**RESOLUTION 07-01-2017**

**DIGEST**
Attorney-Client: Amends Definition of Client
Amends Evidence Code section 951 to make pre-retention communications between attorney and potential client privileged.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Evidence Code section 951 to make pre-retention communications between attorney and potential client privileged. This resolution should be disapproved because pre-retention communications are privileged and it creates ambiguity by using the term "employ".

Under current law, Evidence Code section 954 protects attorney-client communications from disclosure in judicial proceedings. In this context, section 951 provides the definition of a client. While the statute does not specifically state a person can become a "client" even before the attorney agrees to represent the person, it envisions such by providing that "client" includes "a person who… consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity." (Evid. Code §951.) Further, the courts have long held that the plain language of section 951 provides that a "client" includes a person who consults an attorney to retain him/her, but ultimately does not retain that attorney. (See e.g. *People v. Canfield* (1974) 12 Cal.3d 699, 705 [held, "The lawyer-client privilege is, indeed, so extensive that where a person seeks the assistance of an attorney with a view to employing him professionally, any information acquired by the attorney is privileged whether or not actual employment results."].)

Because there is no judicial uncertainty, which needs to be resolved, there is no need for legislative action on this issue. There is no evidence that the trial courts are applying this statutory definition of "client" to exclude pre-retention communications from the protection of the attorney-client privilege, despite the unambiguous holdings of the Courts of Appeal.

Finally, by using the phrase "employs the lawyer", the resolution creates some ambiguity because the term "employ" suggests payment, which may have the unintended consequence of excluding pro bono representation from this definition. However, even if the resolution is amended to remove the ambiguity, it should still be disapproved because the proposed change is unnecessary.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Evidence Code section 951 to read as follows:

§ 951

As used in this article, "client" means a person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity, whether or not that person employs the lawyer, and includes an incompetent (a) who himself so consults the lawyer or (b) whose guardian or conservator so consults the lawyer in behalf of the incompetent.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County.

**STATEMENT OF REASONS**

The Problem: Currently, Evidence Code section 954 protects attorney-client communications from disclosure to third persons. Evidence Code section 951 defines "client" for purposes of this evidentiary privilege, but does not clearly state that "client" includes persons who make pre-retention communications to an attorney whom they do not thereafter employ.

The Solution: This Resolution amends Evidence Code section 951 to make clear this privilege protects potential clients' pre-retention communications with an attorney, even if he/she does not employ the attorney. This comports with established California case law and policy. In *People v. Gionis* (1995) 9 Cal.4th 1196, the California Supreme Court reasoned in dicta that the attorney-client privilege must attach whether or not the attorney is ever employed. The court explained, "'no person could ever safely consult an attorney for the first time with a view to his employment if the privilege depended on the chance of whether the attorney after hearing his statement of the facts decided to accept the employment or decline it.'" *Id.* at 1205 (holding no privilege exists for statements made after the attorney expressly declines representation), quoting *Estate of Dupont* (1943) 60 Cal.App.2d 276, 289.

This Resolution does not change the body of law regarding conflicts of interest. Disqualification is already possible after an initial consultation with a potential client which does not result in employment, but only when the putative client can meet his/her burden of showing the consultation amounted to more than a general discussion of their case. *Med-Trans Corp., Inc. v. City of California City* (2007) 156 Cal.App.4th 655, 667. In making its decision, the court will consider whether the attorney did any substantive work on the case, i.e., more than mere listening and offering initial impressions; whether the disclosed information was material to the current dispute; and a number of similar factors. *Id.*, at fn 7; and *see*, *Marriage of Zimmerman* (1993) 16 Cal.App.4th 556, 564-565.

**IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

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**RESPONSIBLE FLOOR DELEGATE:** Irene E. Stewart

**RESOLUTION 07-02-2017**

**DIGEST**
Environmental Quality Act: Subsequent and Supplemental CEQA Documents
Amends Public Resources Code section 21166 to codify the existing regulatory standards for further environmental review when the prior CEQA review resulted in a negative declaration.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Public Resources Code section 21166 to codify the existing regulatory standards for further environmental review when the prior CEQA review resulted in a negative declaration. This resolution should be approved in principle because it clarifies that negative declarations are within the ambit of documents to which consideration of subsequent or supplemental California Environmental Quality Act review must occur when a project is materially changed.

The California Environmental Quality Act (CEQA), is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. A negative declaration is prepared for a project when there is no substantial evidence that the project or any of its aspects could result in significant adverse impacts. (See, 14 Cal. Code Regs. § 15063, subd. (b)(2).) And, while CEQA sets forth the standards for further environmental review when an environmental impact report (EIR) has previously been certified for a project, the statute is silent as to the standards for further environmental review when the previous CEQA review document was a negative declaration. (See, Pub. Resources Code, § 21166.)

This resolution looks to the CEQA Guidelines (15 Cal. Code Regs., § 15000 et seq.), which extend the statute to apply when a negative declaration was previously adopted for a project. (See, specifically 14 Cal. Code Regs., § 15162.) The CEQA Guideline at section 15162 regulates when an agency *may* require preparation of a further EIR when a negative declaration has been adopted for a project. This resolution makes clear that an agency *shall* require further EIR in these circumstances and prevents a previously rejected project to move forward without the environmental impact being fully considered.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Public Resources Code section 21166 to read as follows:

§ 21166

(a) When an environmental impact report or negative declaration has been prepared for a

project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

(~~a~~1) Substantial changes are proposed in the project which will require major revisions of the environmental impact report or negative declaration.

(~~b~~2) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report or negative declaration.

(~~c~~3) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete or the negative declaration was adopted, becomes available.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County

**STATEMENT OF REASONS**

The Problem: CEQA sets forth the standards for further environmental review when an environmental impact report (EIR) has previously been certified for a project. (Pub. Resources Code, § 21166.) However, the statute refers only to EIRs and is silent as to the standards for further environmental review when the previous CEQA review document was a negative declaration. The CEQA Guidelines extend the statute to apply when a negative declaration was previously adopted for a project. (Cal. Code Regs., tit. 14, §15162.) Under CEQA Guideline Section 15162, when a negative declaration has been adopted for a project, an agency may not require preparation of a further EIR unless one of the three triggers for preparation of a subsequent or supplemental EIR exists. The courts have upheld this extension of subsequent review standards to previous negative declarations as consistent with the legislative intent behind Public Resources Code section 21166. (*Abatti v. Imperial Irrig. Dist.* (2012) 205 Cal.App.4th 650, 668; *American Canyon Community United for Responsible Growth v. City of Am. Canyon* (2006) 145 Cal.App.4th 1062, 1071; *Snarled Traffic Obstructs Progress v. City & County of San Francisco* (1999) 74 Cal.App.4th 793.)

The Solution: This Resolution would amend Public Resources Code section 21166 to clarify that negative declarations are within the ambit of documents to which consideration of subsequent or supplemental CEQA review must occur in the event a project is materially changed.

**IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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**RESPONSIBLE FLOOR DELEGATE**: Michael P. Masterston, Esq

**RESOLUTION 07-03-2017**

**DIGEST**
Federal Legislation: Congressional Apportionment
Authorizes the California Legislature to urge amendments to the Apportionment Act of 1911 and Act of Reapportionment of 1929 that capped the number of members of the House of Representatives at 435.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution authorizes the California Legislature to urge amendments to the Apportionment Act of 1911 and Act of Reapportionment of 1929 that capped the number of members of the House of Representatives at 435. This resolution should be disapproved because it would not have force of law and, even if enacted, would result in ever-changing numbers of representatives based on the language of the proposal.

A resolution that requests the California Legislature to urge repeal of federal law has no force of law of its own, and may not be a wise use of CCBA resources when compared to other resolutions that will directly change the law and impact the administration of justice. Additionally, by tying the number of Congressional Representatives to the population of the least populous state as the denominator and utilizing the total population of the United States as the numerator, the author proposes a system that could result in constant shifting and uncertainty of the accurate number of representatives. This uncertainty could be costly in terms of money and time. For example, changes to legislative districts are costly and often fraught with legal challenges. The delays associated with determining the districts could leave some people without proper representation. A determination that a district is no longer valid based on the change in population could be offensive to people who might feel their rights are being eroded if their representative is eliminated.

There exist other methods for the ideals represented in the resolution to be moved forward. The 2016 presidential election showed that there are significant social media campaigns dedicated to galvanizing a progressive political agenda at the national level. There are civic groups and volunteer entities that appear on Twitter, Facebook, Snap Chat and other feeds in need of leadership and well-crafted ideas that membership can be encouraged to adopt and follow. There are letter and phone campaigns that can be developed to call on elected national representatives to accomplish the concepts contained in this resolution. And, a CCBA delegate could introduce the resolution idea directly to a member of her or his state legislative delegation.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to exhort, by every means available to the State of California, the Government of the United States to amend the provisions of the Act of Reapportionment Act of 1929 (ch. 28, 46 Stat. 21, 2 U.S.C. § 2a, enacted June 18, 1929) and Apportionment Act of 1911 (Pub.L. 62–5, 37 Stat. 13) that cap the number of members of the United States House of Representatives at 435, to read as follows:

2 U.S.C. § 2a. Reapportionment of Representatives; time and manner; existing decennial census figures as basis; statement by President; duty of clerk

(a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the ~~then existing~~ number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member, the total number of Representatives to be calculated by using the population of least populous state as the denominator and the total population of the United States as the numerator.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENTS:** Bar Association of San Francisco

## STATEMENT OF REASONS

The Problem: The Constitution of the United States, Article I, Section 2, Clause 3, provides that the number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative. The 1791 Congress had 69 Representatives. This number increased with population to 435 in 1913. In 1911, Congress passed the Apportionment Act of 1911, which capped the total number of Representatives at 435 and provided that the seats be allocated among the States by population with each State receiving at least one Representative, as required by the Constitution. The Reapportionment Act of 1929 continued the cap of 435, allocating "the number of Representatives to which each State would be entitled under an apportionment of the **then existing number** of Representatives" (emphasis added). The Reapportionment Act of 1929 remains in effect.

Capping the maximum number of Representatives while guaranteeing a minimum number underrepresents urban and populous states, like California, while overrepresenting rural and sparsely populated states. The effect is to undermine compromise struck in the Constitutional Convention between the Senate and House. The Senate provides equal representation among the states regardless of population. The House of Representatives, as its name suggests, provides representation based on the populations of the States. The 1911 and 1929 Acts undermine this compromise and disenfranchise the people of more populous states.

This disenfranchisement has effect every four years in Presidential elections through the Electoral College and every day in the House of Representatives in every single vote.

This is a BAD deal. Let's fix it.

The Solution: This resolution seeks to exhort California, through all of its elected official and every means available to exert its influence to fully enfranchise under the Constitution of the United States the voters of California on par with those of other less populous states.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

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**RESPONSIBLE FLOOR DELEGATE**: Alicia M. Gámez

**RESOLUTION 07-04-2017**

**DIGEST**
Human Rights: Rights of Children
Requests that the Legislature adopt a Joint Resolution urging the President submit and the United States Senate consider ratification of the United Nations Convention on the Rights of the Child.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution requests that the Legislature adopt a Joint Resolution urging the President submit and the United States Senate consider ratification of the United Nations Convention on the Rights of the Child. This resolution should be disapproved because it would result in radical changes to the family law system in California with respect to any proceedings involving children and it fails to inform delegates what precise statutory changes it would effect.

The United Nations Convention on the Rights of the Child includes many laudatory provisions. However, many of its provisions, if enacted, would require profound changes to California law and procedure in the family courts. For example, the Convention obliges signatory states to provide separate legal representation for a child in any judicial dispute concerning their care and asks that the child's viewpoint be heard in such cases. The costs to provide separate counsel for every child in a custody dispute would be catastrophic. Other requirements under the Convention, such as establishing that all adoptive children have the right to know the identity of their birth parents, are potentially harmful in some cases, and in any event would require significant changes to current law. (See, e.g., Fam. Code, § 9200, subd. (a) [adoptee's birth records sealed], Health & Saf. Code, § 10275 [confidentiality of original birth certificates].) Finally, the resolution fails to identify what precise changes in California law this resolution would affect.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Association recommends that legislation be sponsored using the Legislature's Joint Resolution process to adopt a Joint Resolution to read as follows:

Joint Resolution No. ___

WHEREAS, the United Nations Convention on the Rights of the Child (Convention) is an international treaty that recognizes the human rights of children, defined as persons up to the age of 18 years; and

WHEREAS, the Convention establishes in international law that signatories to the Convention must ensure that all children—without discrimination in any form—benefit from special protection measures and assistance; have access to services such as education and health care; can develop their personalities, abilities and talents to the fullest potential; grow up in an environment of happiness, love and understanding; and are informed about and participate in, achieving their rights in an accessible and active manner; and

WHEREAS, The State of California is committed to the protection of children's rights; and

WHEREAS, The State would greatly benefit from having the United States ratify the Convention on the Rights of the Child (http://www.ohchr.org/en/professionalinterest/pages/crc.aspx) which provides a comprehensive framework for the protection of children's rights; now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes and requests the President of the United States submit and the United States Senate act on and ratify the United Nations Convention on the Rights of the Child; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** National Lawyers Guild – San Francisco Bay Area Chapter

**STATEMENT OF REASONS**

The Problem: The United Nations Convention on the Rights of the Child (http://www.ohchr.org/en/professionalinterest/pages/crc.aspx) is a comprehensive framework for the protection of children's rights. It includes the right to protection from discrimination based on their parent's or legal guardian's sex, race, religion, and a host of other identifiers. The convention supports protections for children from forced labor, child marriage, deprivation of a legal identity, and grants both able-bodied and disabled children the right to health care, education, and freedom of expression. It also has safeguards for parents to take care of their children, including parental leave.

The Convention has been ratified by 190 member countries of the United Nations. 1n 1995, Madeline Albright as Ambassador to the United Nations, signed the Convention. However, the treaty has never been submitted to the United States Senate for ratification. The United States is one of three countries who have not ratified the treaty, the others being Somalia and South Sudan.

The Solution: This Resolution recommends that the California Legislature use its Joint Resolution process to enact a Joint Resolution asking the California Congressional delegation to request that the President submit the United Nations Convention on the Rights of the Child to the United States Senate for ratification as a treaty.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

**AUTHOR AND/OR PERMANENT CONTACT:**
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**RESPONSIBLE FLOOR DELEGATE**: Richard P. Koch

**RESOLUTION 07-05-2017**

**DIGEST**
Taxation: Tax Credit for Interest Paid on Student Loans
Adds Revenue and Taxation Code section 17061.6 to create a new tax credit for interest paid for student loans.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution adds Revenue and Taxation Code section 17061.6 to create a new tax credit for interest paid for student loans. This resolution should be disapproved because California already allows a tax deduction for student loan interest payments for the same amount as allowed under federal law, and there is no reason to create a credit in addition to the existing deduction.

Under current law, California allows a tax deduction for student loan interest payments. California Revenue Code section 17201, subdivision (b) provides: "Part VII of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code [namely 17 U.S.C. § 211 et seq.], relating to additional itemized deductions for individuals, shall apply, except as otherwise provided." The federal tax deduction for student loan interest is governed by 17 U.S.C. § 221, which falls within Part VII of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code, and therefore falls within the purview of Revenue and Taxation Code section 17201, subdivision (b).

The exceptions to the allowed deductions referenced in California Revenue Code, section 17201, subdivision (b) are enumerated in the Revenue and Taxation Code, sections 17201.1 – 17299.9. There are no exceptions in the Revenue and Taxation Code disallowing the tax deduction for student loan interest payments. Reinforcing the availability of this deduction, the Franchise Tax Board instructions for California Schedule CA (540) – California Adjustments explains that "California conforms to federal law regarding student loan interest deduction except for a spouse/RDP of a non-California domiciled military taxpayer residing in a community property state," and provides a worksheet to calculate the amount to enter on the Schedule CA (540). (See, https://www.ftb.ca.gov/forms/2016/16_540bk.pdf at page 39.) Finally, to alleviate any further doubt, the California Schedule CA (540), line 33 is labeled "Student Loan Interest Deduction."

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to add Revenue and Taxation Code section 17061.6 to read as follows:

§ 17061.6
(a) In the case of an individual, there shall be allowed a credit against his or her "net tax,"

as defined in Section 17039, for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

(b) For purposes of this section:

(1) The term "qualified education loan" means any indebtedness incurred by the taxpayer solely to pay higher education expenses:

(A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,

(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

(C) which are attributable to education furnished during a period during which the recipient was an eligible student.

Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term "qualified education loan" shall not include any indebtedness owed to a person who is related (within the meaning of Sections 267(b) or 707(b)(1) of the Internal Revenue Code) to the taxpayer or to any person by reason of a loan under any qualified employer plan (as defined in Section 72(p)(4) of the Internal Revenue Code) or under any contract referred to in Section 72(p)(5) of the Internal Revenue Code.

(2) The term "eligible student" has the meaning given such term by Section 25A(b)(3) of the Internal Revenue Code.

(3) The term "dependent" has the meaning given such term by Section 152 of the Internal Revenue Code (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Bernardino County Bar Association

**STATEMENT OF REASONS**

The Problem: According to the Institute for College Access & Success (TICAS), from 2004 to 2014, the average debt at graduation rose at more than twice the rate of inflation. TICAS also reports that, according to data collected in 2015, the proportion of those with debt in California is 55% and the average education debt is $21,382. The interest rates for these education loans are substantial and can be as high as 8.5%. Because borrowers pay this interest with post-income tax dollars, this represents a substantial financial burden for borrowers who are, in many cases, young graduates who want to get married, buy a house, and have a family. Meanwhile, this is a problem for all Californians because, if the increased burden of education loan payments causes the younger generation to be unable to become homeowners, this will negatively impact the real estate market and economy at large.

The Solution: This proposed resolution would alleviate some of the burden of education loans by providing a tax credit for any amounts paid towards education loan interest. Although this would not completely cure the broader, national problem of education loan inflation, doing so would mitigate the burden of student loans, incentivize graduates to do live and work in California, and increase home ownership in California. Although the proposed resolution may lower tax revenues because of the tax credit, the potential loss in revenue would be offset by strengthening the overall economy.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

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**RESPONSIBLE FLOOR DELEGATE:** Jonathan Ziprick

**RESOLUTION 07-06-2017**

**DIGEST**
Foster Children: Address Difficulty in Obtaining Automobile Insurance
Amends Welfare and Institutions Code section 11460 to clarify the responsibility of the Department of Social Services to provide accessible means of obtaining car insurance for foster care children.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Welfare and Institutions Code section 11460 to clarify the responsibility of the Department of Social Services to provide accessible means of obtaining car insurance for foster care children. This resolution should be approved in principle because it would assist foster children in obtaining a driver's license.

The ability of foster children to obtain a driver's license and auto insurance is vital to their independence and, in some cases, the child's ability to earn valuable work experience and income. Foster parents are reimbursed for many of their foster children's expenses but costs for insurance coverage are not included, and therefore are often not provided for the child. A child cannot get a driver's license if they are not insured to drive at least one vehicle. To the extent that this resolution would help foster children obtain a license and insurance, this resolution is helpful and it does not appear to require a foster parent to pay these costs.

This resolution may, however, require a foster parent to assume some liability for damages caused by the foster child in excess of the insurance coverage, which the foster parent may still be unwilling to do. So, while this resolution offers an opportunity for foster parents to cover these costs for the foster child, the risks for the foster parent may still be prohibitive.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Welfare and Institutions code section 11460 to read as follows:

§ 11460

(a) (1) Foster care providers shall be paid a per child per month rate in return for the care and supervision of the AFDC-FC child placed with them. The department is designated the single organizational unit whose duty it shall be to administer a state system for establishing rates in the AFDC-FC program. State functions shall be performed by the department or by delegation of the department to county welfare departments or Indian tribes, consortia of tribes, or tribal organizations that have entered into an agreement pursuant to Section 10553.1.

(2) (A) Foster care providers that care for a child in a home-based setting described in paragraph (1) of subdivision (g) of Section 11461, or in a certified home or an approved resource family of a foster family agency, shall be paid the per child per month rate as set forth in subdivision (g) of Section 11461.

(B) The basic rate paid to either a certified family home or an approved resource family of a foster family agency shall be paid by the agency to the certified family home or approved resource family from the rate that is paid to the agency pursuant to Section 11463.

(b) "Care and supervision" includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance, <u>including liability insurance with respect to a child, automobile insurance for a child who is licensed to drive by the Department of Motor Vehicles, either by addition of the child as an insured to an existing policy or by a policy in the child's name only</u>, with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel or the child to remain in the school in which he or she is enrolled at the time of placement. Reimbursement for the costs of educational travel, as provided for in this subdivision, shall be made pursuant to procedures determined by the department, in consultation with representatives of county welfare and probation directors, and additional stakeholders, as appropriate.

(1) For a child or youth placed in a short-term residential therapeutic program or a group home, care and supervision shall also include reasonable administration and operational activities necessary to provide the items listed in this subdivision.

(2) For a child or youth placed in a short-term residential therapeutic program or a group home, care and supervision may also include reasonable activities performed by social workers employed by the program provider that are not otherwise considered daily supervision or administration activities.

(3) The department, in consultation with the California State Foster Parent Association, and other interested stakeholders, shall provide information to the Legislature, no later than January 1, 2017, regarding the availability and cost for liability and property insurance covering acts committed by children in care, and shall make recommendations for any needed program development in this area.

(c) It is the intent of the Legislature to establish the maximum level of financial participation in out-of-state foster care group home program rates for placements in facilities described in subdivision (h) of Section 11402.

(1) The department shall develop regulations that establish the method for determining the level of financial participation in the rate paid for out-of-state placements in facilities described in subdivision (h) of Section 11402. The department shall consider all of the following methods:

(A) Until December 31, 2016, a standardized system based on the rate classification level of care and services per child per month.

(B) The rate developed for a short-term residential therapeutic program pursuant to Section 11462.

(C) A system that considers the actual allowable and reasonable costs of care and supervision incurred by the out-of-state program.

(D) A system that considers the rate established by the host state.

(E) Any other appropriate methods as determined by the department.

(2) Reimbursement for the Aid to Families with Dependent Children-Foster Care rate to be paid to an out-of-state program described in subdivision (h) of Section 11402 shall only be paid to programs that have done all of the following:

(A) Submitted a rate application to the department, which shall include, but not be limited to, both of the following:

(i) Commencing January 1, 2017, unless granted an extension from the department pursuant to subdivision (d) of Section 11462.04, the equivalent of the mental health program approval required in Section 4096.5.

(ii) Commencing January 1, 2017, unless granted an extension from the department pursuant to subdivision (d) of Section 11462.04, the national accreditation required in paragraph (6) of subdivision (b) of Section 11462.

(B) Maintained a level of financial participation that shall not exceed any of the following:

(i) The current fiscal year's standard rate for rate classification level 14 for a group home.

(ii) Commencing January 1, 2017, the current fiscal year's rate for a short-term residential therapeutic program.

(iii) The rate determined by the ratesetting authority of the state in which the facility is located.

(C) Agreed to comply with information requests, and program and fiscal audits as determined necessary by the department.

(3) Except as specifically provided for in statute, reimbursement for an AFDC-FC rate shall only be paid to a group home or short-term residential therapeutic program organized and operated on a nonprofit basis.

(d) A foster care provider that accepts payments, following the effective date of this section, based on a rate established under this section, shall not receive rate increases or retroactive payments as the result of litigation challenging rates established prior to the effective date of this section. This shall apply regardless of whether a provider is a party to the litigation or a member of a class covered by the litigation.

(e) Nothing shall preclude a county from using a portion of its county funds to increase rates paid to family homes, foster family agencies, group homes, and short-term residential therapeutic programs within that county, and to make payments for specialized care increments, clothing allowances, or infant supplements to homes within that county, solely at that county's expense.

(f) Nothing shall preclude a county from providing a supplemental rate to serve commercially sexually exploited foster children to provide for the additional care and supervision needs of these children. To the extent that federal financial participation is available, it is the intent of the Legislature that the federal funding shall be utilized.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS**

The Problem: Currently, foster children under the age of 18, especially those in group homes rather than in the care of a foster parent, face an impediment in receiving vehicle insurance and a driver's license. To obtain a driver's license, a foster child must have a foster parent or guardian verify that they will provide insurance payment and/or include the child under their insurance plan. The Department of Social Services (DSS) does not cover the cost of a foster teen's vehicle and registration, and few guardians are willing to take on the expenses. This hampers the ability of foster children to successfully obtain a driver's license along with non-foster children, limiting their access to an opportunity that is more readily available to teenagers not in foster care.

Some guardians simply cannot afford to cover the cost of automobile insurance, and some foster children reside in group homes through which they are unable to find a guardian to take on such a responsibility. Thus, a significantly lower percentage of children in foster care (as compared to children not in foster care) are able to obtain a driver's license while still a minor, preventing them from accessing certain career and/or educational opportunities.

The Solution: This resolution would require the Department of Social Services to finance automobile insurance for foster kids under Welfare and Institutions Code section 11460, which provides that "foster care providers shall be paid a per child per month rate in return for the care and supervision of [each foster child] placed with them" and would expand the current definition of "care and supervision." Specifically, the portion of the definition of “care and supervision” that includes "liability insurance with respect to a child” would be expanded to include automobile insurance with respect to the child. This would allow reimbursement to foster parents or direct payment of car insurance for the foster child by the DSS.

Foster children would be able to help the DSS cover the cost of their automobile insurance by applying for the California Chafee Grant for Foster Youth, which would contribute a sum of up to 5,000 dollars per year to individuals who are currently in (or previously were) in foster care. The grant is sponsored by the California Student Aid Commission, and states that a foster youth “may also be able to use [his/her] grant to help pay for child care, transportation and rent while [he/she is] in school.” To avoid delegating financial responsibility solely to the Department of Social Services, foster children could apply to have the Chafee Grant help cover the cost of their automobile insurance.

This resolution would give foster children an equal opportunity to obtain a driver's license without financially burdening a guardian to pay for insurance, thus increasing the amount of foster kids with driver's licenses and transportation opportunities for jobs or other educational goals that necessitate driving.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

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**RESPONSIBLE FLOOR DELEGATE:** Karen R. Frostrom

**RESOLUTION 07-07-2017**

**DIGEST**
Banned Animals: Sugar Glider Legalization
Amends Fish and Game Code section 2118 and adds section 2118.6 to provide that sugar gliders may legally be kept as pets in California, with certain preconditions.

**RESOLUTION COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Fish and Game Code section 2118 and adds section 2118.6 to provide that sugar gliders may legally be kept as pets in California, with certain preconditions. This resolution should be disapproved because the Legislature excluded sugar gliders to protect them from improper handling, to preserve California's agriculture and wildlife and there already is a method to remove a species from the Fish & Game Code list of prohibited species.

Sugar gliders are excluded from California because there is concern that people are unfamiliar with the proper care and health of marsupials, which could result in danger to the animals and/or the environment. Moreover, left to their own devices, sugar gliders could over-populate an area in little time and damage the environment. The concerns that sugar gliders are detrimental to the environment are valid, as these animals breed quickly (gestation period of 15 to 17 days), strip bark from trees, are opportunistic predators preying on small birds and reptiles, and could negatively impact California's forests and agriculture.

If sugar gliders are allowed, they would become the gateway marsupials. California's insatiable appetite for cute exotic pets will only be heightened and sugar gliders will be followed by wallabies, kangaroos, koalas, etc. Californians will become addicted and compelled to move onto these more exotic marsupials. The next thing you know, people will own duck-billed platypuses – we just can't have people owning egg-laying mammals as pets.

Sugar glider cuteness also implicates impulse buying without adequate consideration of the needs and proper care of these marsupials. California's animal shelters are already filled with abandoned pets. They do not need one more species to address. Also, based on their quick breeding abilities, sugar gliders would eventually take over and outnumber cats (unless the cats catch and eat them since sugar gliders are hard to contain and glide everywhere). Needless to say – chaos in animal shelters.

Despite the prohibition on sugar gliders as pets, subdivision (k) of Fish and Game Code section 2118 states, "[c]lasses, families, genera, and species in addition to those listed in this section may be added to or deleted from the above lists from time to time by commission regulations in cooperation with the Department of Food and Agriculture." (Fish & Game Code, § 2118, subd. (k).) An individual can seek a special permit to import and possess the sugar glider (the permit is

to ensure that they know how to properly care, protect, and feed the animal). (See 14 C.C.R. § 671.1, Fish & Game Code, § 2150.)

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Fish and Game Code section 2118 and add section 2118.6 to read as follows:

§ 2118

It is unlawful to import, transport, possess, or release alive into this state, except under a revocable, nontransferable permit as provided in this chapter and the regulations pertaining thereto, any wild animal of the following species:

| | |
|---|---|
| (a) | Class Aves: (birds) |
| | Family Cuculidae (cuckoos) |
| | All Species. |
| | Family Alaudidae (larks) |
| | Skylark, Alauda arvensis |
| | Family Corvidae (crows, jays, magpies) |
| | All species. |
| | Family Turdidae (thrushes) |
| | European blackbird, Turdus merula |
| | Missel (or mistle), thrush, Turdus viscivorus |
| | Family Sturnidae (starlings and mynas or mynahs) |
| | All species of the family, except hill myna (or |
| | hill mynah), |
| | Gracula religiosa (sometimes referred to as |
| | Eulabes religiosa) |
| | Family Ploceidae (weavers) |
| | The following species: |

| | |
|---|---|
| | Spanish sparrow, Passer hispaniolensis |
| | Italian sparrow, Passer italiae |
| | European tree sparrow, Passer montanus |
| | Cape sparrow, Passer capensis |
| | Madagascar weaver, Foudia madagascariensis |
| | Baya weaver, Ploceus baya |
| | Hawaiian rice bird, Munia nisoria |
| | Red-billed quelea, Quelea quelea |
| | Red-headed quelea, Quelea erythrops |
| | Family Fringillidae (sparrows, finches, buntings) |
| | Yellowhammer, Emberiza citrinella |
| (b) | Class Mammalia (mammals) |
| | Order Primates |
| | All species except those in family Hominidae |
| | Order Edentata (sloths, anteaters, armadillos, etc.) |
| | All species. |
| | Order Marsupialia (marsupials or pouched mammals) |
| | All species, except petaurus breviceps. |
| | Order Insectivora (shrews, moles, hedgehogs, etc.) |
| | All species. |
| | Order Dermoptera (gliding lemurs) |
| | All species. |
| | Order Chiroptera (bats) |
| | All species. |

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| | Order Monotremata (spiny anteaters, platypuses) |
| | All species. |
| | Order Pholidota (pangolins, scaly anteaters) |
| | All species. |
| | Order Lagomorpha (pikas, rabbits, hares) |
| | All species, except domesticated races of rabbits. |
| | Order Rodentia (rodents) |
| | All species, except domesticated golden hamsters, also known as Syrian hamster, Mesocricetus auratus; domesticated races of rats or mice (white or albino; trained, dancing or spinning, laboratory-reared); and domestic strains of guinea pig (Cavia porcellus). |
| | Order Carnivora (carnivores) |
| | All species, except domestic dogs (Canis familiaris) and domestic cats (Felis catus). |
| | Order Tubulidentata (aardvarks) |
| | All species. |
| | Order Proboscidea (elephants) |
| | All species. |
| | Order Hyracoidea (hyraxes) |
| | All species. |
| | Order Sirenia (dugongs, manatees) |

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| | All species. |
| | Order Perissodactyla (horses, zebras, tapirs, |
| | rhinoceroses, etc.) |
| | All species except those of the family Equidae. |
| | Order Artiodactyla (swine, peccaries, camels, |
| | deer, elk, except elk (genus Cervus) which are |
| | subject to Section 2118.2, moose, antelopes, |
| | cattle, goats, sheep, etc.) |
| | All species except: domestic swine of the family |
| | Suidae; American bison, and domestic cattle, |
| | sheep and goats of the family Bovidae; races |
| | of big-horned sheep (Ovis canadensis) now |
| | or formerly indigenous to this state. |
| Mammals of the orders Primates, Edentata, Dermoptera, Monotremata, Pholidota, Tubulidentata, Proboscidea, Perissodactyla, Hyracoidea, Sirenia and Carnivora are restricted for the welfare of the animals, except animals of the families Viverridae and Mustelidae in the order Carnivora are restricted because such animals are undesirable and a menace to native wildlife, the agricultural interests of the state, or to the public health or safety. | |
| (c) | Class amphibia (frogs, toads, salamanders) |
| | Family Bufonidae (toads) |
| | Giant toad or marine toad, Bufo marinus |
| (d) | Class Monorhina (lampreys) |
| | All species. |
| (e) | Class Osteichthyes (bony fishes) |

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|---|---|
| | Family Serranidae (bass) |
| | White perch, Morone or Roccus americana |
| | Family Clupeidae (herring) |
| | Gizzard shad, Dorosoma cepedianum |
| | Family Sciaenidae (croakers) |
| | Freshwater sheepshead, Aplodinotus grunniens |
| | Family Characidae (characins) |
| | Banded tetra, Astyanax fasciatus |
| | All species of piranhas |
| | Family Lepisosteidae (gars) |
| | All species. |
| | Family Amiidae (bowfins) |
| | All species. |
| (f) | Class Reptilia (snakes, lizards, turtles, alligators) |
| | Family Crocodilidae |
| | All species. |
| (g) | Class Crustacea (crustaceans) |
| | Genus Cambarus (crayfishes) |
| | All species. |
| | Genus Astacus (crayfishes) |
| | All species. |
| | Genus Astacopsis (crayfishes) |
| | All species. |
| (h) | Class Gastropoda (slugs, snails, clams) |

| | |
|---|---|
| | All species of slugs. |
| | All species of land snails. |
| (i)Other classes, orders, families, genera, and species of wild animals which may be designated by the commission in cooperation with the Department of Food and Agriculture, (1) when the class, order, family, genus, or species is proven to be undesirable and a menace to native wildlife or the agricultural interests of the state, or (2) to provide for the welfare of wild animals.<br>(j)Except as expressly authorized in this code, any live nonindigenous Atlantic salmon or the roe thereof into the Smith River watershed.<br>(k)Classes, families, genera, and species in addition to those listed in this section may be added to or deleted from the above lists from time to time by commission regulations in cooperation with the Department of Food and Agriculture. | |

§ 2118.6

The Department of Fish and Game shall establish a procedure where those who wish to buy or receive sugar gliders (petaurus breviceps) shall learn the basic aspects of proper care for sugar gliders and the commitment necessary to keep them healthy and happy, and receive a permit after having done so. The purpose of this section is to ensure the owners are informed and prevent the impulse buying and selling of sugar gliders. Additionally, male sugar gliders shall be neutered before being bought or received. These requirements shall not apply to animal rescue facilities. Violations of this subsection shall be limited to fines.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS**

The Problem: Under existing law, California is the only state of the contiguous 48 to criminalize having sugar gliders as pets. The following are the problems with such law: (1) Such a law requires they be forfeited by anyone who has them. That makes sense when it comes to dangerous animals, but sugar gliders are no such thing. Seeing as sugar gliders bond to their humans like dogs do, the only thing that makes for here is unhappy people and unhappy sugar gliders. The law makes even less sense when thinking about those who legally had sugar gliders in another state and move here. The idea that they have to give up their pet is wrong and inequitable. (2) Such a law enables a black market. The horrors of a black market are bad enough, but when living creatures are the product, it is unfathomable. Nothing in the black market stops dealers from selling them based on their cuteness to people who do not understand

the commitment required to care for them. Buying, selling, and possessing a sugar glider should be an above-ground regulated system, where we can ensure the transactions are beneficial to the buyers, sellers, and the sugar gliders.

The Solution: This resolution legalizes sugar gliders as pets and requires a permit to have one. The permit process would ensure those who want a sugar glider are serious about it and know the commitment necessary to keep sugar gliders happy and healthy, rather than just buying because they are so cute at first sight. That makes for happier families and happier sugar gliders.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

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**RESPONSIBLE FLOOR DELEGATE:** Ben Rudin

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**COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS**

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**SOCIETY FOR A SUGAR-FREE CALIFORNIA**

The Society for a Sugar-Free California urges CCBA to disapprove this resolution. Californians are already obese and the rate of diabetes continues to rise. Sugary drinks aren't enough? Now we want to add sugar gliders? Sure, they are cute little fuzzy marsupials with big eyes that will

make even the most hardened anti-sugar advocate go soft. One day, it is a hand full of sugar gliders, the next day it is a hand full of sugar gliders and high-fructose corn syrup. Just say no to sugar gliders. If, however, the CCBA elects to approve this resolution, it should be amended to include a sin tax on every sugar glider purchased in the state, with the proceeds designated for diabetes research and to pay for the proponent's anticipated Fish and Wildlife training program.

**N**owhere in California are sugar gliders currently legal. This should remain the state of the law.
**O**ne or two of these cute cuddly little creatures can soon become dozens or more.

**G**liders live an estimated 15 years. That is a long time for such a small creature.
**L**ife will go on without these little guys in California.
**I**solating California from the influence of sugar gliders will aid the health of Californians.
**D**isapprove the resolution seeking to legalized sugar gliders!!!
**E**nd the movement to legalize sugar gliders in California!!!
**R**esolutions like this should be disapproved.
**S**eriously.

**GO GLIDERS**
The CCBA should approve this resolution because sugar gliders are cool and cute. Pay no attention to the NO GLIDERS counterargument – their arguments are always a joke. The same applies to the Society for a Sugar Free California. So what if Californians want to experience the high of sugar glider ownership. Californians should have fee choice.

**RESOLUTION 07-08-2017**

**DIGEST**
Public Utilities Code: Definition of "Public Utility"
Amends Public Utility Code section 216 to include internet providers in the definition of a "public utility."

**RESOLUTIONS COMMITTEE RECOMMENDATION**
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Public Utility Code section 216 to include internet providers in the definition of a "public utility." This resolution should be approved in principle because it updates, and brings consistency to, existing public utilities laws by applying them to internet providers as well as telephone providers, gas companies, and electric companies.

Internet services have become as ubiquitous as telephone services, with modern smartphones, internet and phone services are often provided simultaneously to customers. Further, in many instances customers use internet services in place of the services previously provided by telephone services, e.g. looking up contact information for a business or individual, daily communication for personal or business reasons, making travel reservations, and even ordering food. As such, because the services rendered by internet providers are equivalent to those of currently defined "public utilities," there is little reason to except them from equivalent laws and regulations.

While some may disagree with the general proposition for regulating public utilities, so long as such laws and regulations exist, it benefits the public to have them applied consistently to all services that are provided as utilities to the public.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Public Utility Code section 216 to read as follows:

§ 216

(a) "Public utility" includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, internet or broadband provider or corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

(b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, internet or broadband provider or corporation, water corporation, sewer system corporation, or heat

corporation performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, , internet or broadband provider or corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation, is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(c) When any person or corporation performs any service for, or delivers any commodity to, any person, private corporation, municipality, or other political subdivision of the state, that in turn either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof, that person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(d) Ownership or operation of a facility that employs cogeneration technology or produces power from other than a conventional power source or the ownership or operation of a facility which employs landfill gas technology does not make a corporation or person a public utility within the meaning of this section solely because of the ownership or operation of that facility.

(e) Any corporation or person engaged directly or indirectly in developing, producing, transmitting, distributing, delivering, or selling any form of heat derived from geothermal or solar resources or from cogeneration technology to any privately owned or publicly owned public utility, or to the public or any portion thereof, is nota public utility within the meaning of this section solely by reason of engaging in any of those activities.

(f) The ownership or operation of a facility that sells compressed natural gas at retail to the public for use only as a motor vehicle fuel, and the selling of compressed natural gas at retail from that facility to the public for use only as a motor vehicle fuel, does not make the corporation or person a public utility within the meaning of this section solely because of that ownership, operation, or sale.

(g) Ownership or operation of a facility that has been certified by the Federal Energy Regulatory Commission as an exempt wholesale generator pursuant to Section 32 of the Public Utility Holding Company Act of 1935 (Chapter 2C (commencing with Section 79) of Title 15 of the United States Code) does not make a corporation or person a public utility within the meaning of this section, solely due to the ownership or operation of that facility.

(h) The ownership, control, operation, or management of an electric plant used for direct transactions or participation directly or indirectly in direct transactions, as permitted by subdivision (b) of Section 365, sales into the Power Exchange referred to in Section 365, or the use or sale as permitted under subdivisions (b) to (d), inclusive, of Section 218, shall not make a corporation or person a public utility within the meaning of this section solely because of that ownership, participation, or sale.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS**

The Problem: California law does not currently regulate internet and broadband providers as a public utility. Recent decisions by the FCC imply California may regulate internet providers as a public utility. If broadband and internet providers are regulated as a public utility, California can ensure net neutrality rules for all Californians and possibly allow Google Fiber to access public utility poles.

The Solution: This amendment adds broadband and internet service providers to the definition of a public utility.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

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**RESPONSIBLE FLOOR DELEGATE:** Marissa Walter

**RESOLUTION 07-09-2017**

**DIGEST**
Alcoholic Beverages: Increased Limit on Personal Use Importation
Amends Business and Professions Code section 23661 to increase the amount of alcohol California residents who are traveling either by vehicle, other than common carrier, or on foot, may bring into California from Mexico for personal use.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Business and Professions Code section 23661 to increase the amount of alcohol California residents who are traveling either by vehicle, other than common carrier, or on foot, may bring into California from Mexico for personal use. This resolution should be disapproved because it would effectively allow circumvention of regulation and taxation of alcohol imported into the state.

Business and Professions Code section 23661 limits importation of alcoholic beverages into the state to manufacturers, or common carriers acting on behalf of licensed importers. A limited exception is carved out for a "reasonable amount" of alcohol brought to California for personal use from outside the United States. Currently, the Department of Alcoholic Beverage Control ("ABC") defines "reasonable amount" as no more than 60 liters. People bringing alcoholic beverages into California from Mexico on foot, and California residents doing so by car, do not qualify for the reasonable amount exception, and are limited to bringing the amount of alcohol that would be exempt from federal duty—currently, only one liter. Although the statute is phrased in terms of bringing alcohol into California from outside of the United States, in practical effect, and as construed by the ABC, it applies only to border crossings from Mexico.

Business and Professions Code section 23661 is designed to ensure that regular shipments of alcohol into the state are monitored and regulated. Although non-residents or people traveling by airplane may bring up to 60 liters of alcohol into the state, there is little risk that such importation will become a regular activity. Allowing California residents to bring greater quantities of alcohol across the border, by contrast, creates the risk that would-be importers will have their employees repeatedly transport cases of alcohol in "personal use" amounts, rather than going to the trouble and expense of becoming licensed importers and paying for regulated common carriers. Because the loophole created by this resolution could prevent enforcement of importation regulations, it should be disapproved.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business and Professions section 23661 to read as follows:

§ 23661

Except as otherwise provided in this section, alcoholic beverages may be brought into this state from without this state for delivery or use within the state only by common carriers and only when the alcoholic beverages are consigned to a licensed importer, and only when consigned to the premises of the licensed importer or to a licensed importer or customs broker at the premises of a public warehouse licensed under this division.

The provisions of this chapter are not applicable in the case of alcoholic beverages which are sold and delivered by a licensee in this state to another licensee in this state, and which in the course of delivery are taken without this state through another state without any storage thereof in such other state.

The provisions of this section are not applicable in the case of a reasonable amount of alcoholic beverages brought into this state by an adult from without the United States for personal or household use~~; except that a California resident returning to the United States by a vehicle which is not a common carrier, or any adult entering the United States as a pedestrian, shall be restricted to the amount of alcoholic beverages which are exempt from the payment of duty in accordance with existing provisions of federal law~~. Such alcoholic beverages shall be exempt from state licensing restrictions.

The provisions of this section are not applicable in the case of alcoholic beverages shipped into this state from without the United States by an adult member of the armed forces of the United States, serving outside the confines of the United States, for his personal or household use within the state in such quantity of alcoholic beverages as is exempt from the payment of duty under existing provisions of the Federal Tariff Act or regulations. Such alcoholic beverages may be brought into this state only by common carrier and consigned to the premises of a licensed importer or customs broker, or to a licensed importer or customs broker at the premises of a public warehouse licensed under this division. Notwithstanding any other provisions of this division, the holder of an importer's license, a customs broker's license, or a public warehouse license, may make delivery of such alcoholic beverages as may be brought into this state under the provisions of this paragraph directly to the owner thereof upon satisfactory proof of identity. Such delivery shall not be deemed to constitute a sale in this state.

A manufacturer of distilled spirits may transport such distilled spirits into this state in motor vehicles owned by or leased to the manufacturer, and operated by employees of the manufacturer, if:

(a) Such distilled spirits are transported into this state from a place of manufacture within the United States; and

(b) The manufacturer holds a California distilled spirits manufacturer's license; and

(c) Delivery is made to the licensed premises of such distilled spirits manufacturer.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS**

The Problem: Current law prohibits pedestrians and Californians traveling by personal vehicle from bringing more than one-liter of alcohol (the amount exempt from duty) across the Mexican border. However, non-California residents traveling by personal vehicle and Californians traveling by common carrier may bring a reasonable quantity of alcohol for personal use.

The Solution: This amendment simplifies the code and allows pedestrians and Californians traveling by personal vehicle and pedestrians to bring a reasonable quantity of alcohol for personal use across the border.

**IMPACT STATEMENT**
The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**
None known.

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**RESPONSIBLE FLOOR DELEGATE:** Marissa Walter

**RESOLUTION 07-10-2017**

**DIGEST**
Taxes: Tax Deferred Exchanges
Amends Revenue and Taxation Code section 24941 to provide that the intent to hold property as an investment controls over length of time for purposes of tax deferred exchanges.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Revenue and Taxation Code section 24941 to provide that the intent to hold property as an investment controls over length of time for purposes of tax deferred exchanges. This resolution should be approved in principle because it will bring California practice in conformity with federal interpretation of Internal Revenue Code section 1031.

The plain language of Revenue and Taxation Code section 24941 is to bring California in conformity with Internal Revenue Code section 1031 (26 U.S.C. § 1031) with regard to tax deferred exchanges, unless California expressly provides otherwise by statute. The problem according to the proponent is that the Franchise Tax Board has adopted an interpretation requiring property be held for productive use or investment for a period of at least one year.

The apparent interpretation by California tax authorities is contrary to federal interpretation of 26 U.S.C. § 1031 which requires intent to hold and exchange for productive use or investment. (See, e.g., *Alderson v. Commissioner* (9th Cir. 1963) 317 F.2d 790, 795 ["one need not assume the benefits and burdens of ownership in property before exchanging it but may properly acquire title solely for the purpose of exchange and accept title and transfer it in exchange for other like property all as part of the same transaction with no resulting gain."]; *Magneson v. Commissioner* (9th Cir. 1985) 753 F.2d 1490, 1493 ["To qualify for nonrecognition treatment under section 1031(a), the taxpayer must, at the time the exchange is consummated, intend to hold the property acquired for investment." Upholding Section 1031 exchange of real property for interest in real property then immediately transferred in exchange for general partnership interest in partnership owning property].) There is no minimum length of holding component under federal interpretation of Section 1031. (*Ibid*.) Therefore, this resolution would bring California further in line with federal interpretation of Section 1031 as intended by the Legislature.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Revenue and Taxation Code section 24941 to read as follows:

§ 24941

Section 1031 of the Internal Revenue Code, relating to exchange of property held for productive use or investment, shall apply, except as otherwise provided. The intent to hold property for productive use or investment, not the length of time that property is held, is determinative.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Contra Costa County Bar Association

**STATEMENT OF REASONS**

The Problem: California conforms to the federal rule (IRC 1031) with respect to like-kind exchanges. However, California, in practice, consistently applies the requirement that property must be held for productive use or investment at least one year. This is in opposition to the federal law and case law (including 9th Circuit case law) that looks at the intent of the transferor to determine if the holding requirement has been met.

The improper application of the holding requirement by the CA Franchise Tax Board causes inconsistent outcomes for taxpayers who undergo both federal and California audits in connection with a like-kind exchange. Many times taxpayers' like-kind exchanges will be approved at the end of an IRS audit, but not the corresponding California audit because of the FTB's improper application of the holding requirement. This result is confusing and unfair to taxpayers. This result is not consistent with the Congress's intent in allowing for like-kind exchanges of real property.

The Solution: This resolution would simply clarify that the intent requirement is met based on the facts and circumstances of each case, and the intent of the transferor to hold property for a proper like-kind exchange purpose.

**IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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**RESPONSIBLE FLOOR DELEGATE:** Christina Weed

**RESOLUTION 07-11-2017**

**DIGEST**
Taxpayers: Taxing Agencies to Contact Authorized Representative
Adds Revenue and Taxation Code section 21029 to provide that a taxpayer who files an executed Power of Attorney be contacted through the authorized representative.

**RESOLUTIONS COMMITTEE RECOMMENDATION**
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution adds Revenue and Taxation Code section 21029 to provide that a taxpayer who files an executed Power of Attorney be contacted through the authorized representative. This resolution should be approved in principle because it is consistent with existing rights to representation by an attorney or authorized tax practitioner and will ensure that agency contact is through the authorized representative.

Both federal and California tax authorities recognize the rights of a tax payer to be represented by an attorney or authorized tax practitioner. (See, e.g. https://www.irs.gov/taxpayer-bill-of-rights; Rev. & Tax Code, § 21028; Franchise Tax Board form, FTB 4058C.) This resolution would help ensure the proper implementation of that recognized right by ensuring that upon notification of representation, communication by the tax authority is through the authorized tax representative. It is no different than our courts communicating with the parties through their counsel of record.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored add Revenue and Taxation Code Section 21029 to read as follows:

§ 21029

If a taxpayer is represented by a "Federally authorized tax practitioner" as defined under Part 10, Section 21028, and the taxpayer has authorized the Federally authorized tax practitioner to represent the taxpayer pursuant to an executed Power of Attorney (FTB Form 3520, BOE-392, DE 48, or other equivalent form), and duly submitted the form to the appropriate California taxation authorities, then no agent from any California taxing authority shall contact the taxpayer without the Federally authorized tax practitioner's knowledge, and shall send a copy of all correspondence that is sent to the taxpayer to the Federally authorized tax practitioner. Violation of this right to representation shall result in the removal of the taxpayer's case to a new and impartial agent who shall not consider any information that was improperly obtained by the prior agent who is replaced.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Contra Costa County Bar Association

**STATEMENT OF REASONS**

The Problem: There is no existing law that prevents the California taxing authorities from contacting a taxpayer directly even if said taxpayer has duly authorized an attorney or other tax representative. The California Taxpayers' Bill of Rights indicates that a taxpayer may be represented by a tax practitioner, including an attorney. However, in reality, there is no law that requires an agent of a California taxing agency to avoid contacting a taxpayer directly, or even notifying the taxpayer's representative of a direct contact or communication with the taxpayer. The right to representation in the California Taxpayers' Bill of Rights is not strictly enforced, and there are no guidelines or laws to facilitate enforcement of this right.

Accordingly, there is no current law to protect taxpayers from harassment by California taxing authorities. There are numerous situations in which the amount of tax liability is in dispute, or where there is a simple mistake by a taxpayer, or an error made by relevant California taxing authority. The California taxing authorities are tasked with collecting the correct amount of tax. If a taxpayer needs assistance in determining the correct amount of tax or correcting a mistake or error, by either side, the California taxing authorities should not be permitted to directly contact or harass the taxpayer prior to resolution. If a taxpayer is working to resolve an issue and invokes their right to representation, it must be honored. Obtaining information from taxpayers, who are often elderly or not fully knowledgeable of the complexities of the numerous tax laws, through intimidation tactics and improper contact harms taxpayers and puts them at an unfair advantage, even in situations where the asserted tax liability is incorrect. California taxing authorities can achieve the same results and resolve problems without resorting to these tactics and by working with a taxpayer's authorized representative if the taxpayer chooses to engage one.

The Solution: This resolution would require that a taxpayer who has elected to invoke her right to representation, by completing, executing, and submitting a California Power of Attorney form shall not be contacted directly without the authorized representative's knowledge. This resolution would also require that all California taxing authorities send a copy of any and all correspondence to a taxpayer's authorized representative in addition to sending the correspondence to the taxpayer. This resolution would require that any violation of the above-described requirements would result in the reassignment of the case to a new and neutral, auditor, examiner, appeals officer, or other California agent, and that any improperly obtained information prior to said reassignment shall not be reviewed by the new and neutral agent.

**IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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