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A Few of the 2009 Bills Enacted ... So Far

While Governor Schwarzenegger reviews the 2009 Session bills before him this Fall to meet his October 11th deadline to sign or veto legislation, we discuss below a few of the bills that he signed into law just this past summer.

Among the bills signed by the Governor on June 29, 2009 was the Electronic Discovery Act in **AB 5**, which was carried by Assembly member Evans. This bill established procedures in the Civil Discovery Act for a person to obtain discovery of electronically stored information in the possession of any other party to the action. AB 5 was identical to a bill in 2008 that the Governor vetoed due to the delayed passage of the 2007-2008 State Budget.

On June 29, 2009, **AB 486**, relating to local government and emergencies, was signed by Gov. Schwarzenegger as Chapter 6 to amend *Government Code § 8630*. AB 486 was supported by the AFSCME, CA Association of Nonprofits, the CA Central Valley Food Control Association, the CA State Association of Counties, as well as individual counties. This bill, which was not amended as it was reviewed by both Chambers, eliminated the distinction between a governing body that meets weekly and nonweekly, and required any governing body to review the continuing need for a local emergency at least once every 30 days until the local emergency is terminated.

Also on June 29, 2009, Gov. Schwarzenegger signed into law **AB 1355** by Assembly member Fong to address county employees' retirement and survivor's allowances with amendments to *Government Code §§ 31855.5, 31855.6, 31855.7, and 31855.9* that would cross-reference an alternative method of calculating survivors' allowances in the 1937 County Employees Retirement Law.

A significant bill signed in July was **SB 424**, an urgency bill taking effect immediately and amending *Vehicle Code § 11713.1* and adding §

11713.13 to the *Vehicle Code*, which made certain acts of vehicle manufacturers or distributors illegal. This bill was introduced by Senators Padilla, Florez and Harman. The bill updates the relationship between vehicle manufacturers and franchised dealers. The rationale posited by the bill's sponsor, the CA New Car Dealers Association, was that with over 170 new car dealerships closed during the 2008/2009 economic downturn, SB 424 was needed to ensure that facility requirements imposed by franchisors were reasonable, that assistance for dealers upon termination, nonrenewal, or cancellation of a franchise was adequate, and that dealers were properly indemnified for actions of auto manufacturers or distributors that were beyond their control. The long list of supporters included individual cities and chambers of commerce.

In July, the Governor also signed **SB 673**, which was introduced by Senator Cox. This bill would authorize the board of directors of a public utility district to adopt an ordinance that provides that a director at large may be elected by receiving the greatest number of votes districtwide. This bill amended only *Public Utilities Code § 15956* and was supported by the Tahoe City Public Utilities District.

Gov. Schwarzenegger signed **SB 348** in August, an urgency bill relating to passenger vehicle rentals and advertising, enacted as Chapter 156 and introduced by Senator Cogdill. SB 348 amended *Civil Code § 1936.015* to permit a rental car company to recover the actual costs incurred by the company, for the payment of the increased vehicle license fee under the 2009 Budget Act's temporary increase, from rental car customers. Support for SB 348 came from car rental companies Alamo, Avis Budget Group, Enterprise, Hertz Corporation, and National. The Center for Public Interest Law opposed this bill, noting a current federal antitrust lawsuit.

Later this Fall, after the Governor has signed off on the legislation before him, **LEGISLATIVE INTENT SERVICE, INC.** will produce its "**Compendium of 2009 Notable California**

Legislation.” We will be posting the Compendium at our website for your convenience and review.

About 150 Years Earlier . . .

Around the time of California’s gold rush, the state was a target for settlers and pioneers seeking new lives and fortunes – one of which was Stephen J. Field, the brother of David Dudley Field, a New York Code Commissioner who tirelessly drafted the New York Civil Code and Code of Civil Procedure. Stephen, who became an Associate Justice of the U.S. Supreme Court from 1863 to 1897, brought with him copies of David’s New York codes drafts.

California legislative history and intent researchers and attorneys have observed California Civil Code statutes that are derived in the mid-to-late 1860’s from “Field’s Draft” of the New York Civil Code. The “draft” was an indication that at the time that California enacted the statute, New York had not enacted David’s draft proposal for it. David spent more than 40 years dedicated to creating codes of the common law procedure for New York, resulting in the New York Code of Civil Procedure enacted in 1848, but only a part of the Civil Code that he prepared was ultimately adopted in New York. New York’s reticence did not keep California from enacting his draft laws.

Arriving in California by way of ship across the Isthmus of Panama to San Francisco and a steamer up the Sacramento River, Stephen landed in Marysville, California in 1850, the same year that California was admitted to the Union, and served as a state representative from 1850 to 1851. It was during this time that he served also as the chief drafter of the civil and criminal codes for California that were later enacted in 1872. On the basis of his anti-slavery, pro-Union stance and at the urging of Leland Stanford and David Field, President Lincoln appointed Stephen to serve on the newly created tenth seat on the U.S. Supreme Court in 1863.

Whenever we provide legislative history for California’s four 1872 codes (Civil, Code of Civil Procedure, Penal, and Political), if the history goes back to a “Field’s Draft,” we provide a copy of that draft and, if possible, the early cases cited by David in this draft. For example, in *Civil Code § 11* – the annotations in Deerings tell us this language was

derived from Field’s Draft NY CC § 2020, and it’s still the law today!

Coming Up In 2010, Water Bills May Flood the Capitol

The Senate and Assembly Joint Commission hearings held in Sacramento in late summer may generate legislation next year to address pending water issues that failed to gain traction in 2009. The issues ranged from dried-up Central Valley farm fields suffering from the ongoing drought, to fixing rivers, pipelines, and the state laws responsible for delivering water to millions of Californians living in the Northern, Central and Southern regions of the state.

Gov. Schwarzenegger has asked for bills that address above-the-ground and below-the-ground water storage, seeking a “whole package to restore our water today and ensure that we have water for tomorrow.” A few of the bills that failed in 2009 that may resurface were AB 39 (Huffman), AB 49 (Feuer & Huffman), SB 12 (Simitian), SB 229 (Pavley) and SB 458 (Wolk).

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