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**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 with 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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1 action, defendants contend the statements in question show a
2 legislative intent to apply class action procedures to actions
3 brought under the Labor Code Private Attorneys General Act of 2004.
4 We are not persuaded.

5 The above quoted comments from the committee reports were
6 simply responses to a concern expressed by those opposing the
7 proposed legislation that the proposed legislation would allow
8 employees to sue as a class without satisfying class action
9 requirements. Because the committee report comments do not refer to
10 class actions, they are insufficient to support the conclusion that
11 the Legislature intended to impose class action requirements on
12 representative actions brought under the Labor Code Private Attorneys
13 General Act of 2004. *Arias v. Superior Court* (2009) 46 Cal.4th 969,
14 209 P.3d 923 (2009)

8 III. Legislative History

9 We also find compelling evidence of legislative intent in the
10 legislative history of the 1992 amendment, Assembly Bill No. 1077
11 (1991-1992 Reg. Sess.). As noted, Assembly members were told that by
12 adding subdivision (f) to section 51 the bill would "[m]ake a
13 violation of the ADA a violation of the Unruh Act. *Thereby providing*
14 *persons injured by a violation of the ADA with the remedies provided*
15 *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
16 of the ADA a violation of the Unruh Act. *Thereby providing persons*
17 *injured by a violation of the ADA with the remedies provided by the*
18 *Unruh Act (e.g., right of private action for damages ...)."* (Sen.
19 Judiciary Rep. on Assem. Bill No. 1077, *supra*, at p.5, italics
20 added.)

21 The ADA, as explained above, permits a disabled individual
22 denied access to public accommodations to recover damages in a
23 government enforcement action only, not through a private action by
24 the aggrieved person. But by incorporating the ADA into the Unruh
25 Civil Rights Act, California's own civil rights law covering public
26 accommodations, which does provide for such a private damages action,
27 the Legislature has afforded this remedy to persons injured by a
28 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

1 accessibility standards comprehensively into the Unruh Civil Rights
2 Act and thus to provide a damages remedy for any violation of the
3 ADA's mandate of equal access to public accommodations. That broad
4 remedial intent covers the particular circumstance before us.

5 Any doubt remaining after examination of the language, context,
6 and history of section 51, subdivision (f) would be resolved by the
7 principle that the Unruh Civil Rights Act "must be construed
8 liberally in order to carry out its purpose," which is to "create and
9 preserve a nondiscriminatory environment in California business
10 establishments." (Angelucci v. Century Supper Club, supra, 41 Cal.4th
11 at p.167, 59 Cal.Rptr.3d 142, 158 P.3d 718.) The Legislature having
12 decided, in the 1992 amendment, to pursue the Unruh Civil Rights
13 Act's goal of equality by incorporating ADA accessibility law into
14 California's own law, in the absence of contrary legislative
15 direction we may not choose a restrictive reading of that amendment
16 over a reasonable reading that gives full effect to the law's
17 guarantees. Munson v. Del Taco, Inc. (2009) 46 Cal.4th 661, 208 P.3d
18 623 (2009)

19 *Hughes v. Pair* (2009) 46 Cal.4th 1035, 209 P.3d 963 (2009)

20 *Stevens v. Tri Counties Bank* (2009, 3rd District) 177 Cal.App.4th 236, 99 Cal.Rptr.3d 188 (2009)

21 **3. Prior Law Presumption**

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

25 The Ellis Act was amended in 1999 by Senate Bill No. 948 (Sen.
26 Bill No. 948 (1999-2000 Reg. Sess.) §§ 1-4) and again in 2002 by
27 Senate Bill No. 1403. (Sen. Bill No. 1403 (2001-2002 Reg. Sess.) §
28 5.) Of interest here, Senate Bill No. 1403 made non-substantive
amendments to former section 7060.2, subdivision (c), now section
7060.2, subdivision (d). The last phrase of subdivision (d) was
changed from "notwithstanding any exemption from such a system of
controls for newly constructed accommodations," to "notwithstanding
any exemption from the system of controls for newly constructed
accommodations." (Compare Stats.2002, ch. 301, § 5 with Stats.1985,
ch. 1509, § 1, italics added; see also Sen. Bill No. 1403 (2001-2002
Reg. Sess.) § 5, as introduced Feb. 13, 2002.) Apartment Assn. of Los
Angeles County, Inc. v. City of Los Angeles (2009, 2nd District) 173
Cal.App.4th 13, 92 Cal.Rptr.3d 441 (2009)

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

1 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.*)

2 ... Plaintiff requests that we take judicial notice of
3 legislative history materials regarding Assembly Bill No. 2846, which
amended section 340.1 in 1994. Amicus for plaintiff requests that we
4 take judicial notice of legislative materials relevant to Assembly
Bill No. 1651, which amended the statute in 1998, and Senate Bill No.
5 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
6 Cal.Rptr.3d 330, 169 P.3d 559.) *K.J. v. Roman Catholic Bishop of*
Stockton (2009, 3rd District) 92 Cal.Rptr.3d 673, fn.4 (2009)

7 **B. Enactment History: The Legislative Process**

8 **1. Different Versions of the Bill**

9 The Legislature's concern in passing Assembly Bill No. 711,
10 codified as Financial Code section 864, was that bank accounts were
"often [being] wiped out by the banks' taking their [customers']
11 assets to pay outstanding credit card balances owed. The customer
deserves to have some protection from this practice." (Sen.
12 Democratic Caucus, analysis of Assem. Bill No. 711 (1975-1976 Reg.
Sess.) as amended June 5, 1975.) The bill proposed to " solve [] the
13 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
14 account and by requiring banks to invoke orthodox judicial
proceedings to attach bank deposits." (Assem. Com. on Finance,
15 Insurance and Commerce, Analysis of Assem. Bill No. 711 (1975-1976
Reg. Sess.) as amended Apr. 16, 1975, p.2.)

16 Indeed, the Governor was advised to sign the bill, in a
document acknowledging that it was a "small step in [the] right
17 direction." (Dept. Consumer Affairs, Enrolled Bill Rep. on Assem.
Bill No. 711 (1975-1976 Reg. Sess.) Sept. 11, 1975, p.1.) Financial
18 Code section 864 was enacted to prohibit a bank from using setoff as
"nothing more than a form of nonstatutory, nonjudicial prejudgment
19 attachment applied on a continuing basis to what may be considered a
'necessity of life,' without even the minimal protection of
20 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.)

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

27 The bill was twice amended in 1975 before the definition of
debt currently found in the statute was added to the proposed
28 language. (Assem. Bill No. 711 (1975-1976 Reg. Sess.) as amended May
29, 1975.) In April 1975, when the amendment containing the current

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

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

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

43 ... Importantly, the bill as originally introduced required the
44 court to enforce predispute reference agreements and was amended to
45 give the court discretion to decide whether to enforce such
46 agreements. The original version of the bill contained a separate
47 paragraph on predispute reference agreements, stating: "Parties to a
48 written contract or lease may provide that any controversy arising
49 therefrom will be heard by a reference and any party to such an
50 agreement may move the court to compel the reference. If the court
51 finds a reference agreement existing between the parties, the
52 reference shall be ordered." (Assem. Bill No. 3657 (1982 Sess.) March
53 18, 1982, italics added.) An Assembly committee report noted that
54 then-existing law provided that a court "may" order a reference upon
55 agreement of the parties and that the proposed bill "would require a

1 court to compel a reference if there is a pre-dispute agreement to
2 refer." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 3657
3 (1982 Sess.) April 28, 1982, p.1.) Committee staff commented: "Should
4 not the court have the discretion to decide that, despite the
5 existence of the pre-dispute agreement, the issues would be more
6 properly or efficiently decided by the judge? Therefore, should not
7 this bill simply create a presumption that a court should compel a
8 reference when parties have contractually agreed to one, thereby
9 permitting the court to determine that such a reference would be
10 inappropriate?" (*Id.* at pp. 1-2.) The legislators embraced this
11 recommendation. The bill was amended to delete the mandatory language
12 of the bill as originally introduced, and to use permissive language.
13 (Assem. Amend. to Assem. Bill No. 3657 (1982 Sess.) May 10, 1982.)
14 The amendment deleted the separate paragraph (quoted above) relating
15 to predispute reference agreements and incorporated predispute
16 agreements into the existing discretionary provision governing
17 postdispute reference agreements. (*Ibid.*) Section 638 was thus
18 amended to read as it does now, in substantial form: "A reference may
19 be ordered upon the agreement of the parties filed with the clerk, or
20 judge, or entered in the minutes or in the docket, or upon the motion
21 of a party to a written contract or lease which provides that any
22 controversy arising therefrom shall be heard by a reference if the
23 court finds a reference agreement exists between the parties."
24 (Assem. Amend. to Assem. Bill No. 3657 (1982 Sess.) May 10, 1982,
25 original italics.) The legislative history thus confirms that the
26 Legislature specifically intended to vest courts with discretion to
27 deny predispute reference agreements, just as the court has
28 discretion to deny postdispute reference agreements. *Tarrant Bell
Property, LLC v. Superior Court* (2009, 1st District) 179 Cal.Appl.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)

18 **2. Committee Reports and Analyses**

19 Unless rescinded or set aside, a voluntary declaration of
20 paternity signed by adult parents on or after January 1, 1997, is
21 treated as a judgment. Under section 7573 (enacted in 1996), such a
22 declaration "filed with the Department of Child Support Services
23 shall establish the paternity of a child and shall have the same
24 force and effect as a judgment for paternity issued by a court of
25 competent jurisdiction." The declaration must also "be recognized as
26 a basis for the establishment of an order for child custody,
27 visitation, or child support." (§ 7573.) The legislative intent
28 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

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

8 ... The amendment confirms that a notice of default is not part
9 of the record from which the loan's maturity date can be ascertained
10 for purposes of section 882.020. As mentioned, the amendment revised
11 the phrase "ascertainable from the record" to read "ascertainable
12 from the recorded evidence of indebtedness." An evidence of
13 indebtedness is a security, such as a deed of trust. (See Corp.Code,
14 § 25019.) A notice of default is not a security or evidence of
15 indebtedness. It is an allegation of the existence of a debt, and
16 thus cannot be an evidence of indebtedness for purposes of section
17 882.020.

18 The amendment's legislative history also indicates the
19 amendment was adopted to codify the holding of Ung and clarify that
20 notices of default were not part of the record. According to
21 legislative committee reports, the amendment was intended "to provide
22 certainty as to the expiration date of the lien, preventing
23 subsequent items from becoming part of the 'record,' that would alter
24 the expiration date of the lien. Essentially, this codifies a recent
25 Court of Appeal case that stated that 'once the beneficiary of a deed
26 of trust has become entitled to claim the 60-year time limit ..., the
27 beneficiary does not lose that entitlement merely by filing a notice
28 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

1 claims for statutory death benefits even though the employer had paid
2 the deceased employee's estate under section 4702, subdivision
3 (a)(6)(B), proposed the bill "to clear up the confusion in this
4 area." (Assem. Com. on Insurance, Rep. on Assem. Bill No. 2292 (2005-
5 2006 Reg. Sess.), p.3.) As stated in the committee report, "This bill
6 clarifies that it is the intent of the Legislature that when an heir
7 of a deceased employee is found, the state has no standing to claim
8 workers' compensation benefits under the death without dependents
9 provisions of the code." (*Id.* at p. 2; see also Sen. Com. on Labor
10 and Industrial Relations, Rep. on Assem. Bill No. 2292, as amended
11 April 27, 2006, p.2 [same].)

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

22 The legislative history supports this construction. Legislative
23 committee reports and analyses prepared in connection with the bill
24 that added the second sentence of Government Code section 65858,
25 subdivision (c); paragraphs (1) through (3) of subdivision (c); and
26 subdivisions (g) and (h) stated that the requirement of additional
27 findings would not apply to interim ordinances relating to the types
28 of projects described in subdivision (g). (Sen. Rules Com., Off. Of
29 Sen. Floor Analyses, analysis of Sen. Bill No. 1098 (2001-2002 Reg.
30 Sess.) as amended Aug. 28, 2001, p. 3; Assem. Com. on Local
31 Government, Analysis of Sen. Bill No. 1098 (2001-2002 Reg. Sess.) as
32 amended June 28, 2001, p. 1; Assem. Com. on Housing and Community
33 Development, Analysis of Sen. Bill No. 1098 (2001-2002 Reg. Sess.)
34 June 27, 2001 [proposed amendment], p. A.) The legislative history
35 also indicates that the bill imposed findings requirements similar to
36 those under the Housing Accountability Act in order to prevent local
37 governments from circumventing the requirements of that act through
38 the adoption of interim ordinances. (Sen. Rules Com., Off. Of Sen.
39 Floor Analyses, analysis of Sen. Bill No. 1098 (2001-2002 Reg. Sess.)
40 as amended Aug. 28, 2001, pp. 2, 4.) ...

41 ... We take judicial notice of the cited legislative history
42 materials. (*People v. Superior Court (Ferguson)* (2005) 132
43 Cal.App.4th 1525, 1532, 34, Cal.Rptr.3d 481.) *Hoffman Street, LLC v.*
44 *City of West Hollywood* (2009, 2nd District) 179 Cal.App.4th 754,
45 fn.7, 102 Cal.Rptr.3d 125 (2009)

46 That the unusually dangerous nature of assault weapons was the
47 motivation behind the Assault Weapons Control Act was underscored by
48 Attorney General John Van de Kamp, who testified before the Committee
49 of the Whole: "Increasingly, 'the weapons of choice for this
50 madness,' he noted, were 'semi-automatic military assault rifles.' In
51 Los Angeles, he said, it had 'become fashionable among hard-core
52 members of the Crips Gang to spray a stream of bullets in hopes of
53 taking down one rival gang member, but infants and grandmothers may
54 be killed as well. They say that the young killers even have a phrase

1 for it. They say, "I spray the babies to [the] eighties."
2 '[Citation.]' (Kasler, supra, 23 Cal.4th at p. 484, 97 Cal.Rptr.2d
3 334, 2 P.3d 581, citing 1 Assem. J. (1989-1990 Reg. Sess.) p.438.) A
4 vivid illustration of the Attorney General's observation was provided
5 by Lieutenant Bruce Hagerty of the Los Angeles Police Department: "
6 'Probably the most graphic example, for me, was on Good Friday of
7 last year, where a rival gang entered a neighborhood in South Central
8 Los Angeles and sprayed a crowd of forty to fifty people with an AR-
9 15, and that's an American assault rifle, shooting 14 people, killing
10 a 19 year old boy, hitting a five year old little girl, and a 65 year
11 old man, and all ages in between. I was the field commander of that
12 situation, and I'm here to tell you that that was, in every sense of
13 the word, a war scene.... There were bodies everywhere and people
14 were terrified, and the only reason that this gang did that was to
15 terrorize the neighborhood because they wanted to take it over and be
16 able to sell drugs in that neighborhood, and the military assault
17 rifle is the vehicle that they used. [¶] ... I'm here to tell you
18 that there's only one reason that they use these weapons, and that is
19 to kill people. They are weapons of war.' [Citation.]" (Kasler,
20 supra, 23 Cal.4th at p. 485, 97 Cal.Rptr.2d 334, 2 P.3d 581, citing 1
21 Assem. J. (1989-1990 Reg. Sess.) p.450.)

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

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

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

1 danger to California and the nation." (Sen. Com. on Public Safety,
2 Analysis of Assem. Bill No. 50 (2003-2004 Reg. Sess.) as amended June
3 2, 2003, pp. 13-14; see also Assem. Com. on Public Safety, Analysis
4 of Assem. Bill No. 50 (2003-2004 Reg. Sess.) Apr. 29, 2003, p.7
5 ["According to the author, '[t]he fifty-caliber sniper rifle is one
6 of the United States military's highest-powered rifles, capable of
7 ripping through armored limousines. It is said to be able to punch
8 holes through military personnel carriers at a distance of 2,000
9 yards, the length of 20 football fields. It is deadly accurate at up
10 to one mile and effective at more than four miles....'"].)

11 The Assembly Committee on Public Safety analysis of the bill
12 contains the following: "The term '.50 BMG' stands for Browning
13 machine gun (one of the earliest firearms to use the ammunition) and
14 is a technical designation for the round used in the weapon....
15 Manufacturers of the rifles claim that the rifle is accurate up to
16 2,000 yards and effective up to 7,500 yards.... The .50 caliber
17 ammunition ... [is] capable of piercing through body armor. [¶] ...
18 [¶] ... [¶] The Violence Policy Center has issued two reports on the
19 .50 caliber sniper rifle. [Citations.] Both reports stated that the
20 unregulated sale of military sniper rifles to civilians creates a
21 danger to national security as the rifles have the ability to shoot
22 down aircraft. [¶] The second report also states that at least 25
23 Barrett .50 caliber sniper rifles were sold to the Al Qaeda network.
24 [Citations.]" (Assem. Com. on Public Safety, Analysis of Assem. Bill
25 No. 50 (2003-2004 Reg. Sess.) Apr. 29, 2003, pp.7-9.)

26 The bill was supported by the Los Angeles County Sheriff's
27 Department, which argued in support of the legislation: "This weapon,
28 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.)

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

43 In addition, a review of the legislative history underlying
44 this 2002 amendment to section 391.7 reveals the Legislature merely
45 sought to draw attention to the availability of a vexatious litigant
46 determination as a remedy for relatives who were legal guardians and
47 were subjected to repeatedly and unfounded attempts by parents to
48 challenge a legal guardian's decision making or even their continuing
status as legal guardian. (Bill History of AB 1938, Stats. 2002, ch.
1118.)

1 "Under existing law, parties to family law and probate law
2 proceedings, as well as the court, may already use the vexatious
3 litigant statutes if they so desire. [¶] The intent of this bill,
4 according to the author and the proponents, is to point the way to
5 the vexatious litigant statutes to the parties engaged in these
6 proceedings and to the court, as a tool to discourage repeated
7 motions by parents to regain custody of their children when there are
8 no changed circumstances to justify a different result." (Sen. Com.
9 on Judiciary Analysis of Assem. Bill No. 1938 (2001-2002 Reg. Sess.),
10 p.6.) *In re R.H.* (2009, 5th District) 170 Cal.App.4th 678, 88
11 Cal.Rptr.3d 650 (2009)

12 ... Cintas correctly asserts the testimony of former City
13 Councilmember Jackie Goldberg, who served on the city council from
14 1993 to 2000, is not admissible to show the intended meaning of the
15 statute. (*Amaral, supra*, 163 Cal.App.4th at p. 1187, 78 Cal.Rptr.3d
16 572; see also *City of Los Angeles v. Superior Court* (1985) 170
17 Cal.App.3d 744, 752, 216 Cal.Rptr. 311 ["By attempting to delve into
18 the mind of the [ordinance's] principal drafter, Friedman is trying
19 to discover what the individual members of the City Council
20 interpreted the [ordinance] to mean at the time they passed [it].
21 This violates one of the long-established rules of statutory
22 construction: that the testimony of an individual legislator as to
23 his intention, motive or opinion with regard to a particular piece of
24 legislation is inadmissible."]; but see *In re Marriage of Bouquet*
25 (1976) 16 Cal.3d 583, 589, 128 Cal.Rptr. 427, 546 P.2d 1371
26 [statement by the sponsoring legislator may be used to show
27 legislative intent to the extent it "evidences the understanding of
28 the Legislature" and not simply the particular legislator's personal
29 views].) However, the exhibits Ms. Goldberg authenticates in her
30 declaration, including memoranda from the city attorney to the city
31 council concerning the draft ordinance, are properly considered. (See
32 *Southern California Gas Co. v. Public Utilities Com.* (1979) 24 Cal.3d
33 653, 659, 156 Cal.Rptr. 733, 596 P.2d 1149 ["[s]tatements in
34 legislative committee reports concerning the statutory objects and
35 purposes which are in accord with a reasonable interpretation of the
36 statute are legitimate aids in determining legislative intent"]; *Pac.*
37 *Bell v. Cal. State & Consumer Servs. Agency* (1990) 225 Cal.App.3d
38 107, 116, 275 Cal.Rptr. 62 ["a legislative staff analysis of a
39 measure may be relevant to ascertaining legislative intent when the
40 analysis is consistent with a reasonable interpretation of the
41 enactment"].) *Aguiar v. Superior Court* (2009, 2nd District) 170
42 Cal.App.4th 313, 87 Cal.Rptr.3d 813 (2009)

23 *People v. Dieck* (2009) 46 Cal.4th 934, 209 P.3d 623 (2009); *Munson v. Del Taco, Inc.* (2009) 46
24 Cal.4th 661, 208 P.3d 623 (2009); *Miller v. Bank of America* (2009) 46 Cal.4th 630, 207 P.3d 531
(2009)

25 *Tarrant Bell Property, LLC v. Superior Court* (2009, 1st District) 179 Cal.App.4th 1283, 102
26 Cal.Rptr.3d 235, December 2, 2009; *Duncan v. W.C.A.B.* (2009, 6th District) 179 Cal.App.4th 1009, 102
27 Cal.Rptr.3d 331, November 25, 2009; *Page v. MiraCosta Community College Dist.* (2009, 4th District)
28 Cal.Rptr.3d, WL 4021535, November 23, 2009; *Wunderlich v. County of Santa Cruz* (2009, 6th District)
178 Cal.App.4th 680, 100 Cal.Rptr.3d 598, October 23, 2009; *In re Estate of Pryor* (2009, 2nd
District) 177 Cal.App.4th 1466, 99 Cal.Rptr.3d 895, September 29, 2009; *Benson v. Workers'*
Compensation Appeals Board (2009, 1st District) 170 Cal.App.4th 1535, 89 Cal.Rptr.3d 166 (2009);
California School Employees Assn. v. Colton Joint Unified School Dist. (2009, 4th District) 170
Cal.App.4th 857, 88 Cal.Rptr.3d 486 (2009)

1 **3. Committee Files**

2 Section 17211, enacted in 1996, was one of many changes
3 included in Senate Bill No. 392. The bill was a "probate omnibus bill
4 containing various noncontroversial technical and substantive changes
5 to estate planning, trust, and probate law." (Sen. Rules Com., Off.
6 of Sen. Floor Analyses, analysis of Sen. Bill No. 392 (1995-1996 Reg.
7 Sess.) as amended Jan. 12, 1996, p.1.) The bill was based upon
8 suggestions from organizations such as the California Law Revision
9 Commission and the California State Bar. (Sen. Com. on Judiciary, 3d
10 reading analysis of Sen. Bill No. 392 (1995-1996 Reg. Sess.) as
11 amended Aug. 15, 1996, p.1.)

12 The Estate Planning, Trust and Probate Law Section of the
13 California State Bar proposed what ultimately was enacted as section
14 17211 for the following reasons:

15 "Existing law provides that, in the context of a probate estate
16 administration, if there is a challenge of a personal
17 representative's account which is brought without reasonable cause
18 and in bad faith, the court may award against the contestant the
19 compensation and costs of the personal representative and other
20 expenses and costs of litigation, including attorney's fees, incurred
21 to defend the account. Similarly, if the personal representative
22 defends a challenge to an account without reasonable cause and in bad
23 faith, the court may award the expenses and costs to the challenger.
24 (Probate Code Section 11003.) ... It is advisable to enact a
25 counterpart to these provisions which would apply in settlement of a
26 trustee's account. Without a specific statutory counterpart in the
27 trust law, parties challenging or defending a trustee's accounts are
28 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.) *Chatard v.*
Oveross (2009 2nd District) 179 Cal.App.4th 1098, fn.14, 101
Cal.Rptr.3d 883 (2009)

24 **Bill Analysis Worksheets:**

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

27 **4. Official Commission Reports and Comments**

28 The Law Revision Commission Comments to section 5303 state:
"Subdivision (a) is the same as the first sentence of Section 6-105

1 of the Uniform Probate Code (1987).... [¶] Subdivision (b) is
2 substituted for the remainder of the Uniform Probate Code section and
3 is drawn from Georgia law. See Ga.Code Ann. § 7-1-814 (1989)...."
4 Said Georgia statute provides in part: "Once established, the terms
5 of a multiple-party account can be changed only: [¶] (1) By closing
6 the account and reopening it under different terms; or [¶] (2) By
7 presentation to the financial institution of a modification agreement
8 in a form satisfactory to the financial institution and signed by all
9 parties with a present right of withdrawal." *Stevens v. Tri Counties
10 Bank* (2009, 3rd District) 177 Cal.App.4th 236, 99 Cal.Rptr.3d 188
11 (2009)

12 In discussing the broad purposes of section 366.2, the Supreme
13 Court in Rumsey, supra, 24 Cal.4th 301, 99 Cal.Rptr.2d 792, 6 P.3d
14 713, stated, "The overall intent of the Legislature in enacting Code
15 of Civil Procedure former section 353 [now section 366.2] was to
16 protect decedents' estates from creditors' stale claims. [Citations.]

17 ...
18 The December 1989 California Law Revision Commission
19 recommendation on the proposed legislation amending Code of Civil
20 Procedure former section 353 explained that 'the one year statute of
21 limitations is intended to apply in any action on a debt of the
22 decedent, whether against the personal representative under Probate
23 Code Sections 9350 to 9354 (claim on cause of action), or against
24 another person, such as a distributee under Probate Code Section 9392
25 (liability of distributee), a person who takes the decedent's
26 property and is liable for the decedent's debts ... or a trustee.'
27 [Citation.] It thus appears that when the amendments to former
28 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)

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

39 ... Amicus curiae County of Los Angeles filed a request seeking
40 judicial notice of: (1) a conference report of the Senate Rules
41 Committee on Senate Bill No. 899; (2) a press release from the office
42 of Governor Arnold Schwarzenegger after passage of Senate Bill No.

1 899; (3) an article written by David Neumark, for the Public Policy
2 Institute of California, entitled *The Workers' Compensation Crisis in*
3 *California* (Jan.2005) *California Economic Policy*, page 1; and (4)
4 minutes from the February 24, 2005, meeting of the Commission on
5 Health and Safety and Workers' Compensation. Benson opposes the
6 County of Los Angeles's request. We grant the County of Los Angeles's
7 request for judicial notice with respect to item (1) above. "[I]t is
8 well established that reports of legislative committees and
9 commissions are part of a statute's legislative history and may be
10 considered when the meaning of a statute is uncertain. [Citations.]"
11 (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d
12 456, 465, fn.7, 253 Cal.Rptr. 236, 763 P.2d 1326; accord, *Kaufman &*
13 *Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133
14 Cal.App.4th 26, 31-32, 34 Cal.Rptr.3d 520 (*Kaufman*).) However, we
15 deny the County of Los Angeles's request for judicial notice with
16 respect to items (2), (3), and (4) above. In construing a statute,
17 "the court's task is to ascertain the intent of the Legislature as a
18 whole in adopting a piece of legislation. [Citations.]" (*Quintano v.*
19 *Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, 48 Cal.Rptr.2d 1,
20 906 P.2d 1057 (*Quintano*).) Because there is no indication that the
21 Legislature considered items (2), (3), or (4), they are not proper
22 subjects of judicial notice. (*Cortez v. Purolator Air Filtration*
23 *Products Co.* (2000) 23 Cal.4th 163, 168, fn.2, 96 Cal.Rptr.2d 518,
24 999 P.2d 706; *Quintano, supra*, 11 Cal.4th at p.1062, fn.5, 48
25 Cal.Rptr.2d 1, 906 P.2d 1057; *Kaufman, supra*, 133 Cal.App.4th at pp.
26 38, 42, 34 Cal.Rptr.3d 520.)

27 Senate Bill No. 899 itself provides: "This act is an urgency
28 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
"ha[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.

1 Com. on Labor and Industrial Relations, Analysis of Senate Bill No.
2 899 (2003-2004 Reg. Sess.) as amended Apr. 21, 2003.) It was but one
3 of 20 different bills to reform workers' compensation passed out of
4 the Senate or Assembly in 2003. (Sen. Rules Com., Off. of Sen. Floor
5 Analyses, Rep. on Sen. Bill No. 899 (2003-2004 Reg. Sess.) as amended
6 July 14, 2003, pp.2-3.) Senate and Assembly leaders responded to this
7 plethora of overlapping measures by submitting them to a joint
8 conference to digest the bills and incorporate their provisions into
9 a single omnibus reform measure. (Assem. Com. on Insurance, Analysis
10 of Sen. Bill No. 899 (2003-2004 Reg. Sess.) as proposed to be amended
11 July 9, 2003, p. 6.)" (Brodie, supra, 40 Cal.4th at p. 1329, fn.12,
12 57 Cal.Rptr.3d 644, 156 P.3d 1100.)

13 During the 2003-2004 regular legislative session, apportionment
14 reform was originally proposed in Assembly Bill No. 1481, Assembly
15 Bill No. 1579, and Senate Bill No. 714. But, these bills proposed
16 reforms that differ significantly from the reforms ultimately
17 enacted. (See Stats.2004, ch. 34, §§ 33-35, 37-38; Assem. Bill No.
18 1481 (2003-2004 Reg. Sess.) as introduced Feb. 21.2003, pp. 3-4; Sen.
19 Amend. to Sen. Bill No. 714 (2003-2004 Reg. Sess.) Apr. 21, 2003, p.
20 2; Sen. Amend. to Assem. Bill No. 1579 (2003-2004 Reg. Sess.) July 2,
21 2003, pp.60-61.) For example, Assembly Bill No. 1481 proposed, in
22 relevant part: "Section 5705.1 [be] added to the Labor Code, to read:
23 5705.1. (a) The burden of proof for the apportionment regarding
24 permanent disability under Sections 4663, 4750, and 4750.5 shall rest
25 upon the defendant. In accordance with Section 3202.5, the defendant
26 shall demonstrate by a preponderance of the evidence, and by
27 reasonable medical probability, that absent the industrial injury,
28 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.)

It was when Senate Bill No. 899 emerged from the conference
committee that the proposed apportionment provisions first appeared
in the current form. (Proposed Conf. Report No. 1 to Sen. Bill No.
899 (2003-2004 Reg. Sess.), as proposed April 15, 2004, pp.88-89,
91.) Although the legislative history does not provide any further
clarification for the changes, we must conclude that the changes had
significance. None of the precursor bills had proposed repeal of
former sections 4663 and 4750. (See Assem. Bill No. 1481 (2003-2004
Reg. Sess.) as introduced Feb. 21.2003; Sen. Amend. to Sen. Bill No.
714 (2003-2004 Reg. Sess.) Apr. 21, 2003; Sen. Amend. to Assem. Bill
No. 1579 (2003-2004 Reg. Sess.) July 2, 2003.) Furthermore, all of
these precursor bills proposed limiting the Board's reliance "on any

1 medical report that fails to apportion a *previous injury or illness*
2 *that has been the subject of a prior claim for damages ...*" (Assem.
3 Bill No. 1481 (2003-2004 Reg. Sess.) as introduced Feb. 21, 2003,
4 pp.3-4, italics added; accord, Sen. Amend. to Sen. Bill No. 714
5 (2003-2004 Reg. Sess.) Apr. 21, 2003, p.2; Sen. Amend. to Assem. Bill
6 No. 1579 (2003-2004 Reg. Sess.) July 2, 2003, p.60.) By removing this
7 limitation and requiring physicians to apportion to "prior industrial
8 injuries" without limitation, it can be inferred that the Legislature
9 intended to expand the scope of apportionment to include prior
10 industrial injuries that had *not* been the subject of prior
11 compensation. (Compare Assem. Bill No. 1481 (2003-2004 Reg. Sess.) as
12 introduced Feb. 21, 2003, pp.3-4 with § 4663, subd. (c).) Had the
13 Legislature intended apportionment only for prior industrial injuries
14 that had been the subject of previous awards, it would not have
15 changed the proposed statutory language.

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

1 ... We cannot conceive that the Legislature would intend to
2 "replace" or "repeal and recast" the rules of apportionment but still
3 retain the Wilkinson doctrine. The Legislature indicated no such
4 exception in either the legislative history or the statutory
5 language. Furthermore, we are not convinced that the absence of
6 reference to Wilkinson by name in either the statutory language or
7 the legislative history compels its survival. The Legislature may
8 have on occasion explicitly mentioned certain judicial decisions it
9 sought to overrule. (See, e.g., former § 4750.5 ["The purpose of this
10 section is to overrule the decision in Jensen v. WCAB, 136 Cal.App.3d
11 1042, 186 Cal.Rptr. 570."].) But Benson cites no legal authority
12 compelling the Legislature to do so. In fact, when the Legislature
13 undertakes to amend a statute which has been the subject of judicial
14 construction "it is presumed that the Legislature was fully cognizant
15 of such construction, and when substantial changes are made in the
16 statutory language it is usually inferred that the lawmakers intended
17 to alter the law in those particulars affected by such changes.
18 [Citations.]" (Palos Verdes Faculty Assn. v. Palos Verdes Peninsula
19 Unified Sch. Dist. (1978) 21 Cal.3d 650, 659, 147 Cal.Rptr. 359, 580
20 P.2d 1155; see also People v. Mendoza (2000) 23 Cal.4th 896, 916, 98
21 Cal.Rptr.2d 431, 4 P.3d 265 [Legislature's repeal of prior statute
22 "together with its enactment of a new statute on the same subject ...
23 with significant differences in language, strongly suggests the
24 Legislature intended to change the law"].) When the Legislature
25 repealed former section 4750 and provided for apportionment to
26 causative factors, "including prior industrial injuries," it

1 demonstrated a clear intent to overrule Wilkinson. (See § 4663, subd.
2 (c).)

3 In enacting Senate Bill No. 899, the Legislature made
4 approximately 45 revisions to the workers' compensation statutes.
5 (Stats. 2004, ch.34, §§ 1-45.) It is little wonder that the
6 Legislature did not mention Wilkinson by name in the midst of such
7 extensive reform. Furthermore, it is undisputed that sections 4663
8 and 4664 abrogated the rehabilitation rule and the bar against
9 apportionment to pathology. (Brodie, supra, 40 Cal.4th at pp. 1326-
10 1327, 57 Cal.Rptr.3d 644, 156 P.3d 1100.) Yet, the Legislature did
11 not refer to the judicial decisions that had established those long-
12 standing rules. If the Legislature can abrogate those lines of
13 authority without explicit reference, then surely it can do the same
14 regarding Wilkinson.

15 The fact that both workers and employers were to benefit from
16 Senate Bill No. 899 as a whole does not help us interpret the
17 specific statutes at issue here. (See Sen. Rules Com., Off. of Sen.
18 Floor Analyses, 3rd reading analysis of Sen. Bill No. 899 (2003-2004
19 Reg. Sess.) as amended July 14, 2003, pp.1-2 ["While there is
20 agreement among the parties that the system is in need of repair,
21 what remains subject for debate is what the real systemic problems
22 are and how best to address them without diminishing the arguably
23 meager benefits injured workers receive in this state."].) Benson's
24 reliance on the few provisions of Senate Bill No. 899 that expanded
25 employee benefits is misplaced. (§§ 4658, subd. (d)(1) [increasing
26 benefits for workers with 70 percent or greater permanent
27 disability], 4658, subd. (d) (2) [increasing benefits for disabled
28 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,

1 "Every person who carries concealed upon his person, and every person
2 who sells, offers for sale, exposes for sale, loans, transfers, or
3 gives to any other person a switch-blade knife having a blade over
4 two inches in length is guilty of a misdemeanor." (Stats.1957, ch.
5 355, § 1, p.999.) As originally enacted, therefore, section 653k
6 contained no "public place" restriction and merely required the
7 concealed possession of a switchblade upon one's person.... The
8 reference to possession in a vehicle was added to the statute in
9 1986. The vehicle clause was inserted wholesale in its present form
10 after the first three words of the original statute, without
11 otherwise altering the statutory language. (Stats.1986, ch. 1422, §
12 1, p. 5116.) This suggests the Legislature did not intend to alter
13 the prior scope of the statute, but only to add an additional manner
14 of violation: constructive possession inside a car located in a
15 public place.

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

1 The SIBTF makes much of the legislative history of Assembly
2 Bill 749, the bill that created section 4659, subdivision (c).
3 (Stats. 2002, ch. 6, pp.91-95.) However, our reading of the assembly
4 committee's legislative analysis of the bill reveals that the goal of
5 enacting subdivision (c) was to increase benefits for the most
6 seriously injured workers, without increasing them too much. (Assem.
7 Com. on Insurance, Analysis of Assem. Bill No. 749 (2001-2002 Reg.
8 Sess.) Feb. 4, 2002, pp. 1, 15-18.) Regarding cost comparisons
9 between Assembly Bill 749 and two bills that then Governor Davis
10 vetoed, there is some mention on page 15 of the analysis concerning a
11 "\$7 billion" savings from the "elimination of the retroactive COLA."
12 However, Assembly Bill No. 1176 had provided in subdivision (c) of
13 section 4659, "Any injured employee who is injured on or after
14 January 1, 1998, and who, on or after January 1, 2004, is receiving
15 or becomes entitled to receive a life pension or total permanent
16 disability indemnity ... shall have that payment increased annually,
17 commencing January 1, 2004, and each January 1 thereafter, by an
18 amount equal to the percentage increase in the 'state average weekly
19 wage' as compared to the prior year." (Legis. Counsel Dig., Assem.
20 Bill No. 1176 (2001-2002 Reg. Sess.) vetoed by the Governor October
21 14, 2001.) Similarly, Senate Bill No. 71 had provided in subdivision
22 (c) of section 4659, "Any injured employee who, on or after January
23 1, 2004, regardless of date of injury, is receiving or becomes
24 entitled to receive a life pension or total permanent disability
25 indemnity ... shall have that payment increased annually, commencing
26 January 1, 2004, and each January 1 thereafter, by an amount equal to
27 the percentage increase in the 'state average weekly wage' as
28

1 compared to the prior year." (Legis. Counsel's Dig., Sen. Bill No. 71
2 (2001-2001 Reg. Sess.) vetoed by the Governor October 14, 2001.) Both
3 these bills had provided for COLAs to be given to far more injured
4 workers than the current version of section 4659, because the current
5 version applies only to injured workers whose injury occurs after
6 January 1, 2003.

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

9 The Legislative Counsel's digest explained that Assembly Bill
10 No. 749 "would provide for increased temporary disability and
11 permanent partial disability and death benefits for injuries or
12 deaths occurring on or after January 1, 2003, with additional
13 increases in benefits phased in over several years." (Legis.
14 Counsel's Dig., Assem. Bill No. 749, 6 Stats.2002, § 21; see also
15 Legis. Counsel's Dig., Assem. Bill No. 486, 866 Stats.2002, § 7.)
16 Pertinent to this case, among other changes in 2002, legislation set
17 a \$189 minimum and \$1,092 maximum-average weekly earnings rates for
18 dates of injury occurring on or after January 1, 2004. (See
19 Historical and Statutory Notes, 44B West's Ann. Labor Code (2003 ed.)
20 foll. § 4653, pp.163-164. *Duncan v. W.C.A.B.* (2009, 6th District) 179
21 Cal.App.4th 1009, 102 Cal.Rptr.3d 331 (2009)

22 *Tarrant Bell Property, LLC v. Superior Court* (2009, 1st District) 179 Cal.App.4th 1283, 102
23 Cal.Rptr.3d 235, December 2, 2009; *Benson v. Workers' Compensation Appeals Board* (2009, 1st District)
24 170 Cal.App.4th 1535, 89 Cal.Rptr.3d 166 (2009); *California School Employees Assn. v. Colton Joint*
25 *Unified School Dist.* (2009, 4th District) 170 Cal.App.4th 857, 88 Cal.Rptr.3d 486 (2009)

26 6. Legislative Counsel's Opinions

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

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

18 The absence of legislative intent to grant judges the right to
19 restrict the use of medical marijuana by a person eligible to do so
20 under the CUA is shown not just by the text of section 11362.795, but
21 also by its legislative history. Section 11362.795 was part of Senate
22 Bill 420 introduced by Senator John Vasconcelos in the 2003
23 legislative session and commonly known as the Medical Marijuana
24 Program (MMP). "In uncodified portions of the bill the Legislature
25 declared that, among its purposes in enacting the statute, was to
26 '[c]larify the scope of the application of the [CUA] and facilitate
27 the prompt identification of qualified patients and their designated
28 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)

29 *City of Los Angeles v. Workers' Comp. Appeals Bd.* (2009, 2nd District) 179 Cal.App.4th, 134, 101
30 Cal.Rptr.3d 513 (2009)

31 8. Ballot Summaries and Arguments/Statement of Vote

32 Here, section 667.6 was one of over two dozen statutes amended
33 or added by Jessica's Law. ... (Voter Information Pamp., Gen. Elec.

1 (Nov. 7, 2006) text of Prop. 83, §§ 3-30, pp.127-138.) While the
2 electorate's general intent in enacting Prop. 83 was to strengthen
3 and improve the laws that punish sex offenders (Voter Information
4 Pamp., Gen. Elec. (Nov. 7, 2006) text of Jessica's Law, § 31, p.
5 138), we cannot say that it did not intend that section 667.6,
6 subdivision (c) not be given its literal meaning. This is
7 particularly so where, as here, the drafters plainly intended to omit
8 the "whether or not" language.

9 ... In addition to section 667.6, Prop. 83 amended or added the
10 following: §§ 209, 220, 269, 288.3, 290.3, 311.11, 667.5, 667.51,
11 667.61, 667.71, 1203.06, 1203.065, 1203.75, 3000, 3000.07, 3001,
12 3003, 3003.5, 3004, 12022.75; Welf. & Inst.Code, §§ 6600, 6600.1,
13 6601, 6604, 6604.1, 6605, 6608. (Voter Information Pamp., Gen. Elec.
14 (Nov. 7, 2006) text of Prop. 83, §§ 3-30, pp.127-138).)

15 ... "When construing ... initiative measures, ... the intent of
16 the drafters may be considered ... if there is reason to believe that
17 the electorate was aware of that intent [citation] and we have often
18 presumed, in the absence of other indicia of the voters' intent such
19 as ballot arguments [citation] or contrary evidence, that the
20 drafters' intent and understanding of the measure was shared by the
21 electorate." (Rossi v. Brown (1995) 9 Cal.4th 688, 700, fn.7, 38
22 Cal.Rptr.2d 363, 889 P.2d 557; see also People v. Hazelton (1996) 14
23 Cal.4th 101, 123, 58 Cal.Rptr.2d 443, 926 P.2d 423.)

24 In amending subdivision (c), the drafters not only repealed the
25 "whether or not" language, but added the following sentence: "A term
26 may be imposed consecutively pursuant to this subdivision if a person
27 is convicted of at least one offense specified in subdivision (e)."
28 (§ 667.6, subd. (c); (Voter Information Pamp., Gen. Elec. (Nov. 7,
29 2006) text of Prop. 83, § 11, p. 130).) In Jones, supra, 46 Cal.3d at
30 page 589, 250 Cal.Rptr. 635, 758 P.2d 1165, the Supreme Court held
31 that "a single conviction of an enumerated sex offense is sufficient
32 to trigger the sentencing court's discretion under ... section 667.6,
33 subdivision (c), to impose a full, consecutive sentence for that
34 conviction." At the time the defendant in that case was sentenced,
35 (before Jessica's Law), section 667.6, subdivision (c) authorized a
36 trial court to impose "a full, separate and consecutive sentence ...
37 for each violation of [certain enumerated sex offenses] whether or
38 not the crimes were committed during a single transaction." (Id. at
39 p. 591, fn.2, 250 Cal.Rptr. 635, 758 P.2d 1165, italics added.) In
40 holding that a single conviction of an enumerated sex offense was
41 sufficient to trigger the sentencing court's discretion under
42 subdivision (c), the court relied substantially on the "whether or
43 not" language, explaining that "it is at once apparent that the
44 'whether or not' language was intended to broaden the scope of
45 subdivision (c)'s effect not to restrict it." (Id. at p. 593, 250
46 Cal.Rptr. 635, 758 P.2d 1165.) "The entire 'whether or not' clause is
47 to be read as the Legislature's shorthand pronouncement that the
48 court may discretionarily impose a full, consecutive sentence for
49 each [enumerated sex offense] conviction, irrespective of whether the
50 violent sex crime and the other crime making section 1170.1
51 potentially applicable were committed 'during a single transaction.'
52 (Id. at p. 594, 250 Cal.Rptr. 635, 758 P.2d 1165.)

53 While we do not know why the "whether or not" language was
54 deleted, we do know that it was not inadvertent because of the
55 addition of the following sentence: "A term may be imposed
56 consecutively pursuant to this subdivision if a person is convicted

1 of at least one offense specified in subdivision (e)." (§ 667.6,
2 subd. (c).) Given the court's holding in *Jones*, the only explanation
3 for this addition was the removal of the "whether or not" language.
4 The drafters plainly were concerned that without the "whether or not"
5 language, subdivision (c) might be interpreted as applicable only
6 where a defendant is convicted of more than the offenses specified in
7 subdivision (e). ... We decline to read back into the statute
8 language that was intentionally removed.... *People v. Goodliffe*
9 (2009, 3rd District) 177 Cal.App.4th 723, fn.17, fn.18 and fn.19, 99
10 Cal.Rptr.3d 385 (2009)

11 *Wunderlich v. County of Santa Cruz* (2009, 6th District) 178 Cal.App.4th 680, 100 Cal.Rptr.3d 598
12 (2009)

13 **Legislative Antecedents**

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

16 **9. Third Reading Analyses**

17 **a. Assembly Office of Research Analysis**

18 We note that the statute's legislative history supports our
19 construction of the statute. "It was always the legislative intent
20 that a county prisoner serve 2/3 of his sentence rather than more."
21 (Assem. Comm. on Criminal Justice, mem. summarizing Assem. Bill No.
22 3693 (1978-1979 Reg. Sess.) as amended May 11, 1978, p. 2.) Assembly
23 Bill No. 3693, as enacted, amended section 4019, subdivisions (b) and
24 (c) to provide that conduct credit would be calculated based on a
25 six-day period rather than one fifth of a month, and changed the
26 basis for calculating conduct credit "from period of confinement to
27 period of commitment." (Assem. Off. of Research, third reading
28 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)

29 **b. Office of Assembly Floor Analyses**

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

32 **c. Assembly Third Reading, prepared by Policy Committee**

33 The ballot pamphlet for Proposition 60 did not explicitly or
34 implicitly address the possibility that a lot might be purchased more
35 than two years before the sale of the original property and a
36 structure built upon that lot to serve as a replacement dwelling
37 within two years of the sale of the original property.

38 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,

1 italics added.) However, Assembly Bill No. 60 was subsequently
2 amended to allow the replacement dwelling to be purchased before the
3 sale of the original property so long as the purchase occurred within
4 two years of the sale. (Assem. Amend. to Assem. Bill No. 60 (1987-
5 1988 Reg. Sess.) June 1, 1987.)

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

8 In 1988, the Legislature enacted Assembly Bill No. 2878, which
9 amended section 69.5. One of the amendments made by Assembly Bill No.
10 2878 was the addition of the language in section 69.5, subdivision
11 (g)(5) regarding "the date" to be used "if the replacement dwelling
12 is, in part, purchased and, in part, newly constructed." The purpose
13 of this added language was to "specif[y] the *replacement date* when
14 the replacement dwelling is acquired through acquisition of vacant
15 land and subsequently constructed on the land, *for purposes of*
16 *determining the permissible value* of the replacement dwelling." (Sen.
17 Com. on Revenue and Taxation, Rep. on Assem. Bill No. 2878 (1987-1988
18 Reg. Sess.) as amended Aug. 9, 1988, italics added.) This added
19 language was intended to "specif[y] what replacement date should be
20 used if the replacement dwelling is acquired through the acquisition
21 of vacant land and the new construction of a dwelling on the land
22 (*the replacement date determines the permissible value* of the
23 replacement dwelling for qualification for relief)." (Assem. Com. on
24 Revenue and Taxation, Rep. on Assem. Bill No. 2878 (1987-1988 Reg.
25 Sess.) as amended June 6, 1988, italics added; Assem.3d reading
26 analysis of Assem. Bill No. 2878 (1987-1988 Reg. Sess.) as amended
27 June 28, 1988.) *Wunderlich v. County of Santa Cruz* (2009, 6th
28 District) 178 Cal.App.4th 680, fn.3, 100 Cal.Rptr.3d 598 (2009)

15 The Act governs child day care facilities and was intended to
16 facilitate the Legislature's goal of "provid[ing] a comprehensive,
17 quality system for licensing child day care facilities to ensure a
18 quality day care environment." (Health & Saf.Code, § 1596.72, subd.
19 (b).) The purpose section of the Act references the well-being of
20 parents and children, but not the well-being of workers. (Health &
21 Saf.Code, § 1596.73.) In fact, the statement of purpose speaks of
22 workers in the day care system only with regard to their "knowledge
23 and understanding of children and child care needs" and their need
24 for "technical assistance about licensing requirements." (Health &
25 Saf.Code, § 1596.73, subds. (b) & (c).) This language indicates the
26 statutory scheme was enacted for the benefit of children and their
27 parents. Any benefit to workers is incidental to the safe and
28 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)

1 "[C]ourts must begin with the language of a given statute as
2 the purest expression of legislative intent." (Gunther v. Lin (2006)
3 144 Cal.App.4th 223, 233, 50 Cal.Rptr.3d 317.) "'When interpreting a
4 statute, we must ascertain legislative intent so as to effectuate the
5 purpose of a particular law. Of course our first step in determining
6 that intent is to scrutinize the actual words of the statute, giving
7 them a plain and commonsense meaning. [Citation.] When the words are
8 clear and unambiguous, there is no need for statutory construction or
9 resort to other indicia of legislative intent, such as legislative
10 history. [Citation.]'" (Hale v. Southern Cal. IPA Medical Group, Inc.
11 (2001) 86 Cal.App.4th 919, 924, 103 Cal.Rptr.2d 773, quoting
12 Quarterman v. Kefauver (1997) 55 Cal.App.4th 1366, 1371, 64
13 Cal.Rptr.2d 741.) ... "The statute's plain meaning controls the
14 court's interpretation unless its words are ambiguous. If the plain
15 language of a statute is unambiguous, no court need, or should, go
16 beyond that pure expression of legislative intent. [Citation.]"
17 (Green v. State of California (2007) 42 Cal.4th 254, 260, 64
18 Cal.Rptr.3d 390, 165 P.3d 118.)

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

25 See also: Chatard v. Oveross (2009 2nd District) 179 Cal.App.4th 1098, 101 Cal.Rptr.3d 883 (2009)

26 **d. Senate Democratic and Senate Republican Caucus Analyses**

27 Miller v. Bank of America (2009) 46 Cal.4th 630, 207 P.3d 531 (2009)

28 **e. Office of Senate Floor Analyses**

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

44 Civil Code section 51.9, as originally enacted in 1994,
45 included these requirements for liability: "The defendant has made
46 sexual advances, solicitations, sexual requests, or demands for
47 sexual compliance by the plaintiff that were unwelcome and *persistent*
48 or severe, *continuing after a request by the plaintiff to stop.*"
49 (Civ.Code, former § 51.9, subd. (a)(2), italics added.) In 1999, the

1 Legislature made several changes to the statute. Notably, it amended
2 the statute's subdivision (a)(2) to read as it does now, by replacing
3 the word "persistent," italicized above, with "pervasive," and by
4 deleting the above-italicized phrase "continuing after a request by
5 the plaintiff to stop." (Stats.1999, ch. 964, § 1.) In addition,
6 after the words "sexual compliance by the plaintiff" in the same
7 subdivision, the Legislature added this phrase: "or engaged in other
8 verbal, visual, or physical conduct of a sexual nature or of a
9 hostile nature based on gender." (§ 51.9, subd. (a)(2).) Thus, as
10 amended in 1999, subdivision (a)(2) of section 51.9 now imposes
11 liability when "[t]he defendant has made sexual advances,
12 solicitations, sexual requests, demands for sexual compliance by the
13 plaintiff, or engaged in other verbal, visual, or physical conduct of
14 a sexual nature or of a hostile nature based on gender, that were
15 unwelcome and pervasive or severe."

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

22 The 1999 amendments to Civil Code section 51.9 were authored by
23 Assemblywoman Dion Aroner as Assembly Bill No. 519 (1999-2000 Reg.
24 Sess.). The analysis by the Senate Rules Committee described the bill
25 as "revis[ing] the Civil Code prohibitions against sexual harassment
26 in professional and business settings to generally conform to the
27 legal standards for filing sexual harassment claims in the employment
28 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

1 requirements governing liability for sexual harassment in
2 professional relationships *outside the workplace* to those of the
3 federal law's Title VII and California's FEHA, both of which pertain
4 to liability for sexual harassment *in the workplace*. Under both laws,
5 an employee plaintiff who cannot prove a demand for sexual favors in
6 return for a job benefit (that is, *quid pro quo* harassment) must show
7 that the sexually harassing conduct was so *pervasive or severe* as to
8 alter the conditions of employment. With respect to liability under
9 section 51.9, which covers a wide variety of business relationships
10 outside the workplace, the relevant inquiry is whether the alleged
11 sexually harassing conduct was sufficiently pervasive or severe as to
12 alter the conditions of the business relationship. This inquiry must
13 necessarily take into account the nature and context of the
14 particular business relationship. With this analytical framework in
15 mind, we now consider plaintiff's claim of sexual harassment under
16 section 51.9. *Hughes v. Pair* (2009) 46 Cal.4th 1035, 209 P.3d 963
17 (2009)

18 Finally, although our interpretation of the scope of section
19 3345 and its application to actions brought under the unfair
20 competition law is based on the plain language of the statute itself,
21 the legislative history of Senate Bill No. 1157—to the extent it
22 sheds any light on the issue at all—supports our conclusion. (See
23 *California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th
24 333, 340, 33 Cal.Rptr.2d 109, 878 P.2d 1321 [“Ordinarily, if the
25 statutory language is clear and unambiguous, there is no need for
26 judicial construction. [Citation.] Nonetheless, a court may determine
27 whether the literal meaning of a statute comports with its
28 purpose.”]; accord, *In re Tobacco II Cases, supra*, at p. ----, 93
29 Cal.Rptr.3d at p.572, 207 P.3d at p.32 [“even though recourse to
30 extrinsic material is unnecessary given plain language of statute, we
31 may consult it for material that buttresses our construction of the
32 statutory language”]; see also *Aguiar v. Superior Court* (2009) 170
33 Cal.App.4th 313, 326, 87 Cal.Rptr.3d 813.) The twin purposes of the
34 1988 legislation were to encourage the investigation and prosecution
35 of deceptive business practices perpetrated against senior citizens
36 and to create new forms of civil redress available to senior citizens
37 to “compensate for the lack of [existing] remedies.” (See Sen. Rules
38 Com., Off. of Sen. Floor Analyses, Sen. Bill No. 1157 (1997-1998 Reg.
39 Sess.) as amended June 13, 1988, p.2, [¶] 2.) It is fully consistent
40 with those goals to construe section 3345 to apply to unfair
41 competition actions brought on behalf of senior citizens under the
42 unfair competition law. (See generally *Viles v. State of California*
43 (1967) 66 Cal.2d 24, 32-33, 56 Cal.Rptr. 666, 423 P.2d 818 [remedial
44 legislation must be liberally construed to protect persons within its
45 purview].)

46 Such delay is illustrated by the period that has elapsed since
47 the order of December 19, 2008, the subject of this appeal. We note
48 also that the provisions of subdivision (n) of section 366.26
49 originated with Statutes 2005, chapter 626, section 1 (Sen. Bill No.
50 218). To determine legislative intent it is appropriate to consider
51 the floor analysis of this bill. (See *People v. Broussard* (1993) 5
52 Cal.4th 1067, 1075, 22 Cal.Rptr.2d 278, 856 P.2d 1134.) The Senate
53 Floor Analysis for Senate Bill No. 218 of 2005 indicates that the
54 procedures to protect current caregivers, now set out in section
55 366.26, subdivision (n), were designed to address concerns arising

1 during the more *delayed* "period between termination of parental
2 rights and the granting of a petition for adoption," as distinguished
3 from the more expedited period between voluntary relinquishment and
4 the granting of a petition for adoption. (See Sen. Rules Com., Off.
5 of Sen. Floor Analyses, analysis of Sen. Bill No. 218 (2005-2006 Reg.
6 Sess.) Sept. 6, 2005, par. 3. <http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_0201-0250/sb_218_cfa_20050906_135301_sen_floor.html> [as of Nov. 30, 2009].) *In re R.S.* (2009, 1st
7 District) 179 Cal.App.4th 1137, 101 Cal.Rptr.3d 910 (2009)

8 In analyzing the code section, we look to the plain language of
9 the statute itself and to legislative intent. (*Big Creek Lumber Co.*
10 *v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1152, 45 Cal.Rptr.3d
11 21, 136 P.3d 821.) To give meaning to the reference to receipt of
12 SSDI benefits in section 17450, subdivision (c)(2), a disabled
13 obligor who has provided proof of receipt of SSDI benefits would be
14 exempt from collection efforts. In our view, this is the only logical
15 interpretation of this subdivision.

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

21 Section 17400.5 contains language that is substantially similar
22 to section 17450, subdivision (c)(2). Section 17400.5 provides that
23 when an obligor has an ongoing child support obligation being
24 enforced by a local child support agency, and "the obligor is
25 disabled, meets the SSI resource test, and is receiving [SSI/SSP] or,
26 but for excess income ... would be eligible to receive SSI/SSP, ...
27 and the obligor has supplied the local child support agency with
28 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.

1 Section 17450, subdivision (c)(2) was added in 2004 as part of
2 Assembly Bill No. 2358 (2003-2004 Reg. Sess.). It seems clear that
3 the language of section 17450, subdivision (c)(2) was intended to
4 harmonize this subdivision and the FIDMS child support collection
5 scheme with the provisions of Revenue and Taxation Code section
6 19271, subdivision (e)(3). Family Code section 17450 provides that
7 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)

8 *Chatard v. Oveross* (2009 2nd District) 179 Cal.App.4th 1098, 101 Cal.Rptr.3d 883, November 30, 2009;
9 *Hoffman Street, LLC v. City of West Hollywood* (2009, 2nd District) 179 Cal.App.4th 754, 102
Cal.Rptr.3d 125, November 23, 2009; *Benson v. Workers' Compensation Appeals Board* (2009, 1st
District) 170 Cal.App.4th 1535, 89 Cal.Rptr.3d 166 (2009)

10 **f. Senate Republican Floor Commentaries**

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

13 **g. Assembly Republican Caucus Analysis**

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

15 **h. Senate Floor Amendments Analysis prepared by Senate Policy Committee**

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

18 **10. Departmental Sponsorship, Support, and Analysis**

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

21 **Attorney General**

22 We reject Colton's initial argument that section 45196 is not
23 subject to interpretation on its face. Therefore, we do not need to
consult evidence of legislative intent. (*People v. Birkett* (1999) 21
24 Cal.4th 226, 231-232, 87 Cal.Rptr.2d 205, 980 P.2d 912.)
Nevertheless, we grant Colton's motion for judicial notice (Evid.
25 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.

26 Section 45196 was enacted in 1969. It is clear from the statute
27 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.
28 Counsel's Dig., Assem. Bill No. 597 (1969 Reg. Sess.) as introduced

1 Feb. 20, 1969, and amended April 15, 1969; Assem. Com. on Education
2 Rep. on Assem. Bill No. 597, April 15, 1969; Crandall's (Bill's
3 Author) Statement Regarding Sick Leave Benefits for Classified School
4 Employees; CSEA Letter of Support for Assem. Bill No. 597 to Assem.
5 Com. on Education; Letter to Governor Reagan from Crandall, July 24,
6 1969.) The subsequent proposed amendments to section 45196 also
7 pertained to sick leave, not vacation leave. (Sen. Bill No. 1613
8 (1998 Reg. Sess.); Assem. Bill No. 365 (2001 Reg. Sess.); Assem. Bill
9 No. 1802 (2002 Reg. Sess.).)

10 The attorney general opinions, which predated section 45196's
11 enactment and involved different statutes and practices, are not
12 pertinent to its interpretation. (29 Ops.Cal.Atty.Gen. 62, 63 (1957);
13 38 Ops.Cal.Atty.Gen. 23 (1961); 40 Ops.Cal.Atty.Gen. 1 (1962).) The
14 1970 attorney general opinion cited by Colton (53 Ops.Cal.Atty.Gen.
15 111 (1970)) is also not dispositive because it did not involve
16 classified employees, vacation leave, and the application of the 100-
17 day rule authorized by section 45196 the issues in this case.
18 Similarly, Colton's reliance on cases interpreting the analogous
19 former section 44977 for certificated employees is not persuasive
20 because those cases involved sick leave, not vacation leave, and
21 again do not address the 100-day rule of section 45196. (Lute v.
22 Governing Board (1988) 202 Cal.App.3d 1177, 1181-1183, 249 Cal.Rptr.
23 161, citing Napa Valley Educators' Assn. v. Napa Valley Unified
24 School Dist. (1987) 194 Cal.App.3d 243, 250-253, 239 Cal.Rptr. 395.)
25 California School Employees Assn. v. Colton Joint Unified School
26 Dist. (2009, 4th District) 170 Cal.App.4th 857, 88 Cal.Rptr.3d 486
27 (2009)

28 **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

California School Employees Assn. v. Colton Joint Unified School Dist. (2009, 4th District) 170
Cal.App.4th 857, 88 Cal.Rptr.3d 486 (2009)

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; Elsner 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

1 employer and employee to agree to the contract termination. The
2 statute was amended to limit the maximum cash settlement "if the
3 contract is terminated...." The history indicates that legislators
4 were concerned about covering instances where the employer
5 unilaterally elected to terminate the contract. (See Sen. Com. on
6 Local Government analysis of Sen. Bill No. 1972 (1992-1993 Reg.
7 Sess.), p. 3 [raising question about a local agency taking unilateral
8 action to fire an executive and proposing the committee consider an
9 amendment to limits cash settlements "no matter who terminates the
10 employment contract"].)

11 Analyses by the Assembly Local Government Committee and Senate
12 of S.B. 1972 are not particularly helpful, as they reiterate the
13 statutory language. However, the Assembly Local Government Committee
14 analysis states: "[T]he author has introduced this bill to address
15 the concern that local governments are using their limited public
16 resources to 'buy out' the contracts of highly paid executives."
17 (Assem. Com. on Local Government analysis of Sen. Bill No. 1972
18 (1992-1993 Reg. Sess.) as amended June 24, 1992, p. 3.) It provides
19 the following background: "Most of the nearly 1.4 million
20 Californians who work for local agencies (*i.e.*, counties, cities,
21 special districts, school districts, and community college districts)
22 serve in civil service systems. However, top administrators and
23 managers usually serve at the pleasure of local elected officials.
24 Some of these executive officials, such as school superintendents,
25 city managers, county administrators, and their key aides, have
26 employment contracts with their local agency employers." (*Id.* at
27 p.2.) It included conclusions from a January 1992 report of the state
28 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.

18 A Senate Local Government Committee analysis includes similar
19 background and refers to the same Auditor General report, but
20 provides further explanation: "Some observers are troubled that local
21 governments use their scare public revenues to 'buy out' the
22 contracts of highly paid executives." That analysis reflects concern
23 about the incidence of school district terminations of executive
24 contracts following early renewal of the contract, resulting in very
25 large severance payments: "Although relatively rare, some local
26 governments buy-out their executives' contracts when they fire them.
27 Even when school districts renew superintendents' contracts early,
28 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.)

1 The Legislative file contains several newspapers articles
2 concerning early contract renewals of school district and other
3 government officials, as well as the settlement of a superintendent's
4 "early retirement" referenced by Page, which included attorney fees
5 and a substantial settlement for his claim of personal injury and
6 sickness. Though normally such articles are of little value (see
7 Bermudez v. Municipal Court (1992) 1 Cal.4th 855, 864, fn.6, 4
8 Cal.Rptr.2d 609, 823 P.2d 1210), the committee reports reveal that
9 the Legislature took into consideration several instances of what
10 were considered excessively high buy-outs of such contracts in
11 implementing the limitations of sections 53260 and 53261. Further,
12 the Legislature expressly considered, but rejected, having the
13 statutory limitations apply only to circumstances in which the
14 parties mutually agreed to terminate the contract, presumably
15 instances not involving the employee's assertion of legal claims or
16 causes of action.

17 ... Because the legislative history is unclear, we decline to
18 read intent into the statute when the history clearly does not
19 support it. (E.g., Campbell v. Regents of University of California
20 (2005) 35 Cal.4th 311, 331, 25 Cal.Rptr.3d 320, 106 P.3d 976.) "'An
21 intent that finds no expression in the words of the statute cannot be
22 found to exist. The courts may not speculate that the legislature
23 meant something other than what it said. Nor may they rewrite a
24 statute to make it express an intention not expressed therein.'" [Citation.] [Citations.] 'The plain meaning of words in a statute
25 may be disregarded only when that meaning is "repugnant to the
26 general purview of the act,' or for some other compelling reason...." [Citation.] [Citation.] 'Courts must take a statute as they find it,
27 and if its operation results in inequality or hardship in some cases,
28 the remedy therefor lies with the legislative authority.'" (Unzueta v. Ocean View School Dist. (1992) 6 Cal.App.4th 1689, 1696-1697, 8
Cal.Rptr.2d 614.)

17 Though District asserts the trial court sustained its objection
18 to the legislative history materials, to the contrary the record
19 shows the trial court only sustained, appropriately, its objection to
20 the declaration of former Senator Hart, the author of the sponsoring
21 bill. (See e.g., Kavanaugh v. West Sonoma County Union High School
22 Dist., supra, 29 Cal.4th at p. 920, fn.6, 129 Cal.Rptr.2d 811, 62
23 P.3d 54.) We are not prevented from considering the legislative
24 materials submitted in connection with Page's motion for summary
25 judgment, and we take judicial notice of certain additional materials
26 relevant to legislative intent provided by Page's counsel from the
27 Legislative Intent Service. (Evid.Code, §§ 452, 459.) Page v.
28 MiraCosta Community College Dist. (2009, 4th District) Cal.Rptr.3d,
WL 4021535 (2009)

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

25 **14. House Journals and Final Histories**

26 People v. James (2009, 3rd District) 174 Cal.App.4th 662, 94 Cal.Rptr.3d 576 (2009)

27 **15. Predecessor Bills, Competitor Bills**

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

1 **16. Statements of Author and Other Individual Legislators**

2 *Page v. MiraCosta Community College Dist.* (2009, 4th District) Cal.Rptr.3d, WL 4021535 (2009); *Benson*
3 *v. Workers' Compensation Appeals Board* (2009, 1st District) 170 Cal.App.4th 1535, 89 Cal.Rptr3d 166
4 (2009); *California School Employees Assn. v. Colton Joint Unified School Dist.* (2009, 4th District)
5 170 Cal.App.4th 857, 88 Cal.Rptr.3d 486 (2009)

4 **California Supreme Court**

5 Elizabeth urges us to follow the approach of Shinkle to conform
6 our interpretation of the statutory scheme to the legislative intent.
7 But as we have discussed, the Shinkle court relied on legislative
8 intent to refuse to create a new exception to section 21350. (Estate
9 of Shinkle, supra, 97 Cal.App.4th at p. 1006, 119 Cal.Rptr.2d 42.) We
10 presume the Legislature meant what it said in section 21351,
11 subdivision (a) by providing that the presumption of invalidity
12 raised in section 21350 does not apply where the transferee is
13 married to the transferor. (See Estate of Griswold (2001) 25 Cal.4th
14 904, 911, 108 Cal.Rptr.2d 165, 24 P.3d 1191 [where terms of statute
15 are unambiguous, "we presume the lawmakers meant what they said, and
16 the plain meaning of the language governs"].) The Legislature chose
17 not to make any exception for situations where care custodians used
18 undue influence to marry the dependent charge in a scheme to avoid
19 the application of the presumption of invalidity. Such a change
20 requires legislative action. While we recognize the possibility that
21 unscrupulous care custodians might persuade a dependent adult to
22 enter into marriage to avoid the presumption of section 21350, we
23 disagree that our narrow construction of section 21351 leads to
24 absurd or ridiculous consequences.

25 Sections 21350 and 21351 require a delicate balancing of
26 interests. On one hand, there is the desire to protect elderly or
27 dependent adults from unscrupulous caregivers. On the other, there is
28 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

1 Cal.Rptr.3d 248, 139 P.3d 1196, see Sen. Com. on Judiciary, Analysis
of Sen. Bill No. 105 (2009-2010 Reg. Sess.).)

2 The Senate Judiciary Committee Analysis states that a cleanup
3 bill introduced in 2007 (Assem. Bill No. 1727) was originally
4 intended to respond to the Chief Justice's invitation in Bernard,
5 supra, 39 Cal.4th at pages 820-821, 47 Cal.Rptr.3d 248, 139 P.3d
6 1196. But the donative transfer provisions were deleted from the bill
7 and referred to the Law Revision Commission because it was already
8 studying the subject. (Sen. Com. on Judiciary, Analysis of Sen. Bill
9 No. 105 (2009-2010 Reg. Sess.).) The proposed legislation, Senate
10 Bill No. 105, would reenact the exception to the presumption of
11 invalidity provided to care custodians who are married to the
12 dependent or elder adult without providing an exception where the
13 marriage is the result of undue influence or fraud. (Sen. Bill No.
14 105 (2009-2010 Reg. Sess.) § 13.) The Law Revision Commission
15 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.)

16 The Law Revision Commission also notes that the restrictions on
17 donative transfers currently codified in sections 21350 and 21351
18 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.)

19 In sum, we find no support in the language of section 21351,
20 subdivision (a), or in the legislative history, which would make the
21 spousal exception to the presumption of invalidity unavailable to a
22 spouse who allegedly persuaded the transferor to marry through undue
23 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)

24 **First District Court of Appeal**

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

27 **Second District Court of Appeal**

28 ... Where the statements of a bill's author appear to be part
of the legislative debate and were communicated to other legislators,

1 as was the case here, we may regard them as evidence of the
2 legislative intent. (Carter v. California Dept. of Veterans Affairs
3 (2006) 38 Cal.4th 914, 928, 44 Cal.Rptr.3d 223, 135 P.3d 637.) People
4 v. Saleem (2009, 2nd District) Cal.Rptr.3d, fn.3, WL 4852440 (2009)

3 **Third District Court of Appeal**

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

6 **Fourth District Court of Appeal**

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

9 **Fifth District Court of Appeal**

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

12 **Sixth District Court of Appeal**

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

15 **17. The Author's File**

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

18 **18. Legislative Analyst**

19 *Wunderlich v. County of Santa Cruz* (2009, 6th District) 178 Cal.App.4th 680, 100 Cal.Rptr.3d 598
20 (2009)

21 **19. Rejection, Deletion, and Refusal to Act**

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

23 **20. Conference Committee Reports**

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

27 **C. Post-Enrollment History**

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

1 **1. Role of the Governor**

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

4 **2. Enrolled Bill Reports and Memoranda**

5 *Miller v. Bank of America* (2009) 46 Cal.4th 630, 207 P.3d 531 (2009)

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7 *Page v. MiraCosta Community College Dist.* (2009, 4th District) Cal.Rptr.3d, WL 4021535 (2009)

8 **3. Governor's Correspondence, Press Releases and Message**

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

15 ... A reviewing court may consider correspondence directed to
16 the Governor's office in determining legislative intent. (*Karlin v.*
17 *Zalta* (1984) 154 Cal.App.3d 953, 968, fn.9; accord, *Shapero v.*
18 *Fliegel* (1987) 191 Cal.App.3d 842, 847, fn.5.)

19 Nothing in the language of section 851.8(1) or the
20 aforementioned legislative history limits the two-year filing period
21 to any one of the three classes of individuals entitled to relief
22 under section 851.8. This suggests the Legislature intended the
23 limitations period to apply to anyone entitled to petition for such
24 relief. *People v. Bermudez* (2009, 1st District) 172 Cal.App.4th 966,
25 91 Cal.Rptr.3d 510 (2009)

26 *People v. James* (2009, 3rd District) 174 Cal.App.4th 662, 94 Cal.Rptr.3d 576 (2009); *Benson v.*
27 *Workers' Compensation Appeals Board* (2009, 1st District) 170 Cal.App.4th 1535, 89 Cal.Rptr.3d 166
28 (2009)

18 **D. Post-Enactment History**

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

20 *In re S.C.* (2009, 1st District) 179 Cal.App.4th 1436, Cal.Rptr.3d, WL 4023737 (2009); *Wunderlich v.*
21 *County of Santa Cruz* (2009, 6th District) 178 Cal.App.4th 680, 100 Cal.Rptr.3d 598 (2009)

22 **2. Administrative Agency's Construction of Statutes**

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

25 **3. Legislative Committee Documents**

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

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

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

1 **E. Regulations, Rules and Ordinances**

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

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