

AGENDA ITEM

161 NOVEMBER 2016

DATE: November 1, 2016

TO: Members, Stakeholders, Access to Justice, and Appointments Committee
Members, Board of Trustees

FROM: Saul Bercovitch, Legislative Counsel

SUBJECT: State Bar Section Sponsored Affirmative Legislative Proposals

EXECUTIVE SUMMARY

State Bar Sections may sponsor legislation in their own name following Board of Trustees review and approval. Upon approval, the Sections may pursue the legislative proposals for introduction as section-sponsored legislation. Three State Bar Sections have submitted a total of five legislative proposals for approval. This Agenda Item seeks Board approval of these legislative proposals.

BACKGROUND

State Bar Sections may sponsor legislation in their own name following Board of Trustees review and approval of the Section legislative proposals. The State Bar Sections have submitted a total of five legislative proposals for approval. Upon approval, the Sections may proceed, and pursue the proposals for introduction as section-sponsored legislation. These proposals have been circulated for comment to all State Bar Sections and to other potentially interested parties outside the State Bar. Input received from any interested party will be considered as these proposals move forward.

DISCUSSION

State Bar legislative policies and procedures provide as follows:

A section may use voluntary dues to take positions on bills of others or make affirmative legislative proposals that are germane to the designated practice area of the section, and pursuant to the authority granted under Business and Professions Code section 6031, under the following germaneness standard:

(a) The matter is necessarily or reasonably related to the regulation of the legal profession or improvement of the quality of legal services available to the people of the state, or

(b) The matter requires the special knowledge, training, experience or technical expertise of the section, or

(c) The position advocated, while not specifically related to the regulation of the legal profession or improvement of the quality of legal services, would promote clarity, consistency or comprehensiveness in the law.

(Board Book, Tab 3.5, Article 2, Section 3).

The following is a brief description of the 2017 Section legislative proposals (with links to the proposals):

Title & Brief Description	Sponsor	Code Sections Affected
<p>Creating Emergency Jurisdiction for Custody and Visitation Issues When a Change of Venue Has Been Ordered but Not Perfected (FL-2017-01)</p> <p>Would create emergency jurisdiction for child custody and visitation issues when a case has been approved for a change of venue but jurisdiction has not been perfected in the new venue, thereby filling a void in the law that can result in a denial of access to justice because of a procedural quirk that leaves a case in limbo.</p>	Family Law Section	Amends Section 399 of the Code of Civil Procedure
<p>Revisions to Remedy Inconsistencies in Probate Code Resulting from Recent Case Law, Eliminate Ambiguity, and Correct an Omission (TE-2017-02)</p> <p>Would 1) remedy inconsistencies that have arisen in a statutory scheme designed to protect vulnerable members of society, thereby eliminating harm to victims and preventing confusion; 2) eliminate ambiguity; and 3) correct an omission.</p>	Trusts and Estates Section	Amends Probate Code Sections 21380 et seq.

Title & Brief Description	Sponsor	Code Sections Affected
<p><u>Updating California's Uniform Testamentary Additions to Trusts Act (TE-2017-03)</u></p> <p>Would conform California law with the Uniform Testamentary Additions to Trusts Act to permit a decedent to validly devise property to a trustee where the terms of the trust are set forth in an instrument executed <u>after</u> the decedent's will is executed, as well as where those terms are set forth in an instrument executed <u>before or concurrently with</u> the decedent's will, thereby eliminating the possibility for a technicality to thwart the intention of the decedent.</p>	Trusts and Estates Section	Amends Probate Code Section 6300
<p><u>Commencement of Discovery and Enhanced Notice in Probate Proceedings (TE-2017-04)</u></p> <p>Would 1) bring greater conformity to the timing rules for commencement of discovery in trust and estate proceedings and civil proceedings; and 2) provide enhanced notice in proceedings brought to determine rights and claims to property in the control or possession of an estate or another party, thereby eliminating a potential due process issue.</p>	Trusts and Estates Section	Amends Probate Code Sections 851 and 1000
<p><u>Providing a Legal Path for the Windup of a California Corporation That Has Been Liquidated under a Chapter 11 Plan Approved by a Bankruptcy Court (BLS-2017-05)</u></p> <p>Would provide a legal path for the windup of a California corporation that has been liquidated under a Chapter 11 plan approved by a bankruptcy court, thereby eliminating the inefficiencies and waste that result when a corporate shell remains "on the books" of many California state agencies, including the Secretary of State and the Franchise Tax Board.</p>	Business Law Section (Insolvency Law Committee)	Amends Section 1401 of and adds Section 1905.2 to the Corporations Code

These legislative proposals are being pursued, consistent with the State Bar legislative policies and procedures quoted above, using only voluntary dues. This Agenda Item seeks Board approval of these Section legislative proposals.

FISCAL/PERSONNEL IMPACT

None.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

BOARD COMMITTEE RECOMMENDATIONS

The Stakeholders, Access to Justice, and Appointments Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves the following Section legislative proposals: FL-2017-01; TE-2017-02; TE-2017-03; TE-2017-04; and BLS-2017-05.