

2000

## 1999-2000 Bill Summary

Assembly Committee on Judiciary

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## ASSEMBLY COMMITTEE ON JUDICIARY

# 1999-2000 BILL SUMMARY

*A Comprehensive  
Breakdown of Legislation  
Considered by the Committee in 1999 and 2000*

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*Vice-Chair*

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# Assembly California Legislature



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ASSEMBLY COMMITTEE ON JUDICIARY

*October 2000*

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*The counsel and staff of the Assembly Judiciary Committee have prepared this summary of the bills that were considered by the Committee in 1999 and 2000 for your information. As in past years, the Committee was responsible for one of the largest and most complex bill loads in the Legislature, and the 1999-2000 session saw one of the Committee's most productive efforts in years. Major reforms were enacted in the areas of child and spousal support, domestic violence, the rights of foster parents, reform of the State Bar, the rights of Indian children, elder and dependent abuse, jury reform, the rights of victims of the Northridge earthquake, crime victims' rights, and of course, HMO accountability and expanded access to needed health care – just to name some of the many accomplishments.*

*During this time the Committee also fulfilled a number of oversight responsibilities. At the beginning of the session, the Committee spearheaded a joint hearing to evaluate how best to improve the State's dismal child support collection record - the byproducts of which ultimately led to the most substantial restructuring of the State's child support system in recent times. In addition, the Committee reviewed developments in construction defect law and considered proposals to improve access to affordable housing.*

*This annual report also contains statistical data regarding the disposition of the bills assigned to the Committee in 1999-2000. I believe the report reflects a consistently high quality of work product thanks to the talented Committee counsel and staff. We hope you find this information useful.*

*Sincerely,*

A handwritten signature in black ink that reads "Sheila James Kuehl". The signature is fluid and cursive, with the first name being the most prominent.

Sheila James Kuehl  
Chair



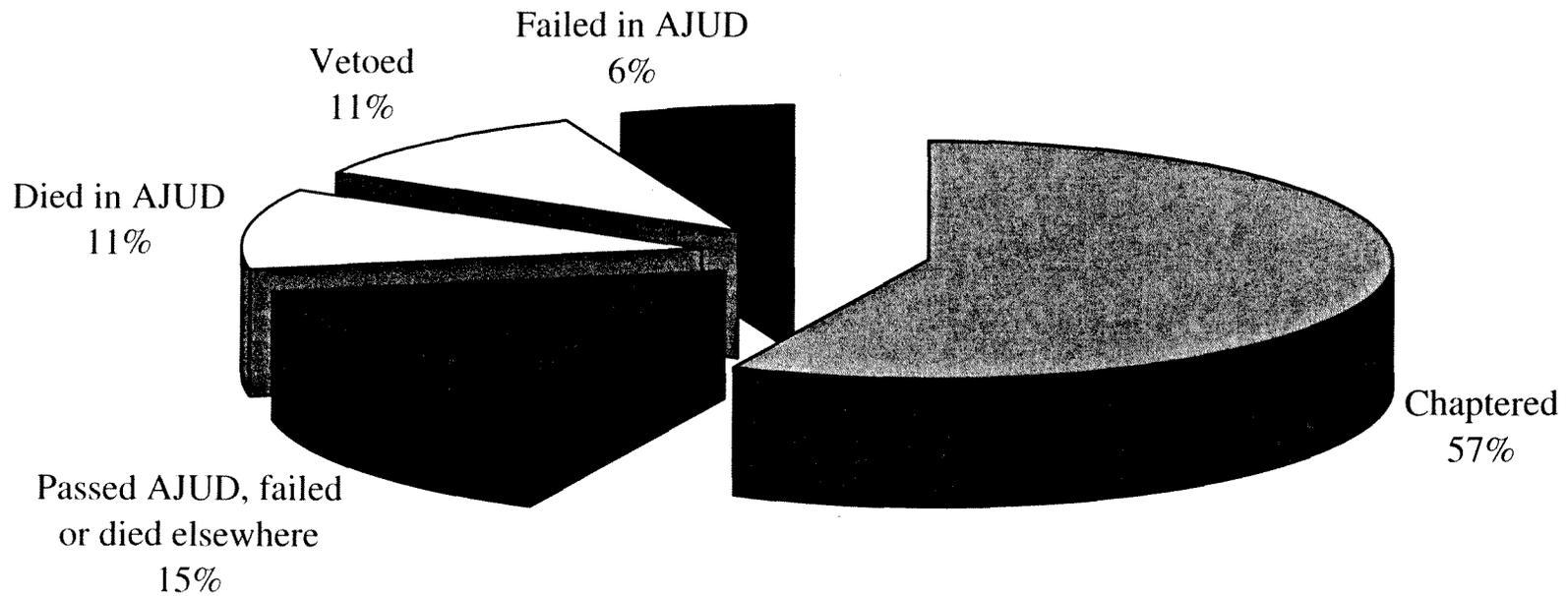
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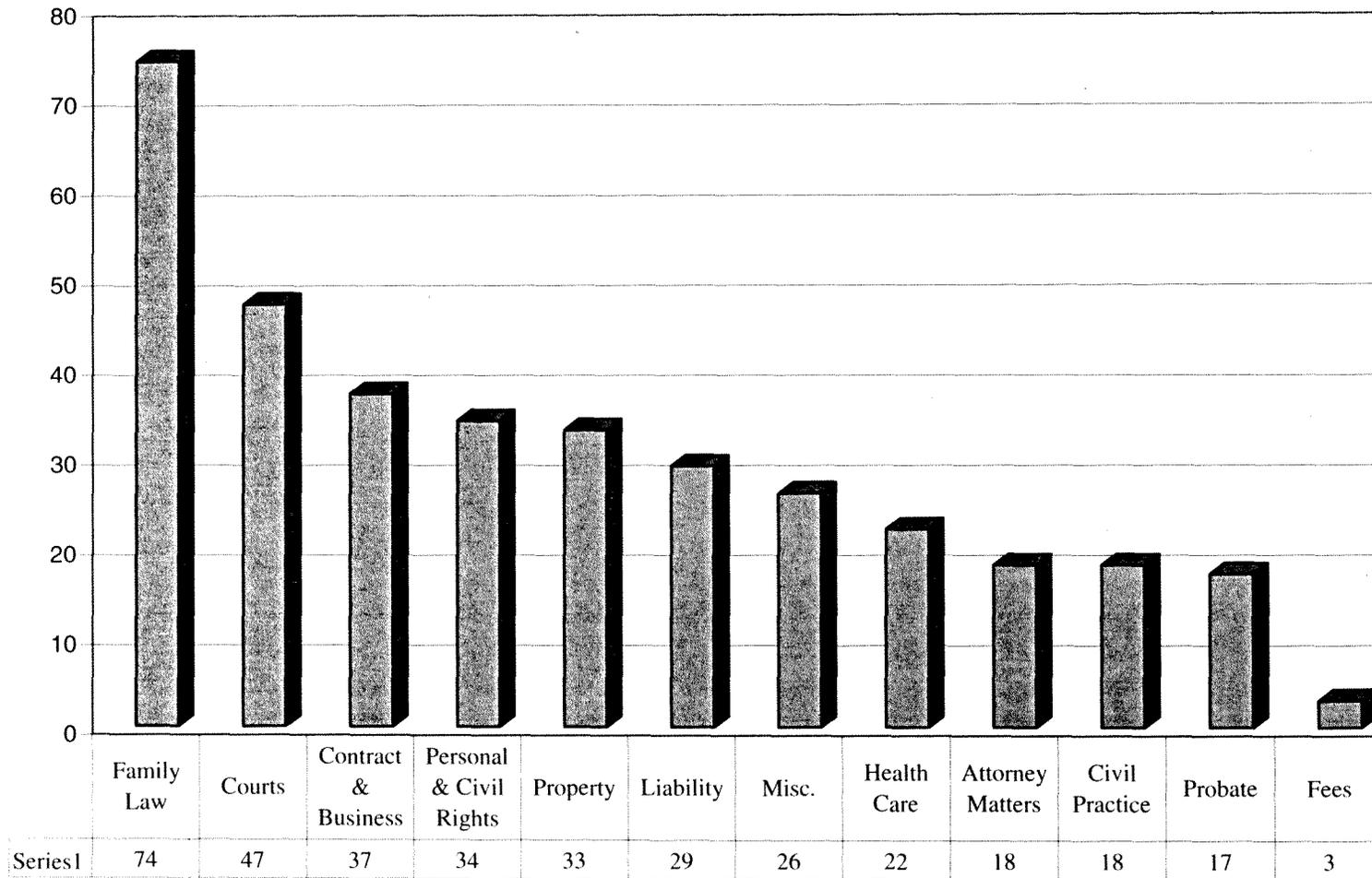
***DISPOSITION OF BILLS  
ASSIGNED TO THE COMMITTEE IN 1999-2000***

<b>ASSIGNED</b>	Assembly: 225 Senate: 133 Total: <b>358</b>	
<b>CHAPTERED</b>	Assembly: 110 Senate: 93 Total: <b>203</b>	<b>57%</b>
<b>PASSED AJUD, BUT FAILED OR DIED ELSEWHERE</b>	Assembly: 40 Senate: 15 Total: <b>55</b>	<b>15%</b>
<b>VETOED</b>	Assembly: 23 Senate: 18 Total: <b>41</b>	<b>11%</b>
<b>DIED IN AJUD</b>	Assembly: 33 Senate: 5 Total: <b>38</b>	<b>11%</b>
<b>FAILED IN AJUD</b>	Assembly: 19 Senate: 2 Total: <b>21</b>	<b>6%</b>

***DISPOSITION OF BILLS ASSIGNED TO THE ASSEMBLY  
JUDICIARY COMMITTEE IN 1999-2000***



***TYPES OF BILLS ASSIGNED TO THE ASSEMBLY  
JUDICIARY COMMITTEE IN 1999-2000***



## HIGHLIGHTS OF THE WORK OF THE ASSEMBLY JUDICIARY COMMITTEE DURING THE 1999-2000 LEGISLATIVE SESSION

During the 1999-2000 legislative session, the Assembly Judiciary Committee considered over 350 bills. Its jurisdiction ranges from civil and constitutional rights to family law, civil practice and procedure, health care, contracts and commercial matters, the state bar, courts, tort reform, probate and landlord-tenant law. Following is a summary containing some of the major issues considered by the Committee during 1999-2000.

### *Personal, Civil and Constitutional Rights*

One of the most important concerns for the people of this state, and a top priority for the Committee, is the protection of Californians' civil and constitutional rights. California has a broad array of civil rights laws designed to protect its residents from discrimination, harassment and violence. Most of these laws protect residents on the basis of race, ancestry, national origin, color, gender, religion, disability, marital status, age and sexual orientation. A brief summary of some of the key bills considered by the Committee in this area during the past two-year session follows.

**Age Discrimination:** **SB 26 (Escutia)**, which was passed by the Committee and signed into law, affirms California's strong public policy against age discrimination in employment by clarifying that the Legislature never intended to afford less protection to victims of age discrimination than to victims of race, sex and other discrimination. The bill invalidates a controversial appellate court case which eliminated one of the two proof theories ("disparate impact") available to age discrimination victims in a court of law.

**Discrimination in Employment:** Two major employment discrimination measures introduced by Assemblywoman Sheila Kuehl were also passed by the Committee and signed into law: **AB 1856**, which seeks to hold all employees responsible for their acts of harassment by providing that an individual employee can be held personally liable for the unlawful harassment of a co-worker; and **AB 2222**, which clarifies the definitions of mental and physical disability and medical condition for the purposes of the Fair Employment and Housing Act, and which requires an employer to engage in a timely, good faith, interactive process to determine effective reasonable accommodations, if any, at the request of a disabled employee or applicant.

**Affirmative Action:** The Committee also heard two similar bills introduced by Senator Polanco that addressed the requirements of Proposition 209 - **SB 44** and **SB 2047**, which would have clarified that Proposition 209's prohibition on engaging in discrimination or granting preferential treatment does not prevent governmental agencies from continuing to engage in outreach programs. Both bills were passed by the Committee but ultimately vetoed by the Governor.

**Personal Rights:** The Committee also considered several other important measures that were designed to protect the personal rights of Californians. Two of these bills addressed the decision-making rights of individuals in the health care context. **AB 891 (Alquist)** enacted a new Health Care Decisions Law that streamlined the procedures for executing advance directives and powers of attorney for health care. **AB 1592 (Aroner)** sought to enact the Death with Dignity Act, modeled after a similar Oregon law, which would authorize competent adults who have been determined by two physicians to be suffering from a terminal disease to make a request for medication to hasten the end of their lives in a humane and dignified manner. It was passed by the Committee but subsequently died on the Assembly inactive file.

The Committee also considered a significant and controversial mental health commitment reform measure, **AB 1800 (Thomson)**, which would have, among other things, broadened the definition of "gravely disabled" for the purpose of involuntary detention and conservatorship, and required individuals subject to 72-hour holds, 14-day certifications, and additional involuntary certifications, to be placed in "community assisted outpatient treatment programs" for 180 days if several conditions exist. The Committee passed the bill but it subsequently died in the Senate Rules Committee.

The Committee also heard **SB 209 (Burton)**, which enacted the Astaire Celebrity Image Protection Act to provide greater protections to the heirs of deceased celebrities by broadening the right to publicity that is descendible to them. The bill qualifies the existing types of uses of a deceased celebrity's name, voice, signature, photograph or likeness which do not require consent of the heirs. It also extends the time in which a person may be subject to liability for the use of a deceased celebrity's image, without consent, for commercial purposes.

**Right to A Jury Trial and Other Due Process Protections:** This past session was also marked by major legislative debate concerning the constitutional implications of the increasing imposition of binding arbitration requirements on consumers. In this key area of constitutional law, the Committee considered several important measures. **AB 858 (Kuehl)**, when heard by the Committee, broadly prohibited merchants and employers from requiring consumers and prospective employees, as a condition of entering into an insurance, health care, or employment contract, to waive any of the following rights and protections: 1) the right to any legal protection against discrimination; 2) the right to various privileges guaranteed pursuant to California's Evidence Code; 3) the right to a jury trial; 4) the right to a judicial forum; and 5) the right to rescind consumer contracts during any statutorily mandated time period. Assemblywoman Kuehl ultimately concluded the time was not ripe to move this bill to the Governor, and the bill was subsequently amended to assist in modifications to the state's vehicle license fees. Status: Chapter 106, 2000.

The Committee also approved **AB 1751 (Kuehl)**, which sought to prevent health plans from forcing patients to give up their jury trial and other due process rights in order to obtain health care coverage for themselves and their family members. The bill would have provided that a pre-dispute binding arbitration clause inserted into a health care

service contract or disability insurance contract shall be void and unenforceable, and it would have established an administrative penalty for violations of this provision. Assemblywoman Kuehl similarly chose not to move this bill off the Assembly floor, and the bill subsequently died on the Assembly inactive file.

Finally in this subject area, the Committee considered and defeated **SB 1934 (Polanco)**, which would have added a few statutory conditions in health plan-imposed contracts that require subscribers or enrollees (patients) to agree to pre-dispute binding arbitration in order to obtain health care coverage for themselves and their families. However, the Committee passed **SB 1570 (Dunn)**, which would have required arbitration or mediation agreements in mobilehome tenancies to be separate from rental agreements, and prohibited management from conditioning a tenancy on acceptance of such an agreement. However, the Governor vetoed this measure.

**Privacy:** Reflecting an area of increasing policy interest and concern, the Committee heard a number of significant measures that sought to protect the privacy rights of Californians. **AB 1707 (Kuehl)** would have prohibited a financial institution, with limited exceptions, from disclosing or making an unrelated use of any personal information without the express written consent of the consumer. It also would have required financial institutions to clearly and conspicuously notify the consumer of the categories of personal information collected by the financial institution, the institutions' policies and practices for protecting the confidentiality and security of personal information, and the categories of persons to whom the information may be disclosed. The bill was passed by the Committee but it subsequently failed in the Assembly Banking and Finance Committee.

The Committee also heard several measures that were enacted to protect the confidentiality of medical information. **AB 2797 (Papan)** prohibits insurance companies and their affiliates from disclosing individually identifiable information concerning the health of, or the medical or genetic history of, a customer, to depository institutions and other third parties, for use with regard to the granting of credit. **SB 1903 (Speier)** requires corporations and their subsidiaries and affiliates to adhere to the same confidentiality laws that apply to health care providers and their contractors. It also gives individuals the ability to obtain a copy of their medical summary or profile upon request and at no cost from certain companies, and it allows patients to submit correcting statements to their medical records.

**AB 2246 (Wayne)**, which was passed by the Committee and signed into law, seeks to combat the crime of identify theft by requiring a business to take all reasonable steps to destroy, or arrange for the destruction of, a customer's records which are within its custody or control and contain personal information by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.

The Committee also considered and passed two measures that were enacted to protect the confidentiality of certain tax information and records. **SB 1724 (Dunn)** amends the laws

governing the use of information by tax preparers by clarifying that a customer's tax information that is obtained or transmitted electronically is confidential information. It also prohibits tax preparers from disclosing confidential taxpayer information internally to others who are not involved in the preparation of the return or to any of their subsidiaries or affiliates, and imposes similar confidentiality requirements on financial institutions and other business entities. **AB 1965 (Leach)** prohibits the State Board of Equalization from selling names and addresses of licensees collected by the board.

## ***Health Care***

A rapidly expanding area of Committee jurisdiction involves health care reform. Many of the "flash-points" of patients' rights found themselves before the Committee, including:

**MICRA**: One of the most substantial, and unresolved, health care issues considered by the Committee in the 1999-2000 legislative session involved efforts to reform the Medical Injury Compensation Reform Act, known as "MICRA." For two decades this statute has placed an arbitrary \$250,000 limit on physician liability for the non-economic damages caused by physician medical malpractice. In 1999, then-Speaker Villaraigosa introduced **AB 1380**, which would have adjusted the cap on non-economic damages contained in MICRA annually to reflect changes in the cost of living. The Committee passed the bill but it was subsequently held in the Senate Appropriations Committee.

**Managed Care Reform**: With opinion polls reflecting Californians' increasing fears that their profit-motivated HMOs won't be there when they most need them, the Legislature, and Judiciary Committee, continued to devote significant attention in 1999-2000 to a number of managed-care reform proposals.

Of the important managed care reform proposals, well over a dozen received special attention by the Committee. These included: **SB 21 (Figueroa)**, which makes a health plan liable for any and all harm legally caused by its failure to exercise ordinary care in arranging for the provision of medically necessary health care services when: a) the failure to exercise ordinary care resulted in the delay, denial, or modification of health care services recommended or furnished by a health care provider; and b) the subscriber or enrollee suffered substantial harm (defined as loss of life, loss or significant impairment of limb or bodily function, significant disfigurement, severe and chronic physical pain, or significant financial loss)(signed into law); **AB 55 (Migden)**, which establishes an independent medical review system for unresolved consumer complaints against health plans and health insurers whenever health care services have been denied, delayed, or otherwise limited by a health plan or one of its contracting providers based on a finding that the service is not medically necessary (signed into law); **SB 19 (Figueroa)**, which significantly strengthens the confidentiality protections that apply to medical records (signed into law); **AB 351 (Steinberg)**, which would have required the Attorney General to approve in advance any merger, acquisition or change in control of a health care service plan (health plan) doing business in California to ensure that such transaction will not substantially lessen competition or create a monopoly in the state (vetoed by the

Governor); and **AB 525 (Kuehl)**, which requires health plans and disability insurers to make a specific disclosure regarding possible limitations on the provision of reproductive health services by certain providers in order to assist women in obtaining access to these critically needed services, including a phone number where they can call for more information (signed into law).

The Committee also considered and passed two important bills pertaining to discount health care programs. **SB 173 (Alpert)** and **SB 1181 (Polanco)** would have permitted the operation in California of discount health care programs, in which consumers are offered access to health care services and products at a purportedly discounted fee if the plan meets specified requirements (both subsequently held in Assembly Appropriations).

### *The State Bar*

In 1999, the Committee conducted an extensive hearing on, and passed **SB 144 (Schiff)**, which restored the authority of the State Bar to collect annual dues from its members. The bill, among other things, authorized the State Bar to collect \$318 as membership dues for the year 2000, on top of the on-going statutory authorization to collect \$77, for a total dues bill of \$395. In addition, the bill reduced the mandatory continuing legal education requirement, and made the Conference of Delegates and the State Bar Sections self-funding (no funding with mandatory dues). The bill also imposed major limits on the Bar's lobbying activities, and it required an independent comprehensive financial audit and performance audit of the Bar. The next year, the Committee passed **SB 1367**, which similarly authorizes the State Bar to collect a total dues bill of \$395 for the year 2001, and continues the reforms contained in SB 144.

The Committee also considered a number of measures relating to the Bar's discipline system and performance. **SB 143 (Burton)**, among other things, clarifies that any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her. It also revises the appointment authority of the State Bar Court. **SB 1420 (Burton)** revises the codes relating to the standard of review used by the State Bar Court in disciplinary proceedings. The bill also requires the State Bar to review its workload standards to measure the effectiveness and efficiency of its disciplinary activities programs, and to use those standards in reassessing the Bar's staffing needs in that area.

The Committee also approved **SB 1782 (Morrow)**, a measure signed into law which declares the intent of the Legislature that the California Supreme Court adopt rules permitting attorneys licensed in other states to be admitted to the State Bar under certain circumstances, and requests that the Supreme Court appoint a task force to study and make recommendations regarding the issue of reciprocal admission.

### *Immunity, Scope of Liability and Damages, and Statutes of Limitation*

Bills which seek to establish, limit or increase liability for various types of tortious conduct are another of the mainstays of the Judiciary Committee, with so-called "tort

reform" measures occupying a significant portion of the Committee's calendar. An example of such legislation considered in 1999 was **SB 911 (Figueroa)** which provides a qualified immunity from civil liability for trained persons who use in good faith and without compensation an automated external defibrillator in rendering emergency care or treatment at the scene of an emergency. The immunity would not apply in cases of personal injury or wrongful death resulting from gross negligence of willful or wanton misconduct.

**Construction Defects:** The Committee also considered three bills addressing the contentious issue of construction defect litigation. Two of the bills were introduced by Assemblyman Dutra - **AB 1221 and AB 2112**, both of which initially sought to set up an elaborate home warranty process for addressing construction defects in all residential housing and would have severely restricted consumers' access to court to resolve such questions. AB 1221 died in the Committee, and AB 2112 was stripped down to intent language and subsequently died in conference. The Committee also reviewed **SB 1882 (Escutia)**, which would have required the California Research Bureau to conduct a study regarding the possible causes of any decrease in the availability of condominiums to assess the need for future legislation to increase access to such housing. This bill was passed by the Committee but it subsequently died on the Assembly floor.

**"Y2K":** A number of bills were introduced in 1999 attempting to respond to the widely-publicized year 2000 ("Y2K") computer failure crisis. Among the Y2K bills heard by the Committee this session were **AB 874 (Alquist) and AB 905 (Dutra)**. When considered by the Committee, AB 874 would have restricted the ability of consumers and small businesses to bring suit and recover damages for harm caused by the Y2K problem in a number of ways, including: requiring plaintiffs to prove fraud in order to recover money damages; severely limiting the ability to recover economic, consequential and punitive damages; mandating pre-litigation 90-day "cure" and detailed ADR procedures; imposing significant new pleading hurdles; and eliminating joint and several liability. AB 905 would have provided that the exclusive remedy in civil actions based on a Y2K computer date failure shall be a breach of contract claim, unless the plaintiff has suffered personal injury (excluding emotional harm), if the defendant has complied with certain requirements (e.g., making available, at no charge to the buyer, a repair or replacement of the product in question, or a refund of the price of the version of the product in question, and providing notice regarding whether a repair or replacement of the product in question is available that is Y2K compliant). Both measures failed in the Committee and were subsequently amended into other subject areas.

**Third Party Bad Faith:** The Committee passed and the Governor signed into law **SB 1237 (Escutia)**, an important measure which requires insurers to act in good faith towards policyholders and others, and allows policyholders and third party claimants to bring a private action for bad faith violations. A bad faith action may be brought against an insurer when the insurer unreasonably denies or delays a claim under certain circumstances. This measure was subsequently invalidated by referenda sponsored by the insurance industry on the March 2000 ballot known as Propositions 30 and 31.

**Joint and Several Liability:** **AB 2483 (Kuehl)** would have, among other things, allowed public water systems to impose joint and several liability on a person who discharges or releases gasoline or a product containing oxygenates into the drinking water and provided for recovery of damages and costs for investigation, replacement water, installation of new wells, treatment of the contaminated water source and preservation of a drinking water source. The Committee passed the bill but it subsequently died on the Assembly floor.

**Punitive Damages:** The Committee heard two bills during this session which would have significantly restricted a consumer's ability to obtain punitive damages - **AB 169 (Ackerman)**, which, among other things, would have strictly limited punitive damages to three times the amount of compensatory damages, and taken away the jury's traditional right to determine punitive damages by requiring the judge, rather than the jury, to determine the amount of punitive damages; and **AB 2582 (Ackerman)**, which would have prohibited generally the award of punitive damages against a product manufacturer or seller for harm, including disability or death, caused by a product if the product received pre-market approval by a federal agency or complied with federal statutes or regulations in effect at the time of its production. Both measures failed in Committee.

**Statutes of Limitation:** The Committee passed three different measures which would provide additional time to bring various civil actions that would otherwise be barred under existing statutes of limitation. In response to the widely-publicized problems that homeowners in Southern California experienced in connection with claims arising out of the Northridge earthquake, Senate President Pro Tempore Burton introduced **SB 1899**, which was enacted to provide victims an additional year to file claims for their quake-related damages. The bill's applicability is limited to cases in which an insured contacted his or her insurance company, prior to January 1, 2000, regarding the potential existence of damage related to the Northridge earthquake. The bill also does not apply to any claim that is litigated to finality prior to January 1, 2001, or to any written compromised settlement agreement which is made between an insurer and its insured where the insured is represented by counsel prior to that date.

**SB 1915 (Poochigian)** was enacted to permit Armenian Genocide victims and their heirs or beneficiaries to file suit in California against an insurer doing business in California or whose contacts with the state satisfy the requirements for imposition of personal jurisdiction, to recover proceeds due under a life, annuities, dowry, educational or casualty insurance policy which was sold directly by that insurer or through a related company to persons in Europe or Asia at any time between 1875 and 1923. The bill also provides that any such action brought by an Armenian Genocide victim or an heir or beneficiary shall not be dismissed for failure to comply with the statute of limitations if the action is filed on or before December 31, 2010. **SB 1261 (Hayden)** would have provided victims of certain forms of police misconduct by officers in the Rampart Division of the Los Angeles Police Department an additional year to file claims for damages arising from this misconduct. The Committee passed the bill but it was subsequently held in the Assembly Appropriations Committee.

## *Courts and Juries*

Matters affecting the courts are one of the bread and butter areas of the Judiciary Committee. A panoply of bills were considered by the Committee during the past legislative session, including measures on court reporters, jury service reforms, expanding the use of small claims court, and support for tribal justice systems. A representative sample of some of the key bills in these areas follows.

**AB 177 (Papan)** establishes as the policy of this state that each court endeavor to provide a children's waiting room in each courthouse for children whose parents or guardians are attending a court hearing as a litigant, witness, or for other court purposes as determined by the court. The bill authorizes the board of supervisors of any county to impose a one-time surcharge of not less than \$2 nor more than \$5 on the filing fees for various civil actions, to pay for the costs of children's waiting rooms in courthouses. **AB 1676 (Committee on Judiciary)** ends, generally, the practice of allowing parties to agree by stipulation to reverse findings and rulings of trial courts ("stipulated reversals"). **AB 2912 (Committee on Judiciary)** provides that, in discovery matters, a referee may be appointed by the court without the consent of the parties only in exceptional circumstances. **SB 367 (Dunn)** requires the Judicial Council, by January 1, 2003, to adopt uniform rules for the electronic filing and service of court documents statewide. Each of these bills passed the Committee and was signed into law.

The Committee considered a number of important measures that sought to reform court-reporting and interpreting practices, including **SB 449 (Burton)**, which increased the fees court reporters would receive for transcripts, while providing indigent litigants increased access to the Transcript Reimbursement Fund (vetoed). The Committee also considered **AB 2589 (Cardenas)**, which would have required the use of certified interpreters in domestic violence matters, waived the cost of interpreters for certain litigants, and mandated training in domestic violence for interpreters. **AB 2589** passed the Committee but failed at a later date.

How to provide meaningful reform of the jury system was another challenge the Judiciary Committee faced this session. **AB 2418 (Migden)** prohibits the exclusion of individuals from jury service based on their sexual orientation and provides that a party may not use a peremptory challenge to remove a prospective juror on the basis of an assumption that the juror is biased merely because he or she is a member of an identifiable group distinguished on racial, religious, ethnic, sexual orientation, gender or similar grounds. **AB 1814 (Lempert)** requires the Judicial Council to adopt a rule of court to specifically allow the mother of a breastfed child to postpone jury duty for a period of up to one year, providing that all steps should be taken to eliminate the need for the mother to physically appear in court to make this request, and providing that at the end of the one year period, jury duty may be further postponed upon written request. Both measures were signed into law.

The Committee heard two measures which were designed to make jury service more attractive by increasing compensation for jurors. **AB 592 (Migden)**, which would have

required the Judicial Council to establish a two-year pilot project dealing with dependent care expenses incurred as a result of jury service and appropriated \$250,000 for this purpose, was passed by the Committee but it subsequently died in the Senate Appropriations Committee. **AB 1796 (Papan)**, which would have increased fees for grand jurors from \$10 per day to \$25 per day for each day's attendance, and changed the mileage reimbursement for grand jurors from \$0.15 per mile, one way, to the mileage reimbursement applicable to county employees, was passed by the Committee but vetoed by the Governor.

The Committee also considered several measures affecting small claims courts. **AB 1131 (Ackerman)** would have expanded the use of small claims court by allowing assignees of a credit debt ("collectors") to file up to five actions per day in the small claims court, subject to various conditions. The Committee passed the bill but it subsequently failed in the Senate Judiciary Committee. **AB 1361 (Aroner)**, which would have authorized the board of supervisors in each county to impose an additional \$5 filing fee in small claims court actions that was to be used solely for the purpose of funding the small claims legal adviser program, was passed by the Committee but vetoed by the Governor.

Recognizing the importance of tribal justice systems and their lack of adequate funding, the Committee passed **AB 2353 (Honda)**, which would have created the California Tribal Justice Support Services Unit within the judicial branch of state government to provide assistance to tribal courts throughout the state. The bill subsequently died in the Senate.

### *Family Law and Children*

The single largest category of bills considered by the Committee during the 1999-2000 Legislative Session dealt with the always-challenging subject of family law and children. A myriad of bills dealing with child and spousal support, custody, visitation, domestic violence and juvenile dependents all came before the Committee during the productive session.

Child support issues were a major focus of the Committee, especially in 1999, with **AB 196 (Kuehl)** and **SB 542 (Burton and Schiff)** enacting substantial reforms to California's ailing child support enforcement system. These measures, both signed into law, created a new state child support agency, wrested the day-to-day operation of the child support program from the local district attorneys, required the development and implementation of uniform best practices, established appropriate staffing ratios and minimum performance standards, and gave greater responsibility for management of delinquent child support to the Franchise Tax Board. **AB 472 (Aroner)**, another component of the reform package which was also signed into law, gave custodial and noncustodial parents the right to a state fair hearing to address grievances concerning specified child support actions.

The Committee also considered various measures seeking to improve the lives of children who are before the juvenile dependency court. **SB 2160 (Schiff)** greatly increases the likelihood that counsel will be appointed for children in dependency cases, requiring the

appointment of counsel unless the court affirmatively finds the child would not benefit from counsel. **AB 1987 (Steinberg)** requires the court to give greater weight to considerations of keeping sibling groups together in making placement decisions. **AB 247 (Kuehl)** sought to broaden the rights of foster parents to participate in juvenile court proceedings concerning a foster child. AB 247 was vetoed, but the other two measures were enacted into law. The Committee also struggled with a measure seeking to open juvenile court proceedings to the public. That bill, **SB 1391 (Schiff)**, passed the Committee after hours of debate and amendment, but died elsewhere in the Legislature.

A wide variety of bills dealing with custody and visitation of children were presented to the Committee during the 1999-2000 session. **AB 2915 (Judiciary)** sought to increase the likelihood that counsel would be appointed for children in contested custody and visitation matters. AB 2915 passed the Committee, but failed elsewhere in the legislative process. **AB 2464 (Kuehl)**, which was chaptered, limited the ability of family law courts to modify a juvenile court custody or visitation order absent a showing of a significant change of circumstances. **SB 668 (Sher)**, repealed the long-standing Uniform Child Custody Jurisdiction Act, and replaced it with the new Uniform Child Custody Jurisdiction and Enforcement Act, and **AB 840 (Kuehl)** created a rebuttable presumption against custody to a batterer.

The Committee also approved **SB 1173 (Vasconcellos)**, giving visitation rights to de facto parents when the court finds that it is in the best interests of the child and a host of other specific criteria are satisfied. That measure died on the Assembly floor.

### *Attorneys*

The Committee considered a number of measures designed to deter the filing of lawsuits. For example, Assemblyman Robert Pacheco introduced two bills in this area - **AB 2139**, which would have extended a pilot project regarding the award of attorney's fees in Riverside and San Bernardino counties for two more years, and applied these provisions statewide in certain construction defect cases, failed in Committee; and **AB 1579**, which would have restricted the total attorney's fees and expenses which may be awarded by the court in a class action lawsuit to counsel for the plaintiff class, died in Committee.

### *Property*

The Committee also delved into some interesting and innovative measures affecting both real and personal property. The Committee approved **AB 2031 (Nakano)**, which would have required the board of directors of a common interest development association to retain all documents and records of the association for not less than 7 years, and to provide members of the association with the same access to these documents and records as the members of the board. This measure died subsequently in the Senate Judiciary Committee. **AB 1859 (McClintock)**, which was passed by the Committee and signed into law, exempts assessments collected by a homeowners' association to pay for required essential services from execution by a judgment creditor and requires a court of law to

ensure that only the funds collected to perform essential services such as paying for utilities and insurance are exempted.

The Committee also considered several bills relating to California's unclaimed property laws, including: **AB 777 (Cardenas)**, which revises the law governing the escheat (i.e., reversion) of bank accounts and money orders to the state by providing that activity in one account at a financial institution will preclude the escheat of funds in another idle account of the same owner at the same institution if certain conditions are met, and which permits money order issuers to deduct "reasonable service charges" from the face value of unclaimed money orders when they escheat to the state, was signed into law; **AB 1625 (Cardoza)**, which would have provided that licensed private investigators, attorneys, accountants, and certain other designated persons are the only individuals permitted to enter into agreements with owners regarding the recovery of unclaimed property that has escheated to the state, was passed by the Committee but vetoed by the Governor; and **AB 2525 (House)**, which allows the county treasurer to release unclaimed money of up to \$60,000, deposited from the estate of a decedent by the public administrator, to the parent who has legal and physical custody of a minor who is entitled to the decedent's escheated estate, without the need to appoint a legal guardian for the minor, was signed into law.

The Committee also considered bills regarding intellectual property, a rapidly evolving area of the law. **AB 1773 (Romero)**, which sought to put a stop to the sale and commercial dissemination of lecture notes without the permission of the instructor, was passed by the Committee and signed into law. Also signed into law was **SB 1319 (Burton)**, a bill that makes it an unfair business practice to register, with a bad faith intent, a domain name that is identical or confusingly similar to the personal name of another living person or deceased personality.

The Committee approved several important measures designed to protect tenants, including **SB 1745 (Burton)**, which requires landlords to give tenants 60 days notice before increasing the rent more than 10%, and **SB 2143 (Bowen)**, which requires residential landlords to provide notice of periodic pest control service to each new tenant. Both of these bills were signed into law. **AB 2270 (Cedillo)**, which passed the Committee but later failed in the Assembly, would have required residential rental unit owners to pay relocation benefits to tenants displaced because of an order to vacate due to specified health and safety violations when the owner has failed to correct the violation.

### ***Practice and Procedure***

Civil practice and procedure is one of the traditional areas of the Committee's jurisdiction, comprising matters such as arbitration and mediation, as well as discovery, evidentiary and other procedural court rules.

The Committee considered several civil procedure bills that were designed to protect consumers and assist Californians in vindicating their civil and constitutional rights. For example, the Committee approved **SB 1254 (Schiff)**, which would have created the

"Sunshine in the Courts Act" to regulate and control the use of court-sanctioned "secrecy" agreements. Among other things, this bill would have prohibited confidentiality agreements or settlement agreements that include secrecy agreements that conceal evidence of financial fraud, a defective product, or an environmental hazard. The bill subsequently died in the Assembly Appropriations Committee. **SB 1245 (Hayden)** was enacted as an urgency measure to authorize any slave or forced labor victim of World War II, or heir of the victim, to bring an action to recover compensation for labor performed without pay. It also extended the statute of limitations for these actions until December 31, 2010.

### ***Contracts and Business***

The Committee also considered an array of contracts bills, including several measures designed to protect consumers in home improvement contracts and to protect the rights of contractors and subcontractors in public and private works of improvement contracts. **SB 99 (Hughes)** sought to reduce the incidences of home equity lending fraud by establishing procedures a seller must follow in retail installment sales contracts involving home improvements where the contract creates a security interest in excess of \$5,000 in the buyer's home. The bill, which would have required that a seller of such contracts consider the buyer's ability to repay the loan, and that a seller require an at-risk buyer to obtain independent advice and counseling before completing the sale and loan, was passed by the Committee and the Legislature but vetoed by the Governor. A narrower measure, **SB 187 (Hughes)**, which prohibits the seller of a home improvement contract from taking a security interest, other than a mechanics lien, in the principal residence of a buyer who is 65 years of age or older, was signed into law.

The Committee approved two measures which were designed to help insure that contractors and subcontractors get paid for their work - **AB 2557 (Margett)**, which increases the payment bond that must be posted by a general contractor on a public works project, including state projects, to 100 percent of the total amount payable for contracts of \$5 million or more, and **SB 471 (Solis)**, which requires an owner of property who contracts for a private work of improvement in an amount exceeding \$5 million to provide one of three specified forms of security for the project. **AB 171 (Margett)**, which would have required certain property owners to notify the original contractor and all subcontractors of the completion or cessation of any work of improvement in order to protect the contractor's and subcontractors' lien rights, failed in Committee.

The Committee passed **SB 820 (Sher)**, the "Uniform Electronic Transactions Act," which was the first bill enacted in the nation to establish uniform standards for conducting electronic transactions in California.

The Committee also struggled with, and devoted significant attention to, a two-bill package by Assemblyman Honda that attempted to strike a difficult balance in seeking to protect the rights of homeowners without unduly jeopardizing the mechanic's lien rights of contractors and subcontractors - **ACA 5**, a proposed constitutional amendment which would have authorized the owner of residential real property to claim a defense against

the recording of a mechanic's lien against the property by a subcontractor when the owner pays the contractor in full for the labor, materials, or services on which the lien is based, and its companion measure, **AB 742**, which would have prohibited a person, other than a general contractor, from recording a mechanic's lien against an owner-occupied dwelling where the homeowner has paid the general contractor in full, and created a Contractor's Default Recovery Fund to provide financial assistance for laborers and suppliers who were not adequately paid for their services due to the default of the general contractor. ACA 5 failed in the Committee, while the Committee approved AB 742 but it died elsewhere in the Assembly.

In the corporation and partnership area, the Committee approved several bills that were signed into law regarding limited liability companies and conversion of business entities. **AB 831 (Leach)** permits the formation of a single person limited liability company in California. It also provides that a member of a limited liability company would be subject to common law governing alter ego liability. **AB 197 (Ackerman)** establishes a comprehensive scheme for the conversion of limited partnerships and limited liability companies into other business entities, including a corporation, business trust, and real estate investment trust. **AB 198 (Ackerman)**, which was also enacted, permits corporations to merge directly with various other business entities, including general partnerships, business trusts, real estate investment trusts, and unincorporated associations.

Two noteworthy bills affecting creditor-debtor relations law that were considered by the Committee were signed into law. **AB 758 (Thomson)** provides, generally, that prevailing plaintiffs, rather than all prevailing parties, are entitled to recover court costs and reasonable attorney's fees in civil actions involving violations of the Consumer Credit Reporting Agencies Act, and eliminates the exemption for out-of-state creditors from the provisions of the Act. **SB 469 (Poochigian)** provides that Roth IRAs are exempt from attachment by judgment creditors to the same extent that traditional IRAs are exempt.

The Committee also heard several unfair trade practices measures. **SB 1359 (Karnette)**, which required nonprofit charitable organizations and solicitors selling intangibles to make certain disclosures when soliciting in-home sales, was passed by the Committee and the Legislature, but was vetoed by the Governor. **AB 2186 (Robert Pacheco)**, which would have significantly altered unfair competition law by placing a number of substantial restrictions on the ability of consumers to bring lawsuits alleging unfair competition, failed in Committee.



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# **ATTORNEYS AND RELATED MATTERS**



## ATTORNEYS AND RELATED MATTERS

### Attorneys and Attorney Related Services

**AB 1138 (Strom-Martin) Unauthorized practice of law: estate planning services.** This bill, among other things, prohibits persons from engaging in the unauthorized practice of law in connection with any estate planning service. The bill also provides that any person affected by a violation of this legislation may bring an action to recover actual damages and other specified forms of relief, including reasonable attorney's fees and costs. However, it also specifies that nothing in this bill shall be construed to prevent a professional licensee or financial institution from performing an estate planning service that does not constitute the unauthorized practice of law. Status: Dead, ASM.

**AB 1761 (Brewer) Paralegals.** The bill defines a paralegal as a person who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work at the direction and under the supervision of an active member of the State Bar. The term paralegal does not include and may not be used by a nonlawyer who provides legal services directly to members of the public, a legal document assistant, or an unlawful detainer assistant. Every person who uses the name paralegal is required to satisfy specified criteria related to education and experience, and to certify completion every three years of four hours of mandatory continuing legal education in legal ethics. Status: Chapter 439, 2000.

**AB 1858 (Romero) Attorney advertising and immigration consultants.** This bill requires, among other things, that all advertisements by a member of the State Bar that seek employment for immigration or naturalization services include a statement that the person is an active member of the State Bar. The bill also increases the civil penalty that victims of immigration fraud can collect. Status: Chapter 674, 2000.

**AB 2069 (Corbett) Attorneys: defense of clients and conflicts of interest.** This bill requires the State Bar to conduct a study concerning the legal and ethical issues that arise when an attorney is retained by an insurance company to represent its insured in one case, and is retained in another case to represent someone against an insured of that same insurance company. The bill also clarifies provisions of existing law protecting attorneys from meritless "civil conspiracy claims," requiring that the defense must be raised by the attorney-party at his or her first appearance in the action by demurrer, motion to strike, or other appropriate motion. Status: Chapter 472, 2000.

**AB 2687 (Margett) Notaries public: fees; performance of immigration services.** This bill seeks to clarify existing law relating to notaries public by restating the prohibition against charging fees for notarization of an application or claim for veterans' benefits. The bill also clarifies that a notary public who is not qualified and bonded as an immigration consultant may not enter data provided by a client on immigration forms or otherwise perform the services of an immigration consultant. Status: Chapter 194, 2000.

**AB 2810 (Robert Pacheco) Legal document assistants.** This bill authorizes legal document assistants (LDAs) and unlawful detainer assistants (UDAs) to post a single \$25,000 bond in the county of their principal place of business, rather than requiring the posting of a bond in every county in which the LDA or UDA registers and provides services. The bond shall indicate the county in which the bond will be on file. Status: Chapter 386, 2000.

**SB 72 (Murray) Lawyers: financial services.** This bill requires a lawyer to provide a detailed disclosure before the lawyer, while acting as a fiduciary, could sell financial products to any client who is an elder or dependent adult with whom the lawyer has or has had an attorney-client relationship within the past three years. It also provides that the disclosure must be made in a manner that should reasonably have been understood by that client and specifies the terms of that disclosure. In addition, the bill permits a client who has suffered damages as a result of a violation of the disclosure requirements to bring an action against the lawyer to recover actual and punitive damages, and injunctive relief. The bill also provides that a violation of its provisions shall be cause for discipline by the State Bar. Status: Chapter 454, 1999.

**SB 1927 (Haynes) Legal document assistants.** This bill provides that legal document assistants (LDAs) who register in, and limit their practice to, Riverside County, and specify on their registration application that their practice is limited to assisting clients in small claims court are required to post only a \$5,000 bond in lieu of the \$25,000 bond otherwise required. LDAs who post this reduced bond are required to include on any solicitation or advertisement, as well as on any contracts, letterhead, business cards, correspondence, and pleadings, that they are only authorized to provide services in small claims court matters. Status: Vetoed.

### Attorney's Fees

**AB 1579 (Robert Pacheco) Class actions: attorney's fees.** This bill restricts the total attorney's fees and expenses which may be awarded by the court in a class action lawsuit to counsel for the plaintiff class in a class action. It states that the total attorney's fees and expenses awarded by the court to counsel for the plaintiff class may not exceed a reasonable percentage of the sum of the following: (1) any damages and prejudgment interest actually paid to the class; (2) any future financial benefits to the class based on the cessation of alleged improper conduct by the defendants; and (3) the costs actually incurred by all defendants in complying with the terms of an injunctive order or settlement agreement. Status: Dead, AJUD.

**AB 2139 (Robert Pacheco) Settlement offers: attorney's fees: common interest developments.** This bill would extend a pilot project regarding the award of attorney's fees in Riverside and San Bernardino counties for two more years, and apply these provisions statewide in certain construction defect cases. Status: Failed, AJUD.

**SB 243 (McPherson) Attorney's fees: recreational property.** Existing law requires the State Board of Control to allow a claim for reasonable attorney's fees incurred by an owner of any interest in real property or a public entity as a defendant in a specified civil action claiming damages, if the owner gives permission to the public to enter or use the property pursuant to a

specified agreement regarding recreational trail use, or if the public entity gives permission to the public to enter or use the property for recreational purposes, not to exceed a total of \$100,000 per fiscal year. This bill requires the Board of Control also to allow claims for reasonable attorney's fees in connection with such lawsuits. Status: Chapter 775, 1999.

### State Bar

**AB 1042 (Cedillo) Admission: first year law students' exam.** This bill, until January 1, 2003, requires a student attending an unaccredited law school only to take the first year law students' examination (the Baby Bar), after which, he or she would be notified, based on the score of the examination, of the probability of passing the general bar examination. It also provides, until January 1, 2003, that the passing of the Baby Bar shall not be a condition of receiving credit for law study or of eligibility to take the general bar examination. This bill repeals all requirements relating to the Baby Bar as of January 1, 2003, and states legislative intent to make the bill apply retroactively. Status: Vetoed.

**AB 1153 (Ackerman) State Bar dues authorization.** This bill requires the assessment of an unspecified amount for annual membership fees for active and inactive members of the State Bar of California. The bill eliminates the authorization for the Board of Governors to charge, in addition to the annual membership fee, a \$25 fee specifically authorized for the disciplinary system and a \$2 fee for the support of a discipline monitor and other independent experts. The bill further prevents the Bar from operating the Conference of Delegates, and fails to provide for the establishment of a voluntary association supported by voluntary dues for a Conference of Delegates or similar forum for local bar association representatives to discuss laws and policies affecting the profession or the public and to lobby on these issues. The bill also fails to provide for the voluntary operation and funding to support continuation of existing specialty sections (e.g., Business Law, Family Law, etc.) or the establishment of new sections. Status: Failed, AJUD.

**SB 143 (Burton) State Bar: attorney discipline.** This bill establishes various reforms to the State Bar's attorney discipline system, including strengthening the rights of attorneys in the process and revising the appointment authority of the State Bar Court. The bill, among other things: (1) clarifies that any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her; (2) strengthens the rights of attorneys complained against by requiring that an attorney be given fair and adequate notice and opportunity to exercise various rights, including the right to exercise any right guaranteed by the state constitution or the United States Constitution; (3) provides that a party requesting review of a decision or order of the State Bar Court has the burden of demonstrating that the review or order is clearly erroneous or unsupported by the evidence, or that the hearing department did not proceed in the manner required by law; (4) requires the State Bar to compile specified disciplinary statistics relating to who is prosecuted, and to issue a written report on or before June 30, 2001, to the Senate and Assembly Judiciary Committees; (5) provides that procedures used in the disciplinary process must ensure that resources of the State Bar are used fairly and equitably in the investigation and prosecution of

complaints against all attorneys; (6) requires that 5 hearing judges be appointed to the State Bar Court, 2 of whom would be appointed by the Supreme Court, one by the Governor, one by the Senate Rules Committee, and one by the Speaker of the Assembly; and (7) eliminates the Lay Judge position on the Review Department of the State Bar Court and replaces that position with another Review Department Judge to be appointed by the Supreme Court. Status: Chapter 221, 1999.

**SB 144 (Schiff) State Bar of California.** This bill authorizes the State Bar to collect \$318 as membership dues for the year 2000, on top of the on-going authorization to collect \$77, for a total dues bill of \$395. It also provides a 25 percent fee reduction if the lawyer's gross family income is less than \$40,000, and a 50 percent offset if the gross income is less than \$25,000. The bill reduces the mandatory continuing legal education (MCLE) requirement from 36 hours in 36 months to 25 hours every 36 months, requires the State Bar to develop low-cost or no-cost options for fulfilling self-study requirements, and repeals the exemption for retired judges from the MCLE requirement. In addition, the bill makes the Conference of Delegates and the State Bar Sections self-funding (no funding with mandatory dues), but allows the Bar to collect voluntary fees on their behalf and to provide administrative support services at cost. The bill further allows members to deduct \$5 from their dues if they do not want their dues used by the State Bar to lobby on legislation outside the limits of Keller v. State Bar, and limits the State Bar's use of mandatory dues on non-Keller lobbying and related activities to an amount specified by formula. It requires an independent comprehensive financial audit of Bar expenses prior to an authorization to collect dues for the year 2001, and requires an annual performance audit to be conducted by the Bureau of State Audits. The bill also limits the contracting for goods and services by the State Bar to no more than \$50,000, with specified exceptions. Status: Chapter 342, 1999.

**SB 1367 (Schiff) State Bar: annual dues bill.** This bill authorizes the State Bar to collect \$318 as membership dues for the year 2001, on top of the on-going authorization to collect \$77, for a total dues bill of \$395. Status: Chapter 118, 2000.

**SB 1420 (Burton) State Bar Court: State Bar workload standards.** This bill revises the codes relating to the operation of the State Bar Court to reflect the Supreme Court's adoption of a court rule providing for a de novo review by the State Bar Review Court of any decision or ruling by a State Bar hearing judge that finally disposes of a proceeding. The bill also requires the State Bar to review its workload standards to measure the effectiveness and efficiency of its disciplinary activities programs, and to use those standards in reassessing the Bar's staffing needs in that area. Status: Chapter 246, 2000.

**SB 1782 (Morrow) Bar admission: out-of-state attorneys.** This bill declares the intent of the Legislature that the California Supreme Court adopt rules permitting attorneys licensed in other states to be admitted to the State Bar under certain circumstances. (This is commonly referred to as "reciprocity" or "reciprocal admission.") It also requests that the Supreme Court appoint a task force to study and make recommendations regarding whether and under what circumstances attorneys who are licensed to practice law in other states and who have not passed the California

State Bar Examination may be permitted to practice law in California. Status: Chapter 247, 2000.



# **CIVIL PRACTICE AND PROCEDURE**



## CIVIL PRACTICE AND PROCEDURE

### Arbitration and Mediation

**AB 1751 (Kuehl) Mandatory pre-dispute binding arbitration.** This bill seeks to prevent health plans from forcing patients to give up their jury trial and other due process rights in order to obtain health care coverage for themselves and their family members. It sets forth various legislative declarations including that mandatory pre-dispute arbitration clauses, imposed on patients by health plans and insurers as a pre-condition of obtaining health care coverage, are inherently unfair and against public policy. The bill further declares that all patients should have the full benefit of legal rights and remedies, and that patients should not be coercively deprived of those rights and remedies, including the right to resolve a health care dispute in court. The bill provides that a pre-dispute binding arbitration clause inserted into a health care service contract or disability insurance contract shall be void and unenforceable. The bill establishes an administrative penalty for each violation by a health care service provider or disability insurer who violates this public policy proscription against forced pre-dispute binding arbitration clauses. Status: Dead, Asm. Inactive.

**SB 1570 (Dunn) Mobilehome arbitration.** This bill requires arbitration or mediation agreements in mobilehome tenancies to be separate from rental agreements, and prohibits management from conditioning a tenancy on acceptance of such an agreement. Status: Vetoed.

### Civil Procedure

**AB 540 (Machado) Certificates of merit: actions against architects, engineers and land surveyors.** This bill requires a plaintiff's attorney, before filing an action for professional negligence against an architect, engineer, or land surveyor, to serve on the other party any certificate of merit required to be filed with the court. Status: Chapter 176, 1999.

**AB 1132 (Ackerman) Time for filing and service of noticed motions.** This bill extends existing statutory timelines for filing and serving specified noticed motions, opposing papers, and reply papers as follows: a) extends from 15 to 21 calendar days before the hearing, the time period in which all motions shall be served and filed, unless a different time period is specifically provided in statute; b) clarifies that if a notice of motion is served by mail, the time period specified for service shall be increased by five "calendar" days if the address for service is within California, by ten "calendar" days if the address for service is outside of California but within the United States, and by twenty "calendar" days if the address for service is outside the country; c) changes from two "court" to two "calendar" days the amount of time that the service period shall be extended where the notice of motion is served by fax, express mail, or any other method of delivery providing for overnight delivery; d) changes from five court days before the hearing to ten calendar days before the hearing the time in which all papers opposing a motion must be filed and served; and e) changes from two court days before the hearing to five calendar days before the hearing the time in which all reply papers must be filed and served. Status: Chapter 43, 1999.

**AB 1669 (Committee on Judiciary) Civil law omnibus.** This is the civil law omnibus bill of the Judiciary Committee. The bill, among other things: clarifies that an exemption for a debtor collecting his own debt from certain debt collection laws also includes the creditor's principal; rewrites the fee exemption for actions to enjoin or restrain domestic or employment violence when the petition alleges violence or potential violence; specifies that a good faith improver claim is, jurisdictionally, an unlimited civil case, unless the claim is brought solely as a defensive cross-complaint; exempts petitions for a name change approved by the Witness Protection Program from the law requiring publication notice of the change of name; and allows district attorney investigators to inspect vehicles and car parts to look for stolen vehicles on public highways and specified private property. Status: Chapter 688, 2000.

**AB 1672 (Committee on Judiciary) Civil law omnibus.** This is the Judiciary Committee's annual civil law and procedure omnibus bill. The bill, among other things: allows the court to appoint either the county auditor or the county tax collector, where both offices are elected, to make certain determinations of tax liability; authorizes the California Integrated Waste Management Board to convert certain administrative penalties into civil judgments; makes various clarifying changes to the recently enacted law governing legal document assistants; revises the exception in current law regarding the taking of multiple depositions of the same person; and expands the means of identification for court determinations of a litigant's application to proceed in forma pauperis. Status: Chapter 892, 1999.

**SB 491 (Johnston) Structured settlements.** This bill would require a transfer of structured settlement payment rights entered into on or after January 1, 2000, to be preceded by a specified disclosure and to include notice to all other interested parties. It would also require such transfers to comply with specified conditions, including conditions as to fairness and compliance with applicable laws. The bill prohibits the inclusion of various contract terms, and would make a transfer agreement void and unenforceable if any of the prohibited terms were included. In addition, the bill requires the filing of transfer agreements with the Attorney General, and would authorize the AG to charge a reasonable fee for filing those agreements, to be paid by the buyer. Finally, this bill exempts from its provisions blanket loan agreements in which the lender takes a security interest in the borrower's assets to secure the loan. Status: Chapter 742, 1999.

**SB 1161 (Senate Judiciary Committee) Offers to compromise.** This bill restores a provision of law inadvertently repealed by SB 73 (Kopp) of 1997. It authorizes the court or arbitrator, in its discretion, to require the party rejecting a settlement offer to pay the offering party's expert witness costs actually incurred and reasonably necessary during trial or arbitration of the case, as specified. Status: Chapter 353, 1999.

**SB 1245 (Hayden) Compensation: World War II slave and forced labor.** This urgency measure authorizes any slave or forced labor victim of World War II, or heir of the victim, to bring an action to recover compensation for labor performed without pay. It also extends the statute of limitations for these actions until December 31, 2010. Status: Chapter 216, 1999.

**SB 1254 (Schiff) Civil Procedure: "secret settlements."** This bill creates the "Sunshine in the Courts Act" to regulate and control the use of court-sanctioned "secrecy" agreements. Specifically, this bill: 1) prohibits confidentiality agreements or settlement agreements that include secrecy agreements that conceal evidence of financial fraud, a defective product, or an environmental hazard; 2) allows the court, in response to a noticed motion, and after examining information proposed for nondisclosure, to issue a protective order approving a secrecy agreement if at least one of certain conditions specified in the bill apply; 3) provides that, if the court issues a protective order to conceal information the court finds would cause serious or imminent danger to the public, the court must notify the Attorney General (AG); 4) requires the AG to file a motion with the court to lift a protective order if the AG determines that sufficient action cannot be taken to alleviate a serious and imminent danger to the public and that disclosure is required to protect public health and safety; and, 5) allows third parties to contest any court order, judgment, agreement, or contract that violates the bill's prohibition against secrecy agreements, or to contest a protective order, within five years of the date of the contract or other agreement. Status: Dead, AAPPR.

### Discovery

**AB 794 (Corbett) Subpoenas: personal records.** This bill addresses issues of access to personal and employment records required to be made available pursuant to a subpoena duces tecum. The bill adds various health care providers not specifically mentioned in existing law to the list of witnesses who are required to produce records pursuant to a subpoena duces tecum; imposes a limit on the time in which a party, other than the requesting party, may seek to purchase copied records from the deposition officer; requires a witness, upon five business days' notice, to designate a time period of six or more continuous hours on a date certain for copying records subject to a subpoena served on the witness; and provides that deposition officers are not liable for the release of a consumer's personal or employment records if they do not receive proper notice of the consumer's motion to quash a subpoena duces tecum. Status: Chapter 444, 1999.

**AB 2374 (Lempert) Discovery of peer review records.** This bill adds organized committees of marriage and family therapists and licensed clinical social workers having the responsibility for evaluation and improvement of the quality of care to the list of other medical professional groups and peer review bodies whose records and proceedings are exempt from discovery in civil litigation. Status: Chapter 136, 2000.

**SB 447 (Dunn) Discovery: inspection.** This bill provides that a party may propound a supplemental demand for inspection, provided that an initial demand for inspection was previously served by that party. The bill further provides that a party may make such a supplemental demand for inspection: (1) twice prior to the initial setting of a trial date; and (2) once after the initial setting of a trial date, subject to the time limits on discovery proceedings and motions before trial. However, on motion for good cause shown, the court may grant leave to a party to propound an additional number of supplemental demands for inspection. Status: Chapter 48, 1999.

## Evidence

**AB 495 (Robert Pacheco) Hearsay exceptions: business records.** This bill creates a new business records exception to the hearsay rule, allowing admission into evidence of business records when the requirements of the current business records exception cannot be satisfied. This new hearsay exception permits a business record to be admitted into evidence to prove the act, condition, or event memorialized by the record if the original custodian of records or other qualified witness is unavailable and the current custodian of records testifies that the writing was received in the ordinary course of business, the custodian has succeeded to the interest in the writing of the original preparer or the successor of the original preparer, there has been a course of conduct to establish that the current custodian is regarded as the successor to the original preparer's interest, and the testimony and course of conduct indicate the trustworthiness of the record. Status: Failed, AJUD.

**AB 526 (Zettel) Hearsay exception: elder and dependent abuse.** This bill creates a new exception to the hearsay rule for certain statements of specified elders and dependent adults who are the victims of abuse. Status: Chapter 383, 1999.

**AB 1016 (Briggs) Taxpayer-taxpreparer privilege.** This bill seeks to conform with the Internal Revenue Service Restructuring and Reform Act of 1998 by expanding the lawyer-client privilege to include specified communications between a taxpayer and a tax practitioner to the extent that the communication would be considered privileged if it were between a lawyer and a client. The privilege only applies in non-criminal tax matters before the Franchise Tax Board, the State Board of Equalization, or the Employment Development Department and sunsets January 1, 2005. Status: Chapter 438, 2000.

**AB 1860 (Migden) Confidentiality of news sources.** This bill makes a number of clarifications relative to the rights of journalists under the media shield law to provide that: (1) no testimony or other evidence given by a journalist under subpoena in a civil or criminal proceeding may be construed as a waiver of the immunity rights provided by the media shield law in the California Constitution; (2) except in exigent circumstances, a journalist who is subpoenaed in any civil or criminal proceeding shall be given at least five days' notice by the party issuing the subpoena that his or her appearance will be required; and (3) where the judge in a criminal trial holds a journalist asserting protection under the media shield law in contempt of court, the court must set forth findings on the record stating, at a minimum, why the information will be of material assistance to the party seeking the evidence, and why alternate sources of the information are not sufficient to satisfy the defendant's constitutionally guaranteed right to a fair trial. Status: Chapter 377, 2000.

**AB 2804 (Papan) Evidence: admissibility of statements of apology.** This bill makes portions of a statement, writing or benevolent gesture expressing sympathy to a person involved in an accident, or to the person's family, inadmissible as evidence of liability in a civil action. However, a statement of fault, which is part of or in addition to any benevolent statement, writing or gesture, would not be inadmissible. Status: Chapter 195, 2000.

**CONTRACTS, BUSINESS  
AND COMMERCIAL  
MATTERS**



## CONTRACTS, BUSINESS AND COMMERCIAL MATTERS

### Business

**AB 1360 (Kaloogian) Seller assisted marketing plans (SAMP): exemptions.** This bill exempts high-volume sellers from the consumer protection provisions of the SAMP Act if the seller has over \$5,000,000 in net worth and has sold the SAMP to 25 people in the last five years, or if the seller's goods being sold come with a trademark or a service mark. This bill also changes the definition of "initial payment" in the Act, and creates a new statute of limitations on these contracts. Status: Dead, AJUD.

**SB 45 (Sher) Commercial law: secured transactions.** This bill replaces the existing Article 9 of the Commercial Code dealing with secured transactions and replaces it with the Revised Article 9 of the Uniform Commercial Code adopted by the National Conference of Commissioners on Uniform State Laws and the American law Institute. Specifically, the bill restructures, as of July 1, 2001, the current system for the filing of financing statements relating to commercial transactions which include a security interest in personal property, fixtures and chattel paper. The bill lists the requirements for filing financing statements, adds a correction statement as a new document which may be filed, sets a new standard for handling termination statements, revises the filing fee and sets a statewide standard for rejecting documents. Status: Chapter 991, 1999.

**SB 417 (Bowen) Supermarket club cards.** This bill requires any application form or written solicitation for a supermarket club card account to be used for personal, family, or household purposes which is obtained on or after July 1, 2000, to disclose if the card issuer collects and aggregates information concerning a cardholder's buying habits, and requires written notice to the cardholder that describes the cardholder's right to prohibit the collection and aggregation of that information. Status: Dead, AAPPR.

**SB 926 (Speier) Supermarket club cards.** This bill enacts the Supermarket Club Card Disclosure Act of 1999. The act, which becomes operative on July 1, 2000, prohibits a club card issuer from requiring an applicant for a supermarket club card to provide a driver's license or Social Security account number as a condition of obtaining the card. The act also prohibits a club card issuer from selling or sharing personal identification information regarding cardholders, except as specified. Status: Chapter 586, 1999.

**SB 1434 (Alarcon) Fax signatures: UETA.** This bill allows declarations accompanying applications for building permits to be filed by facsimile or other electronic means. It also specifies that an "application for a building permit" shall be construed as a "transaction," and all declarations required as part of the permit process shall be construed as "records" under the Uniform Electronic Transactions Act (UETA). Status: Chapter 49, 2000.

**SB 1510 (Escutia) Tobacco sales: restrictions on sales and distribution.** This bill, among other things, prohibits the retail sale or display of cigarettes by self-service displays. It exempts

from this provision self-service displays that are located in a retail establishment where the retailer ensures that no person under 18 years of age is present or permitted to enter at any time and there is a specified sign prominently posted at all entrances to the retail establishment, stating that it is a restricted tobacco sales area where minors are not allowed. The bill also prohibits the non-sale distribution of cigarettes or smokeless tobacco products to any person on private property that is open to the general public. It further specifies that this prohibition does not apply to any private property open to the general public where minors are either prohibited by law or denied access to a separate nonsale distribution area by a peace officer or licensed security guard stationed at the entrance of such distribution area. Status: Dead, SEN.

**SB 2002 (Senate Judiciary Committee) Commercial law: secured transactions.** This bill makes a number of technical and conforming changes to various codes following last year's enactment of the revised Uniform Commercial Code pertaining to secured transactions. Status: Chapter 1003, 2000.

**SB 2015 (Sher) Charitable trusts: Attorney General actions.** This bill amends the Uniform Supervision of Trustees and Fundraisers for Charitable Purposes Act to grant the Attorney General (AG) additional enforcement tools and resources, including: the ability to assess late fees; the authority to suspend or revoke registrations; the power to enter into pre-filing agreements; the ability to impose civil penalties for violations of the Act; and the appropriation of all fines, penalties, attorneys fees and costs to the AG for the administration and enforcement of the Act. Status: Chapter 475, 2000.

### Contracts

**AB 62 (Papan) Car rental contracts.** This bill, which originally addressed health care issues, was amended on the Assembly floor to create a limited rental car insurance agent license category. Specifically, the bill, among other things: 1) creates a limited rental car insurance agent license category, and authorize the Insurance Commissioner (IC) to issue a license to a rental car company or its franchisee; 2) prohibits a rental car company from offering or selling insurance unless it has been issued a rental car agent license; 3) authorizes a duly licensed rental car company to sell insurance only in connection with the rental of a vehicle, as specified; 4) allows an employee or franchisee of a rental car company that has been issued a rental car agent license to be an endorsee on the license, to offer and sell insurance as specified; 5) specifies that conduct of an employee endorsee who is acting within the scope of employment would be deemed to be the conduct of the rental car agent licensee; and 6) requires an endorsee to be at least 18 years of age, and to receive training and periodic retraining, in the types of insurance products offered for sale, ethical sales practices, and the disclosures required to be made to prospective vehicle renters. Status: Chapter 618, 1999.

**AB 171 (Margett) Works of improvement: liens.** This bill requires certain property owners to notify the original contractor and all subcontractors of the completion or cessation of any work of improvement (property improvement) in order to protect the contractor's and subcontractors' lien rights. Status: Dead, AJUD.

**AB 576 (Honda) Mechanic's liens.** This bill corrects drafting mistakes from recently enacted legislation (SB 914 (Sher) - Chapter 795, Statutes of 1999) by deleting erroneous references to provisions of law which were proposed but never enacted regarding the enforcement of mechanics' liens. Status: Chapter 13, 2000.

**AB 742 (Honda) Mechanic's liens.** This bill prohibits a person, other than a general contractor, from recording a mechanic's lien against an owner-occupied dwelling where the homeowner has paid the general contractor in full, and creates a Contractor's Default Recovery Fund to provide financial assistance for laborers and suppliers who were not adequately paid for their services due to the default of the general contractor. The bill also makes the above provisions contingent upon the enactment of ACA 5 (Honda), a proposed amendment to Section 3 of Article 14 of the California Constitution which would authorize the owner of residential real property to claim a defense against the recording of a mechanic's lien against the property by a subcontractor when the owner pays the contractor in full for the labor, materials, or services on which the lien is based. Status: Dead, ASM.

**AB 806 (Keeley) Public works contracts: retention proceeds.** This bill limits the amount of funds that a public entity, contractor or subcontractor may hold in retention in public works projects to five percent of the contract payment and no more than five percent of the contract price, and applies the above requirements to all public works contracts entered into after January 1, 2000. It also specifies that the five percent limitation would not limit the authorization in current law for public agencies to withhold 150 percent of the value of any disputed amount of work from final payment. In addition, it prohibits any party to a public works project from requiring another party to waive the requirements of this bill. Status: Vetoed.

**AB 966 (Papan) Rental cars: collision damage waivers.** This measure adds new consumer disclosure requirements regarding collision damage waivers (CDWs) offered by rental car companies and other consumer notices. Specifically, this bill: 1) requires a rental car company to clearly disclose in any print advertisement the existence and amount of a CDW and requires that any print advertisement also advise a consumer to contact his or her insurance agent or credit card company to determine whether the purchase of a CDW would duplicate the consumer's own insurance or credit card benefits; 2) requires a rental car company to clearly disclose the charge for a CDW in any television, radio, or print advertisement; 3) prohibits a rental company from paying an employee any compensation, fee, or commission directly dependent on the sale of CDWs; and 4) requires rental car companies to notify customers, at the time of the transaction, of what the maximum charge per gallon of fuel will be upon the vehicle's return. Status: Dead, SJUD.

**AB 1304 (Maddox) Home solicitation contracts.** This bill adds licensed private investigators to the list of professionals that are excluded from the consumer protection provisions of the home solicitation sales act. Status: Dead, AJUD.

**AB 2113 (Honda) Mechanic's liens.** This bill would, among other things, require a person, other than an original contractor, who has provided labor, service, equipment, or material to a

work of improvement on property with an existing single family, owner-occupied dwelling, who has recorded a lien, to file a statement of claim with the Contractors' State License Board. The claimant would be entitled to foreclose the lien upon a finding by a hearing officer that the owner has not paid the original contractor in full, or the owner has not complied with specified conditions, including a requirement that the owner prepare an affidavit, under penalty of perjury, that the original contractor was paid in full. Upon a determination that the owner paid the original contractor in full, the hearing officer would enter an order directing specified payment of the claimant from the Contractor Default Recovery Fund, which would be established by the bill and be continuously appropriated to provide monetary relief to any claimant who is not paid in full for this labor, service equipment, or material. Status: Dead, AJUD.

**AB 2405 (Maddox) Enforcement of judgments: debtor name changes.** This bill creates an "affidavit of identity" process to allow a judgment creditor to enforce a judgment against a judgment debtor under an alias name other than that set forth in the original judgment. Status: Chapter 639, 2000.

**AB 2557 (Margett) Payment bonds: public works.** This bill increases the payment bond that must be posted by a general contractor on a public works project, including state projects, to 100 percent of the total amount payable for contracts of \$5 million or more. Status: Chapter 760, 2000.

**AB 2761 (Brewer) Public entities: contracts.** This bill provides that, in the event that a contract to which a public entity is a party contains a provision stating the date for accrual of a cause of action for breach of contract, the accrual date shall not be earlier than the date the project is completed or the conclusion of the claims resolution procedure required by the contract, whichever is later. Status: Dead, AJUD.

**ACA 5 (Honda) Mechanic's liens.** This bill is a proposed amendment to Section 3 of Article 14 of the California Constitution which would authorize the owner of residential real property to claim a defense against the recording of a mechanic's lien against the property by a subcontractor when the owner pays the contractor in full for the labor, materials, or services on which the lien is based. It's companion measure, AB 742 (Honda), is described above. Status: Failed, AJUD.

**SB 99 (Hughes) Home improvement contracts.** This bill attempts to reduce the incidences of home equity lending fraud by establishing procedures a seller must follow in retail installment sales contracts involving home improvements where the contract creates a security interest in excess of \$5,000 in the buyer's home. This bill would require that a seller of such contracts consider the buyer's ability to repay the loan, and that a seller require an at-risk buyer to obtain independent advice and counseling before completing the sale and loan. A person or entity who violates the provisions in the bill would be liable for actual damages suffered by the buyer that were proximately caused by the violation. In addition, any person or entity who intentionally or as a pattern or practice violates any provision would be additionally liable for an amount equal to three times the total sale price of the installment contract. The bill also provides that any buyer who is a senior citizen or disabled person may seek and be awarded, in addition to the other

remedies, up to \$5,000 in additional damages as allowed under the Consumers Legal Remedies Act. Status: Vetoed.

**SB 187 (Hughes) Home improvement contracts.** This bill prohibits the seller of a home improvement contract from taking a security interest, other than a mechanics lien, in the principal residence of a buyer who is 65 years of age or older. It also imposes civil remedies and penalties for a violation of the law prohibiting a lender in a home improvement contract from making direct payments solely to the home improvement contractor. Status: Chapter 512, 1999.

**SB 471 (Solis) Contractors: works of improvement.** This bill requires an owner of property who contracts for a private work of improvement in an amount exceeding \$5 million to provide one of three specified forms of security for the project. It also exempts from the above security requirement: the construction of single-family residences and any associated fixed works that require the services of a general engineering contractor; public works projects; housing developments eligible for a density bonus; and certain publicly-traded and qualified private companies. Status: Dead, SEN.

**SB 820 (Sher) Electronic transactions.** This bill establishes uniform standards for conducting electronic transactions in California. Specifically, this bill enacts the "Uniform Electronic Transactions Act" which, among other things: (1) provides that nothing in the bill requires a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form; (2) provides that where the parties have agreed to conduct a transaction by electronic means they may do so under the rules set forth in this bill, including rules governing detection and confirmation of errors or changes to the record and rules governing retention of electronic records; (3) provides that, except for a separate and optional agreement the primary purpose of which is to authorize a transaction to be conducted by electronic means, an agreement to conduct a transaction by electronic means may not be contained in a standard form contract that is not an electronic record; (4) provides that a record or signature may not be denied legal effect or enforceability because it is in electronic form; (5) specifies the means by which an electronic record would be determined to have been sent and received; (6) specifies that in a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form; (7) provides that an offer made electronically and accepted electronically may form a contract in the same manner and with the same effect as if the record was not electronic, except that an acceptance of the offer would be effective, if at all, when received; and (8) excludes from the bill numerous transactions, including, but not limited to: (a) wills, codicils or testamentary trusts; (b) specified transactions in the Uniform Commercial Code (which were drafted in consideration of electronic records); (c) those records where a law requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed from the record (i.e., real estate transactions); and, (d) specified notices and transactions under various consumer protection laws (e.g., notice of mortgage late fees, non-judicial foreclosure notices; statements of finance charges). Status: Chapter 428, 1999.

**SB 1092 (O'Connell) Motor vehicles: conditional sales contracts.** This bill conforms disclosure requirements in the California Automobile Sales Finance Act with federal law.

Specifically, this bill: (1) clarifies the "total cash price" and "downpayment" disclosure requirements in a conditional sale contract for a motor vehicle when trade-ins are involved in the sale; and (2) deletes obsolete provisions of law relating to a smog check exemption and donation program that has been repealed. Status: Chapter 212, 1999.

**SB 1162 (Burton) Child entertainers: protection of earnings.** This bill overhauls California's "Coogan Law" in an effort to better ensure that a sufficient portion of a child's earnings under specified entertainment, sports and similar contracts is set aside in trust and preserved for the child's future. This bill requires for the first time that a portion of a minor's earnings from entertainment, sports, and similar contracts which are not subject to court approval be set aside in a trust fund or specified savings plan until the minor reaches the age of 18. As to contracts which are subject to court approval, the bill requires that 15% of the minor's gross earnings be set aside in trust or a savings plan approved by the court, unless the court approves the set aside of a higher percentage of the minor's earnings. The bill also for the first time categorizes the earnings of a minor under entertainment, sports, or similar contracts as the sole legal property of the minor. Status: Chapter 940, 1999.

**SB 1371 (Sher) Electronic transactions: records.** This bill would amend the Electronic Transactions Act to create a system for the transfer of title to an electronic loan note, and to extend the doctrine of holder in due course to holders of copies of electronic loan notes. Status: Dead, AJUD.

## Corporations

**AB 197 (Ackerman) Limited partnerships and limited liability companies.** This bill establishes a comprehensive scheme for the conversion of limited partnerships and limited liability companies into other business entities, including a corporation, business trust, and real estate investment trust. Status: Chapter 250, 1999.

**AB 198 (Ackerman) Legal entities: organization and operation.** This bill permits corporations to merge directly with various other business entities, including general partnerships, business trusts, real estate investment trusts, and unincorporated associations. Under existing law, such mergers can only be achieved indirectly in a costly, multi-step process. Status: Chapter 437, 1999.

**AB 229 (Baldwin) Corporations: limited liability companies (LLC).** This bill allows general and subcontractors, real estate agents and brokers, aircraft repair dealers, private detectives, bail bondsmen, restaurants, and approximately fifty other professions to operate as a LLC, while prohibiting attorneys, medical doctors, CPAs, dentists, veterinarians, profession engineers, architects, and twenty other professional occupations from operating as a LLC. Status: Dead, AJUD.

**AB 831 (Leach) Limited liability companies.** This bill permits the formation of a single person limited liability company in California. It also provides that a member of a limited

liability company would be subject to common law governing alter ego liability. Status: Chapter 490, 1999.

**AB 2213 (Frusetta) Corporations.** This bill would, among other things, allow an unlisted corporation which operates a golf and country club to stagger the terms of its directors, potentially risking the rights of minority shareholders. Status: Failed, AJUD.

### Creditor – Debtor Relations

**AB 758 (Thomson) Consumer credit reporting agencies.** This bill provides, generally, that prevailing plaintiffs, rather than all prevailing parties, are entitled to recover court costs and reasonable attorney's fees in civil actions involving violations of the Consumer Credit Reporting Agencies Act (CCRA), and eliminates the exemption for out-of-state creditors from the provisions of the Act. It also provides for a limited exception to the above rule if a plaintiff files a Fair Credit Reporting Agencies Act claim against a debt collector and also files a claim related to the collection of a debt, attorney's fees can be awarded to the prevailing defendant if a judge determines that the plaintiff's case was filed in bad faith. The bill further provides that nothing in the measure is intended to affect remedies available for frivolous actions or delaying tactics under Section 128.5 of the Code of Civil Procedure. Status: Chapter 836, 1999.

**SB 219 (Peace) Priority of creditors.** This bill amends the "assignment for the benefit of creditors" procedure by: (1) increasing the priority given to unsecured claims for wages, salaries, commissions, and contributions to employee benefit plans from \$2,000 to \$4,300 for each affected individual; (2) specifying when commissions may be subject to the same \$4,300 priority as wages; (3) establishing an exemption for alimony, maintenance or support of the debtor's spouse and children; and (4) extending the period for perfection of purchase money security interests from 10 to 20 days. Status: Chapter 202, 1999.

**SB 469 (Poochigian) Roth IRAs: exemption from attachment by judgment creditors.** This bill seeks to extend protections of funds contained in traditional individual retirement accounts (IRAs) to Roth IRAs. The bill provides that Roth IRAs are exempt from attachment by judgment creditors to the same extent traditional IRAs are exempt, and includes in the list of property that may be claimed as exempt from a bankruptcy estate, the debtor's right to receive payments from a Roth IRA. Status: Chapter 98, 1999.

### Unfair Trade Practices

**AB 2186 (Robert Pacheco) Restrictions on unfair competition lawsuits.** This bill places a number of substantial restrictions on the ability of consumers to bring lawsuits alleging unfair competition. Among other things, the bill significantly alters unfair competition law by requiring that a consumer who brings an unfair competition lawsuit seeking restitution on behalf of himself or herself show that he or she has been harmed or threatened with some harm by prohibited acts or practices. The bill also requires a consumer bringing an unfair competition action on behalf of a class of members to prove that some or all of the members have been harmed or threatened

with some harm by prohibited acts or practices and requires such a consumer to be subject to the procedural requirements applicable to class action lawsuits. Status: Failed, AJUD.

**SB 1359 (Karnette) Unfair business practices: in-home solicitations.** In an effort to protect the elderly against unscrupulous telephone and door-to-door solicitors, this bill deletes the exemptions for nonprofit charitable organizations and the sale of intangibles from the Unfair Business Practices Act regulation of in-person solicitations, thus requiring these organizations to make certain disclosures when soliciting in-home sales. The bill also expands disclosure requirements to all in-home solicitations for sales or orders rather than only in-home solicitations for sales or orders for goods or services, as currently required. Status: Vetoed.

# **COURTS AND RELATED MATTERS**



## COURTS AND RELATED MATTERS

### Courts

**AB 177 (Papan) Filing fee surcharge: children's waiting rooms.** This bill establishes as the policy of this state that each court endeavor to provide a children's waiting room in each courthouse for children whose parents or guardians are attending a court hearing as a litigant, witness, or for other court purposes as determined by the court. The bill therefore authorizes the board of supervisors of any county, after appropriate notice and a public hearing, to impose a one-time surcharge of not less than two dollars (\$2) nor more than five dollars (\$5) on the filing fees for various civil actions, to pay for the costs of children's waiting rooms in courthouses. Status: Chapter 115, 1999.

**AB 1152 (Ackerman) Courts: funding and public guardians: fees for services.** This bill requires the court, in determining compensation payable to the public guardian for services rendered, to consider factors such as the actual costs of the services provided, the amount of the estate involved, the special value of services rendered in relation to the estate, and whether the compensation requested might impose an economic hardship on the estate. Status: Chapter 866, 1999.

**AB 1673 (Committee on Judiciary) Omnibus municipal court staffing bill.** This bill makes changes relative to staffing, employee classifications, and compensation for employees of specified municipal and superior courts in order to implement locally negotiated agreements. Staffing changes were reflected in Los Angeles, Orange, Contra Costa, Santa Barbara, Kings, Kern, and Bakersfield counties. The bill also addresses court security consolidation in Madera and Humboldt counties. In addition, AB 1673 clarifies legislative intent that court employees not be adversely affected by unification of the municipal and superior courts in a county. Status: Chapter 891, 1999.

**AB 1675 (Committee on Judiciary) Civil procedure: SLAPP suits.** This bill permits an appeal of an order granting or denying a motion to strike under the Anti-Strategic Lawsuit Against Public Participation (Anti-SLAPP Law). Specifically, the measure: (1) adds "an order denying a special motion to strike under Section 425.16" to the list of orders and judgments that may be appealed; (2) provides that filing the appeal allowed by this bill stays the underlying action unless the plaintiff demonstrates to the appellate court probable success on the merits and irreparable injury; and (3) requires the party filing an anti-SLAPP motion, and any party opposing the motion, to send certain documents to the Judicial Council, and requires the Judicial Council to maintain them in a public record for at least three years. Status: Chapter 960, 1999.

**AB 1676 (Committee on Judiciary) Courts: stipulated reversals.** This bill ends the practice of allowing parties to agree by stipulation to reverse findings and rulings of trial courts. Specifically, the measure prohibits a state appellate court from reversing or vacating a duly entered trial court judgment upon an agreement or stipulation of the parties, unless the court finds both: a) that there is no reasonable possibility that the interests of nonparties or the public will be

adversely affected by the reversal; and, b) that the parties' reasons for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of the stipulated reversal will reduce the incentive for pretrial settlement. Status: Chapter 508, 1999.

**AB 2353 (Honda) Tribal justice support.** This bill creates the California Tribal Justice Support Services Unit within the judicial branch of state government and specifies the duties of the office with respect to assisting tribal courts in California. Status: Dead, SEN.

**AB 2404 (Papan) Appellate opinions: publication; citation.** This bill requires that all final opinions of the California Supreme Court, courts of appeal and appellate divisions of the superior courts be made available for private publication, and provides that such opinions shall constitute precedent under the doctrine of stare decisis the same as opinions published in the official reports. Status: Failed, AJUD.

**AB 2459 (Wiggins and Hertzberg) Public access to court information.** This bill requires the Judicial Council to adopt rules of court to provide for reasonable public access to budget allocation and expenditure information at the state and local level. The bill adds a provision requiring the Judicial Council's new information access rules to ensure that trial courts, upon written request, provide information in a timely manner regarding the administration of the courts, including specified financial information. Status: Chapter 969, 2000.

**AB 2836 (Hertzberg) Public access to court information.** This bill requires the Judicial Council to adopt rules requiring the trial courts to provide financial information regarding court administration, including information affecting the wages, hours, and working conditions of court employees. Status: Dead, SJUD.

**AB 2912 (Committee on Judiciary) Appointment of referees.** This bill provides that, in discovery matters, a referee may be appointed by the court without the consent of the parties only in exceptional circumstances. Whenever making any nonconsensual appointment of a referee, the bill requires the court to make a written order setting forth the subject matter included in the reference and a statement of the reasons for the appointment, and requires the court to find that the parties have the ability to pay the costs of the referee. The bill further provides that decisions or recommendations of a court appointed referee in nonconsensual appointments are advisory only, which the court may adopt in whole or in part after independently considering the referee's findings. Status: Chapter 644, 2000.

**SB 35 (Baca) Court Fees; San Bernardino County.** Existing law authorizes a surcharge on civil filing fees of up to \$50, as specified by the board of supervisors, with respect to actions filed in the superior court in the City and County of San Francisco, to be used solely for courthouse construction and renovation, and authorizes a similar surcharge on certain civil filings in the superior court in Riverside County to be used for specified courthouse construction purposes. This bill authorizes a similar surcharge of no more than \$35 on specified civil filing fees in the superior court of San Bernardino County, to be used for courthouse construction. Status:

Chapter 150, 1999.

**SB 210 (Senate Judiciary Committee) Courts: unification.** The California Constitution provides for the establishment of superior and municipal courts in each county. SCA 4, as approved by the voters on June 2, 1998, provides for the abolition of municipal courts within a county, and for the establishment of a unified superior court for that county, upon a majority vote of superior court judges and a majority vote of municipal court judges within the county; provides for the qualification and election of the judges; and revises the number of jurors required in certain civil actions. This urgency measure makes technical and implementing changes to effectuate the constitutional amendment. Status: Chapter 344, 1999.

**SB 367 (Dunn) Electronic filing.** This bill requires the Judicial Council, by January 1, 2003, to adopt uniform rules for the electronic filing and service of court documents statewide. Trial courts are authorized, in the interim, to adopt local rules relating to electronic filing and service. The bill provides that a document that is filed electronically has the same legal effect as an original paper document filed with the court, and provides that if a document requires the signature of an attorney or person filing in pro per, and the document is filed electronically, it shall be deemed to have been signed by the appropriate person. Status: Chapter 514, 1999.

**SB 1391 (Schiff) Confidentiality of juvenile court hearings.** This bill reverses the presumption, in those courts that adopt the requirements of this measure, that juvenile dependency court hearings are confidential and closed to the public, authorizing the public to be admitted unless an objection is made by the child, the child's attorney, or any other party to the proceeding, or the court moves, on its own motion, to close the hearing. Status: Dead, AAPPR.

**SB 2140 (Burton) Trial court employees: employment status.** This bill adopts the unanimous recommendations of the Task Force on Trial Court Employees for establishing a uniform employment status scheme for court personnel. Among other things, the bill adopts a mechanism for setting the terms and conditions of trial court employment, incorporating various provisions of the Meyers-Milias-Brown Act; provides that recognized employee organizations and court representatives shall utilize the "meet and confer" process; and requires each court to adopt a procedure, such as mediation, as a preliminary step before petitioning the Court of Appeal for relief. Status: Chapter 1010, 2000.

**SB 2153 (Schiff) Disqualification of referees.** This bill clarifies the time for filing a peremptory challenge against discovery referees. A peremptory challenge to remove a discovery referee appointed by the court for purposes of hearing all discovery matters must be brought within 10 days after the appointment of the referee or, if the party has not yet appeared in the action, within 10 days after the party's appearance. A peremptory challenge against a discovery referee appointed for limited purposes must be exercised at least five days before the discovery hearing. The bill additionally extends the sunset date on a recently enacted law permitting out-of-state attorneys to represent parties in an arbitration proceeding. Status: Chapter 1011, 2000.

## Court Reporting and Recording

**AB 1023 (Margett) Court transcripts: electronic recording.** This bill authorizes the Judicial Council to adopt rules to permit any court, civil or criminal, to use audio and video recording and recording monitors in place of the current court reporters and stenographic recording methods. Status: Dead, AJUD.

**AB 1158 (Soto) Disclosure: deposition officers.** This bill requires a party noticing a deposition to make certain disclosures in the deposition notice if that party or his or her attorney has an established relationship with the reporter, having used the services of the deposition officer or the deposition officer's employer one or more times within the preceding 12 months. If the party noticing the deposition fails to make the required disclosures, that party shall be subject to a civil penalty of \$5,000 for each deposition taken in violation of this bill's provisions as well as reasonable fees and costs. The bill further requires the deposition officer, at the time of the deposition, to disclose on the record any services offered by the deposition officer to the parties on an unequal basis. Status: Dead, SJUD.

**AB 2123 (Shelley) Court reporters: San Francisco County.** This bill seeks to establish the court reporter salary in Los Angeles as the floor rather than the ceiling for court reporter salaries in San Francisco, providing that the salary for San Francisco court reporters shall be not less than that paid to Los Angeles court reporters. Status: Chapter 133, 2000.

**AB 2801 (Shelley) Deposition officers and court reporters.** This bill seeks to ensure that recordings used to supplement a reporter's official transcript are not included as part of the official record. This bill makes any non-stenographic recordings that a deposition officer or court reporter uses solely for his or her own convenience, that are not required by statute, rule of court, or court order, the property of the deposition officer or court reporter and prohibits the use of these recordings for the personal benefit of the deposition officer or court reporter. Status: Dead, SEN.

**AB 2808 (Papan) Regulation of court reporting businesses.** This bill seeks to gather data and evidence to support the need for requiring court reporting entities to be registered by and subject to the rules, regulations, and oversight of, the Court Reporters Board (CRB) under the Department of Consumer Affairs. The bill therefore authorizes CRB, from January 1, 2001 through July 1, 2002, to examine, evaluate and investigate complaints against shorthand reporting entities, for the purposes of gathering data to submit to the Legislature on the need to regulate shorthand reporting entities. Status: Chapter 334, 2000.

**SB 449 (Burton) Costs of court transcripts.** This bill revises the fee schedule for purchasing a transcript prepared by a court reporter, increasing the fee from \$0.85 to \$1.15 per 100 words for an original transcript prepared by a court reporter, and decreasing the fee from \$0.15 to \$0.10 per 100 words for each copy of a transcript purchased at the same time as an original. These fee changes are phased-in over a two-year period. The bill also increases access to the Transcript Reimbursement Fund for indigent litigants so the increased transcript costs do not become

prohibitive for such litigants, and appropriates \$1 million to the Judicial Council to assist courts required to purchase transcripts. Status: Vetoed.

**SB 877 (McPherson) Deposition officers.** This bill requires a deposition officer to offer the same products and services to all parties at the same time. It also requires the noticing party or attorney, upon request of any party, to enter in the record of the deposition all services and products made available to the noticing party by the deposition officer or employer of the deposition officer. In addition, the bill would prohibit a deposition officer from providing to any party or third party any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The bill also makes clear that any services or products offered or provided to a third party who is financing all or part of the litigation must also be offered to all parties to the case. Status: Chapter 474, 2000.

**SB 2090 (Murray) Deposition officers and court reporters.** This bill specifies that the term "shorthand reporting" includes the making of a verbatim record in any court ordered hearing or arbitration, in addition to oral court proceedings, depositions, or other proceedings specified under current law. The bill also makes changes relating to the curriculum offered by court reporting schools. Status: Chapter 1009, 2000.

### Judges

**AB 2911 (Committee on Judiciary) Judges retirement.** This bill authorizes judges who are members of the Judges' Retirement System or the Judges' Retirement System II (JRS II) to participate in the Supplemental Contributions Program and provides that for judges enrolled in JRS II, who have also earned retirement benefits in CalPERS, their highest salary as a judge shall be used to determine their CalPERS retirement benefits. Status: Vetoed.

### Juries

**AB 310 (Leach) Juries: jury selection.** Seeks to protect the privacy of jurors by creating the "Jury Identification Protection Act," requiring that the identity of jurors in all criminal trials in California be kept secret absent a showing of a compelling need against juror anonymity. Specifically, this bill: 1) provides for the random selection and identification of trial jurors in all criminal actions by number instead of by name; 2) requires that the identity of all jurors in criminal trials be kept secret from the moment the voir dire (jury selection) process begins, regardless of whether the case is a felony or a misdemeanor, and regardless of the lack of any demonstrated threat to a particular juror's safety or privacy; and 3) prohibits counsel or the court from eliciting personal juror identification information during voir dire in a criminal trial, including, but not limited to, the juror's name, home address, home or work telephone number, and the location of the juror's employer or school. Status: Failed, AJUD.

**AB 592 (Migden) Juror fees.** This bill requires the Judicial Council to establish a two-year pilot project dealing with dependent care expenses incurred as a result of jury service and

appropriates \$250,000 for this purpose. The bill also provides that, in civil cases where a jury trial is requested, the required advance juror fee shall not exceed \$150. Status: Dead, SAPP.

**AB 1796 (Papan) Grand jurors: compensation.** This bill increases fees for grand jurors from \$10 per day to \$25 per day for each day's attendance, in the absence of a higher fee provided by statute, county, or city ordinance, and changes the mileage reimbursement for grand jurors from \$0.15 per mile, one way, to the mileage reimbursement applicable to county employees. Status: Vetoed.

**AB 1814 (Lempert) Jury service exemptions: breast feeding.** This bill requires the Judicial Council to adopt a rule of court to specifically allow the mother of a breastfed child to postpone jury duty for a period of up to one year, providing that all steps should be taken to eliminate the need for the mother to physically appear in court to make this request, and providing that at the end of the one year period, jury duty may be further postponed upon written request. In addition, the bill requires the Judicial Council to adopt a standardized jury summons for use around the state which shall include a specific reference to the rules for breastfeeding mothers. Status: Chapter 266, 2000.

**AB 2418 (Migden) Juror eligibility: non-discriminatory use of peremptory challenges.** This bill prohibits the exclusion of individuals from jury service based on their sexual orientation and provides that a party may not use a peremptory challenge to remove a prospective juror on the basis of an assumption that the juror is biased merely because he or she is a member of an identifiable group distinguished on racial, religious, ethnic, sexual orientation, gender or similar grounds. Status: Chapter 43, 2000.

**AB 2555 (House) Use of juries: termination of parental rights.** This bill requires the use of advisory juries in juvenile dependency proceedings to terminate parental rights, upon the request of either parent, to decide the following issues of fact: whether the parent or parents abused or neglected the child, and whether the abuse or neglect is sufficient to terminate parental rights. The bill also provides for advisory juries in family court proceedings to declare a child free from parental control due to abandonment or neglect. Status: Failed, AJUD.

**AB 2819 (Cardoza) Jury service: physicians and surgeons and registered nurses.** Existing law provides that an eligible person may be excused from jury service only for undue hardship, upon themselves or upon the public, as defined by the Judicial Council. This bill would provide that every physician and surgeon, and every registered nurse, who is employed by a health care facility, as defined, shall be excused from jury service on the basis of undue hardship to the public during any period and in any area of the state in which the Governor has declared a state of emergency because of an epidemic caused by any contagious disease. The bill would set forth the findings of the Legislature, and declare that it is to take effect immediately as an urgency statute. Status: Dead, AJUD.

**SB 1255 (Schiff) Judicial Council Study.** This bill requires the Judicial Council to conduct a study and report its findings to the Legislature by December 31, 2001, on the composition of jury

pools in both civil and criminal cases. The study shall note various data including, but not limited to; age, race, income level, and educational level. It shall also separately report this data on jurors who respond to jury summons as well as those who are actually impaneled. Status: Vetoed.

### Small Claims

**AB 1131 (Ackerman) Extension of jurisdiction to assignees.** The bill would authorize the filing or maintenance of a claim in small claims court of no less than \$750 by an assignee provided the assignee reduces his or her claim by 10% and pays a special filing fee. This bill would exclude from these provisions claims based on dishonored checks and other specified obligations. These claims would be limited to 5 claims per day, or a lesser number of claims, or no such claims, as provided by Judicial Council rule or by local rule of court. The bill would provide for the transfer of the claim to municipal or superior court upon motion of the defendant or by the court, and set forth the rights of the parties in those circumstances. The bill would require the Judicial Council to adopt rules of court advising parties of their rights under the bill, and to conduct a study on the use of small claims court by assignees. This bill would also provide that an action brought in small claims court by an individual acting in his or her individual capacity would have an automatic calendar preference over all other actions. Status: Failed, SJUD.

**AB 1361 (Aroner) Small claims court adviser programs.** This bill authorizes the board of supervisors in each county, after giving notice and holding a public hearing, to impose an additional \$5 filing fee in small claims court actions which is to be used solely for the purpose of funding the small claims legal adviser program. Such additional fee may only be imposed upon a finding by the board of supervisors of a demonstrable need that additional resources be allocated to the small claims adviser program evidenced by a decline in small claims court filings. Status: Vetoed.

### Trial Court Coordination and Funding

**AB 233 (Dickerson) Trial court funding.** Existing law requires the Judicial Council, in consultation with the California State Association of Counties and the California County Auditors Association, to make recommendations to the Legislature on options for improving the collection and remittance of revenues to the state's Trial Court Trust Fund no later than February 1, 1999. This bill would change that deadline to February 1, 2001. Status: Chapter 15, 2000.

**AB 508 (Leonard) Trial court funding: San Bernardino County.** This urgency measure reduces San Bernardino County's contribution to trial court funding by \$439,000 annually, and appropriates \$439,000 in 1998-99 from the General Fund to the Trial Court Trust Fund to cover this revenue loss. Status: Vetoed.

**AB 875 (Maldonado) Trial court funding: court operations.** Existing law provides that, commencing on July 1, 1997, no county shall be responsible for funding many trial court

operations, as statutorily delineated. This bill would instead provide that, commencing on July 1, 1997, and each year thereafter, no county shall be responsible for funding any trial court operations. Status: Dead, AJUD.

**AB 972 (Ducheny) Consolidation of San Diego County's Marshal's and Sheriff's Offices.**

This bill sets forth a detailed plan for the abolition of the San Diego County Marshal's Office and consolidation of court security services and service of process into a bureau in the San Diego County Sheriff's Department. The bureau's primary function shall be to provide the management with direction, supervision, and personnel for court-related services. Concomitant with the abolition of the marshal's office, all personnel of the marshal's office shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits. The terms of this measure shall only become operative when the board of supervisors adopts a resolution declaring the section to be operative. Status: Chapter 335, 1999.

**AB 2385 (Longville) Trial court funding.** This bill reduces by one-third the amount that California's 20 largest counties must contribute to the State for trial court operations commencing in the 2000-01 fiscal year. Status: Dead, AAPPR.

**AB 2402 (Longville) Trial court funding.** This bill seeks to reduce San Bernardino and Del Norte Counties' annual trial court funding obligations to the state, based on their receipt of annual fine and forfeiture revenues. Status: Vetoed.

**ACR 85 (Kuehl) Trial court unification.** This resolution expresses the Legislature's strong support for the unification of the trial courts throughout California, as a critical mechanism to promote efficiency and effectiveness and to improve access to the justice system. The Legislature urges the Judicial Council to take all reasonable and appropriate steps to ensure the implementation of unification. Status: Dead, SEN Rules.

**SB 309 (Baca) Consolidation of San Bernardino County's Marshal's and Sheriff's Offices.**

This urgency bill requires the Board of Supervisors of San Bernardino County to commence public hearings regarding abolition of the marshal's office and consolidation of all court-related services into the sheriff's office. The Board's final determination, to be based on the cost effectiveness and efficiency of transferring these services to the sheriff's office and abolishing the marshal's office, shall be rendered within 30 days after the commencement of the public hearing. If the board elects to abolish the marshal's office and transfer all duties to the sheriff's office, the abolishment and transfer shall be completed within 30 days of the board's determination. Status: Chapter 139, 1999.

**SB 600 (Costa) Trial court funding.** This bill requires the state, if it assumes full or partial responsibility for court facilities after June 30, 2001, to reimburse counties for the costs associated with new court facility construction undertaken after January 1, 2000. The state's share of costs would be in proportion to the established state share of responsibility for court facilities. The bill also requires, in order to conform to federal law, that only an attorney or a court appointed special advocate (CASA) be appointed as guardian ad litem of a child alleged to

be abused or neglected. Under current state law, a probation officer or social worker may be appointed. Status: Vetoed.

**SB 1196 (Morrow) Consolidation of marshal's and sheriff's offices.** This urgency bill authorizes the Boards of Supervisors in Merced, Orange, and Shasta Counties to hold public hearings regarding the abolition of the marshal's office and consolidation of all court-related security services into the sheriff's offices. The Board's final determination must be rendered within 30 days after the commencement of the public hearing. The elimination of the marshal's office or transferring of the duties of the marshal to the sheriff, pursuant to the vote of the Boards of Supervisors, shall be concluded by July 1, 2000. Status: Chapter 641, 1999.

**SB 1533 (Costa) Trial court funding: annual technical cleanup.** This bill makes numerous technical and clarifying changes to current law regarding trial court funding. Status: Chapter 447, 2000.

**SB 1587 (Johannessen) Trinity county: trial court funding.** This bill forgives the obligation of Trinity County to remit to the state monies owing for past-due trial court Maintenance of Effort payments. Status: Vetoed.



# **FAMILY LAW, CHILDREN AND RELATED MATTERS**



## FAMILY LAW, CHILDREN AND RELATED MATTERS

### Adoption

**AB 2433 (Wright) Adoption clean-up.** This bill seeks to correct inconsistencies and clean up loopholes in California adoption laws. Among other things, this bill eliminates obsolete references to "legitimate" children; clarifies that, with regard to birth parents currently residing outside of California, provisions allowing for the adoption placement agreement to be signed before a notary or adoption service provider outside of California apply to persons residing out of the country; allows the same list of relatives who are eligible to petition for a kinship adoption to file a petition for an independent adoption; and reduces from five to three years the statute of limitations for an action to vacate, set aside, or otherwise nullify an order of adoption based on fraud. Status: Chapter 937, 2000.

### Children

**AB 65 (Ducheny) Indian Child Welfare Act.** This bill prohibits the court from using the "existing Indian family doctrine" in determining the best foster care or adoption placement for an Indian child and requires application of the federal Indian Child Welfare Act (ICWA) for all Indian children, thereby requiring the court to follow the placement preferences set forth in ICWA rather than following the placement preferences otherwise set forth in state law. This bill further provides that a determination by an Indian tribe that a child is an "Indian child" constitutes a significant political affiliation with the tribe and requires the court to apply the provisions of ICWA. Status: Chapter 275, 1999.

**AB 247 (Kuehl) Foster parents: access to juvenile court proceedings.** This bill broadens the rights of foster parents to participate in juvenile court proceedings concerning a foster child. The bill grants foster parents the right to receive notice of, and to attend, all juvenile court dependency proceedings involving any foster child currently in that foster parent's care. However, no foster parent shall be permitted to attend a hearing over the objection of the foster child. The bill permits a foster parent, at the discretion of the court, to present relevant information or testimony concerning the health, safety, welfare and social, physical, and emotional condition of a foster child whenever those issues are before the court. Status: Vetoed.

**AB 320 (Kaloogian) Dependent children: medical history information.** This bill requires every parent who appears at a juvenile dependency court detention hearing (after a petition to declare the child a dependent of the court has been filed but prior to the court's determination of any placement options for the child) to provide a complete medical background of the child's mother and the child's father, or all presumed or alleged fathers. Willful failure to provide this information to the court shall be punishable as contempt. Status: Dead, AJUD.

**AB 686 (Aroner) Termination of juvenile dependency court jurisdiction.** This bill authorizes the juvenile dependency court to continue jurisdiction over a child who has reached the age of majority if the court finds that termination of jurisdiction would be harmful to the

child's best interests and that the county welfare department has failed to provide the child with specific information and assistance in preparing for the future, including information and documents concerning the child's family history, such as the whereabouts of any siblings under the jurisdiction of the juvenile court, the child's social security card, identification card, certified birth certificate, and proof of citizenship or residence. The county welfare department is also required to provide the child assistance in the following: completing an application for Medi-Cal or other health insurance, securing housing, obtaining employment, applying for admission to college or a vocational training program, and obtaining financial aid. The bill further authorizes the juvenile dependency court to make orders directing the parents or guardians of a dependent child to ensure the child's regular school attendance and to make reasonable efforts to obtain appropriate educational services necessary to meet the needs of the child. Status: Chapter 911, 2000.

**AB 804 (Keeley) Educational neglect.** This bill provides that a child who has suffered educational neglect is within the jurisdiction of the juvenile dependency court. Educational neglect is deemed to have occurred when a child has suffered, or is at substantial risk of suffering, educational harm as a result of the willful or negligent failure of the child's parent or guardian to enroll the child in school or to ensure the child's regular attendance. The bill defines educational harm to include the failure of a child to make adequate educational progress preventing promotion to the next grade level, a substantial risk of the child falling behind in his or her academic or developmental program, or a situation in which the child's academic program is in serious jeopardy, all resulting from the failure of the child to attend school. The bill additionally provides that it is the intent of the Legislature that no child shall be removed from the custody of his or her parent or guardian, based solely on allegations of educational neglect, prior to the juvenile dependency court's disposition hearing. It is also the intent of the Legislature that no child shall be removed from the custody of his or her parent or guardian after that hearing, based solely on allegations of educational neglect, unless the court finds that reasonable efforts have been made by child protective services or the social worker to address the underlying causes of the educational neglect and the parent or guardian has refused or failed to cooperate with those efforts. Status: Dead, AHumS.

**AB 1030 (Machado) Caregiver's authorization for school enrollment and medical care.** This bill prohibits a caregiver (whether or not the caregiver is a relative of the child) from enrolling a child in school or consenting to specified types of medical care absent the signature on a caregiver authorization affidavit of a parent or person having legal custody. The bill requires that any caregiver authorization affidavit also contain the address and phone number of the parent or other person having legal custody. The bill also provides that a caregiver's authorization affidavit cannot be used for interscholastic athletic recruitment. Status: Dead, AJUD.

**AB 1716 (Robert Pacheco) Paternity.** This bill requires a juvenile dependency court judge, at the time of the detention hearing, to include in the minute order the court's findings with respect to the existence and identity of any presumed or alleged fathers. The bill also clarifies that

juvenile courts have the right to terminate a father's parental rights if an action to establish his paternity has been filed by the alleged father or any interested party, and that the court's right is not conditioned on the father's appearance at the detention hearing. Status: Chapter 56, 2000.

**AB 1764 (Maddox) Abandonment of newborns.** This bill provides that a parent or other person having lawful custody of a newborn baby who is 72 hours old or younger, shall not be subject to criminal prosecution for neglect or abandonment for voluntarily surrendering that baby to any designated employee of a hospital emergency room or other specified facility. The bill provides a procedure for the person surrendering the child to reclaim the child within 14 days of abandonment. Status: Dead, SEN.

**AB 1987 (Steinberg) Juvenile dependency: sibling contact.** This bill requires the juvenile dependency court to give greater weight to considerations of keeping sibling groups together in making placement decisions. The bill requires the court, when ordering that a child be removed from the custody of a parent, to consider whether there are other siblings under the court's jurisdiction, and if so, the nature of the relationship between the child and his or her siblings, the appropriateness of developing or maintaining these sibling relationships, the impact of the sibling relationships on the child's placement and planning for legal permanence, and, if siblings are not placed together, why, what efforts are being made to place them together, if appropriate, and the frequency and nature of any visits between siblings. The bill further requires the court, in ordering reunification services, to provide for visitation between the child and any siblings unless the court finds by clear and convincing evidence that sibling interaction is detrimental to either child. Status: Chapter 909, 2000.

**AB 2155 (Pescetti) Name changes for children.** This bill authorizes the legal guardian of a child to petition for a name change on the child's behalf, regardless of whether one or both of the minor's parents are living. The name change petition must be filed in the court in which the guardian was appointed. The bill imposes specific notice requirements, and details the types of factors the court must consider in determining whether to grant or deny the petition. Status: Chapter 111, 2000.

**SB 199 (Polanco) Juveniles: confidentiality.** This bill creates the Lance Helms Law of Confidentiality, authorizing the court (with limited exceptions) to open to the public, upon petition from any interested party, all juvenile case files which pertain to a deceased child who had been adjudged a dependent of the court. The court may issue an order prohibiting or limiting access to the case file only upon a showing that release of the case file is detrimental to the safety, protection, or physical or emotional well-being of another child. Status: Chapter 984, 1999.

**SB 208 (Polanco) Evidence of sexual abuse.** This bill provides that it shall be prima facie evidence that a child is at substantial risk of harm or neglect and should be adjudged a dependent of the court if the court finds that the child's parent, guardian, or any person currently residing with or having custody of the child, has a prior conviction for sexual abuse, has been found in a prior dependency proceeding to have committed an act of sexual abuse, or is required to register

as a sex offender for a felony sexual abuse conviction. Such evidence constitutes a presumption affecting the burden of producing evidence. Status: Chapter 417, 1999.

**SB 518 (Schiff) Dependent children: confidentiality of records; out-of-state placement.**

This bill reduces from 30 days to seven calendar days the length of the automatic stay on a judgment or order of the juvenile court for the out-of-state placement of a dependent child. The juvenile court may grant subsequent stays if it deems necessary. The bill also clarifies that the automatic stay of a judgment or order of any other trial court in a custody or visitation proceeding which allows, or eliminates restrictions against, removal of a child from the state is 30 "calendar" days. The bill also provides that the purpose of the provisions of juvenile dependency law ensuring the confidentiality of proceedings and records is to protect the privacy rights of the dependent child. Status: Chapter 346, 1999.

**SB 543 (Bowen) Health and education passports; psychotropic medication.** This bill gives exclusive authority to the juvenile court, upon request of a physician, to authorize the administration of psychotropic medication for a child who has been adjudged a dependent of the court. The bill also requires the case plan for each child placed in foster care to include a summary of the child's mental health information or records, which may be maintained in the form of a "health and education passport." While the child is in his or her care, the foster parent is required to obtain and maintain accurate and thorough information from physicians and educators to include within the child's health and education summary. The bill additionally requires the dependency court to direct each parent to provide the child protective agency with complete medical, dental, mental health, and educational information, and the medical background of the child's biological mother and biological father. Status: Chapter 552, 1999.

**SB 674 (Ortiz) Child sexual abuse: time for commencement of action.** This bill makes the extended statute of limitations in civil childhood sexual abuse cases against third parties retroactive, i.e., applicable to any action commenced on or after January 1, 1999, and to any action filed prior to January 1, 1999, and still pending on that date, including any action or causes of action which would have been barred by the laws in effect prior to January 1, 1999. The bill specifically provides, however, that it is not intended to revive cases where there has been a final adjudication prior to January 1, 1999. Status: Chapter 120, 1999.

**SB 1226 (Johannessen) Juvenile dependency: reunification services.** This bill clarifies circumstances under which the court may find that returning a child adjudged a dependent of the court to his or her parents may be detrimental to the safety, protection, or well-being of the child, providing that reunification services need not be provided if the court finds that reunification services for that parent had been previously terminated for any siblings or half-siblings of the child. The bill also clarifies that the failure of a parent to make substantive progress in court-ordered treatment programs, regardless of regular participation in such programs, shall be prima facie evidence that return of the child to the parent would be detrimental to the child. Status: Chapter 399, 1999.

**SB 1368 (Brulte) Abandonment of newborns.** This bill provides that a parent or other person having lawful custody of a newborn baby who is 72 hours old or younger, shall not be subject to criminal prosecution for neglect or abandonment for voluntarily surrendering that baby to any designated employee of a hospital emergency room or other specified facility. The bill provides a procedure for the person surrendering the child to reclaim the child within 14 days of abandonment. Status: Chapter 824, 2000.

**SB 1611 (Bowen) Group home investigations.** This bill authorizes a County Juvenile Justice Commission to access juvenile court records and other confidential records in order to investigate possible abuses in the foster care and juvenile justice systems, provided that the identity of the minors named in the records are kept confidential. The bill also authorizes a juvenile court to join in its proceedings a private service provider, in order to effectuate its orders regarding the care, custody and control of a dependent child. Status: Chapter 908, 2000.

**SB 1641 (Bowen) Guardians and conservators.** This bill, among other things, requires the court, where the guardian or conservator is a family member or blood relative of the ward or conservatee, to determine the value of the ward's or conservatee's estate, based on the estate inventory or the last accounting filed with the court, if the guardian or conservator fails to file the required accounting within 90 days of the date it is due. It provides that if the estate exceeds \$20,000 in value, the court must appoint legal counsel to represent the ward or conservatee, unless the court finds that appointment of legal counsel is not necessary to protect the interest of the ward's or conservatee's estate. It further prohibits the court from reducing the bond required of a guardian or conservator who is a family member or relative of the ward or conservatee, and provides for adjustment of the bond within 60 days of filing of the inventory of assets, if the value of the assets is unknown at the time of appointment. Status: Vetoed.

**SB 2043 (Schiff) Juvenile dependency: service requirements.** This bill modifies the procedures for providing notice to the parent or guardian of a child who is a dependent of the juvenile court with regard to hearings to terminate parental rights and recommend a permanent plan of adoption, guardianship, or long-term foster care. The bill also requires the court, at the detention hearing, to advise each parent or guardian that his or her failure to provide the court or child welfare agency with a current mailing address may result in proceedings being held in the parent's or guardian's absence with potential adverse consequences including termination of parental rights. Status: Vetoed.

**SB 2160 (Schiff) Juvenile dependency: appointment of counsel.** This bill provides that where a child is not represented by counsel, the juvenile dependency court shall be required to appoint counsel unless the court affirmatively finds that the child would not benefit from the appointment of counsel. The bill also prohibits the court from appointing county counsel as counsel for the child, and requires the Judicial Council to adopt a rule of court requiring the appointment of a guardian ad litem for a child in abuse and neglect cases. The guardian ad litem may be an attorney or a court-appointed special advocate. Status: Chapter 450, 2000.

## Child Custody and Visitation

**AB 673 (Honda) Supervised visitation and exchange programs.** This bill requires the Judicial Council to apply for and administer federal grants designated for custody and visitation programs to fund the following types of programs and services: supervised visitation and exchange services, education about protecting children during family disruption, and group counseling for children and parents. Criteria to be used in evaluating requests from superior courts to receive grant money for such services include: availability of services to a broad population, coordination with other community services, hours of service delivery, and overall cost-effectiveness. The bill also deletes the office of the friend of the court program. Status: Chapter 1004, 1999.

**AB 840 (Kuehl) Rebuttable presumption against custody to batterer.** This bill creates a rebuttable presumption that it is detrimental to the best interest of a child to award joint physical or legal custody to a person who has been found by the court to have actually perpetrated domestic violence, within the previous five years, against the other party seeking custody, the child, or the child's siblings. The bill sets out among the factors the court shall consider in determining if a party has overcome the presumption by clear and convincing evidence the following: successful completion of a batterer's treatment program, alcohol or drug abuse counseling program, or parenting classes; and commission of additional acts of domestic violence. Status: Chapter 445, 1999.

**AB 2464 (Kuehl) Modification of juvenile dependency court custody and visitation orders.** This bill provides that any custody or visitation order issued by the juvenile court at the time the juvenile court terminates its jurisdiction shall be a final order and shall not be modified in a proceeding in family court unless the court finds that: 1) there has been a significant change of circumstances since the juvenile court issued the order; and (2) modification of the order is in the best interests of the child. Status: Chapter 921, 2000.

**SB 433 (Johnson) Child custody evaluators.** This bill requires the Judicial Council, on or before January 1, 2002, to formulate a statewide rule of court setting forth education, experience, and training requirements for all child custody evaluators appointed by the court, both private and court-connected. The education, experience, and training requirements shall include, but not be limited to, knowledge of the psychological and developmental needs of children and parent-child relationships. In addition to satisfying these requirements, on or after January 1, 2005, all child custody evaluators must either be psychiatrists, licensed psychologists, licensed marriage and family therapists, or licensed clinical social workers. Status: Chapter 932, 1999.

**SB 668 (Sher) Uniform Child Custody Jurisdiction and Enforcement Act.** This bill repeals the Uniform Child Custody Jurisdiction Act (UCCJA) and replaces it with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The new uniform act provides that a California court has jurisdiction to make an initial child custody determination only if California is the child's home state or the court of the child's home state declines to exercise jurisdiction and the child and at least one parent have a significant connection with the state. California shall

continue to exercise continuing, exclusive jurisdiction until the child and all parties leave the state, or the state otherwise declines to exercise jurisdiction. The new uniform act also clarifies that orders established pursuant to a court's emergency jurisdiction may only be for a short duration, but that emergency jurisdiction can ripen into continuing jurisdiction if no other state with grounds for continuing jurisdiction can be found, or, if found, declines to exercise jurisdiction. The Judicial Council is required, by January 1, 2003, to conduct a study of the effects of implementing the UCCJEA. Status: Chapter 867, 1999.

**SB 792 (Ortiz) Reporting of sexual abuse: effect on custody and visitation.** This bill limits the court's ability to use of the "parental alienation syndrome" by prohibiting the court from ordering supervised visitation or denying custody or visitation rights to a parent solely because that parent lawfully reported suspected sexual abuse of the child, sought treatment for the child from a licensed mental health professional for suspected sexual abuse, or otherwise acted lawfully, based on a reasonable belief, to determine if the child was a victim of sexual abuse. Status: Chapter 985, 1999.

**SB 1173 (Vasconcellos) De facto parent visitation.** This bill allows a de facto parent to petition the court for reasonable visitation rights with a child if the de facto parent had a pre-existing parental relationship with the child formed with the consent and encouragement of the custodial parent, and if the court finds that visitation is in the child's best interests. The bill defines a de facto parent as a former domestic partner of the custodial parent who has assumed, for a substantial period of time, the role of a parent, seeking to fulfill both the child's physical and psychological needs for care and affection. The bill provides a rebuttable presumption that visitation with a de facto parent is not in the best interests of a child if the de facto parent has perpetrated acts of domestic violence, child abuse, or neglect, against any child, or has perpetrated acts of domestic violence against the custodial parent within the previous five years. Status: Failed, ASM.

**SB 1716 (Ortiz) Child custody: allegations of sexual abuse.** This bill seeks to create uniform standards for the investigation and evaluation of child sexual abuse allegations which arise during a custody proceeding. The bill provides that, if allegations of child sexual abuse are made during a child custody proceeding, and the court has concerns regarding the child's safety, the court may take any reasonable temporary steps it deems appropriate to protect the child's safety. In cases where the court has appointed a child custody evaluator and the court finds that there is a serious allegation of child sexual abuse, the evaluation shall be required to comply with specified minimum standards. The bill also requires all court-connected or private child custody evaluators to complete child abuse training. Status: Chapter 926, 2000.

**SB 2124 (Figueroa) Mediation of custody and visitation disputes.** This bill prohibits mediators in contested child custody and visitation matters from making any recommendations to the court as to custody or visitation with the child who is the subject of a pending proceeding. Status: Dead, AJUD.

## Child, Family and Spousal Support

**AB 196 (Kuehl) Child support enforcement reform.** This bill restructures the state child support enforcement program to make child support enforcement a top priority of the state; to significantly increase accountability and responsibility for the program at all levels of government; and, to create an effective child support program that will maximize collection and delivery of child support to the children and families to whom it is owed. Among other things, the bill creates a new Department of Child Support Services (DCSS) to replace the Department of Social Services as the single state agency responsible for the oversight and management of the state's child support enforcement program. The bill further requires that local child support programs located in the district attorneys' offices be transferred to new county departments of child support services, separate and independent from any other county department. In order to ensure uniformity and consistency between local child support programs, the bill requires the director of DCSS to develop uniform forms, policies and procedures to be implemented statewide, including caseworker to case staffing ratios, attorney to caseworker ratios, case closure standards, priorities for the use of specific enforcement mechanisms, statewide training protocols, best practices for establishment of paternity and support orders, best management practices for structuring local child support agencies, and minimum performance standards. The bill also expands the role of the Franchise Tax Board (FTB) in the collection of child support by requiring local child support agencies to transfer all cases to FTB for collection once they become 60 days past due, and expands the new employee registry operated by the Employment Development Department to also include independent contractors. Status: Chapter 478, 1999.

**AB 370 (Wright) Suspension of licenses; notice of arrearages.** This bill amends the procedures of the State License Match System (SLMS) to require any board, commission, department, committee, examiner, and agency that has suspended or revoked a license on the basis of a support delinquency to remove any hold or suspension on the license within five business days of receiving a release from the local child support agency enforcing the support obligation. The bill also requires any notice of support delinquency issued by a state or local governmental entity to include the date upon which the amount of the delinquency was calculated, the fact that the amount calculated may or may not include interest, and that the obligor may request the local child support agency to review the amount of arrearages owed. Status: Chapter 654, 1999.

**AB 380 (Wright) Child support.** This bill changes the statute of limitations for the setting aside of a support order entered after the default of the obligor if the court finds that there was: 1) actual fraud which kept the obligor in ignorance or in some other manner fraudulently prevented the obligor from fully participating in the proceeding; 2) perjury; or 3) a lack of notice which does not allow a party time to defend an action for support. The bill also authorizes parents of children who receive public assistance to claim a hardship deduction in the calculation of child support for the basic living expenses of children of another relationship living with the parent and for whom the parent has a legal obligation to support and reduces from three years to one year the length of time the local child support agency, in cases in which children receive public assistance, may make child support orders retroactive. Finally, the bill authorizes the

court, when ordering that a downward modification of a support order be made retroactive, to order the support obligee to repay any amounts paid by the obligor in excess of the modified order. Status: Chapter 653, 1999.

**AB 391 (Jackson) Spousal support: long-term marriages.** This bill seeks to correct inequities created by recent changes made relating to spousal support orders in marital dissolution or legal separation proceedings. The bill provides that the definition of "reasonable time" in which a supported party should become self-supporting (one-half the length of the marriage) is not applicable to long-term marriages. The bill further eliminates the requirement that courts warn all recipients of spousal support that it is the goal of the state that each party make reasonable good faith efforts to become self-supporting within a time equaling one-half the length of the marriage, and that failure to make such efforts may be considered by the court as a basis for modifying or terminating the support order. The court is instead authorized to advise a recipient of spousal support, except in marriages of long duration where the court decides that the warning is inadvisable, that he or she should make reasonable efforts to assist in providing for his or her support needs. Status: Chapter 846, 1999.

**AB 472 (Aroner) Standardized complaint resolution procedures.** This bill provides custodial and noncustodial parents with the right to a state fair hearing to address the following child support actions: the denial of an opportunity to submit an application for child support services; the action or inaction of the local child support agency on a child support case, including delays or denials of child support services and failure to satisfy the requirements of state or federal law; the failure to distribute or the improper distribution of child support arrearages or the improper calculation of arrearages; and, the decision to close a child support case. All hearing requests must be made within 90 days of actual knowledge of the action or inaction which is the subject of the complaint. The bill authorizes local child support offices to develop their own internal dispute resolution processes to handle the above listed grievances. A parent requesting a state fair hearing must exhaust the local child support agency's grievance process before a state fair hearing will be provided. A pending state hearing does not affect any parent's obligation to comply with an existing support order. Status: Chapter 803, 1999.

**AB 785 (Vincent) Child support: probation department.** This bill seeks to establish a pilot project, to facilitate the establishment and enforcement of support for individuals who are on probation. The bill requires the Department of Social Services (DSS) to establish a pilot project in consultation with district attorneys (DAs) and county probation departments to increase cooperation between the county probation department and the local child support enforcement program. The bill also creates the Probation Family Support Fund, from which DSS may allocate money to the pilot program counties for the non-federal share of administrative project costs, and provides that the pilot projects shall only be implemented if funds are appropriated to this fund. Status: Dead, AJUD.

**AB 808 (Strom-Martin) Spousal support: consideration of effects of domestic violence.** This bill includes among the factors the court is required to consider in setting the level and duration of a spousal support award, emotional distress caused by domestic violence between the

parties where the court finds documented evidence of a history of domestic violence between the parties. Status: Chapter 284, 1999.

**AB 1358 (Shelley and Kuehl) Child support clean-up.** This bill is a technical clean-up bill making minor changes to various statutes necessitated by the overhaul of California's child support enforcement program accomplished in 1999. Among other things, this bill updates and eliminates incorrect and obsolete code references, changes references from "district attorney" to "local child support agency," and clarifies the manner in which local child support agencies will have access to needed criminal history information about child support obligors. Status: Chapter 808, 2000.

**AB 1614 (Wright) Modification of child support: incarcerated obligors.** This bill seeks to assist child support obligors in securing a modification of their child support orders, if appropriate. The bill requires the county sheriff, at the time any person is sentenced to a penal facility for more than 90 days, to provide a simplified form which can be used by support obligors to request a modification of support. A support obligor wanting a modification is required to forward the completed form to the local child support agency or the superior court, as appropriate. If the local child support agency receives a completed modification request form from an incarcerated obligor who is the subject of a child support action brought by the local agency, it shall review the case and either make a motion to the court for modification or notify the obligor why it is not pursuing a modification in court. Status: Vetoed.

**AB 1995 (Aroner) Child support amnesty.** This bill creates a limited one-time child support amnesty program to increase payment of child support payments owed and to increase the participation of non-custodial parents in the lives of their children. Only arrearages owed to the state as reimbursement for welfare payments (and not payments owed to the custodial parent or child) may be forgiven, and only if the obligor remains current on all future child support obligations. If the obligor fails to make payments on any child support obligation for more than 60 days without good cause, the child support arrears will be reinstated and enforceable. Status: Vetoed.

**AB 2081 (Wright) Child support.** This bill makes several unrelated changes to child support statutes to reduce child support obligations in certain circumstances. Among other things, the bill: 1) authorizes the court, in cases for support where a child receives public assistance, to modify or terminate a support order, or relieve the obligor of any or all unpaid child support debts if the support obligor is 55 years of age or older, the child to whom the support relates is 23 years of age or older, and other conditions are satisfied; 2) provides that, for obligors whose net income is less than 200% of the federal poverty level, the monthly child support payable shall be reduced by the amount paid by the obligor for court-ordered health insurance coverage for the child; and 3) reduces the amount of a child support obligation by the amount of derivative social security or VA benefits the child receives based on the retirement or disability of the obligor, whether or not the receipt of such benefits was taken into consideration by the court in initially setting the amount of support due and owing. Failed, AJUD.

**AB 2082 (Wright) Child support.** This bill seeks to reduce child support debt owed to the state for obligors whose income is less than 250 percent of the federal poverty level. For such obligors, the bill reduces interest due on delinquent child support payments owed to the state from the legal rate of 10 percent, to three percent, and authorizes the Department of Child Support Services to settle, adjust, or compromise a delinquent child support obligation owed to the state, including the principal amount of the obligation and any interest accrued. Status: Failed, AJUD.

**AB 2322 (Rod Pacheco) Spousal support.** This bill changes the exception to the statutorily stated goal that, for purposes of spousal support calculations, parties to a divorce or legal separation, be self-supporting within one-half the length of the marriage. The bill limits the exception to marriages of 20 years or more (as opposed to the current 10), and only if the supported party is 55 years of age or older. Status: Dead, AJUD.

**SB 240 (Speier) Child support enforcement.** This bill makes numerous changes to the state child support enforcement program in an attempt to improve collection of child support. Among other things, this bill: 1) authorizes publicly funded or licensed health clinics, pediatric offices, Head Start programs, child care centers, social services providers, prisons, and schools among the entities to offer parents the opportunity to sign a voluntary declaration of paternity; 2) expands the California Parent Locator Service to include information obtained from a provider of electronic digital pager communication or a provider of cellular telephone services; 3) mandates that any board regulating a professional license require every licensee to provide the social security number of each individual listed on the license and any person who qualifies the license; 4) appropriates \$705,000 from the General Fund for funding the family law facilitator program; and 5) authorizes the family law facilitator to provide services concerning the issues of child custody and visitation, as they relate to calculating child support. Status: Chapter 652, 1999.

**SB 542 (Burton and Schiff) Child support enforcement.** This bill enacts necessary clean-up to AB 196 (Kuehl) which reforms California's failing child support enforcement program. Among other things, this bill: 1) requires the new Department of Child Support Services (DCSS), in consultation with the county child support agencies and child support advocates, to evaluate the amount of past-due support that is realistically collectible; 2) allows the local child support agency, until September 1, 2004, to enter into a contract with the office of the district attorney (DA) to provide limited attorney services. Such contract is subject to a finding by DCSS that due to the relatively small size of the local program or other serious programmatic needs, it is most efficient and cost-effective, as a result of the transition of the child support program from the DA to the new local child support agency, to contract out for such services; and 3) refines the language of AB 196 to better delineate the on-going case management role of the local county child support agency when a case is referred to the Franchise Tax Board (FTB) for collection. Status: Chapter 480, 1999.

**SB 1376 (Poochigian) Child support: definition of income.** This bill re-defines "income" under the child support guideline, providing courts with the discretion to consider the benefits of gifts and inheritances received by a parent when determining a parent's income for the purpose of

calculating child support. Status: Dead, AJUD.

**SB 2045 (Schiff) National medical support notice.** This bill requires the local child support agency enforcing a child support order to use the federally mandated National Medical Support Notice, in lieu of the health insurance coverage assignment order, when the court has ordered that a parent provide health insurance for a child. This applies for all cases being enforced by the child support agency, whether or not the child receives public assistance or Medi-Cal. Status: Chapter 119, 2000.

### **Domestic Partnership**

**AB 1990 (Romero) Domestic partners.** This bill would expand the legal rights of a registered domestic partner to include the right to make medical treatment decisions on behalf of his or her partner if the partner is a patient in a health facility and is incapable of giving informed consent. Status: Dead, ASM.

**AB 2047 (Steinberg) Domestic partners.** This bill would expand the legal rights of registered domestic partner to: (1) allow a domestic partner the right to inherit property if one partner dies without a will, and to be appointed as administrator of his or her deceased partner's estate, in the same priority position as a surviving spouse; (2) include the right to make medical treatment decisions on behalf of his or her partner if the partner is a patient in a health facility and is incapable of giving informed consent; (3) allow a registered domestic partner to make funeral arrangements for, and decisions with regards to the autopsy of, his or her partner; and (4) authorize a domestic partner to participate fully and have standing to appear in conservatorship proceedings and be appointed as conservator in the same manner as the spouse of a conservatee or proposed conservatee. The bill also would revise the statutory will form to include domestic partners in the class of beneficiaries to whom a testator may leave assets and property. Status: Dead, AAPPR.

**AB 2211 (Kuehl) Domestic partners.** This bill would expand the legal rights of domestic partners to include rights regarding the incapacitation or death of their partner. The bill, among other things, would: (1) authorize a registered domestic partner to bring a cause of action and recover damages for negligent infliction of emotional distress and wrongful death, to the same extent that spouses are entitled to do under California law; (2) allow a registered domestic partner to make funeral arrangements for, and decisions with regards to the autopsy of, his or her partner; (3) authorize a domestic partner to participate fully and have standing to appear in conservatorship proceedings and be appointed as conservator in the same manner as the spouse of a conservatee or proposed conservatee; (4) revise the statutory will form to include domestic partners in the class of beneficiaries to whom a testator may leave assets and property; and (5) recognize domestic partnerships from jurisdictions outside the state for purposes of California law. However, to be eligible for Public Employees Retirement System health benefits, couples would have to register with the Secretary of State and meet certain eligibility requirements. Status: Dead, ASM.

**AB 2421 (Migden) Domestic partners: definition.** This bill expands the group of individuals who may register as domestic partners to include opposite sex couples where one or both of the persons are over the age of 62. Current law allows opposite sex couples to register as domestic partners only where both partners are over the age of 62. Status: Vetoed.

**SB 75 (Murray) Domestic partnerships: registration.** This bill implements the Domestic Partnership Act of 1999, enacting a statutory scheme for the registration of domestic partnerships by recognizing domestic partnerships validly entered into and recognized in other jurisdictions. The bill also preempts all local ordinances and laws creating domestic partnerships within the state on or after July 1, 2000, permitting the retention or adoption only of those policies, ordinances, or laws that provide rights to domestic partners in addition to those provided by this bill. In addition, all domestic partnerships created before that date remain valid, provided that the domestic partners file a Declaration of Domestic Partnership with the Secretary of State. Status: Vetoed.

### Domestic Violence

**AB 59 (Cedillo) Elder and dependent adult abuse.** This bill expands the rights of elder and dependent adults who have suffered abuse at the hands of unrelated roommates, caregivers, or others to seek restraining and protective orders. The bill authorizes an elder or dependent adult to seek temporary and permanent protective orders from the court to prohibit another from abusing, intimidating, attacking, stalking, threatening, harassing, or engaging in other enumerated activities. An order may be issued by the court upon a showing of reasonable proof of a past act of abuse against the petitioner by the respondent. The bill also allows the court to issue an ex parte emergency protective order if a law enforcement officer presents reasonable grounds to believe that an elder or dependent adult is in immediate and present danger of abuse. Status: Chapter 561, 1999.

**AB 205 (Leach) Confidential Address Program: name change.** This bill provides that, where a petition requesting a name change is filed by a participant in the Secretary of State's Confidential Address Program (CalCAP), and the reason alleged for the name change is to avoid domestic violence, the petition, the order of the court, and the copy of the order published for notice purposes shall indicate that the proposed new name is confidential and will be on file with the Secretary of State. The court is prohibited from disclosing the proposed name during the hearing unless the court finds by clear and convincing evidence that the allegations of domestic violence in the petition are false. The bill further requires that the Secretary of State keep confidential name changes of program participants, and eliminates changing one's name as a reason for removal from CalCAP. Status: Chapter 33, 2000.

**AB 403 (Romero) Access to domestic violence records.** This bill enacts the Access to Domestic Violence Reports Act of 1999, requiring each state and local law enforcement agency to provide to the victim, upon request, a free copy of the police report relating to an incident of domestic violence, the incident report face sheet, or both. The access to domestic violence reports created pursuant to this bill applies to reports made within five years from the date of

completion of the domestic violence incident report. Status: Chapter 1022, 1999.

**AB 825 (Keeley) Domestic Violence Restraining Order Registry.** This bill changes the name of the Domestic Violence Protective Order Registry operated by the Department of Justice to the Domestic Violence Restraining Order System, and seeks to improve the efficiency of the Registry and ensure appropriate enforcement of court-issued protective and restraining orders. The bill requires a court issuing various types of protective orders to prevent domestic violence and harassment to use standard order forms. However, the fact that an order was not issued on the standard form does not make the order unenforceable. The bill further provides that valid protective or restraining orders issued by a court of another state, tribe, or territory need not be issued on the specified forms in order to be entered in the Domestic Violence Restraining Order System. Status: Chapter 661, 1999.

**AB 933 (Keeley) Arbitration.** This bill seeks to protect victims of domestic violence from fear, violence and manipulation in arbitration proceedings. The bill prohibits the court, in an action for marital dissolution or legal separation, from referring parties to arbitration to resolve disputes over the division of property if a party objects to arbitration due to concerns about domestic violence and the court finds that there is a domestic violence protective order in effect or that domestic violence has occurred or is likely to occur between the parties. The court may nevertheless submit the matter to arbitration in such cases if the arbitrator has completed specified domestic violence training and if the arbitration takes place in the courthouse or a location in which there is adequate security. The bill also allows a party to have a "support person" present in the arbitration, to provide emotional and moral support, in any case in which a protective order has been issued by the court. The arbitrator may exclude the support person if he or she participates in the arbitration, acts as an advocate for the party, or otherwise disrupts the arbitration. Status: Vetoed.

**AB 1705 (Gallegos) Domestic violence courts.** This bill creates the Domestic Violence Court Trust Fund for the purpose of providing assistance to local trial courts throughout the state to create new domestic violence courts and improve and to expand existing domestic violence courts. The bill appropriates \$15 million to the fund for this purpose. Status: Dead, AAPPR.

**AB 1754 (Robert Pacheco) Domestic violence courts.** This bill creates the Domestic Violence Court Services Trust Fund for the purpose of providing funding for probation and other court-ordered services for domestic violence courts. The bill provides that without adequate resources earmarked for probation and other court-ordered services, domestic violence courts will be unable to provide the focused attention and the full range of services that have proven effective. The bill therefore appropriates \$3.6 million for the fund. Status: Dead, AAPPR.

**AB 2589 (Cardenas) Interpreters.** This bill requires the appointment of a certified or registered court interpreter in any court proceeding brought under the Domestic Violence Prevention Act (DVPA), or in any family law proceeding in which a protective order has been granted or is being sought where one of the parties is deaf or hearing impaired or does not proficiently speak or understand the English language. The bill provides for the waiver of

interpreter fees in certain instances. The bill also establishes mandatory minimum training for all certified court interpreters. Status: Dead, SAPP. R.

**AB 2914 (Committee on Judiciary) Temporary restraining orders.** This urgency measure corrects a conflict created by a recently enacted statute (AB 1132, Chapter 43, 1999). AB 1132 extended and streamlined time frames from 15 to 21 days before the hearing for filing and service of various motions and orders to show cause. However, where the court issues ex parte temporary restraining orders with notice to the responding party, Family Code section 242 requires the hearing be set no later than 20 days from the date the order is issued. AB 2914 simply returns the service requirements to those in effect prior to the passage of AB 1132 with respect to these temporary restraining orders issued under the Family Code. Status: Chapter 90, 2000.

**SB 218 (Solis) Domestic violence protective orders.** This bill makes numerous changes to improve the effectiveness of domestic violence protective orders and to provide greater security and protection for victims of domestic violence, such as requiring the court to restrain a person subject to a protective order from owning, possessing, purchasing, or receiving a firearm while that protective order is in effect, requiring any respondent present in court at a hearing where such an order is made to relinquish any firearm in that person's immediate possession and control within 24 hours, and directing the Judicial Council to prepare forms that relate to domestic violence prevention in languages other than English. This bill provides also that if a court orders a restrained party to participate in batterer's treatment counseling, it shall be a batterer's treatment program approved by the probation department. Status: Chapter 662, 1999.

**SB 1318 (Alpert) Confidential address program.** This bill seeks to improve and expand California's Confidential Address Program (CalCAP), by extending program eligibility to greater numbers of victims of domestic violence and to victims of stalking. The bill additionally relaxes the proof requirements for demonstrating that the applicant is a victim of domestic violence. Under these revised requirements, an application to participate in CalCAP based on domestic violence may be accompanied by evidence including, but not limited to police, court or other government agency records or files; documentation from a domestic violence program; documentation from a legal, clerical, medical or other professional from whom the applicant has sought help in dealing with the domestic violence; or any other evidence that supports the sworn statement alleging that the applicant is a victim of domestic violence. The bill sets forth similar requirements for stalking victims. Status: Chapter 562, 2000.

**SB 1340 (Solis) Model domestic violence courts.** This bill creates the California Domestic Violence Court Task Force to evaluate domestic violence courts in California and other states, and to develop model guidelines for the future creation and operation of domestic violence courts statewide. The Task Force shall, among other things, evaluate and describe the best practices adopted for the operation of domestic violence courts, both from a substantive and procedural perspective, with emphasis on how each model will ensure the safety of, and support for, domestic violence victims and their children. The Task Force shall submit its recommendations and model guidelines to the Legislature by March 1, 2002. Status: Vetoed.

## Family Law

**AB 889 (Jackson) Rights and responsibilities marriage fact sheet.** This bill requires the Judicial Council to develop a fact sheet noting specified rights, obligations, and laws regarding marriage, including laws pertaining to the following subject areas: a) the effects of marriage on property rights; b) rights and obligations of married persons with regard to management and control of property, the responsibility for individual and community debts, and pension and retirement benefits; c) rights and obligations to and for children, including child support; d) spousal support obligations that may arise from the dissolution of a marriage; and, e) domestic violence. The fact sheet is to be distributed by county clerks at the time of issuing a marriage license. Status: Vetoed.

**AB 1671 (Committee on Judiciary) Family law omnibus bill.** This bill makes several changes to child custody and child support statutes. Among other things, the bill: 1) clarifies that the stated public policy goal of assuring that the health, safety, and welfare of children are the court's primary concern in making orders regarding custody, applies to orders for both legal and physical custody; 2) limits the ability of a support obligor to evade a current child support obligation simply by closing a bank account by allowing the court to require an obligor to open a bank account for the purpose of paying child support by an electronic funds transfer; 3) seeks to comply with federal requirements that all states enact laws pursuant to which liens for personal property become effective by operation of law in cases where an obligor is delinquent in child support payments; 4) adds technical provisions to the Uniform Interstate Family Support Act to set forth the procedure for transferring interstate child support cases between counties or between a county and another state; and 5) prohibits the court from considering the absence or relocation of a party from the home in determining custody or visitation if the absence or relocation is of short duration, the party maintains, or makes reasonable efforts to maintain, regular contact with the child, or if the party is absent or relocates because of actual or threatened domestic violence. Status: Chapter 980, 1999.

**AB 1920 (Jackson) Marriage fact sheet.** This bill requires the Judicial Council, by July 1, 2001, to develop a fact sheet providing a concise summary of general legal principles concerning specified rights and obligations of married persons. The fact sheet shall be offered by county clerks at the time of issuing a marriage license or accepting an application for a confidential marriage certificate and by notary publics receiving confidential marriage licenses. Status: Vetoed.

**AB 2915 (Committee on Judiciary) Child's counsel.** This bill makes various changes to improve the likelihood in family law matters that a child's best interests will be considered and a child's preferences will be heard by the court. The bill requires the court, in any proceeding involving substantial contested issues of custody or visitation, to consider the advisability of appointing counsel to represent the interests of the child. The bill also requires counsel to communicate the child's preferences regarding custody or visitation to the court, if the child consents. The bill provides immunity to the minor's counsel for any act or omission done in

good faith and in connection with the appointment, but creates a procedure for the court to remove and replace appointed counsel if it finds counsel was acting improperly or contrary to the child's best interests. Status: Dead, SAPPR.

**ACA 21 (House) Families: parental rights.** This bill, among other things, provides that every parent has a fundamental right to control the care and custody of his or her minor children, including, but not limited to, control over the education, discipline, religious and moral instruction, health, medical care, welfare, place of habitation, counseling, and psychological and emotional well-being of those minor children. It also prohibits any state action from abridging or hindering this fundamental right absent a showing that the state's action is essential to further a compelling state interest and is the least restrictive means of furthering that interest. Status: Failed, AJUD.

**AJR 44 (Robert Pacheco) Fathers in the home.** This resolution asserts that there is no substitute for a loving mother and father in the lives of children, and that this is a model that has been proven throughout many millennia as the best environment to raise children. The resolution therefore urges the President and Congress to reject and denounce in the strongest possible terms, what the author believes to be the conclusion of an article in the American Psychologist journal that fathers are not essential to the well-being of children. Status: Failed, AJUD.

**SB 357 (Ortiz) Use of marital and non-marital property.** This bill clarifies that the standard restraining order that accompanies a summons, which restrains both parties from encumbering any real or personal property, shall not be construed to prevent the parties from using quasi-community or separate property (in addition to community property, as currently allowed by statute) to pay reasonable attorney's fees and costs in order to retain legal counsel in a proceeding for dissolution or legal separation. Status: Chapter 118, 1999.

**SB 442 (Alarcon) Capacity to marry: post-death nullity of marriage.** This bill allows a conservator to file a petition for the dissolution of marriage or legal separation of a conservatee, where the court finds that such a petition would be in the best interest of the conservatee. It also allows a conservator to file a petition for a judgment of nullity of a conservatee's marriage based on consent obtained by fraud or force. As to property or interest transfers made prior to death by a person whose marriage was annulled on the basis of unsound mind or of consent obtained by fraud or force, this bill creates a presumption affecting the burden of proof that the transfers are invalid, whether the transfer was to the spouse or to a third party, unless the third party was a bona fide purchaser who purchased the property for value and in good faith. Status: Dead, AJUD.

**SB 874 (Escutia) Family law information centers.** This bill makes minor changes to the Family Law Information Center (FLIC) pilot project which was created pursuant to AB 2207 of the 1998 legislative session to provide factual information to unrepresented low-income litigants in order to assist them in utilizing the family court system. The bill extends the pilot project creating the FLICs for one year to compensate for the fact that the project could not be implemented in 1999 due to a lack of funding. The bill also makes technical changes to the

notice that FLICs are required to provide to users, and to the requirement that employees of the FLICs maintain the confidentiality of information provided by any party. Status: Chapter 886, 1999.

# **FEEES**



## **FEES**

**AB 1768 (Steinberg) Sheriffs' and keepers' fees.** This bill seeks to revise and increase various fees for services provided by sheriffs to reflect increasing deficits in providing these services. The bill also increases fees for service of process, dealing with attached property, executing and delivering other instruments, and other related services to reflect cost increases for providing the services. It also deletes the fee for meals and mileage traveled for a keeper of property under a court order from the general schedule for keeper compensation. Status: Chapter 629, 2000.

**AB 2432 (Torlakson) Rental car surcharge fees: San Jose International Airport.** Existing law requires rental car companies doing business at the San Jose International Airport to surcharge specified fees to their customers. This bill would make a technical, non-substantive change to that provision. Status: Dead, ASM.

**SB 1228 (Vasconcellos) Rental vehicles: airport surcharge fees.** This bill requires rental car companies at the San Jose International Airport to collect a city-imposed fee on users of rental car services at the airport, separate from their base rental rate, for the purpose of financing, designing, and constructing a consolidated rental car facility and a common use transportation system for moving passengers between the terminals and the rental car facilities at the airport. Status: Chapter 760, 1999.



# **HEALTH CARE**



## HEALTH CARE

**AB 55 (Migden) Health care service plans: independent review.** This bill establishes an independent medical review system (IMRS) for unresolved consumer complaints against health plans and health insurers. Specifically, the bill: 1) establishes, commencing January 1, 2001, an IMRS for enrollees to seek an independent review whenever health care services have been denied, delayed, or otherwise limited by a health plan or one of its contracting providers based on a finding that the service is not medically necessary, including Medi-Cal beneficiaries subject to conditions, and Medicare beneficiaries if not federally preempted; 2) provides that independent reviews be conducted by expert medical organizations independent of plans pursuant to conflict of interest provisions; 3) directs the Department of Managed Care (DMC) to adopt the determination of the independent review entity, which shall be binding on the plan, and in cases where the enrollee's position prevails, the plan must either offer the enrollee the disputed health care service or reimburse the enrollee for emergency or urgent care received if so directed by DMC; 4) specifies that the enrollee shall not pay any application or processing fees; the costs of IMRS are to be paid for through an industry wide assessment which may be adjusted to reflect plan use of the process; and 5) creates a similar IMRS in the Department of Insurance (DOI) for review of similar unresolved complaints by health insurers. Status: Chapter 533, 1999.

**AB 254 (Cedillo) Health facilities: sale of assets.** This bill requires nonprofit health facilities to obtain the consent of the Attorney General prior to the sale, transfer or lease of a material amount of assets to another nonprofit corporation, which is the same basic process that is currently required for transfers between nonprofit and for-profit facilities. Status: Chapter 850, 1999.

**AB 351 (Steinberg) Health care service plans: mergers.** Requires the Attorney General (AG) to approve in advance any merger, acquisition or change in control of a health care service plan (health plan) doing business in California to ensure that such transaction will not substantially lessen competition or create a monopoly in the state. Specifically, this bill: 1) requires parties to proposed health plan mergers to notify the AG of the proposal, and to provide a copy of the notice to the Department of Managed Care (DMC), and directs the AG to coordinate its antitrust reviews of health plan mergers with any reviews undertaken by the DMC; 2) requires the AG, before approving a health plan merger or acquisition, to find that the proposal will not substantially lessen competition or create a monopoly in the state, and authorizes the AG to impose conditions and mitigation measures on health plan mergers to avoid this adverse result; 3) requires the AG to solicit public comments before issuing a decision; and 4) authorizes the AG to retain expert consultants to assist in the review, and permits the AG to recover from the health plan consultant costs as well as other reasonable costs incurred in the review. Status: Vetoed.

**AB 435 (Corbett) Workers' compensation records: confidentiality.** This bill provides that nothing in the workers' compensation exemption under the Confidentiality of Medical Information Act (Civil Code section 56.30(f)) shall permit the disclosure or use of medical information regarding whether a patient is infected with or exposed to the human immunodeficiency virus (HIV) without the prior authorization from the patient unless the patient

is an injured worker claiming to be infected with or exposed to HIV through an exposure incident arising out of and in the course of employment. It also prohibits an insurer and certain third-party administrators, employees and agents from disclosing to an employer medical information about an employee who has filed a workers' compensation claim, except as follows: (a) if the diagnosis of the injury for which workers' compensation is claimed would affect the employer's premium, then an insurer may disclose that diagnosis, as specified; or, (b) medical information that a treating medical provider determines is necessary for the employer to have in order for the employer to modify the employee's work duties as a result of the injury for which workers' compensation is claimed. Status: Chapter 766, 1999.

**AB 525 (Kuehl) Reproductive health care services.** When this bill was heard by the Judiciary Committee, it enacted a host of provisions which were designed to increase access to reproductive health care services. The bill was subsequently amended to require only that health plans and disability insurers make a specific disclosure regarding possible limitations on the provision of reproductive health services by certain providers in order to assist women in obtaining access to these critically needed services, including a phone number where they can call for more information. This disclosure must be included in provider directories, evidence of coverage forms, and disclosure forms, as well as on the health plan's or disability insurer's website, if any, to help consumers make informed choices up-front when choosing their plans and picking their health care providers. Status: Chapter 347, 2000.

**AB 1577 (Rod Pacheco) Independent review.** This bill seeks to create a new independent medical review system when health care services are denied, significantly delayed, terminated, or otherwise limited by a health care service plan and seeks to expedite HMO and Department of Corporations review of patient grievances. Status: Failed, AJUD.

**AB 1621 (Thomson) Independent medical review.** When heard by the Committee, this bill sought to speed up the time the Department of Corporations shall respond to consumer complaints against health plans and establish a new independent medical review process for decisions by health plans to deny care. As amended in the Senate, the bill would require managed care contractors to report inpatient and outpatient revenues received by hospitals for the provision of services to Medi-Cal beneficiaries. Status: Dead, ASM Concurrence.

**AB 2039 (Kuehl) HMO liability rules.** This bill seeks to address a concern expressed by the Governor when he signed SB 21 of 1999 (Figueroa/Kuehl), that some patients could subvert his intent that patients usually must complete independent review before being permitted to proceed to court for redress of their injuries. It also further restricts the circumstances upon which an injured patient, whose harms are solely financial in nature, may proceed to court without first completing the independent review process. The bill permits an injured patient who suffers significant out-of-pocket losses when paying for needed treatment to proceed to court without completing independent review only in the narrow circumstance when a judge finds, as a matter of law, that exhaustion of the applicable independent review system would have been futile under the circumstances. Status: Failed, AJUD.

**AB 2781 (Oller) Health care service plans.** Existing law provides for the regulation of health care service plans by the Department of Managed Care, effective no later than July 1, 2000, or earlier pursuant to an executive order of the Governor, and authorizes its director to exempt from this regulation specified classes of persons or plan contracts. This bill would make nonsubstantive, technical changes to that provision. Status: Dead, ASM.

**SB 19 (Figueroa) Confidentiality of medical records.** This bill significantly strengthens the confidentiality protections that apply to medical records. The bill, among other things: (1) makes rules regarding disclosure of medical information apply to any contractor of health care providers; (2) prohibits a health care service from conditioning health care services upon the enrollee waiving medical information confidentiality protections; (3) declares that no health care plan or its contractors can use any medical information for any commercial purpose; (4) provides that a violation of the provisions of the bill constitutes a misdemeanor; and (5) sets a maximum fine amount of \$25,000 for each unauthorized non-commercial disclosure, and \$250,000 for each unauthorized commercial disclosure. Status: Chapter 526, 1999.

**SB 21 (Figueroa) Liability of HMOs and managed care entities.** This bill seeks to provide health care consumers with greater protections against mistreatment by health plans. The bill makes a health plan liable, effective January 1, 2001, for any and all harm legally caused by its failure to exercise ordinary care in arranging for the provision of medically necessary health care services when: a) the failure to exercise ordinary care resulted in the delay, denial, or modification of health care services recommended or furnished by a health care provider; and b) the subscriber or enrollee suffered substantial harm (defined as loss of life, loss or significant impairment of limb or bodily function, significant disfigurement, severe and chronic physical pain, or significant financial loss). The right to maintain a cause of action for liability is conditioned on the exhaustion of any independent medical review or other independent review system required by law to which health care service plans are subject. Status: Chapter 536, 1999.

**SB 173 (Alpert) Non-health plan sponsored discount health care programs.** This bill authorizes the operation of consumer discount health care programs, in which consumers are offered access to health care services and products at purportedly discounted rates, and seeks to provide for the regulation of these programs by the Department of Managed Care. This bill allows discount health programs to refer patients to physicians and other health care providers for health care services and products, without a requirement that the programs warrant the competency of the physician or participating provider. This bill, similar to SB 1181 (Polanco), also permits discount health programs to operate in California without first requiring proof that they will provide true discounts to consumers. Among other things, the bill requires that discount health programs comply with specified requirements, including subjecting participating providers to written agreements stating particular information, such as the services and products to be provided at a discount, the amount of the discounts, and the usual and customary rates to which the discounts apply, and providing consumers with specific disclosure materials. This bill also requires that discount health programs register with the Department of Managed Care and permits a consumer injured by a violation of the bill to bring an action for relief. Status: Dead,

AAPPR.

**SB 189 (Schiff) Health Care: health care coverage.** Existing law requires every health care service plan and disability insurer to establish a reasonable external, independent review process to examine coverage decisions regarding experimental or investigational therapies for individual enrollees or insureds who have a terminal condition and meet certain specified criteria. This bill revises these criteria to instead require that the enrollee or insured have a life-threatening or seriously debilitating condition. The bill further requires the Department of Corporations to contract with one or more impartial, independent, accredited entities for purposes of providing an external, independent review process to review treatment decisions by health plans, rather than the plan or insurer. Existing law also requires every health care service plan to establish and maintain a grievance system approved by the department under which enrollees and subscribers may submit their grievances to the plan. This bill requires health care service plans to provide subscribers and enrollees with written responses to grievances, and would provide that a grievance may be submitted to the department by an enrollee or subscriber after participating in the plan's grievance process for 30 days. The bill requires the department to respond to each grievance in writing within 30 days. Status: Chapter 542, 1999.

**SB 490 (Kelley) Confidentiality of veterinary records.** This bill establishes confidentiality requirements for veterinary records and prohibits cities and counties from using or distributing information on animals and their owners collected through license applications and rabies vaccines, except as required by federal, state or local law or regulations. Status: Chapter 418, 1999.

**SB 1045 (Murray) Medical Board licensing fees and disciplinary authority.** This bill increases the maximum amount of the biennial licensing fee for physicians by \$100, and revises the disciplinary process for physicians by: (1) defining repeated negligent acts, for purposes of unprofessional conduct, as those acts that are the result of separate diagnoses or treatment decisions; (2) prohibiting physicians and surgeons from being required to pay more than \$12,500 toward the recovery of the cost of investigation and enforcement of any violation of the Medical Practice Act; and (3) requiring the Medical Board of California to adopt guidelines for the prioritization of cases involving a risk to patient safety for investigation and prosecution. Status: Dead, SEN.

**SB 1181 (Polanco) Health care service plans: discount health care programs.** This bill grants health plans new authority to offer discount health care programs in which consumers are offered access to health care services and products at a purportedly discounted fee if the plan meets specified requirements. Similar to SB 173 (Alpert), this bill permits health plans to operate discount health care programs in California without first requiring proof that the program will provide true discounts to consumers. Unlike SB 173, this bill does not require registration with any regulating entity, such as the Department of Managed Health Care. Also, this bill does not provide a cause of action for an injured consumer. Among other things, the bill requires that discount health programs comply with specified requirements, including written agreements between the plan and participating providers stating particular information, such as the services

provided at a discount, the amount of the discount, and the usual and customary rates or fee schedule to which the discounts apply, and providing consumers with specific disclosure materials. Status: Dead, AAPPR.

**SB 1471 (Schiff) Health care liens.** This bill prohibits a lien asserted by a health plan, insurer, medical group or independent practice association (IPA) for recovery of money paid for health care services for an enrollee or insured from exceeding the sum of the reasonable costs actually paid to perfect the lien and one of the following: (a) for health care services not provided on a capitated basis, the amount actually paid by the health plan, insurer, medical group or IPA to any treating medical provider; or (b) for health care services provided on a capitated basis, the amount equal to 80 percent of the usual and customary charge for the same services by medical providers that provide health care services on a noncapitated basis in the geographic region in which the services were rendered. Status: Chapter 848, 2000.

**SB 1534 (Perata) Mental health: patient advocacy programs.** This bill specifies the duties and responsibilities of patients' rights advocates (PRAs) and clarifies the rights of mental health clients. The bill, among other things: (1) specifies that people with psychiatric disabilities residing in certain community care facilities have the same legal and civil rights guaranteed patients hospitalized in mental health treatment facilities, including access to the services of a PRA; (2) details the specific duties of county PRAs; (3) specifies that PRAs have access to mental health clients in community care facilities; (4) clarifies the authority of PRAs to refer complaints to any appropriate state or local government agency; and (5) prohibits retaliation against advocates for the performance of their duties and prohibits discrimination and retaliation against a resident of a community care facility who complains. Status: Dead, SEN.

**SB 1596 (Ortiz) Confidentiality of medical information.** This bill provides, generally, for the confidentiality of information reported to the California Cancer Registry, the Birth Defects Monitoring Program, and morbidity and mortality studies. The bill creates a rebuttable presumption that the necessity for preserving the confidentiality of data contained in the cancer registry, birth defects registry, and morbidity and mortality studies outweighs the necessity for disclosure. The rebuttable presumption may only be overcome if the court finds that disclosure of the information will serve to protect public health or safety, and that the requesting party demonstrates the ability to assure the security and confidentiality of the data. Status: Dead, SEN.

**SB 1828 (Speier) Dangerous drugs: prescribing over the Internet.** This bill prohibits individuals and companies from prescribing or furnishing prescription drugs over the Internet without a prior good faith medical examination. The bill also provides for a citation of up to \$25,000 from the Medical Board or the Board of Pharmacy or a \$25,000 civil penalty for each violation of this prohibition. Status: Chapter 681, 2000.

**SB 1934 (Polanco) Health contracts: plan requirements on patients to agree to pre-dispute binding arbitration.** This bill seeks, among other things, to add some statutory conditions in health plan-imposed contracts that require subscribers or enrollees (patients) to agree to pre-

dispute binding arbitration in order to obtain health care coverage for themselves and their families. It provides that health plan contracts that contain binding or voluntary arbitration provisions shall be legally enforceable so long as the following conditions are met: the contract does not impose damage limits in arbitrations that differ from the damages available in public trials; and the contract does not prohibit a patient from representation by counsel, filing a written brief or making a closing argument before the arbitrator. It also provides that the statute of limitations that governs civil actions governs demands for arbitration. The bill permits both health plans and patients to appeal arbitration awards involving a health plan if the award, on its face, shows such a "manifest disregard of the law" that it results in a "substantial injustice." It also declares the Legislature's intent that enactment of the bill shall not be construed as intent to restrict a court's ability to find a damages limitation in other arbitration agreements to be void and unenforceable, or as intent to affect pending cases before the California Supreme Court. Status: Failed, AJUD.

**SB 2094 (Insurance Committee) Managed care reforms of 1999: technical clean-up.** This bill makes technical and clarifying changes to recently approved "managed care reform" legislation enacted during 1999. Specifically, this bill clarifies the circumstances under which entities contracting with health plans are permitted to receive and disclose medical information and corrects references to erroneous code sections and removes improper words. Status: Chapter 1067, 2000.

# **LIABILITY AND RELATED MATTERS**



## LIABILITY AND RELATED MATTERS

### Damages Provisions

**AB 169 (Ackerman) Restriction on punitive damages.** This bill would have strictly limited punitive damages to three times the amount of compensatory damages, taken away the jury's traditional right to determine punitive damages by requiring the judge, rather than the jury, to determine the amount of punitive damages, and imposed other restrictions on the award of punitive damages in civil actions. Status: Failed, AJUD.

**AB 1050 (Wright) Insurance fraud.** This bill seeks to enhance the existing insurance fraud program operated by the Department of Insurance. The bill adjusts the distribution of damages in civil actions brought by any interested person, including an insurer, to increase the amount that the person receives both in cases in which the prosecuting authority proceeds with the case and in cases in which the prosecuting authority declines to proceed with the case. The bill further provides that a civil action for insurance fraud may not be filed more than three years after the discovery of the facts constituting the violation, and in no event, more than eight years after commission of the fraud. The bill also establishes urban grants to target automobile insurance fraud activity. Status: Chapter 885, 1999.

**AB 1221 (Dutra) Construction defect litigation.** This bill creates the California Homebuyer Protection and Quality Construction Act of 2000, providing for 10-year home construction warranties for residential properties, and limiting a homeowner's ability to bring an action in court to recover for construction defects. The bill authorizes homebuilders to offer home construction warranties as a condition of the sale of all new residential homes, and specifies that if a homeowner elects to purchase a home subject to a home construction warranty, the provisions of that warranty shall be deemed to be the exclusive election of recourse for the claims covered by the warranty. The parties to the warranty contract are deemed to have waived any tort remedies, including negligence, strict liability, implied warranties, or any other common law remedy other than for breach of warranty contract. Alternative dispute resolution offered under the warranty, if any, shall be mandatory mediation with subsequent referral to judicial arbitration. If it is determined that there is a defect which is covered by the warranty, the builder has the option to repair, replace, or repurchase to alleviate the defect. Status: Dead, AJUD.

**AB 1380 (Villaraigosa) MICRA: Cap on Non-Economic Damages.** This bill would require the Treasurer to adjust the current \$250,000 cap on non-economic damages in a medical malpractice action, each February 1st, to reflect the cumulative percentage change in the Consumer Price Index for all items published by the United States Bureau of Labor Statistics for the preceding calendar year. The bill would also make legislative findings with respect to the need to revise the cap on non-economic damages. Status: Dead, SAPP.

**AB 1565 (Papan) MICRA: Cap on Non-Economic Damages.** Existing law provides that in any action for injury against a health care provider based on professional negligence, the injured plaintiff is entitled to recover non-economic losses to compensate for pain, suffering,

inconvenience, physical impairment, disfigurement and other nonpecuniary damage, up to a maximum of \$250,000. This bill would instead make this provision applicable to any action for injury based on the professional negligence of a health care provider. Status: Dead, AJUD.

**AB 2582 (Ackerman) Exemplary damages.** This bill prohibits generally the award of punitive damages against a product manufacturer or seller for harm, including disability or death, caused by a product if the product received pre-market approval by a federal agency or complied with federal statutes or regulations in effect at the time of its production. Status: Dead, AJUD.

### **Immunity, Scope of Liability, and Statutes of Limitations**

**AB 706 (Torlakson) Immunity: community warning programs.** This bill clarifies the recently enacted law governing liability immunity for donors of community warning systems in Contra Costa County (AB 1688 – Torlakson, Chapter 444, Stats. 1988). Specifically, this bill clarifies that the immunity provided to donors of community warning systems applies to: (1) the installation by a donor organization of alert receiver equipment and initiation box equipment; or, (2) the operation or maintenance, or both, by a donor organization of stationary terminal equipment and related initiation box equipment, and alert receiver equipment, provided that the installation, operation, or maintenance, or all of these, by the donor organization is undertaken in accordance with the direction of, or under contract with Contra Costa County. The bill further clarifies that the installation, operation, or maintenance of the above equipment by the donor organization must be undertaken without compensation in order to qualify for the immunity protection. Status: Chapter 239, 1999.

**AB 823 (Floyd) Worker safety: statute of limitations and burden of proof.** This bill seeks to address various issues relating to worker safety. Specifically, the measure provides that: (1) for injuries or death caused by exposure to toxic substances or cumulative trauma, provides that the statute of limitations is the later of, one year from the date of the plaintiff's disability, or the date of death of plaintiff's decedent, or one year after the date the plaintiff either knew, or through the exercise of reasonable diligence should have known, that injury, illness, or death from the exposure to toxic substances or cumulative trauma was caused by or contributed to the wrongful act of another; (2) includes willful actions of an employer relating to medical, occupational, or environmental monitoring and health and safety hazard concealment or misrepresentation within the exceptions that would permit an employee to bring an action at law for damages against the employer, and revises language in the existing law on proximate cause to codify the substantial factor test; and (3) makes changes in the shifting of the burden of proof in a summary judgment proceeding. Status: Dead, AJUD.

**AB 934 (Steinberg) Peculiar risk doctrine: liability for injury or death on a worksite.** This bill seeks to restore worker protections and safety by expressly abrogating recent holdings of the California Supreme Court which overturned 30 years of case law relating to application of the peculiar risk doctrine, and to reinstate prior judicial rulings relating to the peculiar risk doctrine and the control doctrine. The bill makes a person who hires an independent contractor liable for injuries or death caused as a result of the failure of the contractor to take special precautions

which the hirer knows or should know are necessary to protect against any special risk of harm associated with the work project. Status: Dead, ASM.

**AB 999 (Briggs) Year 2000 ("Y2K") computer failures.** This bill would make contract law the exclusive remedy in civil actions based on a Y2K computer date failure, similar to AB 1710 of last year. It also includes a mandatory pre-litigation 90-day cure period, elimination of joint and several liability among multiple defendants, and special pleading requirements. In addition, this bill would also limit class actions and require that discovery be stayed pending court action on a demurrer or motion to dismiss on the pleadings. Status: Dead, AJUD.

**AB 1281 (Bates) Year 2000 ("Y2K") computer failures.** This bill prohibits consequential or punitive damages in cases involving Y2K computer problems unless the claimant has first attempted to resolve the complaint through alternative dispute resolution. Status: Dead, AJUD.

**AB 1443 (Zettel) Product liability.** This bill enacts the California Product Liability Reform Act of 1999 establishing specific provisions governing the determination of strict liability for design defects, and exempting prescription drug manufacturers from strict liability for design defects. Status: Dead, AJUD.

**AB 1569 (Ackerman) Year 2000 ("Y2K") computer failures.** This bill provides immunity from any noncontract claim to suppliers of computer products, arising from the Y2K bug if the supplier satisfies certain requirements relating to repair, replacement, or refund of the computer products in question. Status: Dead, AJUD.

**AB 2468 (Romero) Farm operators: liability.** This bill provides that every farm operator, as defined, is jointly and severally liable for any claim arising from a violation of an employment standard law with respect to agricultural workers either directly or indirectly employed in the farming operation. The bill also provides that an agricultural worker who is aggrieved by a violation of a defined employment standard may bring a civil action against the farm operator and, upon prevailing in such an action, shall recover reasonable attorney's fees and costs. Status: Dead, ASM.

**AB 2483 (Kuehl) Drinking water contamination: joint and several liability.** This bill allows public water systems to impose joint and several liability on a person who discharges or releases gasoline or a product containing oxygenates into the drinking water and provides for recovery of damages and costs for investigation, replacement water, installation of new wells, treatment of the contaminated water source and preservation of a drinking water source. The bill also allows a city attorney to bring an action against anyone who releases a hazardous substance in an unauthorized manner and permits the California Environmental Protection Agency to prohibit the sale of oxygenated fuels in areas where drinking water sources are threatened. Status: Dead, ASM.

**AB 2510 (Thomson) Agricultural research crops: civil liability.** This bill creates a cause of action against any person who willfully and knowingly damages or destroys any field crop

product that is known by the person to be the subject of testing by, or in conjunction or cooperation with the University of California, the California State University System, or other federal, state, or local government agency. The bill provides for damages in an amount equal to twice the value of the crop damaged or destroyed, limited to research, testing, and crop development costs directly related to the crop that has been damaged or destroyed. Status: Chapter 359, 2000.

**AB 2581 (Maldonado) Oil and gas well operations: liability insurance report.** Among other things, this bill requires the Department of Conservation, in consultation with representatives of the oil industry and insurers, to report to the Governor and Legislature before July 1, 2000, on options for ensuring the existence of liability blowout insurance for persons engaged in drilling or redrilling exploratory oil and gas wells where abnormally high or unknown subsurface gradients exist. Status: Chapter 737, 2000.

**AB 2632 (Calderon) Construction defects.** This bill makes various changes to construction defect statutes. Among other things, this bill provides immunity from liability for a third party inspector who contracts with the developer of a residential building to check plans and specifications or to inspect a work of improvement if the inspection and checking of the plans are performed in good faith and without malice. The bill also limits the recovery of attorney's fees and costs for a homeowner or homeowner's association that unreasonably rejects a settlement offer made by the builder during the pre-litigation process. Status: Failed, AJUD.

**SB 328 (Alpert) Real property: liability.** This bill removes the January 1, 2000, sunset provision in existing law which permits a secured lender to proceed with alternative remedies to foreclosing on commercial property that is contaminated with toxic substances. The alternative remedies to foreclosure that will remain available under the bill include: (1) the lender may waive its lien against a parcel of environmentally impaired property and proceed directly against a "guilty" borrower to recover the outstanding debt as an unsecured creditor; or (2) the lender may enforce any environmental warranties made by the borrower and bring a breach of contract action for certain specified damages. Status: Chapter 60, 1999.

**SB 390 (Alpert) Liability: waste discharge.** This bill: (1) revises the authority of regional water quality control boards to waive waste discharge requirements of the Porter-Cologne Water Quality Control act as to a specific discharge if the waiver is not against the public interest and is not for a period to exceed five years; (2) requires regional boards and the State Water Resources Control Board to enforce the conditions under which a waiver was granted; (3) requires the regional boards, prior to renewing any waiver, to review the terms of the waiver at a public hearing; and, (4) revises liability provisions where a person violates prescribed orders or discharges waste in violation of a waste discharge requirement or other order or prohibition to include waivers or conditions. Status: Chapter 686, 1999.

**SB 681 (Speier) Vehicles: clearing accidents.** This bill authorizes a person involved in a non-injury accident, if possible, to move the vehicle out of the way of traffic if the vehicle can be moved safely. It also provides that a government agency, the Department of the California

Highway Patrol, or the employees or officers of those agencies, may not be held liable for any damage to property caused by a negligent act or omission of the employee or officer when removing property which has fallen onto the highway. Status: Chapter 421, 1999.

**SB 763 (Sher) Public defenders: immunity from malpractice actions.** This bill provides, generally, that public defenders have the same immunity from malpractice suits provided public prosecutors under Government Code Section 820.2. It also provides, notwithstanding the above, that a legal malpractice action arising from the representation by a public defender of a client in a case that resulted in the conviction of that client of a crime shall not be precluded on grounds of immunity if, prior to filing the action, either of the following has occurred: (a) a court has determined that the client is factually innocent of the underlying offense or offenses that gave rise to the representation by the public defender; or (b) the client has been acquitted of all charges in relation to which the public defender provided representation. Status: Vetoed.

**SB 822 (Escutia) Tobacco: tobacco products settlement.** This bill enacts model legislation as recommended in the Tobacco Master Settlement Agreement (MSA) to create a reserve fund from which tobacco manufacturers not participating in the MSA may pay future litigation claims. Specifically, the bill: 1) requires any tobacco manufacturer selling cigarettes within the state to either become a participant in the MSA and generally perform its financial obligations or place into an escrow account a specified amount per unit sold during the year in question; 2) permits any product manufacturer placing funds into an escrow account to receive the interest earned on those funds; 3) requires funds in an escrow account to be released only for specified reasons; and 4) requires tobacco manufacturers using the escrow option to certify to the Attorney General that they are in compliance with the law. The bill also authorizes the Attorney General to bring a civil action against tobacco manufacturers that fail to comply and establishes a schedule of penalties. Status: Chapter 780, 1999.

**SB 911 (Figueroa) Emergency care: defibrillators.** This bill provides a qualified immunity from civil liability for trained persons who use in good faith and without compensation an automated external defibrillator ("AED") in rendering emergency care or treatment at the scene of an emergency. The qualified immunity also extends to those businesses that purchased the device, the physician who prescribed the device, and the agency which trained the person in the use of the AED, as specified. The immunity would not apply in cases of personal injury or wrongful death resulting from gross negligence of willful or wanton misconduct. Status: Chapter 163, 1999.

**SB 1109 (Burton) Vessels: liability.** This bill requires a vessel owner and its operators to either pay for trip insurance or defend, indemnify, and hold harmless, a bar pilot from any liability and expenses in connection with any civil claim arising out of the pilot's performance of the pilotage services, except for acts of willful misconduct. This defense and indemnity obligation would also extend to any organization of pilots to which the pilot belongs, and their officers and employees. The bill also provides that this obligation shall not apply to the extent that it causes the amount recoverable from a vessel to exceed the limits of liability to which it is entitled under any bill of lading, charter party, contract of affreightment, or provision of law. It

further clarifies that nothing in the bill is intended to alter existing liabilities of the vessel to any person who sustains loss or damage. In addition, the bill provides that a pilot who is the prevailing party shall be awarded attorney's fees and costs incurred in any action to enforce any right provided under this legislation. Status: Chapter 786, 2000.

**SB 1237 (Escutia) Liability: third party bad faith lawsuits.** This bill allows a consumer to sue a third party insurer for bad faith claims practices after the claimant obtains a favorable court judgment or arbitration award. Specifically, this bill: 1) invalidates the California Supreme Court's decision in *Moradi-Shalal vs. Fireman's Fund* and allows a consumer to sue a third party insurer, for damages sustained on or after January 1, 2000, for bad faith in the handling, process or settlement of claims made by a party after obtaining a favorable court judgment or arbitration award; 2) requires liability insurers to handle an insurance claim consistent with the fair claims handling practices specified in the state's Unfair Claims Practices Act (UCPA); 3) applies to any liability insurer licensed and subject to regulation under the Insurance Code or to any third party administrator of a private self-funded liability protection program; 4) establishes a new alternative dispute resolution (ADR) process whereby a claimant or a third party insurer in all cases valued at less than \$50,000 may request binding arbitration so long as the claimant is represented by counsel; 5) exempts a professional liability insurer from liability for bad faith where consent of the insured is required by a contract or statute and other specified conditions are met; 6) provides that a claimant convicted of drunk driving cannot sue for bad faith; and 7) clarifies that when a jury considers the merits of a bad faith action, the amount of the verdict in the underlying liability lawsuit may be considered as evidence of bad faith, but shall not be the sole consideration used by the jury. Status: Chapter 720, 1999.

**SB 1261 (Hayden) Limits on actions: police misconduct.** This bill would provide victims of certain forms of police misconduct by officers in the Rampart Division of the Los Angeles Police Department an additional year to file claims for damages arising from this misconduct. Status: Dead, AAPPR.

**SB 1899 (Burton) Statute of limitations: Northridge earthquake claims.** This bill provides victims of the 1994 Northridge earthquake an additional year to file claims for their quake-related damages. It provides that, notwithstanding any other provision of law or contract, any insurance claim for damages arising out of the Northridge earthquake which would normally be time barred solely because the applicable statute of limitations has expired, is revived and may be commenced within one year of the effective date of this bill. The bill also provides that nothing in this section shall be construed to alter the applicable limitations period of an action that is not time barred as of the effective date of this section. It also limits the bill's applicability to cases in which an insured contacted his or her insurance company, prior to January 1, 2000, regarding the potential existence of damage related to the Northridge earthquake. The bill also does not apply to any claim that has been litigated to finality in any court of competent jurisdiction prior to the effective date of this section, or to any written compromised settlement agreement which has been made between an insurer and its insured where the insured was represented by counsel admitted to the practice of law in California at the time of the settlement, and who signed the agreement. Status: Chapter 1090, 2000.

**SB 1915 (Poochigian) Insurance: Armenian Genocide.** This bill permits Armenian Genocide victims and their heirs or beneficiaries to file suit in California against an insurer doing business in California or whose contacts with the state satisfy the requirements for imposition of personal jurisdiction, to recover proceeds due under a life, annuities, dowry, educational or casualty insurance policy which was sold directly by that insurer or through a related company to persons in Europe or Asia at any time between 1875 and 1923. The bill also provides that the Armenian Genocide victim may continue a pending legal action to recover on a claim in any court of competent jurisdiction in this state. It further provides that any such action brought by an Armenian Genocide victim or an heir or beneficiary shall not be dismissed for failure to comply with the statute of limitations if the action is filed on or before December 31, 2010. This provision applies to both resident and non-resident actions. Status: Chapter 543, 2000.



# **PERSONAL, CIVIL AND CONSTITUTIONAL RIGHTS**



## PERSONAL, CIVIL AND CONSTITUTIONAL RIGHTS

### Civil Rights

**AB 407 (Cedillo) Civil rights: discrimination.** This bill clarifies that immigration status is a protected class under the Unruh Civil Rights Act (Unruh Act) and the Hate Crimes statute. It also states the intent of the Legislature, in amending the Unruh Act, not to affect the protected status of any other classification whether or not expressed in the Act. Status: Vetoes.

**AB 519 (Aroner) Civil rights: sexual harassment prevention.** This measure clarifies a host of drafting ambiguities currently contained in California's so-called "professional and business relationships" sexual harassment prevention statute. Specifically, the bill: 1) clarifies that verbal, visual, and physical conduct of a sexual nature are covered forms of sexual harassment; 2) clarifies that prohibited conduct must, consistent with other statutes and regulations, be "pervasive" rather than "persistent;" 3) deletes the unprecedented requirement that a victim of sexual harassment must first ask the harasser to stop the offensive conduct in order to be entitled to seek legal redress; 4) clarifies that the statute covers injuries involving emotional distress and violations of statutory and constitutional rights; 5) eliminates the requirement that a complaint and answer filed in this type of action be verified by either party; 6) clarifies that the specific definitions and standards noted above only apply to causes of action brought under this particular anti-harassment statutory framework; and 7) clarifies that the traditional discrimination remedies contained in the Unruh Civil Rights Act (Unruh Act) are available to victims of sexual harassment suing under this statute. Status: Chapter 964, 1999.

**AB 1670 (Committee on Judiciary) California Civil Rights Amendments of 1999.** This committee bill strengthens and clarifies various civil rights protections afforded by the Fair Employment and Housing Act (FEHA) and other civil rights statutes. Specifically, the measure, among other things: (1) increases the amount of damages and administrative fines that may be awarded by the Fair Employment and Housing Commission in employment discrimination cases from \$50,000 to \$150,000, and permits a court to award expert witness fees to a prevailing party in FEHA cases; (2) extends harassment protections under FEHA to contract workers; (3) requires employers to provide reasonable accommodations to pregnant employees; (4) clarifies that genetic testing of employees is prohibited, and expands the class of employers subject to FEHA's prohibition against discrimination on the basis of mental disability; (5) clarifies that protections against housing and employment discrimination cover discrimination based upon a victim's perceived membership in a protected class; and (6) clarifies that FEHA's protections against housing and employment discrimination cover the right to freely associate. Status: Chapter 591, 1999.

**AB 1856 (Kuehl) Fair Employment and Housing Act: harasser liability.** This bill seeks to hold all employees (whether supervisors or non-supervisors) accountable for their acts of harassment by imposing personal liability under the Fair Employment and Housing Act. Status: Chapter 1047, 2000.

**AB 2000 (Villaraigosa) Tolerance of diversity.** This bill creates a statewide human relations commission to foster greater tolerance of diversity in California. It, among other things, creates the California Commission On Human Relations, which would consist of 13 members serving for four-year terms. It also states various findings including that it is California's responsibility to its citizens and residents to promote understanding and tolerance for all. Status: Vetoed.

**AB 2062 (Kuehl) Fair Employment and Housing Act.** Makes a technical correction to the Fair Employment and Housing Act exempting the state from the payment of attorney's fees and costs in employment discrimination claims, and brings clarity to the precise "triggering" events which permit a respondent to transfer an employment discrimination claim from the Department of Fair Employment and Housing to a court. Status: Chapter 189, 2000.

**AB 2189 (Baldwin) Discrimination: disabilities.** This bill would impose a variety of restrictions not imposed on other victims of discrimination on the ability of an individual with a disability to bring suit for violation of California's equal access laws. The bill would, among other things: (1) require an individual with a disability who in good faith believes that a public accommodation does not provide full and equal access, to so notify the owner or manager of the accommodation, by certified letter, clearly identifying the specific access problems; (2) require the landlord, tenant, owner, operator, or other responsible party to act in good faith by making "undisputed access improvements" within 90 days from receipt of the disabled plaintiff's certified letter, which can be extended for good cause; (3) require the responsible party, no later than 60 days from receipt of the disabled party's certified letter, to respond in writing to the disabled party and provide an "action plan" for undisputed access improvements; (4) prohibit a disabled party from filing an action against a public accommodation based on a violation of certain equal access laws before 90 days from receipt of the disabled individual's certified letter by the owner or manager of the public accommodation; and (5) bar a disabled party from recovering attorney's fees or any other costs with respect to any action or proceeding regarding undisputed access improvements. Status: Failed, AJUD.

**AB 2222 (Kuehl) Discrimination: disabilities.** This bill, among other things, clarifies the definitions of mental and physical disability and medical condition for the purposes of the Fair Employment and Housing Act (FEHA) to include a record or history of that disability or condition. It also provides that, for the purpose of the definition of physical disability, "limits" on an individual's ability to participate in "major life activities" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits an individual's ability to participate in major life activities. And the bill provides, generally, that it is an unlawful employment practice for an employer to make any medical, psychological, or disability-related inquiry of a job applicant unless the applicant has been offered a job and the examination or inquiry is job-related and consistent with business necessity, or the employer is responding to the applicant's request for reasonable accommodation. An employer may, however, ask a job applicant if he or she can perform job-related functions. The bill also requires an employer to engage in a timely, good faith, interactive process to determine effective reasonable accommodations, if any, at the request of a disabled employee or applicant. Status: Chapter 1049, 2000.

**AB 2484 (Romero) Attorney General.** This bill prohibits any governmental authority from engaging in a pattern or practice of conduct by law enforcement officers that deprives any person of rights, privileges, or immunities protected by the law or constitution. The bill also states that the Attorney General (AG) may bring a civil action in the name of the people to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice of conduct, above, whenever the AG has reasonable cause to believe that such a violation has occurred. Status: Chapter 622, 2000.

**AB 2534 (Shelley) Civil rights: discrimination.** This bill would provide that nothing in the Fair Employment and Housing Act shall be construed to prohibit a city, city and county, county, or other political subdivision of this state from providing or maintaining greater protections against discrimination. Status: Dead, AJUD.

**AB 2719 (Wesson) Constitutional and civil rights: enforcement.** This bill allows the Attorney General, a district attorney, or a city attorney to be awarded a \$25,000 civil penalty in successful enforcement actions under the Ralph Civil Rights Act. In addition, this bill declares that an action brought pursuant to the Bane Civil Rights Act for a violation of a person's constitutional rights, does not require the individual whose rights were violated to prove that he or she is a member of a protected class. Status: Chapter 98, 2000.

**AJR 68 (Romero) Discrimination against women.** This bill urges the United States Senate to ratify the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women, and declares that the California Legislature shall continue to work to ensure the elimination of discrimination against women and girls in this state. Status: Dead, SEN.

**SB 26 (Escutia) Civil rights: age discrimination.** This bill affirms California's strong public policy against age discrimination in employment. Among other things, this substantial reform of the state's age discrimination statute clarifies that the Legislature never intended to afford less protection to victims of age discrimination than to victims of race, sex and other discrimination. The legislation also invalidates a recent controversial appellate court case which eliminated one of the two proof theories ("disparate impact") available to age discrimination victims in a court of law. Status: Chapter 222, 1999.

**SB 44 (Polanco) Outreach and recruitment to underrepresented minorities and women.** This bill clarifies the right of government entities to continue outreach and recruitment activities that will yield diverse results in public education and employment. The bill specifically provides that Proposition 209's prohibition on engaging in discrimination or granting preferential treatment does not prevent governmental agencies from continuing to engage in outreach programs, including focused outreach and recruitment efforts towards underrepresented minority groups and women. Status: Vetoed.

**SB 2047 (Polanco) Civil rights: outreach.** This bill provides that Proposition 209's prohibition on discrimination and preferential treatment does not prevent government agencies from engaging in public sector outreach programs, including focused outreach and recruitment

efforts towards underrepresented groups. The bill provides that public sector employers and educational institutions shall be permitted to conduct outreach efforts to increase diversity and opportunities for underrepresented individuals, and specifies that in contracting for goods and services, state and local government agencies are authorized to engage in focused outreach activities in addition to general outreach. Status: Vetoed.

### Constitutional Rights

**AB 1181 (Frusetta) State ballot initiatives: court review.** This bill places original jurisdiction in the appellate department of the superior court for all actions in which the constitutionality of an initiative measure approved by the voters is at issue. Status: Dead, AJUD.

**AJR 72 (Thompson) First Amendment: discrimination; Boy Scouts of America.** This joint resolution urges Congress to affirm the charter of the Boy Scouts of America and urges the President to reaffirm his support for the organization in response to a recent court decision in which the U.S. Supreme Court held that requiring the Boy Scouts to admit openly gay people violated the organization's First Amendment right of expressive association. Status: Dead, AJUD.

**AJR 74 (Thompson) First Amendment: discrimination; Boy Scouts of America.** This joint resolution resolves that the Legislature agrees with the recent decision in which the U.S. Supreme Court held that requiring the Boy Scouts to admit openly gay people violated the organization's First Amendment right of expressive association. The resolution also calls upon Congress to affirm the charter of the Boy Scouts and asks the President to reaffirm his support for the organization. Status: Dead, AJUD.

**SB 1165 (Sher) Expedited judicial review.** This bill creates an expedited writ of mandate process for obtaining court review of public agency decisions regarding the issuance, revocation, suspension, or denial of a permit or other entitlement for expressive conduct protected by the First Amendment of the United States Constitution. Status: Chapter 49, 1999.

### Personal Rights

**AB 891 (Alquist) Health care decisions.** This bill repeals the provisions governing durable powers of attorney for health care and the Natural Death Act, and revises and recasts these provisions as part of a new Health Care Decisions Law. The new law, among other things: (1) creates a new advance health care directives scheme which authorizes an adult having capacity to either make an oral or written "individual health care instruction" which provides direction concerning a health care decision for the patient, or to appoint an agent through a power of attorney for health care, or both; (2) creates a new "power of attorney for health care" (PAHC) mechanism which continues many of the existing provisions governing durable powers of attorney for health care; (3) provides that the authority of an agent becomes effective only on a determination that the patient lacks capacity and ceases to be effective on a determination that the patient has recovered capacity, and specifies that the primary physician is to make these capacity

determinations unless otherwise specified in PAHC or other written advance health care directive; and (4) establishes a uniform standard of decisionmaking for adults without decisionmaking capacity so that the same rules apply whether the decisionmaker is an agent under a PAHC, another surrogate appointed by the patient, a conservator or a court. In each instance, the surrogate is required to make decisions in accordance with the patient's individual health care instructions, if any, and other wishes of the patient to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the best interests of the patient. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate. Status: Chapter 658, 1999.

**AB 1592 (Aroner) Death with Dignity Act.** This bill enacts the Death with Dignity Act, modeled after a similar Oregon law, which would authorize competent adults who have been determined by two physicians to be suffering from a terminal disease to make a request for medication to hasten the end of their lives in a humane and dignified manner. Status: Dead, ASM.

**AB 1800 (Thomson) Mental health commitment laws.** This bill makes many substantial reforms to California's mental health commitment laws. Among other things, it broadens the definition of "gravely disabled" for the purpose of involuntary detention and conservatorship; places new conditions on family members or other third parties whose assistance may prevent an individual from being determined "gravely disabled;" replaces the existing probable cause standard required for involuntary detentions, which currently requires a finding that a person is a danger to himself or herself, or to others, or is "gravely disabled," with a less restrictive standard; and required individuals subject to 72-hour holds, 14-day certifications, and additional involuntary certifications to be placed in "community assisted outpatient treatment programs" for 180 days if several conditions exist. Status: Dead, SEN Rules.

**SB 209 (Burton) Deceased personalities.** This bill enacts the Astaire Celebrity Image Protection Act to provide greater protections to the heirs of deceased celebrities by broadening the right to publicity that is descendible to them. The bill qualifies the existing types of uses of a deceased celebrity's name, voice, signature, photograph or likeness which do not require consent of the heirs, by stating that use in a play, book, magazine, newspaper, musical composition, audiovisual work, radio or television program, single and original work of art, work of political or newsworthy value, or an advertisement or commercial announcement for any of these works does not require the consent of the heir if the work is fictional or nonfictional entertainment, or a dramatic, literary, or musical work. The bill also extends, from 50 to 70 years after the death of celebrity, the time in which a person may be subject to liability for the use of a deceased celebrity's image, without consent, on or in products, merchandise or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services. Status: Chapter 998, 1999.

## Privacy Rights

**AB 1707 (Kuehl) Privacy: financial information.** This bill creates the Consumers' Financial Privacy Act to protect consumers from the indiscriminate selling or sharing of their personal information by financial institutions. The bill prohibits a financial institution, with limited exceptions, from disclosing or making an unrelated use of any personal information without the express written consent of the consumer. All financial institutions are required to clearly and conspicuously notify the consumer of the categories of personal information collected by the financial institution, the institutions' policies and practices for protecting the confidentiality and security of personal information, and the categories of persons to whom the information may be disclosed. The bill allows consumers to sue for damages or injunctive relief, provides for attorney's fees to a prevailing plaintiff, and provides for a civil or administrative penalty for violation of the bill's provisions. Status: Failed, AB&F.

**AB 1836 (Bates) Confidential medical information: coroners' access.** This bill significantly amends the Confidentiality in Medical Information Act regarding coroners' access to medical records and other confidential medical information. The bill requires health care providers, service plans or contractors to disclose medical information or records to a coroner without delay, upon request of the coroner, for the purpose of identifying the decedent, locating next of kin, or when investigating specified deaths. Medical information requested by the coroner under this section is limited to information regarding the patient who is the decedent and who is the subject of the investigation. The bill provides that, in all other cases, the information may be provided to the coroner at the discretion of the health care provider, service plan or contractor. The bill also substantially reduces the time in which the coroner is required to notify a decedent's personal representative of the coroner's request to obtain confidential medical information by subpoena. Status: Chapter 1068, 2000.

**AB 1965 (Leach) Board of Equalization: records.** This bill prohibits the State Board of Equalization from selling names and addresses of licensees collected by the board. It also permits the board to continue to use the information collected to verify resale certificates and IRS tax and fee provisions. The bill further allows the release of data collected by the board to federal or state agencies, and local governments as otherwise provided by law. Status: Chapter 962, 2000.

**AB 2193 (Baldwin) Biometric identifiers.** This bill would, among other things, establish the Biometric and Personal Information Act regulating the creation of data bases regarding certain personal identifying information, including unique individual personal identifiers or UIPIs, by individuals, and public and private entities. It would also require a specified written and signed agreement of informed consent regarding the retention of data containing UIPIs, which would be required to be renewed on a regular basis. The bill further would prohibit the issuance of a warrant permitting intrusion into a home for specified child-related offenses, including truancy and child abuse and neglect, except upon a sworn affidavit alleging that offense. Status: Dead, AJUD.

**AB 2246 (Wayne) Customer records: destruction.** This bill requires a business to take all reasonable steps to destroy, or arrange for the destruction of, a customer's records which are within its custody or control and contain personal information by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means. In addition to any other remedy provided in law, the bill allows for any customer injured by a violation to institute a civil action for injunctive relief and damages. Status: Chapter 1039, 2000.

**AB 2797 (Papan) Confidentiality of health, medical or genetic information.** This bill prohibits insurance companies and their affiliates from disclosing individually identifiable information concerning the health of, or the medical or genetic history of, a customer, to depository institutions and other third parties, for use with regard to the granting of credit. Status: Chapter 278, 2000.

**SB 71 (Murray) Personal information.** This bill, which enacts the California Personal Information Privacy Bill of Rights, would, among other things: (1) provide that a business may not sell, exchange, lease, or otherwise receive consideration for disclosing a consumer's personal information to third parties without written permission from the consumer prior to disclosure; (2) specify that the provision of a service may not be conditioned on obtaining or selling a consumer's personal information; (3) prohibit specified entities from using an individual's Social Security number in certain ways, including posting it publicly or requiring it to access products or services, except as provided; (4) prohibit a person from engaging in "biometric identification or verification," unless certain conditions are met; and (5) permit a person to bring an action against any person or entity based upon the bill's provisions or upon the right to privacy found in the California Constitution, and provide for the recovery of a civil penalty of \$1,000 for each violation of those provisions or that right, in addition to any other damages. Status: Dead, AJUD.

**SB 129 (Peace) Privacy of personal information.** This bill creates the Office of Privacy Protection within the Department of Consumer Affairs, the stated purpose of which is to protect the privacy of individuals' personal information in a manner consistent with the California Constitution. The office is required to, among other things: identify consumer problems in the privacy area and facilitate development of fair information practices, with regard to public and private entities; inform the public of potential options for protecting the privacy of, and avoiding the misuse of personal information; receive complaints from individuals concerning the compilation, use or disclosure of personal information, and provide advice, information, and referral to that individual where appropriate; and develop information and educational programs and materials to foster public understanding of privacy issues. Status: Chapter 984, 2000.

**SB 1419 (Haynes) Medical information: prohibition on medical profiling.** This bill generally prohibits any activity that may be characterized as "medical profiling" if that activity employs the use of medical records or other patient information to help determine whether an individual has a likelihood of engaging in violence or other crimes. The bill defines "medical profiling" as the use of medical records or other individually identifiable patient information in

the possession of a provider of health care for the purpose of determining whether a patient possesses any characteristic that has been previously identified through research as either: being associated with criminal activity; or establishing a propensity for conduct that could be the basis for the restriction or termination of a person's fundamental rights under the state or federal constitution. Status: Failed, AJUD.

**SB 1724 (Dunn) Confidentiality of tax records.** This bill, among other things, amends the laws governing the use of information by tax preparers to: (1) clarify that a customer's tax information which is obtained or transmitted electronically is confidential information; (2) specify that the consent form required in order to disclose a customer's confidential information must state to whom the disclosure will be made and how the information will be used; and (3) prohibit tax preparers from disclosing confidential taxpayer information internally to others who are not involved in the preparation of the return or to any of their subsidiaries or affiliates. It also imposes similar confidentiality requirements on financial institutions and other business entities. The bill further prohibits the Franchise Tax Board from approving for electronic filing any proprietary filing software or electronic tax preparation forms that require a taxpayer to consent to the disclosure of specified information as a condition of access to that software or to those electronic tax preparation forms. Status: Chapter 1084, 2000.

**SB 1903 (Speier) Medical information: request for disclosure.** This bill requires corporations and their subsidiaries and affiliates to adhere to the same confidentiality laws that apply to health care providers and their contractors. It also gives individuals the ability to obtain a copy of their medical summary or profile upon request and at no cost from certain companies. The bill further allows patients to submit correcting statements to their medical records. Status: Chapter 1066, 2000.

# **PROBATE AND RELATED MATTERS**



## PROBATE AND RELATED MATTERS

### Civil Commitment, Conservatorship and Guardianship

**AB 925 (Hertzberg) Conservators: statewide registry.** This bill creates a Statewide Registry for private conservators and guardians, to be maintained by the Department of Justice, in order to provide better communication between counties regarding the qualifications of private conservators and guardians. The Registry will also allow public access to basic information about private conservators and guardians, in order to assist them in making decisions about selecting such individuals and to help guard against the abuse of elderly and other vulnerable Californians. Status: Chapter 409, 1999.

**AB 1257 (Strom-Martin) Developmental disabilities: commitments to state hospitals.** This bill establishes uniform statewide procedures for pre-admission and placement review hearings on involuntary commitments to state developmental centers for people with developmental disabilities. The bill requires proof beyond a reasonable doubt for both judicial commitments of people with mental retardation and involuntary commitments of people with developmental disabilities to state developmental centers. It also requires the Director of the Department of Developmental Services (DDS) to compile, no later than July 1, 2002, a roster of all people with developmental disabilities residing in, or on leave from, a state hospital or developmental center, and to provide the appropriate regional centers with copies of the roster for determination in regard to the placement of those people. The bill further requires DDS to establish, with the cooperation of each regional center, and to submit to the Legislature, by July 1, 2002, a plan for the orderly submission of petitions and judicial review under these provisions for those people found to be in continued need of developmental center placement. Status: Vetoed.

**AB 1950 (Rod Pacheco) Conservatorships.** This bill, among other things, prohibits a guardian or conservator from hiring or directing business to a business entity in which he or she has a financial interest. It also requires a guardian or conservator to submit a statement of financial interests when accountings are filed with the court. In addition, the bill prohibits the payment or offset of surcharges imposed by a court for breach of fiduciary duty, against future fees or wages payable by the estate to the guardian or conservator. The bill also bars anyone connected with the conservatorship or guardianship from leasing, purchasing or renting real or personal property from the estate of the conservatee or ward. Status: Chapter 565, 2000.

**SB 2092 (Schiff) Conservatorship: minors.** This bill establishes notice and other requirements for coordinating cases involving minors subject to mental health conservatorship proceedings when the minor is also a ward or dependent of the juvenile court. Status: Vetoed.

### Elder Abuse

**AB 2063 (Zettel) "Prior bad acts" evidence of abuse.** This bill seeks to protect elders and dependent adults against abuse by permitting, in appropriate circumstances, the admission of "prior bad acts" evidence of abuse of an elder or a dependent adult. It permits evidence of prior

acts of abuse of an elder or a dependent adult to be admitted to prove the defendant's conduct when the defendant is accused of abuse of an elder or a dependent adult, subject to various evidentiary restrictions. The bill also defines abuse of an elder or a dependent adult for these purposes by referencing the standard definition in the Welfare and Institutions Code. Status: Chapter 97, 2000.

**AB 2107 (Scott) Lawyer-client: elder abuse.** This bill clarifies that an insurer or agent has a duty of honesty, good faith and fair dealing to prospective long-term care and Medicare supplement insurance policyholders. It also requires a life agent to make specified disclosures about the potential consequences of entering into financial transactions related to an elder's potential eligibility for Medi-Cal coverage and prohibits a life agent from negligently misrepresenting a product based on its treatment under Medi-Cal. The bill further requires the State Bar to submit an annual report to the Legislature related to financial services rendered to elders. And the bill revises and recasts the definition of financial abuse for the purpose of reporting and prosecuting elder abuse. Status: Chapter 442, 2000.

**AB 2253 (Jackson) Financial institutions: reporting elder abuse.** This bill would authorize employees or agents of financial institutions to report suspected financial abuse against an elder or dependent adult. Status: Dead, ASM.

**SB 163 (Hughes) Elder abuse: pilot project.** This bill creates a three-year pilot program in three counties (one urban, one suburban, and one rural), to be administered by the Department of Social Services (DSS), to reduce the incidences of financial abuse against mentally impaired elders by utilizing peace officers and expanding the authority of public guardians. Each participating county must have a "financial abuse specialist team" (FAST), composed of members who are trained in the prevention, identification, and treatment of financial abuse of elders, and who are qualified to provide a broad range of services related to the financial abuse of elders. A specially trained peace officer would be authorized, upon completion of a check-off competence assessment form, to issue a specified declaration to a public guardian concerning an elder person if, among other things, there is probable cause to believe that the elder is substantially unable to manage his or her financial resources or to resist fraud or undue influence. In response to a peace officer's declaration, the public guardian would be authorized, but not required, to issue a written certification taking immediate possession or control of an elder person's property. Status: Vetoed.

**SB 1742 (Hughes) Adult abuse.** This bill seeks to reduce the incidences of financial abuse against mentally impaired elders by utilizing peace officers and expanding the authority of public guardians. The bill, among other things, authorizes the public guardian of a qualified county to take immediate control of property belonging to an elder person, for a period of five days, if a specially trained peace officer makes a determination that there exists a significant danger that the elder person will lose all or a portion of his or her property as a result of fraud or misrepresentation or the mental incapacity of the elder person. It also provides that an elder person who is the subject of a certification by the public guardian may challenge it in court. Status: Chapter 813, 2000.

## Probate

**AB 239 (Kaloogian) Estates and trusts.** This bill is the annual omnibus bill sponsored by the Estate Planning, Trust & Probate Section of the State Bar to make largely technical changes to the Probate Code. The provisions of the bill include: clarifying that there is no right to a jury trial under the Probate Code except as provided by statute; revising notice requirements in a petition for court authorization for specified medical treatment of wards and conservatees; permitting a conservator of a revocable trust to petition the court to modify the trust; and eliminating the requirement of unanimous consent by written agreement of all interested parties before a trust could be amended to qualify a decedent's estate for a charitable estate tax deduction. Status: Chapter 175, 1999.

**AB 460 (Ackerman) Trusts: trustees and other fiduciaries.** This bill, among other things: clarifies certain obligations of corporate custodian or corporate trustees with respect to trust beneficiaries and other non-beneficiary heirs of a settlor, relating to notice when the trust or a portion thereof becomes irrevocable; specifies the trustee's obligation to exercise reasonably diligent efforts to notify the trust beneficiary and the non-beneficiary heirs of the settlor under specified circumstances; and specifies that a trustee may consider the fact that the period within which a beneficiary or heir may contest a trust has not expired, when exercising discretion in distributing assets. Status: Chapter 34, 2000.

**AB 846 (Ackerman) Uniform Principal and Income Act.** This bill implements the California Law Revision Commission's recommendation on the Uniform Principal and Income Act. Specifically, this bill, among other things: (1) implements new rules dealing with situations not covered by the 1931 Uniform Principal and Income Act (1931 Act) and the 1962 Revised Uniform Principal and Income Act (RUIA), including: (a) the application of the probate administration rules to revocable living trusts after the settlor's death and to other terminating trusts; (b) the payment of interest or some other amount on the delayed payment of an outright pecuniary gift that is made pursuant to a trust agreement instead of a will when the agreement or state law does not provide for such a payment; (c) the allocation between principal and income of receipts from derivatives, options, and asset-backed securities; (d) the power to make adjustments between principal and income to correct inequities caused by tax elections or peculiarities in the way the fiduciary income tax rules apply; (2) makes clarifications and revisions to the 1931 Act and RUIA, including: (a) an income beneficiary's estate will be entitled to receive only net income actually received by a trust before the beneficiary's death and not items of accrued income; (b) income from a partnership is based on actual distribution from the partnership, in the same manner as corporate distributions; (c) charging depreciation against income is no longer mandatory and is left to the discretion of the trustee; and (3) makes revisions in principal and allocation rules for consistency with the prudent investor rule contained in the Uniform Prudent Investor Act, which was enacted in California in 1995. Status: Chapter 145, 1999.

**AB 1051 (Kaloogian) Estates: claims.** This bill makes various technical changes to the Probate Code, including: establishing a presumption that when spouses transfer property into a

revocable trust, the property transferred retains its character in the aggregate unless otherwise specified in the trust agreement; eliminating the existing requirement that, to establish the personal administrator's liability for failure to notify a creditor of the administration of the estate, the creditor establish that his or her attorney had no actual knowledge of the administration of the estate; and clarifying that a formal probate administration does not extend or toll statutes of limitations that would otherwise apply to a claim. Status: Chapter 263, 1999.

**AB 1491 (Kaloogian) Estates and trusts.** When this bill was heard by the Judiciary Committee, it provided that, if an attorney claims to the court to represent a conservatee, proposed conservatee, or person who is alleged to lack legal capacity, a court may appoint the public defender or private counsel to represent the interests of the person if specified conditions are met. The bill also would have required the court to hear and resolve any conflicts between this attorney and the public defender or private counsel. The bill was subsequently amended to make various changes to the law governing contracts to make wills or trusts, "no contest" clauses in such instruments, nomination of spouses as conservators, and jury trial rights in conservatorship cases. Status: Chapter 17, 2000.

**AB 1628 (Kaloogian) Trusts.** When this bill was heard by the Judiciary Committee, it made both technical and substantive changes to the recently enacted law governing conservatorships for people with dementia (Stats. 1996, Ch. 910 (SB 1481 – Mello)). The bill, among other things, would have authorized a conservator to place a conservatee in a restricted placement, as defined, rather than a secured facility, upon specified findings by a court. The bill also would have allowed a conservator to authorize the administration of psychotropic medications for the care and treatment of dementia only upon specified findings by a court. The bill was subsequently amended to correct an error in the drafting of AB 460 (Ackerman - Ch. 34, Stats. 2000, described above) to clarify that the time period during which a beneficiary or non-beneficiary heir may file an action to contest the trust is 120 days after a trustee has provided a specified notice or 60 days after a copy of the terms of the trust is mailed or personally delivered to the person during that 120-day period, whichever is later. Status: Chapter 592, 2000.

**SB 1090 (Schiff) Charitable corporations as trustees.** This bill permits a court to appoint a qualifying nonprofit charitable corporation as a trustee or successor trustee of a trust. It also provides that a petition for the appointment of a nonprofit corporation to serve as a trustee may be filed by the settlor or spouse of the settlor, the nonprofit charitable corporation or an existing trustee. In addition, the bill requires a nonprofit charitable corporation that wishes to serve as a trustee to register as a "private professional trustee," file inventories and appraisals of the settlor's assets that are in the trust, account for those assets, and request payment for services according to the current standards for nonprofit charitable corporations that act as private professional conservators or guardians. Status: Chapter 424, 1999.

**SB 1869 (Solis) Probate: powers of attorney.** This bill requires notice to a principal and to the attorney-in-fact under a power of attorney concerning conditions on the transfer of the principal's property to, or the acceptance of a gift of the principal's property by, the attorney-in-fact. Status: Chapter 999, 2000.

# **PROPERTY AND RELATED MATTERS**



## PROPERTY AND RELATED MATTERS

### Intellectual Property

**AB 1773 (Romero) Post-secondary faculty presentations; commercial appropriation.** This bill seeks to end the sale and commercial dissemination of lecture notes without the permission of the instructor by prohibiting the distribution, sale or transfer of any contemporaneous recording of an academic presentation for any commercial purpose, unless the recording is done in accordance with academic policies. The bill also provides civil penalties for a violation and permits actions for relief to be brought by, among others, the Attorney General, any district attorney, or any person acting for the interests of itself or the general public. Status: Chapter 574, 2000.

**SB 875 (Escutia) State intellectual property rights: General Services study.** This bill requires the director of General Services to create a special advisory committee to develop recommendations on or before August 31, 2002, concerning how the state should organize and manage the cataloging, marketing, licensing, and legal protection of all intellectual property owned or controlled by the state. Status: Dead, AAPPR.

**SB 1319 (Burton) Cyber piracy: unfair business practices.** This bill provides that it is an unfair business practice to register, traffic in, or use a domain name that is identical or confusingly similar to the personal name of another living person or deceased personality, with bad faith intent and without regard to the goods or services of the parties. The bill establishes a non-exclusive list of factors that a court may use to determine whether a domain name was registered in bad faith. The bill does not apply to domain name registrars or registries, and excludes domain names connected to works of authorship, including, but not limited to, fictional or non-fictional entertainment, and dramatic, literary, audiovisual, or musical works. Status: Chapter 218, 2000.

### Personal Property

**AB 777 (Cardenas) Escheat.** This bill revises the law governing the escheat (i.e., revert) of bank accounts and money orders to the state. Specifically, this bill: (1) provides that activity in one account at a financial institution will preclude the escheat of funds in another idle account of the same owner at the same institution if certain conditions are met; and (2) permits money order issuers to deduct "reasonable service charges" from the face value of unclaimed money orders when they escheat to the state, provided such charges are uniformly applied to all of the issuer's money orders, clearly disclosed to the purchaser at the time of purchase and to the recipient of the money order, and do not exceed \$0.25 per month or the aggregate amount of \$21. Status: Chapter 835, 1999.

**AB 1625 (Cardoza) Unclaimed property: recovery.** This bill provides that licensed private investigators, attorneys, accountants, and persons owing a fiduciary duty to the property owner, and any person working under the direct supervision of the aforementioned persons are the only

individuals permitted to enter into agreements with owners regarding the recovery of unclaimed property that has escheated (reverted) to the state. It also requires the Controller to refer information regarding complaints or possible violations of the bill's provisions to the appropriate regulatory board or agency. The bill further provides that a violation of its provisions constitutes grounds for disciplinary action by the appropriate regulatory board or agency. Status: Vetoed.

**AB 2110 (Rod Pacheco) Abatement of nuisances.** This bill extends graffiti abatement laws to cover adults as well as minors. The bill authorizes local governments to impose liens on the property of adults who are convicted of vandalizing the property of others with graffiti. Status: Chapter 58, 2000.

**AB 2525 (House) Release of unclaimed money to minors.** This bill allows the county treasurer to release unclaimed money of up to \$60,000, deposited from the estate of a decedent by the public administrator, to the parent who has legal and physical custody of a minor who is entitled to the decedent's escheated estate, without the need to appoint a legal guardian for the minor, as specified. Status: Chapter 333, 2000.

**AB 2786 (Bates) Escheated funds: affordable housing for elderly persons.** This bill requires that all unclaimed money, including unclaimed money from a deceased person's estate that is currently escheated to the state, be instead deposited in the Housing Rehabilitation Loan Fund. The fund is to be used for the construction, rehabilitation, or acquisition and rehabilitation of multifamily rental housing developments for elderly persons or households. Status: Vetoed.

### Real Property

**AB 321 (Wildman) Eminent domain: valuation.** This bill clarifies and modifies the type of evidence that may be considered to determine the fair market value of property taken in an eminent domain or inverse condemnation proceeding for purposes of compensation by narrowing an existing exception to instead provide that the price or other terms and circumstances shall not be excluded from evidence if the proceeding relates to the valuation of all or part of a water system as defined in Section 240 of the Public Utilities Code. Status: Chapter 948, 2000.

**AB 431 (Dutra) Trust deeds.** This bill makes several changes to the role of a trustee in non-judicial foreclosure proceedings, expands trustee immunity for acting in good faith on information received from the trustee regarding the foreclosure sale, and increases trustee fees when the trustee is required to investigate competing claims from junior lien holders. Status: Chapter 974, 1999.

**AB 444 (Dutra) Unclaimed property: escheat.** This bill would have required the State Controller to establish an amnesty program to allow holders of unclaimed property who may be delinquent in their duty to pay or deliver unclaimed property to the state or its authorized agent to surrender the property without incurring interest assessments. It also would have provided that any person who pays or delivers property to the Controller in accordance with the bill shall not be subject to any statutory interest with respect to that property. The amnesty program would have

applied only to property that is reported and delivered to the Controller on and after January 1, 2000, and before August 1, 2000. Status: Vetoed.

**AB 594 (Cardenas) Real property transfers disclosures.** This bill requires trustees transferring real property to deliver a Transfer Disclosure Statement that discloses material defects in the property if the trustee is the sole trustee of a revocable trust and former owner of the property held by the trust, or if the trustee possessed the property at any time during the year prior to the transfer. Status: Chapter 119, 1999.

**AB 1000 (House) Eminent domain.** This bill provides that any official act, decision, or regulation of a public entity that restricts the use or impairs the value of private property is an exercise of the public entity's eminent domain power, and requires that just compensation be paid to the property owner. Status: Dead, AJUD.

**AB 1128 (Ackerman) Private property: taking.** This bill seeks to overturn the recent California Supreme Court decision in *Landgate v. California Coastal Commission* and make a public agency liable to a private property owner for a temporary taking of the owner's real property for the period when the decision of the public agency affecting the property is the subject of legal challenge in the courts. Status: Dead, AJUD.

**AB 1316 (Correa) Commercial leaseholds.** This bill would permit a real estate licensee to file a *lis pendens* upon filing a civil breach of contract action to collect the realtor's unpaid commission for bringing about a lease of the owner's commercial or industrial property. A "*lis pendens*" is a recorded notice that there is pending litigation affecting title to or possession of real property, and is intended to make prospective purchasers and lenders aware of the fact that the litigation may result in a judgment lien attaching to the property, and that the property could be sold to pay the lien. This measure would redefine the term "real property claim" for purposes of the *lis pendens* recording law to include a cause of action for contract damages which would, if meritorious, require an owner of real property to pay a commission earned by a real estate licensee for securing or providing a tenant who acquires a nonresidential leasehold interest in the subject real property. Status: Dead, SAPPR.

**AB 1533 (Leach) Statute of limitations for enforcing restrictions on real property.** This bill attempts to undue the statute of limitations governing when homeowners associations and others must file an action to enforce restrictions on the use of real property. Status: Dead, AJUD.

**AB 1859 (McClintock) Homeowner associations: new assessment protections.** This bill exempts assessments collected by a homeowners' association to pay for required essential services from execution by a judgment creditor and requires a court of law to ensure that only the funds collected to perform essential services such as paying for utilities and insurance are exempted. Status: Chapter 125, 2000.

**AB 1888 (Dutra) Unclaimed property: escheat.** This bill provides amnesty from interest penalties for holders of unclaimed property who are delinquent in their duty to turn over the

property to the state, provided that certain requirements are met. The bill requires such property holders to deliver the property to the state on or before December 31, 2001. The bill also requires the Controller to conduct outreach and publicity regarding the amnesty program and issue a report detailing the property delivered to the state under the program. Status: Chapter 267, 2000.

**AB 2031 (Nakano) Common interest developments: availability of records.** This bill requires the board of directors of a common interest development association to retain all documents and records of the association for not less than 7 years, and to provide members of the association with the same access to these documents and records as the members of the board. The bill requires the board of directors to redact personal information about homeowners prior to disclosure and provides that any member who has sustained economic loss because of the association's violations of these provisions may recover up to \$5,000 in damages. Status: Dead, SJUD.

**AB 2112 (Dutra) Construction defect litigation.** This bill declares that California has a statewide building crisis and that Californians want to buy from homebuilders who are able to stand behind their work and sets forth the intent of the Legislature that Californians have access to affordable for-sale housing that incorporate high quality construction free from construction defects. Status: Dead, Conference Committee.

**AB 2284 (Dutra) Real estate transactions: common interest developments.** This bill makes numerous substantive and technical changes to the law regarding real estate transactions. Among other things, this bill requires that additional information be filed with the Department of Real Estate by brokers in multilender transactions and authorizes the Department of Real Estate to suspend or deny renewal of a broker's license if the broker fails to pay the amount charged by the Department to conduct an examination. The bill also requires the board of directors of a common interest development, when meeting to consider or impose discipline upon a member, to provide specified notification to the member at least 10 days prior to the meeting. Status: Chapter 636, 2000.

**AB 2913 (Kuehl) Community property with right of survivorship.** This bill provides that, for all title instruments created on or after July 1, 2001, spouses may choose to take title in certain forms of property as community property with right of survivorship. Spouses must affirmatively indicate by signature or initials, on the title document or other document, their intention to take title in this form. Property held as community property with right of survivorship shall, like property held as joint tenancy, pass to the surviving spouse without administration in probate. Parties may sever the right of survivorship in the same manner that joint tenants may sever a joint tenancy. Status: Chapter 645, 2000.

**SB 383 (Haynes) Property taxation: transfer of base year value.** When this bill was heard by the Judiciary Committee, it increased the maximum amount of statutory attorney's fees that may be awarded by a court in a collection action on an open book account. It also provided that the court may find, in its discretion, that the defendant is the prevailing party if the court finds

that the defendant successfully disputed a significant amount of the principal obligation allegedly owed under the contract. The bill was subsequently amended to provide that no escape assessment may be levied if a county has approved an unauthorized allowance of an intercounty transfer of base year value with respect to the real property of a severely and permanently disabled person and then levied an escape assessment, the escape assessment is void. Status: Chapter 693, 2000.

**SB 634 (Kelley) Eminent domain.** This bill provides that, absent an agreement, the parties must exchange their lists of expert witnesses and statements of valuation data 60 days prior to commencement of the trial on the issue of compensation in eminent domain proceedings. The bill also reduces from 30 days before trial to 20 days before trial the time that the plaintiff has to file with the court and serve on the defendant final offers of compensation. Status: Chapter 102, 1999.

**SB 1148 (Burton) Housing discrimination.** This bill, among other things, provides that no declaration or other governing document pertaining to a common interest development shall include a restrictive covenant that discriminates in housing based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry. It also requires the board of directors of an association that manages a common interest development, without approval of the owners, to delete any declaration or other governing document that includes a restrictive covenant prohibited by these provisions, and to restate such declaration or document without the restrictive covenant. In addition, the bill provides that, after providing written notice to an association requesting the association to delete a restrictive covenant, if the association fails to delete the restrictive covenant within 30 days of receiving the notice, the State Department of Fair Employment and Housing, a city or county in which a common interest development is located, or any person may bring a civil action for injunctive relief to enforce the above-mentioned prohibitions against discriminatory restrictions in declarations or other governing documents. It requires a county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a declaration, governing documents or deed with respect to a common interest development to any person, to place a cover page over the document or a stamp on the first page of the document containing a specified statement, in at least 20-point boldface red type, with respect to prohibited restrictive covenants. It provides that any person who holds an interest in such property may require the county recorder to remove any blatant racial restrictive covenant contained in any document associated with that property. Finally, the bill provides that any person who files a document for the express purpose of adding a racially restrictive covenant is guilty of a misdemeanor. Status: Chapter 589, 1999.

**SB 1882 (Escutia) Construction defects: study.** This bill declares that a comprehensive study regarding condominium construction in California is needed in order to effectively evaluate the need for legislation seeking to increase or limit the rights of condominium associations to recover for construction defects. The bill therefore requires the California Research Bureau (CRB), by January 10, 2002, to conduct a study regarding the various factors surrounding the decrease in the availability of condominiums. Status: Failed, ASM.

## Rental Property

**AB 694 (Battin) Unlawful detainer.** This bill seeks to re-enact a pilot project that terminated in 1998 to expedite the adjudication of landlord-tenant disputes where the tenant has refused to pay rent by setting early hearing dates, providing for an informal process, and in some circumstances requiring the tenant to deposit funds with the court to cover prospective rent. Status: Dead, AJUD.

**AB 760 (Maddox) Landlord-tenant: duty to evict.** This bill creates an affirmative duty on the part of landlords to evict tenants who are found guilty of illegal drug activity, or a gang related crime as defined occurring on the premises, and makes landlords civilly and criminally liable for failure to evict. Status: Failed, AJUD.

**AB 2270 (Cedillo) Substandard conditions of rental property: relocation benefits to displaced tenants.** This bill sets up a process requiring owners to pay relocation benefits to tenants who are displaced from a residential rental unit as a result of an order to vacate due to specified health and safety violations where the owner has failed to correct the violation. The bill also creates a Tenant Relocation Trust Fund, with \$500,000 appropriated from the State General Fund, to pay for the relocation benefits when the owner fails to pay. The bill also requires a receiver of real property containing rental housing to notify the court of the existence of any order or notice to correct any substandard condition with which the receiver cannot comply within the time provided by the order or notice, and requires the court to consider appropriate orders or instructions to enable the receiver to correct the substandard conditions or to terminate or limit the period of receivership. Status: Failed, ASM.

**SB 1098 (Burton) Residential property: rent control.** This bill enacts various changes to landlord-tenant law regarding rental applications, amends state rent control law concerning vacancies created by a landlord's refusal to accept Section 8 housing payments, and protects tenant advisors. Specifically, this bill: (1) provides, under the state law covering rent control, that termination of a tenancy is not a voluntary vacancy, which allows a unit to be "decontrolled" (allowing rent to be increased for the next tenant) when: (a) the rental unit has been cited in an inspection report as containing serious code violations which have remained unabated for at least 60 days preceding the vacancy; or, (b) the landlord no longer accepts Section 8 housing payments and the tenancy is terminated because the tenant could not pay the rent without the Section 8 assistance; (2) requires the owner to provide the tenant with 90 days written notice of such terminations, during which period the tenant shall not be obligated to pay more than the tenant's portion of the rent as determined by the Section 8 contract; (3) prohibits, for a five-year period, a landlord from discriminating against a tenant or prospective tenant based on the tenant's or prospective tenant's source of income, and from using financial or income standards in the rental of housing that: (a) fail to account for the aggregate income of persons residing together, or proposing to reside together, on the same basis as the aggregate income of married persons residing together or proposing to reside together; or, (b) is not based on the portion of rent to be paid by the tenant in instances where there is a government rent subsidy; and (4) clarifies the law to make clear that any person invited onto residential real property, during reasonable hours or

because of emergency circumstances, for the purpose of providing information regarding a tenant's or lessee's rights, or to participate in a tenants' or lessees' association meeting, shall not be liable in any civil or criminal action for trespass. Status: Chapter 590, 1999.

**SB 1171 (Johnson) Public accommodations: innkeeper rights.** This bill makes various unrelated changes regarding the rights and conduct of innkeepers, including allowing innkeepers to evict guests who refuse or fail to leave by the posted check-out time, prohibiting handbill distribution on the premises, requiring a responsible adult to assume liability for damage caused by an unaccompanied minor staying at the inn, and requiring a signed agreement that a minor under the age of 12 will not be left unattended on the premises. Status: Chapter 354, 1999.

**SB 1745 (Burton) Landlord-tenant: notice of rent increase.** This bill requires landlords to give 30 days notice before increasing the rent, if the proposed rent increase is 10% or less of the rental amount, in and of itself or when combined with all other rent increases for the 12 months prior to the effective date of the increase. If the proposed rent increase is greater than 10% either by itself or when combined with all other increases in the prior 12 months, the bill requires that the landlord provide an additional 30 days notice. The bill also simplifies existing notification procedures by allowing a landlord to increase the rent provided in the lease upon written notice to the tenant by either personally serving a copy upon the tenant or mailing a copy to the tenant in compliance with existing service procedures. Status: Chapter 680, 2000.

**SB 2143 (Bowen) Landlord-tenant: notice of pest control.** This bill requires the landlord of a residential dwelling unit to provide each new tenant that occupies the unit with a copy of the notice provided by a registered structural pest control company if a contract for periodic pest control service has been executed. Status: Chapter 234, 2000.



# MISCELLANEOUS



## MISCELLANEOUS

**AB 780 (Calderon) Employer-employee relations.** When this bill was heard by the Judiciary Committee, it required every public entity to report to the Employment Development Department (EDD), for inclusion in the New Employee Registry, the name and social security number of each contractor who contracts with the public entity. Every contractor was required to report to EDD the name and social security for every employee who performs work on the state or local public agency contract. The bill was subsequently amended to instead require certain cities' collective bargaining agreements affecting law enforcement employees to include a provision establishing certain due process rights to a fair and impartial appeal of punitive actions by the city. Status: Dead, SPubS.

**AB 858 (Kuehl) Vehicle License Fee Reduction.** When this bill was heard by the Judiciary Committee, it prohibited merchants and employers from requiring consumers and prospective employees, as a condition of entering into an insurance, health care, or employment contract, to waive any of the following rights and protections: 1) the right to any legal protection against discrimination; 2) the right to various privileges guaranteed pursuant to California's Evidence Code; 3) the right to a jury trial; 4) the right to a judicial forum; and 5) the right to rescind consumer contracts during any statutorily mandated time period. The bill was subsequently amended to modify the vehicle license fee offsets for the 2001 year and years thereafter. Status: Chapter 106, 2000.

**AB 874 (Alquist) Disability insurance: controlled groups.** When this bill was heard in the Judiciary Committee, it restricted the ability of consumers and small businesses to bring suit and recover damages for harm caused by the Y2K problem in a number of ways, including, but not limited to: requiring plaintiffs to prove fraud in order to recover money damages; severely limiting the ability to recover economic, consequential and punitive damages; mandating pre-litigation 90-day "cure" and detailed ADR procedures; imposing significant new pleading hurdles; and eliminating joint and several liability. The bill was subsequently amended to permit a group of employers to participate in a consolidated voluntary disability insurance plan. Status: Dead, AINS.

**AB 905 (Dutra) Mortgage guaranty insurance.** When this bill was heard in the Judiciary Committee, it provided that the exclusive remedy in civil actions based on a Y2K computer date failure shall be a breach of contract claim, unless the plaintiff has suffered personal injury (excluding emotional harm), if the defendant has complied with certain requirements (e.g., making available, at no charge to the buyer, a repair or replacement of the product in question, or a refund of the price of the version of the product in question, and providing notice regarding whether a repair or replacement of the product in question is available that is Y2K compliant). That measure failed passage in the Judiciary Committee; the bill was subsequently amended to address mortgage guarantee insurance. Status: Chapter 10, 2000.

**AB 1345 (Nakano) Attorney General: antitrust account.** This bill increases the existing limit on the Attorney General antitrust account from \$3 million to \$6 million and eliminates the

requirement that appropriations from the special fund come through the annual Budget Bill.  
Status: Vetoed.

**AB 1452 (Alquist) Graduate medical education: long-term care and aging.** When this bill was heard by the Judiciary Committee, it eliminated the Supreme Court's Rule of Court 957 requirement that certain written legal books be contained in unaccredited law school libraries and replaced this judicial requirement with a legislative option permitting computer access only to such written materials. The bill was subsequently amended to request that the University of California conduct a study and submit a report relating to the need for specialty training in geriatric medicine. Status: Dead, AAPPR.

**AB 1657 (U&C Committee) Capital facilities fees.** This bill establishes a procedure for notification by municipal electric utilities to specified public agencies, of the imposition of a new capital facilities fee or the increase of an existing capital facilities fee, and imposes a 120-day statute of limitations for initiating a judicial challenge to these fees. Status: Vetoed.

**AB 2329 (Ducheny) Indian tribes: sovereignty.** This bill would declare that any federally recognized tribe having jurisdiction over Indian lands in the United States is recognized as a sovereign nation by the state and any political subdivision of the state. Status: Dead, AJUD.

**AB 2539 (Committee on Judiciary) Maintenance of the codes.** This bill makes technical changes and restates existing provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature for consideration during 2000. Specifically, this bill corrects grammatical and other errors without substantive change to the law. Status: Chapter 135, 2000.

**AB 2668 (Battin) Medi-Cal eligibility.** When this bill was heard by the Judiciary Committee, it sought to shift the burden to a child support obligor, who has obtained a temporary modification of a support order due to his or her incarceration, to request that the court not reinstate the full order upon his or her release from incarceration. The bill was subsequently amended to instead authorize payment for Medi-Cal intermediate care facility/developmental disability services for 13 individuals, whose services have been denied payment under Medi-Cal beginning June 15, 1998. Status: Chapter 804, 2000.

**AB 2735 (Cox) Birth certificates.** This bill creates a procedure for the issuance of a new, correct birth certificate when a person's gender was stated erroneously in the original certificate by the hospital or the county recorder. The bill requires the State Registrar to issue a new birth certificate, and seal the original birth certificate. Status: Chapter 780, 2000.

**AB 2935 (Committee on Information Technology) Government records.** This bill allows counties to use new information processing technologies to record, maintain, and store records and other documents. Status: Chapter 924, 2000.

**ACR 17 (Wayne) California Law Revision Commission study topics.** This resolution

authorizes the California Law Revision Commission to continue its study of selected topics, deleting 5 topics previously approved by the Legislature and adding 4 new topics. Status: Resolution Chapter 81, 1999.

**ACR 185 (Battin) Native American tribes: sovereignty.** This bill reaffirms California's recognition of the sovereign status of federally recognized Indian tribes. Status: Resolution Chapter 150, 2000.

**AJR 62 (Honda) Native American tribes: tribal courts.** This bill requests the President and the Congress of the United States to appropriate, and the Bureau of Indian Affairs to allocate, adequate funding for tribal law enforcement and judicial systems in California. Status: Resolution Chapter 112, 2000.

**AJR 64 (Kuehl) Iranian show trials.** This resolution condemns the arrest and show trials of 13 Jewish men and boys of Shiraz and Isfahan, Iran, accused of espionage on behalf of Israel and the United States. The resolution provides that the accusation of espionage against these individuals is a pretext for the ongoing persecution and scapegoating of Jews in Iran, and urges the federal government to take all possible diplomatic, political, and economic measures to protest the show trials, including but not limited to, refusing to resume diplomatic relations with Iran. Status: Resolution Chapter 82, 2000.

**HR 35 (Machado) Media code of conduct.** Through this resolution, the Assembly calls upon executives of the media to develop a voluntary code of conduct to make our media environment healthy for our society and safer for our children. The new code would affirm the industry's responsibilities for the health of our culture, establish minimum standards for violence, sexual, and degrading material, commit to the overall reduction in the level of entertainment violence, ban targeting of adult-oriented entertainment to youth markets, provide more information regarding media content, and pledge significant action to develop good family-oriented entertainment. Status: Dead, AJUD.

**SB 161 (Monteith) Local government.** This bill, when heard by the Committee, required a court to cause a search of all readily available databases, either by the court itself if it has access to the databases or by a law enforcement agency within the jurisdiction of the court, to determine if the person proposed to be restrained has a prior criminal conviction involving domestic violence, weapons, other acts of violence, or is the subject of any current or prior protective or restraining orders. The bill was subsequently amended to instead require that moneys appropriated in the Budget Act of 1999 for local assistance payments to counties for the cost of homicide trials be available to reimburse 100% of any costs incurred by the Counties of Tuolumne and Mariposa for the homicide trials of individuals that may be arrested for the Sund and Pelloso murders. Status: Vetoed.

**SB 767 (Senate Budget and Fiscal Review Committee) Budget Act of 1999: augmentation.** This bill, when heard by the Committee, authorized the Judicial Council to adopt a rule of court allowing Yuba and Sutter Superior and Municipal Courts to hold sessions in each other's county.

The bill, as subsequently amended, deleted the above provision and replaced it with an augmentation to the Budget Act of 1999, making various appropriations. Status: Chapter 1003, 1999.

**SB 966 (Senate Judiciary Committee) Maintenance of the codes.** This bill makes technical changes and restates existing provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature for consideration during 1999. Specifically, this bill corrects grammatical and other errors without substantive change to the law. Status: Chapter 83, 1999.

**SB 1131 (Burton) Antitrust: oil mergers and gasoline pricing practices.** This bill appropriates \$1 million dollars to allow the Attorney General to conduct an investigation into gasoline pricing practices and to review pending oil company mergers that impact California consumers. Status: Chapter 956, 1999; appropriation vetoed.

**SB 1246 (Polanco) Unemployment: seasonal farmworkers.** When this bill was heard in the Judiciary Committee, it sought to ensure that state agencies and departments comply with the Dymally-Alatorre Bilingual Services Act by providing that, among other things, any individual or organization acting on behalf of an aggrieved party or on behalf of the interests of the general public may file an administrative complaint with the state agency believed to be in violation of the Act. The bill was subsequently amended to require the State Employment Development Department to contract with one or more private, nonprofit entities to develop a program to provide off-season, community-based, employment opportunities for farmworkers. Status: Dead, SEN.

**SB 1305 (Figueroa) Employer indemnification: interest.** This bill, as it arrived in the Judiciary Committee, required the Medical Board to study medical malpractice settlements and patterns of claims or actions for damages for death or personal injury, as specified, and to prepare a report to the Legislature no later than July 1, 2001. The bill was subsequently amended to require that awards for reimbursement of expenditures by a court, or by the Division of Labor Standards Enforcement, carry interest at the same rate as judgments in civil actions, accruing from the date the necessary expenditures or losses were incurred by the employee. Status: Chapter 990, 2000.

**SB 1565 (Schiff) Profits of crime: trust imposed on profiteer proceeds.** This bill expands California's "Son of Sam" law to create an involuntary trust of the profits when a representative of the felon or a third party sells any memorabilia or other thing of a convicted felon, where the value to the memorabilia or thing is enhanced by the notoriety gained from the commission of a felony for which the felon was convicted. From these profits, a seller profiteering from the felony may retain an amount equal to the inherent value of the thing sold, i.e., the item's enhanced value due to the notoriety of the felony would be subject to the constructive trust. The bill also enacts legislative findings declaring, among other things, the state's compelling interest in ensuring that convicted felons do not profit from their crimes and that victims of crime are compensated by those who harm them. The bill also excludes the sale or transfer by a profiteer

of any other expressive work protected by the First Amendment unless the sale or transfer is primarily for a commercial or speculative purpose. Status: Chapter 261, 2000.

**SB 2082 (O'Connell) Animals: alternative testing methods.** This bill requires manufacturers and their contract testing facilities to use alternatives to animal testing in this state if an appropriate validated alternative exists which is recommended by the federal Inter-Agency Coordinating Committee for the Validation of Alternative Methods and is adopted by the responsible federal regulatory agencies. The bill provides for a \$5,000 civil penalty and injunction as remedies for violation and allows prevailing parties to collect attorneys' fees and costs. The bill additionally grants any district attorney or the attorney general standing to enforce the proposed restrictions on animal testing. This bill does not apply to testing done for the purpose of medical research and pharmacological drug discovery research and development. Status: Chapter 476, 2000.

**SB 2127 (Schiff) Drinking water: hexavalent chromium; study.** When this bill was heard in the Judiciary Committee, it required landlords who allocate water and sewer charges in addition to the monthly rent for each tenant's dwelling unit, but who do not provide a separate meter for each unit, to explicitly disclose any separate water and sewer billing arrangements in the lease or rental agreement and, if a specific rental rate is advertised, to disclose, in the advertisement, any separate water and sewer billing arrangements. The bill was subsequently amended to require the Department of Health Services to assess the levels, exposures, and risks posed by hexavalent chromium in public water systems in the San Fernando Basin aquifer and to report its findings to the Governor and the Legislature. Status: Chapter 868, 2000.

