

AGENDA ITEM

162 NOVEMBER

DATE: October 18, 2011

TO: Members, Stakeholder Relations Committee
Members, Board of Governors

FROM: Office of Governmental Affairs

SUBJECT: State Bar Section Sponsored Affirmative Legislative Proposals

EXECUTIVE SUMMARY

Two State Bar Sections have submitted a total of nine affirmative legislative proposals for potential introduction as section-sponsored legislation. These proposals have been circulated for comment to all State Bar Sections and to other interested parties. As of the date of this agenda item, we are still in the process of obtaining comments and input from these interested parties. The State Bar's Office of Governmental affairs has reviewed the legislative proposals and recommends, subject to any further input received from the interested parties, that the Stakeholder Relations Committee recommend to the full Board of Governors that the legislative proposals all be approved for potential introduction as section-sponsored legislation. Questions regarding this agenda item should be directed to Saul Bercovitch, State Bar Legislative Counsel, at (415) 538-2306.

BACKGROUND

State Bar Sections may sponsor affirmative legislation in their own name following Board of Governors review and approval of their proposals. Membership in the State Bar Sections is voluntary and funding for section activities, *including all legislative activities*, is obtained entirely from voluntary sources. (Bus. & Prof. Code §§ 6031.5 and 6140.05).

The State Bar Sections have submitted a total of nine affirmative legislative proposals for potential introduction as section-sponsored legislation.

ISSUE

Whether the Board of Governors should approve the nine affirmative legislative proposals submitted by the Sections for introduction as section-sponsored legislation.

DISCUSSION

State Bar legislative policies and procedures contain the following germaneness standard for section legislative activities:

“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:

- (1) 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
- (2) The matter requires the special knowledge, training, experience or technical expertise of the section, or
- (3) 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.”

State Bar standing committees, as authorized, may also sponsor affirmative legislation in their own name following Board review and approval. The standards and guidelines for legislative activities of committees funded from the lobbying deduction fund provides as follows:

“(a) Legislative activities paid for out of the lobbying deduction fund of committees and other State Bar entities that receive funding from the general fund must be germane to the charge of the committee or other entity and meet the following germaneness standard:

- (1) The matter is necessarily or reasonably related to the improvement of the quality of legal services available to the people of the state; or
- (2) The matter is related to the improvement of the functioning of the courts, judicial efficacy and efficiency;

(b) In interpreting this germaneness standard, the following guidelines should be applied:

- (1) Legislative comments should reflect the special knowledge, training, experience or technical expertise of the State Bar entity;
- (A) Involvement in or comments on legislative matters that are ideological or highly controversial or divisive within the bar or the society are disfavored;

(B) The potential impact of comments and other legislative activities of the State Bar entity on the State Bar and the rest of the bar's legislative program should be considered."

The following is a brief description of the 2012 Section legislative proposals (with links to the proposals):

Title & Brief Description	Sponsor	Code §§ Affected
Indemnification of Employee Benefit Plan Fiduciaries (BLS-2012-01) Indemnification of Employee Benefit Plan Fiduciaries (BLS-2012-01) (<i>ADA Version</i>) Would eliminate the ambiguity in the Corporations Code regarding the indemnification standards applicable to fiduciaries of an employee benefit plan when acting on behalf of a nonprofit public benefit, mutual benefit, religious or consumer cooperative corporation.	Business Law Section (Nonprofit & Unincorporated Organizations Committee)	Amends §§ 5238(j), 7237(j), 9246(j), and 12377(j) of the Corporations Code
Signature Requirement on Financing Statements (BLS-2012-02) Signature Requirement on Financing Statements (BLS-2012-02) (<i>ADA Version</i>) Would conform Section 3440.1(h) of the Civil Code to Division 9 of the Commercial Code by eliminating the requirement that a financing statement be signed by the transferor and instead requiring that the financing statement be authorized in an authenticated record.	Business Law Section (UCC Committee)	Amends § 3440.1(h) of the Civil Code

Title & Brief Description	Sponsor	Code §§ Affected
<p><u>Physician Ownership and Referral Act of 1993</u> (BLS-2012-03)</p> <p><u>Physician Ownership and Referral Act of 1993</u> (BLS-2012-03) (<i>ADA Version</i>)</p> <p>Would make a clarifying change to the Physician Ownership and Referral Act of 1993 (“PORA”), to encourage the adoption of electronic health record technology in California health care settings, and other clarifying changes to PORA.</p>	<p>Business Law Section (Health Law Committee)</p>	<p>Amends §§ 650.01 and 650.02 of the Business and Professions Code</p>
<p><u>Proposal to Extend Anti-Deficiency Protection to Refinanced Mortgage Obligations</u> (BLS-2012-04)</p> <p><u>Proposal to Extend Anti-Deficiency Protection to Refinanced Mortgage Obligations</u> (BLS-2012-04) (<i>ADA Version</i>)</p> <p>Would (1) extend purchase money anti-deficiency protection to homeowners who have refinanced their home loans, and (2) codify the right of sold-out property vendors who subordinate their liens to new construction financing to obtain a deficiency against the developer after foreclosure.</p>	<p>Business Law Section (Insolvency Law Committee)</p>	<p>Amends § 580b of the Code of Civil Procedure</p>

Title & Brief Description	Sponsor	Code §§ Affected
<p><u>Recovery of Fees and Costs for Guardian Ad Litem in Elder Abuse Actions</u> (T&E-2012-05)</p> <p><u>Recovery of Fees and Costs for Guardian Ad Litem in Elder Abuse Actions</u> (T&E-2012-05) (<i>ADA Version</i>)</p> <p>Would conform the treatment of a guardian ad litem to the treatment of a conservator for purposes of recovering fees and costs in an elder abuse action.</p>	Trusts & Estates Section	Amends §§ 15657 and 15657.5 of the Welfare and Institutions Code
<p><u>California Exemption to Termination of Title Insurance on Transfers to Revocable Trusts</u> (T&E-2012-06)</p> <p><u>California Exemption to Termination of Title Insurance on Transfers to Revocable Trusts</u> (T&E-2012-06) (<i>ADA Version</i>)</p> <p>Would provide that coverage under a policy of title insurance issued after enactment of the new statute will continue from the named insured to a transferee when title to property is transferred by the insured to the trustee of a revocable trust of which the insured is a beneficiary with the power to revoke.</p>	Trusts & Estates Section	Adds new Article 9, section 12419 to Division 2, Part 6, Chapter 1 of the Insurance Code

Title & Brief Description	Sponsor	Code §§ Affected
<p><u>Revocation of Joint Trusts Following Death of a Settlor</u> (T&E-2012-07)</p> <p><u>Revocation of Joint Trusts Following Death of a Settlor</u> (T&E-2012-07) (<i>ADA Version</i>)</p> <p>Would clarify the law to (1) make it clear that a settlor can grant a spouse or other party a power of revocation over the settlor's property in a joint trust and that this power can continue after the death of the settlor, and (2) more clearly address what should happen to property that is subject to a power of revocation.</p>	Trusts & Estates Section	Amends §§ 15401 and 15410 of the Probate Code
<p><u>Motions in Probate Proceedings</u> (T&E-2012-08)</p> <p><u>Motions in Probate Proceedings</u> (T&E-2012-08) (<i>ADA Version</i>)</p> <p>Would harmonize procedures in probate litigation and general civil litigation by clarifying that, subject to three specific exceptions, the motions available in general civil litigation are also available in litigation under the Probate Code.</p>	Trusts & Estates Section	Amends § 1000 of the Probate Code

Title & Brief Description	Sponsor	Code §§ Affected
<u>Nomination of Administrator of a Decedent's Estate by a Non-Resident</u> (T&E-2012-09) <u>Nomination of Administrator of a Decedent's Estate by a Non-Resident</u> (T&E-2012-09) (<i>ADA Version</i>) Would provide that a person otherwise entitled to nominate an administrator of a decedent's estate will not be disqualified from doing so solely by virtue of the fact that the nominating person is not a resident of the United States.	Trusts & Estates Section	Amends § 8465 of the Probate Code

These proposals have been circulated for comment to the State Bar Sections, State Bar Standing Committees, and other interested parties, including key legislative staff, Judicial Council staff, and other stakeholders. As of the date of this agenda item, we are still in the process of obtaining comments and input from these interested parties.

FISCAL / PERSONNEL IMPACT:

These proposals, if approved for introduction as section-sponsored legislation, will have no fiscal or personnel impact on the General Fund. Legislative work on section legislative proposals is funded entirely from voluntary funds. Sufficient voluntary funds are available to support the legislative work on these proposals if approved for introduction as section-sponsored legislation.

RULE AMENDMENTS:

None

BOARD BOOK IMPACT:

None

RECOMMENDATION:

The Office of Governmental affairs has reviewed the legislative proposals and recommends, subject to any further input received from the interested parties, that that the Stakeholder Relations Committee recommend to the full Board of Governors that all of the Section legislative proposals be approved for introduction as section-sponsored legislation.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Stakeholder Relations Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Stakeholder Relations Committee recommends that the Board approve the following Section legislative proposals for introduction as section-sponsored legislation: BLS-2012-01, BLS-2012-02, BLS-2012-03, BLS-2012-04, T&E-2012-05, T&E-2012-06, T&E-2012-07, T&E-2012-08, T&E-2012-09.

PROPOSED BOARD OF GOVERNORS RESOLUTION:

Should the Board concur with the Stakeholder Relations Committee's recommendation, the following resolutions would be in order:

RESOLVED, that upon the recommendation of the Stakeholder Relations Committee, the Board hereby approves the following Section legislative proposals for introduction as section-sponsored legislation: BLS-2012-01, BLS-2012-02, BLS-2012-03, BLS-2012-04, T&E-2012-05, T&E-2012-06, T&E-2012-07, T&E-2012-08, T&E-2012-09.