

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Civil Discovery: Correction of Obsolete Cross-References

September 2004

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

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

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335

WILLIAM E. WEINBERGER, Chairperson
EDMUND L. REGALIA, Vice Chairperson
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ASSEMBLY MEMBER ELLEN CORBETT
FRANK KAPLAN
SENATOR BILL MORROW

September 17, 2004

To: The Honorable Arnold Schwarzenegger
Governor of California, and
The Legislature of California

The Law Revision Commission recommends that the following provisions be amended to correct obsolete cross-references to civil discovery provisions:

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

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

Respectfully submitted,

William E. Weinberger,
Chairperson

CIVIL DISCOVERY: CORRECTION OF OBSOLETE CROSS-REFERENCES

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

In developing that proposal, the Commission discovered a number of statutes with one or more cross-references to civil discovery provisions that were never properly conformed to reflect enactment of the Civil Discovery Act of 1986.⁴ Those provisions are:

- Business and Professions Code Section 25009.
- Code of Civil Procedure Section 1283.
- Code of Civil Procedure Section 1991.2.
- Education Code Section 44944.
- Government Code Section 12963.3.⁵

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

2. *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003).

3. 2004 Cal. Stat. ch. 182 [AB 3081, Assembly Committee on Judiciary].

4. 1986 Cal. Stat. ch. 1334.

5. Government Code Section 12963.3 prescribes the procedures for taking a deposition in an action by the Department of Fair Employment and Housing ("DFEH"). Until recently, it included a cross-reference to former Code of Civil Procedure Section 2018(a), which until 1986 governed who could serve as a deposition officer *outside* California. In 2004, the provision was amended to replace that obsolete cross-reference with a reference to Code of Civil Procedure

- Government Code Section 68097.6.
- Health and Safety Code Section 1424.1.
- Insurance Code Section 11580.2.

The Commission recommends updating the obsolete cross-references to civil discovery provisions in these statutes.⁶ This reform would help to prevent confusion and spare courts,

Section 2025, governing who can serve as a deposition officer *inside* California. 2004 Cal. Stat. ch. 647, § 6.

Code of Civil Procedure Section 2025 will be repealed as of July 1, 2005, as part of a nonsubstantive reorganization of the civil discovery provisions. See 2004 Cal. Stat. ch. 182. The new provision governing who can serve as a deposition officer *inside* California will be Code of Civil Procedure Section 2025.320; the new provision governing who can serve as a deposition officer *outside* California will be Code of Civil Procedure Section 2026.010(d). *Id.* The Commission proposes to amend Government Code Section 12963.3 to replace the reference to Code of Civil Procedure Section 2025 with references to both of these new provisions. According to DFEH, that approach will best serve its needs.

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

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

(2) Insurance Code Section 11580.2(c)(5) cross-refers to subdivisions (a), (b), and (c) of Vehicle Code Section 16054. The subdivision references are no longer correct; the pertinent material is now located in subdivisions (a)(1)-(a)(3) of Vehicle Code Section 16054. The proposed amendment to Insurance Code Section 11580.2(c)(5) would delete the subdivision references and simply refer to Vehicle Code Section 16054. This would make it easier to keep the cross-reference up-to-date in the future. It would also expand the scope of the cross-reference to include Vehicle Code Section 16054(a)(4) (proof of financial responsibility by an owner or driver who is involved in an accident while operating a vehicle of less than four wheels).

attorneys, and litigants from unnecessarily expending resources investigating and debating the meaning of the cross-references.⁷

The proposed legislation is based on the recently enacted nonsubstantive reorganization of the civil discovery provisions, which will become operative on July 1, 2005.⁸ A Comment accompanies each proposed amendment. To assist in tracing the history of these provisions, the Comments include citations to sources showing:

- (1) The content of the cross-referenced provision at the time when the cross-reference was inserted.
- (2) Where that material has been relocated.⁹

The Commission's work on civil discovery is continuing. The Commission welcomes suggestions and may propose further reforms in the future.

7. For an example of problems created by the obsolete cross-references, see *Miranda v. 21st Century Ins. Co.*, 117 Cal. App. 4th 913, 921, 12 Cal. Rptr. 3d 159 (2004) (obsolete cross-references in Ins. Code § 11580.2(f)).

8. See 2004 Cal. Stat. ch. 182, § 64 [AB 3081, Assembly Committee on Judiciary].

9. Most of the proposed revisions are straightforward, replacing each outdated cross-reference with the modern equivalent. The proposed amendment of Business and Professions Code Section 25009 would simplify the statute by referring to the Civil Discovery Act generally, rather than to several specific discovery provisions. This nonsubstantive change would make it easier to keep the statute up-to-date in the future.

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

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

PROPOSED LEGISLATION

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

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

25009. Any defendant in any action brought under this chapter or any person who may be a witness therein under Sections ~~2016, 2018, and 2019~~ *Title 4 (commencing with Section 2016.010)* of the Code of Civil Procedure or Section 776 of the Evidence Code, and the books and records of ~~any such~~ *the* defendant or witness, may be brought into court and the books and records may be introduced by reference into evidence, but no information so obtained may be used against the defendant or ~~any such~~ *the* witness as a basis for a misdemeanor prosecution under this chapter.

Comment. Section 25009 is amended to reflect revision and relocation of the civil discovery provisions referenced in it (former Code Civ. Proc. §§ 2016, 2018, and 2019). Those provisions were repealed in 1986 and their substance relocated to Code of Civil Procedure Sections 2017, 2018, 2021, and 2025-2028, which were in turn repealed and recodified in 2004, as part of a nonsubstantive reorganization of the Civil Discovery Act. 1986 Cal. Stat. ch. 1334, §§ 1, 2; 2004 Cal. Stat. ch. 182, §§ 22, 23, 23.5, 61, 62; see *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003); see also 1961 Cal. Stat. ch. 192, § 1 (former Code Civ. Proc. § 2018); 1963 Cal. Stat. ch. 519, § 1 (former Code Civ. Proc. § 2019); 1965 Cal. Stat. ch. 299, § 125 (former Code Civ. Proc. § 2016); 1965 Cal. Stat. ch. 299, § 5 (earlier version of Section 25009). For purposes of simplification and to make it easier to keep the cross-references up-to-date in the future, Section 25009 is amended to refer to the Civil Discovery Act generally, rather than to a list of discovery provisions pertaining to depositions. This is not a substantive change.

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

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

1283. On application of a party to the arbitration the neutral arbitrator may order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or if such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be taken. The deposition shall be taken in the manner prescribed by law for the taking of depositions in civil actions. If the neutral arbitrator orders the taking of the deposition of a witness who resides outside the state, the party who applied for the taking of the deposition shall obtain a commission, *letters rogatory*, or a *letter of request* therefor from the superior court in accordance with ~~Sections 2024 to 2028, inclusive, of this code Chapter 10 (commencing with Section 2026.010) of Title 4 of Part 4.~~

Comment. Section 1283 is amended to reflect revision and relocation of the civil discovery provisions referenced in it. As enacted in 1970, the section referred to Sections 2024-2028. 1970 Cal. Stat. ch. 1045, § 1. That cross-reference is obsolete. See 1986 Cal. Stat. ch. 1334, § 1 (repealing former Sections 2024-2025); 1961 Cal. Stat. ch. 192, §§ 8-10 (repealing former Sections 2026-2028). The modern provisions governing an out-of-state deposition are Sections 2026.010 (oral deposition in another state or territory of the United States) and 2027.010 (oral deposition in a foreign nation).

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

Section 1283 is further amended to delete surplusage.

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

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

1991.2. ~~On and after the ninety-first day after adjournment of the 1959 Regular Session, the~~ *The* provisions of Section 1991 shall *do* not apply to any act or omission thereafter occurring in a deposition taken pursuant to ~~Article 3, Chapter~~

~~3, Title 3, Part 4 (commencing at Section 2016) but the Title 4 (commencing with Section 2016.010). The provisions of Section 2034 shall be Chapter 7 (commencing with Section 2023.010) of Title 4 are exclusively applicable.~~

Comment. Section 1991.2 is amended to delete obsolete language, correct the cross-references, and conform to modern drafting conventions. For the text of former Section 2034, see 1959 Cal. Stat. ch. 1590, § 12. Former Section 2034 was repealed in 1986 and its substance relocated to Section 2023, which was in turn repealed and recodified in 2004, as part of a nonsubstantive reorganization of the Civil Discovery Act. 1986 Cal. Stat. ch. 1334, §§ 1, 2; 2004 Cal. Stat. ch. 182, §§ 22, 23, 23.5, 61, 62; see *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003).

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

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

44944. (a) In a dismissal or suspension proceeding initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing. The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, the hearing date shall be established after consultation with the employee and the governing board, or their representatives, and the Commission on Professional Competence shall have all the power granted to an agency in that chapter, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court under ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.~~ Notwithstanding any provision to the contrary, and except for the taking of oral

depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to such *the* continuance. However, the extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

If the right of discovery granted under the preceding paragraph is denied by either the employee or the governing board, all the remedies in ~~Section 2034~~ *Chapter 7 (commencing with Section 2023.010) of Title 4 of Part 4* of the Code of Civil Procedure shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his or her motion, shall be the superior court of the county in which the hearing will be held.

The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 3~~ *Title 4 (commencing with Section 2016.010) of Part 4* of the Code of Civil Procedure shall not be applied so as to deny discovery in a hearing conducted pursuant to this section.

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

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred

more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

(b) The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason fails to select a commission member at least seven calendar days prior to the date of the hearing, the failure shall constitute a waiver of the right to selection, and the county board of education or its specific designee shall immediately make the selection. When the county board of education is also the governing board of the school district or has by statute been granted the powers of a governing board, the selection shall be made by the Superintendent of Public Instruction, who shall be reimbursed by the school district for all costs incident to the selection.

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

(c) The decision of the Commission on Professional Competence shall be made by a majority vote, and the

commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition which shall be, solely:

(1) That the employee should be dismissed.

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

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

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

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

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

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

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

(d) (1) If the member selected by the governing board or the member selected by the employee is employed by any school district in this state the member shall, during any service on a Commission on Professional Competence, continue to receive salary, fringe benefits, accumulated sick leave, and other leaves and benefits from the district in which the member is

employed, but shall receive no additional compensation or honorariums for service on the commission.

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

(e) If the Commission on Professional Competence determines that the employee should be dismissed or suspended, the governing board and the employee shall share equally the expenses of the hearing, including the cost of the administrative law judge. The state shall pay any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to, payments or obligations incurred for travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee. The Controller shall pay all claims submitted pursuant to this paragraph from the General Fund, and may prescribe reasonable rules, regulations, and forms for the submission of the claims. The employee and the governing board shall pay their own attorney fees.

If the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board shall pay the expenses of the hearing, including the cost of the administrative law judge, any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited

to, payments or obligations incurred for travel, meals, and lodging, the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee, and reasonable attorney fees incurred by the employee.

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

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

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

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

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

Comment. Subdivision (a) of Section 44944 is amended to reflect nonsubstantive reorganization of the Civil Discovery Act. 2004 Cal. Stat. ch. 182, §§ 22, 23, 23.5, 61, 62; see *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm’n Reports 789 (2003).

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

The first paragraph of subdivision (e) is amended to make a grammatical correction.

Gov't Code § 12963.3 (amended). Depositions

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

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

(b) A deposition may be taken before any officer of the department who has been authorized by the director to administer oaths and take testimony, or before any other person before whom a deposition may be taken in a civil action pursuant to ~~Section 2025~~ *Section 2025.320 or subdivision (d) of Section 2026.010* of the Code of Civil Procedure. The person before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the person's direction and in the person's presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed

unless the parties agree otherwise. All objections made at the time of the examination shall be noted on the deposition by the person before whom the deposition is taken, and evidence objected to shall be taken subject to the objections.

Comment. Subdivision (b) of Section 12963.3 is amended to reflect revision and relocation of the civil discovery provision referenced in it (Code Civ. Proc. § 2025, pertaining to a deposition in California) and the civil discovery provision previously referenced in it (former Code Civ. Proc. § 2018(a), pertaining to a deposition outside the state). See 1961 Cal. Stat. ch. 192, § 1 (former Code Civ. Proc. § 2018); see also 1980 Cal. Stat. ch. 1023, § 5 (earlier version of Section 12963.3). Former Code of Civil Procedure Section 2018(a) was repealed in 1986 and its substance relocated to Code of Civil Procedure Section 2026(c). 1986 Cal. Stat. ch. 1334, §§ 1, 2. Section 12963.3(b) was not revised at that time to reflect the repeal of former Code of Civil Procedure Section 2018(a) and the relocation of its substance. In 2004, however, it was revised to refer to the provision governing who is permitted to serve as a deposition officer for an oral deposition taken in California (Code Civ. Proc. § 2025). 2004 Cal. Stat. ch. ch. 647, § 6. The section is now amended to restore the reference to the provision specifying who is permitted to serve as a deposition officer for an oral deposition taken outside California, and to reflect the nonsubstantive reorganization of the civil discovery provisions operative July 1, 2005. See 2004 Cal. Stat. ch. 182, §§ 22, 23, 23.5, 61, 62; *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003).

Gov't Code § 68097.6 (amended). Subpoenas for depositions of certain employees

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

68097.6. Sections 68097.1, 68097.2, 68097.3, 68097.4, and 68097.5 of this code shall be applicable *apply* to subpoenas issued for the taking of depositions of employees of the Department of Justice who are peace officers or analysts in technical fields, peace officers of the Department of the California Highway Patrol, peace officer members of the State Fire Marshal's office, sheriffs, deputy sheriffs, marshals, deputy marshals, firefighters, or city police officers pursuant to ~~Section 2019~~ *Chapter 9 (commencing with*

Section 2025.010) of Title 4 of Part 4 of the Code of Civil Procedure.

Comment. Section 68097.6 is amended to reflect revision and relocation of the civil discovery provision referenced in it (former Code Civ. Proc. § 2019), which set forth guidelines for taking an oral deposition in the state. Former Code of Civil Procedure Section 2019 was repealed in 1986 and its substance relocated to Code of Civil Procedure Section 2025. 1986 Cal. Stat. ch. 1334, §§ 1, 2; see also 1963 Cal. Stat. ch. 519, § 1 (former Code Civ. Proc. § 2019); 1963 Cal. Stat. ch. 1485, § 10 (earlier version of Section 68097.6). Section 68097.6 was not revised at that time to reflect the repeal of former Code of Civil Procedure Section 2019 and the relocation of its substance. It is now amended to reflect that change, as well as a subsequent nonsubstantive reorganization of the provisions governing civil discovery. See 2004 Cal. Stat. ch. 182, §§ 22, 23, 23.5, 61, 62; *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003).

Section 68097.6 is also amended to delete unnecessary language.

Health & Safety Code § 1424.1 (amended). Quality assurance logs

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

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

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

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

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

(4) Promptly upon discovery, the facility implemented remedial action satisfactory to the state department to correct the violation and prevent a recurrence. If the state department determines that remedial action voluntarily undertaken by the facility is unsatisfactory, the state department shall allow the facility reasonable time to augment the remedial action before the condition shall be deemed to be a violation.

(b) Except as otherwise provided in this section, a quality assurance log which meets the criteria of this section shall not be discoverable or admissible in any action against the licensee. The quality assurance log shall be discoverable pursuant to a motion to produce under ~~Section 2031~~ *Chapter 14 (commencing with Section 2031.010) of Title 4 of Part 4* of the Code of Civil Procedure and admissible only for purposes of impeachment. However, the court, in a motion pursuant to ~~paragraph (1) of subdivision (b) of Section 2019~~ *Section 2025.420* of the Code of Civil Procedure, or at trial or other proceeding, may limit access to those entries which would be admissible for impeachment purposes.

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

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

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

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

The licensee may make the quality assurance log available, in the licensee's discretion, to any representative of the Office of the State Long-Term Care Ombudsman, as defined in ~~subdivision (e)~~ of Section 9701 of the Welfare and Institutions Code, without liability for the disclosure. Each

representative of the Office of the State Long-Term Care Ombudsman who has been provided access to a facility's quality assurance log pursuant to this section shall maintain all disclosures in confidence.

Comment. Subdivision (b) of Section 1424.1 is amended to reflect revision and relocation of the civil discovery provisions referenced in it. Former Code of Civil Procedure Section 2019(b)(1) pertained to a motion for a protective order with respect to a deposition. It was repealed in 1986 and its substance relocated to Code of Civil Procedure Section 2025(i). 1986 Cal. Stat. ch. 1334, §§ 1, 2; see also 1982 Cal. Stat. ch. 192, § 1 (former Code Civ. Proc. § 2019); 1985 Cal. Stat. ch. 11, § 10 (earlier version of Section 1424.1). Section 1424.1(b) was not revised at that time to reflect the repeal of former Code of Civil Procedure Section 2019(b)(1) and the relocation of its substance. It is now amended to reflect that change, as well as a subsequent nonsubstantive reorganization of the provisions governing civil discovery. See 2004 Cal. Stat. ch. 182, §§ 22, 23, 23.5, 61, 62; *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003).

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

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

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

11580.2. (a)(1) No policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle, except for policies that provide insurance in the Republic of Mexico issued or delivered in this state by nonadmitted Mexican insurers, shall be issued or delivered in this state to the owner or operator of a motor vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle then principally used or principally garaged in this state, unless the policy contains, or has added to it by endorsement, a provision with coverage limits at least equal to the limits specified in subdivision (m) and in no case less than the financial responsibility requirements specified in Section 16056 of the

Vehicle Code insuring the insured, the insured's heirs or legal representative for all sums within the limits that he, she, or they, as the case may be, shall be legally entitled to recover as damages for bodily injury or wrongful death from the owner or operator of an uninsured motor vehicle. The insurer and any named insured, prior to or subsequent to the issuance or renewal of a policy, may, by agreement in writing, in the form specified in paragraph (2) or paragraph (3), (1) delete the provision covering damage caused by an uninsured motor vehicle completely, or (2) delete the coverage when a motor vehicle is operated by a natural person or persons designated by name, or (3) agree to provide the coverage in an amount less than that required by subdivision (m) but not less than the financial responsibility requirements specified in Section 16056 of the Vehicle Code. Any of these agreements by any named insured or agreement for the amount of coverage shall be binding upon every insured to whom the policy or endorsement provisions apply while the policy is in force, and shall continue to be so binding with respect to any continuation or renewal of the policy or with respect to any other policy that extends, changes, supersedes, or replaces the policy issued to the named insured by the same insurer, or with respect to reinstatement of the policy within 30 days of any lapse thereof. A policy shall be excluded from the application of this section if the automobile liability coverage is provided only on an excess or umbrella basis. Nothing in this section shall require that uninsured motorist coverage be offered or provided in any homeowner policy, personal and residents' liability policy, comprehensive personal liability policy, manufacturers' and contractors' policy, premises liability policy, special multiperil policy, or any other policy or endorsement where automobile liability coverage is offered as incidental to some other basic coverage, notwithstanding that the policy may provide automobile or motor vehicle

liability coverage on insured premises or the ways immediately adjoining.

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

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

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

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

“The California Insurance Code requires an insurer to provide uninsured motorists coverage in each bodily injury liability insurance policy it issues covering liability arising

out of the ownership, maintenance, or use of a motor vehicle. Those provisions also permit the insurer and the applicant to agree to provide the coverage in an amount less than that required by subdivision (m) of Section 11580.2 of the Insurance Code but not less than the financial responsibility requirements. Uninsured motorists coverage insures the insured, his or her heirs, or legal representatives for all sums within the limits established by law, that the person or persons are legally entitled to recover as damages for bodily injury, including any resulting sickness, disease, or death, to the insured from the owner or operator of an uninsured motor vehicle not owned or operated by the insured or a resident of the same household. An uninsured motor vehicle includes an underinsured motor vehicle as defined in subdivision (p) of Section 11580.2 of the Insurance Code.”

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

(b) As used in subdivision (a), “bodily injury” includes sickness or disease, including death, resulting therefrom; “named insured” means only the individual or organization named in the declarations of the policy of motor vehicle bodily injury liability insurance referred to in subdivision (a); as used in subdivision (a) if the named insured is an individual “insured” means the named insured and the spouse of the named insured and, while residents of the same household, relatives of either while occupants of a motor vehicle or otherwise, heirs and any other person while in or

upon or entering into or alighting from an insured motor vehicle and any person with respect to damages he or she is entitled to recover for care or loss of services because of bodily injury to which the policy provisions or endorsement apply; as used in subdivision (a), if the named insured is an entity other than an individual, “insured” means any person while in or upon or entering into or alighting from an insured motor vehicle and any person with respect to damages he or she is entitled to recover for care or loss of services because of bodily injury to which the policy provisions or endorsement apply. As used in this subdivision, “individual” shall not include persons doing business as corporations, partnerships, or associations. As used in this subdivision, “insured motor vehicle” means the motor vehicle described in the underlying insurance policy of which the uninsured motorist endorsement or coverage is a part, a temporary substitute automobile for which liability coverage is provided in the policy or a newly acquired automobile for which liability coverage is provided in the policy if the motor vehicle is used by the named insured or with his or her permission or consent, express or implied, and any other automobile not owned by or furnished for the regular use of the named insured or any resident of the same household, or by a natural person or persons for whom coverage has been deleted in accordance with subdivision (a) while being operated by the named insured or his or her spouse if a resident of the same household, but “insured motor vehicle” shall not include any automobile while used as a public or livery conveyance. As used in this section, “uninsured motor vehicle” means a motor vehicle with respect to the ownership, maintenance or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident, or there is the applicable insurance or bond but the company writing the insurance or bond denies coverage thereunder or

refuses to admit coverage thereunder except conditionally or with reservation, or an “underinsured motor vehicle” as defined in subdivision (p), or a motor vehicle used without the permission of the owner thereof if there is no bodily injury liability insurance or bond applicable at the time of the accident with respect to the owner or operator thereof, or the owner or operator thereof be unknown, provided that, with respect to an “uninsured motor vehicle” whose owner or operator is unknown:

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

(2) The insured or someone on his or her behalf has reported the accident within 24 hours to the police department of the city where the accident occurred or, if the accident occurred in unincorporated territory then either to the sheriff of the county where the accident occurred or to the local headquarters of the California Highway Patrol, and has filed with the insurer within 30 days thereafter a statement under oath that the insured or his or her legal representative has or the insured’s heirs have a cause of action arising out of the accident for damages against a person or persons whose identity is unascertainable and set forth facts in support thereof. As used in this section, “uninsured motor vehicle” shall not include a motor vehicle owned or operated by the named insured or any resident of the same household or self-insured within the meaning of the Financial Responsibility Law of the state in which the motor vehicle is registered or that is owned by the United States of America, Canada, a state or political subdivision of any ~~such government~~ *of those governments* or an agency of any of the foregoing, or a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle, or any equipment or vehicle

designed or modified for use primarily off public roads, except while actually upon public roads.

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

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

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

(1) To property damage sustained by the insured.

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

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

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

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

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

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

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

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

(e) The policy or endorsement added thereto may provide that if the insured has valid and collectible automobile medical payment insurance available to him or her, the

damages that the insured shall be entitled to recover from the owner or operator of an uninsured motor vehicle shall be reduced for purposes of uninsured motorist coverage by the amounts paid or due to be paid under the automobile medical payment insurance.

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

issuance of a subpoena by an attorney of a party to the arbitration under Section 1985 of the Code of Civil Procedure. ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 3~~ *Title 4 (commencing with Section 2016.010)* of Part 4 of the Code of Civil Procedure shall be applicable to these determinations, and all rights, remedies, obligations, liabilities and procedures set forth in ~~Article 3~~ *Title 4* shall be available to both the insured and the insurer at any time after the accident, both before and after the commencement of arbitration, if any, with the following limitations:

(1) Whenever in ~~Article 3~~ *Title 4*, reference is made to the court in which the action is pending, or provision is made for application to the court or obtaining leave of court or approval by the court, the court that shall have jurisdiction for the purposes of this section shall be the superior court of the State of California, in and for any county that is a proper county for the filing of a suit for bodily injury arising out of the accident, against the uninsured motorist, or any county specified in the policy or an endorsement added thereto as a proper county for arbitration or action thereon.

(2) Any proper court to which application is first made by either the insured or the insurer under ~~Article 3~~ *Title 4* for any discovery or other relief or remedy, shall thereafter be the only court to which either of the parties shall make any applications under ~~Article 3~~ *Title 4* with respect to the same accident, subject, however, to the right of the court to grant a change of venue after a hearing upon notice, upon any of the grounds upon which change of venue might be granted in an action filed in the superior court.

(3) A deposition pursuant to ~~Section 2016~~ *Chapter 9 (commencing with Section 2025.010) of Title 4 of Part 4* of the Code of Civil Procedure may be taken without leave of court, except that leave of court, granted with or without

notice and for good cause shown, must be obtained if the notice of the taking of the deposition is served by either party within 20 days after the accident.

(4) ~~Paragraph (4) of subdivision (a) of Section 2019~~ *Subdivision (a) of Section 2025.280* of the Code of Civil Procedure is not applicable to discovery under this section.

(5) For the purposes of discovery under this section, the insured and the insurer shall each be deemed to be “a party to the record of any civil action or proceedings *action*,” where that phrase is used in ~~paragraph (2) of subdivision (b) of Section 2019~~ *Section 2025.260* of the Code of Civil Procedure.

(6) Interrogatories under ~~Section 2030~~ *Chapter 13 (commencing with Section 2030.010)* of Title 4 of Part 4 of the Code of Civil Procedure and requests for admission under ~~Section 2033~~ *Chapter 16 (commencing with Section 2033.010)* of Title 4 of Part 4 of the Code of Civil Procedure may be served by either the insured or the insurer upon the other at any time more than 20 days after the accident without leave of court.

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

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

(h) An insured entitled to recovery under the uninsured motorist endorsement or coverage shall be reimbursed within the conditions stated herein without being required to sign any release or waiver of rights to which he or she may be entitled under any other insurance coverage applicable; nor

shall payment under this section to the insured be delayed or made contingent upon the decisions as to liability or distribution of loss costs under other bodily injury liability insurance or any bond applicable to the accident. Any loss payable under the terms of the uninsured motorist endorsement or coverage to or for any person may be reduced:

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

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

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

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

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

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

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

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

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

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

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

(j) Notwithstanding subdivisions (b) and (i), in the event the accident occurs in any other state or foreign jurisdiction to which coverage is extended under the policy and the insurer of the tortfeasor becomes insolvent, any action authorized pursuant to this section may be maintained within three months of the insolvency of the tortfeasor's insurer, but in no event later than the pertinent period of limitation of the jurisdiction in which the accident occurred.

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

(l) As used in subdivision (b), "public or livery conveyance," or terms of similar import, shall not include the operation or use of a motor vehicle by the named insured in

the performance of volunteer services for a nonprofit charitable organization or governmental agency by providing social service transportation as defined in subdivision (f) of Section 11580.1. This subdivision shall apply only to policies of insurance issued, amended, or renewed on or after January 1, 1976.

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

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

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

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

(o) If an insured has failed to provide an insurer with wage loss information or medical treatment record releases within 15 days of the insurer's request or has failed to submit to a medical examination arranged by the insurer within 20 days of the insurer's request, the insurer may, at any time prior to 30 days before the actual arbitration proceedings commence, request, and the insured shall furnish, wage loss information

or medical treatment record releases, and the insurer may require the insured, except during periods of hospitalization, to make himself or herself available for a medical examination. The wage loss information or medical treatment record releases shall be submitted by the insured within 10 days of request and the medical examination shall be arranged by the insurer no sooner than 10 days after request, unless the insured agrees to an earlier examination date, and not later than 20 days after the request. If the insured fails to comply with the requirements of this subdivision, the actual arbitration proceedings shall be stayed for at least 30 days following compliance by the insured. The proceedings shall be scheduled as soon as practicable following expiration of the 30-day period.

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

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

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

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

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

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

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

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

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

Comment. Subdivision (c)(5) of Section 11580.2 is amended to correct the cross-reference to Vehicle Code Section 16054. See 1974 Cal.

Stat. ch. 1409, § 8 (former Veh. Code § 16054(a)-(c)); 1990 Cal. Stat. ch. 314, § 5 (reorganizes Veh. Code § 16054 and adds paragraph on proof of financial responsibility by owner or driver involved in accident while operating vehicle of less than four wheels). As amended, subdivision (c)(5) encompasses proof of financial responsibility by the means formerly set forth in Vehicle Code Section 16054(a)-(c), which are now codified as Vehicle Code Section 16054(a)(1)-(3). Subdivision (c)(5) also encompasses proof of financial responsibility by an owner or driver who is involved in an accident while operating a vehicle of less than four wheels, as provided in Vehicle Code Section 16054(a)(4).

Subdivision (f)(1)-(2) & (6) and the introductory paragraph of subdivision (f) are amended to reflect nonsubstantive reorganization of the Civil Discovery Act. 2004 Cal. Stat. ch. 182, §§ 22, 23, 23.5, 61, 62; see *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003).

Subdivision (f)(3) is amended to reflect revision and relocation of the civil discovery provision referenced in it (former Code Civ. Proc. § 2016), which pertained to deposition procedure. See 1961 Cal. Stat. ch. 2067, § 1 (former Code Civ. Proc. § 2016); see also 1963 Cal. Stat. ch. 1750, § 1 (earlier version of Ins. Code § 11580.2 — see subdivision (e)(3)). Former Code of Civil Procedure Section 2016 was repealed in 1986 and its substance relocated, with revisions, to Code of Civil Procedure Section 2025, which in turn was repealed and recodified as part of the nonsubstantive reorganization of the Civil Discovery Act in 2004. See 1986 Cal. Stat. ch. 1334, §§ 1, 2.

Subdivision (f)(4) is amended to reflect revision and relocation of the civil discovery provision referenced in it (former Code Civ. Proc. § 2019(a)(4)), which pertained to attendance of specified persons at a deposition without service of a subpoena. See 1963 Cal. Stat. ch. 519, § 1 (former Code Civ. Proc. § 2019(a)(4)); see also 1963 Cal. Stat. ch. 1750, § 1 (earlier version of Ins. Code § 11580.2 — see subdivision (e)(4)). Former Code of Civil Procedure Section 2019 was repealed in 1986 and its substance relocated, with revisions, to Code of Civil Procedure Section 2025(h)(1), which in turn was repealed and recodified as part of the nonsubstantive reorganization of the Civil Discovery Act in 2004. See 1986 Cal. Stat. ch. 1334, §§ 1, 2.

Subdivision (f)(5) is amended to reflect revision and relocation of the civil discovery provision referenced in it (former Code Civ. Proc. § 2019(b)(2)), which pertained to the location of a deposition of “a party to the record of any civil action or proceedings.” See 1961 Cal. Stat. ch. 192, § 2 (former Code Civ. Proc. § 2019(b)(2)); see also 1963 Cal. Stat. ch. 1750, § 1 (earlier version of Ins. Code § 11580.2 — see subdivision (e)(5)). Former Code of Civil Procedure Section 2019(b)(2) was repealed

in 1986 and its substance relocated, with revisions, to Code of Civil Procedure Section 2025(e)(3), which in turn was repealed and recodified as part of the nonsubstantive reorganization of the Civil Discovery Act in 2004. See 1986 Cal. Stat. ch. 1334, §§ 1, 2.

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