

AGENDA ITEM

NOVEMBER 161
State Bar Section
Sponsored Affirmative
Legislative Proposals

DATE: October 25, 2010

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

FROM: Office of Governmental Affairs

SUBJECT: State Bar Section Sponsored Affirmative Legislative Proposals

EXECUTIVE SUMMARY

The State Bar Sections have submitted a total of eleven affirmative legislative proposals for the 2011 Section Legislative Program. The State Bar's Office of Governmental affairs has reviewed the legislative proposals and proposes, subject to any further input received from interested parties, that the Board Committee on Stakeholder Relations recommend to the full Board of Governors that the legislative proposals be approved for inclusion in the 2011 Section Legislative Program. Questions regarding this agenda item should be directed to Saul Bercovitch, State Bar Legislative Counsel, at (415) 538-2306.

BACKGROUND

The State Bar Sections have submitted a total of eleven affirmative legislative proposals that they seek to have introduced by the Legislature in 2011.

State Bar Sections may sponsor affirmative legislation in their own name following Board of Governors review and approval of their proposals. 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).¹

¹ 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.

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 description of the 2011 Section legislative proposals (with links to the proposals):

Title & Brief Description	Sponsor	Code §§ Affected
<p>Revisions to Streamline and Update Corporation Code Provisions Relating to Distributions and Repurchases of Shares (BLS-2011-01) Would simplify, clarify, improve and modernize relevant provisions of the Corporations Code relating to distributions and repurchases of shares.</p>	<p>Business Law Section (Corporations Committee)</p>	<p>Amends §§500, 503, 506 and 509 of the Corporations Code and repeals §§502 and 507 of the Corporations Code</p>
<p>Changes to Business Entity Names Registration (BLS-2011-02) Would amend California’s business entity name availability statutes to adopt a uniform standard for evaluating the availability of names for new corporations, limited liability companies and limited partnerships.</p>	<p>Business Law Section (Corporations Committee)</p>	<p>Amends §§201(b), 5122(b), 7122(c), 9122(b), 12302(b), 13409, 15901.08(d) and 17052(c) of the Corporations Code and §14417 of the Business and Professions Code; adopts new §§165.7, 165.8, 15901.08(h) and 17052(g) of the Corporations Code</p>
<p>Nonprofit and Unincorporated Association Cleanup (BLS-2011-03) Would clarify various sections of the Corporations Code so that nonprofit corporations and unincorporated associations may have more certainty in their operations.</p>	<p>Business Law Section (Nonprofit & Unincorporated Organizations Committee)</p>	<p>Adds §§7914 and 9634 to the Corporations Code, and amends §§1113, 5211, 5212, 5213, 5222, 5235, 5913, 6010, 6019.1, 6321, 6324, 6615, 6716, 7211, 7212, 7213, 8010, 8019.1, 8324, 8615, 9211, 9212, 9213, 9250, 9640, 12311, 12351, 12352, 12353, and 18300 of the Corporations Code</p>

Title & Brief Description	Sponsor	Code §§ Affected
<p>Tax Exemption and Exemption Process for Single Member LLC (BLS-2011-04)</p> <p>Would conform California tax law to federal tax law regarding the treatment of a single member limited liability company (“LLC”) whose sole member is a tax-exempt entity, and further streamline the process for obtaining an acknowledgement of tax-exempt status.</p>	<p>Business Law Section (Nonprofit & Unincorporated Organizations Committee)</p>	<p>Amends §§17941, 17942, 18633.5, and 23701d of the Revenue & Taxation Code</p>
<p>Service of Levies and Related Legal Process on Financial Institutions (BLS-2011-05)</p> <p>Would modernize and clarify the process by which garnishments involving bank accounts are served and processed.²</p>	<p>Business Law Section (Consumer Financial Services Committee)</p>	<p>Amends §§482.070, 488.455, 488.460, 488.600, 488.610, 488.110, 700.140, 700.150, 700.160, 701.030, 703.570 and 708.510 of, and adds §§684.115 and 701.015 to the Code of Civil Procedure; amends §§952 and 1650 of the Financial Code; amends §1755 of the Unemployment Insurance Code</p>
<p>Revised Uniform Limited Liability Company Act (BLS-2011-06)</p> <p>Would adopt the National Conference of Commissioners on Uniform State Laws’ (“NCCUSL”) Revised Uniform Limited Liability Company Act (“RULLCA”) with certain modifications under California law.</p>	<p>Business Law Section (Partnerships and Limited Liability Companies Committee)</p>	<p>Repeals the Beverly-Killea Limited Liability Company Act (Sections 17001 et seq. of the Corporations Code) and adopts the Revised Uniform Limited Liability Company Act</p>
<p>Right to Control Disposition of Remains (T&E-2011-07)</p> <p>Would add the conservator of the person and conservator of the estate to the list of persons who may control the disposition of the decedent’s remains.</p>	<p>Trusts & Estates Section</p>	<p>Amends §7100 of the Health and Safety Code</p>

² As a result of discussions with an interested party, the proposed amendment to Code of Civil Procedure § 708.510 has been deleted from BLS-2011-05. Approval is therefore being sought for BLS-2011-05, as modified, without the proposed amendment to Code of Civil Procedure § 708.510.

Title & Brief Description	Sponsor	Code §§ Affected
Directed Trusts (T&E-2011-08) Would add a chapter to the Probate Code explicitly authorizing the use of directed trusts and make other conforming changes.	Trusts & Estates Section	Adds a new §85, a new §16065 and a new Chapter 6 to Part 4 of Division 9 (Sections 16600 et seq.) to the Probate Code; amends §§300, 1304, 17200, 17202, 17203 and 17205 of the Probate Code
Repeal of the Rule Against Perpetuities (T&E-2011-09) Would repeal the Rule Against Perpetuities and clarify the application of the rule against restraints on the power of a trustee to sell or transfer trust property in California.	Trusts & Estates Section	Amends Article 2, Chapter 2, Title 2, Part 1, Division 2 (Sections 711 and 722 through 726) of the Civil Code; repeals Part 2, Division 11 (Sections 21200 et seq.) of the Probate Code; adopts a new Part 2, Division 11 (Sections 21200-21204) of the Probate Code
Elective Administration of Decedents' Estates (T&E-2011-10) Would permit eligible beneficiaries in certain narrow circumstances to choose between “Elective Administration” and formal administration of a decedent’s estate.	Trusts & Estates Section	Adds a new Article 10 to Chapter 4 of Part 2 of Division 7 (sections 8600 to 8623) of the Probate Code, amends the Independent Administration of Estates Act, Part 6 of Division 7 (sections 10400 to 10592) of the Probate Code
Revised Probate Code Section 16350 (Uniform Principal and Interest Act) (T&E-2011-11) Would bring greater clarity and fairness to the categorization of amounts received from business entities as between principal and income.	Trusts & Estates Section	Amends § 16350 of the Probate Code

These proposals have been circulated for comment to the State Bar Sections, State Bar Standing Committees, and other interested parties, including key legislative staff, Judicial Council staff, and advocacy groups. In addition, we have reached out specifically to certain parties with a known interest in the issues addressed by these legislative proposals in order to obtain their input. As of the date of this agenda item, we are still in the process of obtaining comments and input from these interested parties.

FISCAL/STAFF IMPACT

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

BOARD BOOK IMPACT

None

RULE AMENDMENT IMPACT

None

RECOMMENDATION

The Office of Governmental affairs has reviewed the legislative proposals and proposes, subject to any further input received from interested parties, 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 2011 Section 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 2011 Section Legislative Program: BLS-2011-01, BLS-2011-02, BLS-2011-03, BLS-2011-04, BLS-2011-05 (as modified, without the proposed amendment to Code of Civil Procedure § 708.510), BLS-2011-06, T&E-2011-07, T&E-2011-08, T&E-2011-09, T&E-2011-10, T&E-2011-11.

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 2011 Section Legislative Program: BLS-2011-01, BLS-2011-02, BLS-2011-03, BLS-2011-04, BLS-2011-05 (as modified, without the proposed amendment to Code of Civil Procedure § 708.510), BLS-2011-06, T&E-2011-07, T&E-2011-08, T&E-2011-09, T&E-2011-10, T&E-2011-11.