RESOLUTION 03-01-2019

DIGEST
Schools: Elementary Schools to Provide Feminine Hygiene Products
Amends Education Code section 35292.6 to include grades 3 through 6 in the requirement that elementary schools provide feminine hygiene products.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Education Code section 35292.6 to include grades 3 through 6 in the requirement that elementary schools provide feminine hygiene products. This resolution should be approved in principle because girls who start their menstrual cycles in grades 3 through 6 need access to feminine hygiene products just as much as girls who start their menstrual cycles at an older age.

Under current law, schools with grades 6 through 12 that meet a pupil poverty threshold are required to stock at least 50 percent of the school's restrooms with feminine hygiene products. However, many girls start their menstrual cycle before they reach the sixth grade. (Ed. Code, § 35292.6.) Under current law, those girls do not have the same access to feminine hygiene products as their older peers.

According to a study by the American Academy of Pediatrics, approximately 10 percent of girls start their menstrual cycles by age 11, with 10 percent of Non-Hispanic black and Mexican American girls starting their menstrual cycles before they turn 11. (William Cameron Chumlea, et al., *Age at Menarche and Racial Comparisons in US Girls,* 111 Pediatrics, 110, 111 (2003).) Like their older peers, these girls also need feminine hygiene products for their health, well-being, and full participation in school.

When enacting the current statute, Education Code section 35292.6, California's Legislature acknowledged that inadequate menstrual hygiene management is associated with both health and psycho-social issues, particularly among low-income women, and that it negatively impacts girls' attendance in school. (Sen. Rules Committee, Third Reading, Assem. Bill No. 10, 2017-2018 Reg. Sess., Sept. 4, 2017.)

This resolution promotes the purpose of the current Education Code section 35292.6, which was to ensure that feminine hygiene products are available to all students who menstruate. (Sen. Rules Committee, Third Reading, Assem. Bill No. 10, 2017-2018 Reg. Sess., Sept. 4, 2017.) Because the concerns and goals of the current law apply equally to girls who menstruate in grades 3 through 6, this resolution should be approved in principle.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Education Code Section 35292.6, to read as follows:

§35292.6

(a) A public school maintaining any combination of classes from grade ~~6~~ 3 to grade 12, inclusive, that meets the 40-percent pupil poverty threshold required to operate a schoolwide program pursuant to Section 6314(a)(1)(A) of Title 20 of the United States Code shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.

(b) A public school described in subdivision (a) shall not charge for any menstrual products provided to pupils, including, but not limited to, feminine hygiene products.

(c) For purposes of this section, "feminine hygiene products" means tampons and sanitary napkins for use in connection with the menstrual cycle.

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

PROPONENT: Women Lawyers of Sacramento

STATEMENT OF REASONS

The Problem: Existing law requires elementary school grades 6 through 12 that meet certain requirements to provide feminine hygiene products. However, a study published by the American Academy of Pediatrics shows that approximately 10% of young girls will have their first period, or menarche, by 11 years old. William Cameron Chumlea, et al., Age at Menarche and Racial Comparisons in US Girls, 111 PEDIATRICS, 110, 110-113 (2003). Moreover, socioeconomic status has been found to play a factor in early age at menarche, making the need for access to feminine hygiene products in high poverty elementary schools even more significant. Feminine hygiene products are a necessity for the health, well-being, and full participation for those who menstruate. No person who menstruates should ever need to worry about access to tampons or sanitary pads, especially not the youngest and most vulnerable subset of our population.

The Solution: Amend Education Code section 35292.6 to require public schools teaching grade 3 and above (rather than grade 6 and above as currently provided), and which meet specific pupil poverty thresholds, to provide feminine hygiene products in at least 50 percent of the school's restrooms. The amendment will ensure that children who experience menses at a young age have access to necessary hygiene products.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

AB-10 Feminine hygiene products: public school restrooms. (2017-2018).

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RESPONSIBLE FLOOR DELEGATE: Amy O'Neill and/or Ariana Van Alstine.

RESOLUTION 03-02-2019

DIGEST
School Districts: Mandatory Automated External Defibrillators at Interscholastic Pool Areas
Amends Education Code section 35179.6 to require a school district or charter school with an on-site swimming pool as specified to acquire an AED unit for the pool area.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
Similar to 10-03-2016, which was approved in principle.

Reasons:
This resolution would amend Education Code section 35179.6 to require a school district or charter school with an on-site swimming pool as specified to acquire an AED unit for the pool area. This resolution should be disapproved because it is repetitive of existing law that only came into effect in July 2019 and therefore has not yet demonstrated a need, lifesaving measures such as chest compressions are the primary source of temporary relief in the case of most drownings, and the costs to the school districts would be significant.

Current law requires a school district or charter school that elects to offer interscholastic athletic programs to acquire at least one automated external defibrillator ("AED") for each school within the district or charter school. Additionally, districts and charter schools are encouraged to ensure that the AED units are available for the purpose of rendering emergency care or treatment within a recommended three to five minutes of sudden cardiac arrest to pupils, spectators, and other individuals present at athletic events. (See Ed. Code, § 35179.6, subd. (b)(1).)

This resolution states that if a school district or charter school has an on-site swimming pool and elects to offer any interscholastic aquatics athletic program, the school district or the charter school shall acquire an AED unit for the swimming pool area.

The statement of reasons for this resolution acknowledges that it is repetitive of current law by stating that the proposed requirement for an AED unit designated for the swimming pool area is "in addition to the requirement in section 35179.6(b)(1)." The statement of reasons also accurately recognizes current law including the fact that a recently enacted provision requires the availability of an AED as described above as well as when a public swimming pool charges a direct fee to access/use the aquatic facilities. (Ed. Code, § 35179.6; added by Stats. 2018, Ch. 646, § 2. (AB 2009) Effective January 1, 2019.) As such, the resolution fails to explain the need for the stricter, swimming pool area-specific requirement for an AED.

Additionally, the Centers for Disease Control states that drowning, not cardiac arrest, is a leading cause of death for children between one and 14 years old. This resolution does not address that issue. Also, using AEDs in wet environments requires specialized skill because the electric shock of an AED on a wet body could result in death. Finally, the resolution provides no cost-

benefit analysis for the addition of a pool-area specific AED requirement, which would be a fiscal burden on schools and school districts.

For these reasons, this resolution should be disapproved.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Education Code section 35179.6, to read as follows:

§35179.6

(a) For purposes of this section, an "AED" is an automated external defibrillator.

(b)(1) Commencing July 1, 2019, if a school district or charter school elects to offer any interscholastic athletic program, the school district or the charter school shall acquire at least one AED for each school within the school district or the charter school. The school district or the charter school is encouraged to ensure that the AED or AEDs are available for the purpose of rendering emergency care or treatment within a recommended three to five minutes of sudden cardiac arrest to pupils, spectators, and any other individuals in attendance at the athletic program's on campus activities or events and shall ensure that the AED or AEDs are available to athletic trainers and coaches and authorized persons at these activities or events.

(2) Commencing July 1, 2020, if a school district or charter school has an on-site swimming pool and elects to offer any interscholastic aquatics athletic program, the school district or the charter school shall acquire an AED unit for the swimming pool area. This requirement is in addition to the requirement in section 35179.6(b)(1).

(c) Subdivision (b) of Section 49417 shall apply for the purposes of determining whether an employee of a school district is liable for any civil damages resulting from his or her use, attempted use, or nonuse of an AED in the rendering of emergency care or treatment pursuant to this section.

(d) Subdivision (c) of Section 49417 shall apply for the purposes of determining whether a public school or school district is liable for any civil damages resulting from any act or omission in the rendering of emergency care or treatment pursuant to this section.

(e) Except as provided in subdivision (g), if an employee of a charter school complies with Section 1714.21 of the Civil Code in rendering emergency care or treatment through the use, attempted use, or nonuse of an AED at the scene of an emergency, the employee shall not be liable for any civil damages resulting from any act or omission in the rendering of the emergency care or treatment.

(f) Except as provided in subdivision (g), if a charter school complies with the requirements of Section 1797.196 of the Health and Safety Code, the charter school shall be covered by Section 1714.21 of the Civil Code and shall not be liable for any civil damages resulting from any act or omission in the rendering of the emergency care or treatment.

(g) Subdivisions (e) and (f) do not apply in the case of personal injury or wrongful death that results from gross negligence or willful or wanton misconduct on the part of the person who uses, attempts to use, or fails to use an AED to render emergency care or treatment.

(h) In order to ensure public safety, each school district or charter school that elects to offer any interscholastic athletic program shall ensure that its AED or AEDs are maintained and

regularly tested according to the operation and maintenance guidelines set forth by the manufacturer, the American Heart Association, or the American Red Cross, and according to any applicable rules and regulations set forth by the governmental authority under the federal Food and Drug Administration and any other applicable state and federal authority.

(i) This section does not alter the requirements of Section 1797.196 of the Health and Safety Code.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: Commencing January 1, 2019, public swimming pools that charge a "direct fee" must provide an AED unit at the pool. However, if a high school or charter school has a swimming pool and does not make the pool available to the public through a program to charge a "direct fee," then the high school or charter school with a swimming pool is not required to provide an AED unit at the swimming pool.

California does not require aquatics coaches for interscholastic athletics to be certified Lifeguards. For example, California only "emphasizes" that such coaches to be CPR certified. *See* Education Code section 35179.1(c)(6). In addition, California only requires teachers to take a CPR course one time - before receiving a teaching credential. *See* Education Code section 44259(c)(4)(A). Although CPR certifications expire after two years, most California teachers are not required to renew the training.

As a result, if a student is a drowning victim during an interscholastic athletics practice or competition (or during a swim PE class) and if there is no AED unit available at the pool, then there is a low probability that the untrained bystanders will be able to save the student's life.

The Solution: This resolution will require all high schools or charter schools that participate in interscholastic athletic aquatics programs to provide an AED unit at the pool. For example, if the school participates in interscholastic athletics, then Education Code section 35179.6(a)(1) requires the school to provide at least one AED unit. This resolution would require schools that participate in interscholastic athletics and that have swimming pools to provide a second AED unit in the pool area. As a result, if an AED unit is required for interscholastic athletics in aquatics, then it will also be available for aquatics PE classes during the school day.

CURRENT OR PRIOR RELATED LEGISLATION

AB 2009 (Maienschein, 2018), added Education Code section 35179.6, to require all school districts or charter schools to provide at least one AED unit for each school that participates in any interscholastic athletics program.

AB 1766 (Maienschein, 2018), to require public swimming pools that charge a "direct fee" to provide an AED unit. In addition, AB 1766 requires the State Department of Education, in

consultation with the State Department of Public Health to "issue best practices guidelines related to pool safety at K-12 schools." *See* Health and Safety Code section 116046(a).

AB 2217 (Melendez, 2014) added Education Code section 49417, to allow K-12 schools to solicit funds in order to implement AED programs.

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

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RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 03-03-2019

DIGEST
Child Neglect: Permitting Children More Freedom to Act Unsupervised
Amends Penal Code section 273a and Welfare and Institutions Code section 300.4 to limit parental liability for children engaging in certain activities without being supervised.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Penal Code section 273a and Welfare and Institutions Code section 300.4 to limit parental liability for children engaging in certain activities without being supervised. This resolution should be disapproved because it is an overly broad solution to a problem that is not shown to exist except anecdotally, would limit the discretion of judges deciding dependency and other issues, and would have the unintended consequence of making children less safe.

Under current law, a person may be found guilty of child endangerment regardless of their intent, so long as it is shown they willingly committed an act or omission. (*People v. Odom* (1991) 226 Cal.App.3d 1028, 1032.) However, the prosecution must show the person acted with "criminal negligence," which requires "'a reckless, gross or culpable departure from the ordinary standard of due care; it must be such a departure from what would be the conduct of an ordinarily prudent person under the same circumstances as to be incompatible with a proper regard for human life.'" (*Ibid*., citing *People v. Peabody* (1975) 46 Cal.App.3d 43, 48-49.) Except for limited anecdotal evidence, it does not appear that current law is being abused by the State.

The resolution is also overbroad. While it is consistent with the age limit in Vehicle Code section 15620, subdivision (a), by adding time and temperature restrictions, it ignores, by implication, other dangers of leaving a child in a car alone. A child as young as two can release the brake or put the car in gear, letting the car roll into traffic or pedestrians. He or she can open or close a window, causing a head or arm to be crushed. Even a belted child can undo the restraint, open a door, get out, and wander off. (See *Unsupervised Children in Vehicles: A Risk for Pediatric Trauma*, American Academy of Pediatrics (1991); see also www.KidsandCars.org/how-kids-get-hurt.)

Similarly, while California has no regulation or law about when a child is considered old enough to stay home alone, most experts suggest this is ill-advised prior to 10 to 12 years of age. (See, e.g., FAQ, Safekids.org.) The same limitation is recommended for allowing a child to walk alone to school, particularly where there are streets that must be crossed. (See, e.g., www.healthychildren.org/English/safety-prevention/on-the-go/Pages/Safety-on-the-Way-to-School.aspx.) This is because younger children are more impulsive and less cautious around traffic, and they often do not understand other potential dangers they could come across.

The resolution contains drafting problems as well. The reference to Welfare and Institutions Code section 300, subdivision (b)(3), cites a statute that does not exist. Presumably it meant to cite to Welfare and Institutions Code section 300.4. Also, the term "sufficient capacity" to modify the age limitation is not defined. In other contexts, "sufficient capacity" is a standard that gives rise to arguments as to its application.

While parental neglect may be a problem, the resolution's creation of a bright line definition is not a solution. It seeks to protect parents when it is the safety of children that is the purpose of the law. The existing totality-of-circumstances standard is more reasonable, allowing prosecutors and bench officers sufficient latitude to determine when a child has been endangered.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend the Penal Code section 273a, and Welfare & Institutions Code section 300.4, to read as follows:

§273a

(a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

(c) An act of a parent, custodian, guardian, or foster parent described under Cal. Welf. & Inst. Code § 300(b)(3), is not a criminal offense.

~~(c)~~ (d) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 48 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3)(A) Successful completion of no less than one year of a child abuser's treatment counseling program approved by the probation department. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(B) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

§300.4

A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. For purposes of this subdivision, “serious physical harm” does not include reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury.

(b)(1) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. A child shall not be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(2) The Legislature finds and declares that a child who is sexually trafficked, as described in Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children.

(3) A child shall not be found to be a person described by this subdivision solely due to a parent, custodian, guardian, or foster parent's act of permitting his/her child to perform the following actions, unsupervised, if the child is seven years old or older and of sufficient capacity:

(A) Travel to and from school including without limitation traveling by walking, running, bicycling, school bus, and public transportation;

(B) Engage in outdoor play;

(C) Remain for less than fifteen (15) minutes in a vehicle if the temperature inside the vehicle is not, nor will not become, dangerously hot or cold; or

(D) Remain at a residence, alone, before and after school if the parent, custodian, guardian, or foster parent: (i) returns to that residence on the same day on which the parent, custodian, guardian, or foster parent gives the child permission to remain at the residence, alone; (ii) makes provisions for the child to be able to contact the parent, custodian, guardian, or foster parent from that residence; and (iii) makes provisions for any reasonably foreseeable emergencies that may arise on the same day on which the parent, custodian, guardian, or foster parent gives the child permission to remain at the residence, alone.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. A child shall not be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child shall not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (g) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that this section not disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, this section is not intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control. The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent.

As used in this section, “guardian” means the legal guardian of the child.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: It should not be a crime for parents to let their children play unsupervised in a park or walk home from school. But in many states, including California, it is. On a cool March afternoon Kim Brooks drove to the mall for an errand. But when she arrived her four-year old son did not want to get out of the car. “Come on” said Ms. Brooks.

“No, no, no! I wait here,” replied the boy.

So Ms. Brooks locked the car doors and left her son to his videogame. Five minutes later, mother was back, and the two of them drove away. But not before a concerned citizen called 911. Shortly thereafter a warrant was issued for Ms. Brooks arrest. This story is not unique. *See* Kim Brooks, *Motherhood in the Age of Reason*, The New York Times, (July 27, 2018), https://www.nytimes.com/2018/07/27/opinion/sunday/motherhood-in-the-age-of-fear.html?module=inline.

In 2014, Debra Harrell was charged with unlawful neglect of a child; her daughter was put in foster care for about two weeks because Ms. Harell let her 9-year-old daughter play in a park.

When Danielle and Alexander Meitiv let their children — then ages 10 and 6 — walk home from Silver Spring’s Ellsworth Park in Maryland, the kids were picked up by the police and held by CPS for more than five hours. Then the authorities opened a neglect investigation for months, threatening to take the children away.

Today, only 13 percent of U.S. children walk to school. One study found that only 6 percent of kids age 9-13 play outside in a given week. The American Academy of Pediatrics determined that a lack of unstructured playtime causes depression and anxiety in children. A Stanford School of Medicine study found that kids who miss out on free, unsupervised play also miss out on cognitive, physical, social, and emotional development and well-being as well as self-regulation, empathy, and group management skills. Most health organizations directly link the growing childhood obesity crisis to a lack of independent outdoor play. It’s scary to imagine, but the Alliance for Childhood, a play advocacy group, notes that children ages 10 to 16 now spend just 12.6 minutes per day in vigorous physical activity and an average of 10.4 waking hours each day relatively motionless.

One writer notes: “on top of all of the above, many kids I meet today are just plain terrified of everything, from riding the bus alone to walking to the corner store to meeting a new person. […] It’s fine to want to protect your child, but sheltering them from every single scrape and problem has far reaching implications that will affect their whole life.” Jennifer Chait, *The Convincing Case for Sending Your Kids Outside to Play Alone*, Inhabitots (Apr. 19, 2013), https://inhabitat.com/inhabitots/the-convincing-case-for-sending-your-kids-outside-to-play-alone/.

The Solution: Children are not necessarily served by overprotective laws. The proposed language represents a reasonable modification to laws that currently punish parents for allowing their children to ambulate and play independent of supervision.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None.

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RESPONSIBLE FLOOR DELEGATE: B. Douglas Robbins

RESOLUTION 03-04-2019

DIGEST
Water Code: Ban Use of Oxybenzone and Octinoxate
Adds Water Code section 86000 to ban the use of oxybenzone and octinoxate in sunscreen to preserve reef, ocean, and fresh water wildlife.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution adds Water Code section 86000 to ban the use of oxybenzone and octinoxate in sunscreen to preserve reef, ocean, and fresh water wildlife. This resolution should be approved in principle because the effect of these two compounds on the coral reefs in California and around the world is one of growing concern.

Hawaii and Key West, Florida are among the United States locations that have adopted legislation similar to the proposed addition to the Water Code. Other locations around the world have also adopted such bans. There is substantial debate in the scientific community regarding the effect these compounds have on coral reefs. On the one hand, there are several studies which indicate that these compounds cause coral bleaching and coral death. (See, e.g., Danovaro, et al., *Sunscreens Cause Coral Bleaching by Promoting Viral Infections* (Apr. 2008) 116(4) Environmental Health Perspectives, pp. 441-447.) On the other hand, the validity of these studies has been questioned in the scientific community, including criticism that the studies had no proper internal controls, are the result of small or single-sample testing, and utilize large amounts of these sunscreen compounds in direct contact with the coral as opposed to being dispersed in water. (See, e.g., Hughes, *There's Insufficient Evidence Your Sunscreen Harms Coral Reefs* (Feb. 5, 2019) <https://phys.org/news/2019-02-insufficient-evidence-sunscreen-coral-reefs.html>.) Other recent studies indicate that other compounds (for example, zinc oxide or titanium dioxide) in sunscreen also cause coral bleaching and reef death. Other studies indicate that it is not sunscreen at all, but rather climate change, that is the source of coral bleaching and reef death. (National Oceanic and Atmospheric Association, *Coral Reefs: One of Earth's Most Diverse Ecosystems* (Apr. 14, 2016) <https://www.noaa.gov/explainers/coral-reefs-essential-and-threatened>.)

Sunscreens are an effective method for blocking ultraviolet rays that have a direct and proven correlation to skin cancer. (Stiler, et al., *Update About the Effects of the Sunscreen Ingredients Oxybenzone and Octinoxate on Humans and the Environment* (Oct. 2018) 38(4) Plastic Surgical Nursing, 158-161.) About 90 percent of nonmelanoma skin cancers are associated with exposure to ultraviolet (UV) radiation from the sun. (Koh HK, Geller AC, Miller DR, et al., *Prevention and Early Detection Strategies for Melanoma and Skin Cancer: Current Status* (1996); 132(4) Archives of Dermatology, 436-442.) Nonetheless, even a cursory search of the open market reveals that there are numerous sunscreen products that do not contain oxybenzone and

octinoxate that are at least partially effective against UV radiation. In addition, there are other non-chemical methods of preventing harmful exposure to the sun, including UV protective clothing and hats. Therefore, eliminating sunscreens containing chemicals which studies indicate negatively impact coral reefs and wildlife, would not pose an undue hardship or risk for humans.

This resolution is nearly identical to Assembly Bill No. 60 (2019-2020 Sess.) as introduced on December 3, 2018. However, once it became clear that alternative sunscreen products approved by the FDA were limited to only five compounds, the bill was amended to remove the language that would ban oxybenzone and octinoxate.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add section 86000 to the Water Code, to read as follows:

§86000

(a) Beginning January 1, 2021, it shall be unlawful to sell, offer for sale, or distribute for sale in the State any sunscreen that contains oxybenzone or octinoxate, or both, without a prescription issued by a licensed healthcare provider.

(b) No county shall enact any ordinance or regulatory restriction to prohibit the sale, use, labeling, packaging, handling, distribution, or advertisement of sunscreens containing oxybenzone or octinoxate, or both, prior to January 1, 2021.

(c) For purposes of this section:

"Licensed healthcare provider" means a physician or osteopathic physician licensed to California code or an advanced practice registered nurse licensed pursuant to California code.

"Octinoxate" refers to the chemical (RS)-2-Ethylhexyl (2E)-3-(4-methoxyphenyl)prop-2-enoate under the International Union of Pure and Applied Chemistry chemical nomenclature registry; that has a chemical abstract service registry number 5466-77-3; the synonyms of which include but are not limited to ethylhexyl methoxycinnamate, octyl methoxycinnamate, Eusolex 2292, Neo Heliopan AV, NSC 26466, Parsol MOX, Parsol MCX, and Uvinul MC80; and is intended to be used as protection against ultraviolet light radiation with a spectrum wavelength from 370 nanometers to 220 nanometers in a sunscreen.

"Oxybenzone" refers to the chemical (2-Hydroxy-4-methoxyphenyl)-phenylmethanone under the International Union of Pure and Applied Chemistry chemical nomenclature registry; that has a chemical abstract service registry number 131-57-7; the synonyms of which include but are not limited to benzophenone-3, Escalol 567, Eusolex 4360, KAHSCREEN BZ-3, Uvasorb MET/C, Syntase 62, UV 9, Uvinul 9, Uvinul M-40, Uvistat 24, USAF Cy-9, Uniphenone-3U, 4-methoxy-2-hydroxybenzophenone and Milestab 9; and is intended to be used as protection against ultraviolet light radiation with a spectrum wavelength from 370 nanometers to 220 nanometers in a sunscreen.

"Prescription" means an order for medication, that is dispensed to or for an ultimate user. "Prescription" shall not include an order for medication that is dispensed for immediate administration to the ultimate user, such as a chart order to dispense a drug to a bed patient for immediate administration in a hospital. "Prescription" includes an order for a sunscreen.

"Sunscreen" means a product marketed or intended for topical use to prevent sunburn. Sunscreen does not include products marketed or intended for use as a cosmetic, as defined in section 328-1, for the face."

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

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

The Problem: The purple hydrocoral is a vibrant violet hue coral that is found along the Pacific Coast from Northern California to central Baja California. Two chemicals contained in many sunscreens, oxybenzone and octinoxate, have significant harmful impacts on California's marine environment and residing ecosystems. This coral plays a critical role in protecting California's shoreline. Oxybenzone and octinoxate cause mortality in developing coral; increase coral bleaching-a condition that leaves coral vulnerable to infection and prevents it from getting the nutrients it needs to survive-as well as DNA damage, and abnormalities in their growth and skeleton. These chemicals have also been shown to degrade corals' resiliency and ability to adjust to climate change factors and inhibit recruitment of new corals. Oxybenzone and octinoxate appear to increase the probability of endocrine disruption in wildlife. The chemicals also induce deformities in the embryonic development of fish, sea urchins, coral, and shrimp, and induce neurological behavioral changes in fish that threaten the continuity of fish populations. In addition, species that are listed on the federal Endangered Species Act, including sea turtle species, marine mammals, and migratory birds, may be exposed #W@$to oxybenzone and octinoxate contamination.

The Solution: This resolution prohibits the use oxybenzone and octinoxate in all sunscreen products and will ensure that Californians or those visiting California do not pollute and destroy sensitive habitats including the ocean, streams, and lakes. There is no doubt to the benefits of sunscreen in the mitigation of skin cancer. Plus, there are over 3,400 ocean-friendly sunscreens on the market that use natural ingredients and do not contain oxybenzone or octinoxate.

Swimming and other water activities cause these chemicals to pollute California's water unless they are actively mitigated. Sewage contamination of these chemicals on coastal and fresh waters are not removed by the State's wastewater treatment system. Oxybenzone and octinoxate are also discharged to the ground and surface waters from cesspools, leaking septic systems, and municipal wastewater collection and treatment systems.

Studies done in Hawaii's Hanauma Bay revealed that the 2,600 average visitors deposited about 412 pounds of sunscreen into the water every day. The damaging effects of sunscreen can occur in concentrations as low as 62 parts per trillion, which is equivalent to one drop of oxybenzone in six Olympic-sized swimming pools. To deal with this problem Hawaii and Key West have enacted legislation to ban these two ingredients.

This resolution solves the problem of environmental contamination caused by oxybenzone and octinoxate which persists in coastal and fresh waters, and ensures the protection of our sensitive ecosystems.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
There is no current or prior related legislation in California. The text of this resolution mirrors Hawaii Senate Bill 2570 which was signed into law in 2018.

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COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS

SDCBA

The SDCBA Delegation recommends Disapproval of Resolution 03-04-2019. The problem here is not the proposal itself, but the germaneness of it. We are not the Conference of California Marine Biologists or Conference of California Chemists. As a Conference, we have often gone with a broad interpretation of germaneness to the legal profession, and our delegation supports that. However, when it gets to where we would need to ask experts in a field, that is where we draw the line. This proposal might be a very good one, but lawyers are ill equipped to properly evaluate its potential merit. The resolution should be proposed by scientists, not lawyers.

RESOLUTION 03-05-2019

DIGEST
Environment: Use of Plastic Newspaper Bags
Amends Public Resources Code section 42280 and adds section 42289 regarding the use of plastic newspaper bags.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Public Resources Code section 42280 and adds section 42289 regarding the use of plastic newspaper bags. This resolution should be disapproved because the proposed language does not actually require or prohibit any specific acts.

California was the first state to pass legislation imposing a statewide ban on single-use plastic bags. Newspaper bags were not included. In 2019, New York passed Senate Bill 1508, which bans certain types of single use plastic bags. New York's law, which goes into effect March 2020, will apply to most single-use plastic bags provided by grocery stores and other retailers. Exempt from the ban in that legislation are bags distributed at the meat/deli counter, newspaper bags, trash bags, garment bags, bags provided by a pharmacy for prescription drugs, and restaurant takeout bags.

While banning or restricting the use of plastic newspaper bags may have merit, the language proposed in this resolution does not do either. The proposed statutory language summarizes media reports on the amount of waste resulting from plastic newspaper bags, states the environmental impact from such bags, and provides that to combat that waste "this resolution would limit newspapers in California cities to using newspaper bags only on inclement weather days." It further provides that an exception for Sunday newspapers "would allow" the use of plastic newspaper bags on Sundays.

The proposed statutory language does not actually prohibit California cities from using newspaper bags, plastic or otherwise, does not define what constitutes "inclement weather" days, is limited to "cities" (suggesting that areas outside of city limits are subject to different requirements), and does not actually make an exception for Sunday newspapers. Without such language, the resolution would not have any actual effect, and would not be enforceable. While single-use plastics do greatly contribute to waste and environmental problems, clear statutory revisions would be more effective for solving those problems.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Public Resources Code section 42280 and add new Article 7 and section 42289 to read as follows:

§42280

(a) "Department" means the Department of Resources Recycling and Recovery.

(b) “Postconsumer recycled material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(c) “Recycled paper bag” means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:

(1) (A) Except as provided in subparagraph (B), contains a minimum of 40 percent postconsumer recycled materials.

(B) An eight pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled material.

(2) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the state.

(3) Has printed on the bag the name of the manufacturer, the country where the bag was manufactured, and the minimum percentage of postconsumer content.

(d) “Reusable grocery bag” means a bag that is provided by a store to a customer at the point of sale that meets the requirements of Section 42281.

(e) (1) “Reusable grocery bag producer” means a person or entity that does any of the following:

(A) Manufactures reusable grocery bags for sale or distribution to a store.

(B) Imports reusable grocery bags into this state, for sale or distribution to a store.

(C) Sells or distributes reusable bags to a store.

(2) “Reusable grocery bag producer” does not include a store, with regard to a reusable grocery bag for which there is a manufacturer or importer, as specified in subparagraph (A) or (B) of paragraph (1).

(f) (1) “Single-use carryout bag” means a bag made of plastic, paper, or other material that is provided by a store to a customer at the point of sale and that is not a recycled paper bag or a reusable grocery bag that meets the requirements of Section 42281.

(2) A single-use carryout bag does not include either of the following:

(A) A bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code to a customer purchasing a prescription medication.

(B) A nonhandled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag, a reusable grocery bag, or a compostable plastic bag.

(C) A bag provided to contain an unwrapped food item.

(D) A nonhandled bag that is designed to be placed over articles of clothing on a hanger.

(g) “Store” means a retail establishment that meets any of the following requirements:

(1) A full-line, self-service retail store with gross annual sales of two million dollars ($2,000,000) or more that sells a line of dry groceries, canned goods, or nonfood items, and some perishable items.

(2) Has at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

(3) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of a limited line of goods, generally including milk, bread, soda, and snack foods, and that holds a Type 20 or Type 21 license issued by the Department of Alcoholic Beverage Control.

(4) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of goods intended to be consumed off the premises, and that holds a Type 20 or Type 21 license issued by the Department of Alcoholic Beverage Control.

(5) Is not otherwise subject to paragraph (1), (2), (3), or (4), if the retail establishment voluntarily agrees to comply with the requirements imposed upon a store pursuant to this chapter, irrevocably notifies the department of its intent to comply with the requirements imposed upon a store pursuant to this chapter, and complies with the requirements established pursuant to Section 42284.

(h) "Plastic Newspaper Bag" means any plastic bag used to vend a daily newspaper.

Article 7, § 42289 [Plastic Newspaper Bag Ban]

(a) Plastic newspaper bags, used in California cities, contribute to a large amount of plastic waste every day, no matter whatever weather calls for their use or not. This waste for an example newspaper's daily circulation, in 2019, The San Francisco Chronicle, amounts to 2000 pounds / 1 ton per day, based on an average calculation of 80 bags = 1 oz, 1280 bags = 1 lb. Adding another reference city, Los Angeles, where the LA Times has a circulation 4 times as much as the San Francisco Chronicle, this would bring the total plastic bag waste to 5 tons per day for just two California cities.

(b) Often as much these bags end up in either in ever-expanding landfills, or in the Pacific Ocean, where this waste breaks down and becomes an attractive nuisance to wildlife, who die in vast numbers by ingesting this type of waste.

(c) In order to combat this type of wastage, this resolution would limit newspapers in California cities to using newspaper bags only on inclement weather days. No bags would be deployed unless weather conditions called for it (ie, rain or snow).

(d) An exception for Sunday newspapers would allow for plastic newspaper bag usage on all Sundays of the year, no matter what the weather is, because of the multi-part sections involved.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem**:** Plastic newspaper bags, used in California cities, contribute to a large amount of plastic waste every day, no matter whatever weather calls for their use or not. This waste for an example newspaper's daily circulation, in 2019, The San Francisco Chronicle, amounts to 2000 pounds / 1 ton per day, based on an average calculation of 80 bags = 1 oz, 1280 bags = 1 lb. Adding another reference city, Los Angeles, where the LA Times has a circulation 4 times as much as the San Francisco Chronicle, this would bring the total plastic bag waste to 5 tons per day for just two California cities.

Often as much these bags end up in either in ever-expanding landfills, or in the Pacific Ocean, where this waste breaks down and becomes an attractive nuisance to wildlife, who die in vast numbers by ingesting this type of waste.

The Solution: In order to combat this type of wastage, this resolution would limit newspapers in California cities to using newspaper bags only on inclement weather days. No bags would be deployed unless weather conditions called for it (i.e., rain or snow).

An exception for Sunday newspapers would allow for plastic newspaper bag usage on all Sundays of the year, no matter what the weather is, because of the multi-part sections involved.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS

SDCBA

The SDCBA Delegation recommends Disapproval of Resolution 03-05-2019 as currently written. While there is merit to banning plastic bags in relation to grocery shopping because the usefulness of plastic bags is minimal compared to the environmentally conscious alternative of recyclable paper bags and reusable bags, the same rationale does not hold in relation to newspaper products delivered to homes. Plastic bags serve to protect newspapers from water damage from sprinkler systems and weather.

The SDCBA Delegation recognizes that the proponent attempts to allow an exception to the ban on plastic bags for newspaper products during days of inclement weather. However, that only provides protection against water damage from inclement weather. It fails to recognize that the greatest threat to newspaper products delivered to the home comes from sprinkler systems.

The SDCBA Delegation would likely support this resolution if it were amended to provide an opt-in provision. Thus, those newspaper customers who want to be environmentally conscious and those who are unlikely to have newspapers damaged by sprinkler systems can opt-in to the plastic bag ban.

RESOLUTION 03-06-2019

DIGEST

Hospitals: Requirement of Estimated Cost of Services

Amends Health and Safety Code section 1339.585 to require hospitals to provide patients with the estimated cost of anticipated services.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 05-08-2016, which was approved in principle.

Reasons:

This resolution amends Health and Safety Code section 1339.585 to require hospitals to provide patients with the estimated cost of anticipated services. This resolution should be approved in principle because it ensures that uninsured patients receive critical information they need to make informed decisions about their treatment and minimize the prospect of surprise billing.

Under current law, hospitals are already required to provide cost information to patients, if the patients do not have health insurance and request the information. The resolution shifts the burden from patients who are sick, injured, vulnerable and seeking medical care, to hospitals who already know that their uninsured patients are entitled to this information. Under this resolution hospitals would have to provide cost information to patients upon notice of admission, planned or immediate, to the hospital, rather than waiting for the patient to ask.

A 2010 study suggests that since this statute took effect in 2006, the letter and spirit of the provision has not been regularly or meaningfully achieved.
(See https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2837489/.) The proposed amendment provides cost protection, and enforcement teeth, for this vulnerable population of patients. It caps billing to no greater than five percent of the quoted estimate for the anticipated services and costs. The resolution further enhances this important health care statute by providing the uninsured patient necessary information up-front for decision-making, a meaningful option to shop for care and vet alternate resources, an opportunity to negotiate fair and reasonable reimbursement for the anticipated hospital services and costs, and preventing price discrimination of uninsured patients along with surprise billing. At the same time, the resolution allows that the imposed limitation shall not apply to health care services, procedures or supplies incurred which were not anticipated when the estimate was provided, properly allowing for changes or unexpected complications which may occur in the course of providing the intended care.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Health & Safety Code section 1339.585 as follows:

§1339.585

~~Upon the request of a person without health insurance, a~~ A hospital shall provide the person without health insurance with a written estimate of the amount the hospital will require the person to pay for the health care services, procedures and supplies that are reasonably expected to be provided to the person by the hospital, based upon an average length of stay and services provided for the person's diagnosis The hospital may provide this estimate during normal business office hours, but as soon as practicable after the person is admitted or the hospital has knowledge the person will be admitted. The hospital may not charge the person an amount in excess of the estimate plus five percent of the estimated amount, except for health care services, procedures and supplies provided to the person but not anticipated when the estimate was provided to the person. In addition to the estimate, the hospital shall provide information about its financial assistance and charity care policies and contact information for a hospital employee or office from which the person may obtain further information about these policies. If requested, the hospital shall also provide the person with an application form for financial assistance or charity care. This section shall not apply to emergency services provided to a person pursuant to Section 1317.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: People without healthcare insurance are at the mercy of hospitals when they receive healthcare at a hospital in terms of billing policies. Hospitals generally do not post their prices where they can be readily obtained by patients or prospective patients, and in any event, such a positing would probably be of little value because of the vast number of services and supplies a hospital provides; and, because of the technical terminology, it would be hard for a patient to wade through such a long list to find his, her or their procedures, etc. In addition, prices vary widely from hospital to hospital. Most patients do not have the opportunity to shop for hospital care, but a few do, and those who do not should not be caught by surprise by bills way beyond their expectations of the cost. Medical care is probably the only area where people have no concept of the prices for the services or supplies they are purchasing

The Solution: Health & Safety Code section1339.585 already requires hospital to provide patients without healthcare insurance an estimate of the cost of the services they will receive. but only upon request of the patient, and few people probably know they have this right. In addition, the statute has no teeth, because nothing limits the patient's ultimate bill to the estimate or anything close to it. The proposed amendments would require the hospital to provide the estimate, whether or not requested, and limit the patient's bill for the estimated service to the estimate amount plus five percent. Under the proposed amendments uninsured patients would not only have advanced information about the estimated cost of their hospital stay but assurance their ultimate bills will be within the range of the estimates they receive. This is little comfort for an uninsured person who requires hospitalization, but some improvement over the current blind hospital pricing procedures.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule.

CURRENT OR RELATED LEGISLATION
None known.

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COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS

BANSDC

This resolution should be disapproved because it assumes the existence of transparency and consistency in the pricing of services and supplies in the medical facilities to which it is intended to apply. Everyone knows that if you present yourself for medical treatment at a hospital in anything close to an emergency situation, they have to treat you. Complications in the treatment of a patient for a condition cannot always be anticipated, in contrast, for example to a car, where the mechanic knows going in what labor will be required and how much the parts cost. Because of this uncertainty, the ultimate question of how, whether, and how much the facility is going to be paid in virtually every case remains open until well after the patient has received the treatment. The only thing the medical facility would be able to do is give a "ball park" estimate anticipated costs, factoring in a markup to account for the collectability question. This would likely result in a situation that would discourage patients from obtaining necessary treatment for any condition that is not acute enough to be life threatening. In addition, even if such estimate were to be provided, the question of the nature and extent of charges for unanticipated complications would be left open. In that situation, the patient would still be unable to make a fully informed decision. Rather than insisting that the facility volunteer such information in every instance, perhaps the better approach would be require the posting of notices that such information is available upon request by an authorized person.

SDCBA

The SDCBA Delegation recommends Disapproval of Resolution 03-06-2019. While the Delegation agrees that there should be transparency in hospital charges, this resolution goes too far in creating a cap on charges based on an initial estimate. It fails to adequately account for patients experiencing complications which may require surgery, additional treatments, and additional medications. It would result in hospitals having to over-estimate potential expenses and account for a multitude of contingencies in providing estimates so that they are not left in a

position of not being able to charge for services rendered as a result of a complication, the discovery of additional conditions, or the onset of unanticipated conditions.

Even lawyers who provide litigation budgets estimating anticipated litigation costs provide caveats that the estimates may change as cases progress. A similar proposal requiring lawyers to provide an estimate of attorney's fees and litigation costs with limited to charging no more than the estimate, plus five percent, would be completely unacceptable to a majority of lawyers. We should not impose a restriction on other professions that lawyers would not accept being imposed on themselves.

RESOLUTION 03-07-2019

DIGEST
Evidence Code: Gender Neutral Language
Amends Evidence Code section 403 to provide a gender-neutral description of witnesses who may testify about preliminary facts supporting the admission of evidence.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE WITH RECOMMENDED AMENDMENTS

History:
No similar resolutions found.

Reasons:
This resolution amends Evidence Code section 403 to provide a gender-neutral description of witnesses who may testify about preliminary facts supporting the admission of evidence. This resolution should be approved in principle with recommended amendments because it replaces male-oriented language with gender-neutral language.

As currently written, section 403 refers to witnesses using solely a male pronoun. The proposed change will ensure that all persons to whom the statute applies are included in the statutory language.

Resolutions committee recommends that the words "their self" on line 12 be replaced with "themself." The English language does not have a gender-neutral third-person singular personal pronoun, but in recent years the word "they" has gained considerable recognition as an appropriate replacement in this role. "They" has been officially recognized as correct by several key bodies such as the *Associated Press* and the *Chicago Manual of Style.* The use of a more inclusive pronoun is important for people whose genders are neither male nor female, as well as to avoid defaulting to "he" in regular use. In addition, the California Legislature has recommended the use of "they" as part of its coordinated effort to revise existing statutes and introduce new legislation with inclusive language by using gender-neutral pronouns. (Assem. Con. Res. No. 260.)

Although the male-oriented language is not repeated in the California jury instructions and research disclosed no instances of foundational evidence having been rejected based upon the witness's gender, this technical correction is appropriate to assure that any person's statements or actions can be considered in determining whether evidence should be admitted. California has also adopted gender neutral language in a variety of statutes, including Evidence Code section 1101 and Civil Code section 1542.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Evidence Code section 403, to read as follows:

§403

(a) The proponent of the proffered evidence has the burden of producing evidence as to the existence of the preliminary fact, and the proffered evidence is inadmissible unless the court finds that there is evidence sufficient to sustain a finding of existence of the preliminary fact, when:

(1) The relevance of the proffered evidence depends on the existence of the preliminary fact;

(2) The preliminary fact is the personal knowledge of a witness concerning the subject matter of this testimony;

(3) The preliminary fact is the authenticity of a writing; or

(4) The proffered evidence is of a statement or other conduct of a particular person and the preliminary fact is whether that person made the statement or so conducted ~~himself~~ their self.

(b) Subject to Section 702, the court may admit conditionally the proffered evidence under this section, subject to evidence of the preliminary fact being supplied later in the course of the trial.

(c) If the court admits the proffered evidence under this section, the court:

(1) May, and on request shall, instruct the jury to determine whether the preliminary fact exists and to disregard the proffered evidence unless the jury finds that the preliminary fact does exist.

(2) Shall instruct the jury to disregard the proffered evidence if the court subsequently determines that a jury could not reasonably find that the preliminary fact exists.

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

PROPONENT: Probate Attorneys of San Diego

STATEMENT OF REASONS

The Problem: The statute as currently worded may be perceived as discriminatory and non-inclusive. This simple change, while seemingly minor, will serve to include all persons to whom the statute applies.

The Solution: Legislation to amend Section 403 to reflect inclusive language.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: Hilary J. Vrem

RESOLUTION 03-08-2019

DIGEST
Professional Fiduciaries: Stay of Disciplinary Proceedings During Court Action
Amends Business and Professions Code section 6580 to stay disciplinary proceedings against professional fiduciaries while a court action based on substantially related facts is pending.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Business and Professions Code section 6580 to stay disciplinary proceedings against professional fiduciaries while a court action based on substantially related facts is pending. This resolution should be disapproved because the purpose of a civil or criminal court proceeding against a professional fiduciary is different than a disciplinary proceeding against the same fiduciary even based upon substantially related facts and circumstances.

The Professional Fiduciaries' Bureau ("Bureau") is a division of the California Department of Consumer Affairs. It was created by legislation in 2007 to license and regulate non-family member professional fiduciaries, including conservators, guardians, trustees and agents under durable power of attorney. (Bus. & Prof. Code, §§ 6500, et seq.) Business and Professions Code section 6501, subdivision (f), sets out the comprehensive definition for the persons who are regulated as professional fiduciaries by the Bureau.

Under current law, the Bureau initiates the investigation either upon receiving a complaint or *sua sponte*, and is empowered to impose sanctions upon a finding that the fiduciary violated a statute or breached his / her fiduciary duties; the sanction can include taking away the license to serve as a professional fiduciary. (Bus. & Prof. Code, § 6580, subd. (a).) To ensure due process, the disciplinary proceedings against the fiduciary must be conducted according to the Administrative Procedure Act and prosecuted by the California Attorney General's office. (Bus. & Prof. Code, § 6582.) The Bureau does not make the findings upon which the disciplinary sanctions are based, an administrative law judge makes those findings. The Bureau then has some discretion whether to adopt the administrative law judge's findings, similar to the discretion of other licensing agencies. Further, current law permits the Bureau to refer any case to the authorities for criminal prosecution, and specifically permits the Bureau to continue disciplinary proceedings against a fiduciary while the criminal proceeding is pending. (Bus. & Prof. Code, § 6582.5.)

This resolution seeks to stay disciplinary proceedings during the pendency of any court proceeding when the facts and circumstances of any disciplinary complaint made to the Bureau are substantially related to the pending court proceeding. The resolution does not identify the court proceedings that would trigger such a stay. This is an important issue, because disciplinary proceedings themselves involve court proceedings before an administrative law judge. Assuming that the resolution seeks a stay during any court proceeding other than the disciplinary

administrative proceeding before the administrative law judge, the resolution does not accord with the legislative mandate that public protection is the "highest priority" of the Bureau. (Bus. & Prof. Code, § 6516.)

Any criminal court proceeding can only impose criminal penalties on the fiduciary for his / her wrongdoing, not discipline the fiduciary. A civil court proceeding against a professional fiduciary could take many forms, the most common being in probate court to have the fiduciary removed from his / her role for a particular client or in civil court for a claim involving monetary and/or injunctive relief.

Notably, civil (including probate) court proceedings generally only impact the fiduciary's relationship with the particular client(s) involved in the proceeding. Such proceedings cannot ensure that the general public is protected from the fiduciary's wrongdoing. If disciplinary proceedings are stayed during the pendency of the civil action, the fiduciary will be free to continue to harm the public by continuing his / her wrongdoing in representing other clients for however long the civil action lasts. This could be years, including time for trials and appeals.

Therefore, the public protection purpose of the Bureau will be thwarted if all civil and criminal proceedings effect a stay on the disciplinary proceedings.

If, as the proponent suggests, the problem is that the Professional Fiduciaries Bureau lacks the funding and personnel to appropriately handle disciplinary investigations, or the knowledge and expertise to appropriately exercise the discretion granted to it by the Legislature, the solution is not to prevent the Bureau from doing the job for which it was created, but to find ways to provide the Bureau with the resources it needs to do its job.

Therefore, this resolution should be disapproved.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 6580, to read as follows:

§6580

(a) The bureau may upon its own, and shall, upon the receipt of a complaint from any person, investigate the actions of any professional fiduciary, including a person with a license that either restricts or prohibits the practice of that person as a professional fiduciary, including, but not limited to, a license that is retired, inactive, canceled, or suspended. The bureau shall review a professional fiduciary's alleged violation of statute, regulation, or the Professional Fiduciaries Code of Ethics and any other complaint referred to it by the public, a public agency, or the department, subject to subsection (d) below, may impose sanctions upon a finding of a violation or a breach of fiduciary duty.

(b) Sanctions shall include any of the following:

(1) Administrative citations and fines as provided in Section 125.9 for a violation of this chapter, the Professional Fiduciaries Code of Ethics, or any regulation adopted under this chapter.

(2) License suspension, probation, or revocation.

(c) The bureau shall provide on the Internet information regarding any sanctions imposed by the bureau on licensees, including, but not limited to, information regarding citations, fines, suspension, and revocations of licenses or other related enforcement action taken by the bureau relative to the licensee.

(d) The bureau shall stay an investigation and imposition of any and all sanctions of any professional fiduciary, including a person with a license that wither restricts or prohibits the practice of that person as a professional fiduciary, including, but not limited to a license that is retired, inactive, canceled, or suspended, when the facts and circumstances substantially related to the complaint made by any person to the bureau forms the basis of an action pending before the court. The bureau may proceed with its investigation, and may impose sanctions upon the court's finding of a violation or a breach of fiduciary duty.

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

PROPONENT: Probate Attorneys of San Diego

STATEMENT OF REASONS

The Problem: The duties of fiduciaries are codified or impacted by the legislature under the Probate Code, Welfare and Institutions Code, Business and Professions Code, Government Code and other laws. The bureau does not have the resources, training, nor expertise of the laws that fiduciaries are required to follow to properly, efficiently, and fairly determine imposition of just sanctions and oftentimes the bureau's sanctions are improperly imposed, insufficient, or conflict with the findings of the court. Furthermore, the bureau does not have the authority to require restitution be paid to make a trust or estate whole in the event of a breach.

The Solution: Require the bureau to stay an investigation and imposition of sanctions when the facts and circumstances substantially related to a complaint made by any person to the bureau forms the basis of an action pending before the court. Then, upon review of the court's decision and/or orders, proceed with investigation and/or imposition of appropriate sanctions.

IMPACT STATEMENT

The impact of this resolution is uncertain. This law requires the Professional Fiduciaries Bureau to stay an investigation and imposition of any sanctions when the facts and circumstances substantially related to the complaint from any person form the basis of an action pending before the court, and adhere at a minimum to the findings and orders of the court.

CURRENT OR PRIOR RELATED LEGISLATION

Assembly Bill No. 2024 (2013-2014 Reg. Sess.), Assembly Bill No. 3134 (2015-2016 Reg. Sess.), and Assembly Bill No. 3144 (2018-2019 Reg. Sess.)

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COUNTERARGUMENTS BY BAR ASSOCIATIONS AND CLA SECTIONS

SCBA

This resolution should be disapproved because it would undermine the Professional Fiduciaries Bureau's ("PFB") statutory mandate to protect the public, and because civil litigation and disciplinary actions serve separate and distinct purposes.

The PFB's highest priority is public protection; it has a duty to administer and enforce the duties of licensed professional fiduciaries, pursuant to all requirements set by statute and developed by the courts and the Judicial Council. (Bus. & Prof. Code § 6515, 6516, 6518, 6520.) The PFB and its staff are particularly knowledgeable about the duties, obligations, and grounds for disciplining professional fiduciaries in California; it is their job to know and enforce the obligations of fiduciaries. Contrary to the suggested concern in the resolution, fiduciaries cannot be summarily disciplined by the PFB. All enforcement proceedings require an investigation and an evidentiary hearing pursuant to the Administrative Procedures Act. (Bus. & Prof. Code §§ 6580, 6582.)

Staying disciplinary proceedings during pending court actions would not protect the public. While civil litigation allows a party to recover damages and be made whole for a particular injury, disciplinary actions address a licensee's risk to all consumers. Disciplinary actions often involve a licensee's misconduct with multiple consumers, who could not be parties to the same litigation. Further, under the broad language of this resolution, even court proceedings for trust accountings could prevent a disciplinary investigation. Likewise, because the resolution would only allow the PFB to proceed with discipline if a court finds a violation of fiduciary duty, fiduciaries could simply evade discipline by settling with a consumer – this would not protect the public.

A bad fiduciary should not be allowed to continue harming others simply because one person can afford to pursue litigation, or because beneficiaries are forced to file actions to get trust accountings.

RESOLUTION 03-09-2019

DIGEST
CCBA: ResComm Reports to Include Pro and Con Positions Based on Committee Vote
Amends CCBA Rules of Operation and Procedure, article III, rule 1 to require that a Resolutions Committee report include a dissenting recommendation upon a vote of more than one-third of committee members present.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
Similar to Resolution 10-01-2018, which was withdrawn.

Reasons:
This resolution amends CCBA Rules of Operation and Procedure, article III, rule 1 to require that a Resolutions Committee report include a dissenting recommendation upon a vote of more than one-third of committee members present. This resolution should be disapproved because it would provide undue weight to the opinions of as few as seven committee members, and hurt the chances of approved resolutions being sponsored in the Legislature.

Like a committee of the Legislature, the CCBA Resolutions Committee provides recommendations on proposed legislation, but its views do not control what the governing body ultimately decides to do with the proposals. To the extent there are minority views of the conference as a whole on a particular resolution, those are already captured in the final conference report put together by Resolutions Committee members after debate at the conference. There is not a need to further capture and memorialize the minority views of as few as seven delegates, merely because they happened to participate on the losing side of debates in Resolutions Committee.

Moreover, the inclusion of dissenting opinions in Resolutions Committee reports could hurt the chances of resolutions approved at the conference being enacted. In addition to helping delegates in their analysis of resolutions, Resolutions Committee reports are 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:

Article III
1. Resolutions Committee

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

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

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

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

- Approval in principle as submitted;
- Approval in principle as amended;
- Referral to the Conference without recommendation;
- Referral to Board for appropriate action;
- Disapproval; or
- Action Unnecessary

<u>If greater than one-third (1/3) of the members of the Resolutions Committee who are present vote to publish a recommendation that dissents from the position taken, the dissenting recommendation shall be included in the report.</u>

Upon the conclusion of a regular meeting of the Conference, the chair of the Resolutions Committee shall report to the Board concerning the proceedings of the 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

<u>The Problem</u>: Most people, especially lawyers, benefit best when exposed to both sides of an issue. With any court decision or legislative action, if a disagreement was present, we are exposed to both sides through prevailing and dissenting opinions, transcripts, videos, and so on. By contrast, when the Resolutions Committee (Rescom) reports are released, they often expose delegates to strong arguments only on the side that Rescom took. This creates two problems: (1) unlike in a court decision, the dissenting opinions have no official outlet. The basis of deliberation is that those with a minority view have a chance to convince the majority to their way of thinking. That is why, for example, calling the question requires a two-thirds (2/3) vote instead of a simple majority: it gives a sizable minority the ability to keep the debate going to hopefully convince the majority. In this case, even if they fail to do so within Rescom, they should still have an official

way to express their opinion to the Conference as a whole when the reports come out. (2) Delegations, when reading Rescom reports, are only exposed to one side.

The Solution: This resolution requires Rescom, upon approval of greater than one-third (1/3) of those present, to include a dissenting recommendation in the report. Note that a vote with less than two-thirds (2/3) for a recommendation would **not** automatically trigger a published dissent. Instead, greater than one-third (1/3) of those present would need to vote **to issue a dissenting recommendation**; regardless of the vote count on the recommendation, a dissenting report would only be included if greater than one-third (1/3) then voted to add a dissent. Insofar as that option is exercised, it will enable delegations to be better informed on both sides of the issues, and give a sizable minority a way to make their case to the Conference at large. A concern could be raised that if Rescom voted to approve in principle a resolution, and enough people voted to include a dissenting report, then the resolution passes, the dissenting opinion would present a hurdle to getting the legislature to take it up. That was recently fixed in 2017 with the new rule that when a resolution that was disapproved by Rescom passes, Rescom provides a new report with the reasons in favor.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
Resolution 10-01-2018.

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