

AGENDA ITEM

NOVEMBER 163

Consideration/Approval of
State Bar
Section/Committee-
Sponsored Affirmative
Legislative Proposals

DATE: October 19, 2007

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

FROM: Office of Governmental Affairs

SUBJECT: Consideration/Approval of State Bar Section/Committee-Sponsored
Affirmative Legislative Proposals

EXECUTIVE SUMMARY

The Family Law Section, Trusts & Estates Section, and Business Law Section have submitted a total of eight legislative proposals for the 2008 Section and Committee Legislative Program. The State Bar's Office of Governmental affairs has reviewed the legislative proposals and proposes that the Board Committee on Stakeholder Relations recommend to the full Board of Governors that the legislative proposals be approved for inclusion in the 2008 Section and Committee Legislative Program. Questions regarding this agenda item should be directed to Anthony Williams, Director of Governmental Affairs, or Saul Bercovitch, at (415) 538-2306.

BACKGROUND

The Family Law Section, Trusts & Estates Section, and Business Law Section have submitted a total of eight affirmative legislative proposals that they seek to introduce and seek enactment of by the Legislature in 2008.

State Bar sections and committees may sponsor affirmative legislation in their own name following Board Committee on Stakeholder Relations and full Board review and approval of their proposals. These proposals have been circulated to other State Bar sections and committees for comment.

Under *Keller v. State Bar of California*, State Bar legislative activities funded from mandatory fees are limited to those necessarily or reasonably related to regulating the legal profession or improving the quality of legal services. Because sections use voluntary funds, State Bar legislative policies and procedures include an additional germaneness standard for their legislative activities, as follows:

"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."

The following is a description of the proposals (with links to the proposals):

#	Title & Brief Description	Sponsor	Code §§ Affected
FL-2008-01	Family Law: Waiver of Preliminary Declaration of Disclosure Would permit waiver of receipt of a preliminary final declaration of disclosure under specified circumstances to permit entry of a judgment of dissolution.	Family Law Section	Amends §§2103, 2104, 2106 and 2107 of the Family Code.
FL-2008-02	Family Law: Clarifies non-retroactivity of Family Code §1615 relating to prenuptial agreements. Would clarify that the changes made to the Family Code by Chapter 286 of 2001, which invalidated any prenuptial agreement that was not executed according to specified formalities, do not apply to agreements executed prior to the effective date of that act.	Family Law Section	Amends §1615 of the Family Code.

#	Title & Brief Description	Sponsor	Code §§ Affected
FL-2008-03	Family Law: Require Notice of Declaration Would entitle a support obligor to notice of, and an opportunity to examine, the declaration of the support obligee alleging how much child and spousal support arrearage the support obligee alleges the support obligor owes. (Revised 10/19/07 to strike 2nd provision of proposal.)	Family Law Section	Amends §§17524 of the Family Code
T&E-2008-04	Trusts & Estates: Will Attestation Requirements: UPC "Harmless Error" Rule Would amend §6110 of the Probate Code to add the "Harmless Error" rule provided in Uniform Probate Code (UPC) Section 2-305, permitting wills that reflect the testator's intent to be held valid notwithstanding non-adherence to specified formalities regarding attestation. (Revised 10/19/07 - technical corrections.)	Trusts & Estates Section	Amends §6110 of the Probate Code
T&E-2008-05	Trusts & Estates: Conservatorship of Hume: Duties of Conservators and Guardians re Property Would overturn the holding in <i>Conservatorship of Hume</i> (2006), 139 Cal.App.4th, by amending California statutory law to require conservators and guardians to act with ordinary care and diligence with respect to property of the conservatee or ward regardless of where it is, but clarifying that there is no duty to inventory such property or account for such property.	Trusts & Estates Section	Amends §§1063 and 2400 of, and adds §2401.1 to, the Probate Code.
BLS-2008-06	Business Law: Renewability of Liens Would amend C.C.P. §697.510 to enable liens filed with the California Secretary of State to be renewed every five years.	Business Law Section (Insolvency Law Committee)	Amends §697.510 of the Code of Civil Procedure.
BLS-2008-07	Business Law: Nonprofit Director/Office Liability Would clarify when statutory limitation of personal liability of volunteer members of Board and Directors and officers of nonprofit organizations is not available and what insurance is required for that limitation to be available.	Business Law Section (Nonprofit & Unincorporated Organizations Committee)	Amends §§5047.5 and 24001.5 of the Corporations Code.

#	Title & Brief Description	Sponsor	Code §§ Affected
BLS-2008-08	Business Law: Internet Posting of Proxy Materials, per SEC Would conform the requirements in Corporations Code §1501 to recent amendments of the proxy rules under the Securities Exchange Act of 1934 to permit specified corporations to satisfy the obligation to send an annual report to shareholders by posting the report on the internet.	Business Law Section (Corporations Committee)	Amends §1501 of the Corporations Code.

FISCAL/STAFF IMPACT

These proposals, if approved for the affirmative legislative program, will have no fiscal or personnel impact on the General Fund. Legislative work on section and committee proposals is funded from voluntary funds. Sufficient voluntary funds are available to support the legislative work on these proposals if approved for the affirmative legislative program.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None

RECOMMENDATION

The Office of Governmental affairs has reviewed the legislative proposals, and proposes that the Board Committee on Stakeholder Relations recommend to the full Board of Governors that all of the current Section legislative proposals be approved for inclusion in the 2008 Section and Committee Legislative Program.

RESOLUTION

If the Board Committee on Stakeholder Relations agrees with the above recommendation, the following resolution is suggested:

RESOLVED, that the Board Committee on Stakeholder Relations recommends that the Board of Governors approve the following legislative proposals for inclusion in the 2008 Section and Committee Legislative Program: FL-2008-01; FL-2008-02; FL-2008-03; T&E-2008-04; T&E-2008-05; BLS-2008-06; BLS-2008-07; and BLS-2008-08.

If the Board of Governors concurs with the recommendation of the Board Committee on Stakeholder Relations, the following resolution is suggested

RESOLVED, that, upon recommendation of the Board Committee on Stakeholder Relations, the Board of Governors hereby approves the following legislative proposals for inclusion in the 2008 Section and Committee Legislative Program: FL-2008-01; FL-2008-02; FL-2008-03; T&E-2008-04; T&E-2008-05; BLS-2008-06; BLS-2008-07; and BLS-2008-08.