

AGENDA ITEM

161 NOVEMBER

DATE: October 30, 2012

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

FROM: Office of Governmental Affairs

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 of the Section legislative proposals. Upon approval, the Sections may pursue the proposals for introduction as section-sponsored legislation. Three State Bar Sections have submitted a total of thirteen affirmative legislative proposals for approval. These proposals have been circulated for comment to all State Bar Sections and to other interested parties. The State Bar's Office of Governmental Affairs has reviewed the proposals and recommends that the Stakeholder Relations Committee recommend to the full Board of Trustees that the proposals be approved. Questions regarding this agenda item should be directed to Saul Bercovitch, State Bar Legislative Counsel, at (415) 538-2306.

BACKGROUND

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). 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 thirteen affirmative 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.

* This Agenda Item contains one proposal (BLS-2013-07) that is not technically a "legislative" proposal, insofar as it would seek amendments to the California Code of Regulations and not to any statutes. There is, however, a close connection between the relevant statutory and regulatory schemes, as discussed in the proposal.

ISSUE

Whether the Board of Trustees should approve the thirteen affirmative legislative proposals submitted by the Sections.

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 2013 Section legislative proposals (with links to the proposals):

Title & Brief Description	Sponsor	Code §§ Affected
<p>Revisions to Update California Corporations Code to Add Emergency Powers and Bylaw Provisions (BLS-2013-01)</p> <p>Revisions to Update California Corporations Code to Add Emergency Powers and Bylaw Provisions (BLS-2013-01) (ADA Version)</p> <p>Would provide California corporations with the power to take specific actions to continue to function during an emergency and expressly permit California corporations to adopt emergency bylaws allowing any actions not conflicting with the articles of incorporation to manage the corporation during an emergency.</p>	<p>Business Law Section (Corporations Committee)</p>	<p>Amends §§ 207 and 212 of the Corporations Code</p>

Title & Brief Description	Sponsor	Code §§ Affected
<p><u>Revisions to Streamline and Update Corporations Code Provisions Relating to Actions by Written Consent of Shareholders (BLS-2013-02)</u></p> <p><u>Revisions to Streamline and Update Corporations Code Provisions Relating to Actions by Written Consent of Shareholders (BLS-2013-02)</u> <u>(ADA Version)</u></p> <p>Would eliminate the 10-day waiting period for consummating certain corporate reorganizations that is currently required.</p>	<p>Business Law Section (Corporations Committee)</p>	<p>Amends § 603 of the Corporations Code</p>
<p><u>Proposal to Enact a Safe Harbor for “Finders” in Connection with Securities Transactions (BLS-2013-03)</u></p> <p><u>Proposal to Enact a Safe Harbor for “Finders” in Connection with Securities Transactions (BLS-2013-03)</u> <u>(ADA Version)</u></p> <p>Would create a safe harbor, which would exempt from the definition of a broker-dealer persons acting as “finders” who comply with certain specified requirements.</p>	<p>Business Law Section (Corporations Committee)</p>	<p>Amends § 25004 of the Corporations Code</p>

Title & Brief Description	Sponsor	Code §§ Affected
<p><u>Proposal to Clarify Code of Civil Procedure Section 701.680 to Explicitly State That it Does Not Affect, Limit or Eliminate the Equitable Right of Redemption (BLS-2013-04)</u></p> <p><u>Proposal to Clarify Code of Civil Procedure Section 701.680 to Explicitly State That it Does Not Affect, Limit or Eliminate the Equitable Right of Redemption (BLS-2013-04) (ADA Version)</u></p> <p>Would clarify Code of Civil Procedure Section 701.680 to explicitly state that it does not affect, limit or eliminate the equitable right of redemption.</p>	<p>Business Law Section (Insolvency Law Committee)</p>	<p>Amends § 701.680 of the Code of Civil Procedure</p>
<p><u>Tax Exemption under Revenue and Taxation Code Section 23701 (BLS-2013-05)</u></p> <p><u>Tax Exemption under Revenue and Taxation Code Section 23701 (BLS-2013-05) (ADA Version)</u></p> <p>Would simplify the process for applying for a California tax exemption as an Internal Revenue Code (IRC) Section 501(c)(4), (5), (6) or (7) nonprofit organization under Revenue and Taxation Code Section 23701, just as such process has been simplified for IRC Section 501(c)(3) charitable organizations under Revenue and Taxation Code Section 23701d.</p>	<p>Business Law Section (Nonprofit Organizations Committee)</p>	<p>Amends §§ 23701 and 23701d of the Revenue and Taxation Code</p>

Title & Brief Description	Sponsor	Code §§ Affected
<p><u>Proposal to Provide That California Retailers May Sell an Unregistered Pesticide That Is Lawful for Sale and Use in Another State to a Buyer for Use in That Other State (BLS-2013-06)</u></p> <p><u>Proposal to Provide That California Retailers May Sell an Unregistered Pesticide That Is Lawful for Sale and Use in Another State to a Buyer for Use in That Other State (BLS-2013-06) (ADA Version)</u></p> <p>Would amend Food and Agriculture Code § 12993 to provide that California retailers may sell an unregistered pesticide that is lawful for sale and use in another state to a buyer located in that other state.</p>	<p>Business Law Section (Agribusiness Committee)</p>	<p>Amends Food and Agriculture Code § 12993</p>
<p><u>Proposed New Regulatory Exemption for Negotiated Sales (BLS-2013-07)</u></p> <p><u>Proposed New Regulatory Exemption for Negotiated Sales (BLS-2013-07) (ADA Version)</u></p> <p>Would adopt a new exemption to facilitate negotiated sales of franchises.</p>	<p>Business Law Section (Franchise Law Committee)</p>	<p>Amends § 310.100.2 of Title 10 of the California Code of Regulations and adds a new § 310.150 of Title 10 of the California Code of Regulations</p>

Title & Brief Description	Sponsor	Code §§ Affected
<p><u>Proposal to Expand and Add Consistency to Family Law Exceptions to Automatic Case Dismissal (FL-2013-08)</u></p> <p><u>Proposal to Expand and Add Consistency to Family Law Exceptions to Automatic Case Dismissal (FL-2013-08) (ADA Version)</u></p> <p>Would amend existing exemptions to mandatory dismissal of family law cases to expand exemptions and add consistency to statutory scheme.</p>	Family Law Section	Amends § 583.161 of the Code of Civil Procedure
<p><u>Proposal to Expand Court's Ability to Protect Insurance Coverage When Issuing Orders under the Domestic Violence Prevention Act (FL-2013-09)</u></p> <p><u>Proposal to Expand Court's Ability to Protect Insurance Coverage When Issuing Orders under the Domestic Violence Prevention Act (FL-2013-09) (ADA Version)</u></p> <p>Would permit courts to protect insurance coverage when issuing orders under the Domestic Violence Prevention Act.</p>	Family Law Section	Adds § 6325.1 to the Family Code

Title & Brief Description	Sponsor	Code §§ Affected
<p><u>Capacity Standard to Execute Testamentary Instruments (T&E-2013-10)</u></p> <p><u>Capacity Standard to Execute Testamentary Instruments (T&E-2013-10)</u> <u>(ADA Version)</u></p> <p>Would establish a uniform capacity standard for determining the validity of wills, codicils, trusts, trust amendments, and nonprobate transfer instruments.</p>	Trusts & Estates Section	Adds a new §814 to the Probate Code, amends § 812 of the Probate Code and repeals §6100.5 of the Probate Code
<p><u>Revisions to Probate Code Section 6452 Concerning Intestate Succession (T&E-2013-11)</u></p> <p><u>Revisions to Probate Code Section 6452 Concerning Intestate Succession (T&E-2013-11)</u> <u>(ADA Version)</u></p> <p>Would substantially revise Probate Code provisions relating to the disinheritance of parents and the inheritance rights of relatives of a disinherited parent.</p>	Trusts & Estates Section	Repeals §6452 of the Probate Code and adds a new §6452 to the Probate Code
<p><u>Elective Administration of Decedents' Estates (T&E-2013-12)</u></p> <p><u>Elective Administration of Decedents' Estates (T&E-2013-12)</u> <u>(ADA Version)</u></p> <p>Would permit eligible beneficiaries to choose between "Elective Administration" and formal administration of a decedents' estate in two narrow circumstances.</p>	Trusts & Estates Section	Adds a new Article 10 to Chapter 4 of Part 2 of Division 7 (sections 8600 to 8625) of the Probate Code and amends the Independent Administration of Estates Act, Part 6 of Division 7 (sections 10400 to 10592) of the Probate Code

Title & Brief Description	Sponsor	Code §§ Affected
<u>Revised Probate Code Section 16350 (Uniform Principal and Interest Act) (T&E-2013-13)</u> <u>Revised Probate Code Section 16350 (Uniform Principal and Interest Act) (T&E-2013-13) (ADA Version)</u> Would bring greater clarity and fairness to the categorization of amounts received from business entities as between principal and income.	Trusts & Estates Section	Amends §16350 of the Probate Code

FISCAL / PERSONNEL IMPACT:

These proposals 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.

RULE AMENDMENTS:

None

BOARD BOOK IMPACT:

None

RECOMMENDATION

The Office of Governmental affairs has reviewed the legislative proposals and recommends that that the Stakeholder Relations Committee recommend to the full Board of Trustees that all of the Section legislative proposals be approved.

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: BLS-2013-01, BLS-2013-02, BLS-2013-03, BLS-2013-04, BLS-2013-05, BLS-2013-06, BLS-2013-

07, FL-2013-08, FL-2013-09, T&E-2013-10, T&E-2013-11, T&E-2013-12, and T&E-2013-13.

PROPOSED BOARD OF TRUSTEES 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: BLS-2013-01, BLS-2013-02, BLS-2013-03, BLS-2013-04, BLS-2013-05, BLS-2013-06, BLS-2013-07, FL-2013-08, FL-2013-09, T&E-2013-10, T&E-2013-11, T&E-2013-12, and T&E-2013-13.