

AGENDA ITEM

NOVEMBER 164

Consideration/Approval of
State Bar Section
Sponsored Affirmative
Legislative Proposals

DATE: October 22, 2008

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

FROM: Office of Governmental Affairs

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

EXECUTIVE SUMMARY

The Business Law Section and Trusts & Estates Section have submitted a total of ten affirmative legislative proposals for the 2009 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 2009 Section and Committee Legislative Program. Questions regarding this agenda item should be directed to Saul Bercovitch, Legislative Counsel at (415) 538-2306.

BACKGROUND

The Business Law Section and Trusts & Estates Section have submitted a total of ten affirmative legislative proposals that they seek to have introduced and enacted by the Legislature in 2009.

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 State Bar Sections, State Bar Standing Committees, and other interested parties 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 2009 section legislative proposals (with links to the proposals):

Title & Brief Description	Sponsor	Code §§ Affected
Changes to Names of Stock Exchanges (BLS-2009-01) Would amend various sections of the Corporations Code to reflect the recent designation of The NASDAQ Stock Market, LLC ("Nasdaq") as a national securities exchange, changes in the names of certain national securities exchanges, and changes in the names of some stock exchanges, markets and related regulatory entities.	Business Law Section (Corporations Committee)	Amends various sections of the Corporations Code

Title & Brief Description	Sponsor	Code §§ Affected
<p>Changes to Permit Householding (BLS-2009-02)</p> <p>Would expressly permit a) one set of meeting notices and reports to be sent to record shareholders who share an address, if such shareholders' implied or express consent is obtained, and b) a corporation to satisfy its obligation to provide an annual report by giving record shareholders who share an address one annual report, if such shareholders' implied or express consent is obtained.</p>	<p>Business Law Section (Corporations Committee)</p>	<p>Amends §§ 601 and 1501 of the Corporations Code</p>
<p>Electronic Transmission (BLS-2009-03)</p> <p>Would amend the Corporations to allow corporations to use electronic means of communication with greater ease.</p>	<p>Business Law Section (Nonprofit & Unincorporated Organizations Committee)</p>	<p>Amends § 20 of the Corporations Code</p>
<p>Tax Exemption under 23701d (BLS-2009-04)</p> <p>Would clarify the process for applying for tax exemption as a charitable organization under Revenue and Taxation Code Section 23701d.</p>	<p>Business Law Section (Nonprofit & Unincorporated Organizations Committee)</p>	<p>Amends § 23701d of the Revenue and Taxation Code</p>
<p>Nonprofit and Consumer Cooperative Cleanup (BLS-2009-05)</p> <p>Would clarify various sections of the Corporations Code so that nonprofit and consumer cooperative corporations may have more certainty in their operations.</p>	<p>Business Law Section (Nonprofit & Unincorporated Organizations Committee)</p>	<p>Amends various sections of the Corporations Code</p>

Title & Brief Description	Sponsor	Code §§ Affected
<p>Corrections to Outdated References to Federal Bankruptcy Law in California Statutes (BLS-2009-06)</p> <p>Would correct erroneous or antiquated references in California statutes to former federal bankruptcy law provisions.</p>	<p>Business Law Section (Insolvency Committee)</p>	<p>Amends various sections of the Business & Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Financial Code, Fish & Game Code, Food & Agricultural Code, Government Code, Health & Safety Code, Insurance Code, Probate Code, Public Contracts Code, Revenue & Taxation Code, Streets & Highways Code, and Vehicle Code</p>
<p>Judgment Liens against Registered Organizations (BLS-2009-07)</p> <p>Would reinstate the ability of judgment creditors in California to obtain judgment liens against the assets of corporations and other organizations that are incorporated or registered in other jurisdictions but have assets or their chief executive office in California.</p>	<p>Business Law Section (Insolvency Committee)</p>	<p>Amends §§ 697.530 and 697.590 of the Code of Civil Procedure</p>
<p>Collection of Personal Property of Estate by Sister State Personal Representative without Ancillary Administration (T&E-2009-08)</p> <p>Would allow a sister-state Personal Representative to collect any amount of personal property (anything other than real estate) belonging to a decedent and located in California.</p>	<p>Trusts & Estates Section</p>	<p>Adds §§ 12580 et seq. to the Probate Code</p>
<p>Trustee's Duty to Inform Beneficiaries: Clarification and Expansion (T&E-2009-09)</p> <p>Would clarify a trustee's obligation to provide trust beneficiaries with information and documents.</p>	<p>Trusts & Estates Section</p>	<p>Amends §§ 16061, 16064, and 17200 of, and adds §§ 16060.7, 16065, 16068 and 16069 to, the Probate Code</p>

Title & Brief Description	Sponsor	Code §§ Affected
Trustee Notification (T&E-2009-10) Would reconcile inconsistencies between related sections of the Probate Code, close a loophole that may permit evasion of the required notice of trust administration, clarify that late service of notice is nonetheless effective to trigger the 120 day statute of limitations to file a trust contest, and clarify and modify provisions relating to a trustee's liability for failure to comply with the required notice of trust administration.	Trusts & Estates Section	Amends §§ 16061.5, 16061.7, 16061.8, and 16061.9 of the Probate 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 IMPACT

None

RULE AMENDMENT 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 2009 Section and Committee Legislative Program.

PROPOSED BOARD COMMITTEE RESOLUTION

If the Board Committee on Stakeholder Relations agrees with the above recommendation, the following resolution would be appropriate:

RESOLVED that the Board Committee on Stakeholder Relations recommends that the Board of Governors approve the following legislative proposals for inclusion in the 2009 Section and Committee Legislative Program: BLS-2009-01, BLS-2009-02, BLS-2009-03, BLS-2009-04, BLS-2009-05, BLS-2009-06, BLS-2009-07, T&E-2009-08, T&E-2009-09, and T&E-2009-10.

PROPOSED BOARD RESOLUTION

If the Board of Governors concurs with the recommendation of the Board Committee on Stakeholder Relations, the following resolution would be appropriate:

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 2009 Section and Committee Legislative Program: BLS-2009-01, BLS-2009-02, BLS-2009-03, BLS-2009-04, BLS-2009-05, BLS-2009-06, BLS-2009-07, T&E-2009-08, T&E-2009-09, and T&E-2009-10.