

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

ACR 173 (Gallagher)
Version: February 19, 2020
Hearing Date: August 13, 2020
Fiscal: Yes
Urgency: No
MEC

SUBJECT

California Law Revision Commission: studies

DIGEST

This measure authorizes the California Law Revision Commission to study 13 topics.

EXECUTIVE SUMMARY

The California Law Revision Commission (CLRC) was created in 1953 and tasked with the responsibility for a continuing substantive review of California statutory and decisional law. The CLRC studies the law in order to discover defects and make related recommendations to the Legislature for needed reforms.

The CLRC's enabling statute recognizes two types of topics the CLRC is authorized to study: (1) those that the CLRC identifies for study and lists in the Calendar of Topics that it reports to the Legislature; and (2) those that the Legislature assigns to the CLRC directly, by statute or concurrent resolution. Once the CLRC identifies a topic for study, it cannot begin to work on the topic until the Legislature, by concurrent resolution, authorizes the CLRC to conduct the study. Direct legislative assignments have become much more common in recent years, and many of the CLRC's recent studies were directly assigned by the Legislature.

This measure, sponsored by the CLRC, continues the authorization of the CLRC's studies on 13 topics and discontinues the study of 11 topics.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes the CLRC to study topics approved by concurrent resolution of the Legislature. (Gov. Code Sec. 8293.)
- 2) Prohibits an employee or member of the CLRC, with respect to any proposed legislation concerning matters assigned to the CLRC for study, to advocate for the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature unless requested to do so by the committee or its chairperson. (Gov. Code Sec. 8288.)

This resolution:

- 1) Makes the following findings:
 - a) That the CLRC is authorized to study topics set forth in the calendar contained in its report to the Governor and the Legislature that have been or are thereafter approved for study by concurrent resolution of the Legislature, and topics that have been referred to the CLRC for study by concurrent resolution of the Legislature or by statute; and
 - b) That the CLRC, in its annual report covering its activities for 2018 and 2019, recommends continued study of 13 topics, all of which the Legislature has previously authorized or directed the CLRC to study, and the removal of 11 topics that were previously approved for study.
- 2) Resolves, on behalf of the Assembly of the State of California, the Senate thereof concurring, that the Legislature approves for continued study by the CLRC the topics listed below, all of which the Legislature has previously authorized or directed the CLRC to study:
 - a) Whether the law should be revised that relates to creditors' remedies, including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code provisions on repossession of property), confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, insolvency, and related matters.
 - b) Whether the California Probate Code should be revised, including, but not limited to, the issue of whether California should adopt, in whole or in part, the Uniform Probate Code, and related matters.

- c) Whether the law should be revised that relates to real and personal property, including, but not limited to, a marketable title act, covenants, servitudes, conditions, and restrictions on land use or relating to land, common interest developments, powers of termination, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant on assignment, subletting, termination, or abandonment of a lease, and related matters.
 - d) Whether the law should be revised that relates to family law, including, but not limited to, community property, the adjudication of child and family civil proceedings, child custody, adoption, guardianship, freedom from parental custody and control, and related matters, including other subjects covered by the Family Code.
 - e) Whether the law relating to discovery in civil cases should be revised.
 - f) Whether the Evidence Code should be revised.
 - g) Whether the law relating to arbitration, mediation, and other alternative dispute resolution techniques should be revised.
 - h) Whether there should be changes to administrative law.
 - i) Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification.
 - j) Whether the law of contracts should be revised, including the law relating to the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters.
 - k) Whether the law governing the place of trial in a civil case should be revised.
 - l) Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law.
 - m) Whether to study, report on, and prepare recommended legislation to revise Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, and related provisions, to improve the organization and expression of the law.
- 3) Resolves that the Legislature approves the removal from the calendar of the CLRC the topics listed below:

- a) Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised.
- b) Whether the law relating to the payment and the shifting of attorney's fees between litigants should be revised.
- c) Whether the Uniform Unincorporated Nonprofit Association Act, or parts of that uniform act, and related provisions should be adopted in California.
- d) Whether the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, establish a clear, consistent, and unified policy with regard to the formation and management of these developments and the transaction of real property interests located within them, and to determine to what extent they should be subject to regulation.
- e) Whether the statutes of limitation for legal malpractice actions should be revised to recognize equitable tolling or other adjustment for the circumstances of simultaneous litigation, and related matters.
- f) Whether the law governing disclosure of public records and the law governing protection of privacy in public records should be revised to better coordinate them, including consolidation and clarification of the scope of required disclosure and creation of a single set of disclosure procedures, to provide appropriate enforcement mechanisms, and to ensure that the law governing disclosure of public records adequately treats electronic information, and related matters.
- g) Whether the law governing criminal sentences for enhancements relating to weapons or injuries should be revised to simplify and clarify the law and eliminate unnecessary or obsolete provisions.
- h) Whether the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) and the Mitigation Fee Act Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) of Division 1 of Title 7 of the Government Code) should be revised to improve their organization, resolve inconsistencies, and clarify and rationalize provisions, and related matters.
- i) Whether the Uniform Statute and Rule Construction Act (1995) should be adopted in California in whole or in part, and related matters.

- j) Analysis of the legal and policy implications of treating a charter school as a public entity for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.
 - k) Analysis of the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, and the purposes for, and impact of, those laws on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, and the effectiveness of mediation, as well as any other issues that the CLRC deems relevant.
- 4) Resolves that before commencing work on any project within the calendar of topics the Legislature has authorized or directed the CLRC to study, the CLRC shall submit a detailed description of the scope of work to the chairs and vice chairs of the Assembly Committee on Judiciary and the Senate Committee on Judiciary, and any other policy committee that has jurisdiction over the subject matter of the study, and if during the course of the project there is a major change to the scope of work, submit a description of the change.
- 5) Resolves that the Chief Clerk of the Assembly transmit copies of this resolution to the CLRC and to the author for appropriate distribution.

COMMENTS

1. Stated need for the Resolution

This resolution is sponsored by the California Law Revision Commission. As explained by the author, “[a]t least once per session, the California Law Revision Commission must seek a concurrent resolution that sets their ‘Resolution of Authority’ for the calendar of topics that the Commission is authorized to study. ACR 173 provides this authorization for this session.” The CLRC currently has a list of 24 topics that the Legislature has previously authorized for study. This measure would only reauthorize the CLRC to study the following topics: Creditors’ Remedies; Probate Code; Real and Personal Property; Family Law; Discovery in Civil Cases; Evidence; Arbitration; Administrative Law; Trial Court Unification; Contract Law; Place of Trial in Civil Cases; specified provisions of the Health and Safety Code; and the Fish and Game Code.

The CLRC explains that ACR 173 would not continue the authority to study 11 topics that had previously been authorized because “[t]hat authority is no longer needed. The discontinued topics involve studies that have either been completed or that were never started (because higher priority work consumed the available resources). The removal of those obsolete topics would provide a clearer picture of the Commission’s actual authority and priorities.” Specifically, ACR 173 discontinues the study of the following topics: Rights and Disabilities of Minors and Incompetent Persons; Attorney’s Fees; Uniform Unincorporated Nonprofit Association Act; Common Interest Developments;

Legal Malpractice Statutes of Limitation; Coordination of Public Records Statutes; Criminal Sentencing; Subdivision Map Act and Mitigation Fee Act; Uniform Statute and Rule Construction Act; the legal and policy implications of treating a charter school as a public entity; and the relationship between mediation confidentiality and attorney malpractice.

SUPPORT

California Law Revision Commission (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SCR 91 (Roth, Res. Ch. 158, Stats. 2018) granted approval to the CLRC to continue its study of designated topics that the Legislature previously authorized or directed the CLRC to study; authorized and requested the CLRC to study and report on topics relating to hazardous waste control and hazardous substances; provided that before commencing work on any project within the list of topics authorized for study by the Legislature, the CLRC shall submit a detailed description of the scope of work to the Senate and Assembly Committees on Judiciary and any legislative policy committee with jurisdiction over the study's subject matter; and expressly allowed the CLRC to provide copies of its recommendations to members of a legislative policy committee and invited CLRC staff to hearings for the purpose of explaining recommendations and answering questions from committee members.

ACR 148 (Chau, Res. Ch. 150, Stats. 2016) authorized the CLRC to continue its studies on whether specified laws should be revised; authorized an additional study of the California Public Records Act; provided that before commencing work on any project within the list of topics authorized for study by the Legislature, the CLRC shall submit a detailed description of the scope of work to the Senate and Assembly Committees on Judiciary and any legislative policy committee with jurisdiction over the study's subject matter; and expressly allowed the CLRC to provide copies of its recommendations to members of a legislative policy committee and invite CLRC staff to hearings for the purpose of explaining recommendations and answering questions from committee members.

SCR 54 (Padilla, Res. Ch. 115, Stats. 2013) authorized the CLRC report on and prepare recommended legislation concerning statutes governing access by state and local government agencies to customer information from communications service providers.

AB 567 (Wagner, Res. Ch. 15, Stats. 2013) repealed the requirement that the CLRC make the decennial recommendations, and retained the CLRC's general authority to study, review, and make recommendations regarding the enforcement of judgments law.

ACR 125 (Papan, Res. Ch. 167, Stats. 2002) authorized the CLRC to study, report on, and prepare recommended legislation concerning the issue of financial privacy to address protection and control of a consumer's personal information and provide both administrative and civil penalties.

The following is a list of the prior annual authorizing resolutions for the CLRC:

SCR 83 (Monning, Res. Ch. 63, Stats. 2014)

ACR 98 (Wagner, Res. Ch. 108, Stats. 2012) *See* Comment 4a, b, and c.

ACR 49 (Evans, Res. Ch. 98, Stats. 2009) *See* Comment 4a.

ACR 35 (Evans, Res. Ch. 100, Stats. 2007)

SCR 15 (Morrow, Res. Ch. 1, Stats. 2006)

SCR 42 (Campbell, Res. Ch. 122, Stats. 2005)

SCR 4 (Morrow, Res. Ch. 92, Stats. 2003)

ACR 123 (Wayne, Res. Ch. 166, Stats. 2002)

SCR 13 (Morrow, Res. Ch. 78, Stats. 2001)

ACR 17 (Wayne, Res. Ch. 81, Stats. 1999)

SCR 65 (Kopp, Res. Ch. 91, Stats. 1998)

SCR 3 (Kopp, Res. Ch. 102, Stats. 1997)

SCR 43 (Kopp, Res. Ch. 38, Stats. 1996)

PRIOR VOTES:

Assembly Floor (Ayes 76, Noes 0)

Assembly Appropriations Committee (Ayes 18, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
