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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](http://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.App.4th  
1283, 102 Cal.Rptr.3d 235 (2009)

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

## 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)

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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](http://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](http://www.legintent.com/capa.php)

## 29 **7. Urgency Clauses, Findings and Declarations and Other Uncodified Language**

30 The absence of legislative intent to grant judges the right to  
31 restrict the use of medical marijuana by a person eligible to do so  
32 under the CUA is shown not just by the text of section 11362.795, but  
33 also by its legislative history. Section 11362.795 was part of Senate  
34 Bill 420 introduced by Senator John Vasconcelos in the 2003  
35 legislative session and commonly known as the Medical Marijuana  
36 Program (MMP). "In uncodified portions of the bill the Legislature  
37 declared that, among its purposes in enacting the statute, was to  
38 '[c]larify the scope of the application of the [CUA] and facilitate  
39 the prompt identification of qualified patients and their designated  
40 primary caregivers in order to avoid unnecessary arrest and  
41 prosecution of these individuals and provided needed guidance to law  
42 enforcement officers.'" (Stats.2003, ch. 875, § 1.) *People v. Moret*  
43 (2009, 1st District) Cal.Rptr.3d, WL 5066813 (2009)

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

## 46 **8. Ballot Summaries and Arguments/Statement of Vote**

47 Here, section 667.6 was one of over two dozen statutes amended  
48 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](http://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](http://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](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](http://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](http://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](http://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](http://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  
itself, as well as the legislative history, that differential leave  
and sick leave were intended to be combined to provide at least 100  
27 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](http://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  
29 v. Ocean View School Dist. (1992) 6 Cal.App.4th 1689, 1696-1697, 8  
30 Cal.Rptr.2d 614.)

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

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

#### 46 **14. House Journals and Final Histories**

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

#### 48 **15. Predecessor Bills, Competitor Bills**

49 Benson v. Workers' Compensation Appeals Board (2009, 1st District) 170 Cal.App.4th 1535, 89  
50 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](http://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](http://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](http://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](http://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](http://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](http://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.Rptr3d 166 (2009); *Benson v. Workers' Compensation Appeals Board* (2009, 1st District) 170  
26 Cal.App.4th 1535, 89 Cal.Rptr3d 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](http://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](http://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)

6 -----  
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](http://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](http://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](http://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](http://www.legintent.com/capa.php)

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