



ENGROSSMENT*

Looking Forward To a Successful 2011

There are many reasons for all of us at LIS to be grateful during this particular Holiday Season, but most of all, we are grateful for our clients, both continuing and new, as the economy moves toward financial recovery. We are hopeful that all of our clients experience positive improvements during the coming New Year.

Sustainable Business Certification

Legislative Intent Service, Inc. recently learned that it was added to “LinkedIn Open Groups” as a certified **Sacramento Area Sustainable Business**. Our employees will be able to show this certification on their LinkedIn.com profile. The Sustainable Business Program, operated by the Business Environmental Resource Center at McClellan, California, is a free service available to all Sacramento region businesses and organizations. It encourages businesses to conserve resources, prevent pollution, implement green building practices, use energy efficiently, and reduce water consumption.

LIS has successfully moved toward an almost exclusive electronic research methodology: from our research at the Capitol offices and libraries, to the writing and electronic production in the office, to our final transmission in pdf format to our clients – we have cut significantly our dependence on paper at a great savings in cost and time for our clients.

2010 California Legislation Wrap-up

We recently published our firm’s *Compendium of 2010 Notable California Legislation*, located at: <http://www.legintent.com/legislation/legislation2010.pdf>

Our Compendium is not exhaustive, but it does reflect some of the major bills that were reported on in California’s newspapers and supported by some of California’s more established state-wide interested groups, such as the League of California Cities, the California Teachers Association, California Manufacturers and Technology, the Consumer Attorneys of California, and the California State Bar sections on agribusiness, antitrust and unfair competition, business law, environmental law, patent law, and workers compensation, just to name a few of the sections promoting and tracking interested legislation this year.

Let’s Do the Math

For the **2010 Regular Legislative Session**, there were **1,495 bills introduced in the Senate** and **2,799 bills introduced in the Assembly**. That is a combined total of **4,294 bills** that were considered by the Legislature, which is lower than previous legislative sessions. This figure *does not include* extraordinary legislative sessions, and bills relating to constitutional amendments or joint resolutions.

Most of these 4,294 bills did not make it past their policy committees. Based on approximately **1,039 bills** that finally made it to the Governor, Governor Schwarzenegger has **signed approximately 743 bills** and **vetoed 296 bills**.

We found it interesting at our office that we were asked to research twice as many 2010 bills during the 2010 year than we were asked for 2009 bills during year 2009. I think this means one or both of two things: either the economy is improving so more dollars are freed up for research or the 2010 bills were just more interesting and controversial.

Not all enacted legislation is very exciting or controversial – many bills in 2010 merely sought to clean up language, bring up to date renumbered code or regulation citations, or accomplish other

“housekeeping” tasks that would be considered merely technical and nonsubstantive.

But bills in 2010 may have been *interesting* for any number of reasons. ***Such as:***

1) the subject matter generated a **strong response** from supporters and opposition; or
2) **the bill clarified** language to neutralize misconceptions being addressed in lawsuits and court opinions; or
3) **new laws were enacted to solve new issues or problems** – such as medical marijuana or expanding on social host liability for serving alcohol to minors, or other laws you see set out in our Compendium.

Below are five such interesting 2010 bills that drew the attention of our clients. We will briefly set out the “**what**” “**who**” and “**why**” for each bill. Call us if you wish to discuss research for these or any other 2010 bills.

AB 2650 of 2010

What: This bill added section 11362.768 to the Health and Safety Code relating to medical marijuana. The bill *prohibits any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana from being located within 600 feet of a school, public or private, K-12.*

Who: The bill was originally introduced on February 19, 2010 to address medical treatment for inmates, but on **April 8th**, Assembly member Joan Buchanan took over as author of the bill and the subject matter was gutted and amended to address medical marijuana. Supporters of the bill included the Association of California School Administrators, California Police Chiefs Association and the California State PTA. The Drug Policy Alliance opposed the legislation because it would “pre-empt local medical marijuana ordinances already in place statewide.” The League of California Cities expressed similar concerns.

Why: According to Assembly member Buchanan, *“January 2010, the Los Angeles City Council passed an ordinance to regulate the collective cultivation of medical marijuana in order to ensure the health, safety and welfare of the residents of the City of Los Angeles. Several cities in our district, including Danville, Walnut Creek and Isleton, have recently passed ordinances to move, restrict or ban marijuana*

dispensaries in within their city limits. . . . Currently, there is no guidance as the most appropriate locations for these dispensaries to open. As Medical Marijuana Dispensaries continue to open throughout the state, they are increasingly located near schools and parks, public libraries and child care facilities. To keep these Dispensaries from further encroaching near places where children and families congregate, Buchanan believed we need to keep them a measured distance from these locations.”

AB 2244 of 2010

What: Amended and added Insurance Code statutes relating to health care coverage for children with preexisting conditions. *This bill prohibits the exclusion or limitation of coverage for children due to any preexisting condition, except as specified. The bill requires plans and insurers offering coverage in the individual market to offer coverage for a child subject to specified requirements. The bill prescribes its limits on the rates that may be imposed for coverage of a child depending on, among other things, whether the child applies for coverage during an open enrollment period, as defined, or is a late enrollee as defined, and would, effective January 1, 2014, require plans and insurers to apply standard risk rates to the child coverage, except as specified. The bill prohibits a plan or carrier that does not or ceases to write new plan contracts or policies for children from offering new individual plan contracts or policies in this state for five years. The bill authorizes the Department of Managed Health Care and the Department of Insurance to issue guidance for purposes of implementing these provisions.*

Who: Introduced on **February 18, 2001** by Assembly member Mike Feuer on behalf of Health Access California (HAC). The bill was supported also by AARP, the American Federation of State, County and Municipal Employees, the California School Employees Association, the Congress of California Seniors, the Consumers Union, and the 100% Campaign. Those who opposed were Anthem Blue Cross, the Association of California Life & Health Insurance Companies, the California Association of Health Plans.

Why: According to the **author**, the newly enacted federal **Patient Protection and Affordable Care Act** prohibits use of pre-existing condition exclusions for children in the individual market. Assembly member Feuer maintains there was a dispute

between insurers and the federal government about whether the new federal law requires guaranteed issue and this bill would clarify that for California. He stated that the new federal law also does not specifically address rating rules in the individual market prior to 2014 or prohibit insurers from refusing to sell to entire market segments. A/M Feuer maintains that this bill will align California law with the federal health care reform law and will ensure that children cannot be denied health insurance coverage or be charged more because of a pre-existing condition. The **sponsor** (HAC) argues that not all families with children who are eligible for Medi-Cal and Healthy Families can afford premiums for private insurance, but that a greater number could afford it if premiums for private insurance were no longer increased due to health conditions, and that this could produce state savings to the General Fund in the tens or hundreds of millions of dollars from reduced enrollment in Healthy Families and Medi-Cal.

SB 949 of 2010

What: SB 949 amended Vehicle Code sections 21 and 21100 relating to local authority and assessing penalties. *This bill clarifies that the provisions of the California Vehicle Code are applicable throughout the state, and that local authorities may not enact or enforce an ordinance or resolution related to matters covered in the state Vehicle Code, including ordinances or resolutions that establish regulations or procedures for, or assess a fine, penalty, assessment, or fee for a violation of the Vehicle Code, unless expressly authorized to do so.*

Who: Introduced on February 4, 2010 by the late Senator Jenny Oropeza. SB 949 was supported by the Automobile Club of Southern California, the California State Automobile Association, the Cheap School (Traffic School), the Great Comedians Traffic School, and the Traffic Safety Consultants, Inc. The bill was opposed by the League of California Cities, the Urban Counties Caucus, Alameda County, and the cities of Costa Mesa, Fremont, Los Angeles, and Red Bluff.

Why: Several local governments, including the county of Alameda and the cities of Marysville, Roseville, Riverbank, and Newman, have elected to make it their official policy to ignore certain moving violations and penalties in the state Vehicle Code and punish these offenses under their own local ordinances. **Legislative Counsel** has opined that such actions by

local governments are illegal. The **Los Angeles Police Department**, the largest local law enforcement entity in the state, has reached a similar conclusion, finding such actions by local governments to be in violation of the California Constitution. With this understanding, Senator Oropeza considered this bill to be a technical cleanup measure to remove any misunderstanding local governments may have regarding their authority under state law.

AB 2486 of 2010

What: Only amended **Civil Code § 1714** relating to social host liability. *This bill provides that provisions of law concerning social hosts who serve alcohol would not preclude a claim against a parent, guardian, or other adult to be held liable if he or she knowingly furnishes alcoholic beverages at his or her residence to a person under 21 years of age, in which case the furnishing of alcoholic beverage may be found to be the proximate cause of resulting injuries or death.*

Who: Introduced on February 19, 2010 by Assembly member Mike Feuer, chair of the Assembly Committee on Judiciary, at the request of the Consumer Attorneys of California ["CAOC"] and Mothers Against Drunk Driving ["MADD"]. This bill was also supported by the Board of Supervisors of Santa Clara County

Why: Co-sponsor **Mothers Against Drunk Driving (MADD)** argued that "Alcohol plus youth is a deadly combination, killing 6.5 times more youth than all other drugs combined. Holding social hosts accountable under civil law, for serving alcohol to minors, is intended to change conduct and prevent tragic circumstances. MADD . . . sees AB 2486 as an opportunity to bring California law into compliance with the majority of other states and more importantly save lives." The other co-sponsor, **Consumer Attorneys of California (CAOC)**, noted that existing law's grant of immunity to social hosts "means that no matter what the circumstances and even if an adult knowingly provides alcohol to a minor, there is absolutely no accountability in a civil case." CAOC pointed out that under AB 2486: "[the parent, guardian, or other adult] is not automatically liable for the injuries or deaths to the minor or any third party. AB 2486 simply removes an absolute legal impediment for the family to proceed. And, AB 2486 is extremely limited as it only applies to social hosts who knowingly provide alcohol to minors. Thus, the family of the

injured or killed would still need to prove in court all of the elements of negligence: a duty of care existed, a breach of that duty occurred, causation, and damages. Negligence, as a basis for social host liability, is not automatic. Each element must be proven in order to give rise to social host liability.

SB 1411 of 2010

What: Added § 528.5 to the Penal Code relating to impersonation on the internet. *Creates a new misdemeanor for when a person knowingly and without consent credibly impersonates another actual person on the Internet, or other electronic means in order to harm, intimidate, threaten, or defraud another person. This bill also provides that an aggrieved party may bring a civil action against the violator for compensatory damages and injunctive relief or equitable relief.*

Who: Senator Joe Simitian of Palo Alto introduced this bill on February 19, 2010. This bill was supported by the Privacy Rights Clearinghouse, California Peace Officers' Association, the California State Sheriffs' Association, and the Crime Victims United of California.

Why: Looking at specific past misdeeds, the author related the following examples:

- 1) "Someone on Twitter impersonated St. Louis Cardinals manager Tony LaRussa and made him appear to mock the deaths of two Cardinal players.
- 2) A sports reporter in Texas pretended to be two locally prominent college football players and sent obscene messages to underage girls.
- 3) A 40-year-old woman harassed the 17-year-old daughter of her ex-husband's girlfriend by posting the daughter's photo, workplace, e-mail and cell phone on a Craigslist forum where people go to pursue sexual encounters. The 17-year-old subsequently received lewd calls, e-mails and even photos soliciting sexual acts, causing much emotional distress to the young girl. (This occurred in St. Peters, Missouri after the Lori Drew case and after Missouri had enacted laws against impersonation done through the Internet).
- 4) A mother creates a Facebook page claiming to be a young man and develops a 'cyber' relationship with one of her daughter's peers, a 13-year-old girl who at the time was engaged in a quarrel with her daughter. After weeks of

friendly messaging back and forth the mother, in the guise of this young man, tells the girl that 'the world would be a better place without you.' The 13-year-old girl then committed suicide by hanging herself. (This is the famous Lori Drew case, also occurring in Missouri. The author noted that "*Our bill makes it clear that one has to impersonate an actual person to be a crime, so it wouldn't have applied in this instance. However, a similar scenario can easily be imagined where an actual person is impersonated, resulting in the same tragic ending.*")

According to the author, the above-cited examples "*are real crimes that have to be addressed, and our current statutes do not do so in a thorough enough manner. It is imperative that we specifically address false impersonation done on an Internet Web site or through other electronic means in order to prevent instances like these from repeating themselves.*" Senator Simitian stated further that: "*SB 1411 will address these issues by making it unlawful to knowingly and without consent credibly impersonate another person through or on an Internet Web site or by other electronic means with the intent to harm, intimidate, threaten or defraud another person. An impersonation is credible where another person would reasonably believe, or did reasonably believe, that the defendant was or is the person who was impersonated.*"

Next year, with Governor-elect Brown on board and Governor Schwarzenegger having called for a special session to address the new projected budget deficit on December 6, 2010, when the new Legislature was sworn in, the 2011 Legislative Session may turn out to be even more interesting – let's hope its success is because of good legislative problem solving skills!

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