

Memorandum 2009-1

2009 Legislative Program: Status of Bills

This memorandum outlines the status of the Commission's 2009 legislative program. It also provides information on the correction of an error in a Commission-recommended bill enacted in 2008 (AB 2193 (Tran)). The staff will update this report orally at the meeting.

SB 105 (HARMAN): DONATIVE TRANSFER RESTRICTIONS

Senate Bill 105 has been introduced by Senator Tom Harman to effectuate the Commission's recommendation on *Donative Transfer Restrictions*, 38 Cal. L. Revision Comm'n Reports ___ (2008).

SB 105 also includes language to correct cross-references to the former no contest clause statute, which was repealed by SB 1264 (Harman) in 2008. Those corrections are described in CLRC Memorandum 2009-2.

**AB 176 (SILVA): TECHNICAL AND MINOR SUBSTANTIVE STATUTORY CORRECTIONS:
REFERENCES TO RECORDING TECHNOLOGY**

In 2008, AB 2299 was introduced by Assembly Member Jim Silva to effectuate the Commission's recommendation on *Technical and Minor Substantive Statutory Corrections: References to Recording Technology*, 37 Cal. L. Revision Comm'n Reports 211 (2007). The bill was approved by the Legislature, without a single no vote, but was vetoed by the Governor. The veto message indicated that the veto related to the historic delay in passing the 2008-09 state budget.

Assembly Member Silva has decided to reintroduce the bill in 2009. It has been introduced as AB 176.

In preparing the language for the new bill, the staff reviewed 2008 legislation to see whether the proposed law would need to be adjusted to reflect any legislative changes made in 2008.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The staff found one section that should be dropped from the bill because the section had been amended in 2008 to remove the language that the proposed law would have revised (Penal Code § 3043).

The staff also reviewed a small number of sections that are related to Section 3043 and discovered one that should perhaps also be omitted from the bill (Penal Code § 1191.15).

The Commission had recommended amending that section, but the decision had been a close call. The language in the existing section is adequate to address the obsolete reference problem, but it does so with language that is different from the Commission's. The decision to recommend revision of the section was based on a stylistic preference for the Commission's terminology.

On closer examination of that section's history, the staff discovered that it had been amended very recently, in order to accomplish the same aim as the Commission's recommendation: to modernize obsolete references to recording technology. See 2004 Cal. Stat. ch. 1. The relevant amendments made in 2004 were as follows:

1191.15. (a) The court may permit the victim of any crime, or his or her parent or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to file with the court a written, audiotaped, or videotaped statement, or statement stored on a CD Rom, DVD, or any other recording medium acceptable to the court, expressing his or her views concerning the crime, the person responsible, and the need for restitution, in lieu of or in addition to the person personally appearing at the time of judgment and sentence. The court shall consider the statement filed with the court prior to imposing judgment and sentence.

Whenever an audio or video statement or statement stored on a CD Rom, DVD, or other medium is filed with the court, a written transcript of the ~~tape~~ statement shall also be provided by the person filing the statement, and shall be made available as a public record of the court after the judgment and sentence have been imposed.

(b) Whenever a written, audio, or video statement or statement stored on a CD Rom, DVD, or other medium is filed with the court, it shall remain sealed until the time set for imposition of judgment and sentence except that the court, the probation officer, and counsel for the parties may view and listen to the statement not more than two court days prior to the date set for imposition of judgment and sentence.

(c) No person may, and no court shall, permit any person to duplicate, copy, or reproduce by any audio or visual means any ~~audiotaped or videotaped~~ statement submitted to the court under the provisions of this section.

(d) Nothing in this section shall be construed to prohibit the prosecutor from representing to the court the views of the victim or his or her parent or guardian or the next of kin.

(e) In the event the court permits an audio or video statement or statement stored on a CD Rom, DVD, or other medium to be filed, the court shall not be responsible for providing any equipment or resources needed to assist the victim in preparing the statement.

Considering how recently the section was amended, with the same purpose as the Commission's recommended revision, the staff believes it would be best to leave the section alone. The staff is reluctant to disturb such a recent legislative choice, merely to implement a terminological preference.

The staff consulted with the Commission's chair, Pamela L. Hemminger, before making any change to the bill draft. The chair okayed both of the changes discussed above, and Penal Code Sections 1191.15 and 3043 were omitted from the bill.

MECHANICS LIEN LAW

In 2008, Senator Alan Lowenthal introduced SB 1691 to implement the nonsubstantive recodification recommended in *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527 (2007). The bill was approved by the Legislature, but vetoed by the Governor. The veto message indicated that the bill was vetoed due to the historic delay in approving a state budget for 2008-09.

Senator Lowenthal is now considering introducing a new bill to implement the *Mechanics Lien Law* recommendation. The staff has prepared a new bill draft. Issues relating to that draft will be discussed in a supplement to this memorandum.

AB 2193 (TRAN) (2008): DEPOSITION IN OUT-OF-STATE LITIGATION

Assembly Bill 2193 (Tran), enacted last year, implements the Commission's recommendation on *Deposition in Out-of-State Litigation*, 37 Cal. L. Revision Comm'n Reports 99 (2007). See 2008 Cal. Stat. ch. 231. The staff was recently alerted to a problem relating to the operative date for this legislation.

In particular, the bill enacted the Interstate and International Depositions and Discovery Act. The Act directs the Judicial Council to prepare certain forms. That provision of the Act became operative on January 1, 2009; the remainder of the Act will not become operative until January 1, 2010.

Because the Act is modeled on the Uniform Interstate Depositions and Discovery Act, we placed the provision specifying the operative date in the Act itself. That was a deviation from normal drafting procedure, in which the operative date is specified in an uncodified provision at the end of a bill.

Unfortunately, the effect of this drafting choice was that the delayed operative date applies only to the section of the bill containing the new Act, not the section that repealed its predecessor (Code Civ. Proc. § 2029.010). In other words, Section 2029.010 was repealed as of January 1, 2009, but the new Act will not become operative until January 1, 2010. There will thus be a one-year gap with no statutory law specifically governing this area.

Because Section 2029.010 is invoked infrequently and provided only limited guidance, its absence may not have much impact. The problem will fix itself as of January 1, 2010. Nonetheless, the staff explored whether anything could be done to reduce uncertainty during the one-year gap period.

Urgency legislation seemed unsuitable because the problem is relatively minor, such legislation would take much effort to enact, and the one-year gap period would be nearly over by the time the legislation was enacted and the courts were informed. The Judicial Council suggested instead that we ask the author of the bill, Assembly Member Tran, to write a letter to the *Assembly Journal*. The letter would explain that the one year gap was inadvertent and the intent was to leave Section 2029.010 in place until the new Act became operative. The Judicial Council has used this type of approach successfully to deal with similar problems in the past.

Upon receiving this suggestion, we worked with the Judicial Council, the Commission Chair, and Assembly Member Tran to prepare an appropriate letter to the *Assembly Journal*. A copy of the letter that was published is attached as an exhibit. The Judicial Council plans to use the letter as a basis for a court rule, which will be similar in substance to Section 2029.010 and will remain in effect for the remainder of this year.

The staff regrets the drafting problem with this bill. We are grateful to Assembly Member Tran and the Judicial Council for their assistance in addressing it.

Respectfully submitted,

Brian Hebert
Executive Secretary

From the Assembly Journal (Jan. 26, 2009), pp. 231-32:

REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

Assembly Member Tran was granted unanimous consent that the following statement of legislative intent be printed in the Journal:

Legislative Intent—Assembly Bill No. 2193

January 26, 2009

*E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3106
Sacramento, California*

Re: Letter to Assembly Journal regarding AB 2193 (Tran)

Dear Mr. Wilson: AB 2193 (Tran), enacted as 2008 Cal. Stat. ch. 231, establishes the Interstate and International Depositions Act. This Act was drafted by the California Law Revision Commission and is based in part on the Uniform Interstate Depositions and Discovery Act. It provides much-needed guidance on the procedure for conducting discovery in this state for purposes of a lawsuit pending in another state or country.

A provision in the Interstate and International Depositions Act directs the Judicial Council to prepare certain forms to implement the Act. That provision became operative on January 1, 2009. The remainder of the Act will not become operative until January 1, 2010.

Unfortunately, the legislation failed to make clear that the predecessor of the Act (Code Civ. Proc. § 2029.010*) remains in effect until January 1, 2010. As a result, this provision was inadvertently repealed on January 1, 2009, a year earlier than intended. Technically, there is no statutory law specifically governing this area for the ensuing year.

The California Law Revision Commission has expressed its regret for the drafting error, and confirmed that the intent of the legislation was to leave this provision in place and have courts and litigants follow its procedures until the new Act became operative. This was also my intent as the author of the bill, and it is my hope that courts and litigants continue complying with the provisions of former Code of Civil Procedure section 2029.010 until the new law become operative on January 1, 2010.

Respectfully submitted,

VAN TRAN, Assembly Member
Sixty-eighth District