

## RESOLUTION 10-01-2018

### DIGEST

#### CCBA: ResComm Reports to Describe Pro and Con After Close Votes

Amends CCBA Rules of Operation and Procedure Article III, Rule 1 to require that Resolutions Committee reports include arguments from both sides for recommendations made on less than three-fifths majority.

### RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends CCBA Rules of Operation and Procedure Article III, Rule 1 to require that Resolutions Committee reports include arguments from both sides for recommendations made on less than three-fifths majority. This resolution should be disapproved because it is not clear that it addresses the problem it identifies, and could have a negative impact on resolutions for which the Conference ultimately adopts the Resolutions Committee positions.

The identified problem is the Conference's assumption that Resolutions Committee recommendations are unanimous. As an initial matter, it is not clear that this is a common assumption among delegates; floor debates typically have not included arguments based on the premise that Resolutions Committee spoke unanimously. Moreover, the threshold of less than three-fifths majority would not often be triggered: Resolutions Committee has approximately 20 members; a majority is 11, and three-fifths is 12. Thus, in a 20-member Committee, the requirement in this resolution would only be triggered for votes of exactly 11.

Finally, the proposed solution could actually hurt the chances of an approved resolution receiving legislative support and being enacted into law. In addition to helping delegates in their analysis of resolutions, Resolutions Committee reports are also a tool for legislative sponsors to use in deciding whether to support a bill and in writing their own committee analysis. The inclusion in reports recommending approval in principle, of the equivalent of a minority report advocating disapproval would make it more difficult for such resolutions to find sponsors, or support in the Legislature.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that the Board of Directors amend CCBA Rules of Operation & Procedure article III, rule 1, to read as follows:

- 1 Article III
- 2 1. Resolutions Committee

3 The Board shall appoint a Resolutions Committee. One member of the committee  
4 shall be recommended for appointment by each district Board member and one member  
5 of the committee shall be recommended for appointment by each Ethnic Minority Board  
6 member. In addition to the members of the committee, the Board shall appoint a chair  
7 and up to three vice-chairs of the Resolutions Committee.

8 Members and officers of the committee shall serve for a period of one year or  
9 until their successors have been appointed.

10 The Resolutions Committee shall meet at the call of its Chair.

11 All ordinary and late-filed resolutions to be submitted to the Conference shall be  
12 referred to the Resolutions Committee. The committee shall consider all resolutions and  
13 report its recommendations before the resolutions are made available to Conference  
14 pursuant to article III, section 14. The Resolutions Committee may recommend:

15 • Approval in principle as submitted, but if adopted by fewer than three-fifths  
16 (3/5) of the members voting, shall indicate that the vote was close and summarize the  
17 reasons from each side in its report;

18 • Approval in principle as amended, but if adopted by fewer than three-fifths (3/5)  
19 of the members voting, shall indicate that the vote was close and summarize the reasons  
20 from each side in its report;

21 • Referral to the Conference without recommendation;

22 • Referral to Board for appropriate action;

23 • Disapproval, but if adopted by fewer than three-fifths (3/5) of the members  
24 voting, shall indicate that the vote was close and summarize the reasons from each side in  
25 its report; or

26 • Action Unnecessary

27 Upon the conclusion of a regular meeting of the Conference, the chair of the  
28 Resolutions Committee shall report to the Board concerning the proceedings of the  
29 meeting and make recommendations for committee membership for the following year.

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

**PROPONENT:** San Diego County Bar Association

### **STATEMENT OF REASONS**

The Problem: When the Resolutions Committee (Rescom) reports are released, they often expose delegates to strong arguments only on the side Rescom voted to recommend. That gives the impression that Rescom was decisive in its decision, which makes sense when the vote is resolute. However, when the vote is close, persuasive arguments were presented on both sides. To then give delegates the impression that the vote was decisive and expose them only to convincing arguments from one side fails to acknowledge the apparently persuasive arguments on both sides that delegations ought to consider.

The Solution: This resolution requires Rescom, when the vote is close (less than 3/5 for the position that was adopted), to indicate in the report that the vote was close and summarize the arguments from both sides. That will enable delegates to weigh more efficiently the pros and cons that Rescom considered in a close vote instead of only being exposed to one side.

**IMPACT STATEMENT**

This 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:** Ben Rudin, 3830 Valley Centre Dr., Ste. 705 #231, San Diego, CA 92130, (858) 256-4429, ben\_rudin@hotmail.com.

**RESPONSIBLE FLOOR DELEGATE:** Ben Rudin

## RESOLUTION 10-02-2018

### DIGEST

#### Firearms Fees: School Safety Programs

Amends Penal Code section 28225 to impose increased fees on firearms purchases from dealers to defray the costs of school safety programs.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Penal Code section 28225 to impose increased fees on firearms purchases from dealers to defray the costs of school safety programs. This resolution should be disapproved because it provides no grounds for establishing \$150 as necessary to cover the intended costs so as to qualify as a “fee” and is more likely to be held an improper conversion of a fee into a tax.

Under current law, Penal Code section 28255 and its related regulation, 11 California Code of Regulations section 4001, authorize the collection of a Dealer’s Record of Sale (DROS) Processing fee which may be adjusted for inflation. The fee charged goes towards the costs related to tracking of firearms transfers and for related state-mandated local costs for various firearm notification requirements. The current fee, last revised in 2015, is \$19.00. (See <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/pdf/firearms-fees.pdf>.) In addition, there is a Dealer Fee for Private Party Transfer (per firearm) authorized by Penal Code section 28055.

Under current law, fees may only be set at an amount necessary to cover the reasonable costs of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes. (See *Sinclair Paint Co. v. State Board of Equalization* (1997) 15 Cal.4th 866, 878.) Our courts have recognized that certain user fees are not taxes, but the amount of the fee must be generally related to the actual goods or services provided. (See *Bay Area Cellular Telephone Co. v. City of Union City* (2008) 162 Cal.App.4th 686, 694.)

The resolution would impermissibly expand the purpose of the fee as necessary to cover costs related to tracking firearms transactions and ownership into funding school safety and security programs. While a statewide goal of improved school safety, particularly in relation to protections against school shootings, is important, this resolution impermissibly converts a fee into a tax. Further, even if it could pass constitutional review in relation to impermissible taxation under the guise of a fee, it provides no basis upon which to determine \$150 is the amount reasonably necessary to cover the costs of the intended program.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 28225, to read as follows:

1 § 28225

2 (a) The Department of Justice may require the dealer to charge each firearm purchaser a  
3 fee not to exceed one hundred and fifty-fourteen (~~\$14150~~) dollars except that the fee may be  
4 increased at a rate not to exceed any increase in the California Consumer Price Index as  
5 compiled and reported by the Department of Industrial Relations.

6 (b) The fee under subdivision (a) shall be ~~no more than is necessary~~ used to fund the  
7 following:

8 (1) The department for the cost of furnishing this information.

9 (2) The department for the cost of meeting its obligations under paragraph (2) of  
10 subdivision (b) of Section 8100 of the Welfare and Institutions Code.

11 (3) Local mental health facilities for state-mandated local costs resulting from the  
12 reporting requirements imposed by Section 8103 of the Welfare and Institutions Code .

13 (4) The State Department of State Hospitals for the costs resulting from the requirements  
14 imposed by Section 8104 of the Welfare and Institutions Code.

15 (5) Local mental hospitals, sanitariums, and institutions for state-mandated local costs  
16 resulting from the reporting requirements imposed by Section 8105 of the Welfare and  
17 Institutions Code.

18 (6) Local law enforcement agencies for state-mandated local costs resulting from the  
19 notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

20 (7) Local law enforcement agencies for state-mandated local costs resulting from the  
21 notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and  
22 Institutions Code.

23 (8) For the actual costs associated with the electronic or telephonic transfer of  
24 information pursuant to Section 28215.

25 (9) The Department of Food and Agriculture for the costs resulting from the notification  
26 provisions set forth in Section 5343.5 of the Food and Agricultural Code.

27 (10) The department for the costs associated with subdivisions (d) and (e) of Section  
28 27560.

29 (11) The department for the costs associated with funding Department of Justice  
30 firearms-related regulatory and enforcement activities related to the sale, purchase, possession,  
31 loan, or transfer of firearms pursuant to any provision listed in Section 16580.

32 (12) The Department of Education, for costs associated with the creation, management,  
33 and maintenance of school safety programs, or for costs associated with school facilities  
34 upgrades that promote the safety of students.

35 (c) The fee established pursuant to this section shall not exceed the sum of the actual  
36 processing costs of the department, the estimated reasonable costs of the local mental health  
37 facilities for complying with the reporting requirements imposed by paragraph (3) of subdivision  
38 (b), the costs of the State Department of State Hospitals for complying with the requirements  
39 imposed by paragraph (4) of subdivision (b), the estimated reasonable costs of local mental  
40 hospitals, sanitariums, and institutions for complying with the reporting requirements imposed  
41 by paragraph (5) of subdivision (b), the estimated reasonable costs of local law enforcement

42 agencies for complying with the notification requirements set forth in subdivision (a) of Section  
43 6385 of the Family Code , the estimated reasonable costs of local law enforcement agencies for  
44 complying with the notification requirements set forth in subdivision (c) of Section 8105 of the  
45 Welfare and Institutions Code imposed by paragraph (7) of subdivision (b), the estimated  
46 reasonable costs of the Department of Food and Agriculture for the costs resulting from the  
47 notification provisions set forth in Section 5343.5 of the Food and Agricultural Code , the  
48 estimated reasonable costs of the department for the costs associated with subdivisions (d) and  
49 (e) of Section 27560, the cost to the Department of Education, for the creation, management, and  
50 maintenance of school safety programs, or for the costs of school facilities upgrades that promote  
51 the safety of students, and the estimated reasonable costs of department firearms-related  
52 regulatory and enforcement activities related to the sale, purchase, possession, loan, or transfer of  
53 firearms pursuant to any provision listed in Section 16580.

54 (d)Where the electronic or telephonic transfer of applicant information is used, the  
55 department shall establish a system to be used for the submission of the fees described in this  
56 section to the department.

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

**PROPONENT:** Nick Stewart-Oaten, Lara Kislinger, Robin Bernstein-Lev, Dylan Ford, Casey Lilienfeld, Alissa Sterling, Kim Greene, Mike King, Eyvin Hernandez, Megan Gallow

## **STATEMENT OF REASONS**

The Problem: The mass proliferation of firearms in our country, and apparent inability of the federal government to prevent their acquisition by those intent on harm, has resulted in a surge of school shootings, and the deaths of scores of children, teachers, and others. Already underfunded public schools are forced to incur costs training teachers, and enacting safety programs for students in an effort to prevent further deaths, while profitable firearms vendors sell hundreds of thousands of cheap firearms to the public. The AR-15 assault rifle, for example, most recently used to massacre children in Florida, can be purchased for as little as \$700 today. Handguns, of course, cost significantly less.

The Solution: Firearms dealers should be asked to help defray the substantial costs imposed on society by the sale of their product. This resolution would increase the laughably small \$14 fee currently imposed on dealers to a more robust \$150. In addition, the bill would add school safety programs to the list of programs on which funds generated by this fee can be spent.

## **IMPACT STATEMENT**

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

## **CURRENT OR PRIOR RELEATED LEGISLATION**

None known.

**AUTHOR AND/OR PERMANENT CONTACT:** Nick Stewart-Oaten, nstewart-oaten@pubdef.lacounty.gov, 213-974-3000

**RESPONSIBLE FLOOR DELEGATE:** Nick Stewart-Oaten

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**COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS**

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**SAN DIEGO COUNTY BAR ASSOCIATION**

The SDCBA Delegation urges disapproval of Resolution 10-02-2018. While this Resolution proposes an interesting means of funding school safety programs, the proposed “fee” will likely be determined to be a “tax.” Further, the \$150/fire arms transaction is too high.

The SDCBA Delegation is also concerned that such a high per-firearm transaction fee is likely to increase black market and individual to individual firearms transfers. This will adversely impact law enforcement tracking of firearms.

## RESOLUTION 10-03-2018

### DIGEST

#### Medi-Cal Coverage: Feminine Hygiene Products

Amends Welfare and Institutions Code section 14132 to require coverage for feminine hygiene products under Medi-Cal.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Welfare and Institutions Code section 14132 to require coverage for feminine hygiene products under Medi-Cal. This resolution should be approved in principle because it ensures that women of childbearing age have the feminine hygiene products that are necessary to allow them to attend work and school full-time, and will improve their contributions and productivity in work, school, and their community.

Women who lack the funds for acquiring feminine hygiene products are limited in their ability to control or manage their menstrual flow. As a result, women in this position are faced with much more than just potential embarrassment. If women are unable to manage their menstrual flow they must miss school, work, and other activities outside the home, because participating in such activities would create unsanitary conditions for themselves and those around them.

Consequently, low-income women and girls can find it necessary to segregate themselves from society, and limit their contributions to work and school for approximately one week every month, (which adds up to approximately three months a year). Such limitations not only hinder girls from receiving a full education, they also limit women from finding and retaining employment, and therefore reduce the benefits that employers would otherwise receive from having their employee available all month long.

Feminine hygiene products should not be considered a preferred or optional item; they are necessary for women in modern society to participate and function in society. Providing those products through Medi-Cal will help women of child-bearing age contribute to their work and education on a full-time basis and therefore help to decrease the use and reliance on public resources.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Welfare and Institutions Code Section 14132 to read as follows:

- 1 § 14132
- 2       The following is the schedule of benefits under this chapter:

3 (a) Outpatient services are covered as follows:  
4 Physician, hospital or clinic outpatient, surgical center, respiratory care, optometric, chiropractic,  
5 psychology, podiatric, occupational therapy, physical therapy, speech therapy, audiology,  
6 acupuncture to the extent federal matching funds are provided for acupuncture, and services of  
7 persons rendering treatment by prayer or healing by spiritual means in the practice of any church  
8 or religious denomination insofar as these can be encompassed by federal participation under an  
9 approved plan, subject to utilization controls.

10 (b) (1) Inpatient hospital services, including, but not limited to, physician and podiatric  
11 services, physical therapy and occupational therapy, are covered subject to utilization controls.

12 (2) For Medi-Cal fee-for-service beneficiaries, emergency services and care that are  
13 necessary for the treatment of an emergency medical condition and medical care directly related  
14 to the emergency medical condition. This paragraph shall not be construed to change the  
15 obligation of Medi-Cal managed care plans to provide emergency services and care. For the  
16 purposes of this paragraph, “emergency services and care” and “emergency medical condition”  
17 shall have the same meanings as those terms are defined in Section 1317.1 of the Health and  
18 Safety Code.

19 (c) Nursing facility services, subacute care services, and services provided by any  
20 category of intermediate care facility for the developmentally disabled, including podiatry,  
21 physician, nurse practitioner services, and prescribed drugs, as described in subdivision (d), are  
22 covered subject to utilization controls. Respiratory care, physical therapy, occupational therapy,  
23 speech therapy, and audiology services for patients in nursing facilities and any category of  
24 intermediate care facility for the developmentally disabled are covered subject to utilization  
25 controls.

26 (d) (1) Purchase of prescribed drugs is covered subject to the Medi-Cal List of Contract  
27 Drugs and utilization controls.

28 (2) Purchase of drugs used to treat erectile dysfunction or any off-label uses of those  
29 drugs are covered only to the extent that federal financial participation is available.

30 (3) (A) To the extent required by federal law, the purchase of outpatient prescribed drugs,  
31 for which the prescription is executed by a prescriber in written, nonelectronic form on or after  
32 April 1, 2008, is covered only when executed on a tamper resistant prescription form. The  
33 implementation of this paragraph shall conform to the guidance issued by the federal Centers for  
34 Medicare and Medicaid Services but shall not conflict with state statutes on the characteristics of  
35 tamper resistant prescriptions for controlled substances, including Section 11162.1 of the Health  
36 and Safety Code. The department shall provide providers and beneficiaries with as much  
37 flexibility in implementing these rules as allowed by the federal government. The department  
38 shall notify and consult with appropriate stakeholders in implementing, interpreting, or making  
39 specific this paragraph.

40 (B) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
41 3 of Title 2 of the Government Code, the department may take the actions specified in  
42 subparagraph (A) by means of a provider bulletin or notice, policy letter, or other similar  
43 instructions without taking regulatory action.

44 (4) (A) (i) For the purposes of this paragraph, nonlegend has the same meaning as defined  
45 in subdivision (a) of Section 14105.45.

46 (ii) Nonlegend acetaminophen-containing products, with the exception of children’s  
47 acetaminophen-containing products, selected by the department are not covered benefits.

48 (iii) Nonlegend cough and cold products selected by the department are not covered  
49 benefits. This clause shall be implemented on the first day of the first calendar month following  
50 90 days after the effective date of the act that added this clause, or on the first day of the first  
51 calendar month following 60 days after the date the department secures all necessary federal  
52 approvals to implement this section, whichever is later.

53 (iv) Beneficiaries under the Early and Periodic Screening, Diagnosis, and Treatment  
54 Program shall be exempt from clauses (ii) and (iii).

55 (B) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
56 3 of Title 2 of the Government Code, the department may take the actions specified in  
57 subparagraph (A) by means of a provider bulletin or notice, policy letter, or other similar  
58 instruction without taking regulatory action.

59 (e) Outpatient dialysis services and home hemodialysis services, including physician  
60 services, medical supplies, drugs, and equipment required for dialysis, are covered, subject to  
61 utilization controls.

62 (f) Anesthesiologist services when provided as part of an outpatient medical procedure,  
63 nurse anesthetist services when rendered in an inpatient or outpatient setting under conditions set  
64 forth by the director, outpatient laboratory services, and X-ray services are covered, subject to  
65 utilization controls. Nothing in this subdivision shall be construed to require prior authorization  
66 for anesthesiologist services provided as part of an outpatient medical procedure or for portable  
67 X-ray services in a nursing facility or any category of intermediate care facility for the  
68 developmentally disabled.

69 (g) Blood and blood derivatives are covered.

70 (h) (1) Emergency and essential diagnostic and restorative dental services, except for  
71 orthodontic, fixed bridgework, and partial dentures that are not necessary for balance of a  
72 complete artificial denture, are covered, subject to utilization controls. The utilization controls  
73 shall allow emergency and essential diagnostic and restorative dental services and prostheses that  
74 are necessary to prevent a significant disability or to replace previously furnished prostheses that  
75 are lost or destroyed due to circumstances beyond the beneficiary's control. Notwithstanding the  
76 foregoing, the director may by regulation provide for certain fixed artificial dentures necessary  
77 for obtaining employment or for medical conditions that preclude the use of removable dental  
78 prostheses, and for orthodontic services in cleft palate deformities administered by the  
79 department's California Children Services Program.

80 (2) For persons 21 years of age or older, the services specified in paragraph (1) shall be  
81 provided subject to the following conditions:

82 (A) Periodontal treatment is not a benefit.

83 (B) Endodontic therapy is not a benefit except for vital pulpotomy.

84 (C) Laboratory processed crowns are not a benefit.

85 (D) Removable prosthetics shall be a benefit only for patients as a requirement for  
86 employment.

87 (E) The director may, by regulation, provide for the provision of fixed artificial dentures  
88 that are necessary for medical conditions that preclude the use of removable dental prostheses.

89 (F) Notwithstanding the conditions specified in subparagraphs (A) to (E), inclusive, the  
90 department may approve services for persons with special medical disorders subject to utilization  
91 review.

92 (3) Paragraph (2) shall become inoperative July 1, 1995.

93 (i) Medical transportation is covered, subject to utilization controls.

94 (j) Home health care services are covered, subject to utilization controls.

95 (k) Prosthetic and orthotic devices and eyeglasses are covered, subject to utilization  
96 controls. Utilization controls shall allow replacement of prosthetic and orthotic devices and  
97 eyeglasses necessary because of loss or destruction due to circumstances beyond the  
98 beneficiary's control. Frame styles for eyeglasses replaced pursuant to this subdivision shall not  
99 change more than once every two years, unless the department so directs.

100 Orthopedic and conventional shoes are covered when provided by a prosthetic and orthotic  
101 supplier on the prescription of a physician and when at least one of the shoes will be attached to  
102 a prosthesis or brace, subject to utilization controls. Modification of stock conventional or  
103 orthopedic shoes when medically indicated, is covered subject to utilization controls. When there  
104 is a clearly established medical need that cannot be satisfied by the modification of stock  
105 conventional or orthopedic shoes, custom-made orthopedic shoes are covered, subject to  
106 utilization controls.

107 Therapeutic shoes and inserts are covered when provided to beneficiaries with a  
108 diagnosis of diabetes, subject to utilization controls, to the extent that federal financial  
109 participation is available.

110 (l) Hearing aids are covered, subject to utilization controls. Utilization controls shall  
111 allow replacement of hearing aids necessary because of loss or destruction due to circumstances  
112 beyond the beneficiary's control.

113 (m) Durable medical equipment and medical supplies are covered, subject to utilization  
114 controls. The utilization controls shall allow the replacement of durable medical equipment and  
115 medical supplies when necessary because of loss or destruction due to circumstances beyond the  
116 beneficiary's control. The utilization controls shall allow authorization of durable medical  
117 equipment needed to assist a disabled beneficiary in caring for a child for whom the disabled  
118 beneficiary is a parent, stepparent, foster parent, or legal guardian, subject to the availability of  
119 federal financial participation. The department shall adopt emergency regulations to define and  
120 establish criteria for assistive durable medical equipment in accordance with the rulemaking  
121 provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340)  
122 of Part 1 of Division 3 of Title 2 of the Government Code).

123 (n) Family planning services are covered, subject to utilization controls. However, for  
124 Medi-Cal managed care plans, any utilization controls shall be subject to Section 1367.25 of the  
125 Health and Safety Code.

126 (o) Inpatient intensive rehabilitation hospital services, including respiratory rehabilitation  
127 services, in a general acute care hospital are covered, subject to utilization controls, when either  
128 of the following criteria are met:

129 (1) A patient with a permanent disability or severe impairment requires an inpatient  
130 intensive rehabilitation hospital program as described in Section 14064 to develop function  
131 beyond the limited amount that would occur in the normal course of recovery.

132 (2) A patient with a chronic or progressive disease requires an inpatient intensive  
133 rehabilitation hospital program as described in Section 14064 to maintain the patient's present  
134 functional level as long as possible.

135 (p) (1) Adult day health care is covered in accordance with Chapter 8.7 (commencing  
136 with Section 14520).

137 (2) Commencing 30 days after the effective date of the act that added this paragraph, and  
138 notwithstanding the number of days previously approved through a treatment authorization  
139 request, adult day health care is covered for a maximum of three days per week.

140 (3) As provided in accordance with paragraph (4), adult day health care is covered for a  
141 maximum of five days per week.

142 (4) As of the date that the director makes the declaration described in subdivision (g) of  
143 Section 14525.1, paragraph (2) shall become inoperative and paragraph (3) shall become  
144 operative.

145 (q) (1) Application of fluoride, or other appropriate fluoride treatment as defined by the  
146 department, and other prophylaxis treatment for children 17 years of age and under are covered.

147 (2) All dental hygiene services provided by a registered dental hygienist, registered dental  
148 hygienist in extended functions, and registered dental hygienist in alternative practice licensed  
149 pursuant to Sections 1753, 1917, 1918, and 1922 of the Business and Professions Code may be  
150 covered as long as they are within the scope of Denti-Cal benefits and they are necessary  
151 services provided by a registered dental hygienist, registered dental hygienist in extended  
152 functions, or registered dental hygienist in alternative practice.

153 (r) (1) Paramedic services performed by a city, county, or special district, or pursuant to a  
154 contract with a city, county, or special district, and pursuant to a program established under  
155 former Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2 of the Health and  
156 Safety Code by a paramedic certified pursuant to that article, and consisting of defibrillation and  
157 those services specified in subdivision (3) of former Section 1482 of the article.

158 (2) All providers enrolled under this subdivision shall satisfy all applicable statutory and  
159 regulatory requirements for becoming a Medi-Cal provider.

160 (3) This subdivision shall be implemented only to the extent funding is available under  
161 Section 14106.6.

162 (s) In-home medical care services are covered when medically appropriate and subject to  
163 utilization controls, for beneficiaries who would otherwise require care for an extended period of  
164 time in an acute care hospital at a cost higher than in-home medical care services. The director  
165 shall have the authority under this section to contract with organizations qualified to provide in-  
166 home medical care services to those persons. These services may be provided to patients placed  
167 in shared or congregate living arrangements, if a home setting is not medically appropriate or  
168 available to the beneficiary. As used in this section, "in-home medical care service" includes  
169 utility bills directly attributable to continuous, 24-hour operation of life-sustaining medical  
170 equipment, to the extent that federal financial participation is available.

171 As used in this subdivision, in-home medical care services include, but are not limited to:

172 (1) Level-of-care and cost-of-care evaluations.

173 (2) Expenses, directly attributable to home care activities, for materials.

174 (3) Physician fees for home visits.

175 (4) Expenses directly attributable to home care activities for shelter and modification to  
176 shelter.

177 (5) Expenses directly attributable to additional costs of special diets, including tube  
178 feeding.

179 (6) Medically related personal services.

180 (7) Home nursing education.

181 (8) Emergency maintenance repair.

182 (9) Home health agency personnel benefits that permit coverage of care during periods  
183 when regular personnel are on vacation or using sick leave.

184 (10) All services needed to maintain antiseptic conditions at stoma or shunt sites on the  
185 body.

186 (11) Emergency and nonemergency medical transportation.  
187 (12) Medical supplies.  
188 (13) Medical equipment, including, but not limited to, scales, gurneys, and equipment  
189 racks suitable for paralyzed patients.  
190 (14) Utility use directly attributable to the requirements of home care activities that are in  
191 addition to normal utility use.  
192 (15) Special drugs and medications.  
193 (16) Home health agency supervision of visiting staff that is medically necessary, but not  
194 included in the home health agency rate.  
195 (17) Therapy services.  
196 (18) Household appliances and household utensil costs directly attributable to home care  
197 activities.  
198 (19) Modification of medical equipment for home use.  
199 (20) Training and orientation for use of life-support systems, including, but not limited to,  
200 support of respiratory functions.  
201 (21) Respiratory care practitioner services as defined in Sections 3702 and 3703 of the  
202 Business and Professions Code, subject to prescription by a physician and surgeon.  
203 Beneficiaries receiving in-home medical care services are entitled to the full range of services  
204 within the Medi-Cal scope of benefits as defined by this section, subject to medical necessity and  
205 applicable utilization control. Services provided pursuant to this subdivision, which are not  
206 otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that  
207 federal financial participation for these services is available in accordance with a home- and  
208 community-based services waiver.  
209 (t) Home- and community-based services approved by the United States Department of  
210 Health and Human Services are covered to the extent that federal financial participation is  
211 available for those services under the state plan or waivers granted in accordance with Section  
212 1315 or 1396n of Title 42 of the United States Code. The director may seek waivers for any or  
213 all home- and community-based services approvable under Section 1315 or 1396n of Title 42 of  
214 the United States Code. Coverage for those services shall be limited by the terms, conditions, and  
215 duration of the federal waivers.  
216 (u) Comprehensive perinatal services, as provided through an agreement with a health  
217 care provider designated in Section 14134.5 and meeting the standards developed by the  
218 department pursuant to Section 14134.5, subject to utilization controls.  
219 The department shall seek any federal waivers necessary to implement the provisions of this  
220 subdivision. The provisions for which appropriate federal waivers cannot be obtained shall not  
221 be implemented. Provisions for which waivers are obtained or for which waivers are not required  
222 shall be implemented notwithstanding any inability to obtain federal waivers for the other  
223 provisions. No provision of this subdivision shall be implemented unless matching funds from  
224 Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States  
225 Code are available.  
226 (v) Early and periodic screening, diagnosis, and treatment for any individual under 21  
227 years of age is covered, consistent with the requirements of Subchapter XIX (commencing with  
228 Section 1396) of Chapter 7 of Title 42 of the United States Code.  
229 (w) Hospice service which is Medicare-certified hospice service is covered, subject to  
230 utilization controls. Coverage shall be available only to the extent that no additional net program  
231 costs are incurred.

232 (x) When a claim for treatment provided to a beneficiary includes both services that are  
233 authorized and reimbursable under this chapter, and services that are not reimbursable under this  
234 chapter that portion of the claim for the treatment and services authorized and reimbursable  
235 under this chapter shall be payable.

236 (y) Home- and community-based services approved by the United States Department of  
237 Health and Human Services for beneficiaries with a diagnosis of AIDS or ARC, who require  
238 intermediate care or a higher level of care.

239 Services provided pursuant to a waiver obtained from the Secretary of the United States  
240 Department of Health and Human Services pursuant to this subdivision, and which are not  
241 otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that  
242 federal financial participation for these services is available in accordance with the waiver, and  
243 subject to the terms, conditions, and duration of the waiver. These services shall be provided to  
244 individual beneficiaries in accordance with the client's needs as identified in the plan of care, and  
245 subject to medical necessity and applicable utilization control.

246 The director may under this section contract with organizations qualified to provide, directly or  
247 by subcontract, services provided for in this subdivision to eligible beneficiaries. Contracts or  
248 agreements entered into pursuant to this division shall not be subject to the Public Contract Code.

249 (z) Respiratory care when provided in organized health care systems as defined in  
250 Section 3701 of the Business and Professions Code, and as an in-home medical service as  
251 outlined in subdivision (s).

252 (aa) (1) There is hereby established in the department, a program to provide  
253 comprehensive clinical family planning services to any person who has a family income at or  
254 below 200 percent of the federal poverty level, as revised annually, and who is eligible to receive  
255 these services pursuant to the waiver identified in paragraph (2). This program shall be known as  
256 the Family Planning, Access, Care, and Treatment (Family PACT) Program.

257 (2) The department shall seek a waiver in accordance with Section 1315 of Title 42 of the  
258 United States Code, or a state plan amendment adopted in accordance with Section  
259 1396a(a)(10)(A)(ii)(XXI) of Title 42 of the United States Code, which was added to Section  
260 1396a of Title 42 of the United States Code by Section 2303(a)(2) of the federal Patient  
261 Protection and Affordable Care Act (PPACA) (Public Law 111-148), for a program to provide  
262 comprehensive clinical family planning services as described in paragraph (8). Under the waiver,  
263 the program shall be operated only in accordance with the waiver and the statutes and regulations  
264 in paragraph (4) and subject to the terms, conditions, and duration of the waiver. Under the state  
265 plan amendment, which shall replace the waiver and shall be known as the Family PACT  
266 successor state plan amendment, the program shall be operated only in accordance with this  
267 subdivision and the statutes and regulations in paragraph (4). The state shall use the standards  
268 and processes imposed by the state on January 1, 2007, including the application of an eligibility  
269 discount factor to the extent required by the federal Centers for Medicare and Medicaid Services,  
270 for purposes of determining eligibility as permitted under Section 1396a(a)(10)(A)(ii)(XXI) of  
271 Title 42 of the United States Code. To the extent that federal financial participation is available,  
272 the program shall continue to conduct education, outreach, enrollment, service delivery, and  
273 evaluation services as specified under the waiver. The services shall be provided under the  
274 program only if the waiver and, when applicable, the successor state plan amendment are  
275 approved by the federal Centers for Medicare and Medicaid Services and only to the extent that  
276 federal financial participation is available for the services. Nothing in this section shall prohibit

277 the department from seeking the Family PACT successor state plan amendment during the  
278 operation of the waiver.

279 (3) Solely for the purposes of the waiver or Family PACT successor state plan  
280 amendment and notwithstanding any other law, the collection and use of an individual’s social  
281 security number shall be necessary only to the extent required by federal law.

282 (4) Sections 14105.3 to 14105.39, inclusive, 14107.11, 24005, and 24013, and any  
283 regulations adopted under these statutes shall apply to the program provided for under this  
284 subdivision. No other provision of law under the Medi-Cal program or the State-Only Family  
285 Planning Program shall apply to the program provided for under this subdivision.

286 (5) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
287 3 of Title 2 of the Government Code, the department may implement, without taking regulatory  
288 action, the provisions of the waiver after its approval by the federal Centers for Medicare and  
289 Medicaid Services and the provisions of this section by means of an all-county letter or similar  
290 instruction to providers. Thereafter, the department shall adopt regulations to implement this  
291 section and the approved waiver in accordance with the requirements of Chapter 3.5  
292 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.  
293 Beginning six months after the effective date of the act adding this subdivision, the department  
294 shall provide a status report to the Legislature on a semiannual basis until regulations have been  
295 adopted.

296 (6) In the event that the Department of Finance determines that the program operated  
297 under the authority of the waiver described in paragraph (2) or the Family PACT successor state  
298 plan amendment is no longer cost effective, this subdivision shall become inoperative on the first  
299 day of the first month following the issuance of a 30-day notification of that determination in  
300 writing by the Department of Finance to the chairperson in each house that considers  
301 appropriations, the chairpersons of the committees, and the appropriate subcommittees in each  
302 house that considers the State Budget, and the Chairperson of the Joint Legislative Budget  
303 Committee.

304 (7) If this subdivision ceases to be operative, all persons who have received or are eligible  
305 to receive comprehensive clinical family planning services pursuant to the waiver described in  
306 paragraph (2) shall receive family planning services under the Medi-Cal program pursuant to  
307 subdivision (n) if they are otherwise eligible for Medi-Cal with no share of cost, or shall receive  
308 comprehensive clinical family planning services under the program established in Division 24  
309 (commencing with Section 24000) either if they are eligible for Medi-Cal with a share of cost or  
310 if they are otherwise eligible under Section 24003.

311 (8) For purposes of this subdivision, “comprehensive clinical family planning services”  
312 means the process of establishing objectives for the number and spacing of children, and  
313 selecting the means by which those objectives may be achieved. These means include a broad  
314 range of acceptable and effective methods and services to limit or enhance fertility, including  
315 contraceptive methods, federal Food and Drug Administration approved contraceptive drugs,  
316 devices, and supplies, natural family planning, abstinence methods, and basic, limited fertility  
317 management. Comprehensive clinical family planning services include, but are not limited to,  
318 preconception counseling, maternal and fetal health counseling, general reproductive health care,  
319 including diagnosis and treatment of infections and conditions, including cancer, that threaten  
320 reproductive capability, medical family planning treatment and procedures, including supplies  
321 and follow-up, and informational, counseling, and educational services. Comprehensive clinical  
322 family planning services shall not include abortion, pregnancy testing solely for the purposes of

323 referral for abortion or services ancillary to abortions, or pregnancy care that is not incident to  
324 the diagnosis of pregnancy. Comprehensive clinical family planning services shall be subject to  
325 utilization control and include all of the following:

326 (A) Family planning related services and male and female sterilization. Family planning  
327 services for men and women shall include emergency services and services for complications  
328 directly related to the contraceptive method, federal Food and Drug Administration approved  
329 contraceptive drugs, devices, and supplies, and followup, consultation, and referral services, as  
330 indicated, which may require treatment authorization requests.

331 (B) All United States Department of Agriculture, federal Food and Drug Administration  
332 approved contraceptive drugs, devices, and supplies that are in keeping with current standards of  
333 practice and from which the individual may choose.

334 (C) Culturally and linguistically appropriate health education and counseling services,  
335 including informed consent, that include all of the following:

336 (i) Psychosocial and medical aspects of contraception.

337 (ii) Sexuality.

338 (iii) Fertility.

339 (iv) Pregnancy.

340 (v) Parenthood.

341 (vi) Infertility.

342 (vii) Reproductive health care.

343 (viii) Preconception and nutrition counseling.

344 (ix) Prevention and treatment of sexually transmitted infection.

345 (x) Use of contraceptive methods, federal Food and Drug Administration approved  
346 contraceptive drugs, devices, and supplies.

347 (xi) Possible contraceptive consequences and followup.

348 (xii) Interpersonal communication and negotiation of relationships to assist individuals  
349 and couples in effective contraceptive method use and planning families.

350 (D) A comprehensive health history, updated at the next periodic visit (between 11 and  
351 24 months after initial examination) that includes a complete obstetrical history, gynecological  
352 history, contraceptive history, personal medical history, health risk factors, and family health  
353 history, including genetic or hereditary conditions.

354 (E) A complete physical examination on initial and subsequent periodic visits.

355 (F) Services, drugs, devices, and supplies deemed by the federal Centers for Medicare  
356 and Medicaid Services to be appropriate for inclusion in the program.

357 (G) Feminine hygiene products for containing, collecting or managing menstrual flow.

358 (9) In order to maximize the availability of federal financial participation under this  
359 subdivision, the director shall have the discretion to implement the Family PACT successor state  
360 plan amendment retroactively to July 1, 2010.

361 (ab) (1) Purchase of prescribed enteral nutrition products is covered, subject to the Medi-  
362 Cal list of enteral nutrition products and utilization controls.

363 (2) Purchase of enteral nutrition products is limited to those products to be administered  
364 through a feeding tube, including, but not limited to, a gastric, nasogastric, or jejunostomy tube.  
365 Beneficiaries under the Early and Periodic Screening, Diagnosis, and Treatment Program shall  
366 be exempt from this paragraph.

367 (3) Notwithstanding paragraph (2), the department may deem an enteral nutrition  
368 product, not administered through a feeding tube, including, but not limited to, a gastric,

369 nasogastric, or jejunostomy tube, a benefit for patients with diagnoses, including, but not limited  
370 to, malabsorption and inborn errors of metabolism, if the product has been shown to be neither  
371 investigational nor experimental when used as part of a therapeutic regimen to prevent serious  
372 disability or death.

373 (4) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
374 3 of Title 2 of the Government Code, the department may implement the amendments to this  
375 subdivision made by the act that added this paragraph by means of all-county letters, provider  
376 bulletins, or similar instructions, without taking regulatory action.

377 (5) The amendments made to this subdivision by the act that added this paragraph shall  
378 be implemented June 1, 2011, or on the first day of the first calendar month following 60 days  
379 after the date the department secures all necessary federal approvals to implement this section,  
380 whichever is later.

381 (ac) Diabetic testing supplies are covered when provided by a pharmacy, subject to  
382 utilization controls.

383 (ad) (1) Nonmedical transportation is covered, subject to utilization controls and  
384 permissible time and distance standards, for a beneficiary to obtain covered Medi-Cal services.

385 (2) (A) (i) Nonmedical transportation includes, at a minimum, round trip transportation  
386 for a beneficiary to obtain covered Medi-Cal services by passenger car, taxicab, or any other  
387 form of public or private conveyance, and mileage reimbursement when conveyance is in a  
388 private vehicle arranged by the beneficiary and not through a transportation broker, bus passes,  
389 taxi vouchers, or train tickets.

390 (ii) Nonmedical transportation does not include the transportation of sick, injured,  
391 invalid, convalescent, infirm, or otherwise incapacitated beneficiaries by ambulances, litter vans,  
392 or wheelchair vans licensed, operated, and equipped in accordance with state and local statutes,  
393 ordinances, or regulations.

394 (B) Nonmedical transportation shall be provided for a beneficiary who can attest in a  
395 manner to be specified by the department that other currently available resources have been  
396 reasonably exhausted. For beneficiaries enrolled in a managed care plan, nonmedical  
397 transportation shall be provided by the beneficiary's managed care plan. For Medi-Cal fee-for-  
398 service beneficiaries, the department shall provide nonmedical transportation when those  
399 services are not available to the beneficiary under Sections 14132.44 and 14132.47.

400 (3) Nonmedical transportation shall be provided in a form and manner that is accessible,  
401 in terms of physical and geographic accessibility, for the beneficiary and consistent with  
402 applicable state and federal disability rights laws.

403 (4) It is the intent of the Legislature in enacting this subdivision to affirm the requirement  
404 under Section 431.53 of Title 42 of the Code of Federal Regulations, in which the department is  
405 required to provide necessary transportation, including nonmedical transportation, for recipients  
406 to and from covered services. This subdivision shall not be interpreted to add a new benefit to the  
407 Medi-Cal program.

408 (5) The department shall seek any federal approvals that may be required to implement  
409 this subdivision, including, but not limited to, approval of revisions to the existing state plan that  
410 the department determines are necessary to implement this subdivision.

411 (6) This subdivision shall be implemented only to the extent that federal financial  
412 participation is available and not otherwise jeopardized, and any necessary federal approvals  
413 have been obtained.

414 (7) Prior to the effective date of any necessary federal approvals, nonmedical  
415 transportation was not a Medi-Cal managed care benefit with the exception of when provided as  
416 an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) service.

417 (8) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
418 3 of Title 2 of the Government Code, the department, without taking any further regulatory  
419 action, shall implement, interpret, or make specific this subdivision by means of all-county  
420 letters, plan letters, plan or provider bulletins, or similar instructions until the time regulations  
421 are adopted. By July 1, 2018, the department shall adopt regulations in accordance with the  
422 requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2  
423 of the Government Code. Commencing January 1, 2018, and notwithstanding Section 10231.5 of  
424 the Government Code, the department shall provide a status report to the Legislature on a  
425 semiannual basis, in compliance with Section 9795 of the Government Code, until regulations  
426 have been adopted.

427 (9) This subdivision shall not be implemented until July 1, 2017.

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

**PROPONENT:** Women Lawyers of Ventura County

## **STATEMENT OF REASONS**

The Problem: Existing law under the Family Planning, Access, Care and Treatment (Family PACT) Program covers contraception, including condoms, but does not cover feminine hygiene products for women and girls of childbearing age. Currently young women and girls who cannot afford feminine hygiene products are missing school when they menstruate. Low income female wage earners have a similar challenge; missing work during menstrual periods due to the high cost of feminine hygiene products.

The Solution: This Resolution would include feminine hygiene products as covered items for low income women and girls under the Family PACT Program, a part of Medi-Cal. Providing Medi-Cal coverage for feminine hygiene products under the Family PACT Program would help ensure young women and girls do not miss school or work out of fear that they cannot control or manage menstrual flow.

## **IMPACT STATEMENT**

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

## **CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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**RESPONSIBLE FLOOR DELEGATE:** Tina Rasnow

**RESOLUTION 10-04-2018**

**DIGEST**

Health and Safety: Diaper Changing Stations in Restaurants

Amends Health and Safety Code Section 118506 to require that all restaurants provide diaper changing stations.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Health and Safety Code section 118506 to require that all restaurants provide diaper changing stations. This resolution should be approved in principle because diaper changing stations are necessary for safety of children and to provide a sanitary option for changing diapers.

Current law requires that diaper changing stations be provided in men’s and women’s restrooms in a long list of types of businesses, including restaurants. However, in the current statute, this requirement to provide diaper changing stations only applies to restaurants that have occupancy of at least 60 persons. There are many restaurants that provide bathroom facilities but have occupancy of less than 60 persons. Providing diaper changing stations to parents is also necessary in the smaller restaurants to avoid the parent having to change a diaper on the floor of the restroom or the restaurant, or in a way that is not safe for the child.

Adding this requirement is not cost prohibitive to small business owners. Diaper changing stations can be purchased online starting at approximately \$150, and are simple and cost effective to install. In addition, there is a provision for an exception to the requirement if a local building official determines that the restaurant’s restrooms are too small or unable to accommodate the installation of a diaper changing station.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code section 118506 to read as follows:

- 1 § 118506
- 2 (a) (1) A theater or movie house, grocery store, health facility, convention center, sports
- 3 arena, auditorium, cultural complex, exhibition hall, library, passenger terminal, permanent
- 4 amusement park structure, ~~restaurant with an occupancy of at least 60 persons,~~ as determined by
- 5 the State Fire Marshal, shopping center of more than 25,000 square feet, tourist attraction, or
- 6 retail store of more than 5,000 square feet shall install and maintain at least one baby diaper
- 7 changing station if the facility is open to the public. There shall be at least one safe, sanitary,
- 8 convenient, and publicly accessible baby diaper changing station that is accessible to women

9 entering a restroom provided for use by women and one that is accessible to men entering a  
10 restroom provided for use by men, or at least one safe, sanitary, convenient, and publicly  
11 accessible baby diaper changing station that is accessible to both men and women.

12 (2) (A) All restaurants open to the public shall install and maintain at least one baby  
13 diaper changing station. There shall be at least one safe, sanitary, convenient, and publicly  
14 accessible baby diaper changing station that is accessible to women entering a restroom provided  
15 for use by women and one that is accessible to men entering a restroom provided for use by men,  
16 or at least one safe, sanitary, convenient, and publicly accessible baby diaper changing station  
17 that is accessible to both men and women.

18 (B) If the structure is of such a configuration that it is either too small or unable to  
19 accommodate the installation of a diaper changing station, then the local building official may,  
20 upon application by the party affected, issue a waiver of the requirement of (a)(2).

21 (b) This section does not apply to an industrial building or to a nightclub or bar that does  
22 not permit anyone who is under 18 years of age to enter the premises. This section also does not  
23 apply to a restroom located in a health facility if the restroom is intended for the use of one  
24 patient or resident at a time.

25 ~~(b c)~~ This section shall not be enforceable by a private right of action.

26 (e d) (1) Subdivision (a)(1) applies to all new construction, and, except as otherwise  
27 provided in paragraph (2), to all renovations of bathrooms for which a permit has been obtained,  
28 in which the estimated cost of the new construction or renovation is ten thousand dollars  
29 (\$10,000) or more. If an entity subject to subdivision (a) is already in compliance with that  
30 subdivision at the time of new construction or renovation, additional restrooms equipped with  
31 baby diaper changing stations are not required.

32 (2) Subdivision (a) does not apply to a renovation if a local building permitting entity or  
33 building inspector determines that the installation of a baby diaper changing station is not  
34 feasible or would result in a failure to comply with applicable building standards governing the  
35 right of access for persons with disabilities. The permitting entity or building inspector may grant  
36 an exemption from the requirements of subdivision (a) under those circumstances.

37 (d e) For purposes of this section, the following definitions shall apply:

38 (1) "Health facility" has the meaning set forth in Section 1250.

39 (2) Subdivision (a)(2)~~"Restaurant with an occupancy of at least 60 persons"~~ does not  
40 apply to a restaurant with a seating area if there is a centrally located facility with a baby diaper  
41 changing station that is open to the public and located within 300 feet of the entrance to the  
42 restaurant.

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

**PROPONENT:** San Mateo County Bar Association

## **STATEMENT OF REASONS**

The Problem: Health & Safety Code section 118506, added by AB 1127 (Calderon), went into effect on January 1, 2018. Section 118506 requires "diaper changing stations" to be installed and maintained in all restaurants "with an occupancy of at least 60 persons." However, the new requirement only applies to new construction or to renovations that cost \$10,000 or more.

There are many restaurants that seat less than 60 persons that are frequented by families with young children. Many of these facilities already specifically cater to families, by providing children's menus and highchairs. It is neither sanitary nor safe to change a baby's diaper on a public restroom floor. In addition, it is not safe to change a baby's diaper on the sink counter, if there is one, because the baby can fall down onto the floor and become injured. Further, it is neither sanitary nor safe to change a baby's diaper on the floor within the restaurant's seating area where food is being served.

The Solution: This resolution would expand existing law to provide one or two diaper changing stations, according to the configuration of the restrooms.

In addition, wall-mounted diaper changing tables are not very expensive. For example, Koala Kare sells a horizontal-wall mounted model for \$210. Requiring diaper changing stations within restaurant restrooms will provide a higher standard of health and safety for the babies, for the parents, and for the restaurants – for very little cost. Moreover, restaurants that provide diaper changing stations are likely to generate more business, which will make up for the initial costs to install the diaper changing stations. As a result, the new requirements in this resolution are not unduly burdensome or unreasonable for all restaurants.

Further, if an existing restroom is too small this resolution allows the local building official to issue a waiver of the requirements of the statute.

#### **IMPACT STATEMENT**

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

#### **CURRENT OR PRIOR RELATED LEGISLATION**

Health & Safety Code section 118506 added by Stats. 2017, Ch. 755, Sec. 3. (AB 1127, Calderon) Effective January 1, 2018.

*See also* SB 1358 (Wolk, 2014), which would have required large public venues, including restaurants, to install changing tables in both women's and men's bathrooms.

*See also* SB 1350 (Lara, 2014), which would have required that for businesses that are building a new bathroom or renovating a bathroom with plans to install a changing table, then diapering stations would have to be accessible to both men and women.

H.R. 5147 (114<sup>th</sup> Congress, 2015-2016) Bathrooms Accessible in Every Situation (BABIES) Act, (2016), requiring men's restrooms in federal buildings open to the public to contain diaper changing areas.

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**RESPONSIBLE FLOOR DELEGATE:** Catherine Rucker

## **RESOLUTION 10-05-2018**

### **DIGEST**

#### Insurance: Creation of a Voluntary Long-Term Care Insurance Program

Amends Insurance Code section 10231.2 and adds Article 6, section 10238, to create a voluntary long-term care insurance program administered by a non-profit public benefit corporation.

### **RESOLUTIONS COMMITTEE RECOMMENDATION**

#### **APPROVE IN PRINCIPLE**

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Insurance Code section 10231.2 and adds Article 6, section 10238, to create a voluntary long-term care insurance program administered by a non-profit public benefit corporation. This resolution should be approved in principle because the proposal advances the dialogue and options to deal with the growing need for viable and fiscally-affordable provision of long-term care services for an increasingly aging population.

Today there are some 50 million Americans over the age of 65. According to the American Association of Retired Persons (AARP), in a few decades there will be over 80 million. Over \$300 billion is spent annually on long-term care, some six times the yearly budget of the U.S. Department of Housing and Urban Development. Over \$8000 a month is not an un-heard of tab for long-term care. Fewer insurers are offering long-term care coverage, while the cost of coverage continues to spiral up, with greater premiums and decreasing number of insureds. The California Partnership for Long-Term Care Programs provides education and guidance, but no substantive answers. Long-term care entails custodial services and assistance with activities of daily living. Generally most long-term care is not covered by Medicare. Medicaid does provide benefits, but it is for people with low income and assets thresholds.

The resolution proposes that the Insurance Commissioner create an independent state long-term care insurance program managed by a private non-profit public benefit corporation. A similar program for earthquake insurance currently exists in California. When insurers exited California's market for earthquake insurance, or required prohibitively high premiums for coverage, California created the California Earthquake Authority ("CEA"). (See Ins. Code, § 10089.5 et seq.) The CEA is a hugely successful A.M. Best A- rated publicly-managed, not-for-profit organization. Through careful management, partnership with traditional insurers, a gradation of offered plans, and broadly spreading the risk state-wide, the CEA has been able to provide reasonably-affordable, invaluable earthquake insurance coverage for Californians. A similar program for long-term care insurance can similarly benefit Californians.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Insurance Code section 10231.2 and add section 10238 to read as follows:

1 § 10231.2

2 “Long-term care insurance” includes any insurance policy, certificate, or rider advertised,  
3 marketed, offered, solicited, or designed to provide coverage for diagnostic, preventive,  
4 therapeutic, rehabilitative, maintenance, or personal care services that are provided in a setting  
5 other than an acute care unit of a hospital. Long-term care insurance includes all products  
6 containing any of the following benefit types: coverage for institutional care including care in a  
7 nursing home, convalescent facility, extended care facility, custodial care facility, skilled nursing  
8 facility, or personal care home; home care coverage including home health care, personal care,  
9 homemaker services, hospice, or respite care; or community-based coverage including adult day  
10 care, hospice, or respite care including such care for individuals with Alzheimer’s and other  
11 dementia conditions. Long-term care insurance includes disability based long-term care policies  
12 but does not include insurance designed primarily to provide Medicare supplement or major  
13 medical expense coverage.

14 Long-term care policies, certificates, and riders shall be regulated under this chapter. The  
15 commissioner shall review and approve individual and group policies, certificates, riders, and  
16 outlines of coverage. Other applicable laws and regulations shall also apply to long-term care  
17 insurance insofar as they do not conflict with the provisions in this chapter. Long-term care  
18 benefits designed to provide coverage of 12 months or more that are contained in or amended to  
19 Medicare supplement or other disability policies and certificates shall be regulated under this  
20 chapter.

21  
22 Article 6 Establishment of a Voluntary Long-Term Care Insurance Program Financed by  
23 Individual Enrollees and Administered by a Non-Profit Public Benefit Corporation (§10238 a.  
24 through f.)

25  
26 § 10238

27 The Insurance Commissioner shall create an independent state long-term care insurance  
28 option to be established in a private non-profit public benefit corporation with the provisions as  
29 stated in this Article.

30 (a) Access to long-term service and support under the program is to be such that the  
31 insured may receive service through a Single Entry Point State-Wide, also known as “No Wrong  
32 Door.” The service provided shall be based on a conflict-free case management system.

33 (b) The program shall be administered by a qualified geriatric care manager and all  
34 enrollees shall be assigned to a geriatric care manager who shall direct the care needs of the  
35 enrollee.

36 (c) The program shall be created to allow employers to offer an employer-based  
37 alternative long-term care insurance plan as created by this Article and the employee-enrollee  
38 may sign up for the insurance or refrain from signing up.

39 (d) The cost to the insured for this insurance shall be determined on a sliding scale based  
40 on the accepted poverty index and shall be available to employees through payroll deduction, or,  
41 if the employer does not offer a plan, paid out-of-pocket by purchasing a plan through an

42 independent provider.

43 (e) Advising and counseling shall be provided to enrollees without extra cost to the  
44 enrollees as an aid to obtaining and coordinating long-term service and support.

45 (f) The program shall ensure that the funds collected by the State of California through  
46 the non-profit agency administering the program are used exclusively for this program.

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

**PROPONENT:** Bar Association of San Francisco

## **STATEMENT OF REASONS**

The Problem: “Long-term care insurers collapse,” says a story headline in the December 18, 2016 Wall Street Journal under Jack Craver’s byline. The story concerned two Pennsylvania insurers that failed because of long-term care claims that could not be paid. It seems that the insurance industry’s actuarial calculations were way off. These two insurers are leaving almost 80,000 policyholders with policies that are worthless after paying premiums faithfully over the years. The companies have reached a settlement with the Pennsylvania regulators to liquidate their assets and contribute something to the insureds’ claims. The problem with the settlement is that the assets are worth about \$600 million while the claims total \$4 billion. It is likely these failures are the first of many that will occur in the future because the actuarial tables are generally used by all the insurers and these tables are flawed.

On August 7, 2017 Chad Terhune, writing in the Kaiser Health News, reported that the failures of the Pennsylvania insurers will impact California health insurance consumers. When an insurer fails, the other insurers around the nation are contracted through state guarantee associations to cover a part of the loss. An insurer’s assessment is typically based on market share. According to Terhune, California’s share of the shortfall is \$400.6 million. If, indeed, other insurers begin to find the need to liquidate their assets as the premiums collected prove woefully inadequate to cover the claims made as the cohort of World War II babies begin to retire and need long-term care, we may see that the entire industry finds the shortfall too great to cover.

The Solution: When the Patient Protection and Affordable Care Act (PPACA) was introduced in 2009-10 it contained a Title VIII. However, the provision was removed before the Act became law. All that was left in the final version is the following:

“TITLE VIII—CLASS ACT

“Sec. 8001. Short title of title.

“Sec. 8002. Establishment of national voluntary insurance program for purchasing community living assistance services and support.”

One of the motivations for the CLASS ACT was to take the profit out of the long-term insurance by having the program managed by a non-profit public benefit corporation under a contract with the State of California through the Insurance Commissioner’s Office. Now that it was shown that the actuarial data being used by the insurance industry are unreliable, the Insurance

Commissioner can commission studies to improve the actuarial tables. Since the federal program was not authorized by PPACA, this is California's opportunity to show that there is a better way to offer long-term care insurance that will be there when the insurance is required to pay for the needed care.

**IMPACT STATEMENT**

This 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:** Gerald T. Richards

## RESOLUTION 10-06-2018

### DIGEST

Education: American Government and Civics Course to Include Instruction on Voting

Amends Education Code sections 51220 and 51225.3 to require additional instruction on national and state political systems as part of the existing civics curriculum.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Education Code sections 51220 and 51225.3 to require additional instruction on national and state political systems as part of the existing civics curriculum. This resolution should be approved in principle because of the importance of educating our students on local, state-wide, and national issues, as well as teaching them how eligible voters can register to vote.

The resolution requires the course of study for grades 7 to 12, inclusive, to add instruction on voting in the American legal and political systems. More specifically, the resolution requires “a one-semester course in American government and civics” to include the instruction of the history of voting rights and the importance of exercising voting rights; California and federal voting systems and elections; instruction on voter registration for eligible students; and how to understand a ballot.

The resolution will benefit the students in California’s public schools by providing them with the knowledge to enter the nation’s democracy through meaningful participation in elections at the municipal, county, state, and federal levels. As a result, the students will learn that they can make an impact on issues in their local community and that they can debate controversial issues with others without animosity.

Further, the resolution does not require that the entire curriculum of a course be changed or a whole new course be added to the required areas of study. The resolution simply requires that California’s public school students have the additional instruction on national and state political systems as part of the existing civics curriculum.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Association recommends that legislation be sponsored to amend Education Code sections 51220 and 51225.3 to read as follows:

1 § 51220

2 The adopted course of study for grades 7 to 12, inclusive, shall offer courses in the following  
3 areas of study:

4 (a) English, including knowledge of and appreciation for literature, language, and composition,  
5 and the skills of reading, listening, and speaking.

6 (b)(1) Social sciences, drawing upon the disciplines of anthropology, economics, geography,  
7 history, political science, psychology, and sociology, designed to fit the maturity of the pupils.

8 Instruction shall provide a foundation for understanding the history, resources, development,  
9 and government of California and the United States of America; instruction in our American legal and  
10 political systems, as required by Section 51225.3(D)(i) system, the operation of the juvenile and adult  
11 criminal justice systems, and the rights and duties of citizens under the criminal and civil law and the  
12 State and Federal Constitutions; the development of the American economic system, including the role  
13 of the entrepreneur and labor; the relations of persons to their human and natural environment; eastern  
14 and western cultures and civilizations; human rights issues, with particular attention to the study of the  
15 inhumanity of genocide, slavery, and the Holocaust, and contemporary issues.

16 (2) For purposes of this subdivision, genocide may include the Armenian Genocide. The  
17 “Armenian Genocide” means the torture, starvation, and murder of 1,500,000 Armenians, which  
18 included death marches into the Syrian desert, by the rulers of the Ottoman Turkish Empire and the  
19 exile of more than 500,000 innocent people during the period from 1915 to 1923, inclusive.

20 (c) Foreign language or languages, beginning not later than grade 7, designed to develop a  
21 facility for understanding, speaking, reading, and writing the particular language.

22 (d) Physical education, with emphasis given to physical activities that are conducive to health  
23 and to vigor of body and mind, as required by Section 51222.

24 (e) Science, including the physical and biological aspects, with emphasis on basic concepts,  
25 theories, and processes of scientific investigation and on the place of humans in ecological systems,  
26 and with appropriate applications of the interrelation and interdependence of the sciences.

27 (f) Mathematics, including instruction designed to develop mathematical understandings,  
28 operational skills, and insight into problem-solving procedures.

29 (g) Visual and performing arts, including dance, music, theater, and visual arts, with emphasis  
30 upon development of aesthetic appreciation and the skills of creative expression.

31 (h) Applied arts, including instruction in the areas of consumer and homemaking education,  
32 industrial arts, general business education, or general agriculture.

33 (i) Career technical education designed and conducted for the purpose of preparing youth for  
34 gainful employment in the occupations and in the numbers that are appropriate to the personnel needs  
35 of the state and the community served and relevant to the career desires and needs of the pupils.

36 (j) Automobile driver education, designed to develop a knowledge of the provisions of the  
37 Vehicle Code and other laws of this state relating to the operation of motor vehicles, a proper  
38 acceptance of personal responsibility in traffic, a true appreciation of the causes, seriousness, and  
39 consequences of traffic accidents, and to develop the knowledge and attitudes necessary for the safe  
40 operation of motor vehicles. A course in automobile driver education shall include education in the  
41 safe operation of motorcycles.

42 (k) Other studies as may be prescribed by the governing board.

43

44 § 51225.3

45 (a) A pupil shall complete all of the following while in grades 9 to 12, inclusive, in order to  
46 receive a diploma of graduation from high school:

47 (1) At least the following numbers of courses in the subjects specified, each course having a  
48 duration of one year, unless otherwise specified:

49 (A) Three courses in English.

50 (B) Two courses in mathematics. If the governing board of a school district requires more than  
51 two courses in mathematics for graduation, the governing board of the school district may award a  
52 pupil up to one mathematics course credit pursuant to Section 51225.35.

53 (C) Two courses in science, including biological and physical sciences.

54 (D) Three courses in social studies, including United States history and geography; world  
55 history, culture, and geography; a one-semester course in American government and civics; and a one-

56 semester course in economics.

57 (i) For purposes of this subparagraph, “a one-semester course in American government and  
58 civics” shall include instruction on all the following:

59 (I) the history of voting rights and the importance of exercising voting rights;  
60 (II) California and federal voting systems and elections;  
61 (III) instruction on voter registration for eligible students; and  
62 (IV) how to understand a ballot.

63 (E) One course in visual or performing arts, foreign language, or, commencing with the 2012-  
64 13 school year, career technical education.

65 (i) For purposes of satisfying the requirement specified in this subparagraph, a course in  
66 American Sign Language shall be deemed a course in foreign language.

67 (ii) For purposes of this subparagraph, “a course in career technical education” means a course  
68 in a district-operated career technical education program that is aligned to the career technical model  
69 curriculum standards and framework adopted by the state board, including courses through a regional  
70 occupational center or program operated by a county superintendent of schools or pursuant to a joint  
71 powers agreement.

72 (iii) This subparagraph does not require a school or school district that currently does not offer  
73 career technical education courses to start new career technical education programs for purposes of this  
74 section.

75 (iv) If a school district or county office of education elects to allow a career technical education  
76 course to satisfy the requirement imposed by this subparagraph, the governing board of the school  
77 district or county office of education, before offering that alternative to pupils, shall notify parents,  
78 teachers, pupils, and the public at a regularly scheduled meeting of the governing board of all of the  
79 following:

80 (I) The intent to offer career technical education courses to fulfill the graduation requirement  
81 specified in this subparagraph.

82 (II) The impact that offering career technical education courses, pursuant to this subparagraph,  
83 will have on the availability of courses that meet the eligibility requirements for admission to the  
84 California State University and the University of California, and whether the career technical education  
85 courses to be offered pursuant to this subparagraph are approved to satisfy those eligibility  
86 requirements. If a school district elects to allow a career technical education course to satisfy the  
87 requirement imposed by this subparagraph, the school district shall comply with subdivision (m) of  
88 Section 48980.

89 (III) The distinction, if any, between the high school graduation requirements of the school  
90 district or county office of education, and the eligibility requirements for admission to the California  
91 State University and the University of California.

92 (F) Two courses in physical education, unless the pupil has been exempted pursuant to the  
93 provisions of this code.

94 (2) Other coursework requirements adopted by the governing board of the school district.

95 (b) The governing board, with the active involvement of parents, administrators, teachers, and  
96 pupils, shall adopt alternative means for pupils to complete the prescribed course of study that may  
97 include practical demonstration of skills and competencies, supervised work experience or other  
98 outside school experience, career technical education classes offered in high schools, courses offered  
99 by regional occupational centers or programs, interdisciplinary study, independent study, and credit  
100 earned at a postsecondary educational institution. Requirements for graduation and specified  
101 alternative modes for completing the prescribed course of study shall be made available to pupils,  
102 parents, and the public.

103 (c) On or before July 1, 2017, the department shall submit a comprehensive report to the

104 appropriate policy committees of the Legislature on the addition of career technical education courses  
105 to satisfy the requirement specified in subparagraph (E) of paragraph (1) of subdivision (a), including,  
106 but not limited to, the following information:

107 (1) A comparison of the pupil enrollment in career technical education courses, foreign  
108 language courses, and visual and performing arts courses for the 2005-06 to 2011-12 school years,  
109 inclusive, to the pupil enrollment in career technical education courses, foreign language courses, and  
110 visual and performing arts courses for the 2012-13 to 2016-17 school years, inclusive.

111 (2) The reasons, reported by school districts, that pupils give for choosing to enroll in a career  
112 technical education course to satisfy the requirement specified in subparagraph (E) of paragraph (1) of  
113 subdivision (a).

114 (3) The type and number of career technical education courses that were conducted for the  
115 2005-06 to 2011-12 school years, inclusive, compared to the type and number of career technical  
116 education courses that were conducted for the 2012-13 to 2016-17 school years, inclusive.

117 (4) The number of career technical education courses that satisfied the subject matter  
118 requirements for admission to the University of California or the California State University.

119 (5) The extent to which the career technical education courses chosen by pupils are aligned  
120 with the California Career Technical Education Model Curriculum Standards, and prepare pupils for  
121 employment, advanced training, and postsecondary education.

122 (6) The number of career technical education courses that also satisfy the visual and performing  
123 arts requirement, and the number of career technical education courses that also satisfy the foreign  
124 language requirement.

125 (7) Annual pupil dropout and graduation rates for the 2011-12 to 2014-15 school years,  
126 inclusive.

127 (d) For purposes of completing the report described in subdivision (c), the Superintendent may  
128 use existing state resources and federal funds. If state or federal funds are not available or sufficient,  
129 the Superintendent may apply for and accept grants, and receive donations and other financial support  
130 from public or private sources for purposes of this section.

131 (e) For purposes of completing the report described in subdivision (c), the Superintendent may  
132 accept support, including, but not limited to, financial and technical support, from high school reform  
133 advocates, teachers, chamber organizations, industry representatives, research centers, parents, and  
134 pupils.

135 (f) This section shall become inoperative on the earlier of the following two dates:

136 (1) On July 1, immediately following the first fiscal year after the enactment of the act that adds  
137 this paragraph in which the number of career technical education courses that, as determined by the  
138 department, satisfy the foreign language requirement for admission to the California State University  
139 and the University of California is at least twice the number of career technical education courses that  
140 meet these admission requirements as of January 1, 2012. This section shall be repealed on the  
141 following January 1, unless a later enacted statute, that becomes operative on or before that date,  
142 deletes or extends the dates on which it becomes inoperative and is repealed. It is the intent of the  
143 Legislature that new career technical education courses that satisfy the foreign language requirement  
144 for admission to the California State University and the University of California focus on world  
145 languages aligned with career preparation, emphasizing real-world application and technical content in  
146 related career and technical education courses.

147 (2) On July 1, 2022, and, as of January 1, 2023, is repealed, unless a later enacted statute, that  
148 becomes operative on or before January 1, 2023, deletes or extends the dates on which it becomes  
149 inoperative and is repealed.

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

**PROPONENT:** Bar Association of San Francisco

## **STATEMENT OF REASONS**

The Problem: Even though political and civic involvement of our State's youth is vital for California's economic, social, and political health, it is severely lacking. In 2014 only 8.2% of California's eligible youth (ages 18–24) voted in the general election, and only 52% of California's youth were registered to vote. *California's 2014 Youth Vote Fact Sheet*, UC Davis Center for Regional Change, <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/580000df197aeafac45bc469/1476395232199/2014+Youth+Vote+Fact+Sheet.pdf>. A higher number of eligible youths voted in the 2016 general election (33.4% of registered youth voted, which accounted for only 7.5% of the state's total voters; 14.2% represents the youth share of the eligible voter population). *California's Youth Vote: June 2016 Primary Election*, UC Davis Center for Regional Change, <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/580e517fb8a79b0f917cda10/1477333377366/CCEPFS9+-+FINAL+%284%29.pdf>. With the exception of the 2016 general election, youth voter turnout declined 1.4% in each statewide primary election from 2004 through 2014. *Id.* A significant disparity continues to exist between the number of eligible voters, and the number of people who actually vote.

California's public school curriculum fails each student by not adequately preparing him or her to enter the nation's democracy through meaningful participation in elections at the municipal, county, state, and federal levels. Democracy requires participation. With historically low voter registration and turnout, we face a crisis of participation, which threatens the core tenets of our democracy. California's schools should help remedy that problem by teaching students about the history of voting rights, the importance of exercising those rights, how elections are structured, and how to vote.

While attending a California public high school, the author of this resolution drafted a bill in her 12<sup>th</sup> grade Civics class. The assignment was designed to engage students in a mock-legislative process. For her bill, this author drafted one in the same spirit as this resolution: that instruction on actual voting procedures, voter registration, and ballot format should be included in the high school curriculum. The need to promote fluency in the political systems of the nation and the state has remained poignant through time because the importance of voting will never diminish.

The Solution: This resolution will add a section to the California public school curriculum requiring the current one semester Civics course to include a section of instruction regarding the voting and electoral systems in the United States and California, in order to educate students on local, state-wide, and national issues, and teach them how eligible voters can register to vote. Including instruction on these subjects will raise awareness of local issues upon which young people can make an impact, foster civic involvement, and promote engaging conversations on controversial issues in an educational environment. It will teach students that they can debate controversial issues without animosity, which will foster a culture of learning to understand different perspectives. The proposed section will add language to Education Code section 51225.3: Requirements for graduation for students in grades 9 through 12, and add a corresponding section in Education Code section 51220: Areas of study; grades 7 to 12.

## **IMPACT STATEMENT**

This 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:** Amanda M. Cusick

**RESOLUTION 10-07-2018**

**DIGEST**

Electrical Corporations: Prohibits Recovery of Uninsured Expenses in Certain Situations

Adds Public Utilities Code section 748 to prohibit recovery of uninsured expenses for damages caused by failure to reasonably construct, maintain, manage, control, or operate the facility.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution adds Public Utilities Code section 748 to prohibit recovery of uninsured expenses for damages caused by failure to reasonably construct, maintain, manage, control, or operate the facility. This resolution should be disapproved because it would improperly extend to municipally-owned utility companies, not governed by the Public Utility Commission, which need to retain autonomy to protect their fiscal and functional integrity.

The Public Utilities Commission has regulatory and supervisory authority over privately- or investor-owned utility companies. It does not have jurisdiction over publicly-owned entities or utilities of chartered city and county municipalities, such as the Los Angeles Department of Water and Power and the Sacramento Municipal Utilities Department. The constitutional doctrine of “home rule” precludes application of the proposed rule to utilities established and overseen by chartered cities and counties; this is not a matter of statewide concern. The unlimited reach of the proposed resolution disregards that jurisdictional limitation.

A municipally-owned or chartered utility company must have the ability to operate, set rates and protect against loss and liability, both foreseeable and unforeseeable catastrophic loss, in order to maintain expected level of services and fiscal integrity, subject to municipality oversight and regulation.

This resolution is similar to Sen. Bill 819 ( Hills, Dodd, McGuire & Wiener).

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to add to Public Utilities Code section 748 to read as follows:

- 1 § 748
- 2 (a) An electrical corporation shall not recover through a rate approved by the commission
- 3 either of the following:
- 4 (1) A fine or penalty.
- 5 (2) An uninsured expense resulting from damages caused by the electrical corporation’s
- 6 or its agent’s, commission-regulated facility if the commission determines that the electrical

7 corporation, or its agent, did not reasonably construct, maintain, manage, control, or operate the  
8 facility. The commission's determination of whether those damages were caused by the facility  
9 shall not be admissible in a court action for damages brought against the electrical corporation or  
10 its agent.

11 (b) It is the intent of the Legislature that this section not limit or alter the commission's  
12 authority or obligations under the Public Utilities Act, including to require that all charges be just  
13 and reasonable and that each electrical corporation demonstrate to the commission that all costs  
14 that the electrical corporation seeks to recover from customers through a rate approved by the  
15 commission have been reasonably and prudently incurred.

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

**PROPONENT:** Bay Area Lawyers for Individual Freedom

### **STATEMENT OF REASONS**

The Problem: Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations. Existing law authorizes the commission to establish rules for all public utilities, subject to control by the Legislature. Existing law authorizes the commission to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable. Existing law prohibits a gas corporation from recovering any fine or penalty in any rate approved by the commission.

The Solution: This bill would prohibit an electrical corporation from recovering through a rate approved by the commission an uninsured expense resulting from damages caused by the electrical corporation, or its agent's, commission-regulated facility if the commission determines that the electrical corporation, or its agent, did not reasonably construct, maintain, manage, control, or operate the facility.

### **IMPACT STATEMENT**

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

### **CURRENT AND PRIOR LEGISLATION**

Identical to SB 819 introduced on January 3, 2018.

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