MEMORANDUM 2025-44

Minutes of Meeting on September 18, 2025 (Draft)

The California Law Revision Commission held a meeting on September 18, 2025 in Sacramento and via teleconference.[1] The public was able to attend the meeting in person or via teleconference.

A draft of Minutes for the September 18, 2025, meeting is attached for the Commissioners to review.

The attached draft will be deemed final after it is approved by a vote of the Commission. When voting, the Commission may make specific changes to the Minutes. If so, those changes will be memorialized in the Minutes for the meeting at which the vote occurred.

The Bagley-Keene Open Meeting Act provides that attendees cannot be required to identify themselves.[2] As a means of observing that rule for teleconference attendees, the attendee list only includes teleconference attendees who have affirmatively consented to being identified in the Minutes as part of the teleconference registration process required for those who wish to attend the meeting or who identified themselves during public comment.

Respectfully submitted,

Sharon Reilly
Executive Director

---

[1] 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 Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

[2] Gov't Code § 11124.

DRAFT MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION

September 18, 2025

A meeting of the California Law Revision Commission was held in Sacramento and via teleconference on September 18, 2025.

ATTENDANCE

Commission

Present Richard Simpson, Vice-Chair
Maria Bee
Senator Catherine Blakespear
David A. Carrillo
Amb. (r.) David Huebner
Cara Jenkins, Legislative Counsel
Victor King

Absent Xochitl Carrion, Chair
Ana Cubas
Assemblymember Blanca Pacheco

Commission Staff

Sharon Reilly, Executive Director
Sarah Huchel, Chief Deputy Director
Steve Cohen, Senior Staff Counsel
Christie House, Chief Administrative Officer
Megan Hayenga, Office Technician

Antitrust Expert

Cheryl Johnson, Consultant to the Commission

Other Attendees[1]

Megan Abell
Joan Allen
Denise Amos
Bianca Blomquist
George Cavinta
Lucy Chinkezian
Sam Chung
Vidushi Dyall
Eric Enson
Samantha Gordon
Devon Gray
Lee Hepner
Robert Herrell
Amy Hines-Shaikh

[1] Members of the public are only identified in the Minutes as attendees if they expressly consented to being identified when registering to attend via teleconference, by completing the voluntary visitor register at an in-person meeting location, or by identifying themselves during public comment.

Jason Ikerd
Zoe Johnson
Tasia Kieffer
Stephanie Kimball
Sadalia King
Ron Knox
John Kwoka
Robert Lande
Gilbert Lara
Peter Leroe-Muñoz
Nadia Mahallati
Mona Masri
John Newman
Benjamin O'Brien
Brynne O'Neal
Teri Olle
Andrea Ordin
Andrew Oxford
Justin Paddock
Kaitlyn Preston
Dan Robbins
Carmen Ruiz-Ochoa
Sam Samuelsen
Aniko Sherry
Carlia Suba
Jennifer Suh
Trisha Thao
Jenna Waite

CONTENTS

APPROVAL OF ACTIONS TAKEN

Unless otherwise indicated, the Commission decisions noted in these Minutes were approved by all members present at the meeting. If a member who was present at the meeting voted against a particular decision, abstained from voting, or was not present when the decision was made, that fact is noted below.

MINUTES

The Commission considered Memorandum 2025-34, presenting draft Minutes of the June 26, 2025, meeting. The Commission approved the Minutes without change.

(*Senator Blakespear was not present when this decision was made.)*

ADMINISTRATIVE MATTERS

Introductory remarks by Vice Chair

Vice Chair Simpson announced Chair Xochitl Carrion's resignation from the Commission.

Report of the Executive Director

The Executive Director reported on the following matters:

- SB 470 (Laird), alternative teleconference rules under the Bagley-Keene Open Meeting Act
- Budget update
- Office space
- Website contract
- Staff vacancy

Commissioner Suggestions

There were no suggestions made by Commissioners.

Election of Officers

The Commission considered Memorandum 2025-35 which describes the terms for Commission officers and the election process. The Commission held two elections, first to fill the Chair and Vice-Chair positions through October 11, 2025, and then to fill those same offices through October 11, 2026. Current Vice Chair Richard Simpson was elected Chair and Victor King was elected Vice Chair for both terms.

(*Senator Blakespear was not present when this decision was made.)*

Commission Handbook Updates

The Commission will consider proposed revisions to the Handbook at its December 4, 2025, meeting.

2025 Legislative Program

The Commission considered Memorandum 2025-36, discussing the Commission's 2025 legislative program. No Commission decisions were required or made.

Study E-200 — Recodification of Toxic Substance Statutes

The Commission considered Memorandum 2025-37, presenting a cumulative draft of proposed recodified provisions of Chapter 6.5 of Division 20 of the Health and Safety Code that have been provisionally approved by the Commission for inclusion in a future tentative recommendation.

The Commission provisionally approved the three technical changes to the recurring cumulative draft described in the memorandum.

The Commission also considered Memorandum 2025-38, presenting a staff draft of additional proposed recodified provisions of Chapter 6.5 for provisional inclusion in the future tentative recommendation.

The Commission provisionally approved the inclusion of the proposed revisions presented by Memorandum 2025-38 in that future tentative recommendation, and directed staff to replace the word "presenting" as used in proposed Health and Safety Code Section 85560(d)(2).

(*Senator Blakespear was not present when these decisions were made.)*

Study I-100 — Equal Rights Amendment

The Commission considered Memorandum 2025-39, presenting a staff draft final recommendation with minor clarifying and technical changes, including to a Commission Comment.

The Commission approved the staff draft final recommendation for submission to the legislature and publication in the Commission's final reports.

(*Senator Blakespear was not present when this decision was made.)*

Study I-200 — Terminology Relating to Persons with Disabilities

The Commission considered Memorandum 2025-40, providing a status report on the study. No Commission action relating to this memorandum was required or taken.

Study B-750 — Antitrust Law

The Commission considered Memorandum 2025-41, presenting draft language options for Single Firm Conduct and legislative findings and declarations and Supplements 1 and

2 thereto.

The Commission voted to move forward with recommendations on Single Firm Conduct separately from the other antitrust issues. The Commission also voted to reject Option One and directed staff to present a draft staff recommendation at its next meeting, revising Option Two[2] as follows:

Section 167XX is added to the Business and Professions Code, to read:

(a) It is unlawful for one or more persons to act, cause, take or direct measures, actions, or events:

(1) In restraint of trade~~, or to attempt to restrain the free exercise of competition or the freedom of trade or production~~; or,

(2) To monopolize or monopsonize, to attempt to monopolize or monopsonize, to maintain a monopoly or monopsony, or to combine or conspire with another person to monopolize or monopsonize in any part of trade or commerce.

(b) As used in this section, "restraint of trade" shall include, but not be limited to, any actions, measures, or acts included or cognizable under Section 16720, whether directed, caused, or performed by one or more persons.

(c) Anticompetitive effects in one market from the challenged conduct may not be offset by purported benefits in a separate market; and the harm to a person or persons from the challenged conduct may not be offset by purported benefits to another person or persons.[3]

The Commission also directed staff to note in a Comment that "restraint of trade" means "unreasonable" restraint of trade, in accordance with current law.

The Commission voted to direct staff to revise the basic purpose statement as follows:

Section 167XX is added to the Business and Professions Code to read:

(a) The purpose of this chapter is ~~Legislature finds and declares that~~ the promotion and protection of free and fair competition, which is fundamental to a healthy marketplace that protects all trade participants, including workers and consumers, and to an environment that is conducive to the preservation of our democratic, political, and social institutions.

(b) Protecting competition includes protecting competition between businesses when they compete for workers by prohibiting anticompetitive business practices that impede workers' freedom to choose employment.

This basic purpose statement above combines (a) from the previous "enhanced purpose statement" below:

[2] The revision to Option Two and the related language reflect all the changes made by the Commission to the proposed language first presented to the Commission at it June 26, 2025 meeting, as reflected in Memorandum 2025-30.; see also Memorandum 2025-21, pp.3-5, 9-14.

[3] This is based on New York's Twenty-First Century Anti-Trust Act, S.335 (Gianaris), 2025-2026, Reg. Sess. (N.Y. 2025).

~~The Legislature hereby finds and declares all of the following:~~

(a) ~~That~~ pProtecting competition includes protecting competition between businesses when they compete for workers and prohibiting anticompetitive business practices that impede workers' freedom to choose employment.

~~(b) There is widespread concern about the growing consolidation in our marketplaces and that the accumulation of market power by a few dominant corporations harms our marketplace opportunities, undermines the power of workers, consumers, and small businesses, and threatens our democratic values.~~

~~(c) Effective enforcement against anticompetitive activity has been limited and impeded by the federal courts by applying narrow definitions of monopolies and monopolization, limiting the scope of unilateral conduct, making it excessively difficult to challenge unfair competition, and unreasonably heightening the standards that plaintiffs and government enforcers must overcome to establish violations of those laws.~~

~~(d) A goal of California's antitrust laws is~~ which includes to ~~protect consumer welfare, which includes ensuring open and fair labor markets.~~

The Commission voted to direct staff to revise the statement reflecting California's laws, preferences and priorities as follows:

~~The Legislature hereby finds and declares all of the following:~~

(a) The California Supreme Court has determined that the Cartwright Act is "broader in range and deeper in reach" than the federal Sherman Act; courts shall liberally interpret California's antitrust laws to best promote free and fair competition and be mindful that California favors "maximizing" effective deterrence of antitrust violations; and that the Cartwright Act is not modeled on the Sherman Act. Further, California courts have recognized that the Cartwright Act departs from the Sherman Act in many respects, including, but not limited to, inclusion of indirect purchaser recovery, use of a proximate cause test for Cartwright Act standing, recognition of broader harms and per se conduct, lower actionable market shares, structured rule of reason analysis, and differing burdens of proof.

~~(b) Courts shall liberally interpret California's antitrust laws to best promote free and fair competition and be mindful that California favors~~ maximizing ~~deterrence of antitrust violations.~~

~~(c) Actions that~~ unreasonably ~~restrain trade or create or attempt to create a monopoly or monopsony, can be harmful and anticompetitive whether done by unilateral action or multiple parties and~~ both should be subject to ~~antitrust scrutiny.~~

(b) ~~Courts interpreting this law shall not be bound by federal precedent interpreting the Sherman Act and shall make their own determinations of whether challenged conduct by a single firm violates California law and is in keeping with the language and spirit of that law.~~ Federal caselaw on the subject of this article is not binding on California courts, but courts may consider federal caselaw as persuasive authority to the extent they find it

~~persuasive and~~ consistent with California law and ~~interests~~ Section 167XX.

(c) ~~The 2023 Merger Guidelines issued by the~~ California joins the U.S. Department of Justice and Federal Trade Commission in ~~recognize~~ recognizing that unilateral action and multiparty actions, horizontal and vertical relationships, and various forms of corporate entities can interfere with free and fair competition~~, and courts shall harmonize their rulings with the Guidelines and the guidance of the Guidelines should be followed whenever possible when construing this section to the extent consistent with California law and interests~~.

~~(f) The California Supreme Court has determined that the Cartwright Act is "broader in scope range and deeper in reach" than the federal Sherman Act; and that the Cartwright Act is not modeled on the Sherman Act. Further, California courts have recognized that the Cartwright Act departs from the Sherman Act in many respects, including, but not limited to, inclusion of indirect purchaser recovery, use of a proximate cause test for Cartwright Act standing, recognition of broader harms and per se conduct, lower actionable market shares, structured rule of reason analysis, and differing burdens of proof.~~

The Commission voted to codify the following nonexclusive list of elements of federal precedents that are not binding on California law and gave staff discretion to craft the introductory wording. The Commission directed staff not to use the phrase "the Legislature finds and declares," however, and to instead draft alternative introductory language specifying that the list is nonexclusive and that California law does not require a finding of any of the listed conduct to establish liability.

Section 167XX is added to the Business and Professions Code to read:

~~The Legislature hereby finds and declares that although the following may constitute evidence of a violation of this section, liability shall not require a finding that:~~

(a) The unilateral conduct of the defendant altered or terminated a prior course of dealing between the defendant and a person subject to the exclusionary conduct;

(b) The defendant treated persons subject to the exclusionary conduct differently than the defendant treated other persons;

(c) ~~Any price of T~~~~the~~ The defendant's price for a product or service was below any measure of the costs to the defendant for providing the product or service;

(d) The ~~conduct of the~~ defendant's conduct ~~presented by the conduct~~ makes no economic sense apart from its tendency to harm competition;

(e) The ~~risk of~~ conduct's risk of harming competition or actual harm must be proven with quantitative evidence;

(f) In cases where a defendant's business is a multi-sided platform, that the defendant's conduct presents harm to competition on more than one side of the multi-sided platform, or that the harm to competition on one side

of the multi-sided platform outweighs any benefits to competition on any other side(s) of the multi-sided platform;

(g) In a claim of predatory pricing, the defendant is likely to recoup the losses it sustains from below-cost pricing of the products or services at issue;

(h) The rivals whose ability to compete has been reduced or harmed are as efficient, or nearly as efficient, as the defendant's; or,

(i) A single firm or person has or may achieve a market share at or above a threshold recognized under Section 2 of the Sherman Act or any specific threshold of market power and need not define or prove a "relevant market" where there is direct evidence of market effects or power.

(Commissioner Jenkins was not present when these decisions were made.)

The Commission also considered Memorandum 2025-43, presenting public comment analysis and draft language options for misuse of market power and Supplement 1 thereto. The Commission voted to not proceed with misuse of market power and considered, but voted against, importing the list of conduct from Option One into Single Firm Conduct.

(*Commissioners Blakespear, Huebner, and Jenkins abstained on the first vote. Commissioner Jenkins was not present for the second vote.)*

The Commission will consider Memorandum 2025-42 and the First Supplement to Memorandum 2025-42, presenting public comment analysis and draft language options for mergers and acquisitions at its December 4, 2025, meeting.
