

AGENDA ITEM

162 NOVEMBER 7 2014

DATE: October 24, 2014

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

FROM: Saul Bercovitch, Legislative Counsel

SUBJECT: State Bar Section Sponsored Affirmative Legislative Proposals

EXECUTIVE SUMMARY

Funding for section activities, including all legislative activities, is obtained entirely from voluntary sources. 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 eleven 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 proposals be approved. Questions regarding this agenda item should be directed to Saul Bercovitch, State Bar Legislative Counsel, at (415) 538-2306 or saul.bercovitch@calbar.ca.gov.

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 eleven 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 eleven 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.”

(See Board Book, Tab 16, art. 2, § 3).

State Bar standing committees, as authorized, may also sponsor legislation in their own name following Board review and approval. The standards and guidelines for legislative activities of committees and certain other State Bar entities 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."

(See Board Book, Tab 16, art. 2, § 7).

The following is a brief description of the 2015 Section legislative proposals (with links to the proposals):

Title & Brief Description	Sponsor	Code §§ Affected
<u>Conforming California's Investment Standard to the Uniform Prudent Management of Institutional Funds Act (BLS-2015-01)</u> <u>Conforming California's Investment Standard to the Uniform Prudent Management of Institutional Funds Act (BLS-2015-01)</u> <u>(ADA Version)</u> Would clarify California law with respect to the investment of funds by California nonprofit public benefit and religious corporations.	Business Law Section (Nonprofit Organizations Committee)	Amends Sections 5240 and 9250 of the Corporations Code

Title & Brief Description	Sponsor	Code §§ Affected
<p><u>Use of “Chair” and Other Titles under Corporations Code Sections 5039.5, 5213, 7213, 9213, 12228.5 and 12353 (BLS-2015-02)</u></p> <p><u>Use of “Chair” and Other Titles under Corporations Code Sections 5039.5, 5213, 7213, 9213, 12228.5 and 12353 (BLS-2015-02)</u> <u>(ADA Version)</u></p> <p>Would authorize the use of chair, chairperson, chairman and chairwoman as officer titles, and update and correct related definitional sections of the Corporations Code.</p>	<p>Business Law Section (Nonprofit Organizations Committee)</p>	<p>Amends Sections 5039.5, 5213, 7213, 9213, 12228.5 and 12353 of the Corporations Code</p>
<p><u>Revisions to Update California Consumer Cooperative Corporation Law to Add Emergency Powers and Bylaw Provisions (BLS-2015-03)</u></p> <p><u>Revisions to Update California Consumer Cooperative Corporation Law to Add Emergency Powers and Bylaw Provisions (BLS-2015-03)</u> <u>(ADA Version)</u></p> <p>Would add emergency powers and bylaw provisions to the California Consumer Cooperative Corporation Law.</p>	<p>Business Law Section (Nonprofit Organizations Committee)</p>	<p>Amends Sections 12320 and 12331 of the Corporations Code</p>

Title & Brief Description	Sponsor	Code §§ Affected
<p><u>Amendments to California Revised Uniform Limited Liability Company Act ("RULLCA") and California Revised Uniform Limited Partnership Act ("RULPA")</u> <u>(BLS-2015-04)</u></p> <p><u>Amendments to California Revised Uniform Limited Liability Company Act ("RULLCA") and California Revised Uniform Limited Partnership Act ("RULPA")</u> <u>(BLS-2015-04)</u> <u>(ADA Version)</u></p> <p>Would amend RULLCA and RULPA to address ambiguities and inconsistencies and to make further improvements.</p>	<p>Business Law Section (Partnerships and Limited Liability Companies Committee)</p>	<p>Amends the California Revised Uniform Limited Liability Company Act (Cal. Corp. Code §§ 17701.01 – 17713.13) and the California Revised Uniform Limited Partnership Act (Cal. Corp. Code §§ 15900 – 15912.07)</p>
<p><u>Eliminating Disclosures in Default Cases When Service Is by Publication or Posting</u> <u>(FL-2015-05)</u></p> <p><u>Eliminating Disclosures in Default Cases When Service Is by Publication or Posting</u> <u>(FL-2015-05)</u> <u>(ADA Version)</u></p> <p>Would create an exception to the mandatory financial disclosure rules in dissolution and legal separation matters where service of Summons and Petition was by publication or posting pursuant to court order and the respondent defaults.</p>	<p>Family Law Section</p>	<p>Amends Section 2110 of the Family Code</p>

Title & Brief Description	Sponsor	Code §§ Affected
<p><u>Attendance Records from Court-Ordered Batterer's Intervention Programs (FL-2015-06)</u></p> <p><u>Attendance Records from Court-Ordered Batterer's Intervention Programs (FL-2015-06) (ADA Version)</u></p> <p>Would ensure that attendance records from court-ordered batterer's intervention programs are made available to the court and the protected party.</p>	Family Law Section	Amends Section 6343 of the Family Code
<p><u>Mutual Restraining Orders (FL-2015-07)</u></p> <p><u>Mutual Restraining Orders (FL-2015-07) (ADA Version)</u></p> <p>Would ensure that when the court is determining whether to issue mutual domestic violence restraining orders, the written evidence of abuse or domestic violence required by Family Code Section 6305 is in the form of a request for Domestic Violence Prevention Act (DVPA) orders, not in the form of an Answer to a request for DVPA orders.</p>	Family Law Section	Amends Section 6305 of the Family Code

Title & Brief Description	Sponsor	Code §§ Affected
<p>Protections for Pets in Restraining Orders (FL-2015-08)</p> <p>Protections for Pets in Restraining Orders (FL-2015-08) (ADA Version)</p> <p>Would bring all types of restraining orders in alignment with the protections provided pursuant to the Domestic Violence Prevention Act, by empowering the court to protect companion animals of protected parties in restraining orders issued in juvenile dependency, elder abuse, and civil harassment cases.</p>	Family Law Section	Amends Welfare and Institutions Code Sections 213.5 and 15657.03, and Code of Civil Procedure Section 527.6
<p>Service of Preliminary Declarations Of Disclosure (FL-2015-09)</p> <p>Service of Preliminary Declarations Of Disclosure (FL-2015-09) (ADA Version)</p> <p>Would amend Family Code Section 2104(f) to add the words “or legal separation” to the list of cases for which Preliminary Declarations of Disclosure must be served within 60 days of the Petition or Response.</p>	Family Law Section	Amends Family Code Section 2104

Title & Brief Description	Sponsor	Code §§ Affected
Trustee Property Petition (T&E-2015-10) Trustee Property Petition (T&E-2015-10) (ADA Version) Would permit the trustee of a decedent's revocable trust that is designated as the remainder beneficiary in the decedent's will to collect specifically identified assets of such remainder upon petition to the probate court, if the limited circumstances provided in the proposed statute all apply to the decedent's will and trust.	Trusts & Estates Section	Adds new Part 3 to Division 8 of the Probate Code, Sections 13750 through 13759
Clarification Regarding Clerk's Duty to Provide Copy Of Lodged Will (T&E-2015-11) Clarification Regarding Clerk's Duty to Provide Copy Of Lodged Will (T&E-2015-11) (ADA Version) Would clarify that either an "authorized" certified copy or an "informational" certified copy of a death certificate of a decedent permits the bearer to receive a copy of a will that has been lodged with the clerk of the superior court of the county in which the estate of the decedent may be administered.	Trusts & Estates Section	Amends Probate Code Section 8200

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 Section legislative proposals and recommends that that all of the Section legislative proposals be approved.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Stakeholders and Access to Justice Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Stakeholders and Access to Justice Committee recommends that the Board approve the following Section legislative proposals: BLS-2015-01, BLS-2015-02, BLS-2015-03, BLS-2015-04, FL-2015-05, FL-2015-06, FL-2015-07, FL-2015-08, FL-2015-09, T&E-2015-10, and T&E-2015-11.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Stakeholders and Access to Justice Committee's recommendation, the following resolution would be in order:

RESOLVED, that upon the recommendation of the Stakeholders and Access to Justice Committee, the Board hereby approves the following Section legislative proposals: BLS-2015-01, BLS-2015-02, BLS-2015-03, BLS-2015-04, FL-2015-05, FL-2015-06, FL-2015-07, FL-2015-08, FL-2015-09, T&E-2015-10, and T&E-2015-11.