

1 LEGISLATIVE INTENT SERVICE, Inc.
712 Main Street, Suite 200
2 Woodland, California 95695
Attorneys for: Any Party
3
4

5 **COURT OF APPEAL, STATE OF CALIFORNIA**
6 **ANY APPELLATE DISTRICT**
7

8 Plaintiff-Respondents
9 v.
10 Defendant-Appellant
_____ /

Case No. **2008 Supplement**
AUTHORITY AND PROCEDURE FOR
JUDICIAL CONSIDERATION OF
LEGISLATIVE HISTORY AND INTENT

11
12 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
13 History and Intent, Unabridged. Taken together with the annual supplements as of 2008,
these Points and Authorities will set forth more than 950 California cases utilizing
14 legislative history documents as extrinsic aides to statutory construction.

15 This document supplements with 2007-2008 cases Authority and Procedure for Judicial
Consideration of Legislative History and Intent. The outline of subjects here is the
16 same as in the Unabridged edition. For a complete understanding of the subject, this
supplement must be considered with its unabridged edition.

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

18 **I. CAN A COURT CONSIDER LEGISLATIVE INTENT?..... 2**
19 **A. Preeminence of Legislative Intent in Statutory Construction..... 2**
20 1. Rationale for Primacy of Legislative Intent-Separation of Powers.. 2
21 2. Other Circumstances Justifying an Analysis of Legislative Intent.. 2
22 a. The Purpose and Scope of Subdivision (b) (2) 3
23 **B. Legislative Intent of Initiatives, Local Ordinances, Rules,**
and Regulations..... 3
24 1. Initiatives..... 3
25 2. Local Ordinances..... 3
26 3. Regulations..... 4
27 4. Court Rules..... 4
28 **II. IS THERE A NEED FOR AMBIGUOUS LANGUAGE?..... 4**
A. Plain Meaning Rule and the Need for Ambiguity..... 4
B. Plain Meaning Rule in Historical Context..... 4
1. Ambiguity Not Readily Ascertainable..... 5
2. No Ambiguity: Yet Language "Inconclusive"..... 5
3. Latent Ambiguity: Justifies a Resort to Legislative History..... 5
4. No Ambiguity: Legislative History "Consistent" With The
Plain Meaning of the Statute..... 5

1	5.	No Ambiguity: Legislative History Examined Due to its Proffer by all Parties.....	5
2	6.	No Ambiguity: <i>Duty</i> to Analyze Statute's Legislative History.....	5
3	7.	No Ambiguity: Legislative History Informs, Buttresses, Validates, Comports With or Confirms Court Interpretation.....	5
4	8.	No Ambiguity: Court may Test Construction Against Legislative History.....	6
5	9.	No Ambiguity: Exam of Legislative History Warranted Given Arguments.....	6
6	10.	Other Cases.....	6

7	III. HOW TO PROVIDE LEGISLATIVE HISTORY TO THE COURTS.....	6
8	A. Procedures for Proffering Evidence of Legislative Intent.....	6
9	1. By Informal Notice of Legislative Facts.....	6
10	2. By Judicial Notice	6
11	a. How to Make Discretionary Judicial Notice Mandatory.....	7
12	b. Judicially Noticed Documents Must Be Relevant.....	7
13	(1) Relevancy Reconsidered.....	7
14	c. Do Rules of Evidence Apply?.....	7
15	3. By Citing "Published" Documents.....	7
16	a. What are "Published" Documents?.....	7
17	4. By Stipulation.....	8
18	B. Do Legislative History Documents Need to Be Authenticated?.....	8
19	1. Authentication Not Required.....	8
20	2. Authentication by Declaration or Affidavit.....	8
21	C. How Much of the Legislative History Should Be Submitted?.....	8
22	D. Can an Appellate Court Take Judicial Notice of Legislative History?... 	9
23	1. When is Judicial Notice Mandatory or Discretionary?.....	9
24	2. Judicially Noticed Materials Must Be Relevant.....	9
25	3. What Can an Appellate Court Judicially Notice?.....	9
26	4. What is the Procedure at the Appellate Courts?.....	9
27	5. Can an Appellate Court Take Judicial Notice on its own Initiative?.....	10
28	E. Can an Expert Be Used?.....	10
	F. How is Legislative History Cited?.....	10
	G. Are Legislative Intent Service Fees a Recoverable Cost?.....	10

I. CAN A COURT CONSIDER LEGISLATIVE INTENT?

A. Preeminence of Legislative Intent in Statutory Construction

1. Rationale for Primacy of Legislative Intent-Separation of Powers

For cases regarding this topic see Unabridged Authority and Procedure for Judicial Consideration of Legislative History and Intent at the "Points and Authorities" at www.legintent.com/pointsauthorities.php

2. Other Circumstances Justifying an Analysis of Legislative Intent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

a. The Purpose and Scope of Subdivision (b) (2)

In construing statutory language our objective is to determine and effectuate the Legislature's intent. (Citation.) Such language, however, is construed in the context of the entire law. "Courts properly examine the manifest purpose of the statute as a whole in interpreting its provisions. [Citations.] We examine the history and the background of the statutory provision in order to ascertain the most reasonable interpretation of the measure." (Citation.)

In . . . the court observed that the purpose of subdivision (b) (2) is to target . . . The language of the provision expressly supports this characterization. . . . This interpretation of the statute is also confirmed by a review of the relevant legislative history of Senate Bill No. 1779. . .

Doe v. City of Los Angeles (2007) 42 Cal.4th 531, 543-4

The reconciliation [of two Elections Code provisions] is consistent with the legislative history of 2005 Senate Bill 370, which enacted section 19253 in 2005. On the one hand, that history is nonconclusive because the Legislature did not appear to be concerned with the problem of potential conflict between section 15627 and section 19253. Page after page of the legislative history is devoted to the benefits On the other hand, it does appear safe to say that the legislative history is certainly devoid of any indication that the Legislature wanted to repeal section 15627, subdivision (a). (In this appeal Trung Nguyen opposed the Registrar's request that this court take judicial notice of the materials compiled by the Legislative Intent Service, Inc. constituting the legislative history of Senate Bill 370.)

There are two items in the legislative history that, in fact, support the trial court's interpretation against repealing section 15627. The strongest is on page 3 of the June 21, 2005 report on SB 370 of the Assembly Committee on Elections and Redistricting. That report made
Nguyen v. Nguyen (2008, 4th District, Div. 3) 158 Cal.App.4th 1636, 1659 (emphasis added)

B. Legislative Intent of Initiatives, Local Ordinances, Rules, and Regulations

1. Initiatives

For cases regarding this topic see Unabridged Authority and Procedure for Judicial Consideration of Legislative History and Intent at the "Points and Authorities" at www.legintent.com/pointsauthorities.php

2. Local Ordinances

For cases regarding this topic see Unabridged Authority and Procedure for Judicial Consideration of Legislative History and

1 Intent at the "Points and Authorities" at
2 www.legintent.com/pointsauthorities.php

3 **3. Regulations**

4 For cases regarding this topic see Unabridged Authority and
5 Procedure for Judicial Consideration of Legislative History and
6 Intent at the "Points and Authorities" at
7 www.legintent.com/pointsauthorities.php

8 **4. Court Rules**

9 For cases regarding this topic see Unabridged Authority and
10 Procedure for Judicial Consideration of Legislative History and
11 Intent at the "Points and Authorities" at
12 www.legintent.com/pointsauthorities.php

13 **II. IS THERE A NEED FOR AMBIGUOUS LANGUAGE?**

14 **A. Plain Meaning Rule and the Need for Ambiguity**

15 As the text alone does not establish the Legislature's intent
16 clearly, we must turn to other sources for insight, including the
17 provisions statutory context, its legislative history, and "the
18 human problems the Legislature sought to address" in adopting the
19 juvenile dependency scheme.

20 *Tonya M. Superior Court* (2007) 42 Cal.4th 836, 844

21 The interpretation and application of a statute involve questions
22 of law subject to de novo review. (Citation.) We take a three-
23 step, sequential approach to interpreting statutory language.
24 (Citation.) First, we will examine the language at issue, giving
25 "the words of the statute their ordinary, everyday meaning."
26 (Citation.) If we conclude that the statutory meaning is free of
27 doubt, uncertainty, or ambiguity, the language of the statute
28 controls, and our task is completed. (Citation.) Second, if we
determine that the language is unclear, we will attempt to
determine the Legislature's intent as an aid to statutory
construction. (Citation.) In attempting to ascertain that intent,
"we must examine the legislative history and statutory context of
the act under scrutiny. [Citations.]" (Citation.) Third, if the
clear meaning of the statutory language is not evident after
attempting to ascertain its ordinary meaning or its meaning as
derived from legislative intent, we will "apply reason,
practicality, and common sense to the language at hand. If
possible, the words should be interpreted to make them workable
and reasonable [citations], ... practical [citations], in accord
with common sense and justice, and to avoid an absurd result
[citations]." (Citation.)

Sisemore v. Master Financial, Inc. (2007, 6th District) 151
Cal.app.4th 1386, 1411

29 **B. Plain Meaning Rule in Historical Context**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Ambiguity Not Readily Ascertainable

Since the term "any report authorized by" the Act may be ambiguous, we have reviewed the legislative history of section 11172 to determine the apparent intent of the Legislature. (Citation.) We find support for our conclusion in this history, albeit not directly. . . .
Chabak v. Monroy (2007, 5th District) 154 Cal.App.4th 1502, 1516

2. No Ambiguity: Yet Language "Inconclusive"

For cases regarding this topic see Unabridged Authority and Procedure for Judicial Consideration of Legislative History and Intent at the "Points and Authorities" at www.legintent.com/pointsauthorities.php

3. Latent Ambiguity: Justifies a Resort to Legislative History

For cases regarding this topic see Unabridged Authority and Procedure for Judicial Consideration of Legislative History and Intent at the "Points and Authorities" at www.legintent.com/pointsauthorities.php

4. No Ambiguity: Legislative History "Consistent" With The Plain Meaning of the Statute

For cases regarding this topic see Unabridged Authority and Procedure for Judicial Consideration of Legislative History and Intent at the "Points and Authorities" at www.legintent.com/pointsauthorities.php

5. No Ambiguity: Legislative History Examined Due to being Proffer by all Parties

For cases regarding this topic see Unabridged Authority and Procedure for Judicial Consideration of Legislative History and Intent at the "Points and Authorities" at www.legintent.com/pointsauthorities.php

6. No Ambiguity: Duty to Analyze Statute's Legislative History

For cases regarding this topic see Unabridged Authority and Procedure for Judicial Consideration of Legislative History and Intent at the "Points and Authorities" at www.legintent.com/pointsauthorities.php

7. No Ambiguity: Legislative History Informs, Buttresses, Validates, Comports With or Confirms Court Interpretation

In . . . the court observed that the purpose of subdivision (b) (2) is to target . . . The language of the provision expressly supports this characterization. . . .
This interpretation of the statute is also confirmed by a review of the relevant legislative history of Senate Bill No. 1779. . . .
Doe v. City of Los Angeles (2007) 42 Cal.4th 531, 543-4

1 The plain meaning of the phrase "at or near" denotes a time
close to the . . .

2 Such an interpretation is supported by legislative history
materials underlying section 1370. Earlier versions of the
3 proposed legislation. . .
People v. Quitiquit (2007, 4th District, Div.1)155 Cal.App.4th 1, 9

4 **8. No Ambiguity: Court may Test Construction against
Legislative History**

5 For cases regarding this topic see Unabridged Authority and
6 Procedure for Judicial Consideration of Legislative History and
Intent at the "Points and Authorities" at
7 www.legintent.com/pointsauthorities.php

8 **9. No Ambiguity: Exam of Legislative History Warranted Given
Arguments**

9 For cases regarding this topic see Unabridged Authority and
10 Procedure for Judicial Consideration of Legislative History and
Intent at the "Points and Authorities" at
11 www.legintent.com/pointsauthorities.php

12 **10. Other Cases**

13 Because we find the plain meaning of the statutes and the
relevant legislative history sufficient to overturn PERB's
14 decision, we do not discuss the University's other arguments for
reversing PERB's statutory interpretation.

15 *Board of Trustees of the California State University v. Public
Employment Relations Board* (2007 2nd District, Div. 4) 155
16 Cal.App.4th 866, 883

17 **III. HOW TO PROVIDE LEGISLATIVE HISTORY TO THE COURTS**

18 **A. Procedures for Proffering Evidence of Legislative Intent**

19 **1. By Informal Notice of Legislative Facts**

20 For cases regarding this topic see Unabridged Authority and
Procedure for Judicial Consideration of Legislative History and
21 Intent at the "Points and Authorities" at
www.legintent.com/pointsauthorities.php

22 **2. By Judicial Notice**

23 . . . Evidence Code section 459, subdivision (a) provides, in
part, "[t]he reviewing court may take judicial notice of any
24 matter specified in Section 452." Section 452, subdivision (c)
provides that judicial notice may be taken of "[o]fficial acts of
25 the legislative, executive, and judicial departments."
Defendants' requests for judicial notice of the legislative
26 history documents and the article by the California Department of
Motor Vehicles are granted. (Citations.)

27 *Casella v. Southwest Dealer Services* (2007, 4th District, Div.3)
157 Cal.App.4th 1127

1 . . . We take judicial notice of the cited legislative history
materials pursuant to Evidence Code section 452, subdivision (c).
2 *People v. Taylor* (2007, 5th District) 157 Cal.App.4th 433, 438

3 -----
4 Foothill-DeAnza Community College District v. Emerich (2007, 6th District)
158 Cal.App.4th 11, 28; *Strong v. State Board of Equalization* (2007, 3rd
5 District) 155 Cal. App. 4th 1182, 1188, fn. 3; *In re JT v. Sandra S.* (2007,
1st Distr. Div. 5) 154 Cal.App.4th 986, 993 fn.4.

6 -----
7 *People v. Whaley* (2008, 6th District) 160 Cal.App.4th 779, 788, fn. 9;
8 *Nguyen v. Nguyen* (2008, 4th District, Div. 3) 158 Cal.App.4th 1636, 1659;
9 *Foothill-DeAnza Community College District v. Emerich* (2007, 6th District)
158 Cal.App.4th 11, 28.

10 **a. How to Make Discretionary Judicial Notice Mandatory**

11 For cases regarding this topic see Unabridged Authority and
12 Procedure for Judicial Consideration of Legislative History and
Intent at the "Points and Authorities" at
www.legintent.com/pointsauthorities.php

13 **b. Judicially Noticed Documents Must Be Relevant**

14 Because we find the plain meaning of the statutes and the
15 relevant legislative history sufficient to overturn PERB's
decision, we do not discuss the University's other arguments for
reversing PERB's statutory interpretation.

16 *Board of Trustees of the California State University v. Public*
Employment Relations Board (2007 2nd District, Div. 4) 155
17 Cal.App.4th 866, 883

18 **(1) Relevancy Reconsidered**

19 For cases regarding this topic see Unabridged Authority and
20 Procedure for Judicial Consideration of Legislative History and
Intent at the "Points and Authorities" at
www.legintent.com/pointsauthorities.php

21 **c. Do Rules of Evidence Apply?**

22 For cases regarding this topic see Unabridged Authority and
23 Procedure for Judicial Consideration of Legislative History and
Intent at the "Points and Authorities" at
www.legintent.com/pointsauthorities.php

24
25 **3. By Citing "Published" Documents**

26 **a. What are "Published" Documents?**

27 For cases regarding this topic see Unabridged Authority and
28 Procedure for Judicial Consideration of Legislative History and

Intent at the "Points and Authorities" at www.legintent.com/pointsauthorities.php

4. By Stipulation

For cases regarding this topic see Unabridged Authority and Procedure for Judicial Consideration of Legislative History and Intent at the "Points and Authorities" at www.legintent.com/pointsauthorities.php

B. Do Legislative History Documents Need to Be Authenticated?

1. Authentication Not Required

In a 4th District opinion from 2008, the court enunciated a need for authentication:

In his reply brief, Brand purports to append legislative history from a different statutory provision . . . We do not consider this material for two reasons. First because we have concluded that the meaning of section 8547.10, subdivision (c) is plain and unambiguous, we may not resort to additional materials, including legislative history, to interpret the statute. (Citation.) Second, Brand's attempt to append the legislative history to his reply brief is procedurally and substantively defective. The documents are not identified or authenticated. Instead, they are fragments of documents (three pages from the middle of a transcript and the first page of a memorandum) that are merely appended to the end of Brand's brief. From the fragment of the transcript presented by Brand, it is not clear which legislation it is discussing or who the speakers are. If Brand wanted us to take judicial notice of legislative history documents that were not already in the appellate record, the proper procedure would have been to file a request for judicial notice attaching properly authenticated and complete legislative history documents. (Citation.)

Brand v. Regents of the University of California et al., (2008, 4th District, Div. 1) 72 Cal. Rptr 3d 419, 431 fn. 18 (review granted May 14, 2008)

2. Authentication by Declaration or Affidavit

For cases regarding this topic see Unabridged Authority and Procedure for Judicial Consideration of Legislative History and Intent at the "Points and Authorities" at www.legintent.com/pointsauthorities.php

C. How Much of the Legislative History Should Be Submitted?

Any doubt about the plain meaning of the statute is resolved by the concededly meager legislative history of the section. In recommending that Governor Reagan sign Assembly Bill No. 2310 (1967-1968 Reg. Sess., as amended . . . The Department of Professional and Vocational Standards explained the bill. . . California Veterinary Medical Association v. City of West Hollywood (2007, 2nd District, Div. 7) 152 Cal. App.4th 536

1
2
3 **D. Can an Appellate Court Take Judicial Notice of Legislative History?**

4 **1. When is Judicial Notice Mandatory or Discretionary?**

5 For cases regarding this topic see Unabridged Authority and
6 Procedure for Judicial Consideration of Legislative History and
7 Intent at the "Points and Authorities" at
8 www.legintent.com/pointsauthorities.php

9 **2. Judicially Noticed Materials Must Be Relevant?**

10 For cases regarding this topic see Unabridged Authority and
11 Procedure for Judicial Consideration of Legislative History and
12 Intent at the "Points and Authorities" at
13 www.legintent.com/pointsauthorities.php

14 **3. What Can an Appellate Court Judicially Notice?**

15 For cases regarding this topic see Unabridged Authority and
16 Procedure for Judicial Consideration of Legislative History and
17 Intent at the "Points and Authorities" at
18 www.legintent.com/pointsauthorities.php

19 **4. What is the Procedure at the Appellate Courts?**

20 We take judicial notice of this legislative history pursuant to
21 City's unopposed motion of July 26, 2007. (See Evid. Code, §452,
22 subd. © [judicial notice]; . . .
23 Valley Advocates et al., v. City of Fresno (2008, 5th District)
24 160 Cal. App. 4th 1039, 1070 fn. 20

25 In his reply brief, Brand purports to append legislative history
26 from a different statutory provision . . . We do not consider
27 this material for two reasons. First because we have concluded
28 that the meaning of section 8547.10, subdivision (c) is plain and
unambiguous, we may not resort to additional materials, including
legislative history, to interpret the statute. (Citation.)
Second, Brand's attempt to append the legislative history to his
reply brief is procedurally and substantively defective. The
documents are not identified or authenticated. Instead, they are
fragments of documents (three pages from the middle of a
transcript and the first page of a memorandum) that are merely
appended to the end of Brand's brief. From the fragment of the
transcript presented by Brand, it is not clear which legislation
it is discussing or who the speakers are. If Brand wanted us to
take judicial notice of legislative history documents that were
not already in the appellate record, the proper procedure would
have been to file a request for judicial notice attaching
properly authenticated and complete legislative history
documents. (Citation.)

Brand v. Regents of the University of California et al., (2008,
4th District, Div. 1) 72 Cal. Rptr 3d 419, 431 fn. 18 (review
granted May 14, 2008)

1 **5. Can an Appellate Court Take Judicial Notice on its own Initiative?**

2 Neither party has asked this court to take judicial notice of the
3 legislative history of section 1797.4. However, we may take
4 judicial notice of . . . and we may do so on our own motion
5 (Evid. Code, §459, subd. (a)). We have given notice to the
6 parties of our intent to take judicial notice of certain
7 legislative materials, including the legislative history
8 materials discussed below, and afforded them the opportunity to
9 respond.

10 Canister v. Emergency Ambulance Service (2008, 2nd District,
11 Div.8) 160 Cal.App.4th 388, 401, fn.6

12 **E. Can an Expert Be Used?**

13 For cases regarding this topic see Unabridged Authority and Procedure
14 for Judicial Consideration of Legislative History and Intent at the
15 "Points and Authorities" at www.legintent.com/pointsauthorities.php

16 **F. How is Legislative History Cited?**

17 For cases regarding this topic see Unabridged Authority and Procedure
18 for Judicial Consideration of Legislative History and Intent at the
19 "Points and Authorities" at www.legintent.com/pointsauthorities.php

20 **G. Are Legislative Intent Service Fees a Recoverable Cost?**

21 For cases regarding this topic see Unabridged Authority and Procedure
22 for Judicial Consideration of Legislative History and Intent at the
23 "Points and Authorities" at www.legintent.com/pointsauthorities.php

24
25
26 W:\WORLDOX\WDOCS\WORKPROD\99999\99dht\00102133.DOC