

AGENDA ITEM

161 NOVEMBER

DATE: October 30, 2013

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 four 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 four 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.

ISSUE

Whether the Board of Trustees should approve the four 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 2014 Section legislative proposals (with links to the proposals):

| Title & Brief Description | Sponsor | Code §§ Affected |
|--|--|---|
| <p>Revisions to Update California Corporations Code Regarding Mergers (the "50/90 Rule") (BLS-2014-01)</p> <p>Revisions to Update California Corporations Code Regarding Mergers (the "50/90 Rule") (BLS-2014-01) (ADA Version)</p> <p>Would amend Section 1101 of the Corporations Code to (i) eliminate redundancy with respect to the definition of short-form mergers, (ii) clarify that the additional shareholder approval requirements relating to certain types of merger transactions do not apply to arm's length transactions, and (iii) revise these additional shareholder approval requirements to require "a majority of the minority" approval rather than unanimous approval.</p> | <p>Business Law Section (Corporations Committee)</p> | <p>Amends § 1101 of the Corporations Code</p> |

| Title & Brief Description | Sponsor | Code §§ Affected |
|---|---|---|
| <p><u>Definition of a Director under California Corporations Code Section 5047</u> (BLS-2014-02)</p> <p><u>Definition of a Director under California Corporations Code Section 5047</u> (BLS-2014-02) (ADA Version)</p> <p>Would further clarify the definition of a director under Corporations Code Section 5047 for purposes of the California Nonprofit Corporation Law.</p> | <p>Business Law Section (Nonprofit Organizations Committee)</p> | <p>Amends § 5047 of the Corporations Code</p> |
| <p><u>Proposal to Re-enact Family Code Section 4326 Regarding Termination of Child Support as a Change of Circumstances</u> (FL-2014-03)</p> <p><u>Proposal to Re-enact Family Code Section 4326 Regarding Termination of Child Support as a Change of Circumstances</u> (FL-2014-03) (ADA Version)</p> <p>Would re-enact Family Code Section 4326, which currently contains a sunset provision under which the statute will remain in effect only until January 1, 2014.</p> | <p>Family Law Section</p> | <p>Adds § 4362 to the Family Code</p> |

| Title & Brief Description | Sponsor | Code §§ Affected |
|---|--------------------------|-----------------------------------|
| <p><u>Proposal to Revise Probate Code Section 8200 (Duties of Custodian of a Will)</u> <u>(T&E-2014-04)</u></p> <p><u>Proposal to Revise Probate Code Section 8200 (Duties of Custodian of a Will)</u> <u>(T&E-2014-04)</u> <u>(ADA Version)</u></p> <p>Would authorize the custodian of a will to either lodge the decedent's will, as per the existing statute, or in the alternate to deliver the will to the executor, or if the executor's whereabouts are not known to a person named in the will as a beneficiary, with the statutory fee for lodging the will to be reimbursable from the estate as an expense of administration.</p> | Trusts & Estates Section | Amends § 8200 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-2014-01, BLS-2014-02, FL-2014-03, and T&E-2014-04.

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-2014-01, BLS-2014-02, FL-2014-03, and T&E-2014-04.