

TEXT OF COMMENTS TO SECTIONS AFFECTED BY
2005 COMMISSION RECOMMENDATIONS

CLRC Staff Note. This document sets out the text of Official Comments to three Commission-sponsored bills enacted in the 2005 legislative session — 2005 Cal. Stat. chs. 37, 116, and 294. The source for each Comment is given in the accompanying Table of Sections Affected by 2005 Commission Legislation.

Some sections in Commission recommendations were not included in the final version of enacted bills. Comments to those sections are not included below.

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BUSINESS AND PROFESSIONS CODE

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

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 Those provisions were repealed in 1986 and their substance relocated to Code of Civil Procedure Sections 2017, 2018, 2021, and 2025-2028, which were in turn repealed and recodified in 2004, as part of a nonsubstantive reorganization of the Civil Discovery Act. 1986 Cal.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.

CIVIL CODE

Civ. Code § 945 (amended). Application of requirements relating to action for construction defect

Comment. Section 945 is amended to correct the cross-reference to former Code of Civil Procedure Section 383. This is a nonsubstantive change. The substance of former Code of Civil Procedure Section 383 is continued in Sections 1368.3 and 1368.4. See 2004 Cal. Stat. ch. 754, §§ 4, 7; *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003).

Civ. Code § 1363 (amended). Community association management

Comment. Subdivision (c) of Section 1363 is amended to delete the cross-reference to former Code of Civil Procedure Section 383. This is a nonsubstantive change. Because the substance of former Section 383 is continued in this title, a separate reference to the powers conferred by former Section 383 is unnecessary. See Sections 1368.3, 1368.4; 2004 Cal. Stat. ch. 754, §§ 4, 7; *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003).

Civ. Code § 1374 (amended). Application of Davis-Stirling Common Interest Development Act

Comment. Section 1374 is amended to delete the cross-reference to former Code of Civil Procedure Section 383. This is a nonsubstantive change. The substance of former Section 383 is continued in this title and therefore does not apply to a development that lacks a common area. Specific language making clear that former Section 383 does not confer standing on an association created for the purpose of managing such a development is no longer required. See Sections 1368.3, 1368.4; 2004 Cal. Stat. ch. 754, §§ 4, 7; *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003).

Civ. Code § 1378 (amended). Architectural review and decisionmaking

Comment. Subdivision (a)(3) of Section 1378 is amended to make clear that a decision on a proposed change must be consistent with building codes and other laws relating to land use and public safety. A restriction that requires violation of such a law is against public policy and is unenforceable. See *Nahrstedt v. Lakeside Village Condominium Ass'n*, 8 Cal. 4th 361, 382, 878 P.2d 1275, 33 Cal. Rptr. 2d 63 (1994). An association restriction may impose requirements beyond what is required by the law, so long as those additional requirements do not conflict with the law. For example, an association restriction requiring that a fence be five feet in height would be consistent with a municipal ordinance providing that a fence may not exceed six feet in height. An association restriction requiring that the fence be seven feet in height would conflict with the ordinance and would be unenforceable. The term “law” is intended to be construed broadly and includes a constitutional provision, statute, regulation, local ordinance, and court decision.

Subdivision (a)(3) is consistent with other laws that subordinate a property use restriction to important public policies. See, e.g., Sections 53 (discriminatory covenant unenforceable), 712 (restraint on display of sign advertising real property is void), 714 (prohibition of solar energy system is void), 782 (racially restrictive deed restriction is void), 1353.6 (prohibition on display of certain noncommercial signs is unenforceable), 1376 (prohibition on installation of television antenna or satellite dish is void); Health & Safety Code §§ 1597.40 (restriction on use of home for family day care is void), 13132.7(l) (rules governing roofing material in very high fire hazard severity zone supersede conflicting provision of common interest development's governing documents).

CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 94 (amended). Discovery in economic litigation case

Comment. Subdivision (b) of Section 94 is amended to make clear the proper treatment of a deposition of an organization. Subdivision (b) is also amended to make a stylistic revision.

Code Civ. Proc. § 1005 (amended). Written notice of motion

Comment. Subdivision (a) of Section 1005 is amended to reflect nonsubstantive reorganization of the rules governing civil discovery. See 2004 Cal. Stat. ch. 182.

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

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. § 1985.6 (amended). Employment records

Comment. Subdivisions (a) and (d) of Section 1985.6 are amended to reflect nonsubstantive reorganization of the rules governing civil discovery. See 2004 Cal. Stat. ch. 182. Subdivision (b) is amended to correct a cross-reference. Subdivision (f) is amended to make a grammatical correction.

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

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).

Code Civ. Proc. § 2025.250 (amended). Place of deposition

Comment. Section 2025.250 is amended to make clear that the rule regarding where to depose an organization that has not designated a principal executive or business office in California applies regardless of whether the organization is a party or a nonparty. This is not a substantive change.

Code Civ. Proc. § 2025.330 (amended). Conduct of deposition

Comment. Subdivision (c) of Section 2025.330 is amended to make clear that the right of a non-deposing party to make an audio or video record of deposition testimony is not dependent on the method of recording used by the party noticing the deposition.

Heading of Chapter 12 (commencing with Section 2029.010) of Title 4 of Part 4 of the Code of Civil Procedure (amended). Deposition in action pending outside California

Comment. The heading of Chapter 12 is amended to make a grammatical correction.

Code Civ. Proc. § 2032.510 (amended). Observation of examination by attorney or representative

Comment. Subdivision (a) of Section 2032.510 is amended to reflect advances in technology and for consistency of terminology throughout the Civil Discovery Act. See 2002 Cal. Stat. ch. 1068 (replacing numerous references to “audiotape” in the Civil Discovery Act with either “audio technology,” “audio recording,” or “audio record,” as the context required).

Code Civ. Proc. § 2032.530 (amended). Recording of mental examination

Comment. Subdivision (a) of Section 2032.530 is amended to reflect advances in technology and for consistency of terminology throughout the Civil Discovery Act. See 2002 Cal. Stat. ch. 1068 (replacing numerous references to “audiotape” in the Civil Discovery Act with either “audio technology,” “audio recording,” or “audio record,” as the context required).

Code Civ. Proc. § 2033.280 (amended). Failure to serve timely response

Comment. Subdivision (c) of Section 2033.280 is amended to correct a cross-reference.

Code Civ. Proc. § 2035.010 (amended). Perpetuation of testimony or preservation of evidence before filing action

Comment. Section 2035.010 is amended to permit a person to take presuit discovery on behalf of a successor in interest (i.e., in anticipation of a suit by the person's successor in interest), so long as the statutory requirements for such discovery are satisfied. For similar provisions, see Ohio R. Civ. Proc. 27; Okla. Stat. Ann., tit. 12, § 3227; Or. R. Civ. Proc. 37; 1959 Unif. Perpetuation of Testimony Act, § 1(a) & Comment.

In connection with this reform, several new safeguards have been added to ensure that presuit discovery is conducted only when it is warranted. Under Section 2035.030(b)(2), when a petitioner seeks presuit discovery on behalf of a successor in interest, presuit discovery is permissible only if both the petitioner and the petitioner's successor in interest are unable to bring suit. This requirement is drawn from Section 1(a) of the 1959 Uniform Perpetuation of Testimony Act. Under Section 2035.030(b)(3), a petition for presuit discovery must include a copy of any written instrument connected with the subject matter of the discovery. This requirement is drawn from Section 1(b) of the 1959 Uniform Perpetuation of Testimony Act. Under Section 2035.050(a), when a petitioner seeks presuit discovery on behalf of a successor in interest, the court must consider, in addition to other appropriate factors, whether the requested discovery could be conducted by the successor in interest, instead of by the petitioner. This factor is significant but not necessarily determinative.

Code Civ. Proc. § 2035.030 (amended). Petition

Comment. Subdivision (b)(1) of Section 2035.030 is amended to reflect the rule that a person may take presuit discovery on behalf of a successor in interest (i.e., in anticipation of a suit by the person's successor in interest), so long as the statutory requirements for such discovery are satisfied. See Section 2035.010 (perpetuation of testimony or preservation of evidence before filing action).

Subdivision (b)(2) is amended to ensure that if a person seeks presuit discovery on behalf of a successor in interest, a court may authorize such discovery only if both the petitioner and the petitioner's successor in interest are unable to bring suit. This requirement is drawn from Section 1(a) of the 1959 Uniform Perpetuation of Testimony Act.

Subdivision (b)(3) is amended to add the requirement that a petition for presuit discovery include a copy of any written instrument connected with the subject matter of the discovery. This requirement is drawn from Section 1(b) of the 1959 Uniform Perpetuation of Testimony Act.

For an additional safeguard relating to presuit discovery on behalf of a successor in interest, see Section 2035.050(a) (in deciding whether to permit petitioner to take presuit discovery on behalf of successor in interest, court must consider whether requested discovery could instead be conducted by successor in interest).

Code Civ. Proc. § 2035.050 (amended). Court order

Comment. Subdivision (a) of Section 2035.050 is amended to make clear that when a petitioner seeks presuit discovery on behalf of a successor in interest (i.e., in the expectation that a successor in interest will be a party to an action), the court must consider, in addition to other appropriate factors, whether the requested discovery could be conducted by the successor in interest, instead of by the petitioner. This factor is significant but not necessarily determinative.

For the provision authorizing presuit discovery on behalf of a successor in interest, see Section 2035.010 (perpetuation of testimony or preservation of evidence before filing action). For other safeguards applicable to such discovery, see Section 2035.030 (petition) & Comment.

Code Civ. Proc. § 2035.060 (amended). Use of presuit deposition to perpetuate testimony

Comment. Section 2035.060 is amended to make clear that a deposition to perpetuate testimony may be used in California only if it was taken under this section or under a comparable provision of the federal courts or of the jurisdiction in which it was taken.

CORPORATIONS CODE

Corp. Code § 18003 (added). Board

Comment. Section 18003 is new. See also Sections 18005 (“director” defined), 18035 (“unincorporated association” defined).

Corp. Code § 18005 (amended). Director

Comment. Section 18005 is amended to make clear that "director" includes a person who serves on a governing body regardless of whether that body is a representative body. For example, a director may be appointed to serve on the governing body rather than elected by the membership of the unincorporated association. See also Section 18035 (“unincorporated association” defined).

Corp. Code § 18008 (added). Governing documents

Comment. Section 18008 is new. See also Sections 18015 (“member” defined), 18035 (“unincorporated association” defined).

Corp. Code § 18010 (amended). Governing principles

Comment. Section 18010 is amended to reflect the definition of “governing documents” provided in Section 18008. See also Sections 8 (“writing” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined).

Corp. Code § 18310 (added). Termination of membership

Comment. Section 18310 is new. Subdivision (b) makes clear that termination of membership does not relieve a former member from an obligation incurred before termination of membership. Such an obligation might include an obligation for a charge, assessment, fee, or dues, or an obligation for a service or benefit rendered before termination. See also Sections 18015 (“member” defined), 18035 (“unincorporated association” defined).

Corp. Code § 18320 (added). Expulsion or suspension of membership

Comment. Section 18320 is new. It requires good faith and use of a fair procedure before terminating or suspending membership in an unincorporated association, where membership involves a property right or where expulsion or suspension of a member would affect “an important, substantial economic interest,” for example, the right to carry on one’s trade or profession. See generally *Potvin v. Metropolitan Life Ins. Co.*, 22 Cal. 4th 1060, 997 P.2d 1153, 95 Cal. Rptr. 2d 496 (2000) (expulsion of doctor from list of insurance company’s preferred providers could impair ability of competent physician to practice medicine and affected “important, substantial economic interest”). See also *Swital v. Real Estate Comm’r*, 116 Cal. App. 2d 677, 254 P.2d 587 (1953) (member may not be expelled from local realty board without fair procedure).

Section 18060 provides that a statutory rule specific to a particular type of unincorporated association prevails over an inconsistent provision of this title. Thus, Section 18320 is superseded to the extent that another statute provides a rule for termination or suspension of membership in a particular type of unincorporated association. For example, subscribers in an unincorporated reciprocal insurer could perhaps be characterized as members of an unincorporated association. Nonetheless, cancellation of a subscriber’s insurance policy by the reciprocal insurer would be governed by the Insurance Code provisions on cancellation of policies and not by this section. See, e.g., Ins. Code § 660-669.5 (cancellation of automobile insurance policy).

Nothing in this section affects the common law right of fair procedure as it applies to a decision to exclude a person from membership in a private association. See *Pinsker v. Pacific*

Coast Soc’y of Orthodontists, 12 Cal. 3d 541, 550, 116 Cal. Rptr. 245, 526 P.2d 253 (1974) (“Taken together, these decisions establish the common law principle that whenever a private association is legally required to refrain from arbitrary action, the association’s action must be both substantively rational and procedurally fair.”); *Pinsker v. Pacific Coast Soc’y of Orthodontists*, 1 Cal. 3d 160, 81 Cal. Rptr. 623, 460 P.2d 495 (1969).

To avoid state interference with the free exercise of religion, this section does not apply to an unincorporated association with a religious purpose. *Cf.* Section 7341 (expulsion, suspension, or termination of membership in nonprofit mutual benefit corporation). See also Sections 18003 (“board” defined), 18008 (“governing documents” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined).

Corp. Code § 18330 (added). Member voting

Comment. Section 18330 is new. Subdivision (a) provides a default rule for the number of votes required for approval of a matter. A statute providing a different standard controls over subdivision (a). See, e.g., Sections 18370(c) (unanimous approval required for merger if members of association would become liable for obligations of other constituent entity), 18410(b) (majority of total voting power of association required for dissolution of association).

See also Sections 18010 (“governing principles” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined).

Corp. Code § 18340 (added). Amendment of governing documents

Comment. Section 18340 is new. See also Sections 18008 (“governing documents” defined), 18010 (“governing principles” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined), 18330 (member voting procedure).

An amendment of the governing documents of an unincorporated association may not impair an existing contract right without the consent of the person whose right would be affected. See *Hogan v. Pacific Endowment League*, 99 Cal. 248, 250, 33 P. 924 (1893). However, if the governing documents reserve the power to make future changes to member benefits, an association may amend its governing documents in a way that impairs those benefits so long as the change is substantively reasonable. An association cannot use its power of amendment to repudiate its fair and just obligations. See *Power v. Sheriff’s Relief Ass’n of Los Angeles County*, 57 Cal. App. 2d 350, 134 P.2d 827 (1943).

Corp. Code § 18350 (added). Definitions

Comment. Subdivision (a) of Section 18350 is drawn from Section 5044. Subdivision (b) is drawn from Section 5048. Subdivision (c) is drawn from Section 5074. See also Section 18035 (“unincorporated association” defined).

Corp. Code § 18360 (added). Merger authority

Comment. Section 18360 is new. An “unincorporated association” includes a nonprofit association. See Sections 18020 (“nonprofit association” defined), 18035 (“unincorporated association” defined).

Corp. Code § 18370 (added). Merger procedure

Comment. Section 18370 is new. *Cf.* Sections 8011-8019 (merger of nonprofit mutual benefit corporation). See also Sections 18003 (“board” defined), 18005 (“director” defined), 18008 (“governing documents” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined).

Corp. Code § 18380 (added). Effect of merger

Comment. Subdivisions (a)-(c) of Section 18380 are drawn from Section 8020. Subdivision (d) is new. See also Sections 18005 (“director” defined), 18015 (“member” defined), 18025 (“officer” defined), 18035 (“unincorporated association” defined).

Corp. Code § 18390 (added). Record ownership of real property

Comment. Section 18390 is drawn from Section 8021.

Corp. Code § 18400 (added). Future transfers

Comment. Section 18400 is drawn from Section 8022. The second sentence is added to make clear that property that would be impressed with a trust if transferred to a disappearing entity does not avoid that trust as a result of transfer to a surviving entity under this section. See *Lynch v. Spilman*, 67 Cal. 2d 251, 260, 431 P.2d 636, 62 Cal. Rptr. 12 (1967) (“[P]roperty transferred to a corporation or other institution organized for a charitable purpose without a declaration of the use to which the property is to be put, is received and held by it ‘in trust to carry out the objects for which the organization was created.’”) (citations omitted).

Corp. Code § 18410 (added). Dissolution

Comment. Section 18410 is new. Subdivision (a) is consistent with case law. See *Holt v. Santa Clara County Sheriff’s Benefit Ass’n*, 250 Cal. App. 2d 925, 930, 59 Cal. Rptr. 180 (1967). An unincorporated association that is subordinate to another organization may be subject to dissolution by order of the superior organization. *Id.* See also Sections 18003 (“board” defined), 18005 (“director” defined), 18008 (“governing documents” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined), 18330 (member voting procedure).

Corp. Code § 18420 (added). Procedure on dissolution

Comment. Section 18420 is new. See also Sections 18003 (“board” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined).

Corp. Code § 18620 (added). Tort liability

Comment. Section 18620 provides a nonexclusive list of grounds for the tort liability of a member, director, officer, or agent of a nonprofit association. See also Section 18605 (no liability based solely on status as member, director, or agent of nonprofit association).

A member, director, officer, or agent of a nonprofit association may be liable for a tort of the association if that person expressly assumes liability or that person’s own tortious conduct causes the injury. The term “tortious conduct” is intended to be construed broadly and includes such conduct as negligent entrustment of a vehicle. See, e.g., *Steuer v. Phelps*, 41 Cal. App. 3d 468, 116 Cal. Rptr. 61 (1974). Tortious conduct also includes directing or authorizing an agent to engage in tortious conduct. See Cal. Jur. *Agency* § 136 (3d ed. 2004) (liability based on personal responsibility). See also *Orser v. George*, 252 Cal. App. 2d 660, 670-71, 60 Cal. Rptr. 708 (1967) (nonprofit association member may be liable for “personal participation in an unlawful activity or setting it in motion”).

Subdivision (b) makes clear that the grounds for liability provided in subdivision (a) are not exclusive. Other grounds for liability may exist. For example, the members of an unincorporated homeowners association who own property as tenants in common may be liable in tort for an injury that results from negligent maintenance of that property, even if the members’ own conduct was not responsible for the injury. Such liability derives from the law governing tenancy in common. See *Ruoff v. Harbor Creek Community Ass’n*, 10 Cal. App. 4th 1624, 13 Cal. Rptr. 2d 755 (1992); but see Civ. Code § 1365.9 (tort action arising from common ownership must be brought against association, and not against individual members, if liability insurance is maintained in specified amount).

Other provisions of law may expressly limit the liability of a member, director, officer, or agent of a nonprofit association. See, e.g., Civ. Code § 1365.7 (limitation of liability of officer or director of homeowners association); Corp. Code § 24001.5 (limitation of liability of officer or director of nonprofit medical association). Nothing in this section affects the application of such law. See Section 18060 (“If a statute specific to a particular type of unincorporated association is inconsistent with a general provision of this title, the specific statute prevails to the extent of the inconsistency.”).

See also Sections 18005 (“director” defined), 18015 (“member” defined), 18020 (“nonprofit association” defined), 18025 (“officer” defined).

EDUCATION CODE

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

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.

EVIDENCE CODE

Evid. Code § 1560 (amended). Compliance with subpoena duces tecum for business records

Comment. Section 1560 is amended to reflect nonsubstantive reorganization of the rules governing civil discovery. See 2004 Cal. Stat. ch. 182.

Section 1560 is also amended to delete language authorizing the judge to substitute for the clerk if there is no clerk. Every superior court has a clerk. See Gov’t Code §§ 69840 (court clerk’s powers, duties, and responsibilities), 71620 (court executive or administrative officer has authority of a court clerk). See also Code Civ. Proc. § 167 (judge may perform any act court clerk may perform).

GOVERNMENT CODE

Gov’t Code § 12963.3 (amended). Depositions

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. 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 § 12972 (amended). Deposition and other procedures

Comment. Subdivision (b) of Section 12972 is amended to correct a cross-reference. Subdivision (c) is amended to reflect nonsubstantive reorganization of the rules governing civil discovery. See 2004 Cal. Stat. ch. 182.

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

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 AND SAFETY CODE

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

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.

INSURANCE CODE

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

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).

PENAL CODE

Penal Code § 1524 (amended). Issuance of search warrant

Comment. The introductory paragraph of subdivision (c) of Section 1524 is amended to conform to the terminology used in Evidence Code Section 1030. Paragraph (2) of subdivision (c) is amended to correct a cross-reference. Subdivision (h) is amended to reflect nonsubstantive reorganization of the rules governing civil discovery. See 2004 Cal. Stat. ch. 182.
