

AGENDA ITEM

161 NOVEMBER 20 2015

DATE: November 2, 2015

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. Two State Bar Sections have submitted a total of eight 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 eight 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 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 2016 Section legislative proposals (with links to the proposals):

Title & Brief Description	Sponsor	Code §§ Affected
<p>Permitting Franchisors Without a Currently Registered Disclosure Document to Exhibit at a Trade Show (BLS-2016-01)</p> <p>Permitting Franchisors Without a Currently Registered Disclosure Document to Exhibit at a Trade Show (BLS-2016-01) (ADA Version)</p> <p>Would permit franchisors without a currently registered disclosure document to exhibit at a trade show under specified conditions, including contemporaneous notice that the franchisor may not sell a franchise in California until it has satisfied the registration and disclosure requirements imposed by the Franchise Investment Law.</p>	<p>Business Law Section (Franchise Law Committee)</p>	<p>Adds a new statute to the Franchise Investment Law (Title 4, Division 5, Part 1 of the Corporations Code) and amends Section 31013 of the Corporations Code</p>
<p>Proposed New Statutory Exemption for Negotiated Sales (BLS-2016-02)</p> <p>Proposed New Statutory Exemption for Negotiated Sales (BLS-2016-02) (ADA Version)</p> <p>Would create a new statutory exemption for negotiated sales, addressing practical problems that have been created by the current statutory scheme and helping to educate prospective franchise buyers about the sales process.</p>	<p>Business Law Section (Franchise Law Committee)</p>	<p>Amends Section 31109.1 of the Corporations Code</p>

Title & Brief Description	Sponsor	Code §§ Affected
Modification and Termination of Trusts (T&E-2016-03) Modification and Termination of Trusts (T&E-2016-03) (ADA Version) Would clarify the Probate Code and provide for a modest expansion of the ability of consenting beneficiaries to modify or terminate a trust with court approval.	Trusts & Estates Section	Amends Sections 15403, 15404, and 15406 of the Probate Code
Marital Deduction Trusts (T&E-2016-04) Marital Deduction Trusts (T&E-2016-04) (ADA Version) Would give California marital deduction trusts the benefit of both flexible investment strategy under modern definitions of income and the statutory backstop to ensure that the trust qualifies for the estate tax marital deduction, and would reduce the administrative burden on marital deduction trusts by eliminating unnecessary requirements to qualify for that deduction.	Trusts & Estates Section	Amends Section 21524 of the Probate Code
Powers of Appointment (T&E-2016-05) Powers of Appointment (T&E-2016-05) (ADA Version) Would 1) define the term “power of appointment”; 2) codify the doctrine of selective allocation; 3) provide guidance regarding the disposition of unappointed property in the case of partial exercise of a power of appointment; 4) clarify the rights of creditors to reach property subject to a general power of appointment held by the debtor; and 5) clarify the rights of creditors to reach property subject to a special power of appointment held by the debtor.	Trusts & Estates Section	Adds Sections 675 and 676 to the Probate Code, and amends Sections 610, 681 and 683 of the Probate Code

Title & Brief Description	Sponsor	Code §§ Affected
Notice of Proposed Action by Trustee (T&E-2016-06) Notice of Proposed Action by Trustee (T&E-2016-06) (ADA Version) Would modify the Notice of Proposed Action procedure, increasing the efficiency of trust administrations, enhancing communication between trustees and beneficiaries, and reducing the burden on the courts, without diminishing any rights or protections currently afforded beneficiaries.	Trusts & Estates Section	Amends Sections 16501 and 16502 of the Probate Code
Spousal Property Petitions (T&E-2016-07) Spousal Property Petitions (T&E-2016-07) (ADA Version) Would clarify that the court may issue an order determining the separate or community character of property when a request for that determination has been made by a petitioning or responding party to a spousal property petition.	Trusts & Estates Section	Amends Sections 13651 and 13656 of the Probate Code
Uniform Principal and Income Act (T&E-2016-08) Uniform Principal and Income Act (T&E-2016-08) (ADA Version) Would correct the definition of “capital asset.”	Trusts & Estates Section	Amends Section 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.

BOARD BOOK IMPACT

None.

RULE AMENDMENTS

None.

SCHEDULE OF CHARGES AND DEADLINES (APPENDIX A)

None.

BOARD COMMITTEE RECOMMENDATIONS

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

RESOLVED, that the Board of Trustees approves the following Section legislative proposals: BLS-2016-01, BLS-2016-02, T&E-2016-03, T&E-2016-04, T&E-2016-05, T&E-2016-06, T&E-2016-07, and T&E-2016-08.