LEGISLATIVE HISTORY AND INTENT
AS EXTRINSIC AIDES TO STATUTORY CONSTRUCTION

2009 SUPPLEMENT

Legislative Intent Service, Inc. publishes annually an update to its seminal
works a) Legislative History and Intent as Extrinsic Aides to Statutory
Construction, Unabridged; and b) Authority and Procedure for Judicial
Consideration of Legislative History and Intent, Unabridged. Taken together with
the annual supplements as of 2009, these Points and Authorities will set forth
more than 950 California cases utilizing legislative history documents as
extrinsic aides to statutory construction.

This document supplements 2007-2008 cases Legislative History and
Intent as Extrinsic Aides to Statutory Construction. The outline of subjects here
is the same as in the unabridged edition. It presents cases organized by the
types of legislative history documents generated by the California
Legislature. For example, if you care to see the Court cases citing to a
Legislative Counsel's Digest, you would turn to that document type in these
points and authorities. For a complete understanding of the subject, this
supplement must be considered with its unabridged edition.

These Points and Authorities, as well as the unabridged edition are
available online at www.legintent.com/capa.php.

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A. Pre-Enactment History: The Background Circumstances and Events

1. The Problem to be Solved


2. Based on Federal, State, Uniform or Model Act

   Legislative History Claim
   ... Defendants argue that the legislative history of the Labor Code Private Attorneys General Act of 2004 reveals a legislative intent that any lawsuit under the act be brought as a class action. Defendants point to statements in certain committee reports that an employer need not be concerned about future lawsuits that assert the same issues because “an action on behalf of other aggrieved employees would be final as to those plaintiffs...” (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 796 (2003-2004 Reg. Sess.) as amended Apr. 22, 2003, p.8; see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 796 (2003-2004 Reg. Sess.) as amended May 12, 2003, p.6 [“Because there is no provision in the bill allowing for private prosecution on behalf of the general public, there is no issue regarding the lack of finality of judgments against employers, as there has been with respect to private [unfair competition law] actions.”]). ... Arguing that, as to aggrieved employees other than those named as parties, a judgment would be final only if the action were brought as a class
action, defendants contend the statements in question show a legislative intent to apply class action procedures to actions brought under the Labor Code Private Attorneys General Act of 2004. We are not persuaded.

The above quoted comments from the committee reports were simply responses to a concern expressed by those opposing the proposed legislation that the proposed legislation would allow employees to sue as a class without satisfying class action requirements. Because the committee report comments do not refer to class actions, they are insufficient to support the conclusion that the Legislature intended to impose class action requirements on representative actions brought under the Labor Code Private Attorneys General Act of 2004. Arias v. Superior Court (2009) 46 Cal.4th 969, 209 P.3d 923 (2009)

III. Legislative History
We also find compelling evidence of legislative intent in the legislative history of the 1992 amendment, Assembly Bill No. 1077 (1991-1992 Reg. Sess.). As noted, Assembly members were told that by adding subdivision (f) to section 51 the bill would “[m]ake a violation of the ADA a violation of the Unruh Act. Thereby providing persons injured by a violation of the ADA with the remedies provided by the Unruh Act (e.g., right of private action for damages).” (Assem. Judiciary Rep. on Assem. Bill No. 1077, supra, at p.2, italics added.) Senators were told “this bill would make a violation of the ADA a violation of the Unruh Act. Thereby providing persons injured by a violation of the ADA with the remedies provided by the Unruh Act (e.g., right of private action for damages ...).” (Sen. Judiciary Rep. on Assem. Bill No. 1077, supra, at p.5, italics added.)

The ADA, as explained above, permits a disabled individual denied access to public accommodations to recover damages in a government enforcement action only, not through a private action by the aggrieved person. But by incorporating the ADA into the Unruh Civil Rights Act, California’s own civil rights law covering public accommodations, which does provide for such a private damages action, the Legislature has afforded this remedy to persons injured by a violation of the ADA. The legislative history shows the Legislature contemplated and intended this effect, for, as both the legislative committee reports quoted above state, one purpose of the legislation was to “provid[e] persons injured by a violation of the ADA with the remedies provided by the Unruh Act,” including a “right of private action for damages.” Contrary to the Gunther court’s reading, therefore, the evidence is clear that the 1992 law was intended not only to prohibit ADA violations under section 51, but when such violations occur to provide a damages remedy under section 52. ...

... Although Gunther discusses the legislative history of Assembly Bill No. 1077 (1991-1992 Reg. Sess.) at length, citing among other sources these reports of the two houses' judiciary committees (Gunther, supra, 144 Cal.App.4th at pp. 244-249, 50 Cal.Rptr.3d 317), the decision, inexplicably, fails to address the directly pertinent passages quoted above.

The legislative history, true, does not explicitly mention ADA violations that do not involve intentional discrimination. But neither does it mention those that do. Rather, like the language of the amendment itself, it demonstrates an intent to incorporate ADA
accessibility standards comprehensively into the Unruh Civil Rights Act and thus to provide a damages remedy for any violation of the ADA's mandate of equal access to public accommodations. That broad remedial intent covers the particular circumstance before us.

Any doubt remaining after examination of the language, context, and history of section 51, subdivision (f) would be resolved by the principle that the Unruh Civil Rights Act "must be construed liberally in order to carry out its purpose," which is to "create and preserve a nondiscriminatory environment in California business establishments." (Angelucci v. Century Supper Club, supra, 41 Cal.4th at p.167, 59 Cal.Rptr.3d 142, 158 P.3d 718.) The Legislature having decided, in the 1992 amendment, to pursue the Unruh Civil Rights Act's goal of equality by incorporating ADA accessibility law into California's own law, in the absence of contrary legislative direction we may not choose a restrictive reading of that amendment over a reasonable reading that gives full effect to the law's guarantees. Munson v. Del Taco, Inc. (2009) 46 Cal.4th 661, 208 P.3d 623 (2009)


3. Prior Law Presumption

The 2002 Amendment to the Ellis Act Indicates That the Legislature Did Not Impliedly Repeal Government Code Section 7060.2, Subdivision (d)


Because this appeal arises from a judgment of dismissal following the sustaining of a demurrer without leave to amend, we give the complaint a reasonable interpretation, and treat the demurrer as admitting all material facts properly pleaded. (Doe v. City of Los Angeles (2007) 42 Cal.4th 531, 543, 67 Cal.Rptr.3d 330, 169 P.3d 559.) "We apply well-established principles of statutory construction in seeking 'to determine the Legislature's intent in enacting the statute 'so that we may adopt the construction that best effectuates the purpose of the law.'" (Shirk v. Vista Unified School Dist. (2007) 42 Cal.4th 201, 211, 64 Cal.Rptr.3d 210, 164 P.3d 630 (Shirk).) The statutory language is generally the most reliable indicator of legislative intent. However, if the statutory language may reasonably be given more than one interpretation, courts may
consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, ... public policy, and the statutory scheme encompassing the statute. (Ibid.) ... Plaintiff requests that we take judicial notice of legislative history materials regarding Assembly Bill No. 2846, which amended section 340.1 in 1994. Amicus for plaintiff requests that we take judicial notice of legislative materials relevant to Assembly Bill No. 1651, which amended the statute in 1998, and Senate Bill No. 1779, which amended the statute in 2002. We grant both requests. (See Doe v. City of Los Angeles, supra, 42 Cal.4th at p. 544, fn.4, 67 Cal.Rptr.3d 330, 169 P.3d 559.)


B. Enactment History: The Legislative Process

1. Different Versions of the Bill

The Legislature's concern in passing Assembly Bill No. 711, codified as Financial Code section 864, was that bank accounts were "often [being] wiped out by the banks' taking their [customers'] assets to pay outstanding credit card balances owed. The customer deserves to have some protection from this practice." (Sen. Democratic Caucus, analysis of Assem. Bill No. 711 (1975-1976 Reg. Sess.) as amended June 5, 1975.) The bill proposed to "solve [ ] the problem of the hostage bank account by denying a bank an equitable right of setoff with respect to funds of a customer held in a deposit account and by requiring banks to invoke orthodox judicial proceedings to attach bank deposits." (Assem. Com. on Finance, Insurance and Commerce, Analysis of Assem. Bill No. 711 (1975-1976 Reg. Sess.) as amended Apr. 16, 1975, p.2.)

Indeed, the Governor was advised to sign the bill, in a document acknowledging that it was a "small step in [the] right direction." (Dept. Consumer Affairs, Enrolled Bill Rep. on Assem. Bill No. 711 (1975-1976 Reg. Sess.) Sept. 11, 1975, p.1.) Financial Code section 864 was enacted to prohibit a bank from using setoff as "nothing more than a form of nonstatutory, nonjudicial prejudgment attachment applied on a continuing basis to what may be considered a 'necessity of life,' without even the minimal protection of subsequent adjudication. Seizure of funds in deposit accounts should be limited. Consumers should, at a minimum, be provided notice and a chance to contest such seizure." (Id. at p.2.)

Protecting consumers, including public benefit recipients, from unfair or unlawful setoff does not mean, as plaintiffs suggest, that banks must be prohibited from recouping overdrafts and charging NSF fees under Financial Code section 864. Plaintiffs criticize the Court of Appeal's conclusion that excluding overdrafts and bank charges from the statute's definition of debt "signals the Legislature's view that internal account balancing is different from the practice of setting off separate debt against a deposit account" as "illogical and unsupported by any evidence of legislative intent." However, the plain language and the history of the statute compel a contrary conclusion.

The bill was twice amended in 1975 before the definition of debt currently found in the statute was added to the proposed language. (Assem. Bill No. 711 (1975-1976 Reg. Sess.) as amended May 29, 1975.) In April 1975, when the amendment containing the current
definition of debt was proposed, the bill was opposed by the California Bankers' Association and the California Credit Union League. (Assem. Com. on Finance, Insurance and Commerce, Analysis of Assem. Bill No. 711 (1975-1976 Reg. Sess.) as amended Apr. 16, 1975, p.3.) However, by September 11, 1975, the bill had “no opposition as the sponsor, author, and financial institutions have worked closely together.” (Dept. Consumer Affairs, Enrolled Bill Rep. on Assem. Bill No. 711 (1975-1976 Reg. Sess.) Sept. 11, 1975, p.1.) It is reasonable to conclude that the former opponents of the bill successfully sought to amend the language to exclude internal account balancing from the statute's reach, particularly in light of the documents suggesting that financial institutions “worked closely” with the bill's authors and sponsors. In any event, while the materials do not reveal precisely why, or at the behest of whom, the definition of debt was amended to exclude overdrafts and bank charges, it is clear from the statutory language that the Legislature intended to treat charges for overdrafts and NSF fees differently from the setoff of independent debt by limiting a bank's ability to engage in the latter while expressly permitting the former. Miller v. Bank of America (2009) 46 Cal.4th 630, 207 P.3d 531 (2009)

The legislative history of section 638 confirms that the Legislature meant to empower the trial court with discretionary authority to refuse enforcement of a reference agreement. While the statutory language is clear in expressing this Legislative intent, we may also “look to legislative history to confirm our plain-meaning construction of statutory language.” (Hughes v. Pair (2009) 46 Cal.4th 1035, 1046, 95 Cal.Rptr.3d 636, 209 P.3d 963.) Here, legislative intent on this point is unmistakable.

Prior to 1982, section 638 authorized a court to order trial by referee upon the present agreement of parties to pending litigation. (Legis. Counsel's Dig., Assem. Bill No. 3657 (1982 Sess.) Summary Dig., p. 152.) Section 638 was amended in 1982 to authorize a court to order trial by referee upon a predispute reference agreement when one of the parties moved to enforce the agreement. (Ibid.; Stats.1982, ch. 440, p.1810.) The State Bar of California sponsored the bill to amend section 638 and urged its adoption, arguing “that this bill is needed because there is no present procedure for compelling a reference if one party unilaterally decides not to abide by a prior agreement that any dispute may be submitted to a referee.” (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 3657 (1982 Sess.) April 28, 1982, p.1.) The bill's sponsor argued that “court congestion” makes reference an “attractive remedy.” (Ibid.)

... Importantly, the bill as originally introduced required the court to enforce predispute reference agreements and was amended to give the court discretion to decide whether to enforce such agreements. The original version of the bill contained a separate paragraph on predispute reference agreements, stating: “Parties to a written contract or lease may provide that any controversy arising therefrom will be heard by a reference and any party to such an agreement may move the court to compel the reference. If the court finds a reference agreement existing between the parties, the reference shall be ordered.” (Assem. Bill No. 3657 (1982 Sess.) March 18, 1982, italics added.) An Assembly committee report noted that then-existing law provided that a court “may” order a reference upon agreement of the parties and that the proposed bill “would require a
court to compel a reference if there is a pre-dispute agreement to refer.” (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 3657 (1982 Sess.) April 28, 1982, p.1.) Committee staff commented: “Should not the court have the discretion to decide that, despite the existence of the pre-dispute agreement, the issues would be more properly or efficiently decided by the judge? Therefore, should not this bill simply create a presumption that a court should compel a reference when parties have contractually agreed to one, thereby permitting the court to determine that such a reference would be inappropriate?” (Id. at pp. 1-2.) The legislators embraced this recommendation. The bill was amended to delete the mandatory language of the bill as originally introduced, and to use permissive language. (Assem. Amend. to Assem. Bill No. 3657 (1982 Sess.) May 10, 1982.) The amendment deleted the separate paragraph (quoted above) relating to predispute reference agreements and incorporated predispute agreements into the existing discretionary provision governing postdispute reference agreements. (Ibid.) Section 638 was thus amended to read as it does now, in substantial form: “A reference may be ordered upon the agreement of the parties filed with the clerk, or judge, or entered in the minutes or in the docket, or upon the motion of a party to a written contract or lease which provides that any controversy arising therefrom shall be heard by a reference if the court finds a reference agreement exists between the parties.” (Assem. Amend. to Assem. Bill No. 3657 (1982 Sess.) May 10, 1982, original italics.) The legislative history thus confirms that the Legislature specifically intended to vest courts with discretion to deny predispute reference agreements, just as the court has discretion to deny postdispute reference agreements. Tarrant Bell Property, LLC v. Superior Court (2009, 1st District) 179 Cal.App.4th 1283, 102 Cal.Rptr.3d 235 (2009)

Wunderlich v. County of Santa Cruz (2009, 6th District) 178 Cal.App.4th 680, 100 Cal.Rptr.3d 598 (2009)

2. Committee Reports and Analyses

Unless rescinded or set aside, a voluntary declaration of paternity signed by adult parents on or after January 1, 1997, is treated as a judgment. Under section 7573 (enacted in 1996), such a declaration “filed with the Department of Child Support Services shall establish the paternity of a child and shall have the same force and effect as a judgment for paternity issued by a court of competent jurisdiction.” The declaration must also “be recognized as a basis for the establishment of an order for child custody, visitation, or child support.” (§ 7573.) The legislative intent behind section 7573 was to eliminate the “need to file a separate court action for [the] purpose” of giving a declaration the force and effect of a judgment of paternity. (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1832 (1995-1996 Reg. Sess.) as amended June 18, 1996, pp.19-20.) Kevin Q. v. Lauren W. (2009, 4th District) 175 Cal.App.4th 1119, 95 Cal.Rptr.3d 477 (2009)

Section 882.020 as Amended Effective 2007

... Although we need not reach defendants' arguments concerning the retroactivity of the 2007 amendment to section 882.020, we take
note that the amendment was at a minimum a legislative clarification confirming the meaning we have assigned to section 882.020. “Although an expression of legislative intent in a later enactment is not binding upon a court in its construction of an earlier enacted statute, it is a factor that may be considered. [Citations.]” (Cummins, Inc. v. Superior Court (2005) 36 Cal.4th 478, 492, 30 Cal.Rptr.3d 823, 115 P.3d 98.)

... The amendment confirms that a notice of default is not part of the record from which the loan's maturity date can be ascertained for purposes of section 882.020. As mentioned, the amendment revised the phrase “ascertainable from the record” to read “ascertainable from the recorded evidence of indebtedness.” An evidence of indebtedness is a security, such as a deed of trust. (See Corp.Code, § 25019.) A notice of default is not a security or evidence of indebtedness. It is an allegation of the existence of a debt, and thus cannot be an evidence of indebtedness for purposes of section 882.020.

The amendment's legislative history also indicates the amendment was adopted to codify the holding of Ung and clarify that notices of default were not part of the record. According to legislative committee reports, the amendment was intended “to provide certainty as to the expiration date of the lien, preventing subsequent items from becoming part of the 'record,' that would alter the expiration date of the lien. Essentially, this codifies a recent Court of Appeal case that stated that 'once the beneficiary of a deed of trust has become entitled to claim the 60-year time limit ..., the beneficiary does not lose that entitlement merely by filing a notice of default that specifies the 'final maturity date' of the underlying debt.' [Ung v. Koehler (2005) 135 Cal.App.4th 186, 190-191, 37 Cal.Rptr.3d 311.” (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2624 (2005-2006 Reg. Sess.) June 27, 2006, p.12.)

... More specifically, the Legislature sought to ensure that the filing of a notice of default would not trigger the 10-year statute: "AB 2624 replaces the word 'record' with 'recorded evidence of indebtedness' which is synonymous with deed of trust so that the filing of a notice of default will not impact the statute of limitations on liens placed on a property with a mortgage." (Assem. Com. on Housing and Community Development, Rep. on Assem. Bill No. 2624 (2005-2006 Reg. Sess.) Apr. 26, 2006, pp.5-6.)

... Counsel for plaintiffs referred to these legislative committee reports in its opening brief but without requesting we take judicial notice of them. We treat the reference as a request for judicial notice and grant it. (Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc. (2005) 133 Cal.App.4th 26, 30-32, 34 Cal.Rptr.3d 520.) Schmidli v. Pearce (2009, 3rd District) 178 Cal.App.4th 305, fn.5, 100 Cal.Rptr.3d 343 (2009)

Uncodified section 1 of Assembly Bill No. 2292 (2005-2006 Reg. Sess.) declares the addition of subdivision (h) is intended “to clarify existing statutory requirements governing the payment of death benefits to the survivors of deceased employees under the workers' compensation system when the employee suffered a fatal injury.” (Stats.2006, ch. 119, § 1.) The April 5, 2006 report by the Assembly Committee on Insurance on Assembly Bill No. 2292 explained the sponsor of the legislation, the California Professional Firefighters, citing several instances in which the DWD Unit had made
claims for statutory death benefits even though the employer had paid the deceased employee's estate under section 4702, subdivision (a)(6)(B), proposed the bill “to clear up the confusion in this area.” (Assem. Com. on Insurance, Rep. on Assem. Bill No. 2292 (2005-2006 Reg. Sess.), p.3.) As stated in the committee report, “This bill clarifies that it is the intent of the Legislature that when an heir of a deceased employee is found, the state has no standing to claim workers' compensation benefits under the death without dependents provisions of the code.” (Id. at p. 2; see also Sen. Com. on Labor and Industrial Relations, Rep. on Assem. Bill No. 2292, as amended April 27, 2006, p.2 [same].)

Particularly since this declared intent is supported by the history of the 1972 constitutional amendment authorizing the enactment of section 4706.5, as well as by the absence of any indication the Legislature intended to require the award of two death benefits for a single death when it added section 4702, subdivision (a)(6), we conclude section 4706.5, subdivision (h) did, in fact, simply clarify existing law, rather than create a new exception to the DWD Unit's statutory right to claim a death benefit. City of Los Angeles v. Workers' Comp. Appeals Bd. (2009, 2nd District) 179 Cal.App.4th 134, 101 Cal.Rptr.3d 513 (2009)


That the unusually dangerous nature of assault weapons was the motivation behind the Assault Weapons Control Act was underscored by Attorney General John Van de Kamp, who testified before the Committee of the Whole: "Increasingly, the weapons of choice for this madness,' he noted, were 'semi-automatic military assault rifles.' In Los Angeles, he said, it had 'become fashionable among hard-core members of the Crips Gang to spray a stream of bullets in hopes of taking down one rival gang member, but infants and grandmothers may be killed as well. They say that the young killers even have a phrase
for it. They say, “I spray the babies to [the] eighties.” [Citation.]” (Kasler, supra, 23 Cal.4th at p. 484, 97 Cal.Rptr.2d 334, 2 P.3d 581, citing 1 Assem. J. (1989-1990 Reg. Sess.) p.438.) A vivid illustration of the Attorney General's observation was provided by Lieutenant Bruce Hagerty of the Los Angeles Police Department: “Probably the most graphic example, for me, was on Good Friday of last year, where a rival gang entered a neighborhood in South Central Los Angeles and sprayed a crowd of forty to fifty people with an AR-15, and that's an American assault rifle, shooting 14 people, killing a 19 year old boy, hitting a five year old little girl, and a 65 year old man, and all ages in between. I was the field commander of that situation, and I'm here to tell you that that was, in every sense of the word, a war scene.... There were bodies everywhere and people were terrified, and the only reason that this gang did that was to terrorize the neighborhood because they wanted to take it over and be able to sell drugs in that neighborhood, and the military assault rifle is the vehicle that they used. [¶] ... I'm here to tell you that there's only one reason that they use these weapons, and that is to kill people. They are weapons of war.’ [Citation.]” (Kasler, supra, 23 Cal.4th at p. 486, 97 Cal.Rptr.2d 334, 2 P.3d 581, citing 1 Assem. J. (1989-1990 Reg. Sess.) p.450.)

The Kasler court concluded its review of the legislative history by noting that when Governor Deukmejian signed the Assault Weapons Control Act into law on May 24, 1989, the Governor explained: “‘It's well known that some drug dealers and violent gang members are using assault-type weapons.... In the face of such firepower, our state's courageous law enforcement officers need all the help that we can give them as they seek to preserve our public safety.’” (Kasler, supra, 23 Cal.4th at pp. 486-487, 97 Cal.Rptr.2d 334, 2 P.3d 581.) Accordingly, in enacting the Assault Weapons Control Act, the Legislature sought to address “the grave threat to public safety posed by the possession and use of assault weapons by criminals....” (Id. at p. 487, 97 Cal.Rptr.2d 334, 2 P.3d 581.)

A review of the legislative history of the .50 Caliber BMG Regulation Act of 2004 reveals that the Legislature was not only concerned by the threat to public safety posed by the prospect of .50 caliber BMG rifles being used by criminals, but also by the threat to national security posed by the prospect of these weapons falling into the hands of terrorist organizations.

As expressed by the author of the bill: "[.50 caliber BMG] sniper rifles and .50 [caliber] BMG ammunition are armaments designed for military applications involving the destruction of infrastructure and anti-personnel purposes. The military uses these weapons to destroy concrete structures, including bunkers, light armored vehicles, and stationary tactical targets such as fuel storage facilities, aircraft, communications structures and energy transfer stations .... [¶] [.50 caliber BMG] weapons and their ammunition have increasingly been manufactured and marketed to civilians over the past several years. There is increasing evidence of these weapons falling into the hands of political extremists and terrorists, and more recently drug and street gangs. The manufacturers of these weapons have been reducing the weight, enhancing portability and lowering the price to own these weapons, so there is currently an expanding proliferation of these war weapons. [¶] The facts indicate that [.50 caliber BMG] sniper weapons and .50 [caliber] BMG ammunition present a clear and present public health and safety

["According to the author, ‘‘[t]he fifty-caliber sniper rifle is one of the United States military’s highest-powered rifles, capable of ripping through armored limousines. It is said to be able to punch holes through military personnel carriers at a distance of 2,000 yards, the length of 20 football fields. It is deadly accurate at up to one mile and effective at more than four miles.’’

The Assembly Committee on Public Safety analysis of the bill contains the following: “The term ‘.50 BMG’ stands for Browning machine gun (one of the earliest firearms to use the ammunition) and is a technical designation for the round used in the weapon.... Manufacturers of the rifles claim that the rifle is accurate up to 2,000 yards and effective up to 7,500 yards.... The .50 caliber ammunition ... [is] capable of piercing through body armor. [¶] ... [¶] The Violence Policy Center has issued two reports on the .50 caliber sniper rifle. [Citations.] Both reports stated that the unregulated sale of military sniper rifles to civilians creates a danger to national security as the rifles have the ability to shoot down aircraft. [¶] The second report also states that at least 25 Barrett .50 caliber sniper rifles were sold to the Al Qaeda network. [Citations.]” (Assem. Com. on Public Safety, Analysis of Assem. Bill No. 50 (2003-2004 Reg. Sess.) Apr. 29, 2003, pp.7-9.)

The bill was supported by the Los Angeles County Sheriff’s Department, which argued in support of the legislation: “This weapon, which is readily available on the civilian market, can pierce armored vehicles and concrete structures from one mile away with pinpoint accuracy. In the hands of terrorists, .50 BMG sniper rifles pose a grave threat to airplanes, refineries or other potential targets.” (Assem. Com. on Public Safety, Analysis of Assem. Bill No. 50 (2003-2004 Reg. Sess.) Apr. 29, 2003, p.10.)

In sum, the Legislature enacted the Assault Weapons Control Act of 1989 and the .50 Caliber BMG Regulation Act of 2004 in order to ... address the proliferation and use of unusually dangerous weapons: assault weapons, with an incredibly “high rate of fire and capacity for firepower,” which can be used to indiscriminately “kill and injure human beings” (§ 12275.5, subd. (a)); and .50 caliber BMG rifles, which “have such a high capacity for long distance and highly destructive firepower that they pose an unacceptable risk to the death and serious injury of human beings, destruction or serious damage of vital public and private buildings, civilian, police and military vehicles, power generation and transmission facilities, petrochemical production and storage facilities, and transportation infrastructure” (§ 12275.5, subd. (b)). People v. James (2009, 3rd District) 174 Cal.App.4th 662, 94 Cal.Rptr.3d 576 (2009)

In addition, a review of the legislative history underlying this 2002 amendment to section 391.7 reveals the Legislature merely sought to draw attention to the availability of a vexatious litigant determination as a remedy for relatives who were legal guardians and were subjected to repeatedly and unfounded attempts by parents to challenge a legal guardian's decision making or even their continuing status as legal guardian. (Bill History of AB 1938, Stats. 2002, ch. 1118.)
"Under existing law, parties to family law and probate law proceedings, as well as the court, may already use the vexatious litigant statutes if they so desire. [¶] The intent of this bill, according to the author and the proponents, is to point the way to the vexatious litigant statutes to the parties engaged in these proceedings and to the court, as a tool to discourage repeated motions by parents to regain custody of their children when there are no changed circumstances to justify a different result.” (Sen. Com. on Judiciary Analysis of Assem. Bill No. 1938 (2001-2002 Reg. Sess.), p.6.) In re R.H. (2009, 5th District) 170 Cal.App.4th 678, 88 Cal.Rptr.3d 650 (2009)

... Cintas correctly asserts the testimony of former City Councilmember Jackie Goldberg, who served on the city council from 1993 to 2000, is not admissible to show the intended meaning of the statute. (Amaral, supra, 163 Cal.App.4th at p. 1187, 78 Cal.Rptr.3d 572; see also City of Los Angeles v. Superior Court (1985) 170 Cal.App.3d 744, 752, 216 Cal.Rptr. 311 (“By attempting to delve into the mind of the [ordinance’s] principal drafter, Friedman is trying to discover what the individual members of the City Council interpreted the [ordinance] to mean at the time they passed [it]. This violates one of the long-established rules of statutory construction: that the testimony of an individual legislator as to his intention, motive or opinion with regard to a particular piece of legislation is inadmissible.”); but see In re Marriage of Bouquet (1976) 16 Cal.3d 583, 589, 128 Cal.Rptr. 427, 546 P.2d 1371 [statement by the sponsoring legislator may be used to show legislative intent to the extent it “evidences the understanding of the Legislature” and not simply the particular legislator's personal views].) However, the exhibits Ms. Goldberg authenticates in her declaration, including memoranda from the city attorney to the city council concerning the draft ordinance, are properly considered. (See Southern California Gas Co. v. Public Utilities Com. (1979) 24 Cal.3d 653, 659, 156 Cal.Rptr. 733, 596 P.2d 1149 ["[s]tatements in legislative committee reports concerning the statutory objects and purposes which are in accord with a reasonable interpretation of the statute are legitimate aids in determining legislative intent"]; Pac. Bell v. Cal. State & Consumer Servs. Agency (1990) 225 Cal.App.3d 107, 116, 275 Cal.Rptr. 62 ["a legislative staff analysis of a measure may be relevant to ascertaining legislative intent when the analysis is consistent with a reasonable interpretation of the enactment"]). Aguiar v. Superior Court (2009, 2nd District) 170 Cal.App.4th 313, 87 Cal.Rptr.3d 813 (2009)


3. Committee Files


The Estate Planning, Trust and Probate Law Section of the California State Bar proposed what ultimately was enacted as section 17211 for the following reasons:

"Existing law provides that, in the context of a probate estate administration, if there is a challenge of a personal representative's account which is brought without reasonable cause and in bad faith, the court may award against the contestant the compensation and costs of the personal representative and other expenses and costs of litigation, including attorney's fees, incurred to defend the account. Similarly, if the personal representative defends a challenge to an account without reasonable cause and in bad faith, the court may award the expenses and costs to the challenger. (Probate Code Section 11003.) ... It is advisable to enact a counterpart to these provisions which would apply in settlement of a trustee's account. Without a specific statutory counterpart in the trust law, parties challenging or defending a trustee's accounts are governed by Civil Code Procedure Sections 128.5 et seq. which provide, generally, that a trial court may order a party or the party's attorney, or both to pay any reasonable expenses incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. Frivolous is defined as 'totally and completely without merit or for the sole purpose of harassing an opposing party.' The standards of CCP Sections 128.5 et seq. appear to be more narrow than those incorporated into Probate Code Section 11003. In the context of a challenge of a fiduciary's account, the broader standards of Section 11003 should be adopted and should apply whether the contest occurs during the administration of a probate estate or upon settlement of a trustee's account." (Cal. State Bar Estate Planning, Trust & Prob. Law Section, Legislative Proposal, Sen. Bill No. 392, p. 1, excerpted from Senate Com. on Judiciary legislative bill file.)

Bill Analysis Worksheets:

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

4. Official Commission Reports and Comments

The Law Revision Commission Comments to section 5303 state: “Subdivision (a) is the same as the first sentence of Section 6-105
of the Uniform Probate Code (1987).... [¶] Subdivision (b) is substituted for the remainder of the Uniform Probate Code section and is drawn from Georgia law. See Ga.Code Ann. § 7-1-814 (1989)...." Said Georgia statute provides in part: "Once established, the terms of a multiple-party account can be changed only: [¶] (1) By closing the account and reopening it under different terms; or [¶] (2) By presentation to the financial institution of a modification agreement in a form satisfactory to the financial institution and signed by all parties with a present right of withdrawal." Stevens v. Tri Counties Bank (2009, 3rd District) 177 Cal.App.4th 236, 99 Cal.Rptr.3d 188 (2009)

In discussing the broad purposes of section 366.2, the Supreme Court in Rumsey, supra, 24 Cal.4th 301, 99 Cal.Rptr.2d 792, 6 P.3d 713, stated, "The overall intent of the Legislature in enacting Code of Civil Procedure former section 353 [now section 366.2] was to protect decedents' estates from creditors' stale claims. [Citations.] ... The December 1989 California Law Revision Commission recommendation on the proposed legislation amending Code of Civil Procedure former section 353 explained that 'the one year statute of limitations is intended to apply in any action on a debt of the decedent, whether against the personal representative under Probate Code Sections 9350 to 9354 (claim on cause of action), or against another person, such as a distributee under Probate Code Section 9392 (liability of distributee), a person who takes the decedent's property and is liable for the decedent's debts ... or a trustee.' [Citation.] It thus appears that when the amendments to former section 353 were enacted, they were done so with the clear understanding and intent that such provisions would govern and apply to 'any action on a debt of the decedent,' regardless of whom the action was brought against...." (Rumsey, supra, 24 Cal.4th at p. 308, 99 Cal.Rptr.2d 792, 6 P.3d 713.) The court further stated, "The 1992 California Law Revision Commission comments to Code of Civil Procedure section 366.2, which superseded Code of Civil Procedure former section 353, reiterate the Legislature's intent that the one-year statute of limitations applies to all actions against a decedent on which the statute of limitations otherwise applicable had not run at the time of death. [Citation.]" (Id. at p. 308, fn.6, 99 Cal.Rptr.2d 792, 6 P.3d 713.) Stoltenberg v. Newman (2009, 2nd District) 179 Cal.App.4th 287, 101 Cal.Rptr.3d 606 (2009)

"When the [statutory] language is clear and there is no uncertainty as to the legislative intent, we [are required to] look no further and simply enforce the statute according to its terms. [Citations.]" (DuBois v. Workers' Comp. Appeals Bd., supra, 5 Cal.4th at pp. 387-388, 20 Cal.Rptr.2d 523, 853 P.2d 978.) Inasmuch as the plain language of the new apportionment scheme expresses a legislative intent to abrogate the Wilkinson doctrine, we are required to go no further. But even if some ambiguity were to exist in the statutory language, our conclusion is reinforced by the legislative history....

... Amicus curiae County of Los Angeles filed a request seeking judicial notice of: (1) a conference report of the Senate Rules Committee on Senate Bill No. 899; (2) a press release from the office of Governor Arnold Schwarzenegger after passage of Senate Bill No.
Senate Bill No. 899 itself provides: "This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: [¶] In order to provide relief to the state from the effects of the current workers' compensation crisis at the earliest possible time, it is necessary for this act to take effect immediately." (Stats.2004, ch. 34, § 49, italics added.) The perceived crisis that the Legislature sought to relieve was one caused by soaring workers' compensation costs. (See Stats.2004, ch. 34, § 49; Assem. Com. on Insurance, Analysis of Sen. Bill No. 899 (2003-2004 Reg. Sess.) as proposed to be amended July 9, 2003, p. 3 [identifying "crisis" linked to "skyrocketing costs"]; Cal. Chamber of Commerce, Floor Alert re Sen. Bill No. 899 (2003-2004 Reg. Sess.) Apr. 15, 2004 ["[w]orkers' compensation costs for employers have skyrocketed 136% over the past four years, on average"]).

We cannot agree with Benson that the Legislature's sole intent was to combat rising premium rates caused by disturbances within the insurance sector. (See Assem. Com. on Insurance, Analysis of Sen. Bill No. 899 (2003-2004 Reg. Sess.) as proposed to be amended July 9, 2003, pp.3-4 [attributing increased insurance premium rates to deregulation and investment losses in the insurance sector, as well as increasing cost of medical care].) Workers' compensation costs "had[d] increased for a number of reasons." (Id. at p.3.) As discussed below, the Legislature repeatedly indicated its specific intent to reform apportionment rules to meet the overarching legislative goal of cost reduction.

As noted by the Brodie court, "Senate Bill No. 899 (2003-2004 Reg. Sess.) started out as a minor bill designed to change one aspect of workers' compensation wholly unrelated to apportionment. (See Sen.

During the 2003-2004 regular legislative session, apportionment reform was originally proposed in Assembly Bill No. 1481, Assembly Bill No. 1579, and Senate Bill No. 714. But, these bills proposed reforms that differ significantly from the reforms ultimately enacted. (See Stats.2004, ch. 34, §§ 33-35, 37-38; Assem. Bill No. 1481 (2003-2004 Reg. Sess.) as introduced Feb. 21.2003, pp. 3-4; Sen. Amend. to Sen. Bill No. 714 (2003-2004 Reg. Sess.) Apr. 21, 2003, p. 2; Sen. Amend. to Assem. Bill No. 1579 (2003-2004 Reg. Sess.) July 2, 2003, pp.60-61.) For example, Assembly Bill No. 1481 proposed, in relevant part: "Section 5705.1 [be] added to the Labor Code, to read: 5705.1. (a) The burden of proof for the apportionment regarding permanent disability under Sections 4663, 4750, and 4750.5 shall rest upon the defendant. In accordance with Section 3202.5, the defendant shall demonstrate by a preponderance of the evidence, and by reasonable medical probability, that absent the industrial injury, the injured worker had lost, as a consequence of a preexisting injury or illness, some capacity to perform the activity affected by the injury. [¶] (b) Notwithstanding any other provision of this code relating to workers' compensation benefits, including Section 4062.9, in denying apportionment the appeals board may not, in determining permanent disability, rely on any medical report that fails to fully address the issue of apportionment and fails to set forth the basis of the medical opinion. In denying apportionment, the appeals board may not rely on any medical report that fails to apportion a previous injury or illness that has been the subject of a prior claim for damages or that fails to provide a discussion of the medical processes by which a previously asserted injury or illness resolved without affecting bodily function.” (Assem. Bill No. 1481 (2003-2004 Reg. Sess.) as introduced Feb. 21.2003, pp.3-4, italics added; accord, Sen. Amend. to Sen. Bill No. 714 (2003-2004 Reg. Sess.) Apr. 21, 2003, p.2; Sen. Amend. to Assem. Bill No. 1579 (2003-2004 Reg. Sess.) July 2, 2003, pp.60-61.)

medical report that fails to apportion a previous injury or illness that has been the subject of a prior claim for damages ....” (Assem. Bill No. 1481 (2003-2004 Reg. Sess.) as introduced Feb. 21, 2003, pp.3-4, italics added; accord, Sen. Amend. to Sen. Bill No. 714 (2003-2004 Reg. Sess.) Apr. 21, 2003, p.2; Sen. Amend. to Assem. Bill No. 1579 (2003-2004 Reg. Sess.) July 2, 2003, p.60.) By removing this limitation and requiring physicians to apportion to “prior industrial injuries” without limitation, it can be inferred that the Legislature intended to expand the scope of apportionment to include prior industrial injuries that had not been the subject of prior compensation. (Compare Assem. Bill No. 1481 (2003-2004 Reg. Sess.) as introduced Feb. 21, 2003, pp.3-4 with § 4663, subd. (c).) Had the Legislature intended apportionment only for prior industrial injuries that had been the subject of previous awards, it would not have changed the proposed statutory language.

The legislative history also demonstrates a clear intent to wipe the slate clean of prior apportionment law and proceed under an entirely new causation regime. (See Legis. Counsel's Dig., Sen. Bill No. 899, Stats.2004, ch. 34 (2003-2004 Reg. Sess.) Summary Dig., p.7 ["This bill would repeal and recast [apportionment] provisions."]; Sen. Rules Com., Office of Senate Floor Analyses, Conf. Rep. No. 1 on Sen. Bill No. 899 (2003-2004 Reg. Sess.) as amended Apr. 15, 2004, p.7 ["17. Present law replaced by language that apportionment of permanent disability is based on causation."].) As the Supreme Court has stated, the legislative history of Senate Bill No. 899 “highlights the Legislature's intent to change how one arrives at the percentage disability for which an employer or insurer is liable....” (Brodie, supra, 40 Cal.4th at p. 1329, 57 Cal.Rptr.3d 644, 156 P.3d 1100.)

... We cannot conceive that the Legislature would intend to “replace” or “repeal and recast” the rules of apportionment but still retain the Wilkinson doctrine. The Legislature indicated no such exception in either the legislative history or the statutory language. Furthermore, we are not convinced that the absence of reference to Wilkinson by name in either the statutory language or the legislative history compels its survival. The Legislature may have on occasion explicitly mentioned certain judicial decisions it sought to overrule. (See, e.g., former § 4750.5 ["The purpose of this section is to overrule the decision in Jensen v. WCAB, 136 Cal.App.3d 1042, 186 Cal.Rptr. 570."]). But Benson cites no legal authority compelling the Legislature to do so. In fact, when the Legislature undertakes to amend a statute which has been the subject of judicial construction "it is presumed that the Legislature was fully cognizant of such construction, and when substantial changes are made in the statutory language it is usually inferred that the lawmakers intended to alter the law in those particulars affected by such changes. [Citations.]" (Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist. (1978) 21 Cal.3d 650, 659, 147 Cal.Rptr. 359, 580 P.2d 1155; see also People v. Mendoza (2000) 23 Cal.4th 896, 916, 98 Cal.Rptr.2d 431, 4 P.3d 265 [Legislature's repeal of prior statute "together with its enactment of a new statute on the same subject ... with significant differences in language, strongly suggests the Legislature intended to change the law"]). When the Legislature repealed former section 4750 and provided for apportionment to causative factors, “including prior industrial injuries,” it
demonstrated a clear intent to overrule Wilkinson. (See § 4663, subd. (c).)

In enacting Senate Bill No. 899, the Legislature made approximately 45 revisions to the workers' compensation statutes. (Stats. 2004, ch.34, §§ 1-45.) It is little wonder that the Legislature did not mention Wilkinson by name in the midst of such extensive reform. Furthermore, it is undisputed that sections 4663 and 4664 abrogated the rehabilitation rule and the bar against apportionment to pathology. (Brodie, supra, 40 Cal.4th at pp. 1326-1327, 57 Cal.Rptr.3d 644, 156 P.3d 1100.) Yet, the Legislature did not refer to the judicial decisions that had established those long-standing rules. If the Legislature can abrogate those lines of authority without explicit reference, then surely it can do the same regarding Wilkinson.

The fact that both workers and employers were to benefit from Senate Bill No. 899 as a whole does not help us interpret the specific statutes at issue here. (See Sen. Rules Com., Off. of Sen. Floor Analyses, 3rd reading analysis of Sen. Bill No. 899 (2003-2004 Reg. Sess.) as amended July 14, 2003, pp.1-2 ["While there is agreement among the parties that the system is in need of repair, what remains subject for debate is what the real systemic problems are and how best to address them without diminishing the arguably meager benefits injured workers receive in this state."]).) Benson’s reliance on the few provisions of Senate Bill No. 899 that expanded employee benefits is misplaced. (§§ 4658, subd. (d)(1) [increasing benefits for workers with 70 percent or greater permanent disability], 4658, subd. (d) (2) [increasing benefits for disabled workers denied prompt return to work], 5402, subd. (c) [providing additional medical benefits].) The Brodie court aptly observed that these changes were all made in areas other than apportionment. (Brodie, supra, 40 Cal.4th at p. 1330, fn.13, 57 Cal.Rptr.3d 644, 156 P.3d 1100.)

Benson does not cite any legislative history that both specifically relates to apportionment and supports her position. When it came to apportionment, the Legislature “included a requirement that doctors include apportionment discussions in their reports (§ 4663, subds. (b), (c)), a prohibition against avoiding apportionment by proving that a prior injury had been rehabilitated (§ 4664, subd. (b)), a cap on awards based on injuries to any one body part (§ 4664, subd. (c)(1)), and a reversal of the case-law-imposed prohibition against apportionment based on cause and corresponding expansion of the range of bases that would trigger apportionment (§ 4663, subd. (a)).” (Brodie, supra, 40 Cal.4th at p. 1330, fn.13, 57 Cal.Rptr.3d 644, 156 P.3d 1100.) Even if the statutory language were ambiguous, the legislative history shows a clear intent to abrogate the Wilkinson doctrine. Benson v. Workers’ Compensation Appeals Board (2009, 1st District) 170 Cal.App.4th 1535, 89 Cal.Rptr.3d 166 (2009)

See also: In re Estate of Pryor (2009, 2nd District) 177 Cal.App.4th 1466, 99 Cal.Rptr.3d 895 (2009)

5. Legislative Counsel’s Digest

Because we find the language unambiguous in this regard, we need not refer to the statutory history or purpose for an explanation of the statute. Nonetheless, we note the legislative history supports our construction. As originally enacted in 1957, the statute stated,
“Every person who carries concealed upon his person, and every person who sells, offers for sale, exposes for sale, loans, transfers, or gives to any other person a switch-blade knife having a blade over two inches in length is guilty of a misdemeanor.” (Stats. 1957, ch. 355, § 1, p. 999.) As originally enacted, therefore, section 653k contained no “public place” restriction and merely required the concealed possession of a switchblade upon one's person.... The reference to possession in a vehicle was added to the statute in 1986. The vehicle clause was inserted wholesale in its present form after the first three words of the original statute, without otherwise altering the statutory language. (Stats. 1986, ch. 1422, § 1, p. 5116.) This suggests the Legislature did not intend to alter the prior scope of the statute, but only to add an additional manner of violation: constructive possession inside a car located in a public place.

Contemporary commentary in the Legislative summary digest confirms existing law “specifie[d] that every person who carries upon his person” or transfers a switchblade "is guilty of a misdemeanor.” The new language, it was explained, “impose[s] a state-mandated local program by also making the possession of a switchblade in the passenger's or driver's area, as defined, of any motor vehicle in any public place or any place open to the public a misdemeanor.” (Legis. Counsel's Dig., Assem. Bill. No. 2985, 4 Stats. 1986, (Reg.Sess.), Summary Digest, pp.551-552.) This makes clear the Legislature’s understanding that the existing statute applied to carrying on the person in any location and its intent to impose the “public place” limitation solely on possession in a vehicle. In re S.C. (2009, 1st District) 179 Cal.App.4th 1436, fn.3, Cal.Rptr.3d, WL 4023737 (2009)

The SIBTF makes much of the legislative history of Assembly Bill 749, the bill that created section 4659, subdivision (c). (Stats. 2002, ch. 6, pp.91-95.) However, our reading of the assembly committee's legislative analysis of the bill reveals that the goal of enacting subdivision (c) was to increase benefits for the most seriously injured workers, without increasing them too much. (Assem. Com. on Insurance, Analysis of Assem. Bill No. 749 (2001-2002 Reg. Sess.) Feb. 4, 2002, pp. 1, 15-18.) Regarding cost comparisons between Assembly Bill 749 and two bills that then Governor Davis vetoed, there is some mention on page 15 of the analysis concerning a $7 billion” savings from the “elimination of the retroactive COLA.” However, Assembly Bill No. 1176 had provided in subdivision (c) of section 4659, “Any injured employee who is injured on or after January 1, 1998, and who, on or after January 1, 2004, is receiving or becomes entitled to receive a life pension or total permanent disability indemnity ... shall have that payment increased annually, commencing January 1, 2004, and each January 1 thereafter, by an amount equal to the percentage increase in the ‘state average weekly wage’ as compared to the prior year.” (Legis. Counsel Dig., Assem. Bill No. 1176 (2001-2002 Reg. Sess.) vetoed by the Governor October 14, 2001.) Similarly, Senate Bill No. 71 had provided in subdivision (c) of section 4659, “Any injured employee who, on or after January 1, 2004, regardless of date of injury, is receiving or becomes entitled to receive a life pension or total permanent disability indemnity ... shall have that payment increased annually, commencing January 1, 2004, and each January 1 thereafter, by an amount equal to the percentage increase in the ‘state average weekly wage’ as
compared to the prior year.” (Legis. Counsel's Dig., Sen. Bill No. 71 (2001-2001 Reg. Sess.) vetoed by the Governor October 14, 2001.) Both these bills had provided for COLAs to be given to far more injured workers than the current version of section 4659, because the current version applies only to injured workers whose injury occurs after January 1, 2003.

Thus, the legislative history that has been brought to our attention provides little guidance in resolving this issue.


6. Legislative Counsel’s Opinions

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

7. Urgency Clauses, Findings and Declarations and Other Uncodified Language

The absence of legislative intent to grant judges the right to restrict the use of medical marijuana by a person eligible to do so under the CUA is shown not just by the text of section 11362.795, but also by its legislative history. Section 11362.795 was part of Senate Bill 420 introduced by Senator John Vasconcelos in the 2003 legislative session and commonly known as the Medical Marijuana Program (MMP). “In uncodified portions of the bill the Legislature declared that, among its purposes in enacting the statute, was to '[c]larify the scope of the application of the [CUA] and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provided needed guidance to law enforcement officers.’” (Stats.2003, ch. 875, § 1.) People v. Moret (2009, 1st District) Cal.Rptr.3d, WL 5066813 (2009)


8. Ballot Summaries and Arguments/Statement of Vote

Here, section 667.6 was one of over two dozen statutes amended or added by Jessica's Law. ... (Voter Information Pamp., Gen. Elec.
While the electorate's general intent in enacting Prop. 83 was to strengthen and improve the laws that punish sex offenders (Voter Information Pamp., Gen. Elec. (Nov. 7, 2006) text of Jessica's Law, § 31, p. 138), we cannot say that it did not intend that section 667.6, subdivision (c) not be given its literal meaning. This is particularly so where, as here, the drafters plainly intended to omit the “whether or not” language.

... In addition to section 667.6, Prop. 83 amended or added the following: §§ 209, 220, 269, 288.3, 290.3, 311.11, 667.5, 667.51, 667.61, 667.71, 1203.06, 1203.065, 1203.75, 3000, 3000.07, 3001, 3003, 3003.5, 3004, 12022.75; Welf. & Inst.Code, §§ 6600, 6600.1, 6601, 6604, 6604.1, 6605, 6608. (Voter Information Pamp., Gen. Elec. (Nov. 7, 2006) text of Prop. 83, §§ 3-30, pp.127-138.)

... “When construing ... initiative measures, ... the intent of the electorate was aware of that intent [citation] and we have often presumed, in the absence of other indicia of the voters' intent such as ballot arguments [citation] or contrary evidence, that the drafters' intent and understanding of the measure was shared by the electorate.” (Rossi v. Brown (1995) 9 Cal.4th 688, 700, fn.7, 38 Cal.Rptr.2d 363, 889 P.2d 557; see also People v. Hazelton (1996) 14 Cal.4th 101, 123, 58 Cal.Rptr.2d 443, 926 P.2d 423.)

In amending subdivision (c), the drafters not only repealed the “whether or not” language, but added the following sentence: “A term may be imposed consecutively pursuant to this subdivision if a person is convicted of at least one offense specified in subdivision (e).” (§ 667.6, subd. (c); (Voter Information Pamp., Gen. Elec. (Nov. 7, 2006) text of Prop. 83, § 11, p. 130.) In Jones, supra, 46 Cal.3d at page 589, 250 Cal.Rptr. 635, 758 P.2d 1165, the Supreme Court held that “a single conviction of an enumerated sex offense is sufficient to trigger the sentencing court's discretion under ... section 667.6, subdivision (c), to impose a full, consecutive sentence for that conviction.” At the time the defendant in that case was sentenced, (before Jessica's Law), section 667.6, subdivision (c) authorized a trial court to impose “a full, separate and consecutive sentence ... for each violation of [certain enumerated sex offenses] whether or not the crimes were committed during a single transaction.” (Id. at p. 591, fn.2, 250 Cal.Rptr. 635, 758 P.2d 1165, italics added.) In holding that a single conviction of an enumerated sex offense was sufficient to trigger the sentencing court's discretion under subdivision (c), the court relied substantially on the “whether or not” language, explaining that “it is at once apparent that the 'whether or not' language was intended to broaden the scope of subdivision (c)'s effect not to restrict it.” (Id. at p. 593, 250 Cal.Rptr. 635, 758 P.2d 1165.) “The entire 'whether or not' clause is to be read as the Legislature's shorthand pronouncement that the court may discretionarily impose a full, consecutive sentence for each [enumerated sex offense] conviction, irrespective of whether the violent sex crime and the other crime making section 1170.1 potentially applicable were committed 'during a single transaction.'” (Id. at p. 594, 250 Cal.Rptr. 635, 758 P.2d 1165.)

While we do not know why the “whether or not” language was deleted, we do know that it was not inadvertent because of the addition of the following sentence: "A term may be imposed consecutively pursuant to this subdivision if a person is convicted
of at least one offense specified in subdivision (e).” (§ 667.6, subd. (c).) Given the court's holding in Jones, the only explanation for this addition was the removal of the “whether or not” language. The drafters plainly were concerned that without the “whether or not” language, subdivision (c) might be interpreted as applicable only where a defendant is convicted of more than the offenses specified in subdivision (e). ... We decline to read back into the statute language that was intentionally removed.... People v. Goodliffe (2009, 3rd District) 177 Cal.App.4th 723, fn.17, fn.18 and fn.19, 99 Cal.Rptr.3d 385 (2009).

Wunderlich v. County of Santa Cruz (2009, 6th District) 178 Cal.App.4th 680, 100 Cal.Rptr.3d 598 (2009)

Legislative Antecedents

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

9. Third Reading Analyses

a. Assembly Office of Research Analysis

We note that the statute's legislative history supports our construction of the statute. “It was always the legislative intent that a county prisoner serve 2/3 of his sentence rather than more.” (Assem. Comm. on Criminal Justice, mem. summarizing Assem. Bill No. 3693 (1978-1979 Reg. Sess.) as amended May 11, 1978, p. 2.) Assembly Bill No. 3693, as enacted, amended section 4019, subdivisions (b) and (c) to provide that conduct credit would be calculated based on a six-day period rather than one fifth of a month, and changed the basis for calculating conduct credit “from period of confinement to period of commitment.” (Assem. Off. of Research, third reading analysis of Assem. Bill No. 3693 (1978-1979 Reg. Sess.) as amended May 11, 1978, p.1.) People v. Dieck (2009) 46 Cal.4th 934, 209 P.3d 623 (2009)

b. Office of Assembly Floor Analyses

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

c. Assembly Third Reading, prepared by Policy Committee

The ballot pamphlet for Proposition 60 did not explicitly or implicitly address the possibility that a lot might be purchased more than two years before the sale of the original property and a structure built upon that lot to serve as a replacement dwelling within two years of the sale of the original property. The Legislature exercised its authority under Proposition 60 by enacting Assembly Bill No. 60, which created section 69.5. (Stats.1987, ch. 186, § 1.) The Legislative Analyst's analysis of an early version of Assembly Bill No. 60 opined that “[the original] property must be sold prior to the purchase or new construction of the replacement property, and prior to the purchase of land on which a replacement dwelling will be built.” ... (Legis. Analyst, analysis of Assem. Bill No. 60 (1987-1988 Reg. Sess.) Apr. 3, 1987, pp. 2 & 3,
(italics added.) However, Assembly Bill No. 60 was subsequently amended to allow the replacement dwelling to be purchased before the sale of the original property so long as the purchase occurred within two years of the sale. (Assem. Amend. to Assem. Bill No. 60 (1987-1988 Reg. Sess.) June 1, 1987.)

... I take judicial notice of the legislative history of section 69.5. (Evid.Code § 452, subd. (c).)

In 1988, the Legislature enacted Assembly Bill No. 2878, which amended section 69.5. One of the amendments made by Assembly Bill No. 2878 was the addition of the language in section 69.5, subdivision (g)(5) regarding “the date” to be used “if the replacement dwelling is, in part, purchased and, in part, newly constructed.” The purpose of this added language was to “specify[ ] the replacement date when the replacement dwelling is acquired through acquisition of vacant land and subsequently constructed on the land, for purposes of determining the permissible value of the replacement dwelling.” (Sen. Com. on Revenue and Taxation, Rep. on Assem. Bill No. 2878 (1987-1988 Reg. Sess.) as amended Aug. 9, 1988, italics added.) This added language was intended to “specify[ ] what replacement date should be used if the replacement dwelling is acquired through the acquisition of vacant land and the new construction of a dwelling on the land (the replacement date determines the permissible value of the replacement dwelling for qualification for relief).” (Assem. Com. on Revenue and Taxation, Rep. on Assem. Bill No. 2878 (1987-1988 Reg. Sess.) as amended June 6, 1988, italics added; Assem.3d reading analysis of Assem. Bill No. 2878 (1987-1988 Reg. Sess.) as amended June 28, 1988.) Wunderlich v. County of Santa Cruz (2009, 6th District) 178 Cal.App.4th 680, fn.3, 100 Cal.Rptr.3d 598 (2009)

The Act governs child day care facilities and was intended to facilitate the Legislature’s goal of “provid[ing] a comprehensive, quality system for licensing child day care facilities to ensure a quality day care environment.” (Health & Saf.Code, § 1596.72, subd. (b).) The purpose section of the Act references the well-being of parents and children, but not the well-being of workers. (Health & Saf.Code, § 1596.73.) In fact, the statement of purpose speaks of workers in the day care system only with regard to their “knowledge and understanding of children and child care needs” and their need for “technical assistance about licensing requirements.” (Health & Saf.Code, § 1596.73, subds. (b) & (c).) This language indicates the statutory scheme was enacted for the benefit of children and their parents. Any benefit to workers is incidental to the safe and successful operation of the facilities. The legislative history cited by Penny Lane does not compel a different conclusion about the legislative intent behind the Act. According to the legislative history, the anti-retaliation provisions in the bill were included because “[g]iven the resource constraints on licensing investigators, employees can provide necessary on-site protection against licensing and other violations.” (Assem. Comm. on Human Services, 3d reading analysis of Assem. Bill No. 1040 (1987-1988 Reg. Sess.) as amended May 11, 1987.) The bill was thus intended to encourage employees of child care facilities to monitor licensing violations without fear of retaliation. This is consistent with a statutory scheme intended to protect children by enforcing licensing requirements for child care providers. Boston v. Penny Lane Centers, Inc. (2009, 2nd District) 170 Cal.App.4th 936, 88 Cal.Rptr.3d 707 (2009)
“[C]ourts must begin with the language of a given statute as the purest expression of legislative intent.” (Gunther v. Lin (2006) 144 Cal.App.4th 223, 233, 50 Cal.Rptr.3d 317.) “When interpreting a statute, we must ascertain legislative intent so as to effectuate the purpose of a particular law. Of course our first step in determining that intent is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning. [Citation.] When the words are clear and unambiguous, there is no need for statutory construction or resort to other indicia of legislative intent, such as legislative history. [Citation.]” (Hale v. Southern Cal. IPA Medical Group, Inc. (2001) 86 Cal.App.4th 919, 924, 103 Cal.Rptr.2d 773, quoting Quarterman v. Kefauver (1997) 55 Cal.App.4th 1366, 1371, 64 Cal.Rptr.2d 741.) ... “The statute's plain meaning controls the court's interpretation unless its words are ambiguous. If the plain language of a statute is unambiguous, no court need, or should, go beyond that pure expression of legislative intent. [Citation.]” (Green v. State of California (2007) 42 Cal.4th 254, 260, 64 Cal.Rptr.3d 390, 165 P.3d 118.)

... Defendant requests judicial notice of its extensive legislative history materials. Although that request is granted, we find it unnecessary to resort to legislative history in light of the clear wording of the statute. West Hills Farms, Inc. v. RCO AG Credit, Inc. (2009, 5th District) 170 Cal.App.4th 710, fn.5, 88 Cal.Rptr.3d 458 (2009)


d. Senate Democratic and Senate Republican Caucus Analyses


e. Office of Senate Floor Analyses

... Subdivision (a)(2) of Civil Code section 51.9 allows liability for instances of sexually harassing conduct that qualify as either “pervasive or severe.” Those terms are not defined in the statute. As discussed earlier, those words have long been associated with workplace sexual harassment law embodied in the federal law's Title VII and in California's FEHA. Applying here the legal presumption that a statute's use of terms that have a well-settled judicial construction indicates the Legislature's intent that the terms retain the same meaning that the courts have placed upon them (Richardson v. Superior Court, supra, 43 Cal.4th at p.1050, 77 Cal.Rptr.3d 226, 183 P.3d 1199), we agree with the Court of Appeal majority, and defendant, that the words “pervasive or severe” in section 51.9 should be given the same meaning that those words have in the employment context. This conclusion also finds ample support in the statute's legislative history, as discussed below.

Civil Code section 51.9, as originally enacted in 1994, included these requirements for liability: “The defendant has made sexual advances, solicitations, sexual requests, or demands for sexual compliance by the plaintiff that were unwelcome and persistent or severe, continuing after a request by the plaintiff to stop.” (Civ.Code, former § 51.9, subd. (a)(2), italics added.) In 1999, the
Legislature made several changes to the statute. Notably, it amended the statute's subdivision (a)(2) to read as it does now, by replacing the word “persistent,” italicized above, with “pervasive,” and by deleting the above-italicized phrase “continuing after a request by the plaintiff to stop.” (Stats.1999, ch. 964, § 1.) In addition, after the words “sexual compliance by the plaintiff” in the same subdivision, the Legislature added this phrase: “or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender.” (§ 51.9, subd. (a)(2).) Thus, as amended in 1999, subdivision (a)(2) of section 51.9 now imposes liability when “[t]he defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe.”

The 1999 amendments to Civil Code section 51.9 also deleted a requirement in former subdivision (d) that the plaintiff's complaint be verified, and deleted the phrase “without tangible hardship” formerly contained in subdivision (a)(3), which now provides simply that the plaintiff must show “an inability ... to easily terminate” the sexually abusive relationship.

The 1999 amendments to Civil Code section 51.9 were authored by Assemblywoman Dion Aroner as Assembly Bill No. 519 (1999-2000 Reg. Sess.). The analysis by the Senate Rules Committee described the bill as “revis[ing] the Civil Code prohibitions against sexual harassment in professional and business settings to generally conform to the legal standards for filing sexual harassment claims in the employment setting.” (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 519 (1999-2000 Reg. Sess.) as amended June 10, 1999, p.1 (Senate Analysis of Assembly Bill 519).) The analysis noted that the original version of section 51.9 had “established standards for sexual harassment in the Civil Code which do not comport with other California and federal sexual harassment prevention measures.” (Sen. Analysis, at p.3.)

With respect to the bill's substitution of the word “pervasive” for the term “persistent,” which appeared in the original version of Civil Code section 51.9, the legislative analysis explained: “Section 51.9 currently uses the term ‘persistent’ when setting forth the showing required to prove sexual harassment. This term is not used by federal or state courts, or any administrative agency, in either employment or housing cases. Instead, both state and federal decisions have uniformly required a showing that the harassment be ‘pervasive’ but not necessarily of a ‘persistent’ nature. (See Fisher v. San Pedro Community Hospital (1989) 214 Cal.App.3d 590, 608 [262 Cal.Rptr. 842].) [¶] The traditional analysis was provided by the court in Meritor Savings Bank v. Vinson (1986) 477 U.S. 57, 64-67 [106 S.Ct. 2399] ... ‘For sexual harassment to be actionable, it must be sufficiently severe or pervasive “to alter the conditions of [the victim's] employment and create an abusive working environment.”’” (Sen. Analysis of Assem. Bill 519, at p.4.) The legislative analysis further noted that the bill's proponents “assert that the bill is needed in order to prevent the conflicting definitions of sexual harassment contained in the Civil and Government Codes from causing interpretation problems in the courts.” (Id., at p.8.)

This history of the amendments to Civil Code section 51.9 leaves no doubt of the Legislature's intent to conform the
requirements governing liability for sexual harassment in professional relationships outside the workplace to those of the federal law's Title VII and California's FEHA, both of which pertain to liability for sexual harassment in the workplace. Under both laws, an employee plaintiff who cannot prove a demand for sexual favors in return for a job benefit (that is, quid pro quo harassment) must show that the sexually harassing conduct was so pervasive or severe as to alter the conditions of employment. With respect to liability under section 51.9, which covers a wide variety of business relationships outside the workplace, the relevant inquiry is whether the alleged sexually harassing conduct was sufficiently pervasive or severe as to alter the conditions of the business relationship. This inquiry must necessarily take into account the nature and context of the particular business relationship. With this analytical framework in mind, we now consider plaintiff's claim of sexual harassment under section 51.9. Hughes v. Pair (2009) 46 Cal.4th 1035, 209 P.3d 963 (2009)

Finally, although our interpretation of the scope of section 3345 and its application to actions brought under the unfair competition law is based on the plain language of the statute itself, the legislative history of Senate Bill No. 1157—to the extent it sheds any light on the issue at all—supports our conclusion. (See California School Employees Assn. v. Governing Board (1994) 8 Cal.4th 333, 340, 33 Cal.Rptr.2d 109, 878 P.2d 1321 [“Ordinarily, if the statutory language is clear and unambiguous, there is no need for judicial construction. [Citation.] Nonetheless, a court may determine whether the literal meaning of a statute comports with its purpose.”]; accord, In re Tobacco II Cases, supra, at p. ----, 93 Cal.Rptr.3d at p.572, 207 P.3d at p.32 [“even though recourse to extrinsic material is unnecessary given plain language of statute, we may consult it for material that buttresses our construction of the statutory language”]; see also Aguiar v. Superior Court (2009) 170 Cal.App.4th 313, 326, 87 Cal.Rptr.3d 813.) The twin purposes of the 1988 legislation were to encourage the investigation and prosecution of deceptive business practices perpetrated against senior citizens and to create new forms of civil redress available to senior citizens to “compensate for the lack of [existing] remedies.” (See generally Viles v. State of California (1967) 66 Cal.2d 24, 32-33, 56 Cal.Rptr. 666, 423 P.2d 818 [remedial legislation must be liberally construed to protect persons within its purview].)

Such delay is illustrated by the period that has elapsed since the order of December 19, 2008, the subject of this appeal. We note also that the provisions of subdivision (n) of section 366.26 originated with Statutes 2005, chapter 626, section 1 (Sen. Bill No. 218). To determine legislative intent it is appropriate to consider the floor analysis of this bill. (See People v. Broussard (1993) 5 Cal.4th 1067, 1075, 22 Cal.Rptr.2d 278, 856 P.2d 1134.) The Senate Floor Analysis for Senate Bill No. 218 of 2005 indicates that the procedures to protect current caregivers, now set out in section 366.26, subdivision (n), were designed to address concerns arising

In analyzing the code section, we look to the plain language of the statute itself and to legislative intent. (Big Creek Lumber Co. v. County of Santa Cruz (2006) 38 Cal.4th 1139, 1152, 45 Cal.Rptr.3d 21, 136 P.3d 821.) To give meaning to the reference to receipt of SSDI benefits in section 17450, subdivision (c)(2), a disabled obligor who has provided proof of receipt of SSDI benefits would be exempt from collection efforts. In our view, this is the only logical interpretation of this subdivision.

Further, legislative history indicates that disabled obligors receiving SSDI benefits were intended to be exempt from collection. Assembly Bill No. 891 (2001-2002 Reg. Sess.), enacted in 2001, added section 17400.5 to the Family Code and amended Revenue and Taxation Code section 19271(e)(3).

Section 17400.5 contains language that is substantially similar to section 17450, subdivision (c)(2). Section 17400.5 provides that when an obligor has an ongoing child support obligation being enforced by a local child support agency, and “the obligor is disabled, meets the SSI resource test, and is receiving [SSI/SSP] or, but for excess income ... would be eligible to receive SSI/SSP, ... and the obligor has supplied the local child support agency with proof of his or her eligibility for, and, if applicable, receipt of, SSI/SSP or Social Security Disability Insurance benefits” then the local child support agency is required to prepare and file a motion to modify the support obligation.

The language of Revenue and Taxation Code section 19271, subdivision (e)(3) is identical to that of Family Code section 17400.5 and provides that the child support delinquency shall not be referred to the Franchise Tax Board for collection or, if referred, withdrawn.

The Senate Rules Committee digest addressing Assembly Bill No. 891, which added Family Code section 17400.5 and amended Revenue and Taxation Code section 19271, subdivision (e)(3), stated one of the purposes of the bill was to provide that:

“[U]pon proof of eligibility of a disabled noncustodial parent who receives SSI/SSP or SSDI, the local child support agency shall not refer his or her case to the State Franchise Tax Board, or shall recall the case from the board and cease collection action against that parent.” (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 891 (2001-2002 Reg. Sess.) as amended Sept. 7, 2001, par. 2.)

The Franchise Tax Board also prepared a bill analysis of Assembly Bill No. 891, which stated that the bill would preclude the Franchise Tax Board from collecting delinquent child support in cases where the noncustodial parent is disabled and receiving monthly benefits from SSI/SSP or SSDI.
Section 17450, subdivision (c)(2) was added in 2004 as part of Assembly Bill No. 2358 (2003-2004 Reg. Sess.). It seems clear that the language of section 17450, subdivision (c)(2) was intended to harmonize this subdivision and the FIDMS child support collection scheme with the provisions of Revenue and Taxation Code section 19271, subdivision (e)(3). Family Code section 17450 provides that until the California Child Support Automation System (CCSAS) is fully operational, enforcement of the FIDMS scheme may be delegated to the Franchise Tax Board, to be enforced in accordance with sections "19271 to 19275, inclusive, of the Revenue and Taxation Code." (§ 17450, subd. (d).) Once the CCSAS is operational, enforcement of child support obligations may be shifted to the CDCSS. (Id., subd. (e).) In re Marriage of Hopkins (2009, 5th District) 173 Cal.App.4th 281, 92 Cal.Rptr.3d 570 (2009)


f. Senate Republican Floor Commentaries

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

g. Assembly Republican Caucus Analysis

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

h. Senate Floor Amendments Analysis prepared by Senate Policy Committee

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

10. Departmental Sponsorship, Support, and Analysis

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

Attorney General

We reject Colton's initial argument that section 45196 is not subject to interpretation on its face. Therefore, we do not need to consult evidence of legislative intent. (People v. Birkett (1999) 21 Cal.4th 226, 231-232, 87 Cal.Rptr.2d 205, 980 P.2d 912.) Nevertheless, we grant Colton's motion for judicial notice (Evid. Code, §459) and offer some brief comments on Colton's related arguments, most of which erroneously treat sick leave and vacation leave as equivalent rather than exclusive under section 45196.

Section 45196 was enacted in 1969. It is clear from the statute itself, as well as the legislative history, that differential leave and sick leave were intended to be combined to provide at least 100 days of disability leave. The legislative history cited by Colton referred specifically to sick leave not vacation leave. (Legis. Counsel's Dig., Assem. Bill No. 597 (1969 Reg. Sess.) as introduced


11. Transcripts of Hearing

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

12. Statements by Sponsors, Proponents and Opponents


13. News Media and Law Reviews

Sections 53260 and 53261 were added by Senate Bill 1996 (Stats.1992, ch. 962, § 6) via incorporation of the provisions of Senate Bill 1972, which was introduced by Senator Gary Hart on February 21, 1992. (See Floor Statement for Concurrent Assembly Amendments.) The Department of Finance Enrolled Bill report finds: “Current law does not require local agency employers to include in employment contracts a provision limiting the cash settlement if the contract is terminated. This bill would require local agency employers to include a provision limiting the maximum cash settlement to 18 months salary if the contract is terminated.” (Cal. Dept. of Finance, Enrolled Bill Rep. on Sen. Bill No. 1996 (1992-1993 Reg. Sess.) Sept. 4, 1992, p. 2; Eisner v. Uveges, supra, 34 Cal.4th at p. 934, fn.19, 22 Cal.Rptr.3d 530, 102 P.3d 915 [enrolled bill report is instructive on matters of legislative intent].) As amended on June 24, 1992, section 53260 omitted prior language that required the
employer and employee to agree to the contract termination. The statute was amended to limit the maximum cash settlement "if the contract is terminated...." The history indicates that legislators were concerned about covering instances where the employer unilaterally elected to terminate the contract. (See Sen. Com. on Local Government analysis of Sen. Bill No. 1972 (1992-1993 Reg. Sess.), p. 3 [raising question about a local agency taking unilateral action to fire an executive and proposing the committee consider an amendment to limit cash settlements "no matter who terminates the employment contract"].)

Analyses by the Assembly Local Government Committee and Senate of S.B. 1972 are not particularly helpful, as they reiterate the statutory language. However, the Assembly Local Government Committee analysis states: "[T]he author has introduced this bill to address the concern that local governments are using their limited public resources to 'buy out' the contracts of highly paid executives." (Assem. Com. on Local Government analysis of Sen. Bill No. 1972 (1992-1993 Reg. Sess.) as amended June 24, 1992, p. 3.) It provides the following background: "Most of the nearly 1.4 million Californians who work for local agencies (i.e., counties, cities, special districts, school districts, and community college districts) serve in civil service systems. However, top administrators and managers usually serve at the pleasure of local elected officials. Some of these executive officials, such as school superintendents, city managers, county administrators, and their key aides, have employment contracts with their local agency employers." (Id. at p.2.) It included conclusions from a January 1992 report of the state Auditor General, which noted that school and community college districts enter into employment contracts with their superintendents, and listed the average net settlement payments made upon early termination of the contract, as well as the remaining contract periods. (Ibid.) The Auditor General was concerned about the impact of early renegotiation, renewal and contract extension practices on the size of monetary settlements occurring upon early contract termination.

A Senate Local Government Committee analysis includes similar background and refers to the same Auditor General report, but provides further explanation: "Some observers are troubled that local governments use their scare public revenues to 'buy out' the contracts of highly paid executives." That analysis reflects concern about the incidence of school district terminations of executive contracts following early renewal of the contract, resulting in very large severance payments: "Although relatively rare, some local governments buy-out their executives' contracts when they fire them. Even when school districts renew superintendents' contracts early, they sometimes turn around and let them go. These practices produce cash settlements that disturb public watchdogs. One hospital district terminated its chief executive 32 months before the contract expired, paying $206,042 in settlement. A community college district paid its superintendent $126,000 to settle the seven remaining months of an unexpired contract. While no-cut contracts may be fine for professional sports figures, local governments should not pay their former executives not to work. S.B. 1972 imposes statewide standards on local contracts to limit excessive cash settlements." (Sen. Com. on Local Government analysis of Sen. Bill No. 1972 (1992-1993 Reg. Sess.), p.2.)
The Legislative file contains several newspapers articles
concerning early contract renewals of school district and other
government officials, as well as the settlement of a superintendent's
"early retirement" referenced by Page, which included attorney fees
and a substantial settlement for his claim of personal injury and
sickness. Though normally such articles are of little value (see
Bermudez v. Municipal Court (1992) 1 Cal.4th 855, 864, fn.6, 4
Cal.Rptr.2d 609, 823 P.2d 1210), the committee reports reveal that
the Legislature took into consideration several instances of what
were considered excessively high buy-outs of such contracts in
implementing the limitations of sections 53260 and 53261. Further,
the Legislature expressly considered, but rejected, having the
statutory limitations apply only to circumstances in which the
parties mutually agreed to terminate the contract, presumably
instances not involving the employee's assertion of legal claims or
causes of action.

... Because the legislative history is unclear, we decline to
read intent into the statute when the history clearly does not
support it. (E.g., Campbell v. Regents of University, of California
(2005) 35 Cal.4th 311, 331, 25 Cal.Rptr.3d 320, 106 P.3d 976.) """"An
intent that finds no expression in the words of the statute cannot be
found to exist. The courts may not speculate that the legislature
meant something other than what it said. Nor may they rewrite a
statute to make it express an intention not expressed therein.'"
[Citation.]' [Citations.] 'The plain meaning of words in a statute
may be disregarded only when that meaning is "'repugnant to the
general purview of the act,' or for some other compelling reason...."
[Citation.]' [Citation.] 'Courts must take a statute as they find it,
and if its operation results in inequality or hardship in some cases,
the remedy therefor lies with the legislative authority.'" (Unzueta
Cal.Rptr.2d 614.)

Though District asserts the trial court sustained its objection
to the legislative history materials, to the contrary the record
shows the trial court only sustained, appropriately, its objection to
the declaration of former Senator Hart, the author of the sponsoring
bill. (See e.g., Kavanaugh v. West Sonoma County Union High School
Dist., supra, 29 Cal.4th at p. 920, fn.6, 129 Cal.Rptr.2d 811, 62
P.3d 54.) We are not prevented from considering the legislative
materials submitted in connection with Page's motion for summary
judgment, and we take judicial notice of certain additional materials
relevant to legislative intent provided by Page's counsel from the
MiraCosta Community College Dist. (2009, 4th District) Cal.Rptr.3d,
WL 4021535 (2009)

Benson v. Workers' Compensation Appeals Board (2009, 1st District) 170 Cal.App.4th 1535, 89
Cal.Rptr.3d 166 (2009)

14. House Journals and Final Histories

15. Predecessor Bills, Competitor Bills
Benson v. Workers' Compensation Appeals Board (2009, 1st District) 170 Cal.App.4th 1535, 89
Cal.Rptr.3d 166 (2009)

Updated: 2/2010
16. Statements of Author and Other Individual Legislators


California Supreme Court

Elizabeth urges us to follow the approach of Shinkle to conform our interpretation of the statutory scheme to the legislative intent. But as we have discussed, the Shinkle court relied on legislative intent to refuse to create a new exception to section 21350. (Estate of Shinkle, supra, 97 Cal.App.4th at p. 1006, 119 Cal.Rptr.2d 42.) We presume the Legislature meant what it said in section 21351, subdivision (a) by providing that the presumption of invalidity raised in section 21350 does not apply where the transferee is married to the transferor. (See Estate of Griswold (2001) 25 Cal.4th 904, 911, 108 Cal.Rptr.2d 165, 24 P.3d 1191 [where terms of statute are unambiguous, “we presume the lawmakers meant what they said, and the plain meaning of the language governs”].) The Legislature chose not to make any exception for situations where care custodians used undue influence to marry the dependent charge in a scheme to avoid the application of the presumption of invalidity. Such a change requires legislative action. While we recognize the possibility that unscrupulous care custodians might persuade a dependent adult to enter into marriage to avoid the presumption of section 21350, we disagree that our narrow construction of section 21351 leads to absurd or ridiculous consequences.

Sections 21350 and 21351 require a delicate balancing of interests. On one hand, there is the desire to protect elderly or dependent adults from unscrupulous caregivers. On the other, there is the need to honor the testamentary wishes of elders and dependent adults who may wish to reward those who provided them care. In support of her policy arguments, Elizabeth quotes from a staff memorandum of the California Law Revision Commission which examined four factors that impact the potential that a care custodian may take advantage of an elder or dependent adult. What Elizabeth cites in her brief was a preliminary staff memorandum prepared for the California Law Revision Commission, which preceded the issuance of its Recommendation in October 2008. (Mem. 2008-13, Mar. 10, 2008, Study L-622.)

The restrictions on donative transfers in sections 21350 and 21351 were referred by the Legislature to the California Law Revision Commission in 2006 for study. (Stats.2006, ch. 215.) The recommendations of the Law Revision Commission are currently before the Legislature in Senate Bill No. 105. An analysis of that legislation for the Senate Judiciary Committee sets out the circumstances under which the Law Revision Commission was asked to study this topic. It notes that the Chief Justice, in a concurring opinion in Bernard, invited the Legislature “to consider modifying or augmenting the relevant provisions in order to more fully protect the interests of dependent adults and society as a whole, by according separate treatment to longer term care custodians who undertake that role as a consequence of a personal relationship rather than as an occupational assignment.” (Bernard, supra, 39 Cal.4th at p. 816, 47
The Senate Judiciary Committee Analysis states that a cleanup bill introduced in 2007 (Assem. Bill No. 1727) was originally intended to respond to the Chief Justice's invitation in Bernard, supra, 39 Cal.4th at pages 820-821, 47 Cal.Rptr.3d 248, 139 P.3d 1196. But the donative transfer provisions were deleted from the bill and referred to the Law Revision Commission because it was already studying the subject. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 105 (2009-2010 Reg. Sess.).) The proposed legislation, Senate Bill No. 105, would reenact the exception to the presumption of invalidity provided to care custodians who are married to the dependent or elder adult without providing an exception where the marriage is the result of undue influence or fraud. (Sen. Bill No. 105 (2009-2010 Reg. Sess.) § 13.) The Law Revision Commission recognized the risk that family members might perpetrate financial abuse of the elderly, citing a study finding that over 85 percent of confirmed cases were committed by relatives. (Law Revision Recommendation, p.125.) But it observed: “Despite the prevalence of abuse by relatives, family members are exempt from the statutory presumption of undue influence. The reason for that apparent incongruity seems clear. Family members are also the most likely intended beneficiaries of an at-death transfer. The ‘naturalness' of a gift to a family member weighs heavily against the presumption that such a gift was the product of undue influence. Nor is there anything inherently suspicious about a family member providing care services to a dependent relative. Such assistance is expected and beneficial.” (Ibid.) The Commission recommended that the existing categorical exceptions to the restriction on donative transfers be continued with minor revisions which are not relevant here. (Id. at p. 131.)

The Law Revision Commission also notes that the restrictions on donative transfers currently codified in sections 21350 and 21351 supplement the common law on menace, duress, fraud and undue influence. “A gift that does not fall within the scope of the statutory presumption can still be challenged under the common law.” (Law Revision Recommendation, p.113.)

In sum, we find no support in the language of section 21351, subdivision (a), or in the legislative history, which would make the spousal exception to the presumption of invalidity unavailable to a spouse who allegedly persuaded the transferor to marry through undue influence or fraud. The risks that a family member may exercise undue influence on an elder or dependent adult are well known. The Legislature has addressed the policy alternatives by choosing not to create an exception for the circumstances presented here. It is not our province to do so. In re Estate of Pryor (2009, 2nd District) 177 Cal.App.4th 1466, 99 Cal.Rptr.3d 895 (2009)

**First District Court of Appeal**

For cases regarding this topic see the Unabridged Points and Authorities at [www.legintent.com/capa.php](http://www.legintent.com/capa.php)

**Second District Court of Appeal**

... Where the statements of a bill's author appear to be part of the legislative debate and were communicated to other legislators,
as was the case here, we may regard them as evidence of the legislative intent. (Carter v. California Dept. of Veterans Affairs (2006) 38 Cal.4th 914, 928, 44 Cal.Rptr.3d 223, 135 P.3d 637.) People v. Saleem (2009, 2nd District) Cal.Rptr.3d, fn.3, WL 4852440 (2009)

Third District Court of Appeal

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

Fourth District Court of Appeal

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

Fifth District Court of Appeal

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

Sixth District Court of Appeal

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

17. The Author’s File

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php

18. Legislative Analyst

Wunderlich v. County of Santa Cruz (2009, 6th District) 178 Cal.App.4th 680, 100 Cal.Rptr.3d 598 (2009)

19. Rejection, Deletion, and Refusal to Act


20. Conference Committee Reports


C. Post-Enrollment History

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php
1. **Role of the Governor**

For cases regarding this topic see the Unabridged Points and Authorities at [www.legintent.com/capa.php](http://www.legintent.com/capa.php)

2. **Enrolled Bill Reports and Memoranda**


3. **Governor’s Correspondence, Press Releases and Message**

   Finally, a September 11, 1980 letter to Governor Brown, Jr., from Yolo County District Attorney Richard L. Gilbert, a sponsor of Assembly Bill No. 2861 (1979-1980 Reg. Sess.), urging the signing of the bill, provides, “The bill has been amended in a number of particulars since its first introduction in order to provide ... limitations on the time period for the filing of petitions....” ...


   Nothing in the language of section 851.8 or the aforementioned legislative history limits the two-year filing period to any one of the three classes of individuals entitled to relief under section 851.8. This suggests the Legislature intended the limitations period to apply to anyone entitled to petition for such relief. People v. Bermudez (2009, 1st District) 172 Cal.App.4th 966, 91 Cal.Rptr.3d 510 (2009)


4. **Post-Enactment History**

   1. **Statements and Actions by Subsequent Legislatures**


   2. **Administrative Agency’s Construction of Statutes**

      For cases regarding this topic see the Unabridged Points and Authorities at [www.legintent.com/capa.php](http://www.legintent.com/capa.php)

   3. **Legislative Committee Documents**

      For cases regarding this topic see the Unabridged Points and Authorities at [www.legintent.com/capa.php](http://www.legintent.com/capa.php)

   4. **Author Letter from Legislative Journal and Otherwise**

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E. Regulations, Rules and Ordinances

For cases regarding this topic see the Unabridged Points and Authorities at www.legintent.com/capa.php