports 895 (1992)	Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i>
261. <i>Compensation in Guardianship and Conservatorship Proceedings</i> , 20 Cal. L. Revision Comm'n Reports 2837 (1990); 21 Cal. L. Revision Comm'n Reports 227 (1991)	Enacted. 1992 Cal. Stat. ch. 572 <i>See 22:853</i>
262. <i>Recognition of Trustees' Powers</i> , 20 Cal. L. Revision Comm'n Reports 2849 (1990)	Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i>
263. <i>Gifts in View of Impending Death</i> , 20 Cal. L. Revision Comm'n Reports 2869 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
264. <i>TOD Beneficiary Designation for Vehicles and Certain Other State Registered Property</i> , 20 Cal. L. Revision Comm'n Reports 2883 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
265. <i>1991 General Probate Bill</i> (miscellaneous provisions), see 20 Cal. L. Revision Comm'n Reports 2907 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
266. <i>1991 Probate Urgency Clean-up Bill</i> , see 20 Cal. L. Revision Comm'n Reports 2909 (1990)	Enacted. 1991 Cal. Stat. ch. 82 <i>See 21:21</i>
267. <i>Application of Marketable Title Statute to Executory Interests</i> , 21 Cal. L. Revision Comm'n Reports 53 (1991)	Enacted. 1991 Cal. Stat. ch. 156 <i>See 21:21</i>

Recommendation	Action by Legislature
268. <i>Relocation of Powers of Appointment Statute</i> , 21 Cal. L. Revision Comm'n Reports 91 (1991)	Enacted. 1992 Cal. Stat. ch. 30 <i>See</i> 22:853
269. <i>Miscellaneous Creditors' Remedies</i> , 21 Cal. L. Revision Comm'n Reports 135 (1991)	Enacted. 1992 Cal. Stat. ch. 283 <i>See</i> 22:853
270. <i>Nonprobate Transfers of Community Property</i> , 21 Cal. L. Revision Comm'n Reports 163 (1991)	Enacted. 1992 Cal. Stat. ch. 51 <i>See</i> 22:852
271. <i>Notice of Trustees' Fees</i> , 21 Cal. L. Revision Comm'n Reports 191 (1991)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
272. <i>Nonprobate Transfer to Trustee Named in Will</i> , 21 Cal. L. Revision Comm'n Reports 201 (1991)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
273. <i>Preliminary Distribution Without Court Supervision</i> , 21 Cal. L. Revision Comm'n Reports 209 (1991)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
274. <i>Transfer of Conservatorship Property to Trust</i> , 21 Cal. L. Revision Comm'n Reports 227 (1991)	Enacted. 1992 Cal. Stat. ch. 572 <i>See</i> 22:853
275. <i>Family Code</i> , 22 Cal. L. Revision Comm'n Reports 1 (1992)	Enacted. 1992 Cal. Stat. chs. 162, 163 <i>See</i> 22:851
276. <i>Standing To Sue for Wrongful Death</i> , 22 Cal. L. Revision Comm'n Reports 955 (1992)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
277. <i>1992 General Probate Bill</i> (miscellaneous provisions), see 22 Cal. L. Revision Comm'n Reports 977 (1990)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
278. <i>Special Needs Trust for Disabled Minor or Incompetent Person</i> , 22 Cal. L. Revision Comm'n Reports 989 (1992)	Enacted. 1992 Cal. Stat. ch. 355 <i>See</i> 22:853
279. <i>1994 Family Code</i> , 23 Cal. L. Revision Comm'n Reports 1, 5 (1993)	Enacted. 1993 Cal. Stat. ch. 219 <i>See</i> 23:922
280. <i>Family Code: Child Custody</i> , 23 Cal. L. Revision Comm'n Reports 1, 15 (1993)	Enacted. 1993 Cal. Stat. ch. 219 <i>See</i> 23:922

Recommendation	Action by Legislature
281. <i>Family Code: Reorganization of Domestic Violence Provisions</i> , 23 Cal. L. Revision Comm'n Reports 1, 23 (1993)	Enacted. 1993 Cal. Stat. ch. 219 <i>See</i> 23:922
282. <i>Deposit of Estate Planning Documents with Attorney</i> , 23 Cal. L. Revision Comm'n Reports 965 (1993)	Enacted. 1993 Cal. Stat. ch. 519 <i>See</i> 23:923
283. <i>Parent and Child Relationship for Intestate Succession</i> , 23 Cal. L. Revision Comm'n Reports 991 (1993)	Enacted. 1993 Cal. Stat. ch. 529 <i>See</i> 23:923
284. <i>Effect of Joint Tenancy Title on Marital Property</i> , 23 Cal. L. Revision Comm'n Reports 1013 (1993)	Not enacted. <i>See</i> 24:568
285. <i>Trial Court Unification: Constitutional Revision (SCA 3)</i> , 24 Cal. L. Revision Comm'n Reports 1 (1994); <i>Trial Court Unification: Transitional Provisions for SCA 3</i> , 24 Cal. L. Revision Comm'n Reports 627 (1994)	Not enacted; Commission recommendations adopted in SCA 3 (1993-94), but SCA 3 not approved by Assembly. Commission recommendations largely enacted in SCA 4 (1996 Cal. Stat. res. ch. 36). <i>See</i> 24:568; 28:707
286. <i>Comprehensive Power of Attorney Law</i> , 24 Cal. L. Revision Comm'n Reports 111 (1994); <i>1995 Comprehensive Power of Attorney Law</i> , 24 Cal. L. Revision Comm'n Reports 323 (1994)	Enacted. 1994 Cal. Stat. ch. 307 <i>See</i> 24:567
287. <i>Orders To Show Cause and Temporary Restraining Orders</i> , 24 Cal. L. Revision Comm'n Reports 603 (1994)	Enacted. 1994 Cal. Stat. ch. 587 <i>See</i> 24:567
288. <i>Family Code Technical Amendments</i> . <i>See</i> 24 Cal. L. Revision Comm'n Reports 621 (1994); 26 Cal. L. Revision Comm'n Reports 175 (1996)	Enacted. 1994 Cal. Stat. ch. 1269; 1996 Cal. Stat. ch. 1061 <i>See</i> 24:567; 26:132
289. <i>Debtor-Creditor Relations</i> , 25 Cal. L. Revision Comm'n Reports 1 (1995)	Enacted in part. 1995 Cal. Stat. ch. 196 <i>See</i> 25:636, 707
290. <i>Administrative Adjudication by State Agencies</i> , 25 Cal. L. Revision Comm'n Reports 55 (1995)	Enacted. 1995 Cal. Stat. ch. 938 <i>See</i> 25:636, 711

Recommendation	Action by Legislature
291. <i>Uniform Prudent Investor Act</i> , 25 Cal. L. Revision Comm'n Reports 543 (1995). See also 25 Cal. L. Revision Comm'n Reports 673 (1995)	Enacted. 1995 Cal. Stat. ch. 63 See 25:636, 673
292. <i>Power of Attorney Law Technical Amendments</i> . See 25 Cal. L. Revision Comm'n Reports 709 (1995)	Enacted. 1995 Cal. Stat. ch. 300 See 25:637
293. <i>Statute of Limitations in Trust Matters: Probate Code Section 16460</i> , 26 Cal. L. Revision Comm'n Reports 1 (1996)	Enacted. 1996 Cal. Stat. ch. 862 See 26:132
294. <i>Inheritance From or Through Child Born Out of Wedlock</i> , 26 Cal. L. Revision Comm'n Reports 13 (1996)	Enacted. 1996 Cal. Stat. ch. 862 See 26:132
295. <i>Collecting Small Estate Without Administration</i> , 26 Cal. L. Revision Comm'n Reports 21 (1996)	Enacted. 1996 Cal. Stat. ch. 563 See 26:132
296. <i>Repeal of Civil Code Section 1464: The First Rule in Spencer's Case</i> , 26 Cal. L. Revision Comm'n Reports 29 (1996)	Enacted. 1998 Cal. Stat. ch. 14 See 28:706
297. <i>Homestead Exemption</i> , 26 Cal. L. Revision Comm'n Reports 37 (1996)	Not enacted. See 26:133
298. <i>Tolling Statute of Limitations When Defendant Is Out of State</i> , 26 Cal. L. Revision Comm'n Reports 83 (1996)	Enacted in part (technical amendments). 1997 Cal. Stat. ch. 1012, §§ 13, 14 See 27:555, 623
299. <i>Administrative Adjudication Technical Amendments</i> , 26 Cal. L. Revision Comm'n Reports 171 (1996)	Enacted. 1996 Cal. Stat. ch. 390 See 26:132
300. <i>Unfair Competition Litigation</i> , 26 Cal. L. Revision Comm'n Reports 191 (1996)	Not enacted. See 27:555
301. <i>Administrative Adjudication by Quasi-Public Entities</i> , 26 Cal. L. Revision Comm'n Reports 277 (1996)	Enacted. 1997 Cal. Stat. ch. 220 See 27:554, 593
302. <i>Marketable Title: Enforceability of Land Use Restrictions</i> , 26 Cal. L. Revision Comm'n Reports 289 (1996)	Enacted in part. 1998 Cal. Stat. ch. 14 See 28:706
303. <i>Attachment by Undersecured Creditors</i> , 26 Cal. L. Revision Comm'n Reports 307 (1996)	Enacted. 1997 Cal. Stat. ch. 222 See 27:554

Recommendation	Action by Legislature
304. <i>Ethical Standards for Administrative Law Judges</i> , 26 Cal. L. Revision Comm'n Reports 335 (1996)	Enacted. 1998 Cal. Stat. ch. 95 <i>See</i> 28:706
305. <i>Best Evidence Rule</i> , 26 Cal. L. Revision Comm'n Reports 369 (1996)	Enacted. 1998 Cal. Stat. ch. 100 <i>See</i> 28:706
306. <i>Mediation Confidentiality</i> , 26 Cal. L. Revision Comm'n Reports 407 (1996)	Enacted. 1997 Cal. Stat. ch. 772 <i>See</i> 27:554, 595
307. <i>Judicial Review of Agency Action</i> , 27 Cal. L. Revision Comm'n Reports 1 (1997)	Not enacted. <i>See</i> 28:708
308. <i>Inheritance by Foster Child or Stepchild</i> , 27 Cal. L. Revision Comm'n Reports 625 (1997)	Not enacted. <i>See</i> 28:721
309. <i>Business Judgment Rule</i> , 28 Cal. L. Revision Comm'n Reports 1 (1998)	Not enacted. <i>See</i> 28:708
310. <i>Trial Court Unification: Revision of Codes</i> , 28 Cal. L. Revision Comm'n Reports 51 (1998)	Enacted. 1998 Cal. Stat. ch. 931 <i>See</i> 28:707
311. <i>Response to Demand for Production of Documents in Discovery</i> , 28 Cal. L. Revision Comm'n Reports 561 (1998)	Enacted. 1998 Cal. Stat. ch. 932 <i>See</i> 28:708
312. <i>Uniform TOD Security Registration Act</i> , 28 Cal. L. Revision Comm'n Reports 577 (1998)	Enacted. 1998 Cal. Stat. ch. 242 <i>See</i> 28:707
313. <i>Effect of Dissolution of Marriage on Nonprobate Transfers</i> , 28 Cal. L. Revision Comm'n Reports 599 (1998)	Enacted. 2001 Cal. Stat. ch. 417 <i>See</i> 31:26
314. <i>Administrative Rulemaking: Consent Regulations and Other Noncontroversial Regulations</i> , 28 Cal. L. Revision Comm'n Reports 625 (1998)	Vetoed. <i>See</i> 29:605
315. <i>Administrative Rulemaking: Advisory Interpretations</i> , 28 Cal. L. Revision Comm'n Reports 657 (1998)	Vetoed. <i>See</i> 29:605
316. <i>Health Care Decisions for Adults Without Decisionmaking Capacity</i> , 29 Cal. L. Revision Comm'n Reports 1 (1999)	Enacted. 1999 Cal. Stat. ch. 658 <i>See</i> 29:604

Recommendation	Action by Legislature
317. <i>Uniform Principal and Income Act</i> , 29 Cal. L. Revision Comm'n Reports 245 (1999)	Enacted. 1999 Cal. Stat. ch. 145 <i>See 29:604</i>
318. <i>Admissibility, Discoverability, and Confidentiality of Settlement Negotiations</i> , 29 Cal. L. Revision Comm'n Reports 345 (1999)	Not enacted. <i>See 30:676</i>
319. <i>Air Resources Technical Revisions</i> , 29 Cal. L. Revision Comm'n Reports 409 (1999)	Enacted. 2000 Cal. Stat. ch. 890 <i>See 30:676</i>
320. <i>Administrative Rulemaking</i> , 29 Cal. L. Revision Comm'n Reports 459 (1999)	Enacted. 2000 Cal. Stat. ch. 1060 <i>See 30:676</i>
321. <i>Trial Court Unification Follow-Up</i> , 29 Cal. L. Revision Comm'n Reports 657 (1999)	Enacted. 1999 Cal. Stat. ch. 344 <i>See 29:604</i>
322. <i>Enforcement of Judgments Under the Family Code: Technical Revisions</i> , 29 Cal. L. Revision Comm'n Reports 695 (1999)	Enacted. 2000 Cal. Stat. ch. 808 <i>See 30:675</i>
323. <i>Eminent Domain Valuation Evidence: Clarification of Evidence Code Section 822</i> , 29 Cal. L. Revision Comm'n Reports 733 (1999)	Enacted. 2000 Cal. Stat. ch. 948 <i>See 30:676</i>
324. <i>Alternate Distributee for Unclaimed Distribution</i> , 29 Cal. L. Revision Comm'n Reports 743 (1999)	Enacted. 2000 Cal. Stat. ch. 17 <i>See 30:675</i>
325. <i>Jurisdictional Classification of Good Faith Improver Claims</i> , 30 Cal. L. Revision Comm'n Reports 281 (2000)	Enacted. 2000 Cal. Stat. ch. 688 <i>See 30:675</i>
326. <i>Authority to Appoint Receivers</i> , 30 Cal. L. Revision Comm'n Reports 291 (2000)	Enacted. 2001 Cal. Stat. ch. 44 <i>See 31:25</i>
327. <i>Stay of Mechanic's Lien Enforcement Pending Arbitration</i> , 30 Cal. L. Revision Comm'n Reports 307 (2000); 31 Cal. L. Revision Comm'n Reports 333 (2002)	2000 Recommendation enacted. 2003 Cal. Stat. ch. 113 <i>See 33:641</i>
328. <i>Trout Affidavit</i> , 30 Cal. L. Revision Comm'n Reports 319 (2000)	Enacted. 2000 Cal. Stat. ch. 167 <i>See 30:675</i>
329. <i>Expired Pilot Projects</i> , 30 Cal. L. Revision Comm'n Reports 327 (2000)	Enacted. 2001 Cal. Stat. ch. 115 <i>See 31:25</i>

Recommendation	Action by Legislature
330. <i>Law Library Board of Trustees</i> , 30 Cal. L. Revision Comm'n Reports 429 (2000)	Enacted. 2001 Cal. Stat. ch. 52 <i>See 31:25</i>
331. <i>Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases</i> , 30 Cal. L. Revision Comm'n Reports 443 (2000)	Enacted. 2001 Cal. Stat. ch. 812 <i>See 31:27</i>
332. <i>Civil Procedure: Technical Corrections</i> , 30 Cal. L. Revision Comm'n Reports 479 (2000)	Enacted. 2001 Cal. Stat. ch. 44 <i>See 31:25</i>
333. <i>Improving Access to Rulemaking Information Under the Administrative Procedure Act</i> , 30 Cal. L. Revision Comm'n Reports 517 (2000)	Enacted. 2000 Cal. Stat. ch. 1060 <i>See 30:676</i>
334. <i>Administrative Rulemaking Cleanup</i> , 30 Cal. L. Revision Comm'n Reports 533 (2000)	Enacted. 2001 Cal. Stat. ch. 59 <i>See 31:25</i>
335. <i>Rulemaking Under Penal Code Section 5058</i> , 30 Cal. L. Revision Comm'n Reports 545 (2000)	Enacted. 2001 Cal. Stat. ch. 141 <i>See 31:26</i>
336. <i>Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain</i> , 30 Cal. L. Revision Comm'n Reports 567 (2000)	Enacted. 2001 Cal. Stat. ch. 428 <i>See 31:26</i>
337. <i>Estate Planning During Marital Dissolution</i> , 30 Cal. L. Revision Comm'n Reports 603 (2000)	Enacted. 2001 Cal. Stat. ch. 417 <i>See 31:26</i>
338. <i>Health Care Decisions Law: Miscellaneous Revisions</i> , 30 Cal. L. Revision Comm'n Reports 621 (2000)	Enacted. 2001 Cal. Stat. ch. 230 <i>See 31:26</i>
339. <i>Evidence of Prejudgment Deposit Appraisal in Eminent Domain</i> , 31 Cal. L. Revision Comm'n Reports 109 (2001)	Enacted. 2002 Cal. Stat. ch. 293 <i>See 32:601</i>
340. <i>Debtor-Creditor Law: Technical Revisions</i> , 31 Cal. L. Revision Comm'n Reports 123 (2001)	Enacted. 2002 Cal. Stat. ch. 68 <i>See 32:600</i>
341. <i>Municipal Bankruptcy</i> , 31 Cal. L. Revision Comm'n Reports 143 (2001)	Enacted. 2002 Cal. Stat. ch. 94 <i>See 32:600</i>

Recommendation	Action by Legislature
342. <i>Rules of Construction for Trusts and Other Instruments</i> , 31 Cal. L. Revision Comm'n Reports 167 (2001)	Enacted. 2002 Cal. Stat. ch. 138 <i>See 32:601</i>
343. <i>Cases in Which Court Reporter Is Required</i> , 31 Cal. L. Revision Comm'n Reports 223 (2001)	Enacted. 2002 Cal. Stat. ch. 71 <i>See 32:600</i>
344. <i>Electronic Communications and Evidentiary Privileges</i> , 31 Cal. L. Revision Comm'n Reports 245 (2001)	Enacted. 2002 Cal. Stat. ch. 72 <i>See 32:600</i>
345. <i>Administrative Rulemaking Refinements</i> , 31 Cal. L. Revision Comm'n Reports 259 (2001)	Enacted. 2002 Cal. Stat. ch. 389 <i>See 32:601</i>
346. <i>The Double Liability Problem in Home Improvement Contracts</i> , 31 Cal. L. Revision Comm'n Reports 281 (2001)	Not enacted. <i>See 32:602.</i>
347. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 1</i> , 32 Cal. L. Revision Comm'n Reports 1 (2002)	Enacted. 2002 Cal. Stat. ch. 784 (statutory revision); 2002 Cal. Stat. res. ch. 88 (proposed constitutional amendment) <i>See 32:601</i>
348. <i>Common Interest Developments: Organization of Davis-Stirling Common Interest Development Act</i> , 33 Cal. L. Revision Comm'n Reports 1 (2003).	Enacted. 2003 Cal. Stat. ch. 557 <i>See 33:645</i>
349. <i>Common Interest Developments: Association Rulemaking and Decisionmaking</i> , 33 Cal. L. Revision Comm'n Reports 81 (2003).	Enacted in part. 2003 Cal. Stat. ch. 557 <i>See 33:645</i>
350. <i>Exemptions from Enforcement of Money Judgments: Second Decennial Review</i> , 33 Cal. L. Revision Comm'n Reports 113 (2003).	Enacted. 2003 Cal. Stat. ch. 379
351. <i>Probate Code Technical Corrections</i> , 33 Cal. L. Revision Comm'n Reports 145 (2003).	Enacted. 2003 Cal. Stat. ch. 32
352. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 2</i> , 33 Cal. L. Revision Comm'n Reports 169 (2003).	Enacted. 2003 Cal. Stat. ch. 149 <i>See 33:643</i>
353. <i>Obsolete Reporting Requirements</i> , 33 Cal. L. Revision Comm'n Reports 267 (2003)	Enacted. 2004 Cal. Stat. ch. 193

Recommendation	Action by Legislature
354. <i>Authority of Court Commissioner</i> , 33 Cal. L. Revision Comm'n Reports 673 (2003)	Enacted. 2004 Cal. Stat. ch. 49
355. <i>Alternative Dispute Resolution in Common Interest Developments</i> , 33 Cal. L. Revision Comm'n Reports 689 (2003)	Enacted. 2004 Cal. Stat. ch. 754 <i>See 34:81</i>
356. <i>Unincorporated Associations</i> , 33 Cal. L. Revision Comm'n Reports 729 (2003)	Enacted. 2004 Cal. Stat. ch. 178 <i>See 34:71</i>
357. <i>Civil Discovery: Nonsubstantive Reform</i> , 33 Cal. L. Revision Comm'n Reports 789 (2003)	Enacted. 2004 Cal. Stat. ch. 182 <i>See 34:75</i>
358. <i>Common Interest Development Law: Architectural Review and Decisionmaking</i> , 34 Cal. L. Revision Comm'n Reports 107 (2004)	Enacted. 2004 Cal. Stat. ch. 346 <i>See 34:77</i>
359. <i>Preemption of CID Architectural Restrictions</i> , 34 Cal. L. Revision Comm'n Reports 117 (2004)	Enacted. 2005 Cal. Stat. ch. 37 <i>See 35:30</i>
360. <i>Obsolete Cross-References to Former Code of Civil Procedure Section 383</i> , 34 Cal. L. Revision Comm'n Reports 127 (2004)	Enacted. 2005 Cal. Stat. ch. 37 <i>See 35:30</i>
361. <i>Civil Discovery: Statutory Clarification and Minor Substantive Improvements</i> , 34 Cal. L. Revision Comm'n Reports 137 (2004)	Enacted. 2005 Cal. Stat. ch. 294 <i>See 35:77</i>
362. <i>Civil Discovery: Correction of Obsolete Cross-References</i> , 34 Cal. L. Revision Comm'n Reports 161 (2004)	Enacted. 2005 Cal. Stat. ch. 294 <i>See 35:77</i>
363. <i>Ownership of Amounts Withdrawn from Joint Account</i> , 34 Cal. L. Revision Comm'n Reports 199 (2004)	Enacted. 2012 Cal. Stat. ch. 235 <i>See 42:361</i>
364. <i>Emergency Rulemaking Under the Administrative Procedure Act</i> , 34 Cal. L. Revision Comm'n Reports 221 (2004)	Enacted. 2006 Cal. Stat. ch. 713 <i>See 36:31</i>
365. <i>Unincorporated Association Governance</i> , 34 Cal. L. Revision Comm'n Reports 231 (2004)	Enacted. 2005 Cal. Stat. ch. 116 <i>See 35:73</i>

Recommendation	Action by Legislature
366. <i>Nonprofit Association Tort Liability</i> , 34 Cal. L. Revision Comm'n Reports 257 (2004)	Enacted. 2005 Cal. Stat. ch. 116 <i>See</i> 35:73
367. <i>Waiver of Privilege by Disclosure</i> , 34 Cal. L. Revision Comm'n Reports 265 (2004)	Not enacted. <i>See</i> 36:31 n. 62
368. <i>Financial Privacy</i> , 34 Cal. L. Revision Comm'n Reports 401 (2004)	Not enacted. <i>See</i> 36:31 n. 62
369. <i>Common Interest Development Ombudsperson</i> , 35 Cal. L. Revision Comm'n Reports 123 (2005)	Vetoed. <i>See</i> 36:31 n. 62
370. <i>Enforcement of Judgments Under the Family Code</i> , 35 Cal. L. Revision Comm'n Reports 161 (2005)	Enacted. 2006 Cal. Stat. ch. 86 <i>See</i> 36:31
371. <i>Oral Argument in Civil Procedure</i> , 35 Cal. L. Revision Comm'n Reports 181 (2005)	No legislation recommended.
372. <i>Technical and Minor Substantive Statutory Corrections</i> , 35 Cal. L. Revision Comm'n Reports 219 (2006)	Enacted. 2007 Cal. Stat. ch. 263 <i>See</i> 37:28, 37:71
373. <i>Time Limits for Discovery in an Unlawful Detainer Case</i> , 36 Cal. L. Revision Comm'n Reports 271 (2006).	Enacted. 2007 Cal. Stat. ch. 113 <i>See</i> 37:28
374. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 3</i> , 36 Cal. L. Revision Comm'n Reports 341 (2006).	Enacted. 2007 Cal. Stat. ch. 43 <i>See</i> 37:29
375. <i>Revocable Transfer on Death (TOD) Deed</i> , 36 Cal. L. Revision Comm'n Reports 103 (2006).	Not enacted. <i>See</i> 38:28, n. 66
376. <i>Deposition in Out-of-State Litigation</i> , 37 Cal. L. Revision Comm'n Reports 99 (2007).	Enacted. 2008 Cal. Stat. ch. 231 <i>See</i> 38:29, 38:77
377. <i>Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture</i> , 37 Cal. L. Revision Comm'n Reports 149 (2007).	Not enacted. But see 2012 Cal. Stat. ch. 470 (item 395 <i>infra</i>) <i>See</i> 38:28 n. 66
378. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 4</i> , 37 Cal. L. Revision Comm'n Reports 171 (2007).	Enacted. 2008 Cal. Stat. ch. 56 <i>See</i> 38:29

Recommendation	Action by Legislature
379. <i>Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction</i> , 37 Cal. L. Revision Comm'n Reports 195 (2007).	Enacted. 2008 Cal. Stat. ch. 56 <i>See</i> 38:29
380. <i>Technical and Minor Substantive Statutory Corrections: References to Recording Technology</i> , 37 Cal. L. Revision Comm'n Reports 211 (2007).	Enacted. 2009 Cal. Stat. ch. 88 <i>See</i> 39:27, 39:71
381. <i>Revision of No Contest Clause Statute</i> , 37 Cal. L. Revision Comm'n Reports 359 (2007).	Enacted. 2008 Cal. Stat. ch. 174 <i>See</i> 38:29, 38:75
382. <i>Miscellaneous Hearsay Exceptions: Present Sense Impression</i> , 37 Cal. L. Revision Comm'n Reports 407 (2007).	No legislation introduced.
383. <i>Miscellaneous Hearsay Exceptions: Forfeiture by Wrongdoing</i> , 37 Cal. L. Revision Comm'n Reports 443 (2007).	No legislation introduced; but see 2010 Cal. Stat. ch. 537, enacting a similar amendment of Evid. C. § 240.
384. <i>Mechanics Lien Law</i> , 37 Cal. L. Revision Comm'n Reports 527 (2007).	Enacted. 2010 Cal. Stat. ch. 697 <i>See</i> 39:27, 40:28, 40:49
385. <i>Donative Transfer Restrictions</i> , 38 Cal. L. Revision Comm'n Reports 107 (2007).	Enacted. 2009 Cal. Stat. ch. 348, 2010 Cal. Stat. ch. 620 <i>See</i> 39:27, 40:28, 40:45
386. <i>Attorney-Client Privilege After Client's Death</i> , 38 Cal. L. Revision Comm'n Reports 163 (2008).	Enacted. 2009 Cal. Stat. ch. 8 <i>See</i> 39:27
387. <i>Revision of No Contest Clause Statute: Conforming Revisions</i> , 38 Cal. L. Revision Comm'n Reports 203 (2008).	Enacted. 2009 Cal. Stat. ch. 348 <i>See</i> 39:27
388. <i>Nonsubstantive Reorganization of Deadly Weapon Statutes</i> , 38 Cal. L. Revision Comm'n Reports 217 (2009).	Enacted. 2010 Cal. Stat. ch. 178, 2010 Cal. Stat. ch. 711 <i>See</i> 40:27, 40:43, 40:107
389. <i>Marketable Record Title: Notice of Option</i> , 39 Cal. L. Revision Comm'n Reports 99 (2009).	Enacted. 2011 Cal. Stat. ch. 46 <i>See</i> 41:28
390. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 5</i> , 39 Cal. L. Revision Comm'n Reports 109 (2009).	Enacted. 2010 Cal. Stat. ch. 212 <i>See</i> 40:28, 42:360

Recommendation	Action by Legislature
391. <i>Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part I)</i> , 39 Cal. L. Revision Comm'n Reports 157 (2009).	Enacted. 2012 Cal. Stat. ch. 470 <i>See 42:360</i>
392. <i>Obsolete Cross-References to Former Code of Civil Procedure Section 116.780(d)</i> , 39 Cal. L. Revision Comm'n Reports 223 (2009).	Enacted. 2011 Cal. Stat. ch. 308 <i>See 41:28</i>
393. <i>Statutory Clarification and Simplification of CID Law</i> , 40 Cal. L. Revision Comm'n Reports 235 (2010).	Enacted. 2012 Cal. Stat. ch. 180 <i>See 42:360</i>
394. <i>Mechanics Lien Law: Clean-Up Legislation</i> , 41 Cal. L. Revision Comm'n Reports 103 (2011).	Enacted. 2011 Cal. Stat. ch. 44 <i>See 41:28</i>
395. <i>Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation</i> , 41 Cal. L. Revision Comm'n Reports 135 (2011).	Enacted. 2011 Cal. Stat. ch. 285; see also 2012 Cal. Stat. ch. 162, §§ 12-14, 203, 207; 2013 Cal. Stat. ch. 76, §§ 145.5, 145.7, 147.3, 147.5, 153.5; 2013 Cal. Stat. ch. 291, § 52 <i>See 41:28, 43:279</i>
396. <i>Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture</i> , 41 Cal. L. Revision Comm'n Reports 265 (2011).	Enacted. 2012 Cal. Stat. ch. 470 <i>See 42:360</i>
397. <i>Statutory Cross-References to "Tort Claims Act,"</i> 41 Cal. L. Revision Comm'n Reports 285 (2011).	Enacted. 2012 Cal. Stat. ch. 759 <i>See 42:360-61</i>
398. <i>Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case</i> , 41 Cal. L. Revision Comm'n Reports 315 (2011).	Enacted. 2012 Cal. Stat. ch. 470 <i>See 42:360</i>
399. <i>Commercial and Industrial Common Interest Developments</i> , 42 Cal. L. Revision Comm'n Reports 1 (2012).	Enacted. 2013 Cal. Stat. ch. 605 <i>See 43:279-80</i>
400. <i>Charter Schools and the Government Claims Act</i> , 42 Cal. L. Revision Comm'n Reports 225 (2012).	No legislation recommended.

Recommendation	Action by Legislature
401. <i>Third Decennial Review of Exemptions from Enforcement of Money Judgments</i> , 42 Cal. L. Revision Comm'n Reports 297 (2012).	Enacted. 2013 Cal. Stat. ch. 15 <i>See 43:279</i>
402. <i>Statutory Clarification and Simplification of CID Law: Clean-Up Legislation</i> , 42 Cal. L. Revision Comm'n Reports 311 (2012).	Enacted. 2013 Cal. Stat. ch. 183 <i>See 43:279</i>
403. <i>Commercial and Industrial Subdivisions</i> , 43 Cal. L. Revision Comm'n Reports 1 (2013).	Enacted. 2013 Cal. Stat. ch. 605 <i>See 43:279-80</i>
404. <i>Statutory Clarification and Simplification of CID Law: Further Clean-Up Legislation</i> , 43 Cal. L. Revision Comm'n Reports 23 (2013).	Enacted. 2013 Cal. Stat. ch. 183 <i>See 43:279</i>
405. <i>Technical and Minor Substantive Statutory Corrections</i> , 43 Cal. L. Revision Comm'n Reports 35 (2013).	Enacted. 2014 Cal. Stat. ch. 913 <i>See 44:27</i>
406. <i>Deadly Weapons: Minor Clean-Up Issues</i> , 43 Cal. L. Revision Comm'n Reports 63 (2013).	Enacted. 2014 Cal. Stat. ch. 103 <i>See 44:27</i>
407. <i>Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act</i> , 43 Cal. L. Revision Comm'n Reports 93 (2013).	Enacted. 2014 Cal. Stat. ch. 553 <i>See 44:27, 44:77</i>
408. <i>Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1)</i> , 44 Cal. L. Revision Comm'n Reports 115 (2015).	Enacted. 2015 Cal. Stat. ch. 154 <i>See 44:522; 44:571</i>
409. <i>State and Local Agency Access to Electronic Communications: Constitutional and Statutory Requirements</i> , 44 Cal. L. Revision Comm'n Reports 229 (2015).	No legislation recommended.

APPENDIX 4

REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION
ON CHAPTER 154 OF THE STATUTES OF 2015
(ASSEMBLY BILL 1527)

Fish and Game Law:

Technical Revisions and Minor Substantive Improvements (Part 1)

Chapter 154 of the Statutes of 2015 was introduced as Assembly Bill 1527, authored by the Assembly Committee On Water, Parks, and Wildlife. The measure implements the Commission's recommendation on *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1)*, 44 Cal. L. Revision Comm'n Reports 115 (2015).

The revised Comment set out below supersedes the comparable Comment in the recommendation.

Fish & Game Code § 300 (amended). Filing of regulations

Comment. Section 300 is amended to correct an erroneous cross-reference, and to make nonsubstantive stylistic changes. This amendment is not intended to have any effect on the application of Fish and Game Code Section 215 or Government Code Section 11343.4.

APPENDIX 5

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 293 OF THE STATUTES OF 2015 (ASSEMBLY BILL 139)

Revocable Transfer on Death (TOD) Deed

Chapter 293 of the Statutes of 2015 was introduced as Assembly Bill 139, authored by Assembly Member Mike Gatto. The measure implements the Commission's recommendation on *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103 (2006).

The revised Comments set out below supersede the comparable Comments in the recommendation.

Prob. Code § 5602. Effect on other forms of transfer

Comment. Section 5602 recognizes the possibility of other devices that may achieve an effect similar to the revocable TOD deed, such as a revocable deed under *Tennant v. John Tennant Memorial Home*, 167 Cal. 570, 140 P. 242 (1914), or another instrument under Section 5000 (nonprobate transfer).

Prob. Code § 5604. Effect of other law

Comment. Section 5604 makes clear that the revocable TOD deed law is supplemented by general statutory provisions governing a nonprobate transfer. The specific cross-references in this section are illustrative and not exclusive. General provisions referenced in this section include effect of death on community property, establishing and reporting fact of death, simultaneous death, effect of homicide or abuse, disclaimer, provisions relating to effect of death, nonprobate transfers of community property, nonprobate transfer to former spouse, proration of taxes, rules for interpretation of instruments, and limitations on transfers to drafters.

This part may in some instances limit the effect of a provision otherwise applicable to a nonprobate transfer on death.

Prob. Code § 5610. "Real property" defined

Comment. Section 5610 supplements the definition of real property found in Section 68 ("real property" includes leasehold).

Prob. Code § 5614. Revocable transfer on death deed

Comment. Section 5614 adopts revocable TOD deed terminology, rather than “beneficiary deed” terminology used in some jurisdictions that have enacted comparable legislation.

A revocable TOD deed may be made for real property of the types described in Section 5610 (“real property” defined).

The beneficiary must be identified by name in a revocable TOD deed. See Section 5622 (beneficiary).

A revocable TOD deed creates no rights in the beneficiary until the death of the transferor, and is revocable until that time. See Sections 5630 (revocability) and 5650 (effect during transferor’s life).

For a revocable TOD deed statutory form, see Section 5642. For construction of a revocable TOD deed, see Part 1 (commencing with Section 21101) of Division 11 (rules for interpretation of instruments).

Prob. Code § 5620. Capacity to make deed

Comment. Section 5620 specifies the capacity that is required for execution of a revocable transfer on death deed.

Prob. Code § 5622. Beneficiary

Comment. Subdivision (a) of Section 5622 makes explicit the requirement that a beneficiary be identified by name in the instrument. A class gift is not permissible.

A beneficiary must survive the transferor in order to take an interest under this section. Section 5652(b)(2).

Prob. Code § 5624. Execution

Comment. Section 5624 prescribes execution requirements. A revocable TOD deed is not invalid because it does not comply with the requirements for execution of a will. See Section 5000(a) (provision for nonprobate transfer on death in written instrument).

A properly executed revocable TOD deed is ineffective unless recorded within 60 days after it is executed. See Section 5626 (recordation, delivery, and acceptance).

Prob. Code § 5626. Recordation, delivery, and acceptance

Comment. Subdivision (a) of Section 5626 requires recordation of the revocable TOD deed, but does not require recordation by the transferor — an agent or other person authorized by the transferor may record the instrument. The deed is considered recorded for purposes of this section when it is deposited for record with the county recorder. See Section 5612 (“record” defined).

Subdivision (b) makes clear that delivery of a revocable TOD deed is not necessary, notwithstanding a Law Revision Commission Comment to Section 5000 to the effect that Section 5000 does not relieve against the delivery requirement of the law of deeds. The recordation requirement for a revocable TOD deed makes delivery unnecessary. Consideration is not required for a revocable TOD deed. See Civ. Code § 1040.

Subdivision (c) states the rule that, unlike an inter vivos deed, a revocable TOD deed does not require acceptance. Acceptance of a donative transfer is presumed. Disclaimer procedures are available to a beneficiary. See Sections 267, 279 (disclaimer).

A revocable TOD deed has no effect, and confers no rights on the beneficiary, until the transferor's death. See Section 5650 (effect during transferor's life).

Prob. Code § 5630. Revocability

Comment. Section 5630 states the rule that a transfer on death deed is revocable. The transferor's right of revocation may be subject to a contractual or court ordered limitation.

A TOD deed may be revocable in some circumstances even though the transferor lacks capacity. The transferor's agent under a durable power of attorney may not revoke a TOD deed unless expressly authorized. See Section 4264(f) (power of attorney). If the transferor's conservator seeks to revoke a TOD deed, the transferor's estate plan must be taken into account under general principles of substituted judgment, and notice must be given to the beneficiary. See Sections 2580-2586 (guardianship and conservatorship).

Prob. Code § 5642. Simple revocable TOD deed form

Comment. Section 5642 provides a form for creation of a revocable TOD deed.

Prob. Code § 5644. Revocation form

Comment. Section 5644 provides a form for revocation of a revocable TOD deed. Use of the form is not mandatory, since other recorded instruments may revoke a TOD deed. See Sections 5628 (multiple deeds), 5660 (conflicting dispositive instruments).

Prob. Code § 5652. Effect at death

Comment. Under subdivision (a) of Section 5652, whatever interest the transferor owned at death in the property passes to the beneficiary. It should be noted, however, that this provision is not limited to the fee interest. If the transferor's ownership interest is a less than fee interest,

the transferor's entire less than fee ownership interest passes to the beneficiary on the transferor's death.

Subdivision (b) conditions a transfer to a beneficiary on the beneficiary surviving the transferor.

Under subdivision (b), a beneficiary takes only what the transferor has at death. This is a specific application of the general rule that recordation of a revocable TOD deed does not affect the transferor's ownership rights or ability to deal with the property until death. See Section 5650 (effect during transferor's life). Likewise, if an obligation of the beneficiary attaches to the property as a result of the doctrine of after-acquired title, that obligation is subordinate to any limitations on the transferor's interest in the property, and a transfer by the beneficiary financed by a purchase money mortgage is subject to the priority of a recorded encumbrance on the transferor's interest notwithstanding Civil Code Section 2898 (priority of purchase money encumbrance).

Subdivision (c) emphasizes the point that a revocable TOD deed is basically a quitclaim, passing whatever interest the transferor had at death to the beneficiary.

Prob. Code § 5664. Joint tenancy or community property with right of survivorship

Comment. Section 5664 addresses the effect of a revocable TOD deed that purports to transfer property held, at the time of the transferor's death, in joint tenancy or community property with a right of survivorship.

Prob. Code § 5666. Community property

Comment. Subdivision (a) of Section 5666 incorporates the general statutes governing the rights of spouses in a nonprobate transfer of community property. This is a specific application of the rule that general provisions of Part 1 of this division governing a nonprobate transfer apply to a revocable TOD deed. Section 5604(a)(2) (effect of other law).

Under the rules governing a nonprobate transfer of community property, a person has the power of disposition at death of the person's interest in community property without the joinder of the person's spouse.

Subdivision (b) makes clear that the general statute governing the rights of spouses in a nonprobate transfer of community property is qualified by the recording requirement in the case of a revocable TOD deed of community property. This is a specific application of the rule that general provisions of Part 1 of this division governing a nonprobate transfer are subject to a contrary rule in the revocable TOD deed law. See

Section 5604(b); see also Section 5011(b) (rights of parties subject to “contrary state statute specifically applicable to instrument under which nonprobate transfer is made”).

A third party that acts in reliance on apparent spousal rights under a revocable TOD deed is protected in that reliance. Section 5682 (bona fide purchaser protection).

Prob. Code § 5668. Community property with right of survivorship

Comment. Section 5668 addresses the effect of a revocable TOD deed on community property with right of survivorship. See Civ. Code § 682.1 (community property with right of survivorship).

Prob. Code § 5676. Return of property to estate for benefit of creditors

Comment. Section 5676 is drawn from Section 13206, relating to restoration of property to the estate by a decedent’s successor who takes real property of small value under the affidavit procedure.

Subdivision (d) makes clear that liability for restitution of property to the estate under this section is limited to satisfaction of creditor claims, regardless of whether restitution under this section is made voluntarily or pursuant to a court proceeding. Any surplus belongs to the beneficiary.

Subdivision (f) makes clear that the beneficiary of revocable TOD-deeded property that is restored to the transferor’s estate under this section is the beneficiary of a specific gift for purposes of abatement under Section 21402.

Prob. Code § 5690. Contest of transfer

Comment. Section 5690 incorporates the procedure of Sections 850-859, relating to a conveyance or transfer of property claimed to belong to a decedent or other person. A person adversely affected by a revocable TOD deed has standing to contest the transfer. *Cf.* Section 48 (“interested person” defined).

Grounds for contest may include but are not limited to lack of capacity of the transferor (Section 5620), improper execution or recordation (Sections 5624-5626), invalidating cause for consent to a transfer of community property (Section 5015), and transfer to a disqualified person (Section 21380). See also Section 5696 (fraud, undue influence, duress, mistake, or other invalidating cause).

The proper county for proceedings for administration of a decedent’s estate is the county of the decedent’s domicile or, in the case of a nondomiciliary, the county of the decedent’s death or, if the decedent

died outside the state, where property of the decedent is located. Prob. Code §§ 7051, 7052.

Recordation of a *lis pendens* within 120 days after the transferor's death preserves remedies for the contestant. See Section 5694 (remedies).

Prob. Code § 5692. Time for contest

Comment. Subdivision (a) of Section 5692 limits the contest of a revocable TOD deed to a post-death challenge. A challenge before the transferor's death would be premature since a revocable TOD deed may be revoked at any time before the transfer occurs by reason of the transferor's death. However, the transferor's conservator may seek to revoke a revocable TOD deed pursuant to substituted judgment principles. See Section 5630 (revocability) & Comment and Section 5696(b); see also Sections 2580-2586 (substituted judgment).

Subdivision (b) provides that the limitations period for contesting a TOD deed commences on the transferor's death.

Prob. Code § 5694. Remedies

Comment. The 120-day period under Section 5694 represents a balance between the 40-day period applicable to disposition of an estate without administration under Sections 13100 (affidavit procedure for collection or transfer of personal property) and 13151 (court order determining succession to property), and the six-month period applicable to the affidavit procedure for real property of small value under Section 13200.

Prob. Code § 5696. Fraud, undue influence, duress, mistake, or other invalidating cause

Comment. Subdivision (a) of Section 5696 is drawn from Section 5015 (nonprobate transfer of community property).

Subdivision (b) is new.

APPENDIX 6

BIOGRAPHIES OF 2015 COMMISSIONERS

Taras Peter Kihiczak, of Pacific Palisades, serves as the Chairperson of the Commission, and has been a lawyer with and shareholder of The Kick Law Firm APC since 1991. He was previously a lawyer with the law firm of Thelen Marrin Johnson and Bridges from 1989 to 1990. Commissioner Kihiczak received a Juris Doctor degree from the University of Pennsylvania Law School.

Crystal Miller-O'Brien, of Los Angeles, serves as the Vice-Chairperson of the Commission, and has been corporate counsel for Medical Management Consultants, Inc., since 2006. She was previously an associate with the law firm of Anderson McPharlin and Connors LLP, an associate with the law firm of Robie and Matthai PC, an associate with the law firm of Bullivant Houser Bailey PC, and a judicial clerk to the Washington State Supreme Court. She also served on the board of directors of the Conference of California Bar Associations from 2009 to 2012, and is a member of Corporate Counsel Women of Color, the Black Women Lawyers Association of Los Angeles, and the National Association of Women Business Owners. Commissioner Miller-O'Brien received a Juris Doctor degree and a Joint Certificate in Alternative Dispute Resolution from Willamette University College of Law.

Diane Boyer-Vine, of Sacramento, has been Legislative Counsel for the State of California since 2002. She was previously a deputy and thereafter a chief deputy in the Legislative Counsel's office from 1988 to 2002, and before that an associate with the law firm of Martorana and Stockman. She also serves as a member of the California Commission on Uniform State Laws. Commissioner Boyer-Vine received a Juris Doctor degree from the University of California, Davis School of Law.

Damian Capozzola, of Hermosa Beach, is the founder of the Law Offices of Damian D. Capozzola. He was previously a partner

with the law firm of Crowell and Moring LLP from 2011 to 2013, an attorney with the law firm of Epstein Becker and Green P.C. from 2007 to 2011, and an attorney with the law firm of Kirkland and Ellis LLP from 1996 to 2007. Commissioner Capozzola received a Juris Doctor degree from the University of Virginia School of Law.

Xochitl Carrion, of San Francisco and Oakland, has been an attorney with the law firm of Goldfarb and Lipman LLP since 2007. She is also the Northern District Vice President of the California La Raza Lawyers Association, a Super Lawyers 2013 and 2014 Northern California Rising Star and one of Super Lawyers 2013 and 2014 Northern California Top Women Attorneys, a member of San Francisco La Raza Lawyers Association (SFLRLA), and has served as president of the SFLRLA. Commissioner Carrion received a Juris Doctor degree from the University of California, Hastings College of the Law.

Assembly Member Ed Chau, of Monterey Park, has been a member of the Assembly since 2012. He previously was a general law practitioner in the Law Office of Edwin Chau, a small business owner for over 20 years, an engineer for IBM, and a programmer for Unisys Corporation. He has also previously served as a board member of the Montebello Unified School District, where he acted as Board President three times, and has served as Judge Pro Tem for the Los Angeles Superior Court. Commissioner Chau received a Juris Doctor degree from Southwestern University.

Judge Patricia Cowett (ret.), of San Diego, has been a mediator with Alternative Dispute Resolution Services, Inc. and the American Arbitration Association since 2009. She was previously a judge on the San Diego Superior Court from 1998 to 2008, a judge on the San Diego Municipal Court from 1979 to 1998, and presiding judge of the San Diego Municipal Court in 1991. She is a past president of Lawyers Club of San Diego and founding president of Pan Asian Lawyers of San Diego. She is also a former member of the California Asian-Pacific Judges Association, the San Diego County Judges Association, and a current member of

the Planning Committee for the National Association of Women Judges Annual Conference in San Diego, October 2014. Commissioner Cowett received a Juris Doctor degree from the University of California, Davis School of Law.

Tom Hallinan, of Ceres, has been a partner with Churchwell White LLP since 2012. He was previously a partner with Bush, Ackley, Milich and Hallinan from 1994 to 2012, a law clerk at the United States Attorney's Office from 1991 to 1993, and a law clerk at the Judicial Council of California from 1990 to 1992. He has also served on the 38th District Agricultural Association, Stanislaus County Fair Board of Directors. Commissioner Hallinan received a Juris Doctor degree from Lincoln Law School.

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 Feliton 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.

Susan Duncan Lee, of Tiburon, has been a deputy attorney general and thereafter a supervising deputy attorney general with the California Department of Justice since 1989. Commissioner Lee received a Juris Doctor degree from the University of California, Hastings College of the Law.

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. Commissioner McAllister received a Juris Doctor degree from Humphreys College School of Law.

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.

APPENDIX 7

COMMISSION PUBLICATIONS

From 1955 until 2009, the California Law Revision Commission's annual reports, recommendations, and studies were published in separate pamphlets, which were later bound in a small edition of hard-cover volumes. Beginning with the Commission's 2009-2010 Annual Report, the printing of separate pamphlets was generally discontinued. As a general rule, only the hard-cover volumes are now published. (The Commission may occasionally publish a separate report for ease of reference.)

Commission publications are assigned sequential publication numbers to facilitate cataloging and ordering. Beginning with publication #189, the publication number is printed on the reverse of the title page of each publication.

All Commission reports are available as electronic files, at no cost. Procedures for obtaining printed or electronic versions of Commission publications are described below.

How To Obtain Printed Publications

Commission publications may be obtained from:

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
Tel: (650) 494-1335

Payment in advance is generally required for publications that are available only by purchase. Checks or money orders should be made payable to the "California Law Revision Commission."

Orders should include the titles of the requested publications, the quantity desired, and the street address to which the order is to be sent (*not* a post office box number).

Prices

With the following two exceptions, the price for a hardcover volume of the Commission's *Reports*, *Recommendations*, and *Studies* is \$75.00:

(1) Volume 15 is printed in two separately bound books. The price for each of these books is \$75.00.

(2) Volumes 21 and 22 are combined in a single bound book. The price for this book is \$75.00.

California residents must also add sales tax.

Reports that were printed in pamphlet form are usually available on request. The first copy is free; additional copies are available for the price indicated below. On occasion, special reports may be available only for purchase, such as where the Commission needs to cover costs of producing a particular publication.

Where applicable, the price of Commission pamphlets is determined by the number of pages, unless a special price has been set:

10 or fewer pages:	\$5.50
11-50 pages:	\$8.50
51-100 pages:	\$18.00
101 or more pages:	\$25.00

Whether a charge will be imposed and the amount of the charge are subject to change without notice. When a charge is imposed, special discounts may be available for large orders.

Publication Table

The bound volumes and separate pamphlets listed below are available unless noted as being out of print. For some years, only a few copies remain. If a bound volume is out of print, individual pamphlets from that volume may still be available. Conversely, some pamphlets are unavailable on an individual basis, but can be found in available bound volumes. Note that all publications are now available as electronic files (see below).

Prices are indicated only for individual pamphlets that are still in print.

A frequently updated version of the publication list is available on the Internet at *www.clrc.ca.gov* — the Commission’s website.

How To Obtain Publications in Electronic Form

All Commission publications may be downloaded from the Commission’s website at *www.clrc.ca.gov*.

Key to Publication Table

The first column lists the publication number, if any.

The second column gives the publication title, and includes a list of the recommendations and studies included within a pamphlet that contains more than one item.

In the third column, the first line lists the month and year of the report, followed by a citation to the volume and page number of the report and any supplement to the report (in the format vol:page).

Through Volume 38, the second line in the third column lists the number of pages in a publication and gives its standard price, unless it is out of print (indicated by OOP).

Volume 1 (1957)	[Hardcover Volume Out of Print]	
#1 1955 [Annual] Report [for 1954] — includes: • Homestead Law and Probate Code Sections 640 to 646 • Summary Disposition of Small Estates Under Probate Code Sections 640 to 646	1/55 59 pp	1:1-1 OOP
#2 1956 [Annual] Report [for 1955] — includes: • Comparative Survey of the California Inheritance and Gift Tax Laws and the Federal Estate and Gift Tax Laws	3/56 63 pp	1:2-1 OOP
#3 1957 [Annual] Report [for 1956]	1/57 28 pp	1:3-1 OOP
#4 Maximum Period of Confinement in a County Jail — includes: • Maximum Period of Confinement in a County Jail (Rec) • Penal Code Section 19a and Related Code Sections (Study)	10/56 34 pp	1:A-1 OOP
#5 Notice of Application for Attorney’s Fees and Costs in Domestic Relations Actions — includes: • Notice of Application for Attorney’s Fees and Costs in Domestic Relations Actions (Rec) • Use of Motions and Orders To Show Cause in Connection with Awards of Attorney’s Fees and Costs Pursuant to Civil Code Section 137.3 (Study)	11/56 13 pp	1:B-1 OOP
#6 Taking Instructions to the Jury Room — includes: • Taking Instructions to the Jury Room (Rec) • Whether the Jury Should Be Given a Copy of the Court’s Instructions To Take into the Jury Room (Study)	11/56 17 pp	1:C-1 OOP
#7 Dead Man Statute — includes: • Dead Man Statute (Rec) • Whether the Dead Man Statute Should Be Modified or Repealed (Study)	2/57 54 pp	1:D-1 OOP

#8	Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere — includes: • Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere (Rec) • Whether Section 201.5 of the Probate Code Should Be Revised (Study)	12/56 39 pp	1:E-1 OOP
#9	Marital “For and Against” Testimonial Privilege — includes: • Marital “For and Against” Testimonial Privilege (Rec) • Whether the “For and Against” Testimonial Privilege of Married Persons Should Be Revised (Study)	11/56 20 pp	1:F-1 OOP
#10	Suspension of the Absolute Power of Alienation — includes: • Suspension of the Absolute Power of Alienation (Rec) • Whether the Sections of the Civil Code Prohibiting Suspension of the Absolute Power of Alienation Should Be Repealed (Study)	11/56 32 pp	1:G-1 OOP
#11	Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378	10/56 4 pp	1:H-1 \$5.50
#12	Judicial Notice of the Law of Foreign Countries — includes: • Judicial Notice of the Law of Foreign Countries (Rec) • Whether California Courts Should Take Judicial Notice of the Law of Foreign Countries (Study)	2/57 24 pp	1:I-1 OOP
#13	Choice of Law Governing Survival of Actions — includes: • Choice of Law Governing Survival of Actions (Rec) • Law Which Should Govern Survival of Actions Arising in Another State When Suit Is Brought in California (Study)	2/57 20 pp	1:J-1 OOP
#14	Effective Date of an Order Ruling on a Motion for New Trial — includes: • Effective Date of an Order Ruling on a Motion for New Trial (Rec) • Effective Date of New Trial Orders in Relation to Section 660 of the Code of Civil Procedure (Study)	2/57 27 pp	1:K-1 OOP
#15	Retention of Venue for Convenience of Witnesses — includes: • Retention of Venue for Convenience of Witnesses (Rec) • California Law Relating to Retention of Venue for Convenience of Witnesses (Study)	2/57 29 pp	1:L-1 OOP
#16	Bringing New Parties into Civil Actions — includes: • Bringing New Parties into Civil Actions (Rec) • California Law Relating to Bringing in New Parties in Civil Actions (Study)	2/57 24 pp	1:M-1 OOP

Volume 2 (1959)

[Hardcover Volume Out of Print]

#17	1958 [Annual] Report [for 1957]	3/58 25 pp	2:1-1 \$8.50
#18	1959 [Annual] Report [for 1958] — includes: • Procedure for Appointing Guardians	1/59 29 pp	2:2-1 \$8.50

#19	Presentation of Claims Against Public Entities — includes:	1/59	2:A-1
	• Presentation of Claims Against Public Entities (Rec)	128 pp	\$25.00
	• Presentation of Claims Against Public Entities (Study)		
#20	Right of Nonresident Aliens To Inherit — includes:	1/59	2:B-1
	• Right of Nonresident Aliens To Inherit (Rec)	32 pp	\$8.50
	• Right of Nonresident Aliens To Inherit (Study)		
#21	Mortgages To Secure Future Advances — includes:	11/58	2:C-1
	• Mortgages To Secure Future Advances (Rec)	26 pp	\$8.50
	• Mortgages To Secure Future Advances (Study)		
#22	Doctrine of Worthier Title — includes:	1/59	2:D-1
	• Doctrine of Worthier Title (Rec)	38 pp	\$8.50
	• Whether the Doctrine of Worthier Title Should Be Abolished in California (Study)		
#23	Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving — includes:	11/58	2:E-1
	• Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving (Rec)	22 pp	\$8.50
	• Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Driving While Intoxicated (Study)		
#24	Time Within Which Motion for New Trial May Be Made — includes:	11/58	2:F-1
	• Time Within Which Motions for New Trial and To Vacate Judgment May Be Made (Rec)	16 pp	\$8.50
	• Time Within Which a Motion for a New Trial May Be Made When Notice of Entry of Judgment Has Not Been Given (Study)		
#25	Notice to Shareholders of Sale of Corporate Assets — includes:	1/59	2:G-1
	• Notice to Shareholders of Sale of Corporate Assets (Rec)	18 pp	\$8.50
	• Notice to Shareholders of a Sale of All or Substantially All of the Assets of a Corporation (Study)		

Volume 3 (1961)

[Hardcover Volume Out of Print]

#26	1960 [Annual] Report [for 1959]	3/60	3:1-1
		15 pp	OOP
#27	1961 [Annual] Report [for 1960]	1/61	3:2-1
		15 pp	OOP
#28	Evidence in Eminent Domain Proceedings — includes:	10/60	3:A-1
	• Evidence in Eminent Domain Proceedings (Rec)	65 pp	\$18.00
	• Evidence in Eminent Domain Proceedings (Study)		
#29	Taking Possession and Passage of Title in Eminent Domain Proceedings — includes:	10/60	3:B-1
	• Taking Possession and Passage of Title in Eminent Domain Proceedings (Rec)	66 pp	OOP
	• Taking Possession and Passage of Title in Eminent Domain Proceedings (Study)		

#30	Reimbursement for Moving Expenses when Property Is Acquired for Public Use — includes: • Reimbursement for Moving Expenses when Property Is Acquired for Public Use (Rec) • Reimbursement for Moving Expenses when Property Is Acquired for Public Use (Study)	10/60 36 pp	3:C-1 OOP
#31	Rescission of Contracts — includes: • Rescission of Contracts (Rec) • Rescission of Contracts (Study)	10/60 35 pp	3:D-1 OOP
#32	Right to Counsel and the Separation of the Delinquent Minor from the Nondelinquent Minor in Juvenile Court Proceedings — includes: • Right to Counsel and the Separation of the Delinquent Minor from the Nondelinquent Minor in Juvenile Court Proceedings (Rec) • Juvenile's Right to Counsel and the Designation of Nondelinquent Minor As "Ward of the Juvenile Court" (Study)	10/60 43 pp	3:E-1 OOP
#33	Survival of Actions — includes: • Survival of Actions (Rec) • Survival of Tort Actions (Study)	10/60 26 pp	3:F-1 OOP
#34	Arbitration — includes: • Arbitration (Rec) • Arbitration (Study)	12/60 64 pp	3:G-1 OOP
#35	Presentation of Claims Against Public Officers and Employees — includes: • Presentation of Claims Against Public Officers and Employees (Rec) • Presentation of Claims Against Public Officers and Employees (Study)	10/60 36 pp	3:H-1 OOP
#36	Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere — includes: • Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere (Rec) • Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere (Study)	10/60 35 pp	3:I-1 OOP
#37	Notice of Alibi in Criminal Actions — includes: • Notice of Alibi in Criminal Actions (Rec) • Notice of Alibi in Criminal Actions (Study)	10/60 22 pp	3:J-1 \$8.50

Volume 4 (1963)

[Hardcover Volume Out of Print]

#38	1962 Annual Report [for 1961]	3/62 23 pp	4:1 \$8.50
#39	1963 Annual Report [for 1962]	1/63 18 pp	4:101 \$8.50
#40	1964 Annual Report [for 1963]	12/63 46 pp	4:201 \$8.50

#41	Uniform Rules of Evidence: Article VIII. Hearsay Evidence — includes: • Uniform Rules of Evidence: Article VIII. Hearsay Evidence (Rec) • Hearsay Evidence Article of the Uniform Rules of Evidence (Study)	8/62 319 pp	4:301 OOP
#42	Condemnation Law and Procedure: Number 4 — Discovery in Eminent Domain Proceedings [The first three pamphlets (unnumbered) in Volume 3 also deal with the subject of condemnation law and procedure.] — includes: • Condemnation Law and Procedure: Number 4 — Discovery in Eminent Domain Proceedings (Rec) • Pretrial Conferences and Discovery in Eminent Domain Proceedings (Study)	1/63 74 pp	4:701 \$18.00
#43	Sovereign Immunity: Number 1 — Tort Liability of Public Entities and Public Employees	1/63 86 pp	4:801 \$18.00
#44	Sovereign Immunity: Number 2 — Claims, Actions and Judgments Against Public Entities and Public Employees	1/63 94 pp	4:1001 \$18.00
#45	Sovereign Immunity: Number 3 — Insurance Coverage for Public Entities and Public Employees	1/63 14 pp	4:1201 \$8.50
#46	Sovereign Immunity: Number 4 — Defense of Public Employees	1/63 22 pp	4:1301 \$8.50
#47	Sovereign Immunity: Number 5 — Liability of Public Entities for Ownership and Operation of Motor Vehicles	1/63 8 pp	4:1401 \$5.50
#48	Sovereign Immunity: Number 6 — Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers	1/63 8 pp	4:1501 \$5.50
#49	Sovereign Immunity: Number 7 — Amendments and Repeals of Inconsistent Special Statutes	3/63 11 pp	4:1601 OOP

Volume 5 (1963)

[Hardcover Volume Out of Print]

#50	Study Relating to Sovereign Immunity [Softcover publication has entire contents of hardcover volume except for the title page and some other front matter.]	1/63 568 pp	5:1 \$25.00

Volume 6 (1964)

[Hardcover Volume Out of Print]

#51	Uniform Rules of Evidence: Article 1. General Provisions — includes: • Uniform Rules of Evidence: Article 1. General Provisions (Rec) • General Provisions Article of the Uniform Rules of Evidence (Study)	4/64 74 pp	6:1 \$18.00

#52	Uniform Rules of Evidence: Article IX. Authentication and Content of Writings — includes: • Uniform Rules of Evidence: Article IX. Authentication and Content of Writings (Rec) • Authentication Article of the Uniform Rules of Evidence (Study)	1/64 70 pp	6:101 \$18.00
#53	Uniform Rules of Evidence: Article V. Privileges — includes: • Uniform Rules of Evidence: Article V. Privileges (Rec) • Privileges Article of the Uniform Rules of Evidence (Study)	2/64 301 pp	6:201 OOP
#54	Uniform Rules of Evidence: Article VI. Extrinsic Policies Affecting Admissibility — includes: • Uniform Rules of Evidence: Article VI. Extrinsic Policies Affecting Admissibility (Rec) • Uniform Rules of Evidence — Extrinsic Policies Affecting Admissibility (Study)	3/64 80 pp	6:601 OOP
#55	Uniform Rules of Evidence: Article IV. Witnesses — includes: • Uniform Rules of Evidence: Article IV. Witnesses (Rec) • The Witnesses Article of the Uniform Rules of Evidence (Study)	3/64 72 pp	6:701 \$18.00
#56	Uniform Rules of Evidence: Article II. Judicial Notice — includes: • Uniform Rules of Evidence: Article II. Judicial Notice (Rec) • The Judicial Notice Article of the Uniform Rules of Evidence (Study)	4/64 60 pp	6:801 \$18.00
#57	Uniform Rules of Evidence: Article VII. Expert and Other Opinion Testimony — includes: • Uniform Rules of Evidence: Article VII. Expert and Other Opinion Testimony (Rec) • The Uniform Rules of Evidence — Expert and Other Opinion Testimony (Study)	3/64 49 pp	6:901 \$8.50
#58	Uniform Rules of Evidence: Burden of Producing Evidence, Burden of Proof, and Presumptions (Replacing Article III of the Uniform Rules of Evidence) — includes: • Uniform Rules of Evidence: Burden of Producing Evidence, Burden of Proof, and Presumptions (Replacing Article III of the Uniform Rules of Evidence) (Rec) • Uniform Rules of Evidence — Burden of Producing Evidence, Burden of Proof, and Presumptions (Study)	6/64 148 pp	6:1001 \$25.00
#59	Uniform Rules of Evidence: Article VIII. Hearsay Evidence [same as 4:301] — includes: • Uniform Rules of Evidence: Article VIII. Hearsay Evidence (Rec) • Hearsay Evidence Article of the Uniform Rules of Evidence (Study)	10/62 272 pp	6:ff-1150 OOP

Volume 7 (1965)

[Hardcover Volume Out of Print]

#60	Evidence Code	1/65 394 pp	7:1 OOP
#61	Sovereign Immunity: Number 8 — Revisions of the Governmental Liability Act: Liability of Public Entities for Ownership and Operation of Motor Vehicles; Claims and Actions Against Public Entities and Public Employees	1/65 30 pp	7:401 \$8.50
#62	1965 Annual Report [for 1964]	1/65 16 pp	7:801 OOP
#63	1966 Annual Report [for 1965]	12/65 28 pp	7:901 OOP
#64	Evidence Code with Official Comments	8/65 338 pp	7:1001 \$25.00

Volume 8 (1967)

[Hardcover Volume Out of Print]

#65	Annual Report [for 1966] — includes: • Discovery in Eminent Domain Proceedings	12/66 29 pp	8:1 \$8.50
#66	Evidence Code: Number 1 — Evidence Code Revisions	10/66 28 pp	8:101 \$8.50
#67	Evidence Code: Number 2 — Agricultural Code Revisions	10/66 34 pp	8:201 \$8.50
#68	Evidence Code: Number 3 — Commercial Code Revisions	10/66 13 pp	8:301 \$8.50
#69	Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property — includes: • Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property (Rec) • California Personal Injury Damage Awards to Married Persons [reprinted from 13 UCLA L. Rev. 587 (1966)] (Study)	10/66 43 pp	8:401 \$8.50
#70	Vehicle Code Section 17150 and Related Sections — includes: • Vehicle Code Section 17150 and Related Sections (Rec) • Imputed Contributory Negligence: The Anomaly in California Vehicle Code Section 17150 [reprinted from 17 Stan. L. Rev. 55 (1964)] (Study)	10/66 48 pp	8:501 \$8.50
#71	Additur — includes: • Additur (Rec) • Power of the Trial Court to Deny a New Trial on the Condition that Damages Be Increased [reprinted from 3 Cal. W. L. Rev. 1 (1966)] (Study)	10/66 58 pp	8:601 \$18.00
#72	Abandonment or Termination of a Lease — includes: • Abandonment or Termination of a Lease (Rec) • Whether the Rights and Duties Attendant upon the Termination of a Lease Should Be Revised [reprinted from 54 Cal. L. Rev. 1141 (1966)] (Study)	10/66 74 pp	8:701 \$18.00

#73	Good Faith Improver of Land Owned by Another — includes:	10/66	8:801
	• Good Faith Improver of Land Owned by Another (Rec)	62 pp	\$18.00
	• Improving the Lot of the Trespassing Improver [reprinted from 11 Stan. L. Rev. 456 (1959)] (Study)		
#74	Suit By or Against an Unincorporated Association — includes:	10/66	8:901
	• Suit By or Against an Unincorporated Association (Rec)	42 pp	\$8.50
	• Suit By Or Against An Unincorporated Association (Study)		
#75	Escheat	9/67	8:1001
		70 pp	\$18.00
#76	Condemnation Law and Procedure: Number 1 — Possession Prior to Final Judgment and Related Problems — includes:	9/67	8:1101
	• Condemnation Law and Procedure: Number 1 — Possession Prior to Final Judgment and Related Problems (Rec)	149 pp	\$25.00
	• Possession Prior To Final Judgment in California Condemnation Procedure [reprinted from 7 Santa Clara Law. 1 (1966)] (Study)		
#77	Annual Report [for 1967] — includes:	12/67	8:1301
	• Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding	110 pp	\$25.00
	• Improvements Made in Good Faith Upon Land Owned by Another		
	• Damages for Personal Injuries to a Married Person as Separate or Community Property		
	• Service of Process on Unincorporated Associations		

Volume 9 (1969)

[Hardcover Volume Out of Print]

#78	Annual Report [for 1968] — includes:	12/68	9:1
	• Sovereign Immunity: Number 9 — Statute of Limitations in Actions Against Public Entities and Public Employees	76 pp	\$18.00
	• Additur and Remittitur		
	• Fictitious Business Names		
#79	Annual Report [for 1969] — includes:	12/69	9:81
	• Quasi-Community Property	102 pp	OOP
	• Arbitration of Just Compensation		
	• Evidence Code: Number 5 — Revisions of the Evidence Code		
	• Real Property Leases		
	• Statute of Limitations in Actions Against Public Entities and Public Employees		
#80	Mutuality of Remedies in Suits for Specific Performance — includes:	9/68	9:201
	• Mutuality of Remedies in Suits for Specific Performance	32 pp	\$8.50
	• Mutuality of Remedies in California Under Civil Code Section 3386 (Cox) [reprinted from 19 Hastings L.J. 1430 (1968)]		

#81	Powers of Appointment — includes:	10/68	9:301
	• Powers of Appointment	52 pp	\$18.00
	• Powers of Appointment in California [reprinted from 19 Hastings L.J. 1281 (1968)]		
#82	Real Property Leases	10/68	9:401
		24 pp	\$8.50
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	• Ch. 4: Unintended Physical Damage (Van Alstyne) [reprinted from 20 Hastings L.J. 421 (1969)]		
	• Ch. 5: Intangible Detriment (Van Alstyne) [reprinted from 16 UCLA L. Rev. 491 (1969)]		

• Ch. 6: Taking or Damaging by Police Power (Van Alstyne) [reprinted from 44 S. Cal. L. Rev. 1 (1970)]		
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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Recognition of Tribal and Foreign
Court Money Judgments

September 2016

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Recognition of Tribal and Foreign Court Money Judgments*, 44 Cal. L. Revision Comm'n Reports 611 (2016).

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

c/o King Hall Law School
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September 22, 2016

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

California law includes substantive standards governing the recognition of foreign country and tribal court money judgments. These substantive standards are derived from the 2005 Uniform Foreign-Country Money Judgments Recognition Act. The Legislature directed the Commission to study these standards and report its findings and any recommendations for improvement to the standards.

As discussed in this recommendation, the Commission has reviewed the individual, substantive standards of recognition in detail. For the most part, the Commission found that the standards are operating appropriately in practice. Where the Commission identified the potential for confusion, the recommendation proposes minor reforms or commentary to provide clarification. The Commission's proposed reforms and commentary provide clarification on the following issues:

- Exercises of discretion to recognize a foreign or tribal court judgment in spite of a defect in the foreign or tribal court proceeding.

- Assessment of whether a foreign or tribal court lacked personal jurisdiction over the defendant.
- Defects in notice that could lead to nonrecognition of a foreign or tribal court judgment.
- Types of fraud that could lead to nonrecognition of a foreign or tribal court judgment.
- Resolving a situation of conflicting judgments.
- Recognition of foreign defamation judgments.

This recommendation was prepared pursuant to Section 1 of Chapter 243 of the Statutes of 2014 and Government Code Section 8298.

Respectfully submitted,
Susan Duncan Lee
Chairperson

RECOGNITION OF TRIBAL AND FOREIGN COURT MONEY JUDGMENTS

In 2014, the Legislature enacted Senate Bill 406, establishing the Tribal Court Civil Money Judgment Act (hereafter, “Tribal Court Judgment Act”) and directing the Commission to study “the standards for recognition of a tribal court or a foreign court judgment, under the Tribal Court Civil Money Judgment Act (Title 11.5 (commencing with Section 1730) of Part 3 of the Code of Civil Procedure) and the Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2 (commencing with Section 1713) of Title 11 of Part 3 of the Code of Civil Procedure).”¹

The substantive rules governing the recognition of judgments under the Tribal Court Judgment Act and California’s Uniform Foreign-Country Money Judgments Recognition Act (hereafter, “California’s Uniform Act”) are fundamentally the same. Under either Act, a judgment that falls within the scope of the Act is entitled to recognition, unless an exception to recognition applies. The Acts, collectively referred to hereafter as “Judgment Recognition Acts,” each list essentially the same set of exceptions to recognition.²

As the Legislature considered Senate Bill 406, interested persons raised concerns about the exceptions to recognition in the Judgment Recognition Acts. Presented with these concerns, the Legislature chose to amend the bill, adding an automatic repeal (i.e., “sunset”) provision and directing the Commission to study the exceptions to recognition in advance of the law’s repeal.³

The Commission has reviewed the exceptions to recognition in the Judgment Recognition Acts in detail. For the most part, the Commission did not find problems with the operation of the

1. 2014 Cal. Stat. ch. 243.

2. Compare Code Civ. Proc. § 1716(b), (c) with Code Civ. Proc. § 1737(b), (c).

3. See Assembly Committee on Judiciary Analysis of Senate Bill 406 (June 13, 2014), p. 8 (hereafter, “SB 406 Assembly Judiciary Analysis”).

exceptions. However, the Commission found that certain exceptions could benefit from clarifying amendments or commentary. This recommendation includes proposed legislation that would provide additional clarity as to how these exceptions are intended to operate in practice.

As noted above, the lists of exceptions to recognition in the Judgment Recognition Acts are largely the same. For that reason, the discussion generally focuses on the Judgment Recognition Acts collectively. In some instances, the California Uniform Act and Tribal Court Judgment Act are discussed separately to identify differences between the Acts or differences in other laws that would affect the interpretation and understanding of the Acts.

BACKGROUND

In order to understand the Judgment Recognition Acts, it is helpful to briefly consider the history of judgment recognition law, the policy rationale underlying judgment recognition law, and how judgment recognition law operates generally. Each of these issues is discussed briefly, in turn, below.

History of Judgment Recognition Law

In California, most of the statutory exceptions to recognition applicable to tribal and foreign court money judgments have been largely unchanged since 1967, when California adopted the 1962 Uniform Foreign Money-Judgments Recognition Act (hereafter, “1962 Uniform Act”).⁴

The 1962 Uniform Act set forth substantive standards governing the recognition of both foreign country and tribal court civil money judgments.⁵ The 1962 Uniform Act codified “the most prevalent common law rules with regard to the recognition of money

4. 1967 Cal. Stat. ch. 503, § 1.

5. See 1962 Uniform Act §§ 1 (defining “foreign state” and “foreign judgment”), 3 (default rule of recognition for foreign judgments), and 4 (grounds for nonrecognition).

judgments rendered in other countries.”⁶ Thus, the exceptions to recognition, although newly codified, had previously been recognized under the common law.⁷

In 2005, the Uniform Law Commission revised the 1962 Uniform Act, preparing the Uniform Foreign-Country Money Judgments Recognition Act (hereafter, “2005 Uniform Act”). The 2005 Uniform Act

continues the basic policies and approach of the 1962 Act. Its purpose is not to depart from the basic rules or approach of the 1962 Act, which have withstood well the test of time, but rather to update the 1962 Act, to clarify its provisions, and to correct problems created by the interpretation of the provisions of that Act by the courts over the years since its promulgation.⁸

California enacted the 2005 Uniform Act in 2007.⁹ From that time until the Tribal Court Judgment Act took effect, the recognition of both tribal and foreign court money judgments was governed by California’s enactment of the 2005 Uniform Act.¹⁰

In 2014, the Tribal Court Judgment Act was enacted to specify a detailed procedure for seeking recognition of a tribal court judgment, while retaining the substantive rules that already governed the recognition of tribal court money judgments.¹¹

6. Uniform Foreign-Country Money Judgments Recognition Act (2005) Prefatory Note.

7. See generally *Hilton v. Guyot*, 159 U.S. 113 (1895).

8. 2005 Uniform Act Prefatory Note. Given the relationship between the Acts, the Commission’s study included case law arising under the 1962 Uniform Act. See *infra* note 21.

9. 2007 Cal. Stat. ch. 212, § 2.

10. See former Code Civ. Proc. § 1714, as enacted by 2007 Cal. Stat. ch. 212, § 2 (defining “foreign country” and “foreign-country judgment”); see also Code Civ. Proc. § 1741.

11. See SB 406 Assembly Judiciary Analysis, *supra* note 3, at 6.

Policy Rationale for Judgment Recognition

As a general matter, there are a number of policy rationales supporting recognition of judgments from other jurisdictions. These rationales include respecting state sovereignty, promoting international relations (between sovereigns), avoiding international conflicts, facilitating the transnational operations of businesses and individuals, promoting judicial efficiency, providing predictability, providing finality, and avoiding the intra-jurisdictional conflicts and inconsistencies that would invariably crop up in the absence of judgment recognition.¹²

Operation of Judgment Recognition Law

Under the Judgment Recognition Acts, a foreign or tribal court judgment is entitled to recognition unless an exception applies.¹³

The Acts have two different categories of exceptions: mandatory exceptions (requiring nonrecognition of the judgment) and discretionary exceptions (permitting nonrecognition of the judgment).¹⁴ If a mandatory exception applies, the court *must* deny recognition of the judgment. If a discretionary exception applies, the court *may* deny recognition of the judgment.

The Acts list all of the permissible exceptions to recognition. Unless one of the listed exceptions to recognition applies, the judgment would be entitled to recognition.

12. See generally Donald Earl Childress III, *Comity as Conflict: Resituating International Comity as Conflict of Laws*, 44 U.C. Davis L. Rev. 11, 14 (2010); Joel R. Paul, *Comity in International Law*, 32 Harv. Int'l L.J. 1, 54-56 (1991); Alan Reed, *A New Model of Jurisdictional Propriety for Anglo-American Foreign Judgement Recognition and Enforcement: Something Old, Something Borrowed, Something New?*, 25 Loy. L.A. Int'l & Comp. L. Rev. 243, 274-275 (2003); Kevin J. Christensen, *Of Comity: Aerospatiale as Lex Maritima*, 2 Loy. Mar. L.J. 1, 2-3, 23 (2003).

13. See Code Civ. Proc. §§ 1716(a); 1736(a); 1737(a), (d).

14. See 2005 Uniform Act § 4 Comment 3.

COMMISSION'S STUDY

Scope

In Senate Bill 406, the Commission was directed to review only the “standards of recognition” under the Judgment Recognition Acts. The Commission understood “standards of recognition” to mean the substantive exceptions to recognition contained in the Judgment Recognition Acts.¹⁵ For the most part, the Commission did not examine the definitions¹⁶ or general scope¹⁷ provisions of the Acts.

In conducting this study, the Commission focused on the exceptions to recognition and the related provisions.¹⁸

The Commission did not assess and takes no position on the procedure for seeking tribal court judgment recognition established by the Tribal Court Judgment Act.

Analytical Approach

In conducting this study, the Commission reviewed each exception to recognition in detail to determine whether the exception has been cause for confusion or has led to problematic results. Further, the Commission considered why, as a general matter, certain exceptions were deemed discretionary (i.e., are there justifications for recognizing a judgment when these exceptions apply?).

The Commission paid particular attention to the specific concerns discussed in the analysis of Senate Bill 406 prepared by the Assembly Committee on the Judiciary.¹⁹

15. The 2005 Uniform Act refers to the exceptions to recognition as “standards of recognition.” See 2005 Uniform Act § 4.

16. See Code Civ. Proc. §§ 1714, 1732. The Commission did review the definition of “due process” in the Tribal Court Judgment Act, as that definition pertains to the substance of the standards of recognition. See Code Civ. Proc. §§ 1732(c) (defining “due process”); 1737(b)(3), (c)(8) (exceptions pertaining to due process).

17. See Code Civ. Proc. §§ 1715, 1731.

18. Code Civ. Proc. §§ 1716, 1717, 1732(c), and 1737.

This research included a close review of the language of the Uniform Acts, the associated commentary of the Uniform Law Commission, relevant Restatements of Law,²⁰ judgment recognition case law,²¹ and, as needed, other legal analysis and commentary.

Unless otherwise noted, the analysis and recommendations that follow apply to both foreign and tribal court judgment recognition proceedings.

Recommendations

The Commission largely concluded that the exceptions were working well in practice.

In a few cases, the Commission identified possibilities for confusion. To address those issues, the Commission proposes legislative changes to clarify the statutory language²² and, where

19. See SB 406 Assembly Judiciary Analysis, *supra* note 3.

20. See, e.g., Restatement (Third) of Foreign Relations Law of the United States §§ 421, 482 (1987) (hereafter, “Third Restatement”); Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction §§ 403, 404 (Tentative Draft No. 1, April 1, 2014) (hereafter, “Draft Fourth Restatement”).

21. This case law includes cases arising under both the 1962 and 2005 Uniform Acts.

Twenty-two jurisdictions, including California, are currently operating under an enactment of the 2005 Uniform Act, while fourteen jurisdictions are currently operating under an enactment of the 1962 Uniform Act. See Uniform Foreign-Country Money Judgments Recognition Act (2005), 13, pt. II U.L.A. 2015 Cumulative Annual Pocket Part p. 19 (Arizona and Georgia, which are not listed, have also enacted the 2005 Uniform Act); Uniform Foreign Money-Judgments Recognition Act (1962), 13, pt. II U.L.A. 2015 Cumulative Annual Pocket Part p. 43. (Delaware, Georgia, and Illinois, which are listed as jurisdictions that have adopted the 1962 Act, have all enacted the 2005 Uniform Act); see also Ariz. Rev. Stat. §§ 12-3251 to 12-3254; Ga. Code Ann. §§ 9-12-110 to 9-12-119.

22. See, e.g., discussion of “Personal Jurisdiction under California’s Uniform Act” *infra*; see also proposed Code Civ. Proc. § 1717 *infra*.

appropriate, comments to provide additional guidance about the law.²³

Given that the exceptions to recognition in both of California's Judgment Recognition Acts derive from the 2005 Uniform Act, the Commission's proposed legislation includes relevant commentary from the Uniform Law Commission that provides additional explanation about the operation and effect of the exceptions to recognition.²⁴

DISCRETION TO RECOGNIZE

As discussed previously, the Judgment Recognition Acts each contain a set of discretionary exceptions to recognition. When a discretionary exception applies, the court must decide whether or not to recognize the judgment.

Many of the discretionary exceptions relate to issues of due process or fairness in the foreign or tribal court proceeding.²⁵ The fairness-related exceptions from California's Uniform Act are reproduced below:

A court of this state is not required to recognize a foreign-country judgment if any of the following apply:

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

...

23. See, e.g., proposed Code Civ. Proc. § 1716 Comment *infra*.

24. See, e.g., proposed Code Civ. Proc. § 1716 Comment (Background from the 2005 Uniform Act) *infra*.

25. See Code Civ. Proc. §§ 1716(c)(1), 1737(c)(1) (lack of notice to defendant); 1716(c)(2), 1737(c)(2) (fraud); 1716(c)(5), 1737(c)(5) (contrary to parties' dispute resolution agreement); 1716(c)(6), 1737(c)(6) (seriously inconvenient forum); 1716(c)(7), 1737(c)(7) (lack of court integrity); 1716(c)(8), 1737(c)(8) (due process failure); but see, e.g., Code Civ. Proc. §§ 1716(c)(4), 1737(c)(4) (conflicting judgments).

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(8) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

...²⁶

In some cases, the phrasing of the exception seems to require that the defect be prejudicial (e.g., the defendant “did not receive notice of the proceeding in sufficient time to enable the defendant to defend”²⁷).

A committee analysis of Senate Bill 406 questions whether recognition would ever be appropriate when one of these exceptions applies. The analysis calls for further study of this issue:

Even a cursory review of the grounds for discretionary nonrecognition raise legitimate questions as to the fairness and due process provided in the underlying action and what should the appropriate standard be for recognition in state court. For example, the bill (and [California’s Uniform Act]) allows a court, in its discretion, to recognize and enforce a tribal court money judgment even when the specific proceedings in the tribal court leading to the judgment were not compatible with due process of law. Currently the bill – and [California’s Uniform Act] – require mandatory nonrecognition of a tribal order if it was rendered under a judicial system that does not provide

26. Code Civ. Proc. § 1716(c); see also *id.* § 1737(c).

27. Code Civ. Proc. §§ 1716(c)(1), 1737(c)(1).

procedures compatible with the requirements of due process. However, if the system provides procedures that, at least on paper, provide due process of law, but the actual procedures used in a particular case do not, the defendant has not been afforded due process of the law and thus, the proceeding would not, under the Ninth Circuit decision in *Wilson v. Marchington* [127 F.3d 805 (9th Cir. 1997)], be entitled to recognition in federal court. Is it reasonable policy – under both this bill and [California’s Uniform Act] – to permit such an order to be enforced by a California court? This is obviously a very important question calling for further study.²⁸

The Commission reviewed the Uniform Law Commission’s commentary for the rationales for discretionary recognition. The commentary suggests one situation in which it might be proper to recognize a foreign or tribal court judgment when a discretionary exception applies.

For example, a forum court might decide not to exercise its discretion to deny recognition despite evidence of corruption or procedural unfairness in a particular case because the party resisting recognition failed to raise the issue on appeal from the foreign-country judgment in the foreign country, and the evidence establishes that, if the party had done so, appeal would have been an adequate mechanism for correcting the transgressions of the lower court.²⁹

The Commission identified other equitable issues that might similarly justify recognition of a judgment despite unfairness in the foreign or tribal court proceeding. For example, the court could conclude that recognition was appropriate if the party opposing recognition was somehow responsible for bringing about the problem in the foreign or tribal court (i.e., had unclean hands). Or, the court might find that the defendant had effectively waived the

28. SB 406 Assembly Judiciary Analysis, *supra* note 3, at 7.

29. 2005 Uniform Act § 4 Comment 12.

right that is the basis for the objection. In practice, the Commission expects that instances where equitable considerations will warrant recognition in spite of an applicable exception will be rare, but a court should not be precluded from recognizing a judgment when those circumstances exist.

Treating the fairness-related exceptions as discretionary allows a court to evaluate the level of harm, the parties' conduct in the foreign or tribal court system, and any other factors the court deems relevant in determining whether an individual foreign or tribal court judgment should be recognized.

The Commission concludes that the statutory language, permitting discretionary recognition for specified exceptions, is appropriate as drafted. However, the Commission believes it would be helpful to provide guidance on when a court might exercise its discretion to recognize a judgment, consistent with the discussion above. The proposed legislation includes a comment providing such guidance.³⁰

MANDATORY EXCEPTIONS TO RECOGNITION

The Judgment Recognition Acts each include three mandatory exceptions to recognition. These exceptions require that a judgment be denied recognition in situations where:

- The foreign or tribal judicial system, as a whole, does not provide impartial tribunals or procedures compatible with due process.
- The foreign or tribal court lacked subject matter jurisdiction.
- The foreign or tribal court lacked personal jurisdiction over the defendant.

Each of these mandatory exceptions is discussed, in turn, below.

30. See proposed Code Civ. Proc. § 1716 Comment *infra*.

Systemic Lack of Due Process

Under the Judgment Recognition Acts, a court must decline to recognize a foreign or tribal court judgment that “was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.”³¹

Obviously, if the entire judicial system in the foreign country fails to satisfy the requirements of impartiality and fundamental fairness, a judgment rendered in that foreign country would be so compromised that the forum court should refuse to recognize it as a matter of course.³²

During the legislative process for Senate Bill 406, a tribe raised concerns that this exception has “the potential to negate a tribal judgment simply because a superior court judge finds the judgment incongruous with the State’s idea of due process or impartiality, without regard for the basic [tenets] of Tribal Sovereignty.”³³

That concern may be partially addressed by the fact that this exception does not require strict compliance with U.S. constitutional due process. The Uniform Law Commission’s commentary on the 2005 Uniform Act makes that point clear.

[A] mere difference in the procedural system is not a sufficient basis for nonrecognition. A case of serious injustice must be involved. The focus of inquiry is not whether the procedure in the rendering country is similar to U.S. procedure, but rather on the basic fairness of the foreign-country procedure. Procedural differences, such as absence of jury trial or different evidentiary rules are not

31. Code Civ. Proc. §§ 1716(b)(1), 1737(b)(3).

32. See 2005 Uniform Act § 4 Comment 12.

33. See SB 406 Assembly Judiciary Analysis, *supra* note 3, at 7, *quoting* comments of the Habematolel Pomo of Upper Lake. The analysis suggests that the tribe may have broader concerns about the mandatory exceptions. Lacking additional detail on the nature of any broader concerns, the Commission was not able to evaluate those concerns.

sufficient to justify denying recognition under [this provision], so long as the essential elements of impartial administration and basic procedural fairness have been provided in the foreign proceeding.³⁴

Further, the commentary describes this provision as requiring procedures compatible with “fundamental fairness,”³⁵ suggesting that the reference to “due process” is not intended to invoke the full panoply of due process rights and obligations afforded under the United States Constitution.

Although the Tribal Court Judgment Act was not intended to change the legal standards that apply to judgment recognition, the Act adds clarification as to some of the due process requirements for the recognition of tribal court judgments. The Tribal Court Judgment Act defines “due process” as including, but not limited to “the right to be represented by legal counsel, to receive reasonable notice and an opportunity for a hearing, to call and cross-examine witnesses, and to present evidence and argument to an impartial decisionmaker.”³⁶ This definition effectively establishes certain minimal requirements that must be satisfied in all cases. In other words, the Act would preclude recognition of a judgment from a tribal court system unless that system provides all of the listed due process rights. However, the list of due process rights is not exhaustive. A court could thus find that a tribal court system failed to provide due process on some other grounds.

The Commission has not identified problems with how the systemic due process exception has been applied in practice, nor do the court decisions suggest confusion about how this exception is intended to operate.³⁷

34. 2005 Uniform Act § 4 Comment 5 (citations omitted).

35. *Id.* at Comment 12.

36. Code Civ. Proc. § 1732(c).

37. See, e.g., *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406, 1413 (9th Cir. 1995) (applying this exception to deny recognition to an Iranian judgment against the former shah’s sister on the grounds that she “could not expect fair treatment from the courts of Iran, could not personally appear before those courts, could

The Commission concludes that this exception is appropriate and sufficiently clear as drafted.

Lack of Subject Matter Jurisdiction

Under the Judgment Recognition Acts, a court must decline to recognize a foreign or tribal court judgment if the rendering court “did not have jurisdiction over the subject matter.”³⁸

This seems proper. Generally, where a court lacks subject matter jurisdiction over a case, the resulting judgment would be invalid and should not be recognized.³⁹

not obtain proper legal representation in Iran, and could not even obtain local witnesses on her behalf.”).

38. Code Civ. Proc. §§ 1716(b)(3), 1737(b)(2).

39. See generally 46 Am. Jur. 2d. Judgments § 22 (“In order for a judgment to be valid and enforceable, the court which renders it must have jurisdiction of the parties, as well as jurisdiction of the subject matter. A judgment rendered without jurisdiction may be attacked and vacated at any time, either directly or collaterally.”) (citations omitted); see also *Carr v. Kamins*, 151 Cal. App. 4th 929, 933, 60 Cal. Rptr. 3d 196 (2007) (“‘A judgment is void on its face if the court which rendered the judgment lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant.’ An order after judgment that gives effect to a judgment that is void on its face is itself void and subject to appeal even if the judgment itself is not appealed.”) (citations omitted); but see *Fireman’s Fund Ins. Co. v. Workers’ Comp. Appeals Bd.*, 181 Cal. App. 4th 752, 767, 104 Cal. Rptr. 3d 641 (2010) (“However, a court does not necessarily act without subject matter jurisdiction merely by issuing a judgment going beyond the sphere of action prescribed by law. Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are in excess of jurisdiction The distinction is critical, because action in excess of jurisdiction by a court that has jurisdiction in the fundamental sense (i.e., jurisdiction over the subject matter and the parties) is not void, but only voidable. Errors of substantive law are within the jurisdiction of a court and are not typically acts beyond the court’s fundamental authority to act. For example, a failure to state a cause of action, insufficiency of evidence, abuse of discretion, and mistake of law, have been held

For foreign country judgments, subject matter jurisdiction would be governed by the foreign country's own law.⁴⁰ For tribal court judgments, subject matter jurisdiction would be governed by the tribe's own law and, where the matter involves persons who are not tribe members, federal law.⁴¹

The Commission concludes that this exception to recognition is appropriate and sufficiently clear as drafted.

Lack of Personal Jurisdiction

Under the Judgment Recognition Acts, a court must decline to recognize a foreign or tribal court judgment if the rendering court "did not have personal jurisdiction over the defendant."⁴²

nonjurisdictional errors for which collateral attack will not lie.") (citations, emphasis, and quotation marks omitted).

40. See Draft Fourth Restatement, *supra* note 20, § 403 Comment g ("A court in the United States will not recognize a judgment of a court of a foreign state if the court that rendered the judgment did not have jurisdiction over the subject matter of the dispute. A court that lacked the capacity under its national law to render a judgment cannot expect that judgment to gain recognition elsewhere. The assignment of designated subjects to the jurisdiction of particular foreign courts is, however, solely a matter of foreign law, and the consequences of a mistaken assertion of subject-matter jurisdiction also must depend on foreign law."); see also Third Restatement, *supra* note 20, § 482 Comment a ("[J]urisdiction of the rendering court over the subject matter is normally presumed...").

41. See Cohen's Handbook of Federal Indian Law § 7.02[1][a] (Nell Jessup Newton Editor-in-Chief, Lexis Nexis 2012) (hereafter, "Cohen's Handbook").

Tribal court subject matter jurisdiction over tribal members is first and foremost a matter of internal tribal law. There is no general federal statute limiting tribal jurisdiction over tribal members, and federal law acknowledges this jurisdiction.

A tribe's exercise of adjudicative jurisdiction over non-Indians or nonmembers does raise questions of federal law, however, reviewable in federal court.

Id. (citations omitted).

42. Code Civ. Proc. § 1716(b)(2); see also *id.* § 1737(b)(1) (same with minor differences in phrasing).

The provisions governing personal jurisdiction in California's Uniform Act and the Tribal Court Judgment Act are materially different. For that reason, the Acts are discussed separately below.

Personal Jurisdiction under California's Uniform Act

As noted above, California's Uniform Act provides for mandatory nonrecognition of a judgment where the foreign court lacked personal jurisdiction over the defendant.⁴³

When considering a foreign court's exercise of personal jurisdiction, a court in this state may have two separate and distinct concerns:

- (1) Whether the foreign court's basis for personal jurisdiction over the defendant is consistent with principles of personal jurisdiction in this state.
- (2) Whether the foreign court's exercise of personal jurisdiction was permitted under its own law.

Each of these concerns is discussed, in turn, below.

California Principles of Personal Jurisdiction

If a foreign court's exercise of personal jurisdiction over the defendant offends California's principles of personal jurisdiction, then, as a matter of policy, California may want to decline to recognize the resulting judgment.

For the most part, the judgment recognition case law on personal jurisdiction addresses whether the foreign court's exercise of personal jurisdiction is consistent with principles of personal jurisdiction where recognition is sought.⁴⁴ This result seems to be suggested by a separate section of California's Uniform Act, Code

43. Code Civ. Proc. § 1716(b)(2).

44. See generally Draft Fourth Restatement, *supra* note 20, § 403 Reporters' Note 5 ("U.S. courts will not enforce a foreign judgment if the court rendering the judgment would have lacked personal jurisdiction over the person opposing recognition of the judgment under the minimum requirements of due process imposed by the U.S. Constitution."); see also *id.* § 403 Comment f; Commission Staff Memorandum 2016-6, pp. 14-16.

of Civil Procedure Section 1717, which provides a list of bases for personal jurisdiction that are sufficient for the purposes of the Act. That section is reproduced in relevant part below:

(a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following apply:

(1) The defendant was served with process personally in the foreign country.

(2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.

(3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

(4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.

(5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.

(6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.

(b) The list of bases for personal jurisdiction in subdivision (a) is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subdivision (a) as sufficient to support a foreign-country judgment.

...

In drafting this list of bases for personal jurisdiction, the Uniform Law Commission “adopt[ed] the policy of listing bases

accepted generally today and preserv[ed] for the courts the right to recognize still other bases.”⁴⁵

Generally, the personal jurisdiction provisions of the Uniform Act have been understood to permit a court to recognize bases of personal jurisdiction that are consistent with the U.S. Constitution or, in states with additional restrictions on personal jurisdiction, the state’s own standards.⁴⁶ For instance, in a Ninth Circuit case, the court concluded that the personal jurisdiction provisions of California’s Uniform Act “seem[] to us intended to leave the door open for the recognition by California courts of foreign judgments rendered in accordance with American principles of jurisdictional due process.”⁴⁷

With respect to ensuring that a foreign court’s exercise of personal jurisdiction is consistent with California’s jurisdictional principles, the Commission concluded the personal jurisdiction provisions of California’s Uniform Act are operating appropriately in practice.

Foreign Law

If a foreign court lacks personal jurisdiction under its own laws, then the foreign court would have no legal authority to assert jurisdiction over the defendant. The resulting foreign court judgment would presumably be invalid.⁴⁸

The Commission found some authority suggesting that, in a judgment recognition proceeding, a court may consider whether the foreign court lacked personal jurisdiction under foreign law.⁴⁹

45. 1962 Uniform Act Prefatory Note.

46. See Commission Staff Memorandum 2016-6, pp. 13-16.

47. *Bank of Montreal v. Kough*, 612 F.2d 467, 471 (9th Cir. 1980). California’s long-arm jurisdiction statute extends the jurisdictional reach of the California courts to the limits of the state and federal Constitutions. See Code Civ. Proc. § 410.10.

48. See *supra* note 39.

49. See, e.g., *Monks Own, Ltd. v. Christ in the Desert*, 168 P.3d 121, 125-27 (N.M. 2007) (finding that personal jurisdiction under foreign law was not in

However, the existing language of California's Uniform Act appears to preclude an objection to personal jurisdiction under foreign law in certain cases. In particular, Code of Civil Procedure Section 1717, reproduced above, provides that a judgment "shall not be refused recognition for lack of personal jurisdiction" if any of the listed bases apply, without permitting any assessment of whether jurisdiction is adequate under foreign law.

The Commission notes that, in most cases, objections to personal jurisdiction would likely have been resolved in the foreign court proceeding, either by the foreign court deciding the issue or through waiver where the defendant appears without raising a jurisdictional objection. In such cases, a California court should not permit re-litigation of the issue.⁵⁰ As a general matter, the Commission believes that objections to personal jurisdiction under foreign law would likely only arise in the context of a default judgment where the defendant did not appear at all before the foreign court.

The Commission concluded that permitting objections to personal jurisdiction under foreign law seems to reflect the predominant practice under the Uniform Act, as well as the best policy result (i.e., avoiding recognition of invalid foreign court

dispute); *Dart v. Balaam*, 953 S.W.2d 478, 481-82 (Tex. App. 1997) (discussing appearance as a waiver of jurisdictional objections under both Texas and Australia law); *Sung Hwan Co., Ltd. v. Rite Aid Corp.*, 850 N.E.2d 647, 651 (N.Y. 2006) ("Thus, the inquiry turns on whether exercise of jurisdiction by the foreign court comports with New York's concept of personal jurisdiction, and if so, whether that foreign jurisdiction shares our notions of procedure and due process of law."); *Canadian Imperial Bank of Commerce v. Saxony Carpet Co.*, 899 F. Supp. 1248, 1253 (S.D.N.Y. 1995) ("According to the standards articulated in both New York law and the proof of Quebec law offered by Plaintiff CIBC, the Canadian court obtained valid in personam jurisdiction over Defendant Saxony."); see also Draft Fourth Restatement, *supra* note 20, § 403 Reporters' Note 7.

50. Draft Fourth Restatement, *supra* note 20, § 403 Reporters' Note 7 ("There is authority, however, for the proposition that a U.S. court generally will not look behind a foreign court's finding of personal jurisdiction under its own law.").

judgments).⁵¹ To that end, the Commission concluded that minor reforms are needed to make clear that, in appropriate circumstances, a court is not precluded from considering whether the foreign court's exercise of personal jurisdiction was authorized by foreign law.

Conclusion

In accordance with the foregoing discussion, the Commission recommends amendments to Code of Civil Procedure Section 1717 making clear that a foreign court lacks personal jurisdiction if either (1) the foreign court's basis for personal jurisdiction violates California's jurisdictional principles or (2) the foreign court's exercise of personal jurisdiction was not permitted under foreign law.⁵²

Personal Jurisdiction under Tribal Court Judgment Act

The Tribal Court Judgment Act states the general rule that a court must decline recognition of a tribal court judgment where the tribal court lacked personal jurisdiction over the defendant.⁵³ The Tribal Court Judgment Act differs from California's Uniform Act in that the Tribal Court Judgment Act does not include an analog to Code of Civil Procedure Section 1717, listing sufficient bases for personal jurisdiction.⁵⁴

The omission of such a provision is reasonable. There are significant, material differences in the jurisdictional laws

51. See Commission Staff Memorandum 2016-6, pp. 11-13.

52. The Commission's commentary also specifies that a defect in the service of process could support a finding that the foreign court lacks personal jurisdiction, where that defect is sufficient to defeat personal jurisdiction under foreign law. See proposed Code Civ. Proc. § 1717 Comment *infra*. Where defective service of process does not defeat jurisdiction, the defective service may nonetheless be grounds for nonrecognition under other exceptions. See, e.g., Code Civ. Proc. § 1716(c)(1) (defendant did not receive sufficient notice).

53. Code Civ. Proc. § 1737(b)(1).

54. See generally discussion of "California Principles of Personal Jurisdiction" *supra*.

governing states and tribes. In particular, the federal case law assessing tribal court jurisdiction combines concepts that are traditionally associated with both subject matter jurisdiction (a court's authority to hear a matter) and personal jurisdiction (a court's ability to adjudicate as to a particular party).⁵⁵ The federal case law describes a test for tribal court subject matter jurisdiction that focuses on the status of the party (i.e., a nonmember) and that party's connections with the tribe (i.e., requiring either a consensual relationship with the tribe or its members or conduct threatening or directly affecting the tribe as a whole).⁵⁶ Given these differences, the Commission concluded that, at a minimum, the list of sufficient bases for personal jurisdiction in Code of Civil Procedure Section 1717 could be confusing when applied to a tribal court's exercise of personal jurisdiction over a non-tribe member. Thus, the

55. See, e.g., *Smith v. Salish Kootenai College*, 434 F.3d 1127, 1136-40 (9th Cir. 2006) (en banc) (acknowledging general characterization of tribal civil jurisdiction as subject matter jurisdiction in case law, while noting that aspects of tribal adjudicatory jurisdiction resemble personal jurisdiction). See also Katherine Florey, *Beyond Uniqueness: Reimagining Tribal Courts' Jurisdiction*, 101 Cal. L. Rev. 1499, 1536-40 (December 2013) (discussing *Smith v. Salish Kootenai College*); *id.* at 1504-05 ("In keeping with this supposed tribal uniqueness, the Supreme Court has developed the jurisdictional doctrines that govern tribes on an entirely clean slate. In other words, the Court has never seriously examined the field of personal jurisdiction, or related doctrines like conflict of laws, when discussing Indian country — despite the fact that these doctrines are, by their nature, designed to accommodate different legal values and contexts in multi-jurisdictional disputes. Instead, the Court has developed new doctrines and categories, presumably rooted in federal common law, that bear little relation to jurisdictional concepts as applied in any other context. For example, the Court speaks of 'legislative,' 'adjudicative,' and, in some cases, 'subject matter' jurisdiction in scenarios that would ordinarily be conceptualized as ones involving personal jurisdiction.") (citations omitted).

56. See *Montana v. United States*, 450 U.S. 544, 565-66 (1981) (setting forth a test describing limits on tribe's civil regulatory authority); *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997) (concluding that tribe's "adjudicative jurisdiction does not exceed its legislative jurisdiction," thereby applying *Montana* test to tribal court jurisdiction).

Commission concludes that the omission of an analogous provision in the Tribal Court Judgment Act was appropriate.

The Commission further concludes, that the omission of such a provision was not intended to change the scope of the personal jurisdiction inquiry for the recognition of tribal court judgments.⁵⁷ The Tribal Court Judgment Act, as drafted, does not preclude a court from finding that a tribal court lacked personal jurisdiction over the defendant if either (1) the tribal court's exercise of personal jurisdiction was not authorized by tribal law or (2) the tribal court's basis for personal jurisdiction violates California's jurisdictional principles.

Therefore, the Commission concludes that the Tribal Court Judgment Act is appropriate as drafted, but proposes commentary clarifying the scope of the personal jurisdiction inquiry.⁵⁸

DISCRETIONARY EXCEPTIONS TO RECOGNITION

The Judgment Recognition Acts each include nine discretionary exceptions to recognition. These exceptions permit a court to deny recognition of a judgment in situations where:

- The defendant did not receive timely notice.
- The judgment was procured by fraud that precluded the defendant from defending the case.

57. See, e.g., SB 406 Assembly Judiciary Analysis, *supra* note 3, at 1 (“While, this bill establishes a new procedural framework for seeking recognition of tribal court money judgments in California courts, it does not significantly change the legal grounds for recognition or nonrecognition of these judgments.”); see also Assembly Floor Analysis of SB 406, p. 3 (Aug. 6, 2014) (“Any money judgment that is non-enforceable under existing law would continue to be non-enforceable under this legislation — this bill just simplifies the procedures for seeking enforcement of a tribal court judgment.”); Senate Floor Analysis of SB 406, p. 7 (Aug. 8, 2014) (according to Judicial Council (source of SB 406), bill would “continu[e] to apply the principles of comity appropriate to judgments of sovereign tribes.”).

58. See proposed Heading of Chapter 3 (commencing with Section 1730) of the Code of Civil Procedure Comment *infra*.

- California public policy would be offended by recognition of the judgment.
- The judgment conflicts with another final judgment.
- The proceeding was contrary to the parties' dispute resolution agreement.
- The court was a seriously inconvenient forum.
- The court rendering the judgment appears to have lacked integrity with respect to the judgment.
- The proceeding was incompatible with due process.
- The judgment was for defamation and failed to provide free speech and press protections.

Each of these discretionary exceptions is discussed, in turn, below.

Lack of Notice

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if “[t]he defendant in the proceeding in the foreign [or tribal] court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.”⁵⁹

As a general matter, it seems unfair to hold a defendant responsible for a judgment where the defendant was precluded from putting on a defense due to a failure to receive timely notice.

The terms of this provision seem to emphasize the *timing* of the notice. Nonetheless, the Commission concludes that this provision, as drafted, would permit an objection to notice where the *content* of the notice is defective.

The Commission concluded that the lack of notice exception is appropriate, as drafted. To alleviate any possible confusion on whether this exception permits objections to defects in the content

59. Code Civ. Proc. §§ 1716(c)(1), 1737(c)(1).

of the notice, the Commission provides clarifying commentary on that issue.⁶⁰

Fraud

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if “[t]he judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.”⁶¹

The Uniform Law Commission’s commentary specifies that this provision only permits nonrecognition in cases of “extrinsic fraud—conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case.”⁶² The reference to “extrinsic fraud” may be cause for confusion, as it may suggest a categorical test for the applicability of this provision.⁶³ However, the language of the exception itself establishes a functional test, focusing on whether the fraud deprived the party of an adequate opportunity to present its case.

Commentary on judgment recognition suggests that modern case law focuses on “whether the injured party had any opportunity to address the alleged misconduct during the original proceeding.”⁶⁴

Standing alone, the Uniform Law Commission’s comment, which is reproduced in the Commission’s commentary,⁶⁵ might suggest a limitation on the type of fraud that could serve as grounds for nonrecognition. For that reason, the Commission

60. See proposed Code Civ. Proc. § 1716 Comment; proposed Heading of Chapter 3 (commencing with Section 1730) of the Code of Civil Procedure Comment *infra*.

61. Code Civ. Proc. §§ 1716(c)(2), 1737(c)(2).

62. 2005 Uniform Act § 4 Comment 7.

63. Draft Fourth Restatement, *supra* note 20, § 404 Reporters’ Note 3.

64. *Id.*

65. See proposed Code Civ. Proc. § 1716 Comment; proposed Heading of Chapter 3 (commencing with Section 1730) of the Code of Civil Procedure Comment *infra*.

provides supplemental commentary clarifying that the Uniform Law Commission's reference to extrinsic fraud should not be construed as limiting the application of the fraud exception.

The Commission concludes that the fraud exception, as drafted, is appropriate.

Repugnant to Public Policy

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if “[t]he judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States.”⁶⁶

The Uniform Act's commentary explains the scope of this provision:

[A] difference in law, even a marked one, is not sufficient to raise a public policy issue. Nor is it relevant that the foreign law allows a recovery that the forum state would not allow. Public policy is violated only if recognition or enforcement of the foreign-country judgment would tend clearly to injure the public health, the public morals, or the public confidence in the administration of law, or would undermine “that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel.”⁶⁷

As indicated, this provision establishes a “stringent test for finding a public policy violation.”⁶⁸

Under the 1962 Uniform Act, this exception referred only to the cause of action or claim for relief. In 2005, the Uniform Law Commission revised this provision to also apply to the judgment itself. This amendment addressed confusion in the case law about

66. Code Civ. Proc. § 1716(c)(3); see also *id.* § 1737(c)(3) (same with minor differences in phrasing).

67. See 2005 Uniform Act § 4 Comment 8 (citation omitted).

68. *Id.*

whether the provision applies where the specific judgment is repugnant to public policy, but the underlying cause of action or claim for relief is not.⁶⁹

With the 2005 amendment, the Commission concludes that this exception is appropriate and sufficiently clear as drafted. Therefore, the Commission recommends no change to this provision.

Conflicting Judgments

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if “[t]he judgment conflicts with another final and conclusive judgment.”⁷⁰

The Commission concludes that this exception is appropriate and sufficiently clear as drafted.

Nonetheless, the Commission provides comments offering guidance to a court asked to resolve a situation of conflicting judgments. Absent other law requiring the recognition of a particular judgment,⁷¹ a court may be unsure how to resolve a conflict between multiple judgments, each otherwise eligible for recognition.

Neither the Judgment Recognition Acts, nor the Uniform Law Commission’s commentary, provide guidance on this point. The Draft *Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction* suggests that:

If the court rendering the later judgment fairly considered the earlier judgment and declined to recognize the earlier judgment under standards comparable to those set forth in

69. See *id.*

70. Code Civ. Proc. §§ 1716(c)(4), 1737(c)(4).

71. For example, a court may be required to decline recognition of a foreign or tribal court judgment that conflicts with a sister-state judgment that is entitled to full faith and credit under the U.S. Constitution. See U.S. Const. art. IV, § 1.

this Restatement, a U.S. court should ordinarily recognize the later judgment.⁷²

The Commission provides that guidance in its comments.

Contrary to Parties' Dispute Resolution Agreement

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if “[t]he proceeding in the foreign [or tribal] court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that [] court.”⁷³

By its terms, this provision applies to a dispute resolution agreement that identifies a particular forum for litigation or alternative dispute resolution (i.e., arbitration or mediation).⁷⁴

Generally, “[w]here a valid choice-of-forum agreement governs a dispute, a U.S. court will refuse to recognize a foreign judgment resulting from a breach of that agreement in the absence of a waiver of rights under that agreement.”⁷⁵

72. Draft Fourth Restatement, *supra* note 20, § 404 Comment f. The standards in the Restatement are largely the same as those in the Uniform Act. Compare 2005 Uniform Act § 4 with Draft Fourth Restatement §§ 403, 404.

73. Code Civ. Proc. §§ 1716(c)(5), 1737(c)(5).

74. See 2005 Uniform Act § 4 Comment 9 (This provision “allows the forum court to refuse recognition of a foreign-country judgment when the parties had a valid agreement, such as a valid forum selection clause or agreement to arbitrate, providing that the relevant dispute would be resolved in a forum other than the forum issuing the foreign-country judgment.”).

75. Draft Fourth Restatement, *supra* note 20, § 404 Reporters' Note 7.

Courts have declined to recognize foreign court judgments on the basis of this provision. See, e.g., *Diamond Offshore (Bermuda), Ltd. v. Haaksman*, 355 S.W.3d 842 (Tex. App. 2011); *Montebueno Mktg. v. Del Monte Foods Corp.-USA*, 2012 U.S. Dist. LEXIS 39372 (N.D. Cal. 2012), *aff'd* 570 Fed. Appx. 675 (9th Cir. 2014).

However, the courts have recognized foreign court judgments that are contrary to a dispute resolution agreement where the person raising the objection

The Commission concludes that this provision is appropriate and sufficiently clear as drafted.

Seriously Inconvenient Forum

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if “jurisdiction [is] based only on personal service [and] the foreign [or tribal] court was a seriously inconvenient forum for the trial of the action.”⁷⁶

By its terms, this provision is limited to situations in which personal jurisdiction is premised *solely* on personal service. In practice, this significantly limits the application of the exception.⁷⁷ It will be rare that personal jurisdiction is premised solely on personal service. Typically, the defendant will have had other contacts with the foreign or tribal jurisdiction that would support the exercise of personal jurisdiction.⁷⁸

effectively waived that objection by participating in the foreign court proceedings. See, e.g., *Dart*, 953 S.W.2d at 482 (“While the contract between Appellant and Appellee specified that disputes would be submitted to the courts of Vanuatu, neither party sought to enforce that right. Appellee waived his right by filing suit in Australia. Appellant in turn elected to waive his right by making an unconditional appearance and by filing a counter-claim seeking affirmative relief in the Australian court. Having failed to contest the issue in the Australian court, Appellant cannot now assert it as a basis for nonrecognition.”).

76. Code Civ. Proc. § 1716(c)(6); see also *id.* § 1737(c)(6) (same with minor differences in phrasing).

77. See Third Restatement, *supra* note 20, § 421 Reporter’s Note 5 (“Jurisdiction based on service of process on one only transitorily present in a state is no longer acceptable under international law if that is the only basis for jurisdiction and the action in question is unrelated to that state.”)

78. See, e.g., *Bank of Nova Scotia v. Tschabold Equip.*, 754 P.2d 1290, 1295 (Wash. Ct. App. 1988) (“The Canadian court’s jurisdiction over Pacific Western was based upon its long-arm rule, a court order, and Pacific Western’s voluntary appearance, as well as upon personal service. Refusing recognition of ScotiaBank’s Canadian judgment is therefore not warranted on [the inconvenient forum] basis.”).

Although the practical effect of this provision may be limited, given its narrow application, the Commission concludes that this provision is appropriate and sufficiently clear as drafted.

Lack of Integrity of Rendering Court

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if “[t]he judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.”⁷⁹

The Uniform Law Commission added this provision to the 2005 Uniform Act to complement the mandatory exception to recognition applicable in situations where the judicial system as a whole fails to provide impartial tribunals. The Uniform Law Commission’s commentary describes the difference between the showings required under this discretionary exception and the corresponding mandatory exception:

Thus, the difference is that between showing, for example, that corruption and bribery is so prevalent throughout the judicial system of the foreign country as to make that entire judicial system one that does not provide impartial tribunals versus showing that bribery of the judge in the proceeding that resulted in the particular foreign-country judgment under consideration had a sufficient impact on the ultimate judgment as to call it into question.⁸⁰

This provision is relatively new, so there is little commentary or case law discussing its application. However, the rationale for declining to recognize a judgment when this provision applies is sound.

The Uniform Law Commission commentary also suggests a situation where *recognition* of the judgment might be appropriate,

79. Code Civ. Proc. § 1716(c)(7); see also *id.* § 1737(c)(7) (same with minor differences in phrasing).

80. 2005 Uniform Act § 4 Comment 11.

even if this exception is established.⁸¹ The commentary suggests that a party's failure to appeal the foreign court judgment could serve as a reason for a court to recognize the foreign court judgment when this exception applies.⁸² Although a court could conclude that nonrecognition is nonetheless the appropriate result in such a situation, the comment suggests potentially relevant considerations that might bear on a court's decision whether or not to recognize the judgment.⁸³

The Commission concludes that this provision is appropriate and sufficiently clear as drafted.

Incompatible with Due Process

Under the Judgment Recognition Acts, a court may decline to recognize a foreign or tribal court judgment if "[t]he specific proceeding ... leading to the judgment was not compatible with the requirements of due process of law."⁸⁴

This provision was also new to the 2005 Uniform Act and was added to complement the mandatory exception for systemic due process failures. The reasons for the addition are similar to those discussed above.⁸⁵

As with the previous exception, the explanation provided by the Uniform Law Commission as to the scope of this provision, the rationale for nonrecognition, and the possibility that countervailing considerations could support recognition in spite of the exception seems sound.⁸⁶

The Commission notes that the Tribal Court Judgment Act's definition of "due process,"⁸⁷ discussed *supra*,⁸⁸ would apply to

81. See discussion of "Discretion to Recognize" *supra*.

82. 2005 Uniform Act § 4 Comment 12.

83. See discussion of "Discretion to Recognize" *supra*.

84. Code Civ. Proc. §§ 1716(c)(8), 1737(c)(8).

85. See discussion of "Lack of Integrity of Rendering Court" *supra*.

86. *Id.*

87. Code Civ. Proc. § 1732(c).

tribal court judgment recognition proceedings. As indicated previously, the definition would effectively establish a list of categorical violations of due process, without preventing a court from finding that the violation of other, non-listed due process rights warrants nonrecognition under this provision.

The Commission concludes that this provision is appropriate and sufficiently clear as drafted.

Defamation

Originally, the Uniform Act did not include a specific exception targeted at foreign or tribal defamation judgments. Courts applying the Uniform Act would, however, decline to recognize foreign defamation judgments that were inconsistent with the free speech protections in the United States under the exception for “repugnan[cy] to public policy.”⁸⁹

In 2009, in response to increasing concern about defamation plaintiffs filing suits in foreign countries with plaintiff-friendly libel laws and a relatively low bar for personal jurisdiction (a phenomenon known as “libel tourism”),⁹⁰ the California Legislature enacted Senate Bill 320.⁹¹ This bill supplemented California’s Uniform Act with an exception permitting nonrecognition of a foreign-country judgment if “[t]he judgment includes recovery for a claim of defamation unless the court determines that the defamation law applied by the foreign court provided at least as much protection for freedom of speech and the press as provided by both the United States and California

88. See discussion of “Systemic Lack of Due Process” *supra*.

89. See Anna C. Henning & Vivian S. Chu, Congressional Research Service, Rpt. No. R40497, “Libel Tourism”: Background and Legal Issues 8 (Mar. 5, 2010).

90. See generally *id.* at 2-6.

91. 2009 Cal. Stat. ch. 579 (SB 320 (Corbett)).

Constitutions.”⁹² This exception is also included in the Tribal Court Judgment Act.⁹³

In 2010, the federal government, responding to libel tourism concerns, enacted the SPEECH Act.⁹⁴ The SPEECH Act prohibits any domestic court⁹⁵ from recognizing a foreign defamation judgment unless that judgment meets specified standards for free speech protection and personal jurisdiction.⁹⁶ The SPEECH Act also places an affirmative burden on the party seeking recognition to show that the foreign court judgment meets these standards before the judgment can be recognized.⁹⁷

For foreign defamation judgments that are not sufficiently protective of free speech, the Commission concluded that California’s discretionary nonrecognition provision might cause confusion in light of the federal prohibition on recognition. Therefore, the Commission recommends amending California’s Uniform Act to replace the existing discretionary defamation provision with an express incorporation of the standards for foreign defamation judgments contained in the federal SPEECH Act.⁹⁸

92. Code Civ. Proc. § 1716(c)(9); see also 2009 Cal. Stat. ch. 579, § 1.

93. See Code Civ. Proc. § 1737(c)(9).

94. See generally Emily C. Barbour, Congressional Research Service, Rpt. No. R41417, *The SPEECH Act: The Federal Response to “Libel Tourism”* (Sept. 16, 2010).

The full name of the federal act is the “Securing the Protection of our Enduring and Established Constitutional Heritage Act.” See Pub. L. No. 111-223 (2010).

95. The SPEECH Act defines “domestic court” to include “a court of any State.” 28 U.S.C. § 4101(2).

96. 28 U.S.C. § 4102.

97. See *id.*

98. See proposed Code Civ. Proc. § 1716 *infra*.

By its terms, the federal SPEECH Act does not appear to apply to tribal court judgments.⁹⁹ Therefore, the Commission recommends continuing California's current discretionary exception for defamation judgments in the Tribal Court Judgment Act.¹⁰⁰

RECIPROCITY

Neither of the Judgment Recognition Acts conditions recognition of a foreign or tribal court judgment on whether the foreign country or tribe would reciprocally recognize California judgments.

The legislative history for Senate Bill 406 indicates that a member of the public raised concerns about the lack of a reciprocity requirement in the Tribal Court Judgment Act. In particular, the commenter noted the difficulties she has faced in getting a California court order recognized by tribal courts.¹⁰¹

The Uniform Act commentary indicates that the Uniform Law Commission considered the inclusion of a reciprocity requirement

99. The SPEECH Act defines "foreign court" as "a court, administrative body, or other tribunal of a *foreign country*," without defining foreign country. 28 U.S.C. § 4101(3). As a general matter, under American law, the federal government "has broad powers and responsibilities in Indian affairs." Cohen's Handbook, *supra* note 41, at p. 2. Tribes are more aptly characterized as "domestic" as opposed to "foreign" nations. See, e.g., *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831) ("[Tribes] may, more correctly, perhaps, be denominated domestic dependent nations [as opposed to foreign nations]."); see also U.S. Const. art. I, § 8, cl. 3 (listing foreign nations, states and tribes separately).

100. To the extent that the SPEECH Act does apply to tribal court judgments and preempts California law to the contrary, the SPEECH Act will continue to operate, independent of California's provision. See generally Barbour, *supra* note 94, at 11-13 (discussing the preemptive effect of the SPEECH Act).

101. See SB 406 Assembly Judiciary Analysis, *supra* note 3, at 7-8. The commenter was seeking tribal court recognition of a California child support order. The Commission notes that child support orders are expressly excluded from the Tribal Court Judgment Act. See Code Civ. Proc. § 1731(b)(2).

both when originally developing the 1962 Uniform Act and when revising the Uniform Act in 2005.¹⁰² In 2005, the Uniform Law Commission noted:

In the course of drafting this Act, the drafters revisited the decision made in the 1962 Act not to require reciprocity as a condition to recognition of the foreign-country money judgments covered by the Act. After much discussion, the drafters decided that the approach of the 1962 Act continues to be the wisest course with regard to this issue. While recognition of U.S. judgments continues to be problematic in a number of foreign countries, there was insufficient evidence to establish that a reciprocity requirement would have a greater effect on encouraging foreign recognition of U.S. judgments than does the approach taken by the Act. At the same time, the certainty and uniformity provided by the approach of the 1962 Act, and continued in this Act, creates a stability in this area that facilitates international commercial transactions.¹⁰³

The Uniform Law Commission identifies general benefits (stability and certainty for litigants) for not requiring reciprocity that would seem to apply to both foreign and tribal court judgments.

A reciprocity requirement seems fundamentally different than the other exceptions. Such a requirement does not concern the quality of justice in the individual foreign or tribal court proceeding.¹⁰⁴ Instead, a reciprocity requirement for judgment recognition addresses a political question, involving the degree of comity to extend to other sovereign entities.

102. Some states permit the extension of full faith and credit to tribal judgments, conditioned on reciprocal treatment by the tribe of state judgments. See, e.g., Okla. Stat. tit. 12, § 728; Wis. Stat. § 806.245. Although, absent reciprocity, a tribal court judgment might not be afforded full faith and credit in these states, it is not clear whether a tribal court judgment could nonetheless be recognized and enforced under other state laws (e.g., an enactment of either the 1962 or 2005 Uniform Act).

103. 2005 Uniform Act Prefatory Note.

104. See generally Commission Staff Memorandum 2016-13, p. 20.

As a general matter, the Commission concludes that a lack of reciprocity requirement in California law is not legally problematic, nor is out of step with the current policy direction of the majority of states.¹⁰⁵ Therefore, the Commission does not recommend any change to California law.

SUNSET CLAUSE

When Senate Bill 406 was amended to assign the Commission this study, the bill was also amended to provide for the repeal of the Tribal Court Judgment Act on January 1, 2018.¹⁰⁶ The analysis discussing the assignment of this study to the Commission states:

Given the concerns raised on all sides, the Committee may want to consider passing the measure, but requiring that the California Law Revision[] Commission (CLRC) look at the due process requirements of both [the Tribal Court Judgment Act and the Uniform Act], using existing resources, and sunset the bill in three years, after the study is complete, to allow the Legislature, with a thoughtful and thorough review by the CLRC, to more thoroughly and knowledgeably consider the concerns that have been raised on all sides.¹⁰⁷

With the changes discussed above, the Commission concludes that the standards of recognition in the Judgment Recognition Acts are sound. Further, the Commission concludes that the Tribal Court Judgment Act makes helpful refinements to the standards tailored to recognition of tribal court judgments.

With the caveat that the Commission did not evaluate the *procedural* elements of the Tribal Court Judgment Act, due to the limited scope of the Commission's assignment, the Commission

105. See *id.* at 19.

106. See Code Civ. Proc. §§ 1714, as amended by 2014 Cal. Stat. ch. 243, § 2; 1714, as added by 2014 Cal. Stat. ch. 243, § 3; 1742.

107. SB 406 Assembly Judiciary Analysis, *supra* note 3, at 1-2.

recommends repealing the provisions that would automatically repeal the Tribal Court Judgment Act.¹⁰⁸

TECHNICAL AND ORGANIZATIONAL CHANGES

The Commission recommends a few technical and organizational changes to achieve the following:

- Relocating the provision authorizing declaratory relief for foreign defamation judgments and making clarifying changes.¹⁰⁹
- Relocating the Tribal Court Judgment Act to the same title as other California laws governing judgments from other jurisdictions.¹¹⁰
- Clarifying that the Tribal Court Judgment Act, not California's Uniform Act, governs the recognition of tribal court judgments.¹¹¹
- Stylistic consistency.¹¹²

108. See, e.g., proposed repeal of Code Civ. Proc. § 1742 *infra*.

109. See proposed amendment to Code Civ. Proc. § 1717; proposed Code Civ. Proc. § 1725 *infra*.

110. See proposed repeal of Heading of Title 11.5 (commencing with Code Civ. Proc. § 1730); proposed addition of Heading of Chapter 3 (commencing with Code Civ. Proc. § 1730) *infra*.

111. See proposed amendment to Code Civ. Proc. § 1714 (as amended by Section 2 of Chapter 243 of the Statutes of 2014) *infra*.

112. See, e.g., proposed amendment to Heading of Chapter 1 (commencing with Code Civ. Proc. § 1710.10) *infra*.

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PROPOSED LEGISLATION

Code Civ. Proc. § 1716 (amended). Standards for recognition [UFCMJRA § 4]

SEC. _____. Section 1716 of the Code of Civil Procedure is amended to read:

1716. (a) Except as otherwise provided in subdivisions ~~(b) and (c)~~ (b), (c), and (e), a court of this state shall recognize a foreign-country judgment to which this chapter applies.

(b) A court of this state shall not recognize a foreign-country judgment if any of the following apply:

(1) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

(2) The foreign court did not have personal jurisdiction over the defendant.

(3) The foreign court did not have jurisdiction over the subject matter.

(c) A court of this state is not required to recognize a foreign-country judgment if any of the following apply:

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(3) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States.

(4) The judgment conflicts with another final and conclusive judgment.

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(8) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

~~(9) The judgment includes recovery for a claim of defamation unless the court determines that the defamation law applied by the foreign court provided at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions.~~

(d) If the party seeking recognition of a foreign-country judgment has met its burden of establishing recognition of the foreign-country judgment pursuant to subdivision (c) of Section 1715, a party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subdivision (b) or (c) exists.

(e) A court of this state shall not recognize a foreign-country judgment for defamation if that judgment is not recognizable under Section 4102 of Title 28 of the United States Code.

Comment. Section 1716 is similar to Section 4 of the Uniform Foreign-Country Money Judgments Recognition Act (2005) (“2005 Uniform Act”).

Paragraph (b)(1) and subparagraph (c)(1)(G) state exceptions to recognition of a foreign-country judgment related to the due process offered in the foreign proceeding. Under both paragraph (b)(1) and subparagraph (c)(1)(G), the focus of the inquiry “is not whether the procedure in the rendering country is similar to U.S. procedure, but rather on the basic fairness of the foreign-country procedure.” See Background from the 2005 Uniform Act *infra*. Unlike the Tribal Court Civil Money Judgment Act, this Act does not attempt to define “due process.” Compare Code Civ. Proc. § 1732(c) with Code Civ. Proc. § 1714.

Paragraph (b)(2) provides that a foreign-country judgment shall not be recognized if the foreign court did not have personal jurisdiction over the

defendant. Section 1717 makes clear that a foreign court lacks personal jurisdiction if either of the following applies:

- (1) The foreign court lacks a basis for exercising personal jurisdiction that would be sufficient according to the standards governing personal jurisdiction in this state.
- (2) The foreign court lacks personal jurisdiction under its own law.

Paragraph (c)(1) lists grounds for nonrecognition of a foreign-country judgment. When the grounds for nonrecognition in paragraph (c)(1) apply, the court may nonetheless recognize the foreign-country judgment, under paragraph (c)(2), in the unusual case where countervailing considerations outweigh the seriousness of the defect underlying the applicable ground for nonrecognition. Such countervailing considerations could include, for instance, situations in which the opponent failed to raise an objection in the foreign court or the opponent's own misconduct was the primary cause of the harm suffered.

Subparagraph (c)(1)(A) provides for nonrecognition of a foreign-country judgment if the defendant did not receive notice of the foreign proceeding in sufficient time to enable the defendant to defend. Under this subparagraph, a defect in either the timing or the content of the notice could be grounds for nonrecognition if that defect precluded the defendant from defending in the foreign court proceeding.

Subparagraph (c)(1)(B) provides for nonrecognition of a foreign-country judgment if fraud deprived the losing party of an adequate opportunity to present its case. The Uniform Law Commission's commentary on this provision indicates that the type of fraud that can serve as grounds for nonrecognition is limited to "extrinsic fraud — conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case." See Background from the 2005 Uniform Act *infra*. The reference to "extrinsic fraud" suggests that the test established by the exception is categorical, permitting nonrecognition in cases of extrinsic, but not intrinsic, fraud. However, the language of the exception establishes a functional test, whether the fraud deprived the party of an adequate opportunity to present its case. Recent judgment recognition case law evaluates fraud by assessing "whether the injured party had any opportunity to address the alleged misconduct during the original proceeding." See Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction § 404 Reporters' Note 3 (Tentative Draft No. 1, April 1, 2014). This case law suggests that a key consideration for a court deciding whether

alleged fraud could be a ground for nonrecognition is whether there was “a reasonable opportunity for the person victimized by fraud to uncover the misconduct and bring it to the [rendering] court’s attention.” *Id.*

Former paragraph (c)(9) is not continued. Federal law includes specific standards governing the recognition of foreign-country defamation judgments. See subdivision (f) (referring to the federal SPEECH Act standards for recognition of defamation judgments).

Subdivision (d) provides that a court may decline to recognize a foreign-country judgment if it conflicts with another final and conclusive judgment. Some commentators suggest that, where the foreign court rendering the later judgment fairly considered the earlier judgment and declined to recognize it under standards similar to those set forth in this Uniform Act, a court should ordinarily recognize the later foreign-country judgment. However, in some situations, other law may require the recognition of one of the conflicting judgments (e.g., where one of the conflicting judgments is entitled to full faith and credit). See Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction § 404 Comment f, Reporters’ Note 6 (Tentative Draft No. 1, April 1, 2014).

Subdivision (f) is added to make clear that judgments that are not eligible for recognition under the federal SPEECH Act (codified at 28 U.S.C. §§ 4101-4105) shall not be recognized under this chapter.

The commentary for Section 4 of the 2005 Uniform Act is set out, in relevant part, below. The Law Revision Commission’s recommendation (*Recognition of Tribal and Foreign Court Money Judgments*, 44 Cal. L. Revision Comm’n Reports 611 (2016)) does not reproduce all parts of the Uniform Law Commission’s commentary. The omission of any part of the Uniform Law Commission commentary does not necessarily imply disapproval of the omitted commentary.

The legislation implementing the Commission’s recommendation made changes to the court’s discretion to recognize a judgment when certain grounds for nonrecognition apply. See AB 905 (Maienschein), as amended March 13, 2017. The Uniform Law Commission commentary may not be consistent with these changes.

Background from the 2005 Uniform Act

Source: This section is based on Section 4 of the 1962 [Uniform Foreign Money Judgments Recognition] Act [hereafter, “1962 Act”].

1. This Section provides the standards for recognition of a foreign-country money judgment. Section [1719] sets out the effect of recognition of a foreign-country money judgment under this Act.

2. Recognition of a judgment means that the forum court accepts the determination of legal rights and obligations made by the rendering court in the foreign country. *See, e.g.* Restatement (Second) of Conflicts of Laws, Ch. 5, Topic 3, Introductory Note (recognition of foreign judgment occurs to the extent the forum court gives the judgment “the same effect with respect to the parties, the subject matter of the action and the issues involved that it has in the state where it was rendered.”) Recognition of a foreign-country judgment must be distinguished from enforcement of that judgment. Enforcement of the foreign-country judgment involves the application of the legal procedures of the state to ensure that the judgment debtor obeys the foreign-country judgment. Recognition of a foreign-country money judgment often is associated with enforcement of the judgment, as the judgment creditor usually seeks recognition of the foreign-country judgment primarily for the purpose of invoking the enforcement procedures of the forum state to assist the judgment creditor’s collection of the judgment from the judgment debtor. Because the forum court cannot enforce the foreign-country judgment until it has determined that the judgment will be given effect, recognition is a prerequisite to enforcement of the foreign-country judgment. Recognition, however, also has significance outside the enforcement context because a foreign-country judgment also must be recognized before it can be given preclusive effect under *res judicata* and collateral estoppel principles. The issue of whether a foreign-country judgment will be recognized is distinct from both the issue of whether the judgment will be enforced, and the issue of the extent to which it will be given preclusive effect.

3. [Subdivision (a) of Section 1716] places an affirmative duty on the forum court to recognize a foreign-country money judgment unless one of the grounds for nonrecognition stated in [subdivision (b), (c), (d), or (f)] applies. [Subdivision (b)] states three mandatory grounds for denying recognition to a foreign-country money judgment. If the forum court finds that one of the grounds listed in [subdivision] (b) exists, then it must deny recognition to the foreign-country money judgment. [Subdivisions (c) and (d)] state eight nonmandatory grounds for denying recognition. The forum court has discretion to decide whether or not to refuse recognition based on one of these grounds. [Subdivision (e)] places the burden of proof on the party resisting recognition of the

foreign-country judgment to establish that one of the grounds for nonrecognition [stated in subdivision (b), (c), or (d)] exists.

4. The mandatory grounds for nonrecognition stated in [subdivision (b) of Section 1716] are identical to the mandatory grounds stated in Section 4 of the 1962 Act. The discretionary grounds stated in [subparagraphs (c)(1)(A) through (c)(1)(E) and subdivision (d)] are based on subsection 4(b)(1) through (6) of the 1962 Act. The discretionary grounds stated in [subparagraphs (c)(1)(F) and (c)(1)(G)] are new [to the 2005 Uniform Act].

5. Under [paragraph (b)(1) of Section 1716], the forum court must deny recognition to the foreign-country money judgment if that judgment was “rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.” The standard for this ground for nonrecognition “has been stated authoritatively by the Supreme Court of the United States in *Hilton v. Guyot*, 159 U.S. 113, 205 (1895). As indicated in that decision, a mere difference in the procedural system is not a sufficient basis for nonrecognition. A case of serious injustice must be involved.” Cmt §4, Uniform Foreign Money-Judgment Recognition Act (1962). The focus of inquiry is not whether the procedure in the rendering country is similar to U.S. procedure, but rather on the basic fairness of the foreign-country procedure. *Kam-Tech Systems, Ltd. v. Yardeni*, 74 A.2d 644, 649 (N.J. App. 2001) (interpreting the comparable provision in the 1962 Act); *accord*, *Society of Lloyd’s v. Ashenden*, 233 F.3d 473 (7th Cir. 2000) (procedures need not meet all the intricacies of the complex concept of due process that has emerged from U.S. case law, but rather must be fair in the broader international sense) (interpreting comparable provision in the 1962 Act). Procedural differences, such as absence of jury trial or different evidentiary rules are not sufficient to justify denying recognition under [paragraph] (b)(1), so long as the essential elements of impartial administration and basic procedural fairness have been provided in the foreign proceeding. As the U.S. Supreme Court stated in *Hilton*:

Where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either

prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect then a foreign-country judgment should be recognized. *Hilton*, 159 U.S. at 202.

6. [Omitted]

7. [Subparagraph (c)(1)(B) of Section 1716] limits the type of fraud that will serve as a ground for denying recognition to extrinsic fraud. This provision is consistent with the interpretation of the comparable provision in subsection 4(b)(2) of the 1962 Act by the courts, which have found that only extrinsic fraud — conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case — is sufficient under the 1962 Act. Examples of extrinsic fraud would be when the plaintiff deliberately had the initiating process served on the defendant at the wrong address, deliberately gave the defendant wrong information as to the time and place of the hearing, or obtained a default judgment against the defendant based on a forged confession of judgment. When this type of fraudulent action by the plaintiff deprives the defendant of an adequate opportunity to present its case, then it provides grounds for denying recognition of the foreign-country judgment. Extrinsic fraud should be distinguished from intrinsic fraud, such as false testimony of a witness or admission of a forged document into evidence during the foreign proceeding. Intrinsic fraud does not provide a basis for denying recognition under [subparagraph (c)(1)(B)], as the assertion that intrinsic fraud has occurred should be raised and dealt with in the rendering court.

8. The public policy exception in [subparagraph (c)(1)(C) of Section 1716] is based on the public policy exception in subsection 4(b)(3) of the 1962 Act, with one difference. The public policy exception in the 1962 Act states that the relevant inquiry is whether “the [cause of action] [claim for relief] on which the judgment is based” is repugnant to public policy. Based on this “cause of action” language, some courts interpreting the 1962 Act have refused to find that a public policy challenge based on something other than repugnancy of the foreign cause of action comes within this exception. *E.g.*, *Southwest Livestock & Trucking Co., Inc. v. Ramon*, 169 F.3d 317 (5th Cir. 1999) (refusing to deny recognition to Mexican judgment on promissory note with interest rate of 48% because cause of action to collect on promissory note does not violate public policy); *Guinness PLC v. Ward*, 955 F.2d 875 (4th Cir. 1992) (challenge to recognition based on post-judgment settlement could

not be asserted under public policy exception); *The Society of Lloyd's v. Turner*, 303 F.3d 325 (5th Cir. 2002) (rejecting argument legal standards applied to establish elements of breach of contract violated public policy because cause of action for breach of contract itself is not contrary to state public policy); *cf. Bachchan v. India Abroad Publications, Inc.*, 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992) (judgment creditor argued British libel judgment should be recognized despite argument it violated First Amendment because New York recognizes a cause of action for libel). [Subparagraph (c)(1)(C)] rejects this narrow focus by providing that the forum court may deny recognition if either the cause of action or the judgment itself violates public policy. *Cf. Restatement (Third) of the Foreign Relations Law of the United States*, § 482(2)(d) (1986) (containing a similarly-worded public policy exception to recognition).

Although [subparagraph (c)(1)(C)] of this Act rejects the narrow focus on the cause of action under the 1962 Act, it retains the stringent test for finding a public policy violation applied by courts interpreting the 1962 Act. Under that test, a difference in law, even a marked one, is not sufficient to raise a public policy issue. Nor is it relevant that the foreign law allows a recovery that the forum state would not allow. Public policy is violated only if recognition or enforcement of the foreign-country judgment would tend clearly to injure the public health, the public morals, or the public confidence in the administration of law, or would undermine "that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel." *Hunt v. BP Exploration Co. (Libya) Ltd.*, 492 F. Supp. 885, 901 (N.D. Tex. 1980).

The language "or of the United States" in [subparagraph (c)(1)(C)], which does not appear in the 1962 Act provision, makes it clear that the relevant public policy is that of both the State in which recognition is sought and that of the United States. This is the position taken by the vast majority of cases interpreting the 1962 public policy provision. *E.g., Bachchan v. India Abroad Publications, Inc.*, 585 N.Y.S.2d 661 (Sup.Ct. N.Y. 1992) (British libel judgment denied recognition because it violates First Amendment).

9. [Subparagraph (c)(1)(D) of Section 1716] allows the forum court to refuse recognition of a foreign-country judgment when the parties had a valid agreement, such as a valid forum selection clause or agreement to arbitrate, providing that the relevant dispute would be resolved in a forum other than the forum issuing the foreign-country judgment. Under this provision, the forum court must find both the existence of a valid

agreement and that the agreement covered the subject matter involved in the foreign litigation resulting in the foreign-country judgment.

10. [Subparagraph (c)(1)(E) of Section 1716] authorizes the forum court to refuse recognition of a foreign-country judgment that was rendered in the foreign country solely on the basis of personal service when the forum court believes the original action should have been dismissed by the court in the foreign country on grounds of *forum non conveniens*.

11. [Subparagraph (c)(1)(F) of Section 1716] is new. Under this [subparagraph], the forum court may deny recognition to a foreign-country judgment if there are circumstances that raise substantial doubt about the integrity of the rendering court with respect to that judgment. It requires a showing of corruption in the particular case that had an impact on the judgment that was rendered. This provision may be contrasted with [paragraph] (b)(1), which requires that the forum court refuse recognition to the foreign-country judgment if it was rendered under a judicial system that does not provide impartial tribunals. Like the comparable provision in subsection 4(a)(1) of the 1962 Act, [paragraph] (b)(1) focuses on the judicial system of the foreign country as a whole, rather than on whether the particular judicial proceeding leading to the foreign-country judgment was impartial and fair. *See, e.g.*, *The Society of Lloyd's v. Turner*, 303 F.3d 325, 330 (5th Cir. 2002) (interpreting the 1962 Act); *CIBC Mellon Trust Co. v. Mora Hotel Corp., N.V.*, 743 N.Y.S.2d 408, 415 (N.Y. App. 2002) (interpreting the 1962 Act); *Society of Lloyd's v. Ashenden*, 233 F.3d 473, 477 (7th Cir. 2000) (interpreting the 1962 Act). On the other hand, [subparagraph (c)(1)(F)] allows the court to deny recognition to the foreign-country judgment if it finds a lack of impartiality and fairness of the tribunal in the individual proceeding leading to the foreign-country judgment. Thus, the difference is that between showing, for example, that corruption and bribery is so prevalent throughout the judicial system of the foreign country as to make that entire judicial system one that does not provide impartial tribunals versus showing that bribery of the judge in the proceeding that resulted in the particular foreign-country judgment under consideration had a sufficient impact on the ultimate judgment as to call it into question.

12. [Subparagraph (c)(1)(G) of Section 1716] also is new. It allows the forum court to deny recognition to the foreign-country judgment if the court finds that the specific proceeding in the foreign court was not compatible with the requirements of fundamental fairness. Like

[subparagraph (c)(1)(F)], it can be contrasted with [paragraph] (b)(1), which requires the forum court to deny recognition to the foreign-country judgment if the forum court finds that the entire judicial system in the foreign country where the foreign-country judgment was rendered does not provide procedures compatible with the requirements of fundamental fairness. While the focus of [paragraph] (b)(1) is on the foreign country's judicial system as a whole, the focus of [subparagraph (c)(1)(G)] is on the particular proceeding that resulted in the specific foreign-country judgment under consideration. Thus, the difference is that between showing, for example, that there has been such a breakdown of law and order in the particular foreign country that judgments are rendered on the basis of political decisions rather than the rule of law throughout the judicial system versus a showing that for political reasons the particular party against whom the foreign-country judgment was entered was denied fundamental fairness in the particular proceedings leading to the foreign-country judgment.

[Subparagraphs (c)(1)(F) and (c)(1)(G) of Section 1716] both are discretionary grounds for denying recognition, while [paragraph] (b)(1) is mandatory. Obviously, if the entire judicial system in the foreign country fails to satisfy the requirements of impartiality and fundamental fairness, a judgment rendered in that foreign country would be so compromised that the forum court should refuse to recognize it as a matter of course. On the other hand, if the problem is evidence of a lack of integrity or fundamental fairness with regard to the particular proceeding leading to the foreign-country judgment, then there may or may not be other factors in the particular case that would cause the forum court to decide to recognize the foreign-country judgment. For example, a forum court might decide not to exercise its discretion to deny recognition despite evidence of corruption or procedural unfairness in a particular case because the party resisting recognition failed to raise the issue on appeal from the foreign-country judgment in the foreign country, and the evidence establishes that, if the party had done so, appeal would have been an adequate mechanism for correcting the transgressions of the lower court.

13. Under [subdivision (e) of Section 1716], the party opposing recognition of the foreign-country judgment has the burden of establishing that one of the grounds for nonrecognition set out in [subdivisions (b), (c), or (d)] applies. The 1962 Act was silent as to who had the burden of proof to establish a ground for nonrecognition and courts applying the 1962 Act took different positions on the issue.

Compare *Bridgeway Corp. v. Citibank*, 45 F.Supp. 2d 276, 285 (S.D.N.Y. 1999) (plaintiff has burden to show no mandatory basis under 4(a) for nonrecognition exists; defendant has burden regarding discretionary bases) *with* *The Courage Co. LLC v. The ChemShare Corp.*, 93 S.W.3d 323, 331 (Tex. App. 2002) (party seeking to avoid recognition has burden to prove ground for nonrecognition). Because the grounds for nonrecognition in Section [1716] are in the nature of defenses to recognition, the burden of proof is most appropriately allocated to the party opposing recognition of the foreign-country judgment.

[Adapted from the Uniform Law Commission's Comment to the 2005 Uniform Act § 4.]

Code Civ. Proc. § 1717 (amended). Personal jurisdiction
[UFCMJRA §5]

SEC. _____. Section 1717 of the Code of Civil Procedure is amended to read:

1717. (a) For the purposes of paragraph (2) of subdivision (b) of Section 1716, a foreign court lacks personal jurisdiction over the defendant if either of the following conditions is met:

(1) The foreign court lacks a basis for exercising personal jurisdiction that would be sufficient according to the standards governing personal jurisdiction in this state.

(2) The foreign court lacks personal jurisdiction under its own law.

(b) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction under paragraph (1) of subdivision (a) if any of the following apply:

(1) The defendant was served with process personally in the foreign country.

(2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.

(3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

(4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.

(5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.

(6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.

~~(b) (c)~~ The list of bases for personal jurisdiction in subdivision ~~(a) (b)~~ is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subdivision ~~(a) (b)~~ as sufficient ~~to support a foreign country judgment for the purposes of paragraph (1) of subdivision (a).~~

~~(c) If a judgment was rendered in an action for defamation in a foreign country against a person who is a resident of California or a person or entity amenable to jurisdiction in California, and declaratory relief with respect to liability for the judgment or a determination that the judgment is not recognizable in California under Section 1716 is sought, a court has jurisdiction to determine the declaratory relief action as well as personal jurisdiction over the person or entity who obtained the foreign country judgment if both of the following apply:~~

~~(1) The publication at issue was published in California.~~

~~(2) The person who is a resident, or the person or entity who is amenable to jurisdiction in California, either (A) has assets in California that might be subject to an enforcement proceeding to satisfy the foreign country defamation judgment, or (B) may have to take actions in California to comply with the foreign country defamation judgment.~~

~~This subdivision shall apply to persons who obtained judgments in defamation proceedings in a foreign country both prior to and after January 1, 2010.~~

Comment. Section 1717 is similar to Section 5 of the Uniform Foreign-Country Money Judgments Recognition Act (2005).

Subdivision (a) is added to make clear that a foreign court lacks personal jurisdiction if either of the following applies:

- (1) The foreign court lacks a basis for exercising personal jurisdiction that would be sufficient according to the standards governing personal jurisdiction in this state.
- (2) The foreign court lacks personal jurisdiction under its own law.

The need to evaluate personal jurisdiction under the foreign court's own law should be rare. In most cases, objections to personal jurisdiction will have been litigated or waived in the foreign court proceeding. "There is authority ... for the proposition that a U.S. court generally will not look behind a foreign court's finding of personal jurisdiction under its own law." See Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction § 403 Reporters' Note 7 (Tentative Draft No. 1, April 1, 2014). Generally, the mere fact that a judgment was rendered by a foreign court suggests that personal jurisdiction was proper under foreign law. However, a California court may need to evaluate personal jurisdiction under foreign law when the issue of personal jurisdiction was neither litigated nor waived in the foreign proceeding (e.g., the defendant never appeared and a default judgment was entered).

Where a defect in the service of process would defeat personal jurisdiction under foreign law, a court may find that the foreign court lacked personal jurisdiction under foreign law on the basis of that service defect. However, where the service defect is not jurisdictional, the service defect could still lead to nonrecognition under other provisions. E.g., Section 1716(c)(1).

Subdivision (b) provides a list of bases of personal jurisdiction that are consistent with the standards governing personal jurisdiction in this state.

Subdivision (c) makes clear that the bases listed in subdivision (b) are not the exclusive bases for personal jurisdiction consistent with the standards governing personal jurisdiction in this state.

The substance of former subdivision (c) is continued in Section 1725.

Code Civ. Proc. § 1725 (added). Declaratory relief for foreign-country defamation judgments

SEC. ____ . Section 1725 is added to the Code of Civil Procedure, to read:

1725. (a) If all of the following conditions are satisfied, a person against whom a foreign-country defamation judgment was rendered may seek declaratory relief with respect to liability for the judgment or a determination that the judgment is not recognizable under Section 1716:

(1) The person is a resident or other person or entity amenable to jurisdiction in this state.

(2) The person either has assets in this state that may be subject to an enforcement proceeding to satisfy the foreign-country defamation judgment or may have to take actions in this state to comply with the foreign-country defamation judgment.

(3) The publication at issue was published in this state.

(b) A court of this state has jurisdiction to determine a declaratory relief action or issue a determination pursuant to this section and has personal jurisdiction over the person or entity who obtained the foreign-country defamation judgment.

(c) This section shall apply to a foreign-country defamation judgment regardless of when it was rendered.

Comment. Section 1725 continues the substance of former Section 1717(c).

TECHNICAL AND ORGANIZATIONAL REVISIONS

Heading of Title 11 (commencing with Section 1710.10) (amended).

SEC. _____. The heading of Title 11 (commencing with Section 1710.10) of Part 3 of the Code of Civil Procedure is amended to read:

TITLE 11: ~~SISTER STATE AND FOREIGN MONEY-~~ ~~JUDGMENTS~~ MONEY JUDGMENTS OF OTHER JURISDICTIONS

Comment. The heading of Title 11 (commencing with Section 1710.10) is revised to reflect the addition of the Tribal Court Civil Money Judgment Act (Chapter 3) to this Title.

Heading of Chapter 1 (commencing with Section 1710.10) (amended).

SEC. _____. The heading of Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3 of the Code of Civil Procedure is amended to read:

Chapter 1: Sister State ~~Money Judgments~~ Money Judgments

Comment. The heading of Chapter 1 (commencing with Section 1710.10) is revised for consistency with the hyphenation used within the Chapter.

Code Civ. Proc. § 1714, as amended by Section 2 of Chapter 243 of the Statutes of 2014 (amended). Definitions [UFCMJRA §2]

SEC. _____. Section 1714 of the Code of Civil Procedure, as amended by Section 2 of Chapter 243 of the Statutes of 2014, is amended to read:

1714. As used in this chapter:

(a) “Foreign country” means a government other than any of the following:

(1) The United States.

(2) A state, district, commonwealth, territory, or insular possession of the United States.

(3) A federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village.

(4) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(b) "Foreign-country judgment" means a judgment of a court of a foreign country.

~~(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.~~

Comment. Section 1714, as amended by Section 2 of Chapter 243 of the Statutes of 2014, is drawn from Section 2 of the Uniform Foreign-Country Money Judgments Recognition Act (2005).

Section 1714 is amended to make clear that the recognition of a tribal court civil money judgment is not governed by this chapter. See Section 1732(f) (defining "tribal court"). For the rules governing recognition of a tribal court civil money judgment, see Chapter 3.

Former subdivision (c) is not continued. This reflects the repeal of former Section 1742.

Code Civ. Proc. § 1714, as added by Section 3 of Chapter 243 of the Statutes of 2014 (repealed). Definitions

SEC. _____. Section 1714 of the Code of Civil Procedure, as added by Section 3 of Chapter 243 of the Statutes of 2014, is repealed.

Comment. Section 1714, as added by Section 3 of Chapter 243 of the Statutes of 2014, is repealed. This reflects the repeal of former Section 1742.

 **Note.** The text of the repealed section is set out below.

1714. (a) "Foreign country" means a government other than any of the following:

(1) The United States.

(2) A state, district, commonwealth, territory, or insular possession of the United States.

(3) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(b) "Foreign-country judgment" means a judgment of a court of a foreign country. "Foreign-country judgment" includes a judgment by any Indian tribe recognized by the government of the United States.

(c) This section is operative on and after January 1, 2018.

Heading of Title 11.5 (commencing with Section 1730) (repealed).

SEC. _____. The heading of Title 11.5 (commencing with Section 1730) of Part 3 of the Code of Civil Procedure is repealed.

Comment. The heading of Title 11.5 (commencing with Section 1730) is repealed. It is continued as the heading of Chapter 3 (commencing with Section 1730).

Heading of Chapter 3 (commencing with Section 1730) (added).

SEC. _____. A heading is added as Chapter 3 (commencing with Section 1730) of Title 11 of Part 3 of the Code of Civil Procedure, immediately preceding Section 1730, to read:

**CHAPTER 3: TRIBAL COURT CIVIL MONEY
JUDGMENT ACT**

Comment. The heading of Chapter 3 (commencing with Section 1730) is added to locate the Tribal Court Civil Money Judgment Act within Title 11.

Code Civ. Proc. § 1730 (amended). Short title

SEC. _____. Section 1730 of the Code of Civil Procedure is amended to read:

1730. This ~~title~~ chapter shall be known and may be cited as the Tribal Court Civil Money Judgment Act.

Comment. Section 1730 is amended to update a cross-reference.

Code Civ. Proc. § 1731 (amended). Scope

SEC. _____. Section 1731 of the Code of Civil Procedure is amended to read:

1731. (a) This ~~title~~ chapter governs the procedures by which the superior courts of the State of California recognize and enter tribal court money judgments of any federally recognized Indian tribe. Determinations regarding recognition and entry of a tribal court money judgment pursuant to state law shall have no effect upon the independent authority of that judgment. To the extent not inconsistent with this ~~title~~ chapter, the Code of Civil Procedure shall apply.

(b) This ~~title~~ chapter does not apply to any of the following tribal court money judgments:

(1) For taxes, fines, or other penalties.

(2) For which federal law requires that states grant full faith and credit recognition, including child support orders under the Full Faith and Credit for Child Support Orders Act (28 U.S.C. Sec. 1738B).

(3) For which state law provides for recognition, including child support orders recognized under the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code), other forms of family support orders under the Uniform Interstate Family Support Act (Part 6 (commencing with Section 5700.101) of Division 9 of the Family Code).

(4) For decedents' estates, guardianships, conservatorships, internal affairs of trusts, powers of attorney, or other tribal court money judgments that arise in proceedings that are or would be governed by the Probate Code.

(c) Nothing in this ~~title~~ chapter shall be deemed or construed to expand or limit the jurisdiction of either the state or any Indian tribe.

Comment. Section 1731 is amended to update cross-references.

Code Civ. Proc. § 1732 (amended). Definitions

SEC. _____. Section 1732 of the Code of Civil Procedure is amended to read:

1732. For purposes of this ~~title~~ chapter:

(a) “Applicant” means the person or persons who can bring an action to enforce a tribal court money judgment.

(b) “Civil action or proceeding” means any action or proceeding that is not criminal, except for those actions or proceedings expressly excluded by subdivision (b) of Section 1731.

(c) “Due process” includes, but is not limited to, the right to be represented by legal counsel, to receive reasonable notice and an opportunity for a hearing, to call and cross-examine witnesses, and to present evidence and argument to an impartial decisionmaker.

(d) “Good cause” means a substantial reason, taking into account the prejudice or irreparable harm a party will suffer if a hearing is not held on an objection or not held within the time periods established by this ~~title~~ chapter.

(e) “Respondent” means the person or persons against whom an action to enforce a tribal court money judgment can be brought.

(f) “Tribal court” means any court or other tribunal of any federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village, duly established under tribal or federal law, including Courts of Indian Offenses organized pursuant to Part 11 of Title 25 of the Code of Federal Regulations.

(g) “Tribal court money judgment” means any written judgment, decree, or order of a tribal court for a specified amount of money that was issued in a civil action or proceeding that is final, conclusive, and enforceable by the tribal court in which it was issued and is duly authenticated in accordance with the laws and procedures of the tribe or tribal court.

Comment. Section 1732 is amended to update cross-references.

Code Civ. Proc. § 1733 (amended). Location for filing

SEC. _____. Section 1733 of the Code of Civil Procedure is amended to read:

1733. (a) An application for entry of a judgment under this ~~title~~ chapter shall be filed in a superior court.

(b) Subject to the power of the court to transfer proceedings under this ~~title~~ chapter pursuant to Title 4 (commencing with

Section 392) of Part 2, the proper county for the filing of an application is either of the following:

(1) The county in which any respondent resides or owns property.

(2) If no respondent is a resident, any county in this state.

(c) A case in which the tribal court money judgment amounts to twenty-five thousand dollars (\$25,000) or less is a limited civil case.

Comment. Section 1733 is amended to update cross-references.

Code Civ. Proc. § 1737 (amended). Standards for recognition for tribal court money judgment [UFCMJRA § 4]

Comment. Section 1737 is similar to Section 4 of the Uniform Foreign-Country Money Judgments Recognition Act (2005) (“2005 Uniform Act”), but relates to the recognition for tribal court civil money judgments. See also Section 1716 (for recognition of foreign-country money judgments).

Paragraph (b)(1) provides that a tribal court money judgment shall not be recognized if the tribal court did not have personal jurisdiction over the respondent. Under this paragraph, a tribal court can lack personal jurisdiction if either of the following applies:

- (1) The tribal court lacks a basis for exercising personal jurisdiction that would be sufficient according to the standards governing personal jurisdiction in this state.
- (2) The tribal court lacks personal jurisdiction under its own law.

The need to evaluate personal jurisdiction under the tribal court’s own law should be rare. In most cases, objections to personal jurisdiction will have been litigated or waived in the tribal court proceeding. “There is authority ... for the proposition that a U.S. court generally will not look behind a foreign court’s finding of personal jurisdiction under its own law.” See Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction § 403 Reporters’ Note 7 (Tentative Draft No. 1, April 1, 2014). Generally, the mere fact that a judgment was rendered by a tribal court suggests that personal jurisdiction was proper under tribal law. However, a California court may need to evaluate personal jurisdiction under tribal law when the issue of personal jurisdiction was neither litigated nor waived in the tribal court proceeding (e.g., the defendant never appeared and a default judgment was entered).

Where a defect in the service of process would defeat personal jurisdiction under tribal law, a court may find that the tribal court lacked personal jurisdiction under tribal law on the basis of that service defect. However, where the service defect is not jurisdictional, the service defect could still lead to nonrecognition under other provisions. E.g., Section 1737(c)(1)(A).

Paragraph (c)(1) lists grounds for nonrecognition of a tribal court money judgment. When the grounds for nonrecognition in paragraph (c)(1) apply, the court may nonetheless recognize the foreign-country judgment, under paragraph (c)(2), in the unusual case where countervailing considerations outweigh the seriousness of the defect underlying the applicable ground for nonrecognition. Such countervailing considerations could include, for instance, situations in which the opponent failed to raise an objection in the tribal court or the opponent's own misconduct was the primary cause of the harm suffered.

Subparagraph (c)(1)(A) provides for nonrecognition of a tribal court money judgment if the defendant did not receive notice of the tribal court proceeding in sufficient time to enable the defendant to defend. Under this subparagraph, a defect in either the timing or the content of the notice could be grounds for nonrecognition if that defect precluded the defendant from defending in the tribal court proceeding.

Subparagraph (c)(1)(B) provides for nonrecognition of a tribal court money judgment if fraud deprived the losing party of an adequate opportunity to present its case. The Uniform Law Commission's commentary on this provision indicates that the type of fraud that can serve as grounds for nonrecognition is limited to "extrinsic fraud — conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case." See Background from the 2005 Uniform Act *infra*. The reference to "extrinsic fraud" suggests that the test established by the exception is categorical, permitting nonrecognition in cases of extrinsic, but not intrinsic, fraud. However, the language of the exception establishes a functional test, whether the fraud deprived the party of an adequate opportunity to present its case. Recent judgment recognition case law evaluates fraud by assessing "whether the injured party had any opportunity to address the alleged misconduct during the original proceeding." See Restatement of the Law Fourth: The Foreign Relations Law of the United States: Jurisdiction § 404 Reporters' Note 3 (Tentative Draft No. 1, April 1, 2014). This case law suggests that a key consideration for a court deciding whether alleged fraud could be a ground for nonrecognition is whether there was

“a reasonable opportunity for the person victimized by fraud to uncover the misconduct and bring it to the [rendering] court’s attention.” *Id.*

Subdivision (d) provides that a court may decline to recognize a tribal court money judgment if it conflicts with another final and conclusive judgment. Some commentators suggest that, where the tribal court rendering the later judgment fairly considered the earlier judgment and declined to recognize it under standards similar to those set forth in this Act, a court should ordinarily recognize the later tribal court money judgment. However, in some situations, other law may require the recognition of one of the conflicting judgments (e.g., where one of the conflicting judgments is entitled to full faith and credit). See *id.* § 404 Comment f, Reporters’ Note 6.

The commentary for Section 4 of the 2005 Uniform Act is set out, in relevant part, below. The Law Revision Commission’s recommendation (*Recognition of Tribal and Foreign Court Money Judgments*, 44 Cal. L. Revision Comm’n Reports 611 (2016)) does not reproduce all parts of the Uniform Law Commission commentary. The omission of any part of the Uniform Law Commission commentary does not necessarily imply disapproval of the omitted commentary.

The legislation implementing the Commission’s recommendation made changes to the court’s discretion to recognize a judgment when certain grounds for nonrecognition apply. See AB 905 (Maienschein), as amended March 13, 2017. The Uniform Law Commission commentary may not be consistent with these changes.

Background from the 2005 Uniform Act

Source: [Section 1737] is based on Section 4 of the 1962 [Uniform Foreign Money Judgments Recognition] Act [hereafter, “1962 Act”].

1. [Section 1737] provides the standards for recognition of a [tribal court] money judgment. ...

2. [Omitted]

3. ... [Subdivision (b) of Section 1737] states three mandatory grounds for denying recognition to a [tribal court] money judgment. If the forum court finds that one of the grounds listed in [subdivision (b)] exists, then it must deny recognition to the [tribal court] money judgment. [Subdivisions (c) and (d) state nine] nonmandatory grounds for denying recognition. The forum court has discretion to decide whether or not to refuse recognition based on one of these grounds. [Subdivision (e)] places the burden of proof on the party resisting recognition of the [tribal

court] judgment to establish that one of the grounds for nonrecognition exists.

4. [Omitted]

5. Under [paragraph (b)(3) of Section 1737], the forum court must deny recognition to the [tribal court] money judgment if that judgment was “rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.” The standard for this ground for nonrecognition “has been stated authoritatively by the Supreme Court of the United States in *Hilton v. Guyot*, 159 U.S. 113, 205 (1895). As indicated in that decision, a mere difference in the procedural system is not a sufficient basis for nonrecognition. A case of serious injustice must be involved.” Cmt §4, Uniform Foreign Money-Judgment Recognition Act (1962). The focus of inquiry is not whether the procedure ... is similar to U.S. procedure, but rather on the basic fairness of the [tribal court] procedure. *Kam-Tech Systems, Ltd. v. Yardeni*, 74 A.2d 644, 649 (N.J. App. 2001) (interpreting the comparable provision in the 1962 Act); *accord*, *Society of Lloyd’s v. Ashenden*, 233 F.3d 473 (7th Cir. 2000) (procedures need not meet all the intricacies of the complex concept of due process that has emerged from U.S. case law, but rather must be fair in the broader international sense) (interpreting comparable provision in the 1962 Act). Procedural differences, such as absence of jury trial or different evidentiary rules are not sufficient to justify denying recognition under [paragraph (b)(3)], so long as the essential elements of impartial administration and basic procedural fairness have been provided in the [tribal court] proceeding. As the U.S. Supreme Court stated in *Hilton*:

Where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect then a foreign-country judgment should be recognized. *Hilton*, 159 U.S. at 202.

6. [Omitted]

7. [Subparagraph (c)(1)(B) of Section 1737] limits the type of fraud that will serve as a ground for denying recognition to extrinsic fraud. This provision is consistent with the interpretation of the comparable provision in subsection 4(b)(2) of the 1962 Act by the courts, which have found that only extrinsic fraud — conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case — is sufficient under the 1962 Act. Examples of extrinsic fraud would be when the plaintiff deliberately had the initiating process served on the defendant at the wrong address, deliberately gave the defendant wrong information as to the time and place of the hearing, or obtained a default judgment against the defendant based on a forged confession of judgment. When this type of fraudulent action by the plaintiff deprives the defendant of an adequate opportunity to present its case, then it provides grounds for denying recognition of the [tribal court] judgment. Extrinsic fraud should be distinguished from intrinsic fraud, such as false testimony of a witness or admission of a forged document into evidence during the [tribal court] proceeding. Intrinsic fraud does not provide a basis for denying recognition under [subparagraph (c)(1)(B)], as the assertion that intrinsic fraud has occurred should be raised and dealt with in the rendering court.

8. The public policy exception in [subparagraph (c)(1)(C) of Section 1737] is based on the public policy exception in subsection 4(b)(3) of the 1962 Act, with one difference. The public policy exception in the 1962 Act states that the relevant inquiry is whether “the [cause of action] [claim for relief] on which the judgment is based” is repugnant to public policy. Based on this “cause of action” language, some courts interpreting the 1962 Act have refused to find that a public policy challenge based on something other than repugnancy of the ... cause of action comes within this exception. E.g., *Southwest Livestock & Trucking Co., Inc. v. Ramon*, 169 F.3d 317 (5th Cir. 1999) (refusing to deny recognition to Mexican judgment on promissory note with interest rate of 48% because cause of action to collect on promissory note does not violate public policy); *Guinness PLC v. Ward*, 955 F.2d 875 (4th Cir. 1992) (challenge to recognition based on post-judgment settlement could not be asserted under public policy exception); *The Society of Lloyd’s v. Turner*, 303 F.3d 325 (5th Cir. 2002) (rejecting argument legal standards applied to establish elements of breach of contract violated public policy because cause of action for breach of contract itself is not contrary to state public policy); cf. *Bachchan v. India Abroad Publications, Inc.*, 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992) (judgment creditor argued British

libel judgment should be recognized despite argument it violated First Amendment because New York recognizes a cause of action for libel). [Subparagraph (c)(1)(C)] rejects this narrow focus by providing that the forum court may deny recognition if either the cause of action or the judgment itself violates public policy. Cf. Restatement (Third) of the Foreign Relations Law of the United States, § 482(2)(d) (1986) (containing a similarly-worded public policy exception to recognition).

Although [subparagraph (c)(1)(C)] of this Act rejects the narrow focus on the cause of action under the 1962 Act, it retains the stringent test for finding a public policy violation applied by courts interpreting the 1962 Act. Under that test, a difference in law, even a marked one, is not sufficient to raise a public policy issue. Nor is it relevant that the [tribe's] law allows a recovery that the forum state would not allow. Public policy is violated only if recognition or enforcement of the [tribal court] judgment would tend clearly to injure the public health, the public morals, or the public confidence in the administration of law, or would undermine "that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel." *Hunt v. BP Exploration Co. (Libya) Ltd.*, 492 F. Supp. 885, 901 (N.D. Tex. 1980).

The language "or of the United States" in [subparagraph (c)(1)(C)], which does not appear in the 1962 Act provision, makes it clear that the relevant public policy is that of both the State in which recognition is sought and that of the United States. This is the position taken by the vast majority of cases interpreting the 1962 public policy provision. *E.g.*, *Bachchan v. India Abroad Publications, Inc.*, 585 N.Y.S.2d 661 (Sup.Ct. N.Y. 1992) (British libel judgment denied recognition because it violates First Amendment).

9. [Subparagraph (c)(1)(D) of Section 1737] allows the forum court to refuse recognition of a [tribal court] judgment when the parties had a valid agreement, such as a valid forum selection clause or agreement to arbitrate, providing that the relevant dispute would be resolved in a forum other than the [tribal court] issuing the ... judgment. Under this provision, the forum court must find both the existence of a valid agreement and that the agreement covered the subject matter involved in the ... litigation resulting in the [tribal court] judgment.

10. [Subparagraph (c)(1)(E) of Section 1737] authorizes the forum court to refuse recognition of a [tribal court] judgment that was rendered ... solely on the basis of personal service when the forum court believes

the original action should have been dismissed by the [tribal] court ... on grounds of forum non conveniens.

11. ... Under [subparagraph (c)(1)(F) of Section 1737], the forum court may deny recognition to a [tribal court] judgment if there are circumstances that raise substantial doubt about the integrity of the rendering court with respect to that judgment. It requires a showing of corruption in the particular case that had an impact on the judgment that was rendered. This provision may be contrasted with [paragraph (b)(3)], which requires that the forum court refuse recognition to the [tribal court] judgment if it was rendered under a judicial system that does not provide impartial tribunals. Like the comparable provision in subsection 4(a)(1) of the 1962 Act, [paragraph (b)(3)] focuses on the [tribe's] judicial system ... as a whole, rather than on whether the particular judicial proceeding leading to the [tribal court] judgment was impartial and fair. *See, e.g.,* The Society of Lloyd's v. Turner, 303 F.3d 325, 330 (5th Cir. 2002) (interpreting the 1962 Act); CIBC Mellon Trust Co. v. Mora Hotel Corp., N.V., 743 N.Y.S.2d 408, 415 (N.Y. App. 2002) (interpreting the 1962 Act); Society of Lloyd's v. Ashenden, 233 F.3d 473, 477 (7th Cir. 2000) (interpreting the 1962 Act). On the other hand, [subparagraph (c)(1)(F)] allows the court to deny recognition to the [tribal court] judgment if it finds a lack of impartiality and fairness of the tribunal in the individual proceeding leading to the [tribal court] judgment. Thus, the difference is that between showing, for example, that corruption and bribery is so prevalent throughout the [tribe's] judicial system ... as to make that entire judicial system one that does not provide impartial tribunals versus showing that bribery of the judge in the proceeding that resulted in the particular [tribal court] judgment under consideration had a sufficient impact on the ultimate judgment as to call it into question.

12. [Subparagraph (c)(1)(G) of Section 1737] ... allows the forum court to deny recognition to the [tribal court] judgment if the court finds that the specific proceeding in the [tribal] court was not compatible with the requirements of fundamental fairness. Like [subparagraph (c)(1)(F)], it can be contrasted with [paragraph (b)(3)], which requires the forum court to deny recognition to the [tribal court] judgment if the forum court finds that the entire judicial system ... where the [tribal court] judgment was rendered does not provide procedures compatible with the requirements of fundamental fairness. While the focus of [paragraph (b)(3)] is on the [tribal] judicial system as a whole, the focus of [subparagraph (c)(1)(G)] is on the particular proceeding that resulted in

the specific [tribal court] judgment under consideration. Thus, the difference is that between showing, for example, that there has been such a breakdown of law and order in the particular [tribe] that judgments are rendered on the basis of political decisions rather than the rule of law throughout the judicial system versus a showing that for political reasons the particular party against whom the [tribal court] judgment was entered was denied fundamental fairness in the particular proceedings leading to the [tribal court] judgment.

[Subparagraphs (c)(1)(F) and (c)(1)(G)] both are discretionary grounds for denying recognition, while [paragraph (b)(3)] is mandatory. Obviously, if the [tribe's] entire judicial system ... fails to satisfy the requirements of impartiality and fundamental fairness, a judgment rendered in that [judicial system] would be so compromised that the forum court should refuse to recognize it as a matter of course. On the other hand, if the problem is evidence of a lack of integrity or fundamental fairness with regard to the particular proceeding leading to the [tribal court] judgment, then there may or may not be other factors in the particular case that would cause the forum court to decide to recognize the [tribal court] judgment. For example, a forum court might decide not to exercise its discretion to deny recognition despite evidence of corruption or procedural unfairness in a particular case because the party resisting recognition failed to raise the issue on appeal from the [tribal court] judgment ..., and the evidence establishes that, if the party had done so, appeal would have been an adequate mechanism for correcting the transgressions of the lower court.

13. [Omitted]

[Adapted from the Uniform Law Commission's Comment to the 2005 Uniform Act § 4.]

Code Civ. Proc. § 1741 (amended). Application of chapter

SEC. _____. Section 1741 of the Code of Civil Procedure is amended to read:

1741. (a) The Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2 (commencing with Section 1713) of Title 11 of Part 3) applies to all actions commenced in superior court before ~~the effective date of this title~~ January 1, 2015, in which the issue of recognition of a tribal court money judgment is raised.

(b) This ~~title~~ chapter applies to all actions to enforce tribal court money judgments as defined herein commenced in superior court on or after ~~the effective date of this title~~ January 1, 2015. A judgment entered under this title shall not limit the right of a party to seek enforcement of any part of a judgment, order, or decree entered by a tribal court that is not encompassed by the judgment entered under this ~~title~~ chapter.

Comment. Section 1741 is amended to update cross-references and to specify the effective date of the Act.

Code Civ. Proc. § 1742 (repealed). Repeal of title

SEC. _____. Section 1742 of the Code of Civil Procedure is repealed.

Comment. Section 1742, which would have automatically repealed the Tribal Court Civil Money Judgment Act on January 1, 2018, is repealed. Conforming changes to reflect this repeal are made to Section 1714, as amended by Section 2 of Chapter 243 of the Statutes of 2014, and Section 1714, as amended by Section 3 of Chapter 243 of the Statutes of 2014.

 **Note.** The text of the repealed section is set out below.

1742. This title shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Government Interruption of
Communication Service

December 2016

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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STATE OF CALIFORNIA

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December 1, 2016

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

The Legislature has directed the California Law Revision Commission to study the extent to which government can lawfully interrupt communication services, and to recommend any needed reforms.

The Commission determined that government action to interrupt communications can be constitutional in some circumstances, if government acts pursuant to procedures that are properly designed to protect free expression and due process rights. While existing statutory procedures are mostly sufficient to ensure the constitutionality of government action to interrupt communications, there is room for improvement. This recommendation proposes a number of reforms to improve existing law.

The recommendation was prepared pursuant to Resolution Chapter 150 of the Statutes of 2016.

Respectfully submitted,
Susan Duncan Lee
Chairperson

GOVERNMENT INTERRUPTION OF COMMUNICATION SERVICE

In 2013, the Legislature enacted Senate Concurrent Resolution 54 (Padilla)¹, which, among other things, directs the California Law Revision Commission to study the constitutionality of government interruption of communication service and propose reforms to improve the procedure used to take such action.²

The Commission has analyzed the controlling law and concluded that government action to interrupt communications can be constitutional in some circumstances, if government acts pursuant to procedures that are properly designed to protect constitutional free expression and due process rights.

Existing statutory procedures are mostly sufficient to ensure the constitutionality of government action to interrupt communications, but could be improved. The Commission's analysis and recommendations are set out below.

CONSTITUTIONAL ANALYSIS

A government interruption of communication services directly implicates two constitutional rights:

- (1) The right of free expression guaranteed by the First Amendment of the United States Constitution and Section 2 of Article I of the California Constitution.
- (2) The right not to be deprived of property without due process of law, as guaranteed by the Fifth Amendment of the United States Constitution and Section 7 of Article I of the California Constitution.

Analysis of whether a particular government interruption of communications would violate one or both of those rights depends

1. See 2013 Cal. Stat. res. ch. 115.

2. For a discussion of the resolution language and the Legislature's intent as to the intended scope of the Commission's study, see CLRC Staff Memorandum 2015-18, pp. 2-5; Minutes (June 2015), p. 3.

on the nature of the government's action (i.e., the scope of the interruption, its purpose, and the procedures followed by the government).

For that reason, the Commission divided its analysis of the constitutionality of government interruption of communications into different scenarios, each presenting different constitutional considerations.

One key distinction drawn by the Commission in its analysis is the distinction between a *specific* interruption of communication service and a *general* one. A specific interruption would affect only a specifically-identified service (e.g., one particular cell phone account). By contrast, a general interruption would affect all communications of a particular type within a geographical area (e.g., all cell phone service in a specified geographical area).

The Commission also analyzed the suppression of prisoner use of wireless communications in correctional facilities. Such action presents special constitutional and practical considerations.

Accordingly, the analysis that follows is organized into three parts:

- Specific interruption of communication service.
- General interruption of communication service.
- Prisoners in correctional facilities.

Within each part, the analysis discusses free expression concerns first, and then discusses due process rights.

Specific Interruption of Communication Service

The California Supreme Court has twice held that the summary termination of a specific communication service does not violate constitutional rights if it is conducted in a way that respects due process rights.³ The Commission found no cases holding

3. *Goldin v. Public Utilities Commission*, 23 Cal. 3d 638 (1979) (telephone line used for prostitution); *Sokol v. Public Utilities Commission*, 65 Cal. 2d 247 (1966) (telephone line used for illegal gambling).

otherwise. The basis for the Court's holding in the most recent case (*Goldin v. Public Utilities Commission*) and the procedural requirements that the Court established are explained below.

Free Expression

The Court acknowledged that an interruption of communication service could violate the right of free expression, because the Constitution protects both the content of expression and the means by which expression is made possible:

Inasmuch as the rights of free speech and press are worthless without an effective means of expression, the guarantee extends both to the content of the communication and the means employed for its dissemination.⁴

However, the Court then held that the First Amendment provides no protection for speech that is used for an unlawful purpose.⁵ Thus, if a government interruption would only affect a communication service that is being used for a criminal enterprise, the action would not violate constitutional free expression rights.

Due Process

The Court in *Goldin* expressed “no doubt” that telephone service “is an interest in ‘property’ of the nature entitled to protection against ‘taking’ without due process of law.”⁶ For that reason, government cannot interrupt telephone service without providing due process to the affected customer.

4. *Goldin*, 23 Cal. 3d at 654, quoting *Sokol*, 65 Cal. 2d at 255.

5. *Id.* at 657.

6. *Id.* at 662. Although this principle was not stated as directly in *Sokol*, in that case the Court did find that telephone service is an important property interest that cannot be taken without due process of law. *Sokol*, 65 Cal. 2d at 254-55 (“In modern commercial society, telephone communication is indispensable to legitimate business operations, and the discontinuance of service for even a limited period of time is capable of causing a company to fail....”).

Ordinarily, due process requires notice and an opportunity to be heard before a person is deprived of a property interest.⁷

However, there are extraordinary circumstances in which a person may constitutionally be deprived of a property interest without prior notice and an opportunity to be heard, so long as the deprivation is followed by a prompt opportunity for judicial review. As the California Supreme Court explained in *Goldin*:

In the case of *Fuentes v. Shevin* (1972) 407 U.S. 67 [32 L.Ed.2d 556, 92 S.Ct. 1983], the United States Supreme Court outlined those kinds of circumstances which would be considered sufficiently “extraordinary” to justify the postponement of a hearing. “Only in a few limited situations has this Court allowed outright seizure ... without opportunity for a prior hearing. First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance. Thus, the Court has allowed summary seizure of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economic disaster of a bank failure, and to protect the public from misbranded drugs and contaminated food.”⁸

With all of that in mind, the California Supreme Court held that government may constitutionally deprive a person of telephone service without prior notice and an opportunity to be heard, so long as certain facts are found by a neutral judicial officer. Specifically, the Court held that the following procedure would be consistent with the requirements of due process:

7. *Goldin*, 23 Cal. 3d at 622.

8. *Id.* at 663, quoting *Fuentes v. Shevin*, 407 U.S. 67, 90-92 (1972).

- The government must apply for an authorizing court order, under a procedure similar to the procedure used to obtain a search warrant.
- A magistrate must find probable cause that the communication service to be interrupted is or will be used for an unlawful purpose.
- A magistrate must find that, absent immediate and summary action, significant dangers to public health, safety, or welfare will result.
- The affected customer must have a prompt post-interruption opportunity for judicial review of the government's allegations.⁹

Those procedures were mostly codified in Public Utilities Code Section 7908, which applies to a government interruption of certain communication services, to abate the unlawful use of the service, in circumstances where immediate action is required to protect public health, safety, and welfare.

The Court did not address whether the Constitution permits an exception to the procedure described above in cases of extreme emergency. The Commission concludes that an emergency exception to the requirement of prior court approval of an interruption of communication service makes policy sense and would likely be consistent with due process rights. Such an exception would be consistent with the line of cases cited in *Goldin*, which hold that there are extraordinary circumstances in which government can take summary action to seize property without violating due process rights. A genuine emergency would likely be such an extraordinary circumstance.

There are two existing California statutes that authorize emergency action to terminate communication service, without prior court approval. The first allows law enforcement to cut lines of communication available to a person who has taken hostages.¹⁰

9. *Id.* at 664-65.

10. Pub. Util. Code § 7907.

The purpose of that provision is to limit the hostage-taker's ability to communicate with anyone other than law enforcement. This is a narrowly-drawn rule that addresses an extreme emergency, where lives are at stake. The second statute permits summary interruption of communications in cases of "extreme emergency" involving an "immediate danger of death or great bodily injury" where there is insufficient time to obtain a court order.¹¹ It seems likely that the kind of life-threatening emergencies addressed by those statutes would be the type of extraordinary circumstances that justify summary action without prior notice or prior court approval.

There are also two California statutes that provide for termination of communication service *after* the affected customer has been given notice and an opportunity for review of the government's justification.¹² Because those statutes provide notice and an opportunity to be heard before communications are affected, they seem squarely consistent with constitutional due process rights.

Conclusion

The California Supreme Court has twice held that a specific interruption of communication service, without prior notice to the affected customer, does not violate constitutional free expression or due process rights if the following requirements are satisfied:

- The action must be approved by a judicial officer.
- The judicial officer must find probable cause that the communication service is or will be used for an unlawful purpose.
- The judicial officer must find that immediate action is required to protect public health, safety, or welfare.
- The affected customer must have a prompt opportunity for adjudication of the government's contentions.

11. Pub. Util. Code § 7908.

12. See, e.g., Bus. & Prof. Code §§ 149, 7099.10.

Public Utilities Code Section 7908 requires the first three of those four requirements, but does not provide for post-interruption review. As discussed further below, the Commission recommends that the law be revised to cure that omission.¹³

General Interruption of Communication Service

The distinguishing feature of a general interruption of communication service (as compared to a specific interruption) is that it is indiscriminate. It will affect all communications within a geographical area, both lawful and unlawful. For example, if police temporarily shut down all cell phone service in downtown Los Angeles, in order to prevent the use of a cell phone to detonate a bomb, that action would also interrupt the lawful communications of thousands of cell phone users within the affected area. Because a general interruption would affect lawful communications, it would necessarily affect communications that are protected by the constitutional right of free expression. This means that such action must survive scrutiny under one or more of the standards that are used to determine the compatibility of government action with constitutional free expression rights.

As discussed further below, the standard applied by a court in reviewing whether a general interruption of communications would violate the right of free expression will depend on the purpose and character of the interruption. For that reason, the analysis below is divided into four parts:

- Prior restraint.
- Incitement of imminent violence.
- Time, place, and manner regulation.
- Government interest unrelated to the suppression of free expression.

13. See discussion of “Post-Interruption Judicial Review” *infra*.

Free Expression: Prior Restraint

The Supreme Court has long held that “any prior restraint on expression comes to this Court with a ‘heavy presumption’ against its constitutional validity.”¹⁴ The Government “thus carries a heavy burden of showing justification for the imposition of such a restraint.”¹⁵

However, the prior restraint doctrine is not absolute. It is subject to a few narrow limitations, including one for government action to protect “the security of ... community life ... against incitements to acts of violence.”¹⁶ Thus, if government interruption of communications is necessary to protect against incitement of violence (as discussed further below), it would likely survive scrutiny under the prior restraint doctrine.

Furthermore, the prior restraint doctrine does not apply to content-neutral regulation of expression.¹⁷ If a particular general interruption of communication service is content-neutral, it would probably survive scrutiny under the prior restraint doctrine.

In addition, as discussed further below, the presumption against prior restraints has not been applied when reviewing a government restriction on expression that is “incidental” to a government purpose that is unrelated to the suppression of free expression.

Free Expression: Incitement of Imminent Violence

There could be circumstances in which government believes that a general interruption of communication service is necessary in order to protect the public from the incitement of imminent violence. For example, if rioters are using text messaging to

14. *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971).

15. *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971).

16. *Near v. Minnesota*, 283 U.S. 697, 715-16 (1931).

17. *DVD Copy Control Ass’n, Inc. v. Bunner*, 31 Cal. 4th 864 (Cal. 2003) (“prior restraint is a *content-based* restriction on speech prior to its occurrence.”) (emphasis in original); see also Congressional Research Service, *Freedom of Speech and Press: Exceptions to the First Amendment* at 7 (2014) (“only content-based injunctions are subject to prior restraint analysis”) (emphasis in original).

encourage and coordinate looting and arson, government might decide to temporarily interrupt cell phone service in the affected area to aid in bringing the rioting under control.¹⁸

The United States Supreme Court has long held that government action that restricts free expression may nonetheless survive First Amendment scrutiny if the action is necessary to address a “clear and present danger.” The modern formulation of that doctrine was expressed in *Brandenburg v. Ohio*:¹⁹

[T]he constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing *imminent* lawless action and is *likely* to incite or produce such action.²⁰

The rationale for proscribing incitement has been explained as follows:

When a speaker uses speech to cause unthinking, immediate lawless action, one cannot rely on more speech in the marketplace of ideas to correct the errors of the original speech; there simply is not enough time, because there is an incitement. In addition, the state has a significant interest in, and no other means of preventing, the resulting lawless conduct. The situation is comparable to someone urging the lynch mob to string up the prisoner. Or, to use the Holmes’ analogy, it is akin to someone falsely shouting “fire” in a crowded theater. In such circumstances, there is no time for reasoned debate, because both the intent of the

18. That justification was offered for the 2011 interruption of cell phone service in areas under the control of Bay Area Rapid Transit police, in order to suppress public demonstrations that were expected to be dangerous. See Senate Energy, Utilities, and Communications Committee Analysis of SB 1160 (April 9, 2012), p. 2.

19. 395 U.S. 444 (1969).

20. *Id.* at 447 (emphasis added).

speaker and the circumstances in which he harangues the crowd amount to incitement.²¹

It is likely that a temporary interruption of communication service to suppress the incitement of violence at a riotous assembly would survive review under the *Brandenburg* standard, *if the threatened violence were sufficiently imminent and likely to occur*.

Curfews provide a useful analogy in this regard. A curfew is an order prohibiting all public assembly in specified areas, at specified times, to protect public health, safety, and welfare. A curfew clearly impinges on free expression and assembly rights. Nonetheless, curfews have been upheld as constitutional, in extreme circumstances, as necessary to protect the public from a clear and present danger:

An inherent tension exists between the exercise of First Amendment rights and the government's need to maintain order during a period of social strife. The desire for free and unfettered discussion and movement must be balanced against the desire to protect and preserve life and property from destruction. Restrictions on speech are justified when an undeniable public interest is threatened by clear and present danger of serious substantive evils. "Whenever the fundamental rights of free speech and assembly are alleged to have been invaded, it must remain open to a defendant to present the issue whether there actually did exist at the time a clear danger; whether the danger, if any, was imminent; and whether the evil apprehended was one so substantial as to justify the stringent restriction interposed by the legislature." ...

...
It cannot be gainsaid that the government must make every effort to avoid trammeling its citizens' constitutional rights. By the same token, those rights are not absolute. "[T]he Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an

21. R. Rotunda & J. Nowak, *Treatise on Constitutional Law — Substance and Procedure* § 20.15(d), at 109 (5th Ed. 2013).

individual's liberty interest."... An insurrection or riot presents a case in which the government's interest in safety outweighs the individual's right to assemble, speak or travel in public areas so long as an imminent peril of violence exists.²²

If a general curfew, prohibiting *all* public speech and assembly in a specified area, can survive constitutional scrutiny under extraordinary circumstances, it seems likely that a temporary interruption of communication service in a limited area would also survive scrutiny under those circumstances.

That said, the Commission recognizes that the power to impose a curfew or general interruption of communication service could also be abused, to achieve purposes that are incompatible with constitutional rights. As Justice Douglas cautioned, in dissenting from a decision against reviewing a riot curfew that was imposed in Philadelphia in the immediate aftermath of the assassination of Dr. Martin Luther King, Jr.:

Control of civil disorders that may threaten the very existence of the State is certainly within the police power of government. Yet does a particular proclamation violate equal protection? Is it used to circumvent constitutional procedures for clearing the streets of "undesirable" people? Is it used selectively against an unwelcome minority? Does it give fair notice and are its provisions sufficiently precise so as to survive constitutional challenge? Does it transgress one's constitutional right to freedom of movement which of course is essential to the exercise of First Amendment rights?²³

For that reason, it is important to have procedural checks on government interruption of communication service. Existing law provides such procedures and, as discussed further below, the Commission recommends that they be continued.

22. *In re Juan C.*, 28 Cal. App. 4th 1093, 1100-01 (1994).

23. *Stotland v. Pennsylvania*, 398 U.S. 916, 920-21 (1970) (Douglas, J., dissenting).

Free Expression: Time, Place, and Manner Regulation

A “time, place, and manner regulation” is consistent with the First Amendment so long as it is reasonable, content-neutral, narrowly tailored to serve a significant government interest, and it leaves open “ample alternative channels for communication of the information.”²⁴ For example, a reasonable limit on noise levels at a public concert would likely be a constitutional time, place, and manner regulation.

A general interruption of communication service that meets the standard stated above would likely survive judicial scrutiny with regard to its effect on constitutional free expression rights.

Free Expression: Government Interest Unrelated to the Suppression of Free Expression

There are situations in which the purpose of a general interruption of communication would be unrelated to the suppression of free expression. Such action would have the incidental effect of suppressing free expression, but that would not be the purpose of the action.

For example, if government has reason to believe that a cell-phone-triggered bomb has been planted in a crowded public place, it may act to temporarily suspend all cell phone service in the affected area. The purpose of this action would be to prevent the use of cell phones as an instrument of non-expressive criminal conduct (rather than the expression of ideas). However, such action would also have the incidental effect of suppressing the use of cell phones in the area as a means of expression.

In *United States v. O'Brien*,²⁵ the Supreme Court set out the standard of review for a government action that is not intended to suppress free expression, but has an incidental effect on free expression:

[We] think it clear that a government regulation is sufficiently justified if it is within the constitutional power

24. *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

25. 391 U.S. 367 (1968).

of the government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.²⁶

The scenario described above, a temporary general interruption of communications to prevent the detonation of a bomb in a crowded public place, would likely survive judicial review under the *O'Brien* standard. The protection of the public from a terrorist bombing is an important governmental purpose that falls within the government's traditional police power. That purpose is unrelated to the suppression of free expression. The incidental effect on free expression would likely be no broader than is necessary, in duration and geographic scope, to effect the government's purpose.

There is no guarantee that such action would always survive review under the *O'Brien* standard. But it seems likely that the federal Constitution would not be offended by a carefully-framed general interruption of communication services, for the purpose of preventing a destructive act.

Free Expression: Conclusion

While there are situations in which a general interruption of communication service by government could survive constitutional scrutiny, the outcome of such scrutiny would depend on the answers to a number of factual questions. Is the government's purpose to interrupt expression, or would the effect on expression be incidental to some other purpose? Is the action necessary to avoid a serious threat of violence that is both imminent and likely to occur? Is the action reasonable? Is it content-neutral? Would it impair no more speech than is necessary? Would it leave open other ample means of communication?

Given the importance of the constitutional rights at issue, the risk of abuse, and the numerous context-contingent questions that

26. *Id.* at 377.

must be answered to determine the constitutionality of a general interruption of communication service, it would be prudent to require judicial review and approval of a proposed general interruption of communications. This would safeguard free expression rights by ensuring that a neutral judicial officer evaluates the constitutionality of a proposed action and finds that it would be lawful.

That is the approach taken under existing Public Utilities Code Section 7908. Before government can impose a general interruption of communications in order to protect public health, safety, or welfare, it must obtain the authorization of a neutral judicial officer. Among other things, the judicial officer must find that the proposed interruption is “narrowly tailored to prevent unlawful infringement of speech that is protected by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution...”²⁷

Existing law contains one significant exception. As discussed above, government may interrupt a communication service without the prior approval of a judicial officer if that action is necessary to address a “severe emergency” (involving imminent death or great bodily injury) and there is no time to obtain prior court approval.²⁸ When acting pursuant to this emergency exception, government must promptly apply for court authorization within 24 hours of the interruption. This provides a check on abuse of the emergency exception. Any emergency action that a court finds unconstitutional would be terminated within 24 hours. This is a reasonable accommodation between the need for neutral judicial review of an interruption and the need to act immediately in severe emergencies, when time is of the essence.

Due Process

The due process requirements for a general interruption of communication service are effectively the same as those that apply

27. Pub. Util. Code § 7908(b)(1)(C).

28. Pub. Util. Code § 7908(c).

to a specific interruption of communication service (discussed in an earlier section of this report).

In extraordinary circumstances, communications can be interrupted without prior notice or an opportunity to be heard. The California Supreme Court set out procedures to ensure that constitutionally sufficient grounds for such action exist. Public Utilities Code Section 7908 codified those procedures, with one significant omission. That statute does not provide an opportunity for post-interruption review of the government's allegations and restoration of the interrupted service.

Public Utilities Code Section 7908 also added an exception, not mentioned by the Court, for action required to address an extreme emergency that threatens life or great bodily injury. As discussed above, the Commission believes that such an exception is good policy and is likely consistent with due process rights (especially when coupled with a right of post-interruption review and restoration of interrupted service).

Prisoners in Correctional Facilities

A prisoner in a state or local correctional facility is not permitted to possess a wireless communication device. Such devices are classified as dangerous contraband.²⁹ Efforts to prevent the smuggling of wireless communication devices into correctional facilities have not been successful (from 2006 to 2008 the number of cell phones seized each year in state prisons rose from 261 to 2,811).³⁰ Consequently, correctional officials are looking for technological solutions to block prisoner use of contraband communication devices. Possible technological solutions include jamming (which is currently prohibited by federal law)³¹ and the

29. 15 Cal. Code Regs. § 3006. Prisoner possession of cell phones is also prohibited in federal prisons. See Pub. L. 111-225; 18 U.S.C. § 1791(d)(1)(F) (Cell Phone Contraband Act of 2010).

30. Office of the Inspector General, State of California, *Inmate Cell Phone Use Endangers Prison Security and Public Safety* 1 (2009).

31. 47 U.S.C. §§ 302a, 333.

use of “managed access systems” (which would intercept all wireless communications within the vicinity of a correctional facility, check them against a list of approved devices, and block calls to or from unauthorized devices).³² Such solutions require an interruption of communication service within the area of the correctional facility.

As discussed below, the Commission finds that government action to block prisoner use of wireless communication devices would most likely survive constitutional scrutiny.

Free Expression

In considering the constitutional free expression rights of prisoners, the United States Supreme Court has balanced two broad principles. First, the Court has held that the fact of imprisonment does not wholly extinguish prisoners’ constitutional rights:

Prison walls do not form a barrier separating prison inmates from the protections of the Constitution. Hence, for example, prisoners retain the constitutional right to petition the government for redress of grievances ...; they are protected against invidious racial discrimination ...; and they enjoy the protections of due process....³³

However, prison administration presents extremely difficult and important considerations, which often require restricting prisoner freedoms in ways that a court may be reluctant to second-guess:

[C]ourts are ill equipped to deal with the increasingly urgent problems of prison administration and reform.” ... As the *Martinez* Court acknowledged, “the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree.” ... Running a prison is an inordinately difficult

32. Cal. Council on Sci. & Tech., *The Efficacy of Managed Access Systems to Intercept Calls from Contraband Cell Phones in California Prisons* (2012); Nat’l Telecomm. & Info. Admin., *Contraband Cell Phones in Prisons: Possible Wireless Technology Solutions* (2010).

33. *Turner v. Safley*, 482 U.S. 78, 84 (1987) (citations omitted).

undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint.³⁴

In light of those two competing considerations, the Court must “formulate a standard of review for prisoners’ constitutional claims that is responsive both to the ‘policy of judicial restraint regarding prisoner complaints and [to] the need to protect constitutional rights.’”³⁵

The predominant standard for reviewing a regulation that restricts prisoner free expression was announced in *Turner v. Safley*:

[W]hen a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests. In our view, such a standard is necessary if “prison administrators..., and not the courts, [are] to make the difficult judgments concerning institutional operations.” Subjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration. The rule would also distort the decisionmaking process, for every administrative judgment would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand. Courts would become the primary arbiters of what constitutes the best solution to every administrative problem, thereby “unnecessarily

34. *Id.* at 84-85 (citations omitted).

35. *Id.* at 85.

perpetuat[ing] the involvement of the federal courts in affairs of prison administration”³⁶

The Court went on to explain several factors that are involved in applying the *Turner* standard:

First, there must be a “valid, rational connection” between the prison regulation and the legitimate governmental interest put forward to justify it. ... Thus, a regulation cannot be sustained where the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational. Moreover, the governmental objective must be a legitimate and neutral one. We have found it important to inquire whether prison regulations restricting inmates’ First Amendment rights operated in a neutral fashion, without regard to the content of the expression. ...

A second factor relevant in determining the reasonableness of a prison restriction ... is whether there are alternative means of exercising the right that remain open to prison inmates. Where “other avenues” remain available for the exercise of the asserted right, ... courts should be particularly conscious of the “measure of judicial deference owed to corrections officials . . . in gauging the validity of the regulation.” ...

A third consideration is the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally. In the necessarily closed environment of the correctional institution, few changes will have no ramifications on the liberty of others or on the use of the prison’s limited resources for preserving institutional order. When accommodation of an asserted right will have a significant “ripple effect” on fellow inmates or on prison staff, courts should be particularly deferential to the informed discretion of corrections officials. ...

36. *Turner v. Safley*, 482 U.S. 78, 89 (1987).

Finally, the absence of ready alternatives is evidence of the reasonableness of a prison regulation. ... By the same token, the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an “exaggerated response” to prison concerns. This is not a “least restrictive alternative” test: prison officials do not have to set up and then shoot down every conceivable alternative method of accommodating the claimant’s constitutional complaint. ... But if an inmate claimant can point to an alternative that fully accommodates the prisoner’s rights at *de minimis* cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard.³⁷

California statutory law codifies core elements of the *Turner* standard, providing that prisoners may, during their time of confinement, “be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests.”³⁸

While the Commission did not find any Supreme Court case addressing the constitutionality of prison regulations that restrict prisoner use of wireless communications, there are a number of lower court decisions that have applied the *Turner* standard and upheld regulations that restrict prisoner use of landline telephones.

For example, in *Pope v. Hightower*,³⁹ the Eleventh Circuit Court of Appeals upheld regulations limiting the times during which calls could be made and prohibiting prisoners from calling anyone who is not on the prisoner’s approved list of 10 persons. The court explained that reducing criminal activity and harassment qualifies as a legitimate governmental objective. According to the court, the “connection between that objective and the use of a ten-person calling list is valid and rational because it is not so remote as to

37. *Id.* at 89-91 (citations omitted).

38. Penal Code § 2600.

39. See, e.g., *Pope v. Hightower*, 101 F.3d 1382 (11th Cir. 1996).

render the prison telephone policy arbitrary or irrational.”⁴⁰ The court also found that there were alternative means of communicating with those outside the prison (mail and visitation), that invalidating the prison’s rules would have a significant negative “ripple effect” on administration, and that the rules were not an “exaggerated response” to the prison’s concerns.⁴¹

It is likely that the complete prohibition of prisoner use of wireless communication devices would survive review under the *Turner* standard. Such a prohibition would serve legitimate penological purposes. First and foremost, a ban on wireless communication devices is necessary to implement the existing regulations governing prisoner use of landline telephones.⁴² Absent such a ban, prisoners could completely circumvent constitutionally permissible restrictions on telephone use.

In addition, officials have expressed concern that prisoner use of modern wireless communication devices would create serious new threats to public safety and prison security. For example, a special report of California’s Office of the Inspector General described accounts of prisoners using wireless communication devices for a wide range of dangerous and unlawful purposes, including planning escape attempts, intimidating and harassing witnesses and victims, arranging for the smuggling of contraband into prison, and soliciting criminal activity outside the prison’s walls.⁴³ The

40. *Id.* at 1385.

41. *Id.*

42. California regulations place a number of restrictions on prisoner telephone use (e.g., limits on frequency and duration; access based on prisoner privilege level; prohibitions on calls to inmates at other facilities, victims, and peace officers; monitoring and recording). 15 Cal. Code Regs. § 3282.

43. Office of the Inspector General, State of California, *Inmate Cell Phone Use Endangers Prison Security and Public Safety* (2009). See also U.S. Dep’t of Justice, *Cell Phones Behind Bars* (2009) available at <<https://www.ncjrs.gov/pdffiles1/nij/227539.pdf>>; Federal Comm. Comm’n, *In re Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, 28 FCC Rcd 6603, 6606-07 (2013).

dangers resulting from that kind of activity would almost certainly be considered a legitimate penological concern.

Action to block prisoner use of wireless communication devices would likely also survive review under the other elements of the *Turner* standard:

- Such action would be reasonably related to the penological concerns described above.
- Other alternative means of communication would remain open to prisoners (e.g., landline telephones, letters, visitation).
- Prisoner use of wireless communications would have significant problematic “ripple effects” within a correctional facility, inviting all of the security problems discussed above and imposing significant costs and risks on prison staff, other prisoners, and the public outside the prison’s walls.
- There is no obvious practicable alternative to blocking prisoner use of wireless communications. Attempts to discover and seize contraband devices have been inadequate.

Due Process

While the California Supreme Court has generally held that a communication service is a property interest that cannot constitutionally be taken by government without due process of law, the Commission has not found any case suggesting that due process precludes the summary seizure of contraband in a prison.

A prisoner probably has no legitimate property interest in property that has been proscribed as dangerous contraband. In addition, the United States Supreme Court has held that summary seizure of prisoner property does not violate constitutional due process rights so long as the law provides an adequate post-deprivation remedy.⁴⁴

44. See, e.g., *Hudson v. Palmer*, 468 U.S. 517 (1984).

Consequently, due process does not appear to require notice and an opportunity to be heard before correctional officials interrupt prisoner access to wireless communication service. Even if advance notice were required, existing law provides for it, requiring posted notice, at all entrances to a correctional facility, that service to unauthorized communication devices may be blocked.⁴⁵

Conclusion

The Commission has no position on the policy of prohibiting prisoner use of wireless communications. That policy question has been decided by the Legislature and Governor. The only question addressed by this report is whether action to block prisoner use of wireless communication devices is constitutional and what procedure should be followed when such action is taken.

It seems likely that a prohibition on prisoner use of wireless communications is constitutionally permissible.

FEDERAL EMERGENCY WIRELESS PROTOCOL

Constitutional law is not the only constraint on a state or local government entity's ability to effect a general interruption of communication service. Such action is also subject to the federal "Emergency Wireless Protocol." The origin and effect of that policy is discussed below.

In response to the July 2005 terrorist bombings on London's public transit system, federal government authorities ordered the shut-down of cell phone service in the tunnels leading to and from

45. Penal Code § 4576(d) ("A person who brings, without authorization, a wireless communication device within the secure perimeter of any prison or institution housing offenders under the jurisdiction of the department is deemed to have given his or her consent to the department using available technology to prevent that wireless device from sending or receiving telephone calls or other forms of electronic communication. Notice of this provision shall be posted at all public entry gates of the prison or institution.").

New York City. That action was taken as a precaution, in case similar bombings might be planned in the United States.⁴⁶

Reportedly, the action caused disorder and confusion, for both government and private communication service providers. Citing concerns about the serious impact that an interruption of cellular communications could have, “not only on access by the public to emergency communications services during these situations, but also on public trust in the communications infrastructure in general,” the Department of Homeland Security’s National Coordinating Center for Communications (“NCC”) initiated discussions about when and how government should be able to interrupt cellular communications.

At the conclusion of those discussions, the NCC adopted the “Emergency Wireless Protocol” (“EWP,” also known as “Standard Operating Procedure 303”), which established a process for interrupting and restoring wireless communication service during times of national emergency.

Under the process, the NCC will function as the focal point for coordinating any actions leading up to and following the termination of private wireless network connections, both within a localized area, such as a tunnel or bridge, and within an entire metropolitan area. The decision to shut down service will be made by State Homeland Security Advisors, their designees, or representatives of the DHS Homeland Security Operations Center. Once the request has been made by these entities, the NCC will operate as an authenticating body, notifying the carriers in the affected area of the decision. The NCC will also ask the requestor a series of questions to determine if the shutdown is a necessary action. After making the determination that the shutdown is no longer required, the NCC will initiate a similar process to reestablish service. The NCS continues to work with the Office of State and Local Government Coordination at

46. 2006-07 National Security Telecommunications Advisory Committee Issue Review 139-40.

DHS, and the Homeland Security Advisor for each State to initiate the rapid implementation of these procedures.⁴⁷

The precise details of the EWP have not been widely disclosed. Although the EWP is not classified, it has only been shared with federal law enforcement officials, state homeland security officials, and national cellular carriers.⁴⁸ Efforts by others to compel disclosure of the details of the Emergency Wireless Protocol under the federal Freedom of Information Act have been unsuccessful.⁴⁹ The Court of Appeal for the District of Columbia Circuit held that the EWP falls within a statutory exception that applies where the disclosure of a document could reasonably be expected to endanger the life or physical safety of any individual. According to the Department of Homeland Security, public disclosure of the EWP:

“would enable bad actors to circumvent or interfere with a law enforcement strategy designed to prevent activation of improvised explosive devices” and “to insert themselves into the process of shutting down or reactivating wireless networks by appropriating verification methods and then impersonating officials designated for involvement in the verification process.”⁵⁰

In light of those concerns, it is not surprising that the publicly stated goals of the EWP include “enabling the Government to speak with one voice ... and [providing] wireless carriers with Government-authenticated decisions for implementation.”⁵¹ This strongly suggests that private wireless communication providers have been instructed to only accept orders to shut down or restore

47. *Id.*

48. See *Elec. Privacy Info. Ctr. v. United States Dep’t of Homeland Sec.*, 777 F.3d 518, 526 (D.C. Cir. 2015).

49. *Id.*

50. *Id.* at 523 (citation omitted).

51. 2006-07 National Security Telecommunications Advisory Committee Issue Review 139-40.

communication service from the federal officials designated pursuant to the EWP.

Existing California law has clearly been designed to accommodate exclusive federal control over the process of interrupting and restoring wireless communication service. Under the existing procedure, any document authorizing the interruption of communication service “that falls within the federal Emergency Wireless Protocol” must be served on the Governor’s Office of Emergency Services.⁵² (If an order authorizing an interruption does not fall within the EWP, it is served directly on the relevant communication service provider.⁵³)

Presumably, the Governor’s Office of Emergency Services,⁵⁴ whose director serves as the State Homeland Security Advisor, would then decide whether to contact appropriate federal officials for action pursuant to the EWP.⁵⁵

Thus, the EWP effectively preempts action by state officials to directly interrupt wireless communications. State and local government officials can *initiate* such an interruption, but they cannot directly order wireless communication service providers to take action.

While this general approach makes sense, the Commission sees one significant problem with existing law on this point. The current statute depends on state and local government officials knowing whether a particular interruption of communications would fall within the scope of the EWP. Given that the content of the EWP is secret, it seems likely that many state and local

52. Pub. Util. Code § 7908(d).

53. *Id.*

54. Existing law erroneously refers to the former California Emergency Management Agency. That agency appears to have been dissolved, with its functions assigned to the Office of Emergency Services. See Gov’t Code § 8585(a)(2).

55. Existing law does not *require* that the Governor’s Office of Emergency Services refer a proposed interruption to federal officials for action. Presumably, the law grants policy discretion on that point.

government officials would not have the knowledge required to make that determination.

This could lead to confusion at a time of emergency, with state and local officials unsure of how to proceed and making errors that delay the response to an imminent threat. As discussed further below, the Commission recommends that the law be revised to address that problem.⁵⁶

INTERRUPTION OF EMERGENCY COMMUNICATIONS

While there may be good reason to impose a general interruption of communication service, such action would also have one serious disadvantage — it would interrupt emergency communications. For example, if cell phone service is interrupted in a geographical area, this would prevent all citizens in that area from using cell phones to call 911 for emergency assistance.⁵⁷ It would also block the use of cell phones by police, firefighters, and other emergency responders. This could be particularly problematic in times of civil unrest or other emergency conditions (which are the most likely times that government might wish to effect a general interruption of communications).

For that reason, even if a general interruption of communications would be lawful, it might not be the best course of action as a practical matter. The responsibility for weighing the practical advantages and disadvantages of a general interruption of communication service is probably best left to experts in emergency response and public safety.

That is the approach taken under existing law. While a state or local official could initiate the interruption of communications in a geographical area, and a state judge would assess the

56. See discussion of “Role of Governor’s Office of Emergency Services” *infra*.

57. The Federal Communications Commission estimates that approximately 70% of all 911 calls are now made using wireless communications. See <<https://www.fcc.gov/guides/wireless-911-services>>.

constitutionality of the proposed interruption, the ultimate decision on whether to proceed would rest with officials in the Governor's Office of Emergency Services and the federal Department of Homeland Security. That is appropriate. Those officials are probably in the best position to balance competing public safety concerns in the face of an imminent threat.

CONCLUSION AND RECOMMENDATIONS

The Commission finds that there are circumstances in which government interruption of communications would be constitutional.

The procedure outlined by the California Supreme Court in *Goldin v. Public Utilities Commission* is mostly sufficient to ensure that such action does not offend constitutional due process guarantees.⁵⁸ Public Utilities Code Section 7908, which codifies most of the procedure outlined by the Court in *Goldin* would further strengthen the protection of constitutional rights, by requiring that a neutral judicial officer find that a proposed interruption of communications would not violate constitutional free expression rights.

The Commission recommends that most of the substance of Public Utilities Code Section 7908 be continued. The existing "sunset provision," which would cause that section to be repealed by operation of law on January 1, 2020, should not be continued.

However, the Commission also recommends a number of specific improvements to existing law.

Scope of Application

Existing Public Utilities Code Section 7908 only applies to a specific subset of electronic communication services, those that are

58. Existing provisions that authorize an interruption of communication service after notice to the affected customer and an opportunity to be heard should also be consistent with constitutional due process rights. See Bus. & Prof. Code §§ 149, 7099.10.

connected to the public switched telephone network and are required by the FCC to provide customers access to 911 emergency services.⁵⁹ The Commission understands that definition as generally encompassing telephonic communications.

The Commission considered recommending that the application of Public Utilities Code Section 7908 be broadened, to include non-telephonic communication services, such as email, websites, and social media. *The Commission decided against making that recommendation, for two reasons.* First, there are unanswered questions about the extent to which federal law permits regulation of non-telephonic communication services.⁶⁰ Second, the interruption of non-telephonic services may have materially different effects on free expression than an interruption of telephone service would have.

Location in Code

Section 7908 is currently located in the Public Utilities Code. That placement would make sense if the provision requires special action by the Public Utilities Commission. However, Section 7908 does not require special action by the Public Utilities Commission.

The Commission recommends that the provisions on interruption of communication be located in the Penal Code, with other provisions that address government action to abate unlawful activity.⁶¹

Procedural Gaps

In general, Public Utilities Code Section 7908 prohibits a government interruption of communications except pursuant to an order signed by a judicial officer obtained prior to the interruption.

59. Pub. Util. Code § 7908(a)(1).

60. See generally Federal-State Joint Board on Universal Service, *Report to Congress*, FCC 98-67 (April 10, 1998) (discussing regulatory distinction between “telecommunication service” and “information service”).

61. See proposed Penal Code §§ 11470-11481 *infra*.

However, Section 7908 provides no procedural guidance as to how a government entity would apply for such an order, what criteria the judicial officer is to apply in determining whether to issue the order, and what form the order should take. While courts are capable of filling in those gaps on an *ad hoc* basis, it would be better if the law provided clear guidance. Particularly in times of emergency, there should be no scope for procedural uncertainty or confusion.

The Commission recommends that such guidance be provided, borrowing procedures from the existing law on applying for a court order authorizing a wiretap.⁶²

Post-Interruption Judicial Review

In specifying the process that is constitutionally required when government summarily interrupts communication service, the California Supreme Court made clear that an affected customer must be provided a prompt post-interruption opportunity for review of the government's allegations and, if they are not borne out, restoration of the interrupted service.⁶³

Public Utilities Code Section 7908 does not include such a requirement. While it is possible that a person aggrieved by an interruption of communication service under Section 7908 could obtain judicial review under other law, it would be best if Section 7908 were to include all of the procedures required to ensure the protection of customers' constitutional rights. The Commission recommends that language providing for prompt judicial review be added to the law.⁶⁴

If such language is added to the law, the Commission recommends clarifying that the new procedure for judicial review

62. See proposed Penal Code §§ 11472 (application for order), 11473 (issuance of order), 11474 (content of order) *infra*.

63. *Goldin v. Public Utilities Commission*, 23 Cal. 3d 638, 664-65 (1979).

64. See proposed Penal Code § 11479(a) *infra*.

is not intended to be an exclusive remedy.⁶⁵ It is possible that a person aggrieved by an unlawful interruption of communications may have other remedies available (e.g., suit in tort).

Post-Interruption Notice to Customer

Public Utilities Code Section 7908 does not require that notice of an interruption be served on an affected customer. While customer notice would not be feasible for an indiscriminate interruption of communication service in a geographical area (which could affect thousands of customers, whose identities would not be easily determined), providing notice when interrupting the communication service of a specifically-identified customer should be straightforward. Such notice could be used to inform the affected customer of the availability of judicial review. This would more fully protect the due process rights of affected customers.

The Commission recommends that the law require notice to a customer when that customer's identity is known.⁶⁶

Role of Governor's Office of Emergency Services

As discussed above, existing law requires that documents authorizing an interruption of communications be served on the Governor's Office of Emergency Services if the interruption would "fall within the federal Emergency Wireless Protocol."⁶⁷ That requirement would be problematic if state and local officials do not know the details of the EWP, as seems likely.

Based on the Commission's research into the background of the EWP, it appears that it was only intended to affect an areawide interruption of communications.

65. See proposed Penal Code § 11479(b) *infra*.

66. See proposed Penal Code § 11477(a)(2), (b) *infra*.

67. Pub. Util. Code § 7907(d).

After informal consultation with the Governor's Office of Emergency Services, the Commission recommends that the existing rule be restated to require service of documents on that office if the proposed action would interrupt "a communication service for all customers of the interrupted communication service within a geographical area."⁶⁸

This would provide clear guidance, which would likely be consistent with the requirements of the EWP. It would also avoid burdening the Governor's Office of Emergency Services with review of routine law enforcement actions (e.g., the termination of a particular telephone number used for illegal gambling operations).

Exceptions to Court Authorization Procedure

Existing Public Utilities Code Section 7908 includes a number of narrow exceptions. The acts described in those exceptions do not require prior court approval under the procedure set out in Section 7908. The existing exceptions include:

- Interruption of communication service pursuant to a customer service agreement, contract, or tariff.⁶⁹
- Interruption of communication service pursuant to a service provider's internal practices to protect the security of its networks.⁷⁰
- Interruption of communication service that is authorized by other law, including a specific interruption of communication service in a hostage situation.⁷¹

More generally, the requirements of Section 7908 only apply to interruption of communication service "for the purpose of

68. See proposed Penal Code § 11476 *infra*.

69. Pub. Util. Code § 7908(a)(3)(B).

70. *Id.*

71. *Id.* See also Pub. Util. Code § 7907.

protecting public safety or preventing the use of communications service for an illegal purpose.”⁷² That general limitation makes sense, as there could be any number of mundane reasons why a government entity might interrupt a communication service (e.g., a public university might terminate Internet service to a student who is no longer eligible for service due to having graduated). It would not be practical or beneficial to require prior court approval before taking such actions.

The Commission did not find any problems with the existing exceptions and recommends that they be continued.

However, the Commission also recommends the addition of four new exceptions, to exempt certain types of interruptions from the court authorization procedure required in Section 7908.

It is important to note that exempting a particular kind of interruption of communication service from the requirements of Section 7908 does not imply that every interruption of that type will be lawful. Nor does it preclude bringing an action to challenge the lawfulness of such an interruption. The only effect of the exceptions is to exempt certain types of actions from the court authorization requirements. That point is emphasized in the proposed law.⁷³

The proposed new exceptions are described below.

Correctional Facilities

The existing statutory standards for issuance of a court order authorizing government to interrupt communications are not well-tailored to an interruption of wireless communication service for prisoners in a correctional facility.

There is no need for a judicial officer to find probable cause that such communications would be used for an unlawful purpose (as

72. Pub. Util. Code § 7908(b)(1).

73. See proposed Penal Code Section 11481(b) *infra* (“Nothing in this section provides authority for an action of a type listed in subdivision (a) or limits any remedy that may be available under other law if an action of a type listed in subdivision (a) is taken unlawfully.”).

existing law requires⁷⁴). Such communications are categorically unlawful.

Nor would it make sense to require a judicial officer to find that “absent immediate and summary action” to interrupt prisoner wireless communications, “immediate danger to public safety, health, or welfare will result.”⁷⁵ Action to block prisoner use of wireless communications would typically be a routine matter of prison security, rather than urgent action taken to address an imminent threat.

For those reasons, it would be problematic and unnecessary to apply the existing court authorization procedure to action taken to block prisoner use of wireless communications in correctional facilities. The Commission recommends that such action be expressly exempted from the requirements of Section 7908.⁷⁶

Emergency Alerts

The Commission also recommends that emergency broadcast alerts, including “Amber Alerts,” be exempt from the requirements of Public Utilities Code Section 7908.⁷⁷ Any interruption of communication service caused by an emergency broadcast alert would be brief and justified by the emergency that prompted it. Moreover, such alerts are governed by federal law.⁷⁸

Execution of Search Warrant

In unusual circumstances, the execution of a search warrant could cause the interruption of a communication service. For example, if law enforcement has a search warrant authorizing it to seize and search the contents of a cell phone, the ability to use that phone for communication purposes will be interrupted.

74. Pub. Util. Code § 7908(b)(1)(A).

75. Pub. Util. Code § 7908(b)(1)(B).

76. See proposed Penal Code § 11481(a)(4) *infra*.

77. See proposed Penal Code § 11481(a)(5) *infra*.

78. See 47 C.F.R. § 11.1 *et seq.* (Emergency Alert System); Pub. L. 109-347, § 601 *et seq.*, 47 C.F.R. § 10.1 *et seq.* (Wireless Emergency Alert System).

The proposed law would arguably apply to the execution of a search warrant that interrupts a communication service, because the purpose of a criminal search warrant could be broadly described as the “protection of public safety.”⁷⁹

The Commission does not believe that an interruption of communication service that results from the execution of a search warrant would violate constitutional free expression rights. In that situation, the interruption of communications would not be the government’s *purpose* in executing the search warrant. The purpose would be to conduct the search authorized by the warrant. The interruption of a communication service would be an incidental effect of the search.

In *United States v. O’Brien*, the Supreme Court established the standard for government action that has an incidental effect on expression:

[We] think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.⁸⁰

The execution of a lawfully-issued search warrant would seem to meet that standard, so long as the incidental interruption of communication is no greater than necessary to effect the authorized search.

Moreover, it would be problematic to apply the proposed law to a search warrant. The proposed law requires (1) that the interrupted communication service is being used for an unlawful purpose, and (2) that absent immediate and summary action to interrupt the communication service, serious, direct, and immediate danger to

79. See proposed Penal Code § 11471(a)(2) (“no government entity ... shall interrupt a communication service ... to protect public ... safety”) *infra*.

80. *Id.* at 377.

public safety, health, or welfare will result.⁸¹ While those strict standards are appropriate when the government's purpose is to interrupt a communication service, it is not clear that such standards should apply simply because the execution of a search warrant would have the incidental effect of interrupting a communication service. And it would probably be very difficult for law enforcement to meet either of those standards when applying for a search warrant. This could create a *de facto* bar on search warrants that would have the incidental effect of interrupting communications (e.g., a warrant to search the contents of a cell phone).

For those reasons, the Commission recommends the addition of an express exception for an interruption of communication service that is caused by the execution of a search warrant.⁸²

Customer Consent

The Commission recommends that the law include an express exemption for an interruption of communication service that is done with the consent of the affected customer.⁸³ This would make clear that the general court authorization procedure does not apply where the affected person has no objection.

81. See proposed Penal Code § 11472(a)-(b) *infra*; see also Pub. Util. Code § 7908(b)(1)(A)-(B).

82. See proposed Penal Code § 11481(a)(7) *infra*.

83. See proposed Penal Code § 11481(a)(1) *infra*.

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PROPOSED LEGISLATION

Penal Code §§ 11470-11481 (added). Interruption of Communication

SEC. ____ . Article 7 (commencing with Section 11470) is added to Chapter 3 of Title 1 of Part 4 of the Penal Code, to read:

Article 7. Interruption of Communication

§ 11470. Definitions

11470. For the purposes of this article, the following terms have the following meanings:

(a) “Communication service” means any communication service that interconnects with the public switched telephone network and is required by the Federal Communications Commission to provide customers with 911 access to emergency services.

(b) “Government entity” means every local government, including a city, county, city and county, a transit, joint powers, special, or other district, the state, and every agency, department, commission, board, bureau, or other political subdivision of the state, or any authorized agent thereof.

(c) “Interrupt communication service” means to knowingly or intentionally suspend, disconnect, interrupt, or disrupt a communication service to one or more particular customers or all customers in a geographical area.

(d) “Judicial officer” means a magistrate, judge, commissioner, referee, or any person appointed by a court to serve in one of these capacities, of a superior court.

(e) “Service provider” means a person or entity, including a government entity, that offers a communication service.

Comment. Section 11470(a)-(c) continues former Public Utilities Code Section 7908(a)(1)-(3)(A) without substantive change.

Subdivision (d) continues former Public Utilities Code Section 7908(a)(4) without substantive change, except that the provision has been narrowed to superior court officers.

Subdivision (e) is drawn from Section 1546(j).

§ 11471. General prohibition and exceptions

11471. (a) Except as authorized by this article, no government entity, and no service provider acting at the request of a government entity, shall interrupt a communication service for either of the following purposes:

(1) To prevent the communication service being used for an illegal purpose.

(2) To protect public health, safety, or welfare.

(b) A government entity may interrupt communication service for a purpose stated in subdivision (a) in any of the following circumstances:

(1) The interruption is authorized by a court order pursuant to Section 11473.

(2) The government entity reasonably determines that (A) the interruption is required to address an extreme emergency situation that involves immediate danger of death or great bodily injury, (B) there is insufficient time, with due diligence, to first obtain a court order under Section 11473, and (C) the interruption meets the grounds for issuance of a court order under Section 11473. A government entity acting pursuant to this paragraph must comply with Section 11475.

(3) Notwithstanding Section 591, 631, or 632, or Section 7906 of the Public Utilities code, a supervising law enforcement official with jurisdiction may require that a service provider interrupt a communication service that is available to a person if (A) the law enforcement official has probable cause to believe that the person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, and (B) the purpose of the interruption is to prevent the person from communicating with anyone other than a peace officer or a person authorized by a peace officer. This paragraph cannot be used to interrupt service to a wireless device other than a wireless device used by, or available for use by, the person or persons involved in a hostage or barricade situation.

Comment. Subdivisions (a) and (b)(1) of Section 11471 restate the substance of former Public Utilities Code Section 7908(b)(1).

Paragraph (b)(2) restates the substance of former Public Utilities Code Section 7908(c).

Paragraph (b)(3) restates the substance of former Public Utilities Code Sections 7907 and 7908(a)(3)(C).

§ 11472. Application for court order

11472. (a) Each application by a government entity for a court order authorizing the interruption of communication service shall be made in writing upon the personal oath or affirmation of the chief executive of the government entity or his or her designee, to the presiding judge of the superior court or a judicial officer designated by the presiding judge for that purpose.

(b) Each application shall include all of the following information:

(1) The identity of the government entity making the application.

(2) A statement attesting to a review of the application and the circumstances in support of the application by the chief executive officer of the government entity making the application, or his or her designee. This statement shall state the name and office of the person who effected this review.

(3) A full and complete statement of the facts and circumstances relied on by the government entity to justify a reasonable belief that the order should be issued, including the facts and circumstances that support the statements made in paragraphs (4) to (7), inclusive.

(4) A statement that probable cause exists to believe that the communication service to be interrupted is being used or will be used for an unlawful purpose or to assist in a violation of the law. The statement shall expressly identify the unlawful purpose or violation of the law.

(5) A statement that immediate and summary action is needed to avoid serious, direct, and immediate danger to public safety, health, or welfare.

(6) A statement that the proposed interruption is narrowly tailored to the specific circumstances under which the order is made and would not interfere with more communication than is necessary to achieve the purposes of the order.

(7) A statement that the proposed interruption would leave open ample alternative means of communication.

(8) A statement that the government entity has considered the practical disadvantages of the proposed interruption, including any disruption of emergency communication service.

(9) A description of the scope and duration of the proposed interruption. The application shall clearly describe the specific communication service to be interrupted with sufficient detail as to customer, cell sector, central office, or geographical area affected.

(c) The judicial officer may require the applicant to furnish additional testimony or documentary evidence in support of an application for an order under this section.

(d) The judicial officer shall accept a facsimile copy of the signature of any person required to give a personal oath or affirmation pursuant to subdivision (a) as an original signature to the application.

Comment. Section 11472 is new. It is added to fill a gap in the procedure provided by former Public Utilities Code Section 7908 for issuance of a court order authorizing an interruption of communication service. It is modeled after Section 629.50 (application for wiretap order), with adjustments to reflect the character of and factual prerequisites for the authorization of an interruption of communication service.

§ 11473. Issuance of court order

11473. Upon application made under Section 11472, the judicial officer may enter an ex parte order, as requested or modified, authorizing interruption of a communication service in the territorial jurisdiction in which the judicial officer is sitting, if the judicial officer determines, on the basis of the facts submitted by the applicant, that all of the following requirements are satisfied:

(a) There is probable cause that the communication service is being used or will be used for an unlawful purpose or to assist in a violation of the law.

(b) Absent immediate and summary action to interrupt the communication service, serious, direct, and immediate danger to public safety, health, or welfare will result.

(c) The interruption of communication service is narrowly tailored to prevent unlawful infringement of speech that is protected by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution, or a violation of any other rights under federal or state law.

(d) The interruption of communication service would leave open ample alternative means of communication.

Comment. Section 11473 is new. It is added to fill a gap in the procedure provided by former Public Utilities Code Section 7908 for issuance of a court order authorizing an interruption of communication service. It is modeled after Section 629.52 (authorization of wiretap order), with adjustments to reflect the character of and factual prerequisites for the authorization of an interruption of communication service. Compare former Pub. Util. Code § 7908(b)(1)(A)-(C).

Subdivision (c) requires that the judicial officer find that the proposed interruption of communication service would not violate constitutional free expression rights. Circumstances in which an interruption of communication service might survive scrutiny under this subdivision include the following:

- The interrupted communication service is being used for an unlawful purpose. See *Goldin v. Public Utilities Commission*, 23 Cal. 3d 638, 657, 592 P.2d 289, 153 Cal. Rptr. 802 (1979) (communication service used to solicit crime “is not protected speech within the meaning of the First Amendment.”).
- The interruption of communication service furthers an important or substantial governmental interest that is unrelated to the suppression of free expression and would have only an incidental effect on expression. See generally *United States v. O’Brien*, 391 U.S. 367 (1968).
- The interruption of communication service is intended to prevent the incitement of violence that is imminent and likely to occur. See generally *Brandenburg v. Ohio*, 395 U.S. 444 (1969).
- The interruption of communication is a reasonable, content-neutral regulation of the time, place, and manner of expression. See generally *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

§ 11474. Content of court order

11474. An order authorizing an interruption of communication service shall include all of the following:

(a) A statement of the court's findings required by Section 11473.

(b) A clear description of the communication service to be interrupted, with specific detail as to the affected service, service provider, and customer or geographical area.

(c) A statement of the period of time during which the interception is authorized. The order may provide for a fixed duration or require that the government end the interruption when it determines that the interruption is no longer reasonably necessary because the danger that justified the interruption has abated. If the judicial officer finds that probable cause exists that a particular communication service is being used or will be used as part of a continuing criminal enterprise, the court may order the permanent termination of that service and require that the terminated service not be referred to another communication service.

(d) A requirement that the government entity immediately serve notice on the service provider when the interruption is to cease.

Comment. Section 11474 is drawn from former Public Utilities Code Section 7908(b)(2)-(3).

§ 11475. Extreme emergency situation

11475. A government entity that interrupts communication service pursuant to paragraph (2) of subdivision (b) of Section 11471 shall take all of the following steps:

(a) Apply for a court order under Section 11472 without delay. If possible, the application shall be filed within 6 hours after commencement of the interruption. If that is not possible, the application shall be filed at the first reasonably available opportunity, but in no event later than 24 hours after commencement of an interruption of communication service. If an application is filed more than 6 hours after commencement of an interruption of communication service, the application shall

include a declaration, made under penalty of perjury, stating the reason for the delay.

(b) Prepare a signed statement of intent to apply for a court order. The statement of intent shall clearly describe the extreme emergency situation and the specific communication service to be interrupted. If a government entity does not apply for a court order within 6 hours, then the governmental entity shall submit a copy of the signed statement of intent to the court within 6 hours.

(c) Provide conspicuous notice of the application for a court order on the government entity's Internet Web site without delay, unless the circumstances that justify an interruption of communication service without first obtaining a court order also justify not providing the notice.

Comment. Section 11475 is drawn from former Public Utilities Code Section 7908(c).

§ 11476. Service of authority for area interruption

11476. (a) If an order issued pursuant to Section 11473 or a signed statement of intent prepared pursuant to Section 11475 would authorize the interruption of a communication service for all customers of the interrupted communication service within a geographical area, the government entity shall serve the order or statement on the Governor's Office of Emergency Services.

(b) The Governor's Office of Emergency Services shall have policy discretion on whether to request that the federal government authorize and effect the proposed interruption.

Comment. Subdivision (a) of Section 11476 continues the substance of the first sentence of former Public Utilities Code Section 7908(d), with two changes:

- A reference to the federal Emergency Wireless Protocol is replaced with a reference to "the interruption of a communication service for all customers in a geographical area." That language, which is drawn from former Public Utilities Code Section 7908(a)(3)(A) would make clear that an interruption of communication service that affects a geographical area must be submitted to the Office of

Emergency Services for review and action, if any, in accord with controlling federal policy.

- An obsolete reference to the California Emergency Management Agency is replaced with a reference to the Governor's Office of Emergency Services.

Subdivision (b) makes clear that the Governor's Office of Emergency Services has discretion as to whether to act on any authority to interrupt communication that is served on it pursuant to subdivision (a).

§ 11477. Service of authority for non-area interruption

11477. If an order issued pursuant to Section 11473 or a signed statement of intent prepared pursuant to Section 11475 is not governed by Section 11476, the government entity shall serve the order or statement on both of the following persons:

(a) The appropriate service provider's contact for receiving requests from law enforcement, including receipt of state or federal warrants, orders, or subpoenas.

(b) The affected customer, if the identity of the customer is known. When serving an affected customer, the government entity shall provide notice of the opportunity for judicial review under Section 11479.

Comment. Subdivision (a) of Section 11477 is drawn from the second sentence of former Public Utilities Code Section 7908(d).

Subdivision (b) is new.

§ 11478. Service providers

11478. (a) Good faith reliance by a service provider on a court order issued pursuant to Section 11473, a signed statement of intent prepared pursuant to Section 11475, or the instruction of a supervising law enforcement officer acting pursuant to paragraph (3) of subdivision (b) of Section 11471 shall constitute a complete defense for the service provider against any action brought as a result of the interruption of communication service authorized by that court order, statement of intent, or instruction.

(b) A service provider shall designate a security employee and an alternate security employee, to provide all required assistance to law enforcement officials to carry out the purposes of this article.

(c) A service provider that intentionally interrupts communication service pursuant to this article shall comply with any rule or notification requirement of the Public Utilities Commission or Federal Communications Commission, or both, and any other applicable provision or requirement of state or federal law.

Comment. Subdivision (a) of Section 11478 combines and restates the substance of the third paragraph of former Public Utilities Code Section 7907 and subdivision (f) of former Public Utilities Code Section 7908.

Subdivision (b) restates and generalizes the substance of the third paragraph of former Public Utilities Code Section 7907.

Subdivision (c) continues former Public Utilities Code Section 7908(e) without substantive change.

§ 11479. Judicial review

11479. (a) A person whose communication service has been interrupted pursuant to this article may petition the superior court to contest the grounds for the interruption and restore the interrupted service.

(b) The remedy provided in this section is not exclusive. Other law may provide a remedy for a person who is aggrieved by an interruption of communication service authorized by this chapter.

Comment. Subdivision (a) of Section 11479 is new. It is added to guarantee due process of law, by providing an opportunity for post-deprivation judicial review. See *Sokol v. Pub. Util. Comm'n*, 65 Cal. 2d 247, 256, 418 P.2d 265, 53 Cal. Rptr. 673 (1966) (“after service is terminated the subscriber must be promptly afforded the opportunity to challenge the allegations of the police and to secure restoration of the service”).

§ 11480. Legislative declaration

11480. The Legislature finds and declares that ensuring that California users of any communication service not have that service interrupted, and thereby be deprived of 911 access to

emergency services or a means to engage in constitutionally protected expression, is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution.

Comment. Section 11480 continues former Public Utilities Code Section 7908(g) without substantive change.

§ 11481. Application of article

11481. (a) This article does not apply to any of the following actions:

(1) The interruption of a communication service with the consent of the affected customer.

(2) The interruption of a communication service pursuant to a customer service agreement, contract, or tariff.

(3) The interruption of a communication service to protect the security of the communication network or other computing resources of a government entity or service provider.

(4) The interruption of communication service to prevent unauthorized wireless communication by a prisoner in a state or local correctional facility, including a juvenile facility.

(5) The interruption of communication service to transmit an emergency notice. This includes, but is not limited to an Amber Alert, a message transmitted through the federal Emergency Alert System, or a message transmitted through the federal Wireless Emergency Alert System.

(6) An interruption of communication service pursuant to a statute that expressly authorizes an interruption of communication service, including Sections 149 and 7099.10 of the Business and Professions Code and Sections 2876, 5322, and 5371.6 of the Public Utilities Code.

(7) An interruption of communication that results from the execution of a search warrant.

(b) Nothing in this section provides authority for an action of a type listed in subdivision (a) or limits any remedy that may be available under other law if an action of a type listed in subdivision (a) is taken unlawfully.

Comment. Paragraph (a)(1) of Section 11481 is new.

Paragraphs (a)(2)-(3) restate part of the substance of former Public Utilities Code Section 7908(a)(3)(B).

Paragraph (a)(4) continues part of the substance of former Public Utilities Code Section 7908(a)(3)(B) (cross-referring to Penal Code Section 4576(d)).

Paragraph (a)(5) is new.

Paragraph (a)(6) restates part of the substance of former Public Utilities Code Section (a)(3)(B).

Paragraph (a)(7) is new.

Subdivision (b) makes clear that this section only affects the application of this article. Nothing in the section affects any other requirements of law, including constitutional rights; nor does it affect any other legal remedies that may exist for an unlawful interruption of communications.

CONFORMING REVISIONS

Pub. Util. Code § 7907 (repealed). Interruption of communications in hostage or barricaded resistance situation

SEC. _____. Section 7907 of the Public Utilities Code is repealed.

Comment. Section 7907 is repealed. Its substance is restated in Penal Code Sections 11471(b)(3) and 11478(a).

 **Note.** For ease of reference, the text of Public Utilities Code Section 7907 is set out below:

7907. Notwithstanding Section 591, 631, or 632 of the Penal Code or Section 7906 of this code, whenever the supervising law enforcement official having jurisdiction has probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, such official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communication by such suspected person with any person other than a peace officer or a person authorized by the peace officer.

The telephone corporation shall designate a person as its security employee and an alternate to provide all required assistance to law enforcement officials to carry out the purposes of this section.

Good faith reliance on an order by a supervising law enforcement official shall constitute a complete defense to any action brought under this section.

Pub. Util. Code § 7908 (repealed). Interruption of communications to prevent unlawful use

SEC. _____. Section 7908 of the Public Utilities Code is repealed.

Comment. Section 7908 is repealed. Its substance is restated, with some changes, in Article 7 (commencing with Section 11470) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

 **Note.** For ease of reference, the text of Public Utilities Code Section 7908 is set out below:

7908. (a) For purposes of this section, the following terms have the following meanings:

(1) “Communications service” means any communications service that interconnects with the public switched telephone network and is required

by the Federal Communications Commission to provide customers with 911 access to emergency services.

(2) "Governmental entity" means every local government, including a city, county, city and county, a transit, joint powers, special, or other district, the state, and every agency, department, commission, board, bureau, or other political subdivision of the state, or any authorized agent thereof.

(3) (A) "Interrupt communications service" means to knowingly or intentionally suspend, disconnect, interrupt, or disrupt communications service to one or more particular customers or all customers in a geographical area.

(B) "Interrupt communications service" does not include any interruption of communications service pursuant to a customer service agreement, a contract, a tariff, a provider's internal practices to protect the security of its networks, Section 2876, 5322, or 5371.6 of this code, Section 149 or 7099.10 of the Business and Professions Code, or Section 4575 or subdivision (d) of Section 4576 of the Penal Code.

(C) "Interrupt communications service" does not include any interruption of service pursuant to an order to cut, reroute, or divert service to a telephone line or wireless device used or available for use for communication by a person or persons in a hostage or barricade situation pursuant to Section 7907. However, "interruption of communications service" includes any interruption of service resulting from an order pursuant to Section 7907 that affects service to wireless devices other than any wireless device used by, or available for use by, the person or persons involved in a hostage or barricade situation.

(4) "Judicial officer" means a magistrate, judge, justice, commissioner, referee, or any person appointed by a court to serve in one of these capacities of any state or federal court located in this state.

(b) (1) Unless authorized pursuant to subdivision (c), no governmental entity and no provider of communications service, acting at the request of a governmental entity, shall interrupt communications service for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer obtained prior to the interruption. The order shall include all of the following findings:

(A) That probable cause exists that the service is being or will be used for an unlawful purpose or to assist in a violation of the law.

(B) That absent immediate and summary action to interrupt communications service, serious, direct, and immediate danger to public safety, health, or welfare will result.

(C) That the interruption of communications service is narrowly tailored to prevent unlawful infringement of speech that is protected by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution, or a violation of any other rights under federal or state law.

(2) The order shall clearly describe the specific communications service to be interrupted with sufficient detail as to customer, cell sector, central office, or geographical area affected, shall be narrowly tailored to the specific circumstances under which the order is made, and shall not interfere with more communication than is necessary to achieve the purposes of the order.

(3) The order shall authorize an interruption of communications service only for as long as is reasonably necessary and shall require that the interruption cease once the danger that justified the interruption is abated and shall specify a process to immediately serve notice on the communications service provider to cease the interruption.

(c) (1) Communications service shall not be interrupted without first obtaining a court order except pursuant to this subdivision.

(2) If a governmental entity reasonably determines that an extreme emergency situation exists that involves immediate danger of death or great bodily injury and there is insufficient time, with due diligence, to first obtain a court order, then the governmental entity may interrupt communications service without first obtaining a court order as required by this section, provided that the interruption meets the grounds for issuance of a court order pursuant to subdivision (b) and that the governmental entity does all of the following:

(A) (i) Applies for a court order authorizing the interruption of communications service without delay, but within six hours after commencement of an interruption of communications service except as provided in clause (ii).

(ii) If it is not possible to apply for a court order within six hours due to an emergency, the governmental entity shall apply for a court order at the first reasonably available opportunity, but in no event later than 24 hours after commencement of an interruption of communications service. If an application is filed more than six hours after commencement of an interruption of communications service pursuant to this clause, the application shall include a declaration under penalty of perjury stating the reason or reasons that the application was not submitted within six hours after commencement of the interruption of communications service.

(B) Provides to the provider of communications service involved in the service interruption a statement of intent to apply for a court order

signed by an authorized official of the governmental entity. The statement of intent shall clearly describe the extreme emergency circumstances and the specific communications service to be interrupted. If a governmental entity does not apply for a court order within 6 hours due to the emergency, then the governmental entity shall submit a copy of the signed statement of intent to the court within 6 hours.

(C) Provides conspicuous notice of the application for a court order authorizing the communications service interruption on its Internet Web site without delay, unless the circumstances that justify an interruption of communications service without first obtaining a court order justify not providing the notice.

(d) An order to interrupt communications service, or a signed statement of intent provided pursuant to subdivision (c), that falls within the federal Emergency Wireless Protocol shall be served on the California Emergency Management Agency. All other orders to interrupt communications service or statements of intent shall be served on the communications service provider's contact for receiving requests from law enforcement, including receipt of and responding to state or federal warrants, orders, or subpoenas.

(e) A provider of communications service that intentionally interrupts communications service pursuant to this section shall comply with any rule or notification requirement of the commission or Federal Communications Commission, or both, and any other applicable provision or requirement of state or federal law.

(f) Good faith reliance by a communications service provider upon an order of a judicial officer authorizing the interruption of communications service pursuant to subdivision (b), or upon a signed statement of intent to apply for a court order pursuant to subdivision (c), shall constitute a complete defense for any communications service provider against any action brought as a result of the interruption of communications service as directed by that order or statement.

(g) The Legislature finds and declares that ensuring that California users of any communications service not have that service interrupted, and thereby be deprived of 911 access to emergency services or a means to engage in constitutionally protected expression, is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution.

(h) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Mechanics Liens in Common Interest Developments

December 2016

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Mechanics Liens in Common Interest Developments*, 44 Cal. L. Revision Comm'n Reports 739 (2016).

STATE OF CALIFORNIA

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December 1, 2016

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

The Commission sees three problems with the application of the mechanics lien remedy to a work of improvement in a common interest development:

- Mechanics lien procedures that require the delivery of a notice to the “owner” of improved property may be confusing and burdensome where the improved property is common area.
- Special mechanics lien rules for the authorization of work in a condominium project (one type of common interest development) should also apply to other types of common interest developments.
- The law is unclear as to whether a lien release bond can be used by a condominium owner to release the owner’s property from a mechanics lien recorded against two or more condominiums.

The Commission recommends reforms to address those problems. This recommendation was prepared pursuant to Resolution Chapter 150 of the Statutes of 2016.

Respectfully submitted,

Susan Duncan Lee
Chairperson

MECHANICS LIENS IN COMMON INTEREST DEVELOPMENTS

A mechanics lien is a special type of creditor's remedy, which is established in the state Constitution.¹ It provides a lien right for those who have "bestowed labor or furnished material" on a work of improvement of real property.² Procedures to implement the exercise of the lien right are provided in the Civil Code.³

A common interest development ("CID") is a real property development characterized by (1) separate ownership of a lot or unit (or a right of exclusive occupancy of a unit) that is coupled with an interest in common property, (2) covenants, conditions, and restrictions that limit use of both the common area and separate ownership interests, and (3) management of common property and enforcement of restrictions by an owners' association. CIDs include condominiums, community apartment projects, stock cooperatives, and planned unit developments.⁴

The Commission sees three problems with the application of the mechanics lien remedy to a work of improvement in a CID:

- Mechanics lien procedures that require the delivery of a notice to the "owner" of improved property may be confusing and burdensome where the improved property is common area.

1. Cal. Const. art XIV, § 3 ("Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor

2. *Id.*

3. Civ. Code §§ 8400-8494.

4. Common interest developments can be residential, mixed-use, or entirely commercial or industrial. CIDs that include residential units are governed by the Davis-Stirling Common Interest Development Act. See Civ. Code §§ 4000-6150. CIDs that do not contain residential units are governed by the Commercial and Industrial Common Interest Development Act. See Civ. Code §§ 6500-6876. For ease of reference, the discussion in this recommendation refers primarily to the first of the two Acts.

- Special mechanics lien rules for the authorization of work in a condominium project (one type of common interest development) should also apply to other types of common interest developments.
- It is unclear whether a lien release bond can be used by a condominium owner to release the owner's property from a mechanics lien recorded against two or more condominiums.

Those problems, and the Commission's recommended reforms, are discussed in detail below.

NOTICE TO "OWNER" OF COMMON AREA

In general, the enforcement of a mechanics lien claim is contingent on the claimant having given timely "preliminary notice" to the owner of the improved property.⁵ Mechanics lien law also requires that other important notices and claims be delivered to or served on the improved property's "owner."

It will often be difficult for a mechanics lien claimant to determine who is the "owner" of common area property in a CID. Depending on the form of CID, the common area may be owned by a corporation formed for that purpose, by the CID's association, or by all separate interest owners as tenants in common.⁶ Determining the precise form of ownership of the common area would require reference to complex governing documents that are held in the county recorder's office.

Uncertainty regarding the identity of the improved property's "owner" could lead to mistakes that could undermine the enforcement of an otherwise valid lien claim. Moreover, if the common area is owned jointly by all separate interest owners (who

5. Civ. Code §§ 8200, 8204, 8410. Some provisions authorize giving notice to the "reputed owner" of the improved property. That provides some flexibility but does not entirely cure the problem discussed here.

6. See Civ. Code §§ 4095 ("common area"), 4105 ("community apartment project"), 4125 ("condominium project"), 4175 ("planned development"), 4185 ("separate interest"), 4190 ("stock cooperative").

could number in the thousands), requiring notice to every owner could be unduly burdensome.

A relatively straightforward solution would be to provide that a CID's association is the owner's agent for receipt of mechanics lien notices and claims relating to the CID's common area. Delivery of a notice to the association would be deemed to satisfy the requirement that notice be given to the "owner" of the common area. The same would be true for claims that must be formally served on the "owner."⁷

This would eliminate uncertainty and error about who is the "owner" of the common area. It would also eliminate burdensome mass mailings where the common area happens to be owned by numerous separate interest owners, as tenants in common.

Assigning this function to the association also makes practical sense. Under existing law, the association is generally responsible for maintaining and improving the common area.⁸ Consequently, the association will typically be the party contracting and paying for a work of improvement on the common area.

The Commission recommends that the law be revised to designate the association as the agent for receipt of mechanics lien notices for work on the common area.⁹

To insure that separate interest owners are kept apprised of an imminent mechanics lien enforcement action that could affect the owners' property, the Commission also recommends that the association have the duty of promptly notifying the separate interest owners when a claim of lien is served on the association.¹⁰ The proposed law would require that the notice be given to each owner individually.

7. See Civ. Code § 8416.

8. See, e.g., Civ. Code § 4775.

9. See proposed Civ. Code § 8119 *infra*.

10. See proposed Civ. Code §§ 4620 & 6660 *infra*.

AUTHORIZATION OF WORK IN
CONDOMINIUM PROJECT

Claimants only have a valid mechanics lien right for work that has been authorized by the owner.¹¹ This presents a problem similar to the one discussed above. How can a claimant determine who is the “owner” of common area in a CID in order to secure the necessary authorization? If the common area is owned by separate interest owners as tenants in common, mechanics lien rights could be contingent on obtaining the express authorization of all separate interest owners (who can number in the thousands).

Civil Code Section 4615 provides a solution to this problem, *but only for a work of improvement in a condominium project*. It draws clear lines of authority for authorization of a work of improvement:

4615. (a) In a condominium project, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the condominium project or the owners’ agent or contractor shall be the basis for the filing of a lien against any other property of any other owner in the condominium project unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the owner of any condominium in the case of emergency repairs thereto.

(b) Labor performed or services or materials furnished for the common area, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each condominium owner.

(c) The owner of any condominium may remove that owner’s condominium from a lien against two or more condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien that is attributable to the owner’s condominium.

11. Civ. Code § 8404.

The Commission sees no policy reason for limiting those beneficial rules to condominium projects. With respect to the issues raised in Section 4615, there is nothing that distinguishes a condominium project from any other type of CID. Every type of CID has common area property, with some form of shared ownership. Consequently, every type of CID will face questions about who can authorize work on the common area and about the resulting mechanics lien liability. The answers provided in Section 4615 for condominium projects make equal sense for all types of CIDs.

For those reasons, the Commission recommends that Section 4615 be generalized to apply to all types of CIDs. The Commission also recommends similar revisions to Section 6658 (the parallel provision that governs commercial and industrial CIDs).¹²

USE OF LIEN RELEASE BOND IN COMMON INTEREST DEVELOPMENT

An owner of real property that is subject to a recorded mechanics lien claim, who disputes the correctness or validity of the claim, may release the property from the lien by obtaining and recording a lien release bond (for 125% of the claimed amount).¹³ The bond provides a source of funds for the satisfaction of any judgment enforcing the claim of lien. This allows the property owner to clear a disputed lien from title, without affecting the lien claimant's ability to be paid if the mechanics lien claim is eventually found to be valid and enforceable.

Under Civil Code Section 4615(c), if a mechanics lien claim is recorded against two or more condominiums, an owner of an affected condominium may remove that condominium from the lien by paying the lien claimant the fraction of the total sum secured by the lien that is attributable to the owner's condominium.

12. See proposed amendments to Civ. Code §§ 4615 & 6658 *infra*.

13. Civ. Code § 8424.

It is not clear whether Section 4615(c) would allow an owner to remove a condominium from a recorded lien claim by obtaining and recording a lien release bond for 125% of the fraction of the total sum secured by the lien that is attributable to the owner's condominium.

In order to avoid any uncertainty on that point, the Commission recommends that Section 4615(c) be revised to expressly provide that a mechanics lien release bond may be used, instead of payment, to remove a condominium from a mechanics lien claim recorded against two or more condominiums.¹⁴ The Commission also recommends similar revisions in Section 6658 (the parallel provision that governs commercial and industrial CIDS). These revisions of Sections 4615(c) and 6658(c) would likely be a clarification of existing law, rather than a substantive change.¹⁵ Moreover, the Commission sees no policy reason to preclude use of a mechanics lien release bond in the situation governed by these sections.

14. If Civil Code Section 4615 is generalized, as proposed in this recommendation, the clarification regarding lien release bonds would apply to all types of common interest developments, not just condominiums.

15. The provision that authorizes use of a mechanics lien release bond applies to any "owner of real property," which would include property in a common interest development. See Civ. Code § 8424.

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PROPOSED LEGISLATION

Civ. Code § 4615 (amended). Mechanics liens

SECTION 1. Section 4615 of the Civil Code is amended to read:

4615. (a) In a ~~condominium—project~~ common interest development, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the ~~condominium—project~~ common interest development or the owners' agent or contractor shall be the basis for the filing of a lien against any other property of any other owner in the ~~condominium—project~~ common interest development unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the owner of any ~~condominium~~ separate interest in the case of emergency repairs thereto.

(b) Labor performed or services or materials furnished for the common area, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each ~~condominium~~ separate interest owner.

(c) The owner of any ~~condominium~~ separate interest may remove that owner's ~~condominium~~ separate interest from a lien against two or more ~~condominium~~ separate interests or any part thereof by ~~payment to~~ doing either of the following:

(1) Pay the holder of the lien ~~of~~ the fraction of the total sum secured by the lien that is attributable to the owner's ~~condominium~~ separate interest.

(2) Record a lien release bond, pursuant to Section 8424, in an amount equal to 125 percent of the sum secured by the lien that is attributable to the owner's separate interest.

Comment. Section 4615 is generalized to apply to all types of common interest developments.

Subdivision (c) is revised to make clear that a mechanics lien release bond may be used to remove a separate interest from a mechanics lien claim recorded against two or more separate interests.

Civ. Code § 4620 (added). Notice of claim of lien

SEC. 2. Section 4620 is added to the Civil Code, to read:

4620. If the association is served with a claim of lien pursuant to Part 6 (commencing with Section 8000), for a work of improvement on common area, the association shall promptly give individual notice to the members, pursuant to Section 4040.

Comment. Section 4620 is new. It requires prompt individual notice of a mechanics lien claim served on the association. See Section 4040 (individual notice). See also Section 8119 (with respect to work of improvement on common area, association is agent for receipt of mechanics lien notices and claims).

Civ. Code § 6658 (amended). Mechanics liens

SEC. 3. Section 6658 of the Civil Code is amended to read:

6658. (a) In a ~~condominium—project~~ common interest development, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the ~~condominium—project~~ common interest development or the owners' agent or contractor shall be the basis for the filing of a lien against any other property of any other owner in the ~~condominium—project~~ common interest development unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the owner of any ~~condominium~~ separate interest in the case of emergency repairs thereto.

(b) Labor performed or services or materials furnished for the common area, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each ~~condominium~~ separate interest owner.

(c) The owner of any ~~condominium~~ separate interest may remove that owner's ~~condominium~~ separate interest from a lien against two or more ~~condominium~~ separate interests or any part thereof by ~~payment to~~ doing either of the following:

(1) Pay the holder of the lien ~~of~~ the fraction of the total sum secured by the lien that is attributable to the owner's ~~condominium~~ separate interest.

(2) Record a lien release bond, pursuant to Section 8424, in an amount equal to 125 percent of the sum secured by the lien that is attributable to the owner's separate interest.

Comment. Section 6658 is generalized to apply to all types of common interest developments.

Subdivision (c) is revised to make clear that a mechanics lien release bond may be used to remove a separate interest from a mechanics lien claim recorded against two or more separate interests.

Civ. Code § 6660 (added). Notice of claim of lien

SEC. 4. Section 6660 is added to the Civil Code, to read:

6660. If the association is served with a claim of lien pursuant to Part 6 (commencing with Section 8000), for a work of improvement on common area, the association shall promptly give individual notice to the members, pursuant to Section 6514.

Comment. Section 6660 is new. It requires prompt individual notice of a mechanics lien claim served on the association. See Section 6514 (individual notice). See also Section 8119 (with respect to work of improvement on common area, association is agent for receipt of mechanics lien notices and claims).

Civ. Code § 8119 (added). Agent for receipt of notice in common interest development

SEC. 5. Section 8119 is added to the Civil Code, to read:

8119. (a) With respect to a work of improvement on common area within a common interest development:

(1) The association is deemed to be an agent of the owners of separate interests in the common interest development, for all notices and claims required by this part.

(2) If any provision of this part requires the delivery or service of a notice or claim to or on the owner of common area property, the notice or claim may be delivered to or served on the association.

(b) For the purposes of this section, the terms "association," "common area," "common interest development," and "separate interest" have the meanings provided in Article 2 (commencing

with Section 4075) of Chapter 1 of Part 5 and Article 2 (commencing with Section 6526) of Chapter 1 of Part 5.3.

Comment. Section 8119 is new. It establishes the association of a common interest development as an agent for receipt of notices and claims for a work of improvement, but only with respect to work affecting the common area. See Section 8066 (agents). This section does not make the association an agent of a separate interest owner for work performed on the owner's separate interest.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

2016-2017 Annual Report

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
www.clrc.ca.gov

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Comm'n Reports 755 (2016).

SUMMARY OF WORK OF COMMISSION

Recommendations to the 2016 Legislature

In 2016, bills effectuating two Commission recommendations were enacted, relating to the following subjects:

- Trial Court Unification: Publication of Legal Notice
- Fish and Game Law: Technical Revisions and Minor Substantive Improvements: Part 2

Recommendations to the 2017 Legislature

In 2017, the Commission plans to seek the introduction of legislation effectuating Commission recommendations on the following subjects:

- Recognition of Tribal and Foreign Court Money Judgments
- Government Interruption of Communication Services
- Mechanics Liens and Common Area
- Deadly Weapons: Minor Clean-Up Issues

Commission Activities Planned for 2017

During 2017, the Commission intends to work on the following major topics: mediation confidentiality, revision of the Fish and Game Code, revision of the California Public Records Act, liability of nonprobate transfers for creditor claims and family protections, discovery in civil cases, and revocable transfer on death deeds.

The Commission will work on other topics as time permits.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

c/o King Hall Law School
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SENATOR RICHARD ROTH

December 1, 2016

To: The Honorable Edmund G. Brown, Jr.
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 2016 and its plans for 2017.

Two Commission recommendations considered by the Legislature in 2016 were enacted into law.

The Commission is grateful to the members of the Legislature who carried Commission-recommended legislation in 2016:

- Assembly Committee on Judiciary (Trial Court Unification: Publication of Legal Notice)
- Senate Committee on Natural Resources and Water (Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 2))

The Commission held six one-day meetings in 2016. Meetings were held in Sacramento and Los Angeles.

Respectfully submitted,

Susan Duncan Lee
Chairperson

2016-2017 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 a 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 study only topics that the Legislature has authorized.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., 2014 Cal. Stat. ch. 243 [SB 406] (standards

The Commission has submitted 411 recommendations to the Legislature, of which 378 (more than 90%) have been enacted in whole or in substantial part.⁵ Commission recommendations have resulted in the enactment of legislation affecting 25,257 sections of California law: 5,205 sections amended, 11,093 sections added, and 8,959 sections repealed.

The Commission's recommendations, reports, and other selected materials are published annually in hardcover volumes. Recent materials are also available through the Internet. A list of past publications and information on obtaining printed or electronic versions of Commission material can be found at the end of this Annual Report.⁶

2017 Legislative Program

In 2017, the Commission plans to seek the introduction of legislation implementing Commission recommendations on the following subjects:

- Recognition of Tribal and Foreign Court Money Judgments
- Government Interruption of Communication Services
- Mechanics Liens and Common Area
- Deadly Weapons: Minor Clean-Up Issues

Major Studies in Progress

During 2017, the Commission intends to work on the following major topics: mediation confidentiality, revision of the Fish and

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).

5. See *Legislative Action on Commission Recommendations*, Appendix 3 *infra*.

6. See *Commission Publications*, Appendix 5 *infra*.

Game Code, revision of the California Public Records Act, liability of nonprobate transfers for creditor claims and family protections, discovery in civil cases, and revocable transfer on death deeds.

The Commission will work on other topics as time permits.

Mediation Confidentiality

The Commission will continue to analyze the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, including the purposes for and impact of mediation confidentiality on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, the effectiveness of mediation, and other relevant issues.⁷

Revision of the Fish and Game Code

The Commission will continue to study the revision of the Fish and Game Code and related statutory law to improve organization, clarify meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law.⁸

Revision of the California Public Records Act

The Commission will begin a study of the revision of the California Public Records Act and related provisions to reduce the length and complexity of current sections, avoid unnecessary cross-references, maintain the scope of the existing exemptions to the general rule of records being open to the public, use terms with common definitions, improve organization, and make other specified improvements, without making any substantive change to the effect of the law.⁹

7. See 2016 Cal. Stat. res. ch. 150.

8. See 2016 Cal. Stat. res. ch. 150.

9. See 2016 Cal. Stat. res. ch. 150.

Discovery in Civil Cases

The Commission will begin a study addressing minor substantive improvements to the law governing discovery in civil cases.

Liability of Nonprobate Transfers for Creditor Claims and Family Protections

The Commission will recommence a study of the liability of a decedent's assets that pass outside the probate system for creditor claims and family protections.

Revocable Transfer On Death Deeds

The Commission has been directed to study the effect of California's revocable transfer on death deed.¹⁰ The Commission's report on this matter is due on or before January 1, 2020.

Other Subjects

The major studies described above will dominate the Commission's time and resources during 2017. As time permits, the Commission will continue its work on trial court restructuring and consider other subjects authorized for study.

Calendar of Topics for Study

The Commission's calendar includes 24 topics authorized by the Legislature for study.¹¹

Function and Procedure of Commission

The principal duties of the Commission are to:¹²

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.

10. See 2016 Cal. Stat. ch. 179, § 1 (AB 1779 (Gatto)); 2015 Cal. Stat. ch. 293, § 21 (AB 139 (Gatto)).

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

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

- (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,¹³ 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.¹⁴

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.¹⁵ However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.¹⁶ Additionally, a concurrent

13. 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 § 8261.

14. 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*.

15. Gov't Code § 8293. Section 8293 requires a concurrent resolution authorizing the Commission to study topics contained in the calendar of topics set forth in the Commission's regular report to the Legislature. Section 8293 also requires that the Commission study any topic that the Legislature by concurrent resolution or statute refers to the Commission for study.

16. Gov't Code § 8298.

resolution¹⁷ or statute¹⁸ 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.¹⁹

17. For an example of a concurrent resolution referring a specific topic to the Commission for study, see 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communications service providers).

18. 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 may be uncodified. See, e.g., 2016 Cal. Stat. ch. 179 (revocable transfer on death deeds).

19. In 2016, the Commission received valuable assistance from Professors Ashutosh Bhagwat, William Dodge, Katherine Florey, Edward Imwinkelried, Carlton Larson, and Brian Soucek, all of UC Davis School of Law. The Commission is grateful for their input.

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 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.²⁰ When the Commission has reached a conclusion on the matter,²¹ 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.²²

20. 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).

21. 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.

22. 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*

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.²³

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 (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).

23. Commission Comments are published by LexisNexis and Thomson Reuters 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.

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.²⁴ Receipt of a recommendation by the Legislature is noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.²⁵

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.²⁶ 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.²⁷

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

24. See Gov't Code §§ 8291, 9795, 11094-11099; see also *Reynolds v. Superior Court*, 12 Cal. 3d 834, 847 n.18, 528 P.2d 45, 53 n.18, 117 Cal. Rptr. 437, 445 n.18 (1974) (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

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

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

27. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 542, 28 P.3d 151, 166, 110 Cal. Rptr. 2d 412, 430 (2001), 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 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.").

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.²⁸ 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.²⁹

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.³⁰

Use of Commission Materials To Determine Legislative Intent

Commission materials that have been placed before and considered by the Legislature are legislative history, are

28. See, e.g., *Baldwin v. State*, 6 Cal. 3d 424, 433, 491 P.2d 1121, 1126, 99 Cal. Rptr. 145, 150 (1972). For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

29. 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).

30. Commission reports have in the past been published as well in the legislative journals. See, e.g., *In re Marriage of Neal*, 153 Cal. App. 3d 117, 124, 200 Cal. Rptr. 341, 345 (1984) (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).

declarative of legislative intent,³¹ and are entitled to great weight in construing statutes.³² The materials are a key interpretive aid for practitioners as well as courts,³³ and courts may judicially notice and rely on them.³⁴ Courts at all levels of the state³⁵ and federal³⁶

31. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 657, 51 Cal. Rptr. 3d 871, 875 (2006) (“The Commission’s official comments are deemed to express the Legislature’s intent.”); *People v. Williams*, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) (“The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it.”).

32. See, e.g., *Dep’t of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 12-13 n.9, 145 P.3d 462, 469 n.9, 50 Cal. Rptr. 3d 585, 593 n.9 (2006) (Commission’s official comments are persuasive evidence of Legislature’s intent); *Hale v. S. Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

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].)

33. Cf. 7 B. Witkin, *Summary of California Law Constitutional Law* § 123, at 230 (10th ed. 2005) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

34. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale*, 86 Cal. App. 4th at 927; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

35. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 298, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Admin. Mgmt. Services, Inc. v. Fid. Deposit Co. of Md.*, 129 Cal. App. 3d 484, 488, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

judicial systems depend on Commission materials to construe statutes enacted on Commission recommendation.³⁷ 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

36. See, e.g., *California v. Green*, 399 U.S. 149, 154 n.3 (1970) (United States Supreme Court); *S. Cal. Bank v. Zimmerman* (*In re Hilde*), 120 F.3d 950, 953 (9th Cir. 1997) (federal court of appeals); *Williams v. Townsend*, 283 F. Supp. 580, 582 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell* (*In re McDonell*), 204 B.R. 976, 978-79 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289, 292-93 (Bankr. S.D. Cal. 1984) (bankruptcy court).

37. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to substantial weight in construing statute); *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature's intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence clear legislative intent of law); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight), overruled on other grounds by *Privette v. Superior Court*, 5 Cal. 4th 689, 854 P.2d 721, 21 Cal. Rptr. 2d 72 (1993); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission).

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*, 185 F. Supp. 2d 1128, 1132 (E.D. Cal. 2002) (Law Revision "Committee"); *Ryan v. Garcia*, 27 Cal. App. 4th 1006, 1010 n.2, 33 Cal. Rptr. 2d 158, 160 n.2 (1994) (Law "Review" Commission).

39. See, e.g., *People v. Ainsworth*, 45 Cal. 3d 984, 1015, 755 P.2d 1017, 1036, 248 Cal. Rptr. 568, 586 (1988).

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 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

40. See, e.g., *Heieck & Moran v. City of Modesto*, 64 Cal. 2d 229, 233 n.3, 411 P.2d 105, 108 n.3, 49 Cal. Rptr. 377, 380 n.3 (1966).

41. See, e.g., *Southern Cal. Gas Co. v. Public Utils. Comm'n*, 50 Cal. 3d 31, 38 n.8, 784 P.2d 1373, 1376 n.8, 265 Cal. Rptr. 801, 804 n.8 (1990).

42. See, e.g., *State ex rel. State Pub. Works Bd. v. Stevenson*, 5 Cal. App. 3d 60, 64-65, 84 Cal. Rptr. 742, 745-46 (1970) (finding that 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*, 56 Cal. 4th 613, 623-24, 300 P.3d 886, 155 Cal. Rptr. 3d 817 (2013); *Nestle v. City of Santa Monica*, 6 Cal. 3d 920, 935-36, 496 P.2d 480, 490, 101 Cal. Rptr. 568, 578 (1972).

44. See, e.g., *Redevelopment Agency v. Metropolitan Theatres Corp.*, 215 Cal. App. 3d 808, 812, 263 Cal. Rptr. 637, 639 (1989) (Comment does not override clear and unambiguous statute). Commission materials are but one indicium of legislative intent. See, e.g., *Estate of Joseph*, 17 Cal. 4th 203, 216, 949 P.2d 472, 480, 70 Cal. Rptr. 2d 619, 627 (1998). The accuracy of a Comment may also be questioned. See, e.g., *Buzgheia v. Leasco Sierra Grove*, 30 Cal. App. 4th 766, 774, 36 Cal. Rptr. 2d 144, 149 (1994); *In re Thomas*, 102 B.R. 199, 202 (Bankr. E.D. Cal. 1989).

45. *Cf. People v. Coleman*, 8 Cal. App. 3d 722, 731, 87 Cal. Rptr. 554, 559 (1970) (Comments make clear intent to reflect existing law even if not all supporting cases are cited).

46. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 885, 109 Cal. Rptr. 421, 426-27 (1973) (noting that decisional law cited in Comment was distinguished by the California Supreme Court in a case decided after enactment of the Commission recommendation).

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 Commission materials were before the Legislature during its consideration of the legislation, those materials are not legislative history and are not relevant in

47. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). 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*, 33 Cal. 4th 407, 93 P.3d 260, 15 Cal. Rptr. 3d 643 (2005) (tentative recommendation, correspondence, and staff memorandum and draft); *Yamaha Corp. v. State Bd. of Equalization*, 19 Cal. 4th 1, 12-13, 960 P.2d 1031, 1037, 78 Cal. Rptr. 2d 1, 7 (1998) (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*, 193 Cal. App. 3d 238, 243, 239 Cal. Rptr. 137, 140 (1987). In that event, reliance on the tentative recommendation is proper.

See also *Ilkhchooyi v. Best*, 37 Cal. App. 4th 395, 406, 45 Cal. Rptr. 2d 766, 772-73 (1995) (letter responding to tentative recommendation); D. Henke, *California Legal Research Handbook* § 3.51 (1971) (background studies).

49. Cf. *Rittenhouse v. Superior Court*, 235 Cal. App. 3d 1584, 1589, 1 Cal. Rptr. 2d 595, 598 (1991) (linking Commission's intent and Legislature's intent); *Guthman v. Moss*, 150 Cal. App. 3d 501, 508, 198 Cal. Rptr. 54, 58 (1984) (determination of Commission's intent used to infer Legislature's intent).

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, it is believed, are a valuable contribution to the legal literature of California. These volumes are available at many county law libraries and at some other libraries.

50. The Commission concurs with the opinion of the court in *Juran v. Epstein*, 23 Cal. App. 4th 882, 894 n.5, 28 Cal. Rptr. 2d 588, 594 n.5 (1994), that staff memoranda to the Commission should generally not be considered as legislative history.

51. See, e.g., *Duarte v. Chino Community Hosp.*, 72 Cal. App. 4th 849, 856 n.3, 85 Cal. Rptr. 2d 521, 525 n.3 (1999).

52. See, e.g., *Sierra Club v. San Joaquin Local Agency Formation Comm'n*, 21 Cal. 4th 489, 502-03, 981 P.2d 543, 551-52, 87 Cal. Rptr. 2d 702, 712 (1999) (unenacted Commission recommendation useful as "opinion of a learned panel"); *Hall v. Hall*, 222 Cal. App. 3d 578, 585, 271 Cal. Rptr. 773, 777 (1990) (Commission staff report most detailed analysis of statute available); *W.E.J. v. Superior Court*, 100 Cal. App. 3d 303, 309-10, 160 Cal. Rptr. 862, 866 (1979) (law review article prepared for Commission provides insight into development of law); *Schonfeld v. City of Vallejo*, 50 Cal. App. 3d 401, 407 n.4, 123 Cal. Rptr. 669, 673 n.4 (1975) (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.

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

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. Recent publications and memoranda may be downloaded from the Commission's website. Files that are not on the website are available on request.⁵⁷

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

54. See *Commission Publications*, Appendix 5 *infra*.

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

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

57. See *Commission Publications*, Appendix 5 *infra*.

meeting, a person must register at the meeting. Meeting materials are available free of charge on the Internet⁵⁸ or may be purchased in advance from the Commission.

Personnel of Commission⁵⁹

As of December 1, 2016, the following persons were members of the Law Revision Commission:

Legislative Members⁶⁰

Assembly Member Ed Chau
Senator Richard Roth

Members Appointed by Governor⁶¹

	<i>Term Expires</i>
Susan Duncan Lee, San Francisco	October 1, 2019
<i>Chairperson</i>	
Tom Hallinan, Ceres	October 1, 2019
<i>Vice-Chairperson</i>	
Damian Capozzola, Palos Verdes	October 1, 2017
Taras Kihiczak, Pacific Palisades	October 1, 2017
Victor King, La Crescenta	October 1, 2019
Jane McAllister, Hilmar	October 1, 2019
Crystal Miller-O’Brien, Los Angeles	October 1, 2017

58. See “Electronic Publication and Internet Access” *supra*.

59. See also *Biographies of 2016 Commissioners*, Appendix 4 *infra*.

60. 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.

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).

Legislative Counsel⁶²

Diane F. Boyer-Vine, Sacramento

The following persons are on the Commission's staff:

Legal

BRIAN HEBERT
Executive Director

BARBARA S. GAAL
Chief Deputy Counsel

KRISTIN BURFORD
Staff Counsel

STEVE COHEN
Staff Counsel

Administrative-Secretarial

DEBORA LARRABEE
*Associate Governmental
Program Analyst*

VICTORIA V. MATIAS
Secretary

In addition, Meredith Hankins, Michel Wigney, and Steven Sok all from the University of California, Davis, School of Law, worked for the Commission in 2016.

Commission Budget

The Commission's operations for the 2016-17 fiscal year have been funded through a reimbursement from the California Office of Legislative Counsel, in the amount of \$872,000.

That reimbursement is supplemented by monies budgeted for income generated from the sale of documents to the public, to recover the cost of the documents.

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

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

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 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.

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.⁶³

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.⁶⁴ Legislative Counsel and Commission member Diane F. Boyer-Vine is a member of the California Commission on Uniform State Laws and the National Conference. The Commission's Executive Director, Brian Hebert, is an associate member of the National Conference.

Other Commissioner and Staff Activities

On June 9, 2016, Executive Director Brian Hebert participated in a meeting of the Judicial Council's Tribal Court-State Court Forum in Los Angeles to discuss the Commission's study of the Recognition of Tribal and Foreign Court Money Judgments.

On September 14, 2016, Executive Director Brian Hebert participated in a panel discussion at the University of California, Davis, School of Law, on law student opportunities in the

63. Gov't Code § 8296.

64. Gov't Code § 8289.

legislative process, with a focus on the work of the Law Revision Commission.

Legislative History of Recommendations in the 2016 Legislative Session

In 2016, bills to effectuate two Commission recommendations were introduced. Both proposals were enacted.

Trial Court Unification: Publication of Legal Notice

Assembly Bill 2881 (2016 Cal. Stat. ch. 703) was introduced in 2016 by the Assembly Committee on the Judiciary. The bill effectuated the Commission's recommendation on *Trial Court Unification: Publication of Legal Notice*, 44 Cal. L. Revision Comm'n Reports 385 (2015).

Fish and Game Law: Technical Revisions and Minor Substantive Improvements: Part 2

Senate Bill 1473 (2016 Cal. Stat. ch. 546) was introduced in 2016 by the Senate Committee on Natural Resources and Water. The bill effectuated the Commission's recommendation on *Fish and Game Law: Technical Revisions and Minor Substantive Improvements: Part 2*, 44 Cal. L. Revision Comm'n Reports 349 (2015).

Resolution Authorizing Topics for Study

Assembly Concurrent Resolution 148 (2016 Cal. Stat. res. ch. 150) was introduced by Assemblymember Ed Chau. It authorizes the Commission's continued study of 23 previously authorized topics, and authorizes the Commission to study revision of the California Public Records Act and related provisions.

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 prepared⁶⁵ and has the following to report:

- No decision holding a state statute repealed by implication has been found.
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.
- One decision of the California Supreme Court holding a state statute unconstitutional has been found.

In *Property Reserve, Inc. v. Superior Court*, 1 Cal. 5th 151, 375 P.3d 887, 204 Cal. Rptr. 3d 770 (2016), the California Supreme Court concluded that the lack of an option for a jury trial on damages under Code of Civil Procedure Section 1245.060(c) is unconstitutional. The Court held that the takings clause of the California Constitution⁶⁶ requires a jury trial option on the issue of damages in a precondemnation entry and testing proceeding. The Court concluded that the appropriate remedy for this flaw is to reform the statutes to provide a jury trial option.

Recommendations

The Commission respectfully recommends that the Legislature authorize the Commission to continue its study of the topics previously authorized.⁶⁷

65. This study has been carried through opinions published on or before November 2, 2016.

66. Cal. Const. art. I, § 19.

67. See discussion under "Calendar of Topics for Study" *supra*; *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provisions referred to under “Report on Statutes Repealed by Implication or Held Unconstitutional,” *supra*, to the extent they have been held unconstitutional and have not been amended, reformed, or repealed.

APPENDIX 1

STATUTE GOVERNING THE CALIFORNIA LAW REVISION COMMISSION (Government Code Sections 8280-8298*)

§ 8280. Creation

8280. There is created in the State Government the California Law Revision Commission. 787

§ 8281. Membership

8281. The commission consists of one Member of the Senate appointed by the Committee on Rules, one Member of the Assembly appointed by the Speaker, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel shall be an ex officio member of the commission.

The Members of the Legislature appointed to the commission shall serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this article, those Members of the Legislature shall constitute a joint interim investigating committee on the subject of this article and as a joint interim investigating committee shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

The members appointed by the Governor shall be appointed for a term of four years and shall hold office until the appointment and qualification of their successors. The terms of the members first appointed shall not commence earlier than October 1, 1953, and

*Added by 1984 Cal. Stat. ch. 1335, § 2; see also 1985 Cal. Stat. ch. 106, § 45 (amending Section 8295); 1989 Cal. Stat. ch. 152, § 1 (adding Section 8298), 2004 Cal. Stat. ch. 193, § 33 (amending Section 8293). Formerly Gov't Code §§ 10300-10340, added by 1953 Cal. Stat. ch. 1445, § 2; amended by 1960 Cal. Stat. ch. 61, § 1 (1st Ex. Sess.); 1965 Cal. Stat. ch. 371, § 110; 1978 Cal. Stat. ch. 228, § 1; 1981 Cal. Stat. ch. 1106, § 2.

shall expire as follows: four on October 1, 1955, and three on October 1, 1957. When a vacancy occurs in any office filled by appointment by the Governor, he or she shall appoint a person to the office, who shall hold office for the balance of the unexpired term of his or her predecessor.

Note. The provision in the third paragraph to the effect that Commission members appointed by the Governor hold office until appointment and qualification of their successors is 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).

§ 8282. Compensation and expenses

8282. (a) The members of the commission shall serve without compensation, except that each member appointed by the Governor shall receive fifty dollars (\$50) for each day's attendance at a meeting of the commission.

(b) In addition, each member shall be allowed actual expenses incurred in the discharge of his or her duties, including travel expenses.

Note. Government Code Section 11564.5 provides a per diem compensation of \$100, notwithstanding any other provision of law.

§ 8283. Chairperson

8283. The commission shall select one of its members chairperson.

§ 8284. Executive secretary

8284. The commission may appoint an executive secretary and fix his or her compensation, in accordance with law.

§ 8285. Employees

8285. The commission may employ and fix the compensation, in accordance with law, of such professional, clerical and other assistants as may be necessary.

§ 8286. Assistance of state

8286. The material of the State Library shall be made available to the commission. All state agencies, and other official state organizations, and all persons connected therewith shall give the commission full information, and reasonable assistance in any matters of research requiring recourse to them, or to data within their knowledge or control.

§ 8287. Assistance of bar

8287. The Board of Governors of the State Bar shall assist the commission in any manner the commission may request within the scope of its powers or duties.

§ 8288. Political activities of commissioners and staff

8288. No employee of the commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature as to such matters unless requested to do so by the committee or its chairperson. In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his or her official capacity as an employee or member.

§ 8289. Duties of commission

8289. The commission shall, within the limitations imposed by Section 8293:

(a) Examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

(c) Receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(d) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state into harmony with modern conditions.

§ 8290. Unconstitutional and impliedly repealed statutes

8290. 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.

§ 8291. Submission and distribution of reports

8291. The commission shall submit its reports, and its recommendations as to revision of the laws, to the Governor and the Legislature, and shall distribute them to the Governor, the Members of the Legislature, and the heads of all state departments.

Note. Section 8291 is limited by later-enacted rules governing distribution of state reports set out in Government Code Sections 9795 and 11094-11099.

§ 8292. Contents of reports

8292. The commission may, within the limitations imposed by Section 8293, include in its report the legislative measures proposed by it to effect the adoption or enactment of the proposed revision. The reports may be accompanied by exhibits of various changes, modifications, improvements, and suggested enactments prepared or proposed by the commission with a full and accurate index thereto.

§ 8293. Calendar of topics

8293. The commission shall file a report at each regular session of the Legislature that shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. The commission shall confine its studies to those topics set forth in the calendar

contained in its last preceding report that have been or are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic that the Legislature, by concurrent resolution or statute, refers to it for study.

§ 8294. Printing of reports

8294. The reports, exhibits, and proposed legislative measures shall be printed by the State Printing Office under the supervision of the commission. The exhibits shall be so printed as to show in the readiest manner the changes and repeals proposed by the commission.

§ 8295. Cooperation with legislative committees

8295. The commission shall confer and cooperate with any legislative committee on revision of the law and may contract with any committee for the rendition of service, by either for the other, in the work of revision.

§ 8296. Cooperation with bar and other associations

8296. The commission may cooperate with any bar association or other learned, professional, or scientific association, institution or foundation in any manner suitable for the fulfillment of the purposes of this article.

§ 8297. Research contracts

8297. The commission may, with the approval of the Director of General Services, enter into, amend and terminate contracts with colleges, universities, schools of law or other research institutions, or with qualified individuals for the purposes of research.

§ 8298. Recommendations concerning minor revisions

8298. The commission may study and recommend revisions to correct technical or minor substantive defects in the statutes of the state without a prior concurrent resolution of the Legislature referring the matter to it for study.

APPENDIX 2

CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission's calendar of topics authorized for study includes the subjects listed below.¹ Each of these topics has been authorized for Commission study by the Legislature. For the current authorizing resolution, see 2016 Cal. Stat. res. ch. 150.

1. Creditors' remedies. Whether the law should be revised that relates to creditors' remedies, including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code provisions on repossession of property), confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, insolvency, and related matters.²

2. Probate Code. Whether the California Probate Code should be revised, including, but not limited to, the issue of whether California should adopt, in whole or in part, the Uniform Probate Code, and related matters.³

1. The calendar of topics lists only those topics selected by the Commission for study and authorized by the Legislature. The Commission also studies topics specifically directed to it by concurrent resolution of the Legislature or by statute. See, e.g., 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communication service providers); 2014 Cal. Stat. ch. 243 [SB 406] (recognition of tribal and foreign court money judgments). The Commission may also study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution. Gov't Code § 8298.

2. See also 1983 Cal. Stat. res. ch. 40; 1974 Cal. Stat. res. ch. 45; 1972 Cal. Stat. res. ch. 27; 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957, at 15-16 (1957). Revised in 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 661 (2000).

3. See also 1980 Cal. Stat. res. ch. 37. Revised in 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 661 (2000).

3. Real and personal property. Whether the law should be revised that relates to real and personal property, including, but not limited to, a marketable title act, covenants, servitudes, conditions, and restrictions on land use or relating to land, powers of termination, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant on assignment, subletting, termination, or abandonment of a lease, and related matters.⁴

4. Family law. Whether the law should be revised that relates to family law, including, but not limited to, community property, the adjudication of child and family civil proceedings, child custody, adoption, guardianship, freedom from parental custody and control, and related matters, including other subjects covered by the Family Code.⁵

5. Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised.⁶

6. Rights and disabilities of minors and incompetent persons. Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised.⁷

7. Evidence. Whether the Evidence Code should be revised.⁸

4. See 1983 Cal. Stat. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic. Expanded in 1988 Cal Stat. res. ch. 81. Revised in 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 661 (2000).

5. See 1997 Cal. Stat. res. ch. 102, consolidating Family Code authority, child custody, adoption, and guardianship authority, and family law proceedings authority. See also 1995 Cal. Stat. res. ch. 87; 1989 Cal. Stat. res. ch. 70; 1983 Cal. Stat. res. ch. 40; 1978 Cal. Stat. res. ch. 65; 1972 Cal. Stat. res. ch. 27; 1956 Cal. Stat. res. ch. 42.

6. See also 1975 Cal. Stat. res. ch. 15; 12 Cal. L. Revision Comm'n Reports 526-28 (1974).

7. See also 1979 Cal. Stat. res. ch. 19; 14 Cal. L. Revision Comm'n Reports 217-18 (1978).

8. See also 1965 Cal. Stat. res. ch. 130.

8. Alternative Dispute Resolution. Whether the law relating to arbitration, mediation, and other alternative dispute resolution techniques should be revised.⁹

9. Administrative law. Whether there should be changes to administrative law.¹⁰

10. Attorney's fees. Whether the law relating to the payment and the shifting of attorney's fees between litigants should be revised.¹¹

11. Uniform Unincorporated Nonprofit Association Act. Whether the Uniform Unincorporated Nonprofit Association Act, or parts of that uniform act, and related provisions should be adopted in California.¹²

12. Trial court unification. Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification.¹³

13. Contract law. Whether the law of contracts should be revised, including the law relating to the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters.¹⁴

14. Common interest developments. Whether the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, establish a clear, consistent, and unified policy with regard to formation and management of these developments and transaction of real property interests located within

9. See also 1968 Cal. Stat. res. ch. 110; 8 Cal. L. Revision Comm'n Reports 1325-26 (1967). Revised in 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 661-62 (2000).

10. See also 1987 Cal. Stat. res. ch. 47.

11. See also 1995 Cal. Stat. res. ch. 87; 1988 Cal. Stat. res. ch. 20.

12. See also 1993 Cal. Stat. res. ch. 31; 22 Cal. L. Revision Comm'n Reports 846 (1992).

13. See also 1995 Cal. Stat. res. ch. 87; 1993 Cal. Stat. res. ch. 96.

14. See also 1996 Cal. Stat. res. ch. 38; 25 Cal. L. Revision Comm'n Reports 628-29 (1995).

them, and to determine to what extent they should be subject to regulation.¹⁵

15. Legal malpractice statutes of limitation. Whether the statutes of limitation for legal malpractice actions should be revised to recognize equitable tolling or other adjustment for the circumstances of simultaneous litigation, and related matters.¹⁶

16. Coordination of public records statutes. Whether the law governing disclosure of public records and the law governing protection of privacy in public records should be revised to better coordinate them, including consolidation and clarification of the scope of required disclosure and creation of a single set of disclosure procedures, to provide appropriate enforcement mechanisms, and to ensure that the law governing disclosure of public records adequately treats electronic information, and related matters.¹⁷

17. Criminal sentencing. Whether the law governing criminal sentences for enhancements relating to weapons or injuries should be revised to simplify and clarify the law and eliminate unnecessary or obsolete provisions.¹⁸

18. Subdivision Map Act and Mitigation Fee Act. Whether the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) and the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) of Division 1 of Title 7 of the Government Code) should

15. See also 1999 Cal. Stat. res. ch. 81; 28 Cal. L. Revision Comm'n Reports 693-94 (1998).

16. See also 1999 Cal. Stat. res. ch. 81; 28 Cal. L. Revision Comm'n Reports 696 (1998).

17. See also 1999 Cal. Stat. res. ch. 81; 28 Cal. L. Revision Comm'n Reports 695-96 (1998).

18. See also 1999 Cal. Stat. res. ch. 81; 28 Cal. L. Revision Comm'n Reports 695 (1998). Revised in 2002 Cal. Stat. res. ch. 166.

be revised to improve their organization, resolve inconsistencies, and clarify and rationalize provisions, and related matters.¹⁹

19. Uniform Statute and Rule Construction Act. Whether the Uniform Statute and Rule Construction Act (1995) should be adopted in California in whole or in part, and related matters.²⁰

20. Place of trial in a civil case. Whether the law governing the place of trial in a civil case should be revised.²¹

21. Charter schools and the Government Claims Act. Analysis of the legal and policy implications of treating a charter school as a public entity for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.²²

22. Fish and Game Code. Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law.²³

23. Mediation Confidentiality. (a) Analysis of the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, and the purposes for, and impact of, those laws on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, and the effectiveness of mediation, as well as any other issues that the commission deems relevant. Among other matters, the commission shall consider the following:

19. See also 2001 Cal. Stat. res. ch. 78; 30 Cal. L. Revision Comm'n Reports 662 (2000).

20. See also 2003 Cal. Stat. res. ch. 92; 33 Cal. L. Revision Comm'n Reports 599 (2003).

21. See also 2007 Cal. Stat. res. ch. 100; 38 Cal. L. Revision Comm'n Reports 30 (2008).

22. See also 2009 Cal. Stat. res. ch. 98; 39 Cal. L. Revision Comm'n Reports 28 (2009).

23. See also 2012 Cal. Stat. res. ch. 108; 42 Cal. L. Revision Comm'n Reports 361 (2012).

(1) Sections 703.5, 958, and 1119 of the Evidence Code and predecessor provisions, as well as California court rulings, including, but not limited to, *Cassel v. Superior Court* (2011) 51 Cal. 4th 113, *Porter v. Wyner* (2010) 183 Cal. App. 4th 949, and *Wimsatt v. Superior Court* (2007) 152 Cal. App. 4th 137.

(2) The availability and propriety of contractual waivers.

(3) The law in other jurisdictions, including the Uniform Mediation Act, as it has been adopted in other states, other statutory acts, scholarly commentary, judicial decisions, and any data regarding the impact of differing confidentiality rules on the use of mediation.

(b) In studying this matter, the commission shall request input from experts and interested parties, including, but not limited to, representatives from the California Supreme Court, the State Bar of California, legal malpractice defense counsel, other attorney groups and individuals, mediators, and mediation trade associations. The commission shall make any recommendations that it deems appropriate for the revision of California law to balance the competing public interests between confidentiality and accountability.²⁴

24. California Public Records Act. Study, report on, and prepare recommended legislation as soon as possible, considering the commission's preexisting duties and workload demands, concerning the revision of the California Public Records Act and related provisions. This legislation shall accomplish all of the following objectives:

(1) Reduce the length and complexity of current sections.

(2) Avoid unnecessary cross-references.

(3) Neither expand nor contract the scope of existing exemptions to the general rule that records are open to the public pursuant to the current provisions of the Public Records Act.

(4) To the extent compatible with (3), use terms with common definitions.

(5) Organize the existing provisions in such a way that similar provisions are located in close proximity to one another.

(6) Eliminate duplicative provisions.

24. See also 2012 Cal. Stat. res. ch. 108; 42 Cal. L. Revision Comm'n Reports 361 (2012).

(7) Clearly express legislative intent without any change in the substantive provisions.²⁵

25. See also 2016 Cal. Stat. res. ch. 150; 44 Cal. L. Revision Comm'n Reports 782 (2016).

APPENDIX 3

LEGISLATIVE ACTION ON COMMISSION RECOMMENDATIONS

(Cumulative)

Note. The “Action by Legislature” column may include references to relevant legislative history in the Commission’s Reports, following the italicized “*See.*” These references are to pages in Commission bound volumes (e.g., “35:73” refers to bound volume 35, page 73).

Recommendation	Action by Legislature
1. <i>Partial Revision of Education Code</i> , 1 Cal. L. Revision Comm’n Reports, Annual Report for 1954, at 12 (1957)	Enacted. 1955 Cal. Stat. chs. 799, 877
2. <i>Summary Distribution of Small Estates Under Probate Code Sections 640 to 646</i> , 1 Cal. L. Revision Comm’n Reports, Annual Report for 1954, at 50 (1957)	Enacted. 1955 Cal. Stat. ch. 1183
3. <i>Fish and Game Code</i> , 1 Cal. L. Revision Comm’n Reports, Annual Report for 1956, at 13-14 (1957)	Enacted. 1957 Cal. Stat. ch. 456
4. <i>Maximum Period of Confinement in a County Jail</i> , 1 Cal. L. Revision Comm’n Reports, at A-1 (1957)	Enacted. 1957 Cal. Stat. ch. 139
5. <i>Notice of Application for Attorney’s Fees and Costs in Domestic Relations Actions</i> , 1 Cal. L. Revision Comm’n Reports, at B-1 (1957)	Enacted. 1957 Cal. Stat. ch. 540
6. <i>Taking Instructions to Jury Room</i> , 1 Cal. L. Revision Comm’n Reports, at C-1 (1957)	Not enacted; but see Code Civ. Proc. § 612.5, enacting substance of this recommendation.
7. <i>The Dead Man Statute</i> , 1 Cal. L. Revision Comm’n Reports, at D-1 (1957)	Not enacted; but recommendation accomplished in enactment of Evidence Code. See Evid. Code § 1261 Comment
8. <i>Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere</i> , 1 Cal. L. Revision Comm’n Reports, at E-1 (1957)	Enacted. 1957 Cal. Stat. ch. 490

Recommendation	Action by Legislature
9. <i>The Marital “For and Against” Testimonial Privilege</i> , 1 Cal. L. Revision Comm’n Reports, at F-1 (1957)	Not enacted; but recommendation accomplished in enactment of Evidence Code. See Evid. Code § 970 Comment
10. <i>Suspension of the Absolute Power of Alienation</i> , 1 Cal. L. Revision Comm’n Reports, at G-1 (1957); 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 14 (1959)	Enacted. 1959 Cal. Stat. ch. 470
11. <i>Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378</i> , 1 Cal. L. Revision Comm’n Reports, at H-1 (1957)	Enacted. 1957 Cal. Stat. ch. 102
12. <i>Judicial Notice of the Law of Foreign Countries</i> , 1 Cal. L. Revision Comm’n Reports, at I-1 (1957)	Enacted. 1957 Cal. Stat. ch. 249
13. <i>Choice of Law Governing Survival of Actions</i> , 1 Cal. L. Revision Comm’n Reports, at J-1 (1957)	No legislation recommended.
14. <i>Effective Date of Order Ruling on a Motion for New Trial</i> , 1 Cal. L. Revision Comm’n Reports, at K-1 (1957); 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 16 (1959)	Enacted. 1959 Cal. Stat. ch. 468
15. <i>Retention of Venue for Convenience of Witnesses</i> , 1 Cal. L. Revision Comm’n Reports, at L-1 (1957)	Not enacted.
16. <i>Bringing New Parties Into Civil Actions</i> , 1 Cal. L. Revision Comm’n Reports, at M-1 (1957)	Enacted. 1957 Cal. Stat. ch. 1498
17. <i>Grand Juries</i> , 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 20 (1959)	Enacted. 1959 Cal. Stat. ch. 501
18. <i>Procedure for Appointing Guardians</i> , 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 21 (1959)	Enacted. 1959 Cal. Stat. ch. 500
19. <i>Appointment of Administrator in Quiet Title Action</i> , 2 Cal. L. Revision Comm’n Reports, Annual Report for 1959, at 29 (1959)	No legislation recommended.

Recommendation	Action by Legislature
20. <i>Presentation of Claims Against Public Entities</i> , 2 Cal. L. Revision Comm'n Reports, at A-1 (1959)	Enacted. 1959 Cal. Stat. chs. 1715, 1724, 1725, 1726, 1727, 1728; Cal. Const., art. XI, § 10 (1960)
21. <i>Right of Nonresident Aliens to Inherit</i> , 2 Cal. L. Revision Comm'n Reports, at B-1 (1959); 11 Cal. L. Revision Comm'n Reports 421 (1973)	Enacted. 1974 Cal. Stat. ch. 425
22. <i>Mortgages to Secure Future Advances</i> , 2 Cal. L. Revision Comm'n Reports, at C-1 (1959)	Enacted. 1959 Cal. Stat. ch. 528
23. <i>Doctrine of Worthier Title</i> , 2 Cal. L. Revision Comm'n Reports, at D-1 (1959)	Enacted. 1959 Cal. Stat. ch. 122
24. <i>Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving</i> , 2 Cal. L. Revision Comm'n Reports, at E-1 (1959)	Not enacted; but see 1972 Cal. Stat. ch. 92, enacting substance of a portion of recommendation relating to drunk driving.
25. <i>Time Within Which Motion for New Trial May Be Made</i> , 2 Cal. L. Revision Comm'n Reports, at F-1 (1959)	Enacted. 1959 Cal. Stat. ch. 469
26. <i>Notice to Shareholders of Sale of Corporate Assets</i> , 2 Cal. L. Revision Comm'n Reports, at G-1 (1959)	Not enacted; but see Corp. Code §§ 1001, 1002, enacting substance of recommendation.
27. <i>Evidence in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at A-1 (1961)	Not enacted; but see Evid. Code § 810 <i>et seq.</i> , enacting substance of recommendation.
28. <i>Taking Possession and Passage of Title in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at B-1 (1961)	Enacted. 1961 Cal. Stat. chs. 1612, 1613
29. <i>Reimbursement for Moving Expenses When Property Is Acquired for Public Use</i> , 3 Cal. L. Revision Comm'n Reports, at C-1 (1961)	Not enacted; but see Gov't Code § 7260 <i>et seq.</i> , enacting substance of recommendation.
30. <i>Rescission of Contracts</i> , 3 Cal. L. Revision Comm'n Reports, at D-1 (1961)	Enacted. 1961 Cal. Stat. ch. 589

Recommendation	Action by Legislature
31. <i>Right to Counsel and Separation of Delinquent From Nondelinquent Minor in Juvenile Court Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at E-1 (1961)	Enacted. 1961 Cal. Stat. ch. 1616
32. <i>Survival of Actions</i> , 3 Cal. L. Revision Comm'n Reports, at F-1 (1961)	Enacted. 1961 Cal. Stat. ch. 657
33. <i>Arbitration</i> , 3 Cal. L. Revision Comm'n Reports, at G-1 (1961)	Enacted. 1961 Cal. Stat. ch. 461
34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 Cal. L. Revision Comm'n Reports, at H-1 (1961)	Not enacted 1961; but see recommendation to 1963 session (item 39 <i>infra</i>), which was enacted.
35. <i>Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere</i> , 3 Cal. L. Revision Comm'n Reports, at I-1 (1961)	Enacted. 1961 Cal. Stat. ch. 636
36. <i>Notice of Alibi in Criminal Actions</i> , 3 Cal. L. Revision Comm'n Reports, at J-1 (1961)	Not enacted.
37. <i>Discovery in Eminent Domain Proceedings</i> , 4 Cal. L. Revision Comm'n Reports 701 (1963); 8 Cal. L. Revision Comm'n Reports 19 (1967)	Enacted. 1967 Cal. Stat. ch. 1104
38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 801 (1963)	Enacted. 1963 Cal. Stat. ch. 1681 <i>See 4:211, 219</i>
39. <i>Claims, Actions and Judgments Against Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1001 (1963)	Enacted. 1963 Cal. Stat. ch. 1715 <i>See 4:211, 222</i>
40. <i>Insurance Coverage for Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1201 (1963)	Enacted. 1963 Cal. Stat. ch. 1682 <i>See 4:212, 223</i>
41. <i>Defense of Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1301 (1963)	Enacted. 1963 Cal. Stat. ch. 1683 <i>See 4:212, 224</i>
42. <i>Liability of Public Entities for Ownership and Operation of Motor Vehicles</i> , 4 Cal. L. Revision Comm'n Reports 1401 (1963); 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 1527

Recommendation	Action by Legislature
43. <i>Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer</i> , 4 Cal. L. Revision Comm'n Reports 1501 (1963)	Enacted. 1963 Cal. Stat. ch. 1684 <i>See</i> 4:212, 224
44. <i>Sovereign Immunity — Amendments and Repeals of Inconsistent Statutes</i> , 4 Cal. L. Revision Comm'n Reports 1601 (1963)	Enacted. 1963 Cal. Stat. chs. 1685, 1686, 2029 <i>See</i> 4:213
45. <i>Evidence Code</i> , 7 Cal. L. Revision Comm'n Reports 1 (1965)	Enacted. 1965 Cal. Stat. ch. 299 <i>See</i> 7:912, 923
46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 653 <i>See</i> 7:914, 928
47. <i>Evidence Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 101 (1967)	Enacted in part. 1967 Cal. Stat. ch. 650 Balance enacted. 1970 Cal. Stat. ch. 69 <i>See</i> 8:1315
48. <i>Evidence — Agricultural Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 201 (1967)	Enacted. 1967 Cal. Stat. ch. 262
49. <i>Evidence — Commercial Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 301 (1967)	Enacted. 1967 Cal. Stat. ch. 703
50. <i>Whether Damage for Personal Injury to a Married Person Should Be Separate or Community Property</i> , 8 Cal. L. Revision Comm'n Reports 401 (1967); 8 Cal. L. Revision Comm'n Reports 1385 (1967)	Enacted. 1968 Cal. Stat. chs. 457, 458 <i>See</i> 8:1318; 9:18
51. <i>Vehicle Code Section 17150 and Related Sections</i> , 8 Cal. L. Revision Comm'n Reports 501 (1967)	Enacted. 1967 Cal. Stat. ch. 702 <i>See</i> 8:1317
52. <i>Additur</i> , 8 Cal. L. Revision Comm'n Reports 601 (1967)	Enacted. 1967 Cal. Stat. ch. 72 <i>See</i> 8:1317
53. <i>Abandonment or Termination of a Lease</i> , 8 Cal. L. Revision Comm'n Reports 701 (1967); 9 Cal. L. Revision Comm'n Reports 401 (1969); 9 Cal. L. Revision Comm'n Reports 153 (1969)	Enacted. 1970 Cal. Stat. ch. 89 <i>See</i> 8:1319; 10:1018

Recommendation	Action by Legislature
54. <i>Good Faith Improver of Land Owned by Another</i> , 8 Cal. L. Revision Comm'n Reports 801 (1967); 8 Cal. L. Revision Comm'n Reports 1373 (1967)	Enacted. 1968 Cal. Stat. ch. 150 <i>See 8:2319; 9:19</i>
55. <i>Suit By or Against an Unincorporated Association</i> , 8 Cal. L. Revision Comm'n Reports 901 (1967)	Enacted. 1967 Cal. Stat. ch. 1324 <i>See 8:1317</i>
56. <i>Escheat</i> , 8 Cal. L. Revision Comm'n Reports 1001 (1967)	Enacted. 1968 Cal. Stat. chs. 247, 356 <i>See 9:16</i>
57. <i>Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding</i> , 8 Cal. L. Revision Comm'n Reports 1361 (1967)	Enacted. 1968 Cal. Stat. ch. 133 <i>See 9:19</i>
58. <i>Service of Process on Unincorporated Associations</i> , 8 Cal. L. Revision Comm'n Reports 1403 (1967)	Enacted. 1968 Cal. Stat. ch. 132 <i>See 9:18</i>
59. <i>Sovereign Immunity — Statute of Limitations</i> , 9 Cal. L. Revision Comm'n Reports 49 (1969); 9 Cal. L. Revision Comm'n Reports 175 (1969)	Enacted. 1970 Cal. Stat. ch. 104 <i>See 9:98</i>
60. <i>Additur and Remittitur</i> , 9 Cal. L. Revision Comm'n Reports 63 (1969)	Enacted. 1969 Cal. Stat. ch. 115 <i>See 9:99</i>
61. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 71 (1969)	Enacted. 1969 Cal. Stat. ch. 114 <i>See 9:98</i>
62. <i>Quasi-Community Property</i> , 9 Cal. L. Revision Comm'n Reports 113 (1969)	Enacted. 1970 Cal. Stat. ch. 312 <i>See 10:1019</i>
63. <i>Arbitration of Just Compensation</i> , 9 Cal. L. Revision Comm'n Reports 123 (1969)	Enacted. 1970 Cal. Stat. ch. 417 <i>See 10:1018</i>
64. <i>Revisions of Evidence Code</i> , 9 Cal. L. Revision Comm'n Reports 137 (1969)	Enacted in part. 1970 Cal. Stat. ch. 69 <i>See also</i> 1970 Cal. Stat. chs. 1396, 1397; 1972 Cal. Stat. ch. 888 <i>See 10:1018</i>
65. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 Cal. L. Revision Comm'n Reports 201 (1969)	Enacted. 1969 Cal. Stat. ch. 156 <i>See 9:99</i>
66. <i>Powers of Appointment</i> , 9 Cal. L. Revision Comm'n Reports 301 (1969)	Enacted. 1969 Cal. Stat. chs. 113, 155 <i>See 9:98</i>

Recommendation	Action by Legislature
67. <i>Evidence Code — Revisions of Privileges Article</i> , 9 Cal. L. Revision Comm'n Reports 501 (1969)	Vetoed; but see 1970 Cal. Stat. chs. 1396, 1397 <i>See</i> 9:98
68. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 601 (1969)	Enacted. 1970 Cal. Stat. ch. 618 <i>See</i> 10:1019
69. <i>Representation as to the Credit of Third Persons and the Statute of Frauds</i> , 9 Cal. L. Revision Comm'n Reports 701 (1969)	Enacted. 1970 Cal. Stat. ch. 720 <i>See</i> 10:1021
70. <i>Revisions of Governmental Liability Act</i> , 9 Cal. L. Revision Comm'n Reports 801 (1969)	Enacted in part. 1970 Cal. Stat. chs. 662, 1099 <i>See</i> 10:1020
71. <i>"Vesting" of Interests Under Rule Against Perpetuities</i> , 9 Cal. L. Revision Comm'n Reports 901 (1969)	Enacted. 1970 Cal. Stat. ch. 45 <i>See</i> 10:1021
72. <i>Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions</i> , 10 Cal. L. Revision Comm'n Reports 501 (1971)	Enacted. 1971 Cal. Stat. chs. 244, 950; see also 1973 Cal. Stat. ch. 828 <i>See</i> 10:1125
73. <i>Wage Garnishment and Related Matters</i> , 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601 (1976); 13 Cal. L. Revision Comm'n Reports 1703 (1976); 14 Cal. L. Revision Comm'n Reports 261 (1978)	Enacted in part. 1978 Cal. Stat. ch. 1133; see also 1979 Cal. Stat. ch. 66 <i>See</i> 11:1024; 11:1123; 12:530; 13:2012; 14:13, 223; 15:1024
74. <i>Proof of Foreign Official Records</i> , 10 Cal. L. Revision Comm'n Reports 1022 (1971)	Enacted. 1970 Cal. Stat. ch. 41
75. <i>Inverse Condemnation — Insurance Coverage</i> , 10 Cal. L. Revision Comm'n Reports 1051 (1971)	Enacted. 1971 Cal. Stat. ch. 140 <i>See</i> 10:1126
76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 Cal. L. Revision Comm'n Reports 1147 (1971)	Enacted. 1971 Cal. Stat. ch. 1607 <i>See</i> 10:1126
77. <i>Civil Arrest</i> , 11 Cal. L. Revision Comm'n Reports 1 (1973)	Enacted. 1973 Cal. Stat. ch. 20 <i>See</i> 11:1123

Recommendation	Action by Legislature
78. <i>Claim and Delivery Statute</i> , 11 Cal. L. Revision Comm'n Reports 301 (1973)	Enacted. 1973 Cal. Stat. ch. 526 <i>See 11:1124</i>
79. <i>Unclaimed Property</i> , 11 Cal. L. Revision Comm'n Reports 401 (1973); 12 Cal. L. Revision Comm'n Reports 609 (1974)	Proposed resolution enacted. 1973 Cal. Stat. res. ch. 76 Legislation enacted. 1975 Cal. Stat. ch. 25 <i>See 11:1124; 12:530; 13:2012</i>
80. <i>Enforcement of Sister State Money Judgments</i> , 11 Cal. L. Revision Comm'n Reports 451 (1973)	Enacted. 1974 Cal. Stat. ch. 211 <i>See 12:534</i>
81. <i>Prejudgment Attachment</i> , 11 Cal. L. Revision Comm'n Reports 701 (1973)	Enacted. 1974 Cal. Stat. ch. 1516 See also 1975 Cal. Stat. ch. 200 <i>See 12:530</i>
82. <i>Landlord-Tenant Relations</i> , 11 Cal. L. Revision Comm'n Reports 951 (1973)	Enacted. 1974 Cal. Stat. chs. 331, 332 <i>See 12:536</i>
83. <i>Pleading</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1024 (1973)	Enacted. 1972 Cal. Stat. ch. 73
84. <i>Evidence — Judicial Notice</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1025 (1973)	Enacted. 1972 Cal. Stat. ch. 764
85. <i>Evidence — "Criminal Conduct" Exception</i> , 11 Cal. L. Revision Comm'n Reports 1147 (1973)	Not enacted 1974; see recommendation to 1975 session (item 90 <i>infra</i>), which was enacted. <i>See 12:535</i>
86. <i>Erroneously Compelled Disclosure of Privileged Information</i> , 11 Cal. L. Revision Comm'n Reports 1163 (1973)	Enacted. 1974 Cal. Stat. ch. 227 <i>See 12:535</i>
87. <i>Liquidated Damages</i> , 11 Cal. L. Revision Comm'n Reports 1201 (1973); 13 Cal. L. Revision Comm'n Reports 1735 (1976); 13 Cal. L. Revision Comm'n Reports 2139 (1976)	Enacted. 1977 Cal. Stat. ch. 198 <i>See 12:535; 13:1616; 14:13</i>
88. <i>Payment of Judgments Against Local Public Entities</i> , 12 Cal. L. Revision Comm'n Reports 575 (1974)	Enacted. 1975 Cal. Stat. ch. 285 <i>See 13:2011</i>
89. <i>View by Trier of Fact in a Civil Case</i> , 12 Cal. L. Revision Comm'n Reports 587 (1974)	Enacted. 1975 Cal. Stat. ch. 301 <i>See 13:2011</i>

Recommendation	Action by Legislature
90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 Cal. L. Revision Comm'n Reports 601 (1974)	Enacted. 1975 Cal. Stat. ch. 318 <i>See 13:2012</i>
91. <i>Improvement Acts</i> , 12 Cal. L. Revision Comm'n Reports 1001 (1974)	Enacted. 1974 Cal. Stat. ch. 426 <i>See 12:534</i>
92. <i>Condemnation Law and Procedure: Conforming Changes in Special District Statutes</i> , 12 Cal. L. Revision Comm'n Reports 1101 (1974); 12 Cal. L. Revision Comm'n Reports 2004 (1974)	Enacted. 1975 Cal. Stat. chs. 581, 582, 584, 585, 586, 587, 1176, 1276
93. <i>The Eminent Domain Law</i> , 12 Cal. L. Revision Comm'n Reports 1601 (1974)	Enacted. 1975 Cal. Stat. chs. 1239, 1240, 1275 <i>See 13:2010</i>
94. <i>Oral Modification of Written Contracts</i> , 13 Cal. L. Revision Comm'n Reports 301 (1976); 13 Cal. L. Revision Comm'n Reports 2129 (1976)	Enacted. 1975 Cal. Stat. ch. 7; 1976 Cal. Stat. ch. 109 <i>See 13:2011; 13:1616</i>
95. <i>Partition of Real and Personal Property</i> , 13 Cal. L. Revision Comm'n Reports 401 (1976)	Enacted. 1976 Cal. Stat. ch. 73 <i>See 13:2013, 1610</i>
96. <i>Revision of the Attachment Law</i> , 13 Cal. L. Revision Comm'n Reports 801 (1976)	Enacted. 1976 Cal. Stat. ch. 437 <i>See 13:1612</i>
97. <i>Undertakings for Costs</i> , 13 Cal. L. Revision Comm'n Reports 901 (1976)	Not enacted 1976; but see recommendation to 1979 session (item 118 <i>infra</i>), which was enacted. <i>See 13:1614</i>
98. <i>Service of Process on Unincorporated Associations</i> , 13 Cal. L. Revision Comm'n Reports 1657 (1976)	Enacted. 1976 Cal. Stat. ch. 888 <i>See 13:1616</i>
99. <i>Sister State Money Judgments</i> , 13 Cal. L. Revision Comm'n Reports 1669 (1976)	Enacted. 1977 Cal. Stat. ch. 232 <i>See 14:12</i>
100. <i>Damages in Action for Breach of Lease</i> , 13 Cal. L. Revision Comm'n Reports 1679 (1976)	Enacted. 1977 Cal. Stat. ch. 49 <i>See 14:13</i>
101. <i>Admissibility of Copies of Business Records in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2051 (1976)	Not enacted. <i>See 13:2012</i>

Recommendation	Action by Legislature
102. <i>Turnover Orders Under the Claim and Delivery Law</i> , 13 Cal. L. Revision Comm'n Reports 2079 (1976)	Enacted. 1976 Cal. Stat. ch. 145 <i>See 13:1614</i>
103. <i>Relocation Assistance by Private Condemnors</i> , 13 Cal. L. Revision Comm'n Reports 2085 (1976)	Enacted. 1976 Cal. Stat. ch. 143 <i>See 13:1614</i>
104. <i>Condemnation for Byroads and Utility Easements</i> , 13 Cal. L. Revision Comm'n Reports 2091 (1976)	Enacted in part (utility easements). 1976 Cal. Stat. ch. 994 <i>See 13:1615</i>
105. <i>Transfer of Out-of-State Trusts to California</i> , 13 Cal. L. Revision Comm'n Reports 2101 (1976)	Enacted. 1976 Cal. Stat. ch. 144 <i>See 13:1615</i>
106. <i>Admissibility of Duplicates in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2115 (1976)	Enacted in bill not sponsored by Commission. See 1985 Cal. Stat. ch. 100 <i>For original history, see 13:1615</i>
107. <i>Nonprofit Corporation Law</i> , 13 Cal. L. Revision Comm'n Reports 2201 (1976)	Not enacted.; legislation on this subject, not sponsored by Commission, was enacted in 1978. <i>For original history, see 14:11</i>
108. <i>Use of Keepers Pursuant to Writ of Execution</i> , 14 Cal. L. Revision Comm'n Reports 49 (1978)	Enacted. 1977 Cal. Stat. ch. 155 <i>See 14:12</i>
109. <i>Attachment Law: Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> , 14 Cal. L. Revision Comm'n Reports 61 (1978)	Enacted. 1977 Cal. Stat. ch. 499 <i>See 14:12</i>
110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 Cal. L. Revision Comm'n Reports 83 (1978)	Enacted. 1978 Cal. Stat. ch. 286 <i>See 14:224</i>
111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 Cal. L. Revision Comm'n Reports 93 (1978)	Enacted. 1978 Cal. Stat. ch. 151 <i>See 14:224</i>
112. <i>Evidence of Market Value of Property</i> , 14 Cal. L. Revision Comm'n Reports 105 (1978)	Enacted in part. 1978 Cal. Stat. ch. 294 Substance of remainder enacted in 1980. See item 123 <i>infra</i> <i>See 14:225</i>

Recommendation	Action by Legislature
113. <i>Psychotherapist-Patient Privilege</i> , 14 Cal. L. Revision Comm'n Reports 127 (1978); 15 Cal. L. Revision Comm'n Reports 1307 (1980)	Enacted in part. 1985 Cal. Stat. chs. 545 (licensed educational psychologist), 1077 (repeal of Evid. Code § 1028) <i>See 14:225</i>
114. <i>Parol Evidence Rule</i> , 14 Cal. L. Revision Comm'n Reports 143 (1978)	Enacted. 1978 Cal. Stat. ch. 150 <i>See 14:224</i>
115. <i>Attachment Law — Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action,"</i> 14 Cal. L. Revision Comm'n Reports 241 (1978)	Enacted. 1978 Cal. Stat. ch. 273 <i>See 14:224</i>
116. <i>Powers of Appointment</i> (technical changes), 14 Cal. L. Revision Comm'n Reports 257 (1978)	Enacted. 1978 Cal. Stat. ch. 266
117. <i>Ad Valorem Property Taxes in Eminent Domain Proceedings</i> , 14 Cal. L. Revision Comm'n Reports 291 (1978)	Enacted. 1979 Cal. Stat. ch. 31 <i>See 15:1025</i>
118. <i>Security for Costs</i> , 14 Cal. L. Revision Comm'n Reports 319 (1978)	Enacted. 1980 Cal. Stat. ch. 114 <i>See 15:1025</i>
119. <i>Guardianship-Conservatorship Law</i> , 14 Cal. L. Revision Comm'n Reports 501 (1978); 15 Cal. L. Revision Comm'n Reports 451 (1980)	Enacted. 1979 Cal. Stat. chs. 165, 726, 730 <i>See 15:1024, 1427</i>
120. <i>Interest Rate on Judgments</i> , 15 Cal. L. Revision Comm'n Reports 7 (1980)	Enacted. 1982 Cal. Stat. ch. 150 <i>See 15:1427; 16:2025</i>
121. <i>Married Women as Sole Traders</i> , 15 Cal. L. Revision Comm'n Reports 21 (1980)	Enacted. 1980 Cal. Stat. ch. 123 <i>See 15:1426</i>
122. <i>State Tax Liens</i> , 15 Cal. L. Revision Comm'n Reports 29 (1980)	Enacted. 1980 Cal. Stat. ch. 600 <i>See 15:1427</i>
123. <i>Application of Evidence Code Property Valuation Rules in Noncondemnation Cases</i> , 15 Cal. L. Revision Comm'n Reports 301 (1980)	Enacted. 1980 Cal. Stat. ch. 381 <i>See 15:1429</i>
124. <i>Uniform Durable Power of Attorney Act</i> , 15 Cal. L. Revision Comm'n Reports 351 (1980)	Enacted. 1981 Cal. Stat. ch. 511 <i>See 16:25</i>
125. <i>Probate Homestead</i> , 15 Cal. L. Revision Comm'n Reports 401 (1980)	Enacted. 1980 Cal. Stat. ch. 119 <i>See 15:1428</i>

Recommendation	Action by Legislature
126. <i>Effect of New Bankruptcy Law on the Attachment Law</i> , 15 Cal. L. Revision Comm'n Reports 1043 (1980)	Enacted. 1979 Cal. Stat. ch. 177 <i>See 15:1024</i>
127. <i>Confessions of Judgment</i> , 15 Cal. L. Revision Comm'n Reports 1053 (1980)	Enacted. 1979 Cal. Stat. ch. 568 <i>See 15:1024</i>
128. <i>Special Assessment Liens on Property Taken for Public Use</i> , 15 Cal. L. Revision Comm'n Reports 1101 (1980)	Enacted. 1980 Cal. Stat. ch. 122 <i>See 15:1428</i>
129. <i>Assignments for the Benefit of Creditors</i> , 15 Cal. L. Revision Comm'n Reports 1117 (1980)	Enacted. 1980 Cal. Stat. ch. 135 <i>See 15:1427</i>
130. <i>Vacation of Public Streets, Highways, and Service Easements</i> , 15 Cal. L. Revision Comm'n Reports 1137 (1980)	Enacted. 1980 Cal. Stat. ch. 1050 <i>See 15:1429</i>
131. <i>Quiet Title Actions</i> , 15 Cal. L. Revision Comm'n Reports 1187 (1980)	Enacted. 1980 Cal. Stat. ch. 44 <i>See 15:1428</i>
132. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 Cal. L. Revision Comm'n Reports 1237 (1980)	Enacted. 1980 Cal. Stat. ch. 682 <i>See 15:1426</i>
133. <i>Enforcement of Claims and Judgments Against Public Entities</i> , 15 Cal. L. Revision Comm'n Reports 1257 (1980)	Enacted. 1980 Cal. Stat. ch. 215 <i>See 15:1426</i>
134. <i>Uniform Veterans Guardianship Act</i> , 15 Cal. L. Revision Comm'n Reports 1289 (1980)	Enacted. 1980 Cal. Stat. ch. 89 <i>See 15:1428</i>
135. <i>Enforcement of Obligations After Death</i> , 15 Cal. L. Revision Comm'n Reports 1327 (1980)	Enacted. 1980 Cal. Stat. ch. 124 <i>See 15:1426</i>
136. <i>Guardianship-Conservatorship</i> (technical change), 15 Cal. L. Revision Comm'n Reports 1427 (1980)	Enacted. 1980 Cal. Stat. ch. 246
137. <i>Revision of Guardianship-Conservatorship Law</i> , 15 Cal. L. Revision Comm'n Reports 1463 (1980)	Enacted. 1981 Cal. Stat. ch. 9 <i>See 16:24</i>

Recommendation	Action by Legislature
138. <i>Non-Probate Transfers</i> , 15 Cal. L. Revision Comm'n Reports 1605 (1980); 16 Cal. L. Revision Comm'n Reports 129 (1982)	Enacted in part (pay-on-death accounts). 1982 Cal. Stat. ch. 269; (credit unions and industrial loan companies) 1983 Cal. Stat. ch. 92 Substance of balance enacted. 1989 Cal. Stat. ch. 397 (banks and savings and loan associations) (item 229 <i>infra</i>) <i>See 16:2026; 17:823</i>
139. <i>Revision of the Powers of Appointment Statute</i> , 15 Cal. L. Revision Comm'n Reports 1667 (1980)	Enacted. 1981 Cal. Stat. ch. 63 <i>See 16:25</i>
140. <i>The Enforcement of Judgments Law</i> , 15 Cal. L. Revision Comm'n Reports 2001 (1980)	Enacted. 1982 Cal. Stat. chs. 497, 1364 <i>See 16:2024</i>
141. <i>State Tax Liens</i> (technical change), 16 Cal. L. Revision Comm'n Reports 24 (1982)	Enacted. 1981 Cal. Stat. ch. 217
142. <i>Assessment Liens on Property Taken for Public Use</i> (technical change), 16 Cal. L. Revision Comm'n Reports 25 (1982)	Enacted. 1981 Cal. Stat. ch. 139
143. <i>Federal Pensions as Community Property</i> , 16 Cal. L. Revision Comm'n Reports 47 (1982)	Proposed resolution adopted. 1982 Cal. Stat. res. ch. 44 <i>See 16:2027</i>
144. <i>Missing Persons</i> , 16 Cal. L. Revision Comm'n Reports 105 (1982)	Enacted. 1983 Cal. Stat. ch. 201 <i>See 17:822</i>
145. <i>Escheat</i> (technical change), 16 Cal. L. Revision Comm'n Reports 124 (1982)	Enacted. 1982 Cal. Stat. ch. 182
146. <i>Emancipated Minors</i> , 16 Cal. L. Revision Comm'n Reports 183 (1982)	Enacted. 1983 Cal. Stat. ch. 6 <i>See 17:823</i>
147. <i>Notice in Limited Conservatorship Proceedings</i> , 16 Cal. L. Revision Comm'n Reports 199 (1982)	Enacted. 1983 Cal. Stat. ch. 72 <i>See 17:823</i>
148. <i>Disclaimer of Testamentary and Other Interests</i> , 16 Cal. L. Revision Comm'n Reports 207 (1982)	Enacted. 1983 Cal. Stat. ch. 17 <i>See 17:823</i>
149. <i>Holographic and Nuncupative Wills</i> , 16 Cal. L. Revision Comm'n Reports 301 (1982)	Enacted. 1982 Cal. Stat. ch. 187 <i>See 16:2026</i>

Recommendation	Action by Legislature
150. <i>Marketable Title of Real Property</i> , 16 Cal. L. Revision Comm'n Reports 401 (1982)	Enacted. 1982 Cal. Stat. ch. 1268 <i>See 16:2026</i>
151. <i>Statutory Bonds and Undertakings</i> , 16 Cal. L. Revision Comm'n Reports 501 (1982)	Enacted. 1982 Cal. Stat. chs. 517, 998 <i>See 16:2025</i>
152. <i>Attachment</i> , 16 Cal. L. Revision Comm'n Reports 701 (1982)	Enacted. 1982 Cal. Stat. ch. 1198 <i>See 16:2025</i>
153. <i>Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage</i> , 16 Cal. L. Revision Comm'n Reports 2165 (1982), 17 Cal. L. Revision Comm'n Reports 863 (1984)	Enacted. 1983 Cal. Stat. ch. 342 <i>See 17:823</i>
154. <i>Creditors' Remedies</i> , 16 Cal. L. Revision Comm'n Reports 2175 (1982)	Enacted. 1983 Cal. Stat. ch. 155 <i>See 17:824</i>
155. <i>Conforming Changes to the Bond and Undertaking Law</i> , 16 Cal. L. Revision Comm'n Reports 2239 (1982)	Enacted. 1983 Cal. Stat. ch. 18 <i>See 17:825</i>
156. <i>Notice of Rejection of Late Claim Against Public Entity</i> , 16 Cal. L. Revision Comm'n Reports 2251 (1982)	Enacted. 1983 Cal. Stat. ch. 107 <i>See 17:824</i>
157. <i>Wills and Intestate Succession</i> , 16 Cal. L. Revision Comm'n Reports 2301 (1982)	Enacted. 1983 Cal. Stat. ch. 842 <i>See 17:822</i>
158. <i>Liability of Marital Property for Debts</i> , 17 Cal. L. Revision Comm'n Reports 1 (1984)	Enacted. 1984 Cal. Stat. ch. 1671 <i>See 18:20</i>
159. <i>Durable Power of Attorney for Health Care Decisions</i> , 17 Cal. L. Revision Comm'n Reports 101 (1984)	Enacted. 1983 Cal. Stat. ch. 1204 <i>See 17:822</i>
160. <i>Marital Property Presumptions and Transmutations</i> , 17 Cal. L. Revision Comm'n Reports 205 (1984)	Enacted in part (transmutations). 1984 Cal. Stat. ch. 1733 <i>See 18:21</i>
161. <i>Reimbursement of Educational Expenses</i> , 17 Cal. L. Revision Comm'n Reports 229 (1984)	Enacted. 1984 Cal. Stat. ch. 1661 <i>See 18:22</i>
162. <i>Special Appearance in Family Law Proceedings</i> , 17 Cal. L. Revision Comm'n Reports 243 (1984)	Enacted. 1984 Cal. Stat. ch. 156 <i>See 18:21</i>

Recommendation	Action by Legislature
163. <i>Liability of Stepparent for Child Support</i> , 17 Cal. L. Revision Comm'n Reports 251 (1984)	Enacted. 1984 Cal. Stat. ch. 249 <i>See 18:21</i>
164. <i>Awarding Temporary Use of Family Home</i> , 17 Cal. L. Revision Comm'n Reports 261 (1984)	Enacted. 1984 Cal. Stat. ch. 463 <i>See 18:21</i>
165. <i>Disposition of Community Property</i> , 17 Cal. L. Revision Comm'n Reports 269 (1984)	Not enacted. <i>See 18:22</i>
166. <i>Statutes of Limitation for Felonies</i> , 17 Cal. L. Revision Comm'n Reports 301 (1984)	Enacted. 1984 Cal. Stat. ch. 1270 <i>See 18:23; 20:2305</i>
167. <i>Independent Administration of Decedent's Estate</i> , 17 Cal. L. Revision Comm'n Reports 405 (1984)	Enacted. 1984 Cal. Stat. ch. 451 <i>See 18:19</i>
168. <i>Distribution of Estates Without Administration</i> , 17 Cal. L. Revision Comm'n Reports 421 (1984)	Enacted. 1984 Cal. Stat. ch. 451 <i>See 18:19</i>
169. <i>Simultaneous Deaths</i> , 17 Cal. L. Revision Comm'n Reports 443 (1984)	Enacted in part. <i>See</i> 1989 Cal. Stat. ch. 544 (intestate succession) (item 227 <i>infra</i>); 1990 Cal. Stat. ch. 710 (statutory will) (item 240 <i>infra</i>) <i>See 18:20</i>
170. <i>Notice of Will</i> , 17 Cal. L. Revision Comm'n Reports 461 (1984)	Not enacted. <i>See 18:20</i>
171. <i>Garnishment of Amounts Payable to Trust Beneficiary</i> , 17 Cal. L. Revision Comm'n Reports 471 (1984)	Enacted. 1984 Cal. Stat. ch. 493 <i>See 18:19</i>
172. <i>Bonds for Personal Representatives</i> , 17 Cal. L. Revision Comm'n Reports 483 (1984)	Enacted. 1984 Cal. Stat. ch. 451 <i>See 18:19</i>
173. <i>Recording Affidavits of Death</i> , 17 Cal. L. Revision Comm'n Reports 493 (1984)	Enacted. 1984 Cal. Stat. ch. 527 <i>See 18:20</i>
174. <i>Execution of Witnessed Will</i> , 17 Cal. L. Revision Comm'n Reports 509 (1984)	Not enacted. <i>See 18:20</i>
175. <i>Revision of Wills and Intestate Succession Law</i> , 17 Cal. L. Revision Comm'n Reports 537 (1984)	Enacted. 1984 Cal. Stat. ch. 892 <i>See 18:19</i>

Recommendation	Action by Legislature
176. <i>Uniform Transfers to Minors Act</i> , 17 Cal. L. Revision Comm'n Reports 601 (1984)	Enacted. 1984 Cal. Stat. ch. 243 <i>See 18:19</i>
177. <i>Statutory Forms for Durable Powers of Attorney</i> , 17 Cal. L. Revision Comm'n Reports 701 (1984)	Enacted. 1984 Cal. Stat. chs. 312 (health care), 602 (general power of attorney) <i>See 18:18</i>
178. <i>Vacation of Streets</i> (technical change), 17 Cal. L. Revision Comm'n Reports 825 (1984)	Enacted. 1983 Cal. Stat. ch. 52
179. <i>Effect of Death of Support Obligor</i> , 17 Cal. L. Revision Comm'n Reports 897 (1984)	Enacted in part. 1984 Cal. Stat. ch. 19. Balance enacted. 1985 Cal. Stat. ch. 362 (item 186 <i>infra</i>) <i>See 18:21</i>
180. <i>Dismissal for Lack of Prosecution</i> , 17 Cal. L. Revision Comm'n Reports 905 (1984)	Enacted. 1984 Cal. Stat. ch. 1705 <i>See 18:23</i>
181. <i>Severance of Joint Tenancy</i> , 17 Cal. L. Revision Comm'n Reports 941 (1984)	Enacted. 1984 Cal. Stat. ch. 519 <i>See 18:23</i>
182. <i>Quiet Title and Partition Judgments</i> , 17 Cal. L. Revision Comm'n Reports 947 (1984)	Enacted. 1984 Cal. Stat. ch. 20 <i>See 18:22</i>
183. <i>Dormant Mineral Rights</i> , 17 Cal. L. Revision Comm'n Reports 957 (1984)	Enacted. 1984 Cal. Stat. ch. 240 <i>See 18:22</i>
184. <i>Creditors' Remedies</i> , 17 Cal. L. Revision Comm'n Reports 975 (1984)	Enacted. 1984 Cal. Stat. ch. 538 <i>See 18:23</i>
185. <i>Rights Among Cotenants</i> , 17 Cal. L. Revision Comm'n Reports 1023 (1984)	Enacted. 1984 Cal. Stat. ch. 241 <i>See 18:23</i>
186. <i>Provision for Support if Support Obligor Dies</i> , 18 Cal. L. Revision Comm'n Reports 119 (1986)	Enacted. 1985 Cal. Stat. ch. 362 <i>See 18:217</i>
187. <i>Transfer of State Registered Property Without Probate</i> , 18 Cal. L. Revision Comm'n Reports 129 (1986)	Enacted. 1985 Cal. Stat. ch. 982 <i>See 18:216</i>
188. <i>Dividing Jointly Owned Property Upon Marriage Dissolution</i> , 18 Cal. L. Revision Comm'n Reports 147 (1986)	Enacted. 1985 Cal. Stat. ch. 362 <i>See 18:217</i>

Recommendation	Action by Legislature
189. <i>Probate Law</i> (clarifying revisions), 18 Cal. L. Revision Comm'n Reports 216 (1986)	Enacted. 1985 Cal. Stat. ch. 359
190. <i>Creditors' Remedies</i> (technical change), 18 Cal. L. Revision Comm'n Reports 217 (1986)	Enacted. 1985 Cal. Stat. ch. 41
191. <i>Uniform Transfers to Minors Act</i> (technical change), 18 Cal. L. Revision Comm'n Reports 218 (1986)	Enacted. 1985 Cal. Stat. ch. 90
192. <i>Protection of Mediation Communications</i> , 18 Cal. L. Revision Comm'n Reports 241 (1986)	Enacted. 1985 Cal. Stat. ch. 731 <i>See 18:218</i>
193. <i>Recording Severance of Joint Tenancy</i> , 18 Cal. L. Revision Comm'n Reports 249 (1986)	Enacted. 1985 Cal. Stat. ch. 157 <i>See 18:217</i>
194. <i>Abandoned Easements</i> , 18 Cal. L. Revision Comm'n Reports 257 (1986)	Enacted. 1985 Cal. Stat. ch. 157 <i>See 18:217</i>
195. <i>Distribution Under a Will or Trust</i> , 18 Cal. L. Revision Comm'n Reports 269 (1986)	Enacted. 1985 Cal. Stat. ch. 982 <i>See 18:216</i>
196. <i>Effect of Adoption or Out of Wedlock Birth on Rights at Death</i> , 18 Cal. L. Revision Comm'n Reports 289 (1986)	Enacted. 1985 Cal. Stat. ch. 982 <i>See 18:216</i>
197. <i>Durable Powers of Attorney</i> , 18 Cal. L. Revision Comm'n Reports 305 (1986)	Enacted. 1985 Cal. Stat. ch. 403 <i>See 18:216</i>
198. <i>Litigation Expenses in Family Law Proceedings</i> , 18 Cal. L. Revision Comm'n Reports 351 (1986)	Enacted. 1985 Cal. Stat. ch. 362 <i>See 18:217</i>
199. <i>Civil Code Sections 4800.1 and 4800.2</i> , 18 Cal. L. Revision Comm'n Reports 383 (1986)	One of two recommended measures enacted (<i>Application of Civil Code §§ 4800.1 and 4800.2</i>). 1986 Cal. Stat. ch. 49 <i>See 18:1717</i>
200. <i>The Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 501 (1986)	Enacted. 1986 Cal. Stat. ch. 820 <i>See 18:1718</i>
201. <i>Disposition of Estate Without Administration</i> , 18 Cal. L. Revision Comm'n Reports 1005 (1986)	Enacted. 1986 Cal. Stat. ch. 783 <i>See 18:1717</i>
202. <i>Small Estate Set-Aside</i> , 18 Cal. L. Revision Comm'n Reports 1101 (1986)	Enacted. 1986 Cal. Stat. ch. 783 <i>See 18:1717</i>

Recommendation	Action by Legislature
203. <i>Proration of Estate Taxes</i> , 18 Cal. L. Revision Comm'n Reports 1127 (1986)	Enacted. 1986 Cal. Stat. ch. 783 <i>See 18:1717</i>
204. <i>Notice in Guardianship and Conservatorship</i> , 18 Cal. L. Revision Comm'n Reports 1793 (1986)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:516</i>
205. <i>Preliminary Provisions and Definitions</i> , 18 Cal. L. Revision Comm'n Reports 1807 (1986)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:516</i>
206. <i>Technical Revisions in the Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 1823 (1986)	Enacted. 1987 Cal. Stat. ch. 128 <i>See 19:517</i>
207. <i>Supervised Administration</i> , 19 Cal. L. Revision Comm'n Reports 5 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:516</i>
208. <i>Independent Administration</i> , 19 Cal. L. Revision Comm'n Reports 205 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
209. <i>Creditor Claims Against Decedent's Estate</i> , 19 Cal. L. Revision Comm'n Reports 299 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
210. <i>Notice in Probate Proceedings</i> , 19 Cal. L. Revision Comm'n Reports 357 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
211. <i>Marital Deduction Gifts</i> , 19 Cal. L. Revision Comm'n Reports 615 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
212. <i>Estates of Missing Persons</i> , 19 Cal. L. Revision Comm'n Reports 637 (1988)	Enacted. 1987 Cal. Stat. ch. 923 <i>See 19:517</i>
213. <i>Public Guardians and Administrators</i> , 19 Cal. L. Revision Comm'n Reports 707 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
214. <i>Inventory and Appraisal</i> , 19 Cal. L. Revision Comm'n Reports 741 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
215. <i>Opening Estate Administration</i> , 19 Cal. L. Revision Comm'n Reports 787 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
216. <i>Abatement</i> , 19 Cal. L. Revision Comm'n Reports 865 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
217. <i>Accounts</i> , 19 Cal. L. Revision Comm'n Reports 877 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>

Recommendation	Action by Legislature
218. <i>Litigation Involving Decedents</i> , 19 Cal. L. Revision Comm'n Reports 899 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
219. <i>Rules of Procedure in Probate</i> , 19 Cal. L. Revision Comm'n Reports 917 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
220. <i>Distribution and Discharge</i> , 19 Cal. L. Revision Comm'n Reports 953 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
221. <i>Nondomiciliary Decedents</i> , 19 Cal. L. Revision Comm'n Reports 993 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
222. <i>Interest and Income During Administration</i> , 19 Cal. L. Revision Comm'n Reports 1019 (1988)	Enacted. 1988 Cal. Stat. ch. 1199 <i>See 19:1167</i>
223. <i>Authority of the Law Revision Commission</i> , 19 Cal. L. Revision Comm'n Reports 1162 (1988)	Enacted. 1989 Cal. Stat. ch. 152
224. <i>1988 Probate Cleanup Bill</i> , see 19 Cal. L. Revision Comm'n Reports 1167, 1191–1200 (1988)	Enacted. 1988 Cal. Stat. ch. 113
225. <i>Creditors' Remedies</i> , 19 Cal. L. Revision Comm'n Reports 1251 (1988)	Enacted. 1989 Cal. Stat. ch. 1416 <i>See 20:201</i>
226. <i>No Contest Clauses</i> , 20 Cal. L. Revision Comm'n Reports 7 (1990)	Enacted. 1989 Cal. Stat. ch. 544 <i>See 20:201</i>
227. <i>120-Hour Survival Requirement</i> , 20 Cal. L. Revision Comm'n Reports 21 (1990)	Enacted. 1989 Cal. Stat. ch. 544 <i>See 20:201</i>
228. <i>Compensation of Attorneys and Personal Representatives</i> , 20 Cal. L. Revision Comm'n Reports 31 (1990)	Enacted except for portion relating to compensation of attorneys. 1990 Cal. Stat. ch. 79 <i>See 20:2218</i>
229. <i>Multiple-Party Accounts</i> , 20 Cal. L. Revision Comm'n Reports 95 (1990)	Enacted. 1989 Cal. Stat. ch. 397 <i>See 20:202</i>
230. <i>Notice to Creditors</i> , 20 Cal. L. Revision Comm'n Reports 165 (1990); 20 Cal. L. Revision Comm'n Reports 507 (1990)	Enacted in part. 1989 Cal. Stat. ch. 544 Balance enacted. 1990 Cal. Stat. ch. 140 <i>See 20:201</i>
231. <i>1989 Probate Cleanup Bill</i> , see 20 Cal. L. Revision Comm'n Reports 201, 227 (1990)	Enacted. 1989 Cal. Stat. ch. 21

Recommendation	Action by Legislature
232. <i>Bonds of Guardians and Conservators</i> , 20 Cal. L. Revision Comm'n Reports 235 (1990)	Enacted. 1989 Cal. Stat. ch. 544
233. <i>Brokers' Commissions on Probate Sales</i> , 20 Cal. L. Revision Comm'n Reports 237-42 (1990)	Enacted. 1989 Cal. Stat. ch. 544
234. <i>Commercial Real Property Leases</i> , 20 Cal. L. Revision Comm'n Reports 251 (1990)	Enacted. 1989 Cal. Stat. ch. 982 <i>See 20:202</i>
235. <i>Trustees' Fees</i> , 20 Cal. L. Revision Comm'n Reports 279 (1990)	Enacted. 1990 Cal. Stat. ch. 79 <i>See 20:2218</i>
236. <i>Springing Powers of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 405 (1990)	Enacted. 1990 Cal. Stat. ch. 986 <i>See 20:2220</i>
237. <i>Uniform Statutory Form Powers of Attorney Act</i> , 20 Cal. L. Revision Comm'n Reports 415 (1990)	Enacted. 1990 Cal. Stat. ch. 986 <i>See 20:2220</i>
238. <i>Disposition of Small Estate by Public Administrator</i> , 20 Cal. L. Revision Comm'n Reports 529 (1990)	Enacted. 1990 Cal. Stat. ch. 324 <i>See 20:2220</i>
239. <i>Court-Authorized Medical Treatment</i> , 20 Cal. L. Revision Comm'n Reports 537 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
240. <i>Survival Requirement for Beneficiary of Statutory Will</i> , 20 Cal. L. Revision Comm'n Reports 549 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
241. <i>Execution or Modification of Lease Without Court Order</i> , 20 Cal. L. Revision Comm'n Reports 557 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
242. <i>Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding</i> , 20 Cal. L. Revision Comm'n Reports 565 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
243. <i>Repeal of Probate Code Section 6402.5 (In-Law Inheritance)</i> , 20 Cal. L. Revision Comm'n Reports 571 (1990)	Not enacted. <i>See 20:2220</i>
244. <i>Access to Decedent's Safe Deposit Box</i> , 20 Cal. L. Revision Comm'n Reports 597 (1990); 20 Cal. L. Revision Comm'n Reports 2859 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 20:2219; 21:20</i>

Recommendation	Action by Legislature
245. <i>Priority of Conservator or Guardian for Appointment as Administrator</i> , 20 Cal. L. Revision Comm'n Reports 607 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
246. <i>New Probate Code</i> , 20 Cal. L. Revision Comm'n Reports 1001 (1990)	Enacted. 1990 Cal. Stat. ch. 79 <i>See 20:2218</i>
247. <i>Notice in Probate Where Address Unknown</i> , 20 Cal. L. Revision Comm'n Reports 2245 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
248. <i>Jurisdiction of Superior Court in Trust Matters</i> , 20 Cal. L. Revision Comm'n Reports 2253 (1990)	Enacted. 1990 Cal. Stat. ch. 710 <i>See 20:2219</i>
249. <i>Uniform Management of Institutional Funds Act</i> , 20 Cal. L. Revision Comm'n Reports 2265 (1990)	Enacted. 1990 Cal. Stat. ch. 1307 <i>See 20:2220</i>
250. <i>Remedies for Breach of Assignment or Sublease Covenant</i> , 20 Cal. L. Revision Comm'n Reports 2405 (1990)	Enacted. 1991 Cal. Stat. ch. 67 <i>See 21:22</i>
251. <i>Use Restrictions</i> , 20 Cal. L. Revision Comm'n Reports 2421 (1990)	Enacted. 1991 Cal. Stat. ch. 67 <i>See 21:22</i>
252. <i>Uniform Statutory Rule Against Perpetuities</i> , 20 Cal. L. Revision Comm'n Reports 2501 (1990)	Enacted. 1991 Cal. Stat. ch. 156 <i>See 21:21</i>
253. <i>Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care</i> , 20 Cal. L. Revision Comm'n Reports 2605 (1990)	Enacted. 1991 Cal. Stat. ch. 896 <i>See 21:22</i>
254. <i>Recognition of Agent's Authority Under Statutory Form Power of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 2629 (1990); 22 Cal. L. Revision Comm'n Reports 965 (1992)	Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i>
255. <i>Debts That Are Contingent, Disputed, or Not Due</i> , 20 Cal. L. Revision Comm'n Reports 2707 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
256. <i>Remedies of Creditor Where Personal Representative Fails to Give Notice</i> , 20 Cal. L. Revision Comm'n Reports 2719 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>

Recommendation	Action by Legislature
257. <i>Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)</i> , 20 Cal. L. Revision Comm'n Reports 2729 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
258. <i>Disposition of Small Estate Without Probate</i> , 20 Cal. L. Revision Comm'n Reports 2737 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
259. <i>Right of Surviving Spouse to Dispose of Community Property</i> , 20 Cal. L. Revision Comm'n Reports 2769 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
260. <i>Litigation Involving Decedents</i> , 20 Cal. L. Revision Comm'n Reports 2785 (1990); 22 Cal. L. Revision Comm'n Reports 895 (1992)	Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i>
261. <i>Compensation in Guardianship and Conservatorship Proceedings</i> , 20 Cal. L. Revision Comm'n Reports 2837 (1990); 21 Cal. L. Revision Comm'n Reports 227 (1991)	Enacted. 1992 Cal. Stat. ch. 572 <i>See 22:853</i>
262. <i>Recognition of Trustees' Powers</i> , 20 Cal. L. Revision Comm'n Reports 2849 (1990)	Enacted. 1992 Cal. Stat. ch. 178 <i>See 22:852</i>
263. <i>Gifts in View of Impending Death</i> , 20 Cal. L. Revision Comm'n Reports 2869 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
264. <i>TOD Beneficiary Designation for Vehicles and Certain Other State Registered Property</i> , 20 Cal. L. Revision Comm'n Reports 2883 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
265. <i>1991 General Probate Bill</i> (miscellaneous provisions), see 20 Cal. L. Revision Comm'n Reports 2907 (1990)	Enacted. 1991 Cal. Stat. ch. 1055 <i>See 21:20</i>
266. <i>1991 Probate Urgency Clean-up Bill</i> , see 20 Cal. L. Revision Comm'n Reports 2909 (1990)	Enacted. 1991 Cal. Stat. ch. 82 <i>See 21:21</i>
267. <i>Application of Marketable Title Statute to Executory Interests</i> , 21 Cal. L. Revision Comm'n Reports 53 (1991)	Enacted. 1991 Cal. Stat. ch. 156 <i>See 21:21</i>

Recommendation	Action by Legislature
268. <i>Relocation of Powers of Appointment Statute</i> , 21 Cal. L. Revision Comm'n Reports 91 (1991)	Enacted. 1992 Cal. Stat. ch. 30 <i>See</i> 22:853
269. <i>Miscellaneous Creditors' Remedies</i> , 21 Cal. L. Revision Comm'n Reports 135 (1991)	Enacted. 1992 Cal. Stat. ch. 283 <i>See</i> 22:853
270. <i>Nonprobate Transfers of Community Property</i> , 21 Cal. L. Revision Comm'n Reports 163 (1991)	Enacted. 1992 Cal. Stat. ch. 51 <i>See</i> 22:852
271. <i>Notice of Trustees' Fees</i> , 21 Cal. L. Revision Comm'n Reports 191 (1991)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
272. <i>Nonprobate Transfer to Trustee Named in Will</i> , 21 Cal. L. Revision Comm'n Reports 201 (1991)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
273. <i>Preliminary Distribution Without Court Supervision</i> , 21 Cal. L. Revision Comm'n Reports 209 (1991)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
274. <i>Transfer of Conservatorship Property to Trust</i> , 21 Cal. L. Revision Comm'n Reports 227 (1991)	Enacted. 1992 Cal. Stat. ch. 572 <i>See</i> 22:853
275. <i>Family Code</i> , 22 Cal. L. Revision Comm'n Reports 1 (1992)	Enacted. 1992 Cal. Stat. chs. 162, 163 <i>See</i> 22:851
276. <i>Standing To Sue for Wrongful Death</i> , 22 Cal. L. Revision Comm'n Reports 955 (1992)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
277. <i>1992 General Probate Bill</i> (miscellaneous provisions), see 22 Cal. L. Revision Comm'n Reports 977 (1990)	Enacted. 1992 Cal. Stat. ch. 178 <i>See</i> 22:852
278. <i>Special Needs Trust for Disabled Minor or Incompetent Person</i> , 22 Cal. L. Revision Comm'n Reports 989 (1992)	Enacted. 1992 Cal. Stat. ch. 355 <i>See</i> 22:853
279. <i>1994 Family Code</i> , 23 Cal. L. Revision Comm'n Reports 1, 5 (1993)	Enacted. 1993 Cal. Stat. ch. 219 <i>See</i> 23:922
280. <i>Family Code: Child Custody</i> , 23 Cal. L. Revision Comm'n Reports 1, 15 (1993)	Enacted. 1993 Cal. Stat. ch. 219 <i>See</i> 23:922

Recommendation	Action by Legislature
281. <i>Family Code: Reorganization of Domestic Violence Provisions</i> , 23 Cal. L. Revision Comm'n Reports 1, 23 (1993)	Enacted. 1993 Cal. Stat. ch. 219 <i>See</i> 23:922
282. <i>Deposit of Estate Planning Documents with Attorney</i> , 23 Cal. L. Revision Comm'n Reports 965 (1993)	Enacted. 1993 Cal. Stat. ch. 519 <i>See</i> 23:923
283. <i>Parent and Child Relationship for Intestate Succession</i> , 23 Cal. L. Revision Comm'n Reports 991 (1993)	Enacted. 1993 Cal. Stat. ch. 529 <i>See</i> 23:923
284. <i>Effect of Joint Tenancy Title on Marital Property</i> , 23 Cal. L. Revision Comm'n Reports 1013 (1993)	Not enacted. <i>See</i> 24:568
285. <i>Trial Court Unification: Constitutional Revision (SCA 3)</i> , 24 Cal. L. Revision Comm'n Reports 1 (1994); <i>Trial Court Unification: Transitional Provisions for SCA 3</i> , 24 Cal. L. Revision Comm'n Reports 627 (1994)	Not enacted; Commission recommendations adopted in SCA 3 (1993-94), but SCA 3 not approved by Assembly. Commission recommendations largely enacted in SCA 4 (1996 Cal. Stat. res. ch. 36). <i>See</i> 24:568; 28:707
286. <i>Comprehensive Power of Attorney Law</i> , 24 Cal. L. Revision Comm'n Reports 111 (1994); <i>1995 Comprehensive Power of Attorney Law</i> , 24 Cal. L. Revision Comm'n Reports 323 (1994)	Enacted. 1994 Cal. Stat. ch. 307 <i>See</i> 24:567
287. <i>Orders To Show Cause and Temporary Restraining Orders</i> , 24 Cal. L. Revision Comm'n Reports 603 (1994)	Enacted. 1994 Cal. Stat. ch. 587 <i>See</i> 24:567
288. <i>Family Code Technical Amendments</i> . <i>See</i> 24 Cal. L. Revision Comm'n Reports 621 (1994); 26 Cal. L. Revision Comm'n Reports 175 (1996)	Enacted. 1994 Cal. Stat. ch. 1269; 1996 Cal. Stat. ch. 1061 <i>See</i> 24:567; 26:132
289. <i>Debtor-Creditor Relations</i> , 25 Cal. L. Revision Comm'n Reports 1 (1995)	Enacted in part. 1995 Cal. Stat. ch. 196 <i>See</i> 25:636, 707
290. <i>Administrative Adjudication by State Agencies</i> , 25 Cal. L. Revision Comm'n Reports 55 (1995)	Enacted. 1995 Cal. Stat. ch. 938 <i>See</i> 25:636, 711

Recommendation	Action by Legislature
291. <i>Uniform Prudent Investor Act</i> , 25 Cal. L. Revision Comm'n Reports 543 (1995). See also 25 Cal. L. Revision Comm'n Reports 673 (1995)	Enacted. 1995 Cal. Stat. ch. 63 See 25:636, 673
292. <i>Power of Attorney Law Technical Amendments</i> . See 25 Cal. L. Revision Comm'n Reports 709 (1995)	Enacted. 1995 Cal. Stat. ch. 300 See 25:637
293. <i>Statute of Limitations in Trust Matters: Probate Code Section 16460</i> , 26 Cal. L. Revision Comm'n Reports 1 (1996)	Enacted. 1996 Cal. Stat. ch. 862 See 26:132
294. <i>Inheritance From or Through Child Born Out of Wedlock</i> , 26 Cal. L. Revision Comm'n Reports 13 (1996)	Enacted. 1996 Cal. Stat. ch. 862 See 26:132
295. <i>Collecting Small Estate Without Administration</i> , 26 Cal. L. Revision Comm'n Reports 21 (1996)	Enacted. 1996 Cal. Stat. ch. 563 See 26:132
296. <i>Repeal of Civil Code Section 1464: The First Rule in Spencer's Case</i> , 26 Cal. L. Revision Comm'n Reports 29 (1996)	Enacted. 1998 Cal. Stat. ch. 14 See 28:706
297. <i>Homestead Exemption</i> , 26 Cal. L. Revision Comm'n Reports 37 (1996)	Not enacted. See 26:133
298. <i>Tolling Statute of Limitations When Defendant Is Out of State</i> , 26 Cal. L. Revision Comm'n Reports 83 (1996)	Enacted in part (technical amendments). 1997 Cal. Stat. ch. 1012, §§ 13, 14 See 27:555, 623
299. <i>Administrative Adjudication Technical Amendments</i> , 26 Cal. L. Revision Comm'n Reports 171 (1996)	Enacted. 1996 Cal. Stat. ch. 390 See 26:132
300. <i>Unfair Competition Litigation</i> , 26 Cal. L. Revision Comm'n Reports 191 (1996)	Not enacted. See 27:555
301. <i>Administrative Adjudication by Quasi-Public Entities</i> , 26 Cal. L. Revision Comm'n Reports 277 (1996)	Enacted. 1997 Cal. Stat. ch. 220 See 27:554, 593
302. <i>Marketable Title: Enforceability of Land Use Restrictions</i> , 26 Cal. L. Revision Comm'n Reports 289 (1996)	Enacted in part. 1998 Cal. Stat. ch. 14 See 28:706
303. <i>Attachment by Undersecured Creditors</i> , 26 Cal. L. Revision Comm'n Reports 307 (1996)	Enacted. 1997 Cal. Stat. ch. 222 See 27:554

Recommendation	Action by Legislature
304. <i>Ethical Standards for Administrative Law Judges</i> , 26 Cal. L. Revision Comm'n Reports 335 (1996)	Enacted. 1998 Cal. Stat. ch. 95 <i>See</i> 28:706
305. <i>Best Evidence Rule</i> , 26 Cal. L. Revision Comm'n Reports 369 (1996)	Enacted. 1998 Cal. Stat. ch. 100 <i>See</i> 28:706
306. <i>Mediation Confidentiality</i> , 26 Cal. L. Revision Comm'n Reports 407 (1996)	Enacted. 1997 Cal. Stat. ch. 772 <i>See</i> 27:554, 595
307. <i>Judicial Review of Agency Action</i> , 27 Cal. L. Revision Comm'n Reports 1 (1997)	Not enacted. <i>See</i> 28:708
308. <i>Inheritance by Foster Child or Stepchild</i> , 27 Cal. L. Revision Comm'n Reports 625 (1997)	Not enacted. <i>See</i> 28:721
309. <i>Business Judgment Rule</i> , 28 Cal. L. Revision Comm'n Reports 1 (1998)	Not enacted. <i>See</i> 28:708
310. <i>Trial Court Unification: Revision of Codes</i> , 28 Cal. L. Revision Comm'n Reports 51 (1998)	Enacted. 1998 Cal. Stat. ch. 931 <i>See</i> 28:707
311. <i>Response to Demand for Production of Documents in Discovery</i> , 28 Cal. L. Revision Comm'n Reports 561 (1998)	Enacted. 1998 Cal. Stat. ch. 932 <i>See</i> 28:708
312. <i>Uniform TOD Security Registration Act</i> , 28 Cal. L. Revision Comm'n Reports 577 (1998)	Enacted. 1998 Cal. Stat. ch. 242 <i>See</i> 28:707
313. <i>Effect of Dissolution of Marriage on Nonprobate Transfers</i> , 28 Cal. L. Revision Comm'n Reports 599 (1998)	Enacted. 2001 Cal. Stat. ch. 417 <i>See</i> 31:26
314. <i>Administrative Rulemaking: Consent Regulations and Other Noncontroversial Regulations</i> , 28 Cal. L. Revision Comm'n Reports 625 (1998)	Vetoed. <i>See</i> 29:605
315. <i>Administrative Rulemaking: Advisory Interpretations</i> , 28 Cal. L. Revision Comm'n Reports 657 (1998)	Vetoed. <i>See</i> 29:605
316. <i>Health Care Decisions for Adults Without Decisionmaking Capacity</i> , 29 Cal. L. Revision Comm'n Reports 1 (1999)	Enacted. 1999 Cal. Stat. ch. 658 <i>See</i> 29:604

Recommendation	Action by Legislature
317. <i>Uniform Principal and Income Act</i> , 29 Cal. L. Revision Comm'n Reports 245 (1999)	Enacted. 1999 Cal. Stat. ch. 145 <i>See 29:604</i>
318. <i>Admissibility, Discoverability, and Confidentiality of Settlement Negotiations</i> , 29 Cal. L. Revision Comm'n Reports 345 (1999)	Not enacted. <i>See 30:676</i>
319. <i>Air Resources Technical Revisions</i> , 29 Cal. L. Revision Comm'n Reports 409 (1999)	Enacted. 2000 Cal. Stat. ch. 890 <i>See 30:676</i>
320. <i>Administrative Rulemaking</i> , 29 Cal. L. Revision Comm'n Reports 459 (1999)	Enacted. 2000 Cal. Stat. ch. 1060 <i>See 30:676</i>
321. <i>Trial Court Unification Follow-Up</i> , 29 Cal. L. Revision Comm'n Reports 657 (1999)	Enacted. 1999 Cal. Stat. ch. 344 <i>See 29:604</i>
322. <i>Enforcement of Judgments Under the Family Code: Technical Revisions</i> , 29 Cal. L. Revision Comm'n Reports 695 (1999)	Enacted. 2000 Cal. Stat. ch. 808 <i>See 30:675</i>
323. <i>Eminent Domain Valuation Evidence: Clarification of Evidence Code Section 822</i> , 29 Cal. L. Revision Comm'n Reports 733 (1999)	Enacted. 2000 Cal. Stat. ch. 948 <i>See 30:676</i>
324. <i>Alternate Distributee for Unclaimed Distribution</i> , 29 Cal. L. Revision Comm'n Reports 743 (1999)	Enacted. 2000 Cal. Stat. ch. 17 <i>See 30:675</i>
325. <i>Jurisdictional Classification of Good Faith Improver Claims</i> , 30 Cal. L. Revision Comm'n Reports 281 (2000)	Enacted. 2000 Cal. Stat. ch. 688 <i>See 30:675</i>
326. <i>Authority to Appoint Receivers</i> , 30 Cal. L. Revision Comm'n Reports 291 (2000)	Enacted. 2001 Cal. Stat. ch. 44 <i>See 31:25</i>
327. <i>Stay of Mechanic's Lien Enforcement Pending Arbitration</i> , 30 Cal. L. Revision Comm'n Reports 307 (2000); 31 Cal. L. Revision Comm'n Reports 333 (2002)	2000 Recommendation enacted. 2003 Cal. Stat. ch. 113 <i>See 33:641</i>
328. <i>Trout Affidavit</i> , 30 Cal. L. Revision Comm'n Reports 319 (2000)	Enacted. 2000 Cal. Stat. ch. 167 <i>See 30:675</i>
329. <i>Expired Pilot Projects</i> , 30 Cal. L. Revision Comm'n Reports 327 (2000)	Enacted. 2001 Cal. Stat. ch. 115 <i>See 31:25</i>

Recommendation	Action by Legislature
330. <i>Law Library Board of Trustees</i> , 30 Cal. L. Revision Comm'n Reports 429 (2000)	Enacted. 2001 Cal. Stat. ch. 52 <i>See 31:25</i>
331. <i>Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases</i> , 30 Cal. L. Revision Comm'n Reports 443 (2000)	Enacted. 2001 Cal. Stat. ch. 812 <i>See 31:27</i>
332. <i>Civil Procedure: Technical Corrections</i> , 30 Cal. L. Revision Comm'n Reports 479 (2000)	Enacted. 2001 Cal. Stat. ch. 44 <i>See 31:25</i>
333. <i>Improving Access to Rulemaking Information Under the Administrative Procedure Act</i> , 30 Cal. L. Revision Comm'n Reports 517 (2000)	Enacted. 2000 Cal. Stat. ch. 1060 <i>See 30:676</i>
334. <i>Administrative Rulemaking Cleanup</i> , 30 Cal. L. Revision Comm'n Reports 533 (2000)	Enacted. 2001 Cal. Stat. ch. 59 <i>See 31:25</i>
335. <i>Rulemaking Under Penal Code Section 5058</i> , 30 Cal. L. Revision Comm'n Reports 545 (2000)	Enacted. 2001 Cal. Stat. ch. 141 <i>See 31:26</i>
336. <i>Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain</i> , 30 Cal. L. Revision Comm'n Reports 567 (2000)	Enacted. 2001 Cal. Stat. ch. 428 <i>See 31:26</i>
337. <i>Estate Planning During Marital Dissolution</i> , 30 Cal. L. Revision Comm'n Reports 603 (2000)	Enacted. 2001 Cal. Stat. ch. 417 <i>See 31:26</i>
338. <i>Health Care Decisions Law: Miscellaneous Revisions</i> , 30 Cal. L. Revision Comm'n Reports 621 (2000)	Enacted. 2001 Cal. Stat. ch. 230 <i>See 31:26</i>
339. <i>Evidence of Prejudgment Deposit Appraisal in Eminent Domain</i> , 31 Cal. L. Revision Comm'n Reports 109 (2001)	Enacted. 2002 Cal. Stat. ch. 293 <i>See 32:601</i>
340. <i>Debtor-Creditor Law: Technical Revisions</i> , 31 Cal. L. Revision Comm'n Reports 123 (2001)	Enacted. 2002 Cal. Stat. ch. 68 <i>See 32:600</i>
341. <i>Municipal Bankruptcy</i> , 31 Cal. L. Revision Comm'n Reports 143 (2001)	Enacted. 2002 Cal. Stat. ch. 94 <i>See 32:600</i>

Recommendation	Action by Legislature
342. <i>Rules of Construction for Trusts and Other Instruments</i> , 31 Cal. L. Revision Comm'n Reports 167 (2001)	Enacted. 2002 Cal. Stat. ch. 138 <i>See 32:601</i>
343. <i>Cases in Which Court Reporter Is Required</i> , 31 Cal. L. Revision Comm'n Reports 223 (2001)	Enacted. 2002 Cal. Stat. ch. 71 <i>See 32:600</i>
344. <i>Electronic Communications and Evidentiary Privileges</i> , 31 Cal. L. Revision Comm'n Reports 245 (2001)	Enacted. 2002 Cal. Stat. ch. 72 <i>See 32:600</i>
345. <i>Administrative Rulemaking Refinements</i> , 31 Cal. L. Revision Comm'n Reports 259 (2001)	Enacted. 2002 Cal. Stat. ch. 389 <i>See 32:601</i>
346. <i>The Double Liability Problem in Home Improvement Contracts</i> , 31 Cal. L. Revision Comm'n Reports 281 (2001)	Not enacted. <i>See 32:602.</i>
347. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 1</i> , 32 Cal. L. Revision Comm'n Reports 1 (2002)	Enacted. 2002 Cal. Stat. ch. 784 (statutory revision); 2002 Cal. Stat. res. ch. 88 (proposed constitutional amendment) <i>See 32:601</i>
348. <i>Common Interest Developments: Organization of Davis-Stirling Common Interest Development Act</i> , 33 Cal. L. Revision Comm'n Reports 1 (2003).	Enacted. 2003 Cal. Stat. ch. 557 <i>See 33:645</i>
349. <i>Common Interest Developments: Association Rulemaking and Decisionmaking</i> , 33 Cal. L. Revision Comm'n Reports 81 (2003).	Enacted in part. 2003 Cal. Stat. ch. 557 <i>See 33:645</i>
350. <i>Exemptions from Enforcement of Money Judgments: Second Decennial Review</i> , 33 Cal. L. Revision Comm'n Reports 113 (2003).	Enacted. 2003 Cal. Stat. ch. 379
351. <i>Probate Code Technical Corrections</i> , 33 Cal. L. Revision Comm'n Reports 145 (2003).	Enacted. 2003 Cal. Stat. ch. 32
352. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 2</i> , 33 Cal. L. Revision Comm'n Reports 169 (2003).	Enacted. 2003 Cal. Stat. ch. 149 <i>See 33:643</i>
353. <i>Obsolete Reporting Requirements</i> , 33 Cal. L. Revision Comm'n Reports 267 (2003)	Enacted. 2004 Cal. Stat. ch. 193

Recommendation	Action by Legislature
354. <i>Authority of Court Commissioner</i> , 33 Cal. L. Revision Comm'n Reports 673 (2003)	Enacted. 2004 Cal. Stat. ch. 49
355. <i>Alternative Dispute Resolution in Common Interest Developments</i> , 33 Cal. L. Revision Comm'n Reports 689 (2003)	Enacted. 2004 Cal. Stat. ch. 754 <i>See 34:81</i>
356. <i>Unincorporated Associations</i> , 33 Cal. L. Revision Comm'n Reports 729 (2003)	Enacted. 2004 Cal. Stat. ch. 178 <i>See 34:71</i>
357. <i>Civil Discovery: Nonsubstantive Reform</i> , 33 Cal. L. Revision Comm'n Reports 789 (2003)	Enacted. 2004 Cal. Stat. ch. 182 <i>See 34:75</i>
358. <i>Common Interest Development Law: Architectural Review and Decisionmaking</i> , 34 Cal. L. Revision Comm'n Reports 107 (2004)	Enacted. 2004 Cal. Stat. ch. 346 <i>See 34:77</i>
359. <i>Preemption of CID Architectural Restrictions</i> , 34 Cal. L. Revision Comm'n Reports 117 (2004)	Enacted. 2005 Cal. Stat. ch. 37 <i>See 35:30</i>
360. <i>Obsolete Cross-References to Former Code of Civil Procedure Section 383</i> , 34 Cal. L. Revision Comm'n Reports 127 (2004)	Enacted. 2005 Cal. Stat. ch. 37 <i>See 35:30</i>
361. <i>Civil Discovery: Statutory Clarification and Minor Substantive Improvements</i> , 34 Cal. L. Revision Comm'n Reports 137 (2004)	Enacted. 2005 Cal. Stat. ch. 294 <i>See 35:77</i>
362. <i>Civil Discovery: Correction of Obsolete Cross-References</i> , 34 Cal. L. Revision Comm'n Reports 161 (2004)	Enacted. 2005 Cal. Stat. ch. 294 <i>See 35:77</i>
363. <i>Ownership of Amounts Withdrawn from Joint Account</i> , 34 Cal. L. Revision Comm'n Reports 199 (2004)	Enacted. 2012 Cal. Stat. ch. 235 <i>See 42:361</i>
364. <i>Emergency Rulemaking Under the Administrative Procedure Act</i> , 34 Cal. L. Revision Comm'n Reports 221 (2004)	Enacted. 2006 Cal. Stat. ch. 713 <i>See 36:31</i>
365. <i>Unincorporated Association Governance</i> , 34 Cal. L. Revision Comm'n Reports 231 (2004)	Enacted. 2005 Cal. Stat. ch. 116 <i>See 35:73</i>

Recommendation	Action by Legislature
366. <i>Nonprofit Association Tort Liability</i> , 34 Cal. L. Revision Comm'n Reports 257 (2004)	Enacted. 2005 Cal. Stat. ch. 116 <i>See</i> 35:73
367. <i>Waiver of Privilege by Disclosure</i> , 34 Cal. L. Revision Comm'n Reports 265 (2004)	Not enacted. <i>See</i> 36:31 n. 62
368. <i>Financial Privacy</i> , 34 Cal. L. Revision Comm'n Reports 401 (2004)	Not enacted. <i>See</i> 36:31 n. 62
369. <i>Common Interest Development Ombudsperson</i> , 35 Cal. L. Revision Comm'n Reports 123 (2005)	Vetoed. <i>See</i> 36:31 n. 62
370. <i>Enforcement of Judgments Under the Family Code</i> , 35 Cal. L. Revision Comm'n Reports 161 (2005)	Enacted. 2006 Cal. Stat. ch. 86 <i>See</i> 36:31
371. <i>Oral Argument in Civil Procedure</i> , 35 Cal. L. Revision Comm'n Reports 181 (2005)	No legislation recommended.
372. <i>Technical and Minor Substantive Statutory Corrections</i> , 35 Cal. L. Revision Comm'n Reports 219 (2006)	Enacted. 2007 Cal. Stat. ch. 263 <i>See</i> 37:28, 37:71
373. <i>Time Limits for Discovery in an Unlawful Detainer Case</i> , 36 Cal. L. Revision Comm'n Reports 271 (2006).	Enacted. 2007 Cal. Stat. ch. 113 <i>See</i> 37:28
374. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 3</i> , 36 Cal. L. Revision Comm'n Reports 341 (2006).	Enacted. 2007 Cal. Stat. ch. 43 <i>See</i> 37:29
375. <i>Revocable Transfer on Death (TOD) Deed</i> , 36 Cal. L. Revision Comm'n Reports 103 (2006).	Not enacted. <i>See</i> 38:28, n. 66
376. <i>Deposition in Out-of-State Litigation</i> , 37 Cal. L. Revision Comm'n Reports 99 (2007).	Enacted. 2008 Cal. Stat. ch. 231 <i>See</i> 38:29, 38:77
377. <i>Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture</i> , 37 Cal. L. Revision Comm'n Reports 149 (2007).	Not enacted. But see 2012 Cal. Stat. ch. 470 (item 395 <i>infra</i>) <i>See</i> 38:28 n. 66
378. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 4</i> , 37 Cal. L. Revision Comm'n Reports 171 (2007).	Enacted. 2008 Cal. Stat. ch. 56 <i>See</i> 38:29

Recommendation	Action by Legislature
379. <i>Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction</i> , 37 Cal. L. Revision Comm'n Reports 195 (2007).	Enacted. 2008 Cal. Stat. ch. 56 <i>See</i> 38:29
380. <i>Technical and Minor Substantive Statutory Corrections: References to Recording Technology</i> , 37 Cal. L. Revision Comm'n Reports 211 (2007).	Enacted. 2009 Cal. Stat. ch. 88 <i>See</i> 39:27, 39:71
381. <i>Revision of No Contest Clause Statute</i> , 37 Cal. L. Revision Comm'n Reports 359 (2007).	Enacted. 2008 Cal. Stat. ch. 174 <i>See</i> 38:29, 38:75
382. <i>Miscellaneous Hearsay Exceptions: Present Sense Impression</i> , 37 Cal. L. Revision Comm'n Reports 407 (2007).	No legislation introduced.
383. <i>Miscellaneous Hearsay Exceptions: Forfeiture by Wrongdoing</i> , 37 Cal. L. Revision Comm'n Reports 443 (2007).	No legislation introduced; but see 2010 Cal. Stat. ch. 537, enacting a similar amendment of Evid. C. § 240.
384. <i>Mechanics Lien Law</i> , 37 Cal. L. Revision Comm'n Reports 527 (2007).	Enacted. 2010 Cal. Stat. ch. 697 <i>See</i> 39:27, 40:28, 40:49
385. <i>Donative Transfer Restrictions</i> , 38 Cal. L. Revision Comm'n Reports 107 (2007).	Enacted. 2009 Cal. Stat. ch. 348, 2010 Cal. Stat. ch. 620 <i>See</i> 39:27, 40:28, 40:45
386. <i>Attorney-Client Privilege After Client's Death</i> , 38 Cal. L. Revision Comm'n Reports 163 (2008).	Enacted. 2009 Cal. Stat. ch. 8 <i>See</i> 39:27
387. <i>Revision of No Contest Clause Statute: Conforming Revisions</i> , 38 Cal. L. Revision Comm'n Reports 203 (2008).	Enacted. 2009 Cal. Stat. ch. 348 <i>See</i> 39:27
388. <i>Nonsubstantive Reorganization of Deadly Weapon Statutes</i> , 38 Cal. L. Revision Comm'n Reports 217 (2009).	Enacted. 2010 Cal. Stat. ch. 178, 2010 Cal. Stat. ch. 711 <i>See</i> 40:27, 40:43, 40:107
389. <i>Marketable Record Title: Notice of Option</i> , 39 Cal. L. Revision Comm'n Reports 99 (2009).	Enacted. 2011 Cal. Stat. ch. 46 <i>See</i> 41:28
390. <i>Statutes Made Obsolete by Trial Court Restructuring: Part 5</i> , 39 Cal. L. Revision Comm'n Reports 109 (2009).	Enacted. 2010 Cal. Stat. ch. 212 <i>See</i> 40:28, 42:360

Recommendation	Action by Legislature
391. <i>Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part I)</i> , 39 Cal. L. Revision Comm'n Reports 157 (2009).	Enacted. 2012 Cal. Stat. ch. 470 <i>See 42:360</i>
392. <i>Obsolete Cross-References to Former Code of Civil Procedure Section 116.780(d)</i> , 39 Cal. L. Revision Comm'n Reports 223 (2009).	Enacted. 2011 Cal. Stat. ch. 308 <i>See 41:28</i>
393. <i>Statutory Clarification and Simplification of CID Law</i> , 40 Cal. L. Revision Comm'n Reports 235 (2010).	Enacted. 2012 Cal. Stat. ch. 180 <i>See 42:360</i>
394. <i>Mechanics Lien Law: Clean-Up Legislation</i> , 41 Cal. L. Revision Comm'n Reports 103 (2011).	Enacted. 2011 Cal. Stat. ch. 44 <i>See 41:28</i>
395. <i>Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation</i> , 41 Cal. L. Revision Comm'n Reports 135 (2011).	Enacted. 2011 Cal. Stat. ch. 285; see also 2012 Cal. Stat. ch. 162, §§ 12-14, 203, 207; 2013 Cal. Stat. ch. 76, §§ 145.5, 145.7, 147.3, 147.5, 153.5; 2013 Cal. Stat. ch. 291, § 52 <i>See 41:28, 43:279</i>
396. <i>Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture</i> , 41 Cal. L. Revision Comm'n Reports 265 (2011).	Enacted. 2012 Cal. Stat. ch. 470 <i>See 42:360</i>
397. <i>Statutory Cross-References to "Tort Claims Act,"</i> 41 Cal. L. Revision Comm'n Reports 285 (2011).	Enacted. 2012 Cal. Stat. ch. 759 <i>See 42:360-61</i>
398. <i>Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case</i> , 41 Cal. L. Revision Comm'n Reports 315 (2011).	Enacted. 2012 Cal. Stat. ch. 470 <i>See 42:360</i>
399. <i>Commercial and Industrial Common Interest Developments</i> , 42 Cal. L. Revision Comm'n Reports 1 (2012).	Enacted. 2013 Cal. Stat. ch. 605 <i>See 43:279-80</i>
400. <i>Charter Schools and the Government Claims Act</i> , 42 Cal. L. Revision Comm'n Reports 225 (2012).	No legislation recommended.

Recommendation	Action by Legislature
401. <i>Third Decennial Review of Exemptions from Enforcement of Money Judgments</i> , 42 Cal. L. Revision Comm'n Reports 297 (2012).	Enacted. 2013 Cal. Stat. ch. 15 <i>See 43:279</i>
402. <i>Statutory Clarification and Simplification of CID Law: Clean-Up Legislation</i> , 42 Cal. L. Revision Comm'n Reports 311 (2012).	Enacted. 2013 Cal. Stat. ch. 183 <i>See 43:279</i>
403. <i>Commercial and Industrial Subdivisions</i> , 43 Cal. L. Revision Comm'n Reports 1 (2013).	Enacted. 2013 Cal. Stat. ch. 605 <i>See 43:279-80</i>
404. <i>Statutory Clarification and Simplification of CID Law: Further Clean-Up Legislation</i> , 43 Cal. L. Revision Comm'n Reports 23 (2013).	Enacted. 2013 Cal. Stat. ch. 183 <i>See 43:279</i>
405. <i>Technical and Minor Substantive Statutory Corrections</i> , 43 Cal. L. Revision Comm'n Reports 35 (2013).	Enacted. 2014 Cal. Stat. ch. 913 <i>See 44:27</i>
406. <i>Deadly Weapons: Minor Clean-Up Issues</i> , 43 Cal. L. Revision Comm'n Reports 63 (2013).	Enacted. 2014 Cal. Stat. ch. 103 <i>See 44:27</i>
407. <i>Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act</i> , 43 Cal. L. Revision Comm'n Reports 93 (2013).	Enacted. 2014 Cal. Stat. ch. 553 <i>See 44:27, 44:77</i>
408. <i>Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1)</i> , 44 Cal. L. Revision Comm'n Reports 115 (2015).	Enacted. 2015 Cal. Stat. ch. 154 <i>See 44:522; 44:571</i>
409. <i>State and Local Agency Access to Electronic Communications: Constitutional and Statutory Requirements</i> , 44 Cal. L. Revision Comm'n Reports 229 (2015).	No legislation recommended.
410. <i>Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 2)</i> , 44 Cal. L. Revision Comm'n Reports 349 (2015).	Enacted. 2016 Cal. Stat. ch. 546 <i>See 44:782</i>
411. <i>Trial Court Unification: Publication of Legal Notice</i> , 44 Cal. L. Revision Comm'n Reports 385 (2015).	Enacted. 2016 Cal. Stat. ch. 703 <i>See 44:782</i>

Recommendation	Action by Legislature
412. <i>Deadly Weapons: Minor Clean-Up Issues (Part 2)</i> , 44 Cal. L. Revision Comm'n Reports 471 (2015).	No legislation introduced.
413. <i>Recognition of Tribal and Foreign Court Money Judgments</i> , 44 Cal. L. Revision Comm'n Reports 611 (2016).	Legislation pending.
414. <i>Government Interruption of Communication Service</i> , 44 Cal. L. Revision Comm'n Reports 681 (2016).	Legislation pending.
415. <i>Mechanics Liens in Common Interest Developments</i> , 44 Cal. L. Revision Comm'n Reports 739 (2016).	Legislation pending.

APPENDIX 4

BIOGRAPHIES OF 2016 COMMISSIONERS

Susan Duncan Lee, of San Francisco, serves as Chairperson of the Commission, and has been a deputy attorney general and thereafter a supervising deputy attorney general with the California Department of Justice since 1989. Commissioner Lee received a Juris Doctor degree from the University of California, Hastings College of the Law.

Tom Hallinan, of Ceres, serves as the Vice-Chairperson of the Commission, and has been a partner with Churchwell White LLP since 2012. He was previously a partner with Bush, Ackley, Milich and Hallinan from 1994 to 2012, a law clerk at the United States Attorney's Office from 1991 to 1993, and a law clerk at the Judicial Council of California from 1990 to 1992. He has also served on the 38th District Agricultural Association, Stanislaus County Fair Board of Directors. Commissioner Hallinan received a Juris Doctor degree from Lincoln Law School.

Diane Boyer-Vine, of Sacramento, has been Legislative Counsel for the State of California since 2002. She was previously a deputy and thereafter a chief deputy in the Legislative Counsel's office from 1988 to 2002, and before that an associate with the law firm of Martorana and Stockman. She also serves as a member of the California Commission on Uniform State Laws. Commissioner Boyer-Vine received a Juris Doctor degree from the University of California, Davis School of Law.

Damian Capozzola, of Palos Verdes, is the founder of the Law Offices of Damian D. Capozzola. He was previously a partner with the law firm of Crowell and Moring LLP from 2011 to 2013, an attorney with the law firm of Epstein Becker and Green P.C. from 2007 to 2011, and an attorney with the law firm of Kirkland and Ellis LLP from 1996 to 2007. He is the current West Region Vice President for the National Italian-American Bar Association and has previously served as a President of the Italian-American

Lawyers Association of Los Angeles. Commissioner Capozzola received a Juris Doctor degree from the University of Virginia School of Law.

Assembly Member Ed Chau, of Monterey Park, has been a member of the Assembly since 2012. He previously was a general law practitioner in the Law Office of Edwin Chau, a small business owner for over 20 years, an engineer for IBM, and a programmer for Unisys Corporation. He has also previously served as a board member of the Montebello Unified School District, where he acted as Board President three times, and has served as Judge Pro Tem for the Los Angeles Superior Court. Commissioner Chau received a Juris Doctor degree from Southwestern University.

Taras Peter Kihiczak, of Pacific Palisades, has been a lawyer with and shareholder of The Kick Law Firm APC since 1991. He was previously a lawyer with the law firm of Thelen Marrin Johnson and Bridges from 1989 to 1990. Commissioner Kihiczak received a Juris Doctor degree from the University of Pennsylvania Law School.

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 Feliton 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. Commissioner McAllister received a Juris Doctor degree from Humphreys College School of Law.

Crystal Miller-O'Brien, of Los Angeles, is general counsel for the All City Employee Benefits Services Association, Inc., since 2016. She was previously corporate counsel for Medical Management Consultants, Inc. from 2006 to 2015, an associate with the law firm of Anderson McPharlin and Connors LLP from 2005 to 2006, an associate with the law firm of Robie and Matthai PC from 2003 to 2004, an associate with the law firm of Bullivant Houser Bailey PC from 2002 to 2003, and a judicial clerk to the Washington State Supreme Court from 2001 to 2002. She also served on the board of directors of the Conference of California Bar Associations from 2009 to 2012, and is a member of Corporate Counsel Women of Color, the Black Women Lawyers Association of Los Angeles, and the National Association of Women Business Owners. Commissioner Miller-O'Brien received a Juris Doctor degree and a Joint Certificate in Alternative Dispute Resolution from Willamette University College of Law.

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.

APPENDIX 5

COMMISSION PUBLICATIONS

From 1955 until 2009, the California Law Revision Commission's annual reports, recommendations, and studies were published in separate pamphlets, which were later bound in a small edition of hard-cover volumes. Beginning with the Commission's 2009-2010 Annual Report, the printing of separate pamphlets was generally discontinued. As a general rule, only the hard-cover volumes are now published. (The Commission may occasionally publish a separate report for ease of reference.)

Commission publications are assigned sequential publication numbers to facilitate cataloging and ordering. Beginning with publication #189, the publication number is printed on the reverse of the title page of each publication.

All Commission reports are available as electronic files, at no cost. Procedures for obtaining printed or electronic versions of Commission publications are described below.

How To Obtain Printed Publications

Commission publications may be obtained from:

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
Tel: (650) 494-1335

Payment in advance is generally required for publications that are available only by purchase. Checks or money orders should be made payable to the "California Law Revision Commission."

Orders should include the titles of the requested publications, the quantity desired, and the street address to which the order is to be sent (*not* a post office box number).

Prices

With the following two exceptions, the price for a hardcover volume of the Commission's *Reports*, *Recommendations*, and *Studies* is \$75.00:

(1) Volume 15 is printed in two separately bound books. The price for each of these books is \$75.00.

(2) Volumes 21 and 22 are combined in a single bound book. The price for this book is \$75.00.

California residents must also add sales tax.

Reports that were printed in pamphlet form are usually available on request. The first copy is free; additional copies are available for the price indicated below. On occasion, special reports may be available only for purchase, such as where the Commission needs to cover costs of producing a particular publication.

Where applicable, the price of Commission pamphlets is determined by the number of pages, unless a special price has been set:

10 or fewer pages:	\$5.50
11-50 pages:	\$8.50
51-100 pages:	\$18.00
101 or more pages:	\$25.00

Whether a charge will be imposed and the amount of the charge are subject to change without notice. When a charge is imposed, special discounts may be available for large orders.

Publication Table

The bound volumes and separate pamphlets listed below are available unless noted as being out of print. For some years, only a few copies remain. If a bound volume is out of print, individual pamphlets from that volume may still be available. Conversely, some pamphlets are unavailable on an individual basis, but can be found in available bound volumes. Note that all publications are now available as electronic files (see below).

Prices are indicated only for individual pamphlets that are still in print.

A frequently updated version of the publication list is available on the Internet at www.clrc.ca.gov — the Commission's website.

How To Obtain Publications in Electronic Form

All Commission publications may be downloaded from the Commission's website at www.clrc.ca.gov.

Key to Publication Table

The first column lists the publication number, if any.

The second column gives the publication title, and includes a list of the recommendations and studies included within a pamphlet that contains more than one item.

In the third column, the first line lists the month and year of the report, followed by a citation to the volume and page number of the report and any supplement to the report (in the format vol:page).

Through Volume 38, the second line in the third column lists the number of pages in a publication and gives its standard price, unless it is out of print (indicated by OOP).

Volume 1 (1957)		[Hardcover Volume Out of Print]	
#1	1955 [Annual] Report [for 1954] — includes: • Homestead Law and Probate Code Sections 640 to 646 • Summary Disposition of Small Estates Under Probate Code Sections 640 to 646	1/55 59 pp	1:1-1 OOP
#2	1956 [Annual] Report [for 1955] — includes: • Comparative Survey of the California Inheritance and Gift Tax Laws and the Federal Estate and Gift Tax Laws	3/56 63 pp	1:2-1 OOP
#3	1957 [Annual] Report [for 1956]	1/57 28 pp	1:3-1 OOP
#4	Maximum Period of Confinement in a County Jail — includes: • Maximum Period of Confinement in a County Jail (Rec) • Penal Code Section 19a and Related Code Sections (Study)	10/56 34 pp	1:A-1 OOP
#5	Notice of Application for Attorney’s Fees and Costs in Domestic Relations Actions — includes: • Notice of Application for Attorney’s Fees and Costs in Domestic Relations Actions (Rec) • Use of Motions and Orders To Show Cause in Connection with Awards of Attorney’s Fees and Costs Pursuant to Civil Code Section 137.3 (Study)	11/56 13 pp	1:B-1 OOP
#6	Taking Instructions to the Jury Room — includes: • Taking Instructions to the Jury Room (Rec) • Whether the Jury Should Be Given a Copy of the Court’s Instructions To Take into the Jury Room (Study)	11/56 17 pp	1:C-1 OOP
#7	Dead Man Statute — includes: • Dead Man Statute (Rec) • Whether the Dead Man Statute Should Be Modified or Repealed (Study)	2/57 54 pp	1:D-1 OOP

#8	Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere — includes: • Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere (Rec) • Whether Section 201.5 of the Probate Code Should Be Revised (Study)	12/56 39 pp	1:E-1 OOP
#9	Marital “For and Against” Testimonial Privilege — includes: • Marital “For and Against” Testimonial Privilege (Rec) • Whether the “For and Against” Testimonial Privilege of Married Persons Should Be Revised (Study)	11/56 20 pp	1:F-1 OOP
#10	Suspension of the Absolute Power of Alienation — includes: • Suspension of the Absolute Power of Alienation (Rec) • Whether the Sections of the Civil Code Prohibiting Suspension of the Absolute Power of Alienation Should Be Repealed (Study)	11/56 32 pp	1:G-1 OOP
#11	Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378	10/56 4 pp	1:H-1 \$5.50
#12	Judicial Notice of the Law of Foreign Countries — includes: • Judicial Notice of the Law of Foreign Countries (Rec) • Whether California Courts Should Take Judicial Notice of the Law of Foreign Countries (Study)	2/57 24 pp	1:I-1 OOP
#13	Choice of Law Governing Survival of Actions — includes: • Choice of Law Governing Survival of Actions (Rec) • Law Which Should Govern Survival of Actions Arising in Another State When Suit Is Brought in California (Study)	2/57 20 pp	1:J-1 OOP
#14	Effective Date of an Order Ruling on a Motion for New Trial — includes: • Effective Date of an Order Ruling on a Motion for New Trial (Rec) • Effective Date of New Trial Orders in Relation to Section 660 of the Code of Civil Procedure (Study)	2/57 27 pp	1:K-1 OOP
#15	Retention of Venue for Convenience of Witnesses — includes: • Retention of Venue for Convenience of Witnesses (Rec) • California Law Relating to Retention of Venue for Convenience of Witnesses (Study)	2/57 29 pp	1:L-1 OOP
#16	Bringing New Parties into Civil Actions — includes: • Bringing New Parties into Civil Actions (Rec) • California Law Relating to Bringing in New Parties in Civil Actions (Study)	2/57 24 pp	1:M-1 OOP

Volume 2 (1959)

[Hardcover Volume Out of Print]

#17	1958 [Annual] Report [for 1957]	3/58 25 pp	2:1-1 \$8.50
#18	1959 [Annual] Report [for 1958] — includes: • Procedure for Appointing Guardians	1/59 29 pp	2:2-1 \$8.50

#19	Presentation of Claims Against Public Entities — includes:	1/59	2:A-1
	• Presentation of Claims Against Public Entities (Rec)	128 pp	\$25.00
	• Presentation of Claims Against Public Entities (Study)		
#20	Right of Nonresident Aliens To Inherit — includes:	1/59	2:B-1
	• Right of Nonresident Aliens To Inherit (Rec)	32 pp	\$8.50
	• Right of Nonresident Aliens To Inherit (Study)		
#21	Mortgages To Secure Future Advances — includes:	11/58	2:C-1
	• Mortgages To Secure Future Advances (Rec)	26 pp	\$8.50
	• Mortgages To Secure Future Advances (Study)		
#22	Doctrine of Worthier Title — includes:	1/59	2:D-1
	• Doctrine of Worthier Title (Rec)	38 pp	\$8.50
	• Whether the Doctrine of Worthier Title Should Be Abolished in California (Study)		
#23	Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving — includes:	11/58	2:E-1
	• Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving (Rec)	22 pp	\$8.50
	• Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Driving While Intoxicated (Study)		
#24	Time Within Which Motion for New Trial May Be Made — includes:	11/58	2:F-1
	• Time Within Which Motions for New Trial and To Vacate Judgment May Be Made (Rec)	16 pp	\$8.50
	• Time Within Which a Motion for a New Trial May Be Made When Notice of Entry of Judgment Has Not Been Given (Study)		
#25	Notice to Shareholders of Sale of Corporate Assets — includes:	1/59	2:G-1
	• Notice to Shareholders of Sale of Corporate Assets (Rec)	18 pp	\$8.50
	• Notice to Shareholders of a Sale of All or Substantially All of the Assets of a Corporation (Study)		

Volume 3 (1961)

[Hardcover Volume Out of Print]

#26	1960 [Annual] Report [for 1959]	3/60	3:1-1
		15 pp	OOP
#27	1961 [Annual] Report [for 1960]	1/61	3:2-1
		15 pp	OOP
#28	Evidence in Eminent Domain Proceedings — includes:	10/60	3:A-1
	• Evidence in Eminent Domain Proceedings (Rec)	65 pp	\$18.00
	• Evidence in Eminent Domain Proceedings (Study)		
#29	Taking Possession and Passage of Title in Eminent Domain Proceedings — includes:	10/60	3:B-1
	• Taking Possession and Passage of Title in Eminent Domain Proceedings (Rec)	66 pp	OOP
	• Taking Possession and Passage of Title in Eminent Domain Proceedings (Study)		

#30	Reimbursement for Moving Expenses when Property Is Acquired for Public Use — includes: • Reimbursement for Moving Expenses when Property Is Acquired for Public Use (Rec) • Reimbursement for Moving Expenses when Property Is Acquired for Public Use (Study)	10/60 36 pp	3:C-1 OOP
#31	Rescission of Contracts — includes: • Rescission of Contracts (Rec) • Rescission of Contracts (Study)	10/60 35 pp	3:D-1 OOP
#32	Right to Counsel and the Separation of the Delinquent Minor from the Nondelinquent Minor in Juvenile Court Proceedings — includes: • Right to Counsel and the Separation of the Delinquent Minor from the Nondelinquent Minor in Juvenile Court Proceedings (Rec) • Juvenile's Right to Counsel and the Designation of Nondelinquent Minor As "Ward of the Juvenile Court" (Study)	10/60 43 pp	3:E-1 OOP
#33	Survival of Actions — includes: • Survival of Actions (Rec) • Survival of Tort Actions (Study)	10/60 26 pp	3:F-1 OOP
#34	Arbitration — includes: • Arbitration (Rec) • Arbitration (Study)	12/60 64 pp	3:G-1 OOP
#35	Presentation of Claims Against Public Officers and Employees — includes: • Presentation of Claims Against Public Officers and Employees (Rec) • Presentation of Claims Against Public Officers and Employees (Study)	10/60 36 pp	3:H-1 OOP
#36	Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere — includes: • Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere (Rec) • Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere (Study)	10/60 35 pp	3:I-1 OOP
#37	Notice of Alibi in Criminal Actions — includes: • Notice of Alibi in Criminal Actions (Rec) • Notice of Alibi in Criminal Actions (Study)	10/60 22 pp	3:J-1 \$8.50

Volume 4 (1963)

[Hardcover Volume Out of Print]

#38	1962 Annual Report [for 1961]	3/62 23 pp	4:1 \$8.50
#39	1963 Annual Report [for 1962]	1/63 18 pp	4:101 \$8.50
#40	1964 Annual Report [for 1963]	12/63 46 pp	4:201 \$8.50

#41	Uniform Rules of Evidence: Article VIII. Hearsay Evidence — includes: • Uniform Rules of Evidence: Article VIII. Hearsay Evidence (Rec) • Hearsay Evidence Article of the Uniform Rules of Evidence (Study)	8/62 319 pp	4:301 OOP
#42	Condemnation Law and Procedure: Number 4 — Discovery in Eminent Domain Proceedings [The first three pamphlets (unnumbered) in Volume 3 also deal with the subject of condemnation law and procedure.] — includes: • Condemnation Law and Procedure: Number 4 — Discovery in Eminent Domain Proceedings (Rec) • Pretrial Conferences and Discovery in Eminent Domain Proceedings (Study)	1/63 74 pp	4:701 \$18.00
#43	Sovereign Immunity: Number 1 — Tort Liability of Public Entities and Public Employees	1/63 86 pp	4:801 \$18.00
#44	Sovereign Immunity: Number 2 — Claims, Actions and Judgments Against Public Entities and Public Employees	1/63 94 pp	4:1001 \$18.00
#45	Sovereign Immunity: Number 3 — Insurance Coverage for Public Entities and Public Employees	1/63 14 pp	4:1201 \$8.50
#46	Sovereign Immunity: Number 4 — Defense of Public Employees	1/63 22 pp	4:1301 \$8.50
#47	Sovereign Immunity: Number 5 — Liability of Public Entities for Ownership and Operation of Motor Vehicles	1/63 8 pp	4:1401 \$5.50
#48	Sovereign Immunity: Number 6 — Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers	1/63 8 pp	4:1501 \$5.50
#49	Sovereign Immunity: Number 7 — Amendments and Repeals of Inconsistent Special Statutes	3/63 11 pp	4:1601 OOP

Volume 5 (1963)

[Hardcover Volume Out of Print]

#50	Study Relating to Sovereign Immunity [Softcover publication has entire contents of hardcover volume except for the title page and some other front matter.]	1/63 568 pp	5:1 \$25.00

Volume 6 (1964)

[Hardcover Volume Out of Print]

#51	Uniform Rules of Evidence: Article 1. General Provisions — includes: • Uniform Rules of Evidence: Article 1. General Provisions (Rec) • General Provisions Article of the Uniform Rules of Evidence (Study)	4/64 74 pp	6:1 \$18.00

#52	Uniform Rules of Evidence: Article IX. Authentication and Content of Writings — includes: • Uniform Rules of Evidence: Article IX. Authentication and Content of Writings (Rec) • Authentication Article of the Uniform Rules of Evidence (Study)	1/64 70 pp	6:101 \$18.00
#53	Uniform Rules of Evidence: Article V. Privileges — includes: • Uniform Rules of Evidence: Article V. Privileges (Rec) • Privileges Article of the Uniform Rules of Evidence (Study)	2/64 301 pp	6:201 OOP
#54	Uniform Rules of Evidence: Article VI. Extrinsic Policies Affecting Admissibility — includes: • Uniform Rules of Evidence: Article VI. Extrinsic Policies Affecting Admissibility (Rec) • Uniform Rules of Evidence — Extrinsic Policies Affecting Admissibility (Study)	3/64 80 pp	6:601 OOP
#55	Uniform Rules of Evidence: Article IV. Witnesses — includes: • Uniform Rules of Evidence: Article IV. Witnesses (Rec) • The Witnesses Article of the Uniform Rules of Evidence (Study)	3/64 72 pp	6:701 \$18.00
#56	Uniform Rules of Evidence: Article II. Judicial Notice — includes: • Uniform Rules of Evidence: Article II. Judicial Notice (Rec) • The Judicial Notice Article of the Uniform Rules of Evidence (Study)	4/64 60 pp	6:801 \$18.00
#57	Uniform Rules of Evidence: Article VII. Expert and Other Opinion Testimony — includes: • Uniform Rules of Evidence: Article VII. Expert and Other Opinion Testimony (Rec) • The Uniform Rules of Evidence — Expert and Other Opinion Testimony (Study)	3/64 49 pp	6:901 \$8.50
#58	Uniform Rules of Evidence: Burden of Producing Evidence, Burden of Proof, and Presumptions (Replacing Article III of the Uniform Rules of Evidence) — includes: • Uniform Rules of Evidence: Burden of Producing Evidence, Burden of Proof, and Presumptions (Replacing Article III of the Uniform Rules of Evidence) (Rec) • Uniform Rules of Evidence — Burden of Producing Evidence, Burden of Proof, and Presumptions (Study)	6/64 148 pp	6:1001 \$25.00
#59	Uniform Rules of Evidence: Article VIII. Hearsay Evidence [same as 4:301] — includes: • Uniform Rules of Evidence: Article VIII. Hearsay Evidence (Rec) • Hearsay Evidence Article of the Uniform Rules of Evidence (Study)	10/62 272 pp	6:ff-1150 OOP

Volume 7 (1965)

[Hardcover Volume Out of Print]

#60	Evidence Code	1/65 394 pp	7:1 OOP
#61	Sovereign Immunity: Number 8 — Revisions of the Governmental Liability Act: Liability of Public Entities for Ownership and Operation of Motor Vehicles; Claims and Actions Against Public Entities and Public Employees	1/65 30 pp	7:401 \$8.50
#62	1965 Annual Report [for 1964]	1/65 16 pp	7:801 OOP
#63	1966 Annual Report [for 1965]	12/65 28 pp	7:901 OOP
#64	Evidence Code with Official Comments	8/65 338 pp	7:1001 \$25.00

Volume 8 (1967)

[Hardcover Volume Out of Print]

#65	Annual Report [for 1966] — includes: • Discovery in Eminent Domain Proceedings	12/66 29 pp	8:1 \$8.50
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	• Ch. 2: Inverse Condemnation Goals and Policy Criteria (Van Alstyne) [reprinted from 8 Santa Clara Law. 1 (1967)]		
	• Ch. 3: Deliberately Inflicted Injury or Destruction (Van Alstyne) [reprinted from 20 Stan. L. Rev. 617 (1968)]		
	• Ch. 4: Unintended Physical Damage (Van Alstyne) [reprinted from 20 Hastings L.J. 421 (1969)]		
	• Ch. 5: Intangible Detriment (Van Alstyne) [reprinted from 16 UCLA L. Rev. 491 (1969)]		

• Ch. 6: Taking or Damaging by Police Power (Van Alstyne) [reprinted from 44 S. Cal. L. Rev. 1 (1970)]		
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Volume 21 (1991)

[Bound with Volume 22]

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	• Nonprobate Transfer to Trustee Named in Will		
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	• Transfer of Conservatorship Property to Trust		
	• Compensation in Guardianship and Conservatorship Proceedings		
#174	Cumulative Tables for Bound Volumes 21-22 (1991-92)	7/93	21:T-1
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Volume 22 (1992)

[Bound with Volume 21]

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		830 pp	\$35.00
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	• Special Needs Trust for Disabled Minor or Incompetent Person		

Volume 23 (1993)

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	• Reorganization of Domestic Violence Provisions		
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Volume 26 (1996)

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Volume 27 (1997)

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