

No. S192768

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

AIDAN LEUNG by and through his Guardian ad
Litem NANCY LEUNG

Plaintiff, Appellant and Respondent

vs.

VERDUGO HILLS HOSPITAL

Defendant, Appellant and Respondent

B204908

(Los Angeles County
Super. Ct. No. BC343985)

SUPREME COURT
FILED

SEP 08 2011

**VERDUGO HILLS HOSPITAL'S
MOTION FOR JUDICIAL NOTICE**

Frederick K. Ohlrich Clerk
Deputy

California Court of Appeal, Second District, Division Four
Case No. B204908
Los Angeles Superior Court Case No. BC343985
Honorable Laura A. Matz

THOMAS & THOMAS, LLP

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Attorneys for Petitioner, Defendant and Appellant
VERDUGO HILLS HOSPITAL

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Attorneys for Petitioner, Defendant and Appellant
VERDUGO HILLS HOSPITAL

TO THE RESPECTIVE PARTIES AND THEIR ATTORNEYS

OF RECORD: Petitioner, Defendant and Appellant Verdugo Hills

Hospital hereby asks this Court to take judicial notice of the following

documents pursuant to sections 451, 452, 453 and 459 of the California

Evidence Code and California Rules of Court, rules 8.520(g) and 8.252(a):

- (1) Senate Bill 1510 as introduced on January 22, 1957;
- (2) Senate Bill 1510 as amended in Senate on April 30, 1957;
- (3) Senate Bill 1510 as amended in Senate on May 1, 1957;
- (4) Senate Bill 1510 as amended in Assembly on May 17, 1957;
- (5) Final version of Senate Bill 1510 as approved by Governor on July 5, 1957 and filed with Secretary of State on July 8, 1957;
- (6) The procedural history of Senate Bill 1510 as reflected in the *1957 Senate Final History*;
- (7) Excerpt of the *1957 Legislative Digest*, prepared by Legislative Counsel regarding Senate Bill 1510;
- (8) Excerpt of the *1957 Summary Digest of Statutes Enacted*, prepared by Legislative Counsel regarding Senate Bill 1510;
- (9) Excerpt of the *1957 Report to Legislature*, by the Senate Interim Judiciary Committee, 1955-1957, regarding Senate Bill 1510;
- (10) Enrolled Bill Memoranda to the Governor regarding Senate Bill 1510;
- (11) Senate Bill 1395 as introduced on March 6, 1987;
- (12) Senate Bill 1395 as amended in Senate on May 28, 1987;

- (13) Senate Bill as passed by Senate on June 11, 1987, and by Assembly on August 31, 1987;
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- (15) The procedural history of Senate Bill 1395 as reflected in the 1987 to 1988 *Senate Final History*;
- (16) Analysis on “Joint Contractual Obligations—Impact of Good Faith Settlement and Release” of Senate Committee on Judiciary regarding Senate Bill 1395 from the 1987-1988 Regular Session;
- (17) Third Reading analysis on “Settlement: Co-Obligors” of the Office of Senate Floor Analyses regarding Senate Bill 1395;
- (18) Analysis on Senate Bill 1395 of the Assembly Subcommittee on the Administration of Justice;
- (19) Senate Third Reading analysis of Senate Bill 1395 of the Assembly Subcommittee on the Administration of Justice;
- (20) Legislative Counsel’s Digest analysis on “Settlement: Co-Obligors” regarding Senate Bill 1395; and
- (21) Assembly Judiciary Committee Republican Analysis of “Settlement: Co-Obligors” regarding Senate Bill 1395.

This Motion for Judicial Notice is identical to one filed in the Court of Appeal in this matter on November 26, 2008, and granted by that Court

on December 16, 2008. The present Motion is based on the papers that were filed in the Court of Appeal, consisting of the Motion, Memorandum of Points and Authorities, two declarations of Maria A. Sanders, proposed order and attached documents, all of which are attached to this Motion as Exhibit A; the present Motion is further based on the record on appeal as well as any oral argument as may be entertained as to judicial notice.

Dated: September 7, 2011

Respectfully submitted,

THOMAS and THOMAS LLP

Michael Thomas
Maureen F. Thomas

GREINES, MARTIN, STEIN & RICHLAND LLP

Robert A. Olson
Feris M. Greenberger

By:



Feris M. Greenberger

Attorneys for Petitioner, Defendant and
Appellant VERDUGO HILLS HOSPITAL

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On September 7, 2011, I served the foregoing document described as: **VERDUGO HILLS HOSPITAL'S MOTION FOR JUDICIAL NOTICE** the parties in this action by serving:

Luan K. Phan
LKP Global Law, LLP
1901 Avenue of the Stars, Suite 480
Los Angeles, California 90067
[Attorneys for Plaintiff and Appellant
Aidan Ming-Ho Leung]

Stuart B. Esner
Esner, Chang & Boyer
234 East Colorado Boulevard, Suite 750
Pasadena, California 91101
[Attorneys for Plaintiff and Appellant
Aidan Ming-Ho Leung]

Thomas F. McAndrews
Reback McAndrews & Kjar LLP
1230 Rosecrans Avenue, Suite 450
Manhattan Beach, California 90266
[Attorneys for Defendants and
Respondents Steven Wayne Nishibayashi,
M.D. and Steven Wayne Nishibayashi,
M.D., Inc.]

(X) BY MAIL: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on September 7, 2011, at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


ANITA F. COLE

No. S192768

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

AIDAN LEUNG by and through his Guardian ad
Litem NANCY LEUNG

Plaintiff, Appellant and Respondent

vs.

VERDUGO HILLS HOSPITAL

Defendant, Appellant and Respondent

B204908

(Los Angeles County
Super. Ct. No. BC343985)

**VERDUGO HILLS HOSPITAL'S
MOTION FOR JUDICIAL NOTICE**

California Court of Appeal, Second District, Division Four
Case No. B204908
Los Angeles Superior Court Case No. BC343985
Honorable Laura A. Matz

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Attorneys for Petitioner, Defendant and Appellant
VERDUGO HILLS HOSPITAL

No. S192768

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Plaintiff, Appellant and Respondent

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B204908

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Attorneys for Petitioner, Defendant and Appellant
VERDUGO HILLS HOSPITAL

TO THE RESPECTIVE PARTIES AND THEIR ATTORNEYS

OF RECORD: Petitioner, Defendant and Appellant Verdugo Hills

Hospital hereby asks this Court to take judicial notice of the following

documents pursuant to sections 451, 452, 453 and 459 of the California

Evidence Code and California Rules of Court, rules 8.520(g) and 8.252(a):

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- (20) Legislative Counsel’s Digest analysis on “Settlement: Co-Obligors” regarding Senate Bill 1395; and
- (21) Assembly Judiciary Committee Republican Analysis of “Settlement: Co-Obligors” regarding Senate Bill 1395.

This Motion for Judicial Notice is identical to one filed in the Court of Appeal in this matter on November 26, 2008, and granted by that Court

COPY

2d Civil No. B204908

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

AIDAN MING-HO LEUNG,
Plaintiff, Respondent and Cross-Appellant,

vs.

STEVEN WAYNE NISHIBAYASHI, M.D., and
STEVEN WAYNE NISHIBAYASHI, M.D., INC.,

Defendants,

and

VERDUGO HILLS HOSPITAL,

Defendant, Appellant and Cross-Respondent.

Appeal from Los Angeles Superior Court, No. BC343985
Honorable Laura Matz

COURT OF APPEAL - SECOND DIST.

FILED

NOV 26 2008

J. LANE Clerk
S. VEVERKA Deputy Clerk

**APPELLANT'S MOTION FOR JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR JUDICIAL NOTICE; TWO DECLARATIONS OF
MARIA A. SANDERS; AND [PROPOSED] ORDER**

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Attorneys for Defendant, Appellant and Cross-Respondent
VERDUGO HILLS HOSPITAL

2d Civil No. B204908

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

AIDAN MING-HO LEUNG,

Plaintiff, Respondent and Cross-Appellant,

vs.

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Defendants,

and

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Defendant, Appellant and Cross-Respondent.

Appeal from Los Angeles Superior Court, No. BC343985
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Facsimile: (310) 276-5261

Attorneys for Defendant, Appellant and Cross-Respondent
VERDUGO HILLS HOSPITAL

TO THE RESPECTIVE PARTIES AND THEIR ATTORNEYS

OF RECORD: Defendant, appellant, and cross-respondent Verdugo Hills Hospital, hereby moves this Court to take judicial notice of the following documents pursuant to sections 451, 452, 453 and 459 of the California Evidence Code and California Rules of Court, rule 8.252(a):

- (1) Senate Bill 1510 as introduced on January 22, 1957;
- (2) Senate Bill 1510 as amended in Senate on April 30, 1957;
- (3) Senate Bill 1510 as amended in Senate on May 1, 1957;
- (4) Senate Bill 1510 as amended in Assembly on May 17, 1957;
- (5) Final version of Senate Bill 1510 as approved by Governor on July 5, 1957 and filed with Secretary of State on July 8, 1957;
- (6) The procedural history of Senate Bill 1510 as reflected in the *1957 Senate Final History*;
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- (9) Excerpt the *1957 Report to Legislature*, by the Senate Interim Judiciary Committee, 1955-1957, regarding Senate Bill 1510;
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- (20) Legislative Counsel’s Digest analysis on “Settlement: co-obligors” regarding Senate Bill 1395; and
- (21) Assembly Judiciary Committee Republican Analysis of “Settlement: Co-Obligors” regarding Senate Bill 1395.

This Motion for Judicial Notice is based on the attached Memorandum of Points and Authorities, the two declarations of Maria A.

Sanders, the attached documents, the record on appeal, as well as any oral argument as may be entertained as to judicial notice.

Dated: November 25, 2008

Respectfully submitted,

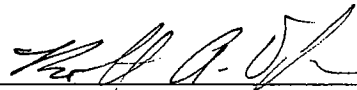
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Maureen F. Thomas

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LLP**

Robert A. Olson
Feris M. Greenberger
Jennifer C. Yang

By:



Robert A. Olson
Attorneys for Defendant, Appellant and
Cross-Respondent VERDUGO HILLS
HOSPITAL

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant, appellant, and cross-respondent Verdugo Hills Hospital moves this Court to take judicial notice of four categories of legislative history documents:

- (1) The evolution of statutory language as amended from introduction to enactment;
- (2) Legislative Counsel's summaries;
- (3) Legislative committee reports;
- (4) Analyses by legislative party caucuses; and,
- (5) Enrolled Bill Memoranda.

Evidence Code section 459 affords a Court of Appeal the same power and responsibility to take judicial notice as the trial court. (See *Martin v. General Finance Co.* (1966) 239 Cal.App.2d 438, 442 [“The power of this court to take judicial notice is the same as that of the trial court”].)

Evidence Code section 452, subdivisions (c) and (h), make the official records of the Legislature judicially noticeable. (E.g., *Casella v. South West Dealer Services* (2007) 157 Cal.App.4th 1127.) Section 453 makes such judicial notice conditionally mandatory upon, as here, adequate notice and documentation.

A reviewing court's independent power and duty to judicially notice legislative history extends even to materials not before the trial court. (*Hogen v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125 [“this court may take judicial notice of matters which could have been noticed by the trial

court, even where the trial court was not requested to take such notice”]; *B & P Development Corp. v. City of Saratoga* (1986) 185 Cal.App.3d 949, 960 [“An appellate court is permitted to take judicial notice of any matter specified in Evidence Code section 452, although the trial court did not take notice of it and it is not in the record, so long as a record is made of the matter and each party is afforded an opportunity to respond to it”].)

Each of the above categories of legislative records is well-established as subject to judicial notice:

- (1) *Proposed and final versions of statutes and final histories detailing the evolution of the statutory language.* (See *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31-32 [“*Kaufman*”] [collecting cases; different versions of bill constitute cognizable legislative history].)
- (2) *Legislative counsel’s digests and reports.* (*Id.* at pp. 34-35 [collecting cases; official reports, analyses, and summaries of legislation to analyze legislative history judicially noticeable].)
- (3) *Legislative committee reports available to the Legislature as a whole.* (*Ibid.*)
- (4) *Legislative Party Caucuses’s analyses available to the Legislature as a whole.* (*Id.* at pp. 36-37.)
- (5) *Enrolled bill reports.* (*Id.* at p. 37; see also *Elsner v. Uveges* (2004) 34 Cal.4th 915, 934, fn. 19 [“we have routinely found

enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent”].)

Each of the documents for which judicial notice is sought is also relevant to this appeal:

- (1) *Proposed and final versions of statutes and final histories detailing the evolution of the statutory language.* The versions of Senate Bill 1510 and its final history (Attachments 1 to 6) are relevant to the appeal, among other reasons, because they show that the Legislature in enacting Code of Civil Procedure section 877 understood that section 877 would not apply to all settlements or releases, consciously adding the good faith and before verdict or judgment requirements for its application.

The versions of Senate Bill 1395 and its final history (Attachments 11 to 15) are relevant to the appeal, among other reasons, because they show that the Legislature in amending Civil Code section 1543 did so solely to conform that section to the concurrent amendment of Code of Civil Procedure section 877 to cover settlements and releases (made in good faith and before verdict or trial) by co-obligors mutually subject to contribution rights. Nothing in the amendment of section 1543 suggests that the Legislature intended to alter the existing common law rule governing

releases of a joint tortfeasor when outside the reach of Code of Civil Procedure section 877 as it existed before Senate Bill 1510.

- (2) *Legislative counsel's digests and reports.* These items of legislative history (Attachments 7-8 and 20) are relevant to the appeal, among other things, because they provide context for the Legislature's enactment of section 877 and amendment of section 1543.
- (3) *Legislative committee reports available to the Legislature as a whole.* These items of legislative history (Attachments 9, and 16-19) are relevant to the appeal, among other things, because they provide context for the Legislature's enactment of section 877 and amendment of section 1543.
- (4) *Legislative Party Caucuses's analyses available to the Legislature as a whole.* This item of legislative history (Attachment 21) is relevant to the appeal, among other things, because it provides context for the Legislature's amendment of section 1543.
- (5) *Enrolled bill reports.* This item of legislative history (Attachment 10) is relevant to the appeal, among other things, because it provides context for the enactment of section 877.

Accordingly, this Court should judicially notice the requested documents and the legislative history reflected therein.

Dated: November 21, 2008

Respectfully submitted,

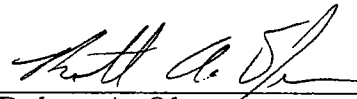
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By:



Robert A. Olson
Attorneys for Defendant, Appellant and
Cross-Respondent VERDUGO HILLS
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2d Civil No. B204908

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Defendants,

and

VERDUGO HILLS HOSPITAL,

Defendant, Appellant and Cross-Respondent.

Appeal from Los Angeles Superior Court, No. BC343985
Honorable Laura Matz

**[PROPOSED] ORDER GRANTING
MOTION FOR JUDICIAL NOTICE**

IT IS HEREBY ORDERED THAT the Motion for Judicial Notice of defendant, appellant, and cross-respondent Verdugo Hills Hospital is granted. This Court shall judicially notice the following documents and the legislative history reflected therein, which are attached to the Motion For Judicial Notice:

- (1) Senate Bill 1510 as introduced on January 22, 1957;
- (2) Senate Bill 1510 as amended in Senate on April 30, 1957;

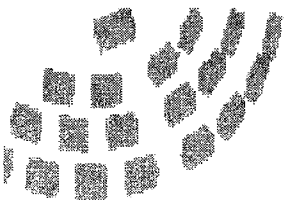
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Judiciary regarding Senate Bill 1395 from the 1987-1988
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- (17) Third Reading analysis on “Settlement: Co-Obligors” of the Office of Senate Floor Analyses regarding Senate Bill 1395;
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- (21) Assembly Judiciary Committee Republican Analysis of “Settlement: Co-Obligors” regarding Senate Bill 1395.

Dated: _____

_____ Presiding Justice



LEGISLATIVE INTENT SERVICE, INC.

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(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Senate Bill 1510 of 1957. Senate Bill 1510 was approved by the Legislature and was enacted as Chapter 1700 of the Statutes of 1957.


The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Senate Bill 1510 of 1957. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

SENATE BILL 1510 OF 1957:

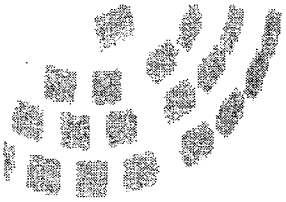
1. All versions of Senate Bill 1510 (Arnold-1957);
2. Procedural history of Senate Bill 1510 from the 1957 Senate Final History;
3. Excerpt regarding Senator Stanley Arnold from the 1957 "Legislative Handbook";
4. Excerpt regarding Senate Bill 1510 from the 1957 Legislative Digest, prepared by Legislative Counsel;
5. Excerpt regarding Senate Bill 1510 from the 1957 Summary Digest of Statutes Enacted, prepared by Legislative Counsel;
6. Excerpt regarding Senate Bill 1510 from the Fourth Progress Report to the Legislature, by the Senate Interim Judiciary Committee, 1955-1957;
7. Post-enrollment documents regarding Senate Bill 1510;

8. Excerpt regarding Senate Bill 1510 from the Journal of the State Bar of California, January-February 1957, July-August 1957 and September-October 1957;
9. Material from the file of the Legislative Representative of the State Bar of California on Senate Bill 1510;
10. "Joint Tortfeasors: Legislative Changes in the Rules Regarding Releases and Contribution," by James F. Thaxter, excerpted from Vol. 9 Hastings Law Journal, 180, 1958.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10th day of November, 2008 at Woodland, California.



MARIA A. SANDERS



LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Senate Bill 1395 of 1987. Senate Bill 1395 was approved by the Legislature and was enacted as Chapter 677 of the Statutes of 1987.

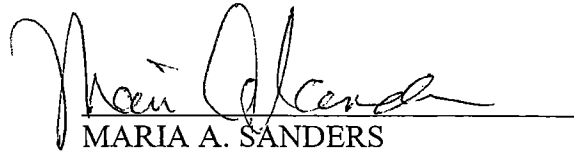
The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Senate Bill 1395 of 1987. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

SENATE BILL 1395 OF 1987:

1. All versions of Senate Bill 1395 (Kopp-1987);
2. Procedural history of Senate Bill 1395 from the 1987-88 Senate Final History;
3. Analysis of Senate Bill 1395 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 1395;
5. Third Reading analysis of Senate Bill 1395 prepared by the Office of Senate Floor Analyses;
6. Document from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 1395;

7. Analysis of Senate Bill 1395 prepared for the Assembly Committee on Judiciary's Subcommittee on the Administration of Justice;
8. Material from the legislative bill file of the Assembly Committee on Judiciary's Subcommittee on the Administration of Justice on Senate Bill 1395;
9. Third Reading analysis of Senate Bill 1395 prepared by the Assembly Committee on Judiciary's Subcommittee on the Administration of Justice;
10. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 1395;
11. Material from the legislative bill file of Senator Quentin L. Kopp on Senate Bill 1395;
12. Post-enrollment documents regarding Senate Bill 1395.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10th day of November, 2008 at Woodland, California.


MARIA A. SANDERS

Introduced by Senators Arnold, Short, Cunningham, and Busch

January 22, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Title 11 to Part 2 of the Code of Civil Procedure, relating to releases from and contribution among joint tortfeasors.

The people of the State of California do enact as follows:

1 SECTION 1. Title 11 is added to Part 2 of the Code of Civil
2 Procedure, to read:

3
4 TITLE 11. RELEASES FROM AND CONTRIBUTION
5 AMONG JOINT TORTFEASORS
6

7 .875. (a) Where a money judgment has been rendered
8 jointly against two or more defendants in a tort action there
9 shall be a right of contribution among them as hereinafter
10 provided.

11 (b) Such right of contribution shall be administered in ac-
12 cordance with the principles of equity.

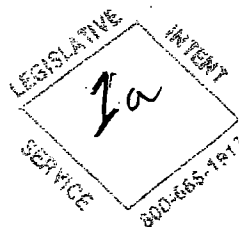
13 (c) Such right of contribution may be enforced only after
14 one tortfeasor has, by payment, discharged the joint judgment
15 or has paid more than his pro rata share thereof. It shall be
16 limited to the excess so paid over the pro rata share of the
17 person so paying and in no event shall any tortfeasor be com-
18 pelled to make contribution beyond his own pro rata share of
19 the entire judgment.

20 (d) There shall be no right of contribution in favor of any
21 tortfeasor who has intentionally injured the injured person.

22 (e) A liability insurer who by payment has discharged the
23 liability of a judgment tortfeasor shall be subrogated to his
24 right of contribution.

25 (f) This title shall not impair any right of indemnity under
26 existing law, and where one judgment tortfeasor is entitled to
27 indemnity from another there shall be no right of contribution
28 between them.

EXHIBIT |



1 876. (a) The pro rata share of each judgment tortfeasor
2 shall be determined by dividing the entire judgment equally
3 among all of them.

4 (b) Where one or more persons are held liable solely for
5 the tort of another, as in the case of the liability of a master
6 for the tort of his servant, they shall contribute a single pro
7 rata share, as to which there may be indemnity between them.

8 877. Where a release or a covenant not to sue or not to en-
9 force judgment is given to one of two or more persons liable
10 for the same tort—

11 (a) It shall not discharge any other such tortfeasor from
12 liability unless its terms so provide, but it shall reduce the
13 claims against the others in the amount stipulated by the re-
14 lease or the covenant, or in the amount of the consideration
15 paid for it which ever is the greater; and

16 (b) It shall discharge the tortfeasor to whom it is given
17 from all liability for any contribution to any other tortfeasors.

18 878. Judgment for contribution may be entered by one
19 judgment tortfeasor against other judgment tortfeasors by
20 motion upon notice. Notice of such motion shall be given to
21 all parties in the action, including the plaintiff or plaintiffs, at
22 least 10 days before the hearing thereon. Such notice shall be
23 accompanied by an affidavit setting forth any information
24 which the moving party may have as to the assets of defend-
25 ants available for satisfaction of the judgment or claim for
26 contribution.

27 879. If any provision of this title or the application thereof
28 to any person is held invalid, such invalidity shall not affect
29 other provisions or applications of the act which can be given
30 effect without the invalid provision or application and to this
31 end the provisions of this title are declared to be severable.

32 80. This title shall become effective as to causes of actions
33 accruing on or after January 1, 1958.

AMENDED IN SENATE APRIL 30, 1957

SENATE BILL

No. 1510

Introduced by Senators Arnold, Short, Cunningham, and Busch

January 22, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Title 11 to Part 2 of the Code of Civil Procedure, relating to releases from and contribution among joint tortfeasors.

The people of the State of California do enact as follows:

1 SECTION 1. Title 11 is added to Part 2 of the Code of Civil
2 Procedure, to read:

3
4 TITLE 11. RELEASES FROM AND CONTRIBUTION
5 AMONG JOINT TORTFEASORS
6

7 875. (a) Where a money judgment has been rendered
8 jointly against two or more defendants in a tort action there
9 shall be a right of contribution among them as hereinafter
10 provided.

11 (b) Such right of contribution shall be administered in ac-
12 cordance with the principles of equity.

13 (c) Such right of contribution may be enforced only after
14 one tortfeasor has, by payment, discharged the joint judgment
15 or has paid more than his pro rata share thereof. It shall be
16 limited to the excess so paid over the pro rata share of the
17 person so paying and in no event shall any tortfeasor be com-
18 pelled to make contribution beyond his own pro rata share of
19 the entire judgment.

20 (d) There shall be no right of contribution in favor of any
21 tortfeasor who has intentionally injured the injured person.

22 (e) A liability insurer who by payment has discharged the
23 liability of a ~~judgment tortfeasor~~ ~~tortfeasor~~ ~~tortfeasor judgment debtor~~
24 shall be subrogated to his right of contribution.

25 (f) This title shall not impair any right of indemnity under
26 existing law, and where one ~~judgment tortfeasor~~ ~~tortfeasor~~

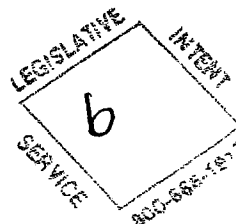


EXHIBIT 2

1 judgment debtor is entitled to indemnity from another there
2 shall be no right of contribution between them.

3 (g) This title shall not impair the right of a plaintiff to
4 satisfy a judgment in full as against any tortfeasor judgment
5 debtor.

6 876. (a) The pro rata share of each judgment tortfeasor
7 tortfeasor judgment debtor shall be determined by dividing
8 the entire judgment equally among all of them.

9 (b) Where one or more persons are held liable solely for
10 the tort of one of them or of another, as in the case of the
11 liability of a master for the tort of his servant, they shall
12 contribute a single pro rata share, as to which there may be
13 indemnity between them.

14 877. Where a release, dismissal with or without prejudice,
15 or a covenant not to sue or not to enforce judgment is given
16 to one of two or more persons liable before verdict or judg-
17 ment to one or more of a number of tortfeasors claimed to be
18 liable for the same tort—

19 (a) It shall not discharge any other such tortfeasor from
20 liability unless its terms so provide, but it shall reduce the
21 claims against the others in the amount stipulated by the re-
22 lease or the covenant, or in the amount of the consideration
23 paid for it which ever is the greater; and

24 (b) It shall discharge the tortfeasor to whom it is given
25 from all liability for any contribution to any other tortfeasors.

26 878. Judgment for contribution may be entered by one
27 judgment tortfeasor tortfeasor judgment debtor against other
28 judgment tortfeasors tortfeasor judgment debtors by motion
29 upon notice. Notice of such motion shall be given to all parties
30 in the action, including the plaintiff or plaintiffs, at least 10
31 days before the hearing thereon. Such notice shall be accom-
32 panied by an affidavit setting forth any information which
33 the moving party may have as to the assets of defendants
34 available for satisfaction of the judgment or claim for con-
35 tribution.

36 879. If any provision of this title or the application thereof
37 to any person is held invalid, such invalidity shall not affect
38 other provisions or applications of the act which can be given
39 effect without the invalid provision or application and to this
40 end the provisions of this title are declared to be severable.

41 880. This title shall become effective as to causes of
42 actions action accruing on or after January 1, 1958.

AMENDED IN SENATE MAY 1, 1957
AMENDED IN SENATE APRIL 30, 1957

SENATE BILL

No. 1510

Introduced by Senators Arnold, Short, Cunningham, and Busch

January 22, 1957

REFERRED TO COMMITTEE ON JUDICIARY

*An act to add Title 11 to Part 2 of the Code of Civil Procedure,
relating to releases from and contribution among joint tort-
feasors.*

The people of the State of California do enact as follows:

1 SECTION 1. Title 11 is added to Part 2 of the Code of Civil
2 Procedure, to read:

3
4 TITLE 11: RELEASES FROM AND CONTRIBUTION
5 AMONG JOINT TORTFEASORS
6

7 875. (a) Where a money judgment has been rendered
8 jointly against two or more defendants in a tort action there
9 shall be a right of contribution among them as hereinafter
10 provided.

11 (b) Such right of contribution shall be administered in ac-
12 cordance with the principles of equity.

13 (c) Such right of contribution may be enforced only after
14 one tortfeasor has, by payment, discharged the joint judgment
15 or has paid more than his pro rata share thereof. It shall be
16 limited to the excess so paid over the pro rata share of the
17 person so paying and in no event shall any tortfeasor be com-
18 pelled to make contribution beyond his own pro rata share of
19 the entire judgment.

20 (d) There shall be no right of contribution in favor of any
21 tortfeasor who has intentionally injured the injured person.

22 (e) A liability insurer who by payment has discharged the
23 liability of a tortfeasor judgment debtor shall be subrogated
24 to his right of contribution.

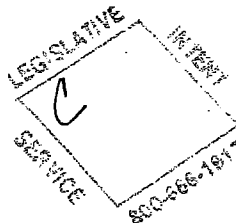


EXHIBIT 3

1 (f) This title shall not impair any right of indemnity under
2 existing law, and where one tortfeasor judgment debtor is en-
3 titled to indemnity from another there shall be no right of
4 contribution between them.

5 (g) This title shall not impair the right of a plaintiff to
6 satisfy a judgment in full as against any tortfeasor judgment
7 debtor.

8 876. (a) The pro rata share of each tortfeasor judgment
9 debtor shall be determined by dividing the entire judgment
10 equally among all of them.

11 (b) Where one or more persons are held liable solely for
12 the tort of one of them or of another, as in the case of the
13 liability of a master for the tort of his servant, they shall
14 contribute a single pro rata share, as to which there may be
15 indemnity between them.

16 877. Where a release, dismissal with or without prejudice,
17 or a covenant not to sue or not to enforce judgment is given
18 before verdict or judgment to one or more of a number of
19 tortfeasors claimed to be liable for the same tort—

20 (a) It shall not discharge any other such tortfeasor from
21 liability unless its terms so provide, but it shall reduce the
22 claims against the others in the amount stipulated by the re-
23 lease or the covenant, or in the amount of the consideration
24 paid for it which ever is the greater; and

25 (b) It shall discharge the tortfeasor to whom it is given
26 from all liability for any contribution to any other tortfeasors.

27 878. Judgment for contribution may be entered by one
28 tortfeasor judgment debtor against other tortfeasor judgment
29 debtors by motion upon notice. Notice of such motion shall be
30 given to all parties in the action, including the plaintiff or
31 plaintiffs, at least 10 days before the hearing thereon. Such
32 notice shall be accompanied by an affidavit setting forth any
33 information which the moving party may have as to the assets
34 of defendants available for satisfaction of the judgment or
35 claim for contribution.

36 879. If any provision of this title or the application thereof
37 to any person is held invalid, such invalidity shall not affect
38 other provisions or applications of the ~~act~~ title which can be
39 given effect without the invalid provision or application and to
40 this end the provisions of this title are declared to be severable.

41 880. This title shall become effective as to causes of action
42 accruing on or after January 1, 1958.

AMENDED IN ASSEMBLY MAY 17, 1957
AMENDED IN SENATE MAY 1, 1957
AMENDED IN SENATE APRIL 30, 1957.

SENATE BILL

No. 1510

Introduced by Senators Arnold, Short, Cunningham, and Busch

January 22, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Title 11 to Part 2 of the Code of Civil Procedure, relating to releases from and contribution among joint tortfeasors.

The people of the State of California do enact as follows:

1 SECTION 1. Title 11 is added to Part 2 of the Code of Civil
2 Procedure, to read:

3
4 TITLE 11. RELEASES FROM AND CONTRIBUTION
5 AMONG JOINT TORTFEASORS
6

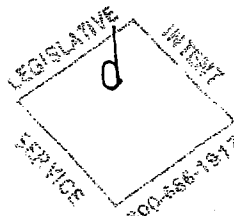
7 S75. (a) Where a money judgment has been rendered
8 jointly against two or more defendants in a tort action there
9 shall be a right of contribution among them as hereinafter
10 provided.

11 (b) Such right of contribution shall be administered in ac-
12 cordance with the principles of equity.

13 (c) Such right of contribution may be enforced only after
14 one tortfeasor has, by payment, discharged the joint judgment
15 or has paid more than his pro rata share thereof. It shall be
16 limited to the excess so paid over the pro rata share of the
17 person so paying and in no event shall any tortfeasor be com-
18 pelled to make contribution beyond his own pro rata share of
19 the entire judgment.

20 (d) There shall be no right of contribution in favor of any
21 tortfeasor who has intentionally injured the injured person.

22 (e) A liability insurer who by payment has discharged the



EXHIBIT

4

1 liability of a tortfeasor judgment debtor shall be subrogated.
2 to his right of contribution.

3 (f) This title shall not impair any right of indemnity under
4 existing law, and where one tortfeasor judgment debtor is en-
5 titled to indemnity from another there shall be no right of
6 contribution between them.

7 (g) This title shall not impair the right of a plaintiff to
8 satisfy a judgment in full as against any tortfeasor judgment
9 debtor.

10 876. (a) The pro rata share of each tortfeasor judgment
11 debtor shall be determined by dividing the entire judgment
12 equally among all of them.

13 (b) Where one or more persons are held liable solely for
14 the tort of one of them or of another, as in the case of the
15 liability of a master for the tort of his servant, they shall
16 contribute a single pro rata share, as to which there may be
17 indemnity between them.

18 877. Where a release, dismissal with or without prejudice,
19 or a covenant not to sue or not to enforce judgment is given
20 *in good faith* before verdict or judgment to one or more of a
21 number of tortfeasors claimed to be liable for the same tort—

22 (a) It shall not discharge any other such tortfeasor from
23 liability unless its terms so provide, but it shall reduce the
24 claims against the others in the amount stipulated by the re-
25 lease, *the dismissal* or the covenant, or in the amount of the
26 consideration paid for it which ever is the greater; and

27 (b) It shall discharge the tortfeasor to whom it is given
28 from all liability for any contribution to any other tortfeasors.

29 878. Judgment for contribution may be entered by one
30 tortfeasor judgment debtor against other tortfeasor judgment
31 debtors by motion upon notice. Notice of such motion shall be
32 given to all parties in the action, including the plaintiff or
33 plaintiffs, at least 10 days before the hearing thereon. Such
34 notice shall be accompanied by an affidavit setting forth any
35 information which the moving party may have as to the assets
36 of defendants available for satisfaction of the judgment or
37 claim for contribution.

38 879. If any provision of this title or the application thereof
39 to any person is held invalid, such invalidity shall not affect
40 other provisions or applications of the title which can be given
41 effect without the invalid provision or application and to this
42 end the provisions of this title are declared to be severable.

43 880. This title shall become effective as to causes of action
44 accruing on or after January 1, 1958.

4. Any tenant, subtenant, or executor or administrator of his estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using such premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provision of this chapter.

CHAPTER 1700

An act to add Title 11 to Part 2 of the Code of Civil Procedure, relating to releases from and contribution among joint tortfeasors.

In effect
September
11, 1957

[Approved by Governor July 5, 1957. Filed with
Secretary of State July 8, 1957.]

The people of the State of California do enact as follows:

SECTION 1. Title 11 is added to Part 2 of the Code of Civil Procedure, to read:

TITLE 11. RELEASES FROM AND CONTRIBUTION
AMONG JOINT TORTFEASORS

Contribution 875. (a) Where a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them as hereinafter provided.

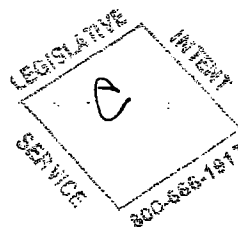
(b) Such right of contribution shall be administered in accordance with the principles of equity.

(c) Such right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof. It shall be limited to the excess so paid over the pro rata share of the person so paying and in no event shall any tortfeasor be compelled to make contribution beyond his own pro rata share of the entire judgment.

(d) There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person.

(e) A liability insurer who by payment has discharged the liability of a tortfeasor judgment debtor shall be subrogated to his right of contribution.

(f) This title shall not impair any right of indemnity under existing law, and where one tortfeasor judgment debtor is entitled to indemnity from another there shall be no right of contribution between them.



EXHIBIT

5

(g) This title shall not impair the right of a plaintiff to satisfy a judgment in full as against any tortfeasor judgment debtor.

876. (a) The pro rata share of each tortfeasor judgment debtor shall be determined by dividing the entire judgment ^{Pro rata share} equally among all of them.

(b) Where one or more persons are held liable solely for the tort of one of them or of another, as in the case of the liability of a master for the tort of his servant, they shall contribute a single pro rata share, as to which there may be indemnity between them.

877. Where a release, dismissal with or without prejudice, ^{Release, etc.} or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort—

(a) It shall not discharge any other such tortfeasor from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater; and

(b) It shall discharge the tortfeasor to whom it is given from all liability for any contribution to any other tortfeasors.

878. Judgment for contribution may be entered by one tortfeasor judgment debtor against other tortfeasor judgment debtors by motion upon notice. Notice of such motion shall be given to all parties in the action, including the plaintiff or plaintiffs, at least 10 days before the hearing thereon. Such notice shall be accompanied by an affidavit setting forth any information which the moving party may have as to the assets of defendants available for satisfaction of the judgment or claim for contribution.

879. If any provision of this title or the application thereof to any person is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application and to this end the provisions of this title are declared to be severable.

880. This title shall become effective as to causes of action ^{Effective date} accruing on or after January 1, 1958.

CHAPTER 1701

An act to free certain state lands from the public trust for navigation, commerce, and fisheries, and to empower the State Lands Commission to sell such lands.

[Approved by Governor July 5, 1957. Filed with Secretary of State July 8, 1957.]

In effect
September
11, 1957

The people of the State of California do enact as follows:

SECTION 1. It is hereby determined that the following described land being a portion of the Guadalupe Canal, San Mateo County, California, is no longer necessary or useful for

CALIFORNIA LEGISLATURE
AT SACRAMENTO
1957 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING THE ACTION ON ALL SENATE BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS AND SENATE RESOLUTIONS INTRODUCED

Including Also Lists of Officers, Members, Attaches, Interim and Standing Committees of the Senate

FIRST HALF—BEGAN JANUARY 7, AND ADJOURNED JANUARY 25, 1957.
SECOND HALF—BEGAN MARCH 4, AND ADJOURNED SINE DIE JUNE 12, 1957

LEGISLATIVE DAYS	91
CALENDAR DAYS	120
CONSTITUTIONAL RECESS	37

The Bill Signing Period Expired 12 O'clock Midnight, July 17, 1957

Laws Become Effective September 11, 1957
(Unless otherwise specified)

Last Day for Filing Referendum, September 10, 1957

HAROLD J. POWERS
President of the Senate

HUGH M. BURNS
President pro Tempore

Compiled Under the Direction of
J. A. BEEK
Secretary of the Senate

With the Assistance of
J. E. HEAVERSIDE
History Clerk

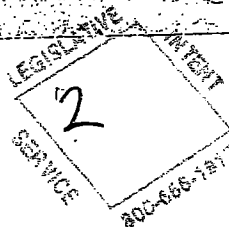


EXHIBIT 6

1509—Sutton and Short, Jan. 22. To Com. on Soc. Wel.

An act to add Section 2020.002, and Part 2, comprising Chapter 1, Sections 4000 to 4192, inclusive, to Division 5 of, and to amend Sections 7.5, 103.4, 103.5, 114.5, 118.2, 119.5, 145, 145.1, and 145.4 of, the Welfare and Institutions Code, and to amend Section 29S02 of the Government Code, relating to public assistance.

- Jan. 22—Read first time. To printer. From printer. To committee.
 April 15—From committee, with author's amendments. Read second time. Amended. To print, and re-referred to committee.
 April 22—From committee, with author's amendments. Read second time. Amended. To print, and re-referred to committee.
 April 24—From committee, with author's amendments. Read second time. Amended. To print, and re-referred to committee.
 April 29—From committee, with author's amendments. Read second time. Amended. To print, and re-referred to committee.
 May 14—From committee: Do pass, and re-refer to Com. on Fin. Re-referred to Com. on Fin.
 May 27—From committee: Do pass.
 May 28—Read second time, to engrossment and third reading. Reported correctly engrossed. Made case of urgency. Art. IV, Sec. 15, of Constitution suspended.
 May 30—Read third time, passed, title approved. To Assembly.
 May 31—In Assembly. Read first time. To Com. on Soc. Wel.
 June 6—Withdrawn from Com. on Soc. Wel. and re-referred to Com. on W. & M.
 June 8—From committee: Do pass as amended.
 June 9—Read second time. To third reading.
 June 10—Made special order for 11.15 a.m., June 11.
 June 11—Read third time. Amended. To print, and third reading file. Read third time, passed, title approved. To Senate.
 June 11—In Senate. To unfinished business.
 June 12—Senate concurs in Assembly amendment. To enrollment.
 June 20—Reported correctly enrolled. To Governor at 5 p.m.
 July 16—Approved by Governor. Chapter 2411.

1510—Arnold, Short, Cunningham, and Busch, Jan. 22. To Com. on Jud.

An act to add Title 11 to Part 2 of the Code of Civil Procedure, relating to releases from and contribution among joint tortfeasors.

- Jan. 22—Read first time. To printer. From printer. To committee.
 April 29—From committee: Do pass as amended.
 April 30—Read second time. Amended. To print, engrossment, and third reading.
 May 1—Reported correctly engrossed. Read third time. Amended. To print, engrossment, and third reading.
 May 2—Reported correctly re-engrossed. Read third time, passed, title approved. To Assembly.
 May 3—In Assembly. Read first time. To Com. on Jud.
 May 16—From committee: Do pass as amended.
 May 17—Read second time. Amended. To printer. From printer.
 May 18—Read second time. To third reading.
 June 4—Read third time, passed, title approved. To Senate.
 June 4—In Senate. To unfinished business.
 June 5—Senate concurs in Assembly amendment. To enrollment.
 June 7—Reported correctly enrolled. To Governor at 3 p.m.
 July 5—Approved by Governor. Chapter 1700.

1511—Arnold, Jan. 22. To Com. on Rev. & Tax.

An act to amend Section 103 of the Revenue and Taxation Code, relating to property taxation.

- Jan. 22—Read first time. To printer. From printer. To committee.
 June 12—From committee without further action.

1512—Arnold, Jan. 22. To Com. on Nat. Res.

An act to amend Section 4000 of the Public Resources Code, relating to forest fires.

- Jan. 22—Read first time. To printer. From printer. To committee.
 June 12—From committee without further action.

LEGISLATIVE DIGEST

BILLS AND CONSTITUTIONAL
AMENDMENTS INTRODUCED

CALIFORNIA LEGISLATURE

1957 REGULAR SESSION

FROM JANUARY 7 TO JANUARY 25, 1957

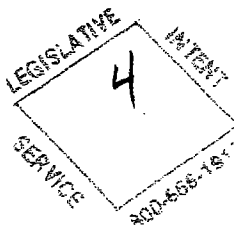


Compiled by

RALPH N. KLEPS
Legislative Counsel

J. A. BEEK
Secretary of the Senate

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly



EXHIBIT

7

S.B. 1506—DESMOND. (Agr.) Adds Ch. 7b, Div. 5, Ag. C., re livestock disease remedies.

Requires registration of livestock remedies and makes sale not in conformance with registration unlawful.

S.B. 1507—SUTTON. (Soc. Wel.) Adds Pt. 2, Div. 5, amends various secs., W. & I. C., re program of aid to needy permanently and totally disabled persons in accordance with Title XIV, Federal Social Security Act.

Provides for establishment of state plan, federally approved, providing for aid to needy permanently and totally disabled, prescribes qualifications of applicants, and method of computing amount thereof, not to exceed \$80 monthly per person.

Provides that aid is to be administered by counties, under supervision of State Department of Social Welfare, in substantially same manner as aid to aged is administered.

Provides that State is to bear entire cost of aid to persons without county residence, after deducting federal assistance, and is to bear cost of aid to persons with county residence in same proportion as prescribed for aid to aged.

Requires spouse, parent, or adult child, residing within State, pecuniarily able to support applicant, to repay county aid granted, making responsibility of such relatives enforceable by court action.

S.B. 1508—SUTTON. (Trans.) Adds Sec. 100, S. & H. C., re former state highways through cities or communities bypassed by freeways.

Requires freeway agreement under such circumstances to provide for construction of traffic interchange at junction of freeway and former state highway and erection of appropriate signs at approaches thereto and along former state highway indicating latter as business district route.

S.B. 1509—SUTTON. (Soc. Wel.) Amends Secs. 2020, 2025, W. & I. C., re aged aid.

Increases from \$85 to \$100 maximum amount payable to recipient of aged aid, and provides for maximum of \$100, instead of \$90, and minimum of \$89, instead of \$75, to take care of possible increases or decreases in federal aid.

Provides that increases or decreases due to increases or decreases in federal aid shall be based on those occurring after October 1, 1956, rather than May 1, 1955, and deletes provision that increases resulting from federal increases after May 1, 1955, shall be considered necessary to meet medical and health needs of recipients should Federal Government so require.

Provides that payments of aid delayed pursuant to departmental rule due to change in circumstances shall be paid retroactively to day change took place.

S.B. 1510—ARNOLD. (Jud.) Adds Title 11, Pt. 2, C. C. P., re release of, and contribution among, joint tortfeasors.

Provides, with some exceptions, such right of contribution as to causes of action accruing on or after January 1, 1958, where one such tortfeasor has discharged joint judgment or paid more than pro-rata share, but provides that when right of indemnity exists between such tortfeasors, there is no right of contribution. Provides that when one or more persons are held liable solely for tort of another, as in respondent superior, they shall contribute single pro-rata share, as to which there may be indemnity between them.

Provides, as to causes of action accruing at such time, that when release or covenant not to sue or not to enforce judgment is given to one of several persons liable for same tort, it does not discharge other tortfeasors from liability unless it so provides, but it reduces claims against others in amount stipulated therein or amount of consideration paid therefor, whichever is greater, and it discharges tortfeasor to whom given from liability for contribution.

S.B. 1511—ARNOLD. (Rev. & Tax.) Amends Sec. 103, R. & T. C., re property taxation, redefining "property" to include all matters and things, real, personal, and mixed, capable of ownership, rather than capable only of "private" ownership.

SUMMARY DIGEST

of

STATUTES ENACTED

and

Proposed Constitutional Amendments
Submitted to the Electors
Including
Table of Sections Affected

California Legislature
1957 Regular Session



J. A. Beek
Secretary of the Senate

Arthur A. Ohnimus
Chief Clerk of the Assembly

Compiled by
Ralph N. Kleps
Legislative Counsel

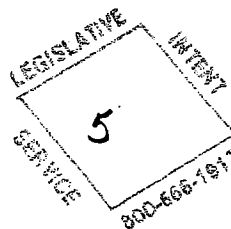


EXHIBIT §

to the insurer waive delivery of a policy and in lieu thereof there shall be delivered to such owner a written certificate of insurance setting forth in brief form the matters required by Sec. 381, Ins. C., to be in a policy.

- S.B. 1502 (Ch. 2032). GRUNSKY. Amends Sec. 1351 and adds Sec. 1352, Ins. C., re certificates of authority for reciprocal and interinsurance exchanges.

Requires certificates of authority for reciprocal or interinsurance exchanges to be for indefinite term to expire upon dissolution of organization, rather than renewable annually.

Retains required \$10 fee for amendment of certificate, specifying that it be paid in advance as fee for filing application to amend; and imposes \$10 annual fee in lieu of \$10 fee for annual certificate renewal, with each such fee to be for term commencing July 1st and ending June 30th, beginning on July 1, 1958, to become due on June 1st of each year and delinquent on and after June 15th.

Empowers commissioner, after notice and hearing, upon determining that certificated exchange has not maintained required standard of solvency or has not paid all required fees and taxes, to order exchange to comply with such requirements within 30 days of the determination under penalty of revocation of certificate unless order is stayed by court, instead of making these requirements conditions upon annual renewal of certificates.

- S.B. 1509 (Ch. 2411). SUTTON. Adds and amends various secs., W. & I. C., and Gov. C., re public assistance.

Increases aid to recipients of aged aid who under existing law do not have grant and income sufficient to meet their actual needs, in amount equivalent to amount of unmet needs up to \$16 per month.

Provides for establishment of program of aid to needy disabled, prescribing amount of aid to be granted, qualifications for recipients, and procedure for administration of program.

- S.B. 1510 (Ch. 1700). ARNOLD. Adds Title 11, Pt. 2, C. C. P., re release of, and contribution among, joint tortfeasors.

Provides, with some exceptions, such right of contribution as to causes of action accruing on or after January 1, 1958, where one such tortfeasor has discharged joint judgment or paid more than pro-rata share, but provides that when right of indemnity exists between such tortfeasors, there is no right of contribution. Provides that when one or more persons are held liable solely for tort of another, as in respondent superior, they shall contribute single pro-rata share, as to which there may be indemnity between them.

Provides, as to causes of action accruing at such time, that when release, dismissal, or covenant not to sue or not to enforce judgment is given to one of several persons liable for same tort, it does not discharge other tortfeasors from liability unless it so provides, but it reduces claims against others in amount stipulated therein or amount of consideration paid therefor, whichever is greater, and it discharges tortfeasor to whom given from liability for contribution.

- S.B. 1517 (Ch. 1701). ARNOLD. New act, re state lands.

Determines that described state lands comprising a portion of Guadalupe Canal in San Mateo County and certain accreted lands along Gallinas Creek in ~~Marin~~ County to be no longer necessary or useful for navigation, commerce, and fisheries, and free of public trust for such purposes.

Authorizes State Lands Commission to sell such lands upon terms, conditions, reservations, and exceptions it deems for best interests of State and to issue patent to purchaser.

Authorizes persons claiming interest in accreted lands along Gallinas Creek to bring quiet title against State or obtain declaratory relief determining title.

- S.B. 1524 (Ch. 1077). ARNOLD. Adds Art. 8, Ch. 13, Div. 2, Ed. C., to prescribe procedure for withdrawal of joint union high school district from junior college district under conditions prescribed.

In effect immediately.

FOURTH PROGRESS REPORT TO THE LEGISLATURE

BY THE

**SENATE INTERIM JUDICIARY
COMMITTEE**
(1955-1957)

(Senate Resolution No. 146)

MEMBERS OF THE COMMITTEE

JAMES E. CUNNINGHAM, SR., *Chairman*

DONALD L. GRUNSKY

EDWIN J. REGAN

SENATE STANDING COMMITTEE ON JUDICIARY
(1957)

MEMBERS OF THE COMMITTEE

EDWIN J. REGAN, *Chairman*

STANLEY ARNOLD
JOHN WILLIAM BEARD
JAMES E. BUSCH
CARL L. CHRISTENSEN, JR.
JAMES A. COBEY
NATHAN F. COOMBS

EARL D. DESMOND
RICHARD J. DOLWIG
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FRED S. FARR
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RICHARD RICHARDS

JOHN A. BOHN, *Counsel*

Published by the
SENATE
OF THE STATE OF CALIFORNIA

HAROLD J. POWERS
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK

6
EXHIBIT 9

LETTER OF TRANSMITTAL

SENATE CHAMBER, Sacramento, California
June 7, 1957

HONORABLE HAROLD J. POWERS,
President of the Senate, and
Members of the Senate

GENTLEMEN: The Senate Interim Judiciary Committee, created by Senate Resolution No. 146 (Senate Journal, June 8, 1955), presents herewith a progress report of its activities and results of its investigations, together with its recommendations.

Respectfully submitted,

JAMES E. CUNNINGHAM, Sr., Chairman
DONALD L. GRUNSKY
EDWIN J. REGAN

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PART I

INTRODUCTION

The Senate Interim Judiciary Committee differs from other interim and investigating committees in a rather marked degree. This committee seeks to directly co-ordinate its work with the Standing Senate Committee on Judiciary which meets only during sessions of the Legislature. Members of the staff responsible for the routine work of the Standing Senate Committee on Judiciary have customarily been employed also by the Senate Interim Judiciary Committee in order that there might be maximum co-ordination in the consideration of the many complex problems which are presented to the Members of the Senate. The Standing Senate Committee on Judiciary is composed entirely of attorney Members of the Senate, and members of the interim committee are likewise attorneys chosen from among the larger membership of the standing committee.

The type of proposed legislation referred to the Senate Committee on Judiciary during the session is extremely technical in character and in almost every instance affects the personal liberty or basic property rights of every citizen of this State. At the same time, the proposed legislation considered by this committee is, in many instances, not of the sort that attracts wide public attention and it has, therefore, been deemed advisable by the California Senate to provide a screening and analyzing process prior to consideration of the bills referred to this committee during the legislative session. To this end, each of the bills referred to the Senate Committee on Judiciary is analyzed prior to committee hearing of the bill. Between sessions of the Legislature the Senate Interim Judiciary Committee gathers information, conducts surveys, and holds hearings on bills which have been referred to it by the preceding Legislature or on certain proposed legislation likely to be presented to the succeeding session of the Legislature.

The following is a summary of actions taken on bills referred to the Senate Committee on Judiciary during the 1957 Regular Session of the Legislature:

SENATE BILLS

342 Senate bills, including Senate constitutional amendments, Senate concurrent resolutions and Senate joint resolutions were referred to the Senate Committee on Judiciary. Of this number

- 108 were given to "do pass" or "do pass as amended" recommendation. Of these
- 132 were chaptered.
- 4 were refused passage by the Senate.
- 3 were re-referred to the Senate Committee on Rules.
- 1 remained in the Senate Committee on Finance.

ASSEMBLY BILLS

232 Assembly bills, including Assembly constitutional amendments and Assembly concurrent resolutions, were referred to the Senate Committee on Judiciary. Of this number

- 206 were given a "do pass" or "do pass as amended" recommendation. Of these
- 184 were chaptered.
- 1 was refused passage by the Senate and was returned to committee where it remained.*
- 1 was referred by the Senate to the Committee on Rules for assignment to an interim committee for study.

SENATE BILLS—Continued

- 3 remained on the Senate inactive file.
- 14 remained in the Assembly committee to which they had been assigned.
- 2 remained on the Assembly inactive file.
- 9 were pocket vetoed by the Governor.
- 13 were refused passage by the Senate Committee on Judiciary.
- 30 were re-referred to the Senate Committee on Rules for assignment to an interim committee for study.
- 4 were re-referred to the Senate Committee on Rules for reference to another standing committee.
- 2 were withdrawn by the Senate Committee on Rules.
- 125 remained in committee. (A number of these bills were heard by the committee but were subsequently dropped by the authors.)

ASSEMBLY BILLS—Continued

- 3 remained on the Senate inactive file.
- 2 were vetoed by the Governor and the veto was sustained.
- 15 were pocket vetoed by the Governor.
- 5 were refused passage by the Senate Committee on Judiciary.
- 6 were re-referred to the Senate Committee on Rules for assignment to an interim committee for study.
- 17 remained in committee.* (Most of these bills were heard by the committee but were subsequently dropped by the authors.)

In order to give some indication of the volume of work required of the judiciary committees of both houses of the Legislature, it is interesting to note that during the 1957 Session 732 bills were introduced in the Assembly and referred to the Assembly Judiciary Committee, and 342 bills were introduced in the Senate and referred to the Senate Committee on Judiciary.

This current Fourth Progress Report of the Senate Interim Judiciary Committee created by the 1955 Legislature continues the work of the Senate Interim Judiciary Committees created in 1949, 1951, and 1953. It also supplements the work of the 1949, 1951, 1953, and 1955 Sessions of the California Legislature insofar as the work of the Standing Senate Committee on Judiciary is concerned.

Because of the large volume of technical bills considered by both the Senate Interim Judiciary Committee and the Standing Senate Committee on Judiciary it has not been deemed practical to repeat verbatim all of the bills presented nor to include in this report a complete technical explanation as to what each bill sought to accomplish and its ultimate fate by amendment or other action. Instead, the committee has determined to limit the detailed portion of this report to bills which were presented to the Senate Interim Judiciary Committee, and significant bills considered by the Standing Senate Committee on Judiciary.

This report has been prepared according to codes affected, bills sponsored by the State Bar of California, the California Law Revision Commission, the California Land Title Association, the California Bankers Association, the District Attorneys Association, and significant bills by various sponsors relating to eminent domain and mechanics' liens. Where a detailed technical explanation was made available to

the committee by the group sponsoring a particular bill that explanation is included in the report. As to the remainder of the bills, brief explanations have been inserted for the purpose of clarity. However, readers are cautioned that these explanations were prepared primarily to give a general indication of what the bill sought to accomplish rather than to give an exhaustive analysis of the subject or the technical effect of the bill.

An additional word of caution is also believed to be desirable in relation to the bills and explanations included in this report. In many instances the original bill was altered substantially after introduction or after presentation to the committee and the explanation furnished may refer to the bill in a form slightly or even substantially different from the bill in its final form.

Also, the report includes for the first time certain significant bills on subjects which came within the jurisdiction of both the Senate and Assembly Standing Committees on Judiciary during the 1957 Session. The purpose of including a partial summary of the activities of the Senate Committee on Judiciary during the session is to further the co-ordination and correlation of activities of the interim committee with those of the standing committee.

It is hoped that the form in which this material is presented will be of interest to the Bench and Bar.

Those bills falling within the jurisdiction of the Senate Committee on Judiciary which did not constitute a portion of the legislative programs of the previously mentioned groups have not been reported on in full for the reason that the sponsors did not make available to the committee a detailed analyses of the purpose of the bills. However, in the final portion of the report a brief reference is made to those bills which were passed by the Legislature and which were signed or vetoed by the Governor. In addition there is included a reference to the bills which the committee recommended be assigned to an appropriate interim committee for further study.

PART II
PREVIOUS COMMITTEE REPORTS

For reference purposes the titles of predecessor Senate Interim Judiciary Committee reports are listed below, together with brief tables of contents of matters considered by precedent committees in 1951, 1952, 1953, and 1955:

PROGRESS REPORT OF THE SENATE INTERIM JUDICIARY COMMITTEE, 1951

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Introduction	Real Property
Uniform Laws	Legislative Proposals—State Bar of California
Legislative Proposals—Department of Mental Hygiene	Municipal Courts
Adult Authority and Prisons	Legal Education and Admission to the Bar
Criminal Procedure	Recommendations for Further Study
Juvenile Laws	
Probation and Parole	

PROGRESS REPORT TO THE LEGISLATURE BY THE SENATE INTERIM JUDICIARY COMMITTEE, 1952

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Letter of Transmittal	Amendment of Probate Code Section 1170
Accreditation Rule and Bar Examinations	Sex Crimes
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II. Bar Examinations	II. Suggested Amendments
III. Resolution	A. The Accomplice Rule Related to Sex Crimes
Investigation of Charities	B. Qualifications of Children as Witnesses
I. Resolution	C. Jury Instruction re Testimony of Children
II. Question	D. Detention of Children as Material Witnesses
III. Law	E. Sex Crimes and Kidnaping Statutes
IV. Facts	F. Sex Crimes and Emasculation
V. Recommendations of the Committee	G. Proceedings for Commitment of Sex Psychopaths prior to Conviction of Crime
Illegal Use of Narcotics	III. Recommendations of the Committee
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I. Nature and Scope of the Problem	
II. Distinctions and Definitions	
III. California Narcotics Statutes	
IV. Suggested Amendments	
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Introduction and Acknowledgment	III. 1952 Examinations Contrasted With October, 1951
Bar Examinations of October, 1951, to October, 1952	IV. Commendation of Progress

SECOND PROGRESS REPORT TO THE LEGISLATURE BY THE SENATE INTERIM JUDICIARY COMMITTEE, 1953—Continued

Investigations of Charities	Retirement of Judges
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II. Further Work of the Committee	II. Conclusions
A. Hearing of July 14, 1952, Los Angeles	III. Recommendations
1. Division of Campaign Receipts	Illegal Use of Narcotics
2. Expenditure of Campaign Receipts	I. Previous Reports
3. Campaign and Administrative Costs	II. Further Work of the Committee
B. Report of Major Fund Raising Drive in Los Angeles, 1951	III. Conclusions and Recommendations
C. Experience and Procedures of the Department of Social Service, City of Los Angeles	Publication of All Opinions of the Supreme Court
1. Testimony of Evelyn Spaulding, General Manager	I. Introduction
2. Documents Pertaining to Charitable Solicitation in the City of Los Angeles	II. The Inquiry
3. Other Documents	III. Conclusions and Recommendations
4. Organizations Filing Applications for Charitable Solicitations in the City of Los Angeles	Commission on Qualifications, Article VI, Section 26, California Constitution
D. Experience and Procedures of the Department of Social Welfare, State of California	I. Introduction
III. Recommendations and Conclusions	II. The Inquiry
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I. Introduction	Miscellaneous Amendments
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B. Assembly Bill No. 1310 by Mr. Smith	A. Section 1600 of the Probate Code
C. Assembly Bill No. 3200 by Messrs. Condon and Hagen	B. Section 296.42 of the Probate Code
D. Senate Bill No. 1766	C. Sections 1180 and 1181 of the Civil Code
II. Analysis of Legislative Counsel	D. Section 1203 of the Civil Code
III. Report of the Conference Committee of the State Bar of California	E. Sections 1013 and 1013.5 of the Civil Code
IV. Report of the California State Chamber of Commerce	F. Section 386.5 of the Code of Civil Procedure
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SECOND PROGRESS REPORT TO THE LEGISLATURE BY THE
SENATE INTERIM JUDICIARY COMMITTEE, 1953—Continued

- | | |
|---|---|
| B. Article XI, Section 21, Constitution of the State of California | W. Sections 300, 301 and 302 of the Probate Code |
| C. Sections 6140 and 6141 of the Business and Professions Code | X. Sections 553.3 and 1483.1 of the Probate Code |
| D. Section 1200 of the Civil Code | Y. Sections 630, 630.5, 640, 642, 645, and 640 of the Probate Code |
| E. Section 3400 of the Civil Code | Z. Section 740 of the Probate Code |
| F. Section 1861 of the Civil Code | AA. Section 754.5 of the Probate Code |
| G. Section 1861a of the Civil Code | BB. Article 1 and Article 2 of Chapter 16 of Division 3 of the Probate Code |
| H. Section 6905 of the Code of Civil Code | CC. Section 1080 of the Probate Code |
| I. Section 137.3 of the Civil Code | DD. Sections 1124, 1125, 1125.1, 1126, and 1127 of the Probate Code |
| J. Section 1203 of the Penal Code | EE. Sections 1132, 1133, 1134, 1135, and 1130 of the Probate Code |
| K. Section 11715.6 of the Health and Safety Code | FF. Section 1200 of the Probate Code |
| L. Section 11722 of the Health and Safety Code | GG. Section 437c of the Code of Civil Procedure |
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| N. Section 3004 of the Corporations Code | II. Section 447 of the Code of Civil Procedure |
| O. Sections 15502 and 15525 of the Corporations Code | JJ. Sections 690.26 and 691.5 of the Code of Civil Procedure |
| P. Section 170.5 of the Code of Civil Procedure | KK. Section 1430 of the Probate Code |
| Q. Section 1001 of the Code of Civil Procedure | LL. Section 5400.5 of the Labor Code |
| R. Section 1881 of the Code of Civil Procedure | MM. Sections 13307 and 15510 of the Revenue and Taxation Code |
| S. Sections 2084, 2085, 2080, 2084.1, 2084.2, and 2000 of the Code of Civil Procedure | NN. Section 721 of the Welfare and Institutions Code |
| T. Section 2105 of the Code of Civil Procedure | IV. Sponsored by the California Code Commission and Others |
| U. Section 6060 of the Business and Professions Code | |
| V. Section 6101 of the Business and Professions Code | |

APPENDICES

- Appendix A—Ordinance No. 77,000, City of Los Angeles
Appendix B—List of Organizations Filing Applications for Charitable Solicitations in the City of Los Angeles

- Appendix C—Report on Comparative Negligence by the Legal Research Department of the California State Chamber of Commerce

SUPPLEMENT TO SECOND PROGRESS REPORT OF
SENATE INTERIM JUDICIARY COMMITTEE

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| 3. Probate Code 300, 301 and 302 | 7. Probate Code 754.5 |
| 4. Probate Code 553.3 and 1483.1 | |

SUPPLEMENT TO SECOND PROGRESS REPORT OF SENATE
INTERIM JUDICIARY COMMITTEE—Continued

- | | |
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| 11. Probate Code 1132, 1133, 1134, 1135, 1136 | 28. C.C. 137.3 |
| 12. Probate Code 1200 | 29. C.C. 1260 |
| 13. Probate Code 1430 | 30. C.C. 1861, 1861a, C.C.P. 690.5 |
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| 15. C.C.P. 437 | 32. P.C. 1203, II and S 11715.6, 11722 |
| 16. C.C.P. 474 | 33. P.C. 1088 |
| 17. C.C.P. 601 | 34. Corp C. 15502, 15525 |
| 18. C.C.P. 647 | 35. Corp C. 3004 |
| 19. C.C.P. 632 | 36. Labor Code 5406.5 |
| 20. C.C.P. 690 | 37. Rev. and Tax. 13307, 15110 |
| 21. C.C.P. 691.5 | 38. Veh. C. 332.01 |
| 22. C.C.P. 981a and 980b | 39. Wel. and I. 721 |
| 23. C.C.P. 1001 | 40. B. and P. 6060 |
| 24. C.C.P. 1005.5 | 41. B. and P. 6101 |
| | 42. B. and P. 6140, 6141 |

THIRD PROGRESS REPORT TO THE LEGISLATURE BY THE
SENATE INTERIM JUDICIARY COMMITTEE, 1955

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APPENDICES

- Appendix A—Table of Code Sections Affected by Bills Referred to the Senate and Assembly Judiciary Committees, 1955

- Appendix B—Table of Code Sections Considered for Legislative Change, 1949 Through 1953

SENATE BILL

No. 1510

Introduced by Senators Arnold, Short, Cunningham, and Busch

January 22, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Title 11 to Part 2 of the Code of Civil Procedure, relating to releases from and contribution among joint tortfeasors.

The people of the State of California do enact as follows:

1 SECTION 1. Title 11 is added to Part 2 of the Code of Civil
2 Procedure, to read:

3
4 TITLE 11. RELEASES FROM AND CONTRIBUTION
5 AMONG JOINT TORTFEASORS
6

7 875. (a) Where a money judgment has been rendered
8 jointly against two or more defendants in a tort action there
9 shall be a right of contribution among them as hereinafter
10 provided.

11 (b) Such right of contribution shall be administered in ac-
12 cordance with the principles of equity.

13 (c) Such right of contribution may be enforced only after
14 one tortfeasor has, by payment, discharged the joint judgment
15 or has paid more than his pro rata share thereof. It shall be
16 limited to the excess so paid over the pro rata share of the
17 person so paying and in no event shall any tortfeasor be com-
18 pelled to make contribution beyond his own pro rata share of
19 the entire judgment.

20 (d) There shall be no right of contribution in favor of any
21 tortfeasor who has intentionally injured the injured person.

22 (e) A liability insurer who by payment has discharged the
23 liability of a judgment tortfeasor shall be subrogated to his
24 right of contribution.

25 (f) This title shall not impair any right of indemnity under
26 existing law, and where one judgment tortfeasor is entitled to
27 indemnity from another there shall be no right of contribution
28 between them.

1 876. (a) The pro rata share of each judgment tortfeasor
2 shall be determined by dividing the entire judgment equally
3 among all of them.

4 (b) Where one or more persons are held liable solely for
5 the tort of another, as in the case of the liability of a master
6 for the tort of his servant, they shall contribute a single pro
7 rata share, as to which there may be indemnity between them.

8 877. Where a release or a covenant not to sue or not to en-
9 force judgment is given to one of two or more persons liable
10 for the same tort—

11 (a) It shall not discharge any other such tortfeasor from
12 liability unless its terms so provide, but it shall reduce the
13 claims against the others in the amount stipulated by the re-
14 lease or the covenant, or in the amount of the consideration
15 paid for it which ever is the greater; and

16 (b) It shall discharge the tortfeasor to whom it is given
17 from all liability for any contribution to any other tortfeasors.

18 878. Judgment for contribution may be entered by one
19 judgment tortfeasor against other judgment tortfeasors by
20 motion upon notice. Notice of such motion shall be given to
21 all parties in the action, including the plaintiff or plaintiffs, at
22 least 10 days before the hearing thereon. Such notice shall be
23 accompanied by an affidavit setting forth any information
24 which the moving party may have as to the assets of defend-
25 ants available for satisfaction of the judgment or claim for
26 contribution.

27 879. If any provision of this title or the application thereof
28 to any person is held invalid, such invalidity shall not affect
29 other provisions or applications of the act which can be given
30 effect without the invalid provision or application and to this
31 end the provisions of this title are declared to be severable.

32 80. This title shall become effective as to causes of actions
33 accruing on or after January 1, 1958.

As introduced, the State Bar explained the purpose of this bill as follows:

Explanation to Interim Committee

Contribution Among Judgment Joint Tortfeasors

The State Bar sponsored legislation on this subject at the 1955 Session (S. B. 412). Several hearings were held before the Senate Committee on Judiciary. No objections to the principle of the bill were expressed, but two suggestions as to the form of the bill were made. The bill was finally referred to the Senate Interim Judiciary Committee for study.

The two suggestions regarding the form of the bill were:

(1) The original bill did not provide for the effect to be given a covenant not to enforce judgment, or a release, given to one of the several judgment joint tortfeasors.

This is now covered in Section 877 of the revised proposed bill.

(2) There was also the suggestion that one judgment joint tortfeasor should not be permitted to enforce contributions against

another unless and until the plaintiff in the case had been paid in full, or at least had executed a satisfaction of judgment.

However, there was an objection to this suggestion for the reason that the plaintiff after compelling judgment debtor "A" to pay all that he possesses and more than his share, for example, could by collusion with the other judgment debtor "B" take less than full payment and thus leave "A" without a right of contribution from "B."

The proposed solution to this problem is to permit enforcement of the right of contribution prior to payment in full, but to provide that notice of the motion for enforcement of contribution shall be served upon the holder of the judgment, which notice shall be accompanied by an affidavit setting forth any information which the moving party may have as to the assets of the other judgment joint tortfeasor available for satisfaction of the judgment or claim for contribution.

Explanation to Standing Committee

Under the common law there is no contribution between joint tortfeasors. One of several joint tortfeasors may be forced to pay the whole claim for the damages caused by them yet he may not recover from the others their pro rata share of the claim. California follows this rule. (*Dow v. Sunset Tel. & Tel. Co.* (1921) 162 Cal. 136 and cases there cited; see Tuft, Contribution Between Joint Tortfeasors (1936) 24 Cal. Law Rev. 546.) The purpose of this bill is to lessen the harshness of that doctrine.

The ancient basis of the rigid rule against contribution in this type of case is the policy that the law should deny assistance to tortfeasors in adjusting losses among themselves because they are wrongdoers and the law should not aid wrongdoers. But this over-emphasizes the supposed penal character of liability in tort; it ignores the general aim of the law for equal distribution of common burdens and of the right of recovery of contribution in various situations, e.g., among cosureties. It ignores also the fact that most tort liability results from inadvertently caused damage and leads to the punishment of one wrongdoer by permitting another wrongdoer to profit at his expense.

Some American jurisdictions have recognized the right of contribution among joint tortfeasors without a statute: District of Columbia, Minnesota, Pennsylvania (before statutes), Tennessee (before statutes), Wisconsin, and (possibly) Maine.

Eight states have statutes which, as in the proposed bill, are limited to contribution among joint judgment defendants: Delaware, Michigan, Mississippi, Missouri, New York, North Carolina, Texas, and West Virginia.

A number of states have adopted statutes which declare broadly the right of contribution while other states have adopted variations of the contribution act sponsored in 1939 by the National Conference of Commissioners on Uniform Laws but which has been withdrawn for further study.

According to the Report of the Special Committee on Review of Uniform Joint Tortfeasors Act of the National Conference of Commissioners on Uniform Laws (1953 Handbook, p. 278), "contribution among joint tortfeasors is now in effect, in one form or another, in about half of the states."

The proposed statute applies only to the case where a money judgment has been rendered against two or more defendants jointly. Like the New York statute, it covers only contribution among judgment tortfeasors. In order for one judgment tortfeasor to enforce a right of contribution he must, by payment, discharge the joint judgment or pay more than his pro rata share (Sec. 875(c)). The pro rata share is determined by dividing the entire judgment equally (Sec. 876(a)), but the measure also provides that "where one or more persons are held liable solely for the tort of another, as in the case of the liability of a master for the tort of his servant, they shall contribute a single pro rata share, as to which there may be indemnity between them." (See *Martindale v. Griffin*, 233 App. Div. 517, 253 N. Y. S. 578 (1931), affirmed in 259 N. Y. 530, 182 N. E. 167 (1932) applying the New York statute.)

The right of contribution is denied the tortfeasor "who has intentionally injured the injured person" (Sec. 875(d)). In this respect the statute retains the original rule on contribution, the doctrine having its inception in a case involving intentional joint tortfeasors (*Merryweather v. Nixon* (1799) 8 Term Report 186).

Certain problems inherent in the formulation of a statute on contribution, such as subrogation of liability insurers, indemnity, vicarious liability, and the application of equitable principles, are covered by the statute. Thus, Section 875(e) expressly provides for subrogation where the liability insurer by payment has discharged the judgment in order to make it clear that the right of contribution is not limited to the insured. The right of indemnity is preserved and there is no right of contribution where one tortfeasor is entitled to indemnity from another (Sec. 875(f)). In the case where the master is liable for the tort of his servant under the doctrine of respondeat superior, the servant could have no justifiable claim to contribution from the master and the master has the greater right to full indemnity.

The procedure applicable is provided by Section 877, which provides for entry of judgment for contribution by motion upon notice.

In order to provide ample opportunity for knowledge of the statute and to make it applicable prospectively, it is provided that the measure "shall become effective as to causes of action accruing on and after January 1, 1958," in lieu of the earlier normal effective date under constitutional provisions.

Senate Bill No. 1510 was amended in the Senate on April 30th and May 1st and in the Assembly on May 17th. As finally passed, the bill reads as follows:

CHAPTER 1700

An act to add Title 11 to Part 2 of the Code of Civil Procedure, relating to releases from and contribution among joint tortfeasors.

The people of the State of California do enact as follows:

SECTION 1. Title 11 is added to Part 2 of the Code of Civil Procedure, to read:

TITLE 11. RELEASES FROM AND CONTRIBUTION AMONG JOINT TORTFEASORS

875. (a) Where a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them as hereinafter provided.

(b) Such right of contribution shall be administered in accordance with the principles of equity.

(c) Such right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof. It shall be limited to the excess so paid over the pro rata share of the person so paying and in no event shall any tortfeasor be compelled to make contribution beyond his own pro rata share of the entire judgment.

(d) There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person.

(e) A liability insurer who by payment has discharged the liability of a tortfeasor judgment debtor shall be subrogated to his right of contribution.

(f) This title shall not impair any right of indemnity under existing law, and where one tortfeasor judgment debtor is entitled to indemnity from another there shall be no right of contribution between them.

(g) This title shall not impair the right of a plaintiff to satisfy a judgment in full as against any tortfeasor judgment debtor.

876. (a) The pro rata share of each tortfeasor judgment debtor shall be determined by dividing the entire judgment equally among all of them.

(b) Where one or more persons are held liable solely for the tort of one of them or of another, as in the case of the liability of a master for the tort of his servant, they shall contribute a single pro rata share, as to which there may be indemnity between them.

877. Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort—

(a) It shall not discharge any other such tortfeasor from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater; and

(b) It shall discharge the tortfeasor to whom it is given from all liability for any contribution to any other tortfeasors.

878. Judgment for contribution may be entered by one tortfeasor judgment debtor against other tortfeasor judgment debtors by motion upon notice. Notice of such motion shall be given to all parties in the action, including the plaintiff or plaintiffs, at least 10 days before the hearing thereon. Such notice shall be accompanied by an affidavit setting forth any information which the moving party may have as to the assets of defendants available for satisfaction of the judgment or claim for contribution.

879. If any provision of this title or the application thereof to any person is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application and to this end the provisions of this title are declared to be severable.

880. This title shall become effective as to causes of action accruing on or after January 1, 1958.

SENATE BILL

No. 827

Introduced by Senators Cunningham, Arnold, Beard, Richards, Dorsey, and Short

January 17, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Sections 956 and 988h of the Code of Civil Procedure, relating to appeal and review in civil actions.

The people of the State of California do enact as follows:

1 SECTION 1. Section 956 of the Code of Civil Procedure is
2 amended to read:
3 956. Upon an appeal from a judgment the court may re-
4 view the verdict or decision, and any intermediate ruling,
5 proceeding, order or decision which involves the merits or
affects the judgment or which substantially affects

SENATE BILL NO. 1510

CHAPTER 1702

1957

AUTHOR Arnold, et al
RECEIVED 6/7 1957
LAST DAY 7/7 1957
ACTION OF GOVERNOR 7/5 1957

Date JUN 8 1957

REQUESTS FOR DIGESTS

Legislative Counsel Attorney General

RECOMMENDATIONS

- Affiliated Teachers Org. of L. A.
- Agricultural Council
- American Legion
- ASSOCIATED SPORTSMEN
- Association of Cas. & Surety Cos.
- Automobile Club of So. Calif.
- Board of Sup. County
- Calif. Assn. of Hwy. Patrolmen
- Calif. Assn. of Insurance Agents
- Calif. Congress of P. and T.
- California Farm Bureau Fed.
- California Farmers
- Calif. Insurance Cos.
- Calif. Manufacturers Assn.
- Calif. Newspapers Association
- California Real Estate Assn.
- California Retailers Assn.
- California Savings and Loan L.
- California School Board Assn.
- California State Auto. Assn.
- Calif. State Chamber of Com.
- California State Fed. of Labor
- California State Sheriff's Assn.
- California Taxpayers Assn.
- California Teachers Association
- Calif. West. States Life Ins. Co.
- CIO
- County Assessors
- County Clerks' Association
- County Supervisors Association
- County Tax Collectors Assn.
- C.S.E.A.
- Disabled American Veterans
- District Attorneys Assn.
- Grand Jury County
- Irrigation Districts Association
- Judges, Marshals and Con. Assn.
- League of California Cities
- League of Women Voters
- Motor Vehicle Advisory Com.
- Organized Sportsmen of Calif.
- Pacific Tel. & Tel.
- Peace Officers Assn.
- Public Health Engineers
- Registrar of Voters
- Registrar of Voting
- Veterinarians Assn.
- School Superintendents Assn.
- Sportsmen Council of Cal.
- State Chamber of Commerce
- State Grange
- Taxpayers Assn.
- Adjutant General
- Aeronautics Commission
- Agriculture
- Alcoholic Beverage Control
- Banks
- California State Fair and Ex.
- Civil Defense
- Compensation Insurance Fund
- Controller
- Corporation Commissioner
- Corrections
- Criminal Identification
- Education
- Employees Retirement
- Employment
- Equalization
- Finance
- Fire Marshal
- Fish and Game
- Franchise Tax Board
- Highway Patrol
- Industrial Accident Commission
- Industrial Relations
- Insurance
- Judicial Council
- Legislative Auditor
- Law Revision Commission
- Mental Hygiene
- Motor Vehicles
- Natural Resources
- Personnel Board
- Professional and Voc. Stds.
- Public Health
- Public Utilities Commission
- Public Works
- Real Estate
- Reclamation Board
- Recreation Commission
- Safety and Health Commission
- State Bar
- Social Welfare
- State Bar
- State Lands Commission
- Treasurer
- Veterans Affairs
- Water Pollution Control Board

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1157-957
1157-957

EXHIBIT / D

Per

To: Honorable Goodwin J. Knight
Governor of California

Bill Report

From: Office of the Attorney General

S. B. No. 1510

By B. Franklin Walker
Deputy Attorney General

June 12, 1957.

We have examined the above bill and find no substantial
legal objection thereto.

B. Franklin Walker

RALPH N. KLEPS
LEGISLATIVE COUNSEL
CHARLES W. JOHNSON
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STATE OF CALIFORNIA
Office of Legislative Counsel

3021 STATE CAPITOL, SACRAMENTO 14
311 STATE BUILDING, LOS ANGELES 12

June 14, 1957

LAWRENCE G. ALLYN
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RAY H. WHITAKER
ROSE WOODS
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REPORT ON SENATE BILL NO. 1510. ARNOLD.

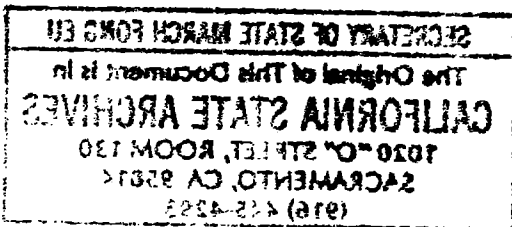
SUMMARY: Adds Title 11, Pt. 2, C.C.P., re release of, and contribution among, joint tortfeasors.

Provides, with some exceptions, such right of contribution as to causes of action accruing on or after January 1, 1958, where one such tortfeasor has discharged joint judgment or paid more than pro-rata share, but provides that when right of indemnity exists between such tortfeasors, there is no right of contribution. Provides that when one or more persons are held liable solely for tort of another, as in respondent superior, they shall contribute single pro-rata share, as to which there may be indemnity between them.

Provides, as to causes of action accruing at such time, that when release, dismissal, or covenant not to sue or not to enforce judgment is given to one of several persons liable for same tort, it does not discharge other tortfeasors from liability unless it so provides, but it reduces claims against others in amount stipulated therein or amount of consideration paid therefor, whichever is greater, and it discharges tortfeasor to whom given from liability for contribution.

FORM: Approved. TITLE: Approved.
CONSTITUTIONALITY: Approved.

Ralph N. Kleps
Legislative Counsel



By *Terry L. Baum*
Terry L. Baum
Deputy

TLB:fo

PE-3

Introduced by Senator Kopp

March 6, 1987

An act to amend Section 1432 of the Civil Code, and to amend Sections 877 and 877.6 of the Code of Civil Procedure, relating to settlements.

LEGISLATIVE COUNSEL'S DIGEST

SB 1395, as introduced, Kopp. Settlement: co-obligors.

Under existing law, in an action against multiple tortfeasors, if one or more of the alleged tortfeasors settles the action in good faith, it does not discharge the other tortfeasors but reduces the claims against them by the amount stipulated in the settlement or the consideration paid for it, whichever is greater, and it discharges the settling tortfeasor from liability for contribution to other tortfeasors.

This bill would extend those provisions to cover co-obligors mutually subject to contribution rights, unless the co-obligors have expressly agreed to apportionment of liability.

It would not apply to co-obligors with respect to a contract made prior to January 1, 1988.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1432 of the Civil Code is
- 2 amended to read:
- 3 1432. *A Except as provided in Section 877 of the Code*
- 4 *of Civil Procedure, a party to a joint, or joint and several*
- 5 *obligation, who satisfies more than his share of the claim*
- 6 *against all, may require a proportionate contribution*
- 7 *from all the parties joined with him.*
- 8 SEC. 2. Section 877 of the Code of Civil Procedure is

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1a

//

1 amended to read:

2 877. Where a release, dismissal with or without
3 prejudice, or a covenant not to sue or not to enforce
4 judgment is given in good faith before verdict or
5 judgment to one or more of a number of tortfeasors
6 claimed to be liable for the same ~~tort~~ tort, or to one or
7 more other co-obligors mutually subject to contribution
8 rights, it shall have the following effect:

9 (a) It shall not discharge any other such ~~tortfeasor~~
10 party from liability unless its terms so provide, but it shall
11 reduce the claims against the others in the amount
12 stipulated by the release, the dismissal or the covenant,
13 or in the amount of the consideration paid for it
14 whichever is the greater; ~~and~~.

15 (b) It shall discharge the ~~tortfeasor~~ party to whom it
16 is given from all liability for any contribution to any other
17 ~~tortfeasors~~ parties.

18 (c) *This section shall not apply to co-obligors who have*
19 *expressly agreed in writing to an apportionment of*
20 *liability for losses or claims among themselves.*

21 (d) *This section shall not apply to a release, dismissal*
22 *with or without prejudice, or a covenant not to sue or not*
23 *to enforce judgment given to a co-obligor on an alleged*
24 *contract debt where the contract was made prior to*
25 *January 1, 1988.*

26 SEC. 3. Section 877.6 of the Code of Civil Procedure
27 is amended to read:

28 877.6. (a) Any party to an action wherein it is alleged
29 that two or more parties are joint tortfeasors or
30 co-obligors on a contract debt shall be entitled to a
31 hearing on the issue of the good faith of a settlement
32 entered into by the plaintiff or other claimant and one or
33 more alleged tortfeasors or co-obligors, upon giving
34 notice thereof in the manner provided in Sections 1010
35 and 1011 at least 20 days before the hearing. In addition,
36 the notice may be served by mail pursuant to Section
37 1012, but in those cases the period of notice shall be at
38 least 25 days if the place of address is within the State of
39 California, at least 30 days if the place of address is outside
40 the State of California but within the United States, and



1 at least 40 days if the place of address is outside the United
2 States. Upon a showing of good cause, the court may
3 shorten the time for giving the required notice to permit
4 the determination of the issue to be made before the
5 commencement of the trial of the action, or before the
6 verdict or judgment if settlement is made after the trial
7 has commenced.

8 (b) The issue of the good faith of a settlement may be
9 determined by the court on the basis of affidavits served
10 with the notice of hearing, and any counteraffidavits filed
11 in response thereto, or the court may, in its discretion,
12 receive other evidence at the hearing.

13 (c) A determination by the court that the settlement
14 was made in good faith shall bar any other joint tortfeasor
15 or *co-obligor* from any further claims against the settling
16 tortfeasor or *co-obligor* for equitable comparative
17 contribution, or partial or comparative indemnity, based
18 on comparative negligence or comparative fault.

19 (d) The party asserting the lack of good faith shall
20 have the burden of proof on that issue.

21 (e) When a determination of the good faith or lack of
22 good faith of a settlement is made, any party aggrieved
23 by the determination may petition the proper court to
24 review the determination by writ of mandate. The
25 petition for writ of mandate shall be filed within 20 days
26 after service of written notice of the determination, or
27 within such additional time not exceeding 20 days as the
28 trial court may allow.

29 (1) The court shall, within 30 days of the receipt of all
30 materials to be filed by the parties, determine whether or
31 not the court will hear the writ and notify the parties of
32 its determination.

33 (2) If the court grants a hearing on the writ, the
34 hearing shall be given special precedence over all other
35 civil matters on the calendar of the court except those
36 matters to which equal or greater precedence on the
37 calendar is granted by law.

38 The running of any period of time after which an action
39 would be subject to dismissal pursuant to Section 583 shall
40 be tolled during the period of review of a determination



SB 1395

— 4 —

1 pursuant to this subdivision.

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AMENDED IN SENATE MAY 28, 1987

SENATE BILL

No. 1395

Introduced by Senator Kopp

March 6, 1987

An act to amend ~~Section 1432~~ Sections 1432 and 1543 of the Civil Code, and to amend Sections 877 and 877.6 of the Code of Civil Procedure, relating to settlements.

LEGISLATIVE COUNSEL'S DIGEST

SB 1395, as amended, Kopp. Settlement: co-obligors.

Under existing law, in an action against multiple tortfeasors, if one or more of the alleged tortfeasors settles the action in good faith, it does not discharge the other tortfeasors but reduces the claims against them by the amount stipulated in the settlement or the consideration paid for it, whichever is greater, and it discharges the settling tortfeasor from liability for contribution to other tortfeasors.

This bill would extend those provisions to cover co-obligors mutually subject to contribution rights, unless the co-obligors have expressly agreed to apportionment of liability.

It would not apply to co-obligors with respect to a contract made prior to January 1, 1988.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1432 of the Civil Code is
- 2 amended to read:
- 3 1432. Except as provided in Section 877 of the Code
- 4 of Civil Procedure, a party to a joint, or joint and several
- 5 obligation, who satisfies more than his share of the claim
- 6 against all, may require a proportionate contribution

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1 from all the parties joined with him.

2 *SEC. 1.5. Section 1543 of the Civil Code is amended*
3 *to read:*

4 1543. A release of one of two or more joint debtors
5 does not extinguish the obligations of any of the others,
6 unless they are mere guarantors; nor does it affect their
7 right to contribution from him or her, *except as provided*
8 *in Section 877 of the Code of Civil Procedure.*

9 *SEC. 2. Section 877 of the Code of Civil Procedure is*
10 *amended to read:*

11 877. Where a release, dismissal with or without
12 prejudice, or a covenant not to sue or not to enforce
13 judgment is given in good faith before verdict or
14 judgment to one or more of a number of tortfeasors
15 claimed to be liable for the same tort, or to one or more
16 other co-obligors mutually subject to contribution rights,
17 it shall have the following effect:

18 (a) It shall not discharge any other such party from
19 liability unless its terms so provide, but it shall reduce the
20 claims against the others in the amount stipulated by the
21 release, the dismissal or the covenant, or in the amount
22 of the consideration paid for it whichever is the greater.

23 (b) It shall discharge the party to whom it is given
24 from all liability for any contribution to any other parties.

25 (c) This section shall not apply to co-obligors who have
26 expressly agreed in writing to an apportionment of
27 liability for losses or claims among themselves.

28 (d) This section shall not apply to a release, dismissal
29 with or without prejudice, or a covenant not to sue or not
30 to enforce judgment given to a co-obligor on an alleged
31 contract debt where the contract was made prior to
32 January 1, 1988.

33 *SEC. 3. Section 877.6 of the Code of Civil Procedure*
34 *is amended to read:*

35 877.6. (a) Any party to an action wherein it is alleged
36 that two or more parties are joint tortfeasors or
37 co-obligors on a contract debt shall be entitled to a
38 hearing on the issue of the good faith of a settlement
39 entered into by the plaintiff or other claimant and one or
40 more alleged tortfeasors or co-obligors, upon giving



1 notice thereof in the manner provided in Sections 1010
2 and 1011 at least 20 days before the hearing. In addition,
3 the notice may be served by mail pursuant to Section
4 1012, but in those cases the period of notice shall be at
5 least 25 days if the place of address is within the State of
6 California, at least 30 days if the place of address is outside
7 the State of California but within the United States, and
8 at least 40 days if the place of address is outside the United
9 States. Upon a showing of good cause, the court may
10 shorten the time for giving the required notice to permit
11 the determination of the issue to be made before the
12 commencement of the trial of the action, or before the
13 verdict or judgment if settlement is made after the trial
14 has commenced.

15 (b) The issue of the good faith of a settlement may be
16 determined by the court on the basis of affidavits served
17 with the notice of hearing, and any counteraffidavits filed
18 in response thereto, or the court may, in its discretion,
19 receive other evidence at the hearing.

20 (c) A determination by the court that the settlement
21 was made in good faith shall bar any other joint tortfeasor
22 or co-obligor from any further claims against the settling
23 tortfeasor or co-obligor for equitable comparative
24 contribution, or partial or comparative indemnity, based
25 on comparative negligence or comparative fault.

26 (d) The party asserting the lack of good faith shall
27 have the burden of proof on that issue.

28 (e) When a determination of the good faith or lack of
29 good faith of a settlement is made, any party aggrieved
30 by the determination may petition the proper court to
31 review the determination by writ of mandate. The
32 petition for writ of mandate shall be filed within 20 days
33 after service of written notice of the determination, or
34 within such additional time not exceeding 20 days as the
35 trial court may allow.

36 (1) The court shall, within 30 days of the receipt of all
37 materials to be filed by the parties, determine whether or
38 not the court will hear the writ and notify the parties of
39 its determination.

40 (2) If the court grants a hearing on the writ, the



1 hearing shall be given special precedence over all other
2 civil matters on the calendar of the court except those
3 matters to which equal or greater precedence on the
4 calendar is granted by law.
5 The running of any period of time after which an action
6 would be subject to dismissal pursuant to Section 583 shall
7 be tolled during the period of review of a determination
8 pursuant to this subdivision.

O



Senate Bill No. 1395

Passed the Senate June 11, 1987

Secretary of the Senate

Passed the Assembly August 31, 1987

Chief Clerk of the Assembly

This bill was received by the Governor this _____
day of _____, 1987, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 1432 and 1543 of the Civil Code, and to amend Sections 877 and 877.6 of the Code of Civil Procedure, relating to settlements.

LEGISLATIVE COUNSEL'S DIGEST

SB 1395, Kopp. Settlement: co-obligors.

Under existing law, in an action against multiple tortfeasors, if one or more of the alleged tortfeasors settles the action in good faith, it does not discharge the other tortfeasors but reduces the claims against them by the amount stipulated in the settlement or the consideration paid for it, whichever is greater, and it discharges the settling tortfeasor from liability for contribution to other tortfeasors.

This bill would extend those provisions to cover co-obligors mutually subject to contribution rights, unless the co-obligors have expressly agreed to apportionment of liability.

It would not apply to co-obligors with respect to a contract made prior to January 1, 1988.

The people of the State of California do enact as follows:

SECTION 1. Section 1432 of the Civil Code is amended to read:

1432. Except as provided in Section 877 of the Code of Civil Procedure, a party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

SEC. 1.5. Section 1543 of the Civil Code is amended to read:

1543. A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him or her, except as provided in Section 877 of the Code of Civil Procedure.

SEC. 2. Section 877 of the Code of Civil Procedure is



amended to read:

877. Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort, or to one or more other co-obligors mutually subject to contribution rights, it shall have the following effect:

(a) It shall not discharge any other such party from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater.

(b) It shall discharge the party to whom it is given from all liability for any contribution to any other parties.

(c) This section shall not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for losses or claims among themselves.

(d) This section shall not apply to a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment given to a co-obligor on an alleged contract debt where the contract was made prior to January 1, 1988.

SEC. 3. Section 877.6 of the Code of Civil Procedure is amended to read:

877.6. (a) Any party to an action wherein it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice thereof in the manner provided in Sections 1010 and 1011 at least 20 days before the hearing. In addition, the notice may be served by mail pursuant to Section 1012, but in those cases the period of notice shall be at least 25 days if the place of address is within the State of California, at least 30 days if the place of address is outside the State of California but within the United States, and at least 40 days if the place of address is outside the United States. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit



the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response thereto, or the court may, in its discretion, receive other evidence at the hearing.

(c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

(d) The party asserting the lack of good faith shall have the burden of proof on that issue.

(e) When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the determination, or within such additional time not exceeding 20 days as the trial court may allow.

(1) The court shall, within 30 days of the receipt of all materials to be filed by the parties, determine whether or not the court will hear the writ and notify the parties of its determination.

(2) If the court grants a hearing on the writ, the hearing shall be given special precedence over all other civil matters on the calendar of the court except those matters to which equal or greater precedence on the calendar is granted by law.

The running of any period of time after which an action would be subject to dismissal pursuant to Section 583 shall be tolled during the period of review of a determination pursuant to this subdivision.



Approved _____, 1987

Governor

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LEGISLATIVE INTENT SERVICE



Senate Bill No. 1395

CHAPTER 677

An act to amend Sections 1432 and 1543 of the Civil Code, and to amend Sections 877 and 877.6 of the Code of Civil Procedure, relating to settlements.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 16, 1987.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1395, Kopp. Settlement: co-obligors.

Under existing law, in an action against multiple tortfeasors, if one or more of the alleged tortfeasors settles the action in good faith, it does not discharge the other tortfeasors but reduces the claims against them by the amount stipulated in the settlement or the consideration paid for it, whichever is greater, and it discharges the settling tortfeasor from liability for contribution to other tortfeasors.

This bill would extend those provisions to cover co-obligors mutually subject to contribution rights, unless the co-obligors have expressly agreed to apportionment of liability.

It would not apply to co-obligors with respect to a contract made prior to January 1, 1988.

The people of the State of California do enact as follows:

SECTION 1. Section 1432 of the Civil Code is amended to read: 1432. Except as provided in Section 877 of the Code of Civil Procedure, a party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

SEC. 1.5. Section 1543 of the Civil Code is amended to read:

1543. A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him or her, except as provided in Section 877 of the Code of Civil Procedure.

SEC. 2. Section 877 of the Code of Civil Procedure is amended to read:

877. Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort, or to one or more other co-obligors mutually subject to contribution rights, it shall have the following effect:

(a) It shall not discharge any other such party from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the

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covenant, or in the amount of the consideration paid for it whichever is the greater.

(b) It shall discharge the party to whom it is given from all liability for any contribution to any other parties.

(c) This section shall not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for losses or claims among themselves.

(d) This section shall not apply to a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment given to a co-obligor on an alleged contract debt where the contract was made prior to January 1, 1988.

SEC. 3. Section 877.6 of the Code of Civil Procedure is amended to read:

877.6. (a) Any party to an action wherein it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice thereof in the manner provided in Sections 1010 and 1011 at least 20 days before the hearing. In addition, the notice may be served by mail pursuant to Section 1012, but in those cases the period of notice shall be at least 25 days if the place of address is within the State of California, at least 30 days if the place of address is outside the State of California but within the United States, and at least 40 days if the place of address is outside the United States. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response thereto, or the court may, in its discretion, receive other evidence at the hearing.

(c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

(d) The party asserting the lack of good faith shall have the burden of proof on that issue.

(e) When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the determination, or within such additional time not exceeding 20 days as the trial court may allow.

(1) The court shall, within 30 days of the receipt of all materials to



be filed by the parties, determine whether or not the court will hear the writ and notify the parties of its determination.

(2) If the court grants a hearing on the writ, the hearing shall be given special precedence over all other civil matters on the calendar of the court except those matters to which equal or greater precedence on the calendar is granted by law.

The running of any period of time after which an action would be subject to dismissal pursuant to Section 583 shall be tolled during the period of review of a determination pursuant to this subdivision.

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VOLUME 1
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1987-88 REGULAR SESSION
1987-88 FIRST EXTRAORDINARY SESSION

SENATE FINAL HISTORY

SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS
AND SENATE RESOLUTIONS

CONVENED DECEMBER 6, 1986
ADJOURNED SINE DIE NOVEMBER 30, 1988

DAYS IN SESSION 253
CALENDAR DAYS 731

LT. GOVERNOR LEO T. McCARTHY
President of the Senate

SENATOR DAVID ROBERTI
President pro Tempore

Compiled Under the Direction of
DARRYL R. WHITE
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk

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2

EXHIBIT

15

S.B. No. 1394—Kopp.

An act to add Section 160835 to the Education Code, relating to school construction.

1987

- Mar. 6—Introduced. To Com. on RLS. for assignment. To print.
- Mar. 9—Read first time.
- Mar. 10—From print. May be acted upon on or after April 9.
- Mar. 19—To Com. on ED.
- Mar. 26—Art. IV, Sec. 8(a), of Constitution suspended. Joint Rule 55 suspended. Set for hearing April 1.
- April 1—Set, first hearing. Failed passage in committee. (Ayes 4. Noes 4. Page 674.)
- April 8—Reconsideration granted. From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- May 7—Set for hearing May 20.
- May 20—Set, first hearing. Failed passage in committee. (Ayes 4. Noes 5. Page 1459.)

1988

- Feb. 1—Returned to Secretary of Senate pursuant to Joint Rule 56.

S.B. No. 1395—Kopp.

An act to amend Sections 1432 and 1543 of the Civil Code, and to amend Sections 877 and 877.6 of the Code of Civil Procedure, relating to settlements.

1987

- Mar. 6—Introduced. To Com. on RLS. for assignment. To print.
- Mar. 9—Read first time.
- Mar. 10—From print. May be acted upon on or after April 9.
- Mar. 19—To Com. on JUD.
- April 6—Set for hearing May 12.
- May 27—From committee: Do pass as amended. (Ayes 7. Noes 3. Page 1387.)
- May 28—Read second time. Amended. To third reading.
- June 11—Read third time. Passed. (Ayes 23. Noes 2. Page 1953.) To Assembly.
- June 15—In Assembly. Read first time. Held at Desk.
- June 18—To Com. on JUD.
- July 1—Hearing postponed by committee.
- Aug. 20—From committee: Do pass. (Ayes 7. Noes 0.)
- Aug. 24—Read second time. To third reading.
- Aug. 31—Read third time. Passed. (Ayes 43. Noes 20. Page 4201.) To Senate.
- Aug. 31—In Senate. To enrollment.
- Sept. 4—Enrolled. To Governor at 10:15 a.m.
- Sept. 16—Approved by Governor.
- Sept. 16—Chaptered by Secretary of State. Chapter 677, Statutes of 1987.



SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1987-88 Regular Session

SB 1395 (Kopp)
As introduced
Hearing: May 13, 1987
Civil/Civil Procedure Codes
GWW

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B
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5

JOINT CONTRACTUAL OBLIGATIONS
-IMPACT OF GOOD FAITH SETTLEMENT AND RELEASE-

HISTORY

Source: Conference of Delegates, State Bar
Prior Legislation: None
Support: Unknown
Opposition: No known

KEY ISSUE

SHOULD THE TORT CONTRIBUTION AND GOOD FAITH SETTLEMENT LAWS APPLY TO CO-OBLIGORS OF A JOINT CONTRACT?

PURPOSE

Under existing law, an obligor to a joint debt arising out of contract who pays more than his share of the debt has a right of proportionate contribution against his co-obligors (Civil Code Section 1432). Existing law also provides that a settlement by one of two or more joint debtors does not extinguish the obligation of any of the others; nor does it affect their right to contribution from him (Civil Code Section 1543).

This bill would apply the tort contribution and good faith settlement statutes to the settlement of obligations arising out of a joint contract. An obligor who made a good faith settlement of a claim arising from a joint obligation would not be liable for any contribution claim by the non-settling co-obligors. The bill would not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for the losses amongst themselves. The bill would only apply to contracts made on or after January 1, 1988.

(More)

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EXHIBIT

16

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The purpose of this bill is to encourage settlements of contractual disputes involving joint obligors.

COMMENT

1. Extension of tort settlement principles to joint contract actions

Code of Civil Procedure Section 877 provides that a good faith settlement by a joint tortfeasor discharges that person's liability to a non-settling tortfeasor under the contribution statutes. As recently reiterated by the Supreme Court in Tech-Bilt v. Woodward-Clyde (1985) 38 Cal.3d 488, "the major goals of the 1957 legislation are, first, equitable sharing of costs among the parties at fault, and second, encouragement of settlements." (Citation omitted.)

The court went on to state: "In interpreting this legislation the courts therefore properly attempted to accommodate both objectives, even though the goals of equitable sharing and encouragement of settlements are not always necessarily harmonious. 'If the policy of encouraging settlements is permitted to overwhelm equitable financial sharing, the possibilities of unfair tactics are multiplied. Neither statutory goal should be applied to defeat the other' (citation omitted)."

Section 877.6, a companion provision added in 1980, bars claims for partial or comparative indemnity as well as contribution in a case of a good faith settlement. The provision also clarifies the procedures for judicial determination of the good faith issue.

[The test for "good faith," as stated in Tech-Bilt is "whether the amount of the settlement is within the reasonable range of the settling tortfeasor's proportional share of comparative liability for plaintiff's injuries." Facts to be taken into account include "a rough approximation of plaintiff's total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if found liable after trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interest of nonsettling defendants." (Emphasis added.)]

(More)



This bill would apply the tort settlement rules to actions to enforce joint contractual obligations. Proponents assert that policy of encouraging settlements is an important one and that, therefore, these rules should be extended to joint contract actions.

2. Policy considerations

It is widely recognized that the tort contribution and good faith settlement statutes have operated to encourage settlements. Thus, it seems clear that this bill would also encourage settlements in contracts involving joint contractual obligations. Less clear, however, are some of the other potential policy impacts of the bill.

(a) Dual purpose not met in contract cases

As noted above, the tort settlement principles serve the dual purpose of encouraging settlements and fairly allocating costs among multiple tortfeasors. However, the use of the tort settlement rules in joint contract actions would not achieve the same purposes. The proponent itself notes: "In the context of contract obligations there is no similar need to ensure equitable sharing of costs among the parties at fault, as common law clearly establishes how liability shall be apportioned among co-obligors. Generally, when one of several promisors on an obligation pay the full amount of the debt, that promisor may exact contribution from his co-obligors to the extent that the payment is in excess of his share. Such share is determined by any agreement made between the obligors...[or] if...no such agreement was made, the share of each promisor is measured by his interest in the contract....The rules are well settled, and make sense in the context of contractual expectations."

Thus, in joint contract actions, the only purpose served by the tort settlement laws would be to encourage settlements. Such a singular use, where the policy of settlement is advanced to the virtual exclusion of the competing policy of equitable financial sharing, of which the court warned against in Tech-Bilt, may well result in the introducing of multiple possibilities of unfair tactics in cases involving joint contracts to the ultimate disservice of the policy and the law.

WOULD NOT THIS BILL ENCOURAGE CO-OBLIGORS TO ENGAGE IN UNFAIR SETTLEMENT TACTICS TO THE DETRIMENT OF THEIR CO-OBLIGORS?

(More)



SHOULD TORT PRINCIPLES AND PROCEDURES BE APPLIED TO
CONTRACT CASES?

Passage of this bill would constitute a further step on the road to merging contract and tort principles (See e.g., Seaman's Direct Buying Service, Inc. v. Standard Oil Co. (1984) 36 Cal.3d 752.)

(b) Potential of unfair settlement tactics

Just as the tort experience provides evidence of the effectiveness of the settlement laws, it also provides evidence of what may be perceived as unfair settlement practices under those laws. For example, it is not uncommon for a plaintiff to dismiss a case against a relatively insolvent defendant for a nominal sum, or against a well-heeled defendant for tactical reasons, because the plaintiff could rely on the deep pocket of the non-settling defendants. While the most egregious practices have been curbed by the Tech-Bilt "reasonable range" test, joint tortfeasors may still freely settle for less than their proportionate share (in recognition that a settlor should always pay less in settlement), leaving the other tortfeasors to pay the rest. [It should be noted that Proposition 51 may be interpreted to hold the non-settling tortfeasors only severally liable and not responsible for the remainder of the judgement (as to noneconomic damages). However, Proposition 51 would not apply to contract actions, so the point remains valid for contract cases in the event this bill passes.]

The risk of being made a deep pocket is not now present in contracts involving joint obligations. As set forth in Civil Code Section 1543, the release of a joint debtor does not extinguish the other joint debtors' right of contribution from him.

This bill, however, is intended to extinguish that right in the case of a good faith settlement. In doing so it would create the potential for plaintiffs to choose deep pocket defendants and for defendants to pay less than their fair share in contract cases.

IN THAT THE PEOPLE OF CALIFORNIA SEEMINGLY VOTED TO ELIMINATE DEEP POCKETS IN TORT CASES, SHOULD IT NOW BE CREATED IN JOINT CONTRACT ACTIONS?

(More)



3. Possible impact on interpretation of Prop. 51

One of the central questions regarding the impact of Prop. 51 is whether it was intended to limit the several liability of every "tortfeasor" or, as in the words of the act, of each defendant. The broadest interpretation would apply the act to every tortfeasor, e.g., "the universe of actors." A narrower interpretation would only encompass parties, including cross defendants, while the narrowest interpretation would include only named defendants.

This bill would amend the term used in Section 877 (the good faith release statute) from "tortfeasor" to "party." In view of the importance of this section to the eventual interpretation of Prop. 51, this change, though intended as a technical one, could have far reaching effect. Arguably, it could be used by a litigant to support a narrower interpretation of Prop. 51. While this argument is very speculative at this time, it is at least plausible in the absence of contrary legislative intent.

The problem, if indeed it is one, can be resolved by the addition of uncodified legislative intent language which states that the change in Section 877 is not intended to affect the interpretation of Proposition 51 or its impact, if any, on the application of the statute.

4. No applicable to straight surety arrangements

This bill would apply to "co-obligors mutually subject to contribution rights." As drafted, it would not apply to surety arrangements where the surety has a 100% right to reimbursement.

5. Technical amendment needed

As drafted the bill would conflict with Civil Code Section 1543. That section should be amended to exempt the provisions of this bill in order to effectuate the provisions of SB 1395.



THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 1395
	Author:	Kopp (I)
	Amended:	5/28/87
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.:	SB 1395	
DATE OF HEARING:	5-12-87	
SENATORS:	AYE	NO
Doolittle	✓	
Keene	✓	
Marks	✓	
Petris		✓
Presley	✓	
Richardson	✓	
Roberti		✓
Torres		
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)		✓
TOTAL:	73	

Assembly Floor Vote:

SUBJECT: Settlement: Co-obligors

SOURCE: Conference of Delegates, State Bar

DIGEST: This bill provides that the tort contribution and good faith settlement laws apply to co-obligors of a joint contract. The bill also provides that a release one of two or more joint debtors does not extinguish the obligations of any of the others as specified.

ANALYSIS: Under existing law, an obligor to a joint debt arising out of contract who pays more than his share of the debt has a right of proportionate contribution against his co-obligors (Civil Code Section 1432). Existing law also provides that a settlement by one of two or more joint debtors does not extinguish the obligation of any of the others; nor does it affect their right to contribution from him (Civil Code Section 1543).

This bill would apply the tort contribution and good faith settlement statutes to the settlement of obligations arising out of a joint contract. An obligor who made a good faith settlement of a claim arising from a joint obligation would not be liable for any contribution claim by the non-settling co-obligors. The bill would not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for the losses amongst themselves. The bill would only apply to contracts made on or after January 1, 1988.

This bill also states that a release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him or her, except as provided in Section 877 of the Code of Civil Procedure.

EXHIBIT 17 CONTINUED

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LEGISLATIVE INTENT SERVICE



The purpose of this bill is to encourage settlements of contractual disputes involving joint obligors.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 5/28/87)

Conference of Delegates, State Bar (source)
Orange County Bar Association

RJG:nf 5/29/87 Senate Floor Analyses



Date of Hearing: August 19, 1987

SB 1395

ASSEMBLY SUBCOMMITTEE ON THE ADMINISTRATION OF JUSTICE
LLOYD G. CONNELLY, Chairperson

SB 1395 (Kopp) - As Amended: May 28, 1987

SUBJECT: This bill extends various concepts of tort law relating to settlement, release, and contribution to contract actions involving co-obligors.

DIGEST

Existing law, with regard to joint tortfeasors, provides that the good faith settlement of one tortfeasor relieves that settling tortfeasor from all liability for contribution to any other tortfeasor.

Existing law, with regard to joint debtors, provides that the release of one debtor does not extinguish his or her obligation in contribution to the other debtors. (Civil Code Section 1543)

Likewise, a co-obligor who satisfies more than his or her share of a claim may seek contribution from the other co-obligors. (Civil Code Section 1432)

This bill extends the existing provisions of law relating to the good faith settlements of joint tortfeasors to co-obligors on a contract debt and, also, provides that:

- 1) The bill does not apply if the co-obligors have "expressly agreed in writing" to an apportionment of liability among themselves.
- 2) The bill only applies to contracts made on or after January 1, 1987.

FISCAL EFFECT

This bill will not be referred to Ways and Means Committee.

COMMENTS

- 1) SB 1395 is sponsored by the State Bar Conference of Delegates and was proposed by the Orange County Bar Association. The primary rationale for the bill is to "encourage settlements in contract actions." As stated by the sponsor, one of the primary purposes of Code of Civil Procedure Section 877 is the encouragement of settlements. Promotion of settlements is accomplished by discharging settling tortfeasors from all liability in contribution to any other party.

Existing law (Code of Civil Procedure Section 877.6) subjects settlements to a "good faith" standard. Non-settling parties may petition the court

- continued -

7
EXHIBIT

SB 1395

18

for a hearing on the good faith of a settlement. If the court upholds the settlement, the settling party is discharged from further liability. If the court determines that the settlement was not made in good faith, the settling party remains liable to other potential tortfeasors for contribution.

Recently, the Supreme Court ruled in Tech-built, Inc. v. Woodward-Clyde & Associates (1985) 38 Cal.3d 488 that when a trial court is determining whether a settlement has been made in good faith, the trial court must inquire:

"whether the amount of the settlement is within the reasonable range of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injuries."

This means that nonsettling defendants now have a greater opportunity to challenge the good faith quality of settlements.

- 2) The Association of California Tort Reform (ACTR) has expressed concern about SB 1395. Basically, ACTR is concerned that SB 1395 proposes an untested melding of tort and contract principles of law. ACTR argues that the division between tort and contract has become less clear in recent years. The emergence of a cause of action in tort for breach of the covenant of good faith and fair dealing has contributed to this blurring.

While not strictly relevant to SB 1395, in Seaman's Direct Buying Service, Inc. v. Standard Oil Co. (1984) 36 Cal.3d 752, the Court addressed this issue of conflicting principles of tort and contract law:

"When we move from such special relationships to consideration of the tort remedy in the context of the ordinary commercial contract, we move into largely uncharted and potentially dangerous waters. Here, parties of roughly equal bargaining power are free to shape the contours of their agreement and to include provisions for attorney fees and liquidated damages in the event of breach. They may not be permitted to disclaim the covenant of good faith but they are free, within reasonable limits at least, to agree upon the standards by which application of the covenant is to be measured. In such contracts, it may be difficult to distinguish between breach of the covenant and breach of contract, and there is the risk that interjecting tort remedies will intrude upon the expectations of the parties. This is not to say that tort remedies have no place in such a commercial

- continued -



context, but that it is wise to proceed with caution in determining their scope and application."

ACTR is concerned that SB 1395 accelerates the deterioration of the division between contract and tort law and that the consequences of the bill are not fully understood.

- 3) Lastly, with regard to ACTR's argument, it should be noted that one of the objectives of Section 877 is to effect "equitable sharing of costs among the parties at fault." (See Tech-Bilt, supra.)

Even the sponsors of SB 1395 recognize that "in the context of contract obligations there is no similar need to ensure equitable sharing of costs among the parties at fault, as common law clearly establishes how liability shall be apportioned among co-obligors."

Thus, it appears that extending the tort principles embodied in Sections 877 and 877.6 to contract actions only accomplishes one of the objectives of these provisions of law. SB 1395 may promote settlements in contract disputes but, may also frustrate the contractual expectations of the parties by interposing notions of equitable apportionment of fault into clearly established rules of common law.

Support

Conference of Delegates

Opposition

Association of California Tort Reform



SENATE THIRD READING

SB 1395 (Kopp) - As Amended: May 28, 1987

SENATE VOTE: 23-2

ASSEMBLY ACTIONS:

COMMITTEE _____ JUD. _____ VOTE 7-0 COMMITTEE _____ VOTE _____

Ayes: _____ Ayes: _____

Nays: _____ Nays: _____

DIGEST

Existing law, with regard to joint tortfeasors, provides that the good faith settlement of one tortfeasor relieves that settling tortfeasor from all liability for contribution to any other tortfeasor.

Existing law, with regard to joint debtors, provides that the release of one debtor does not extinguish his or her obligation in contribution to the other debtors.

Likewise, a co-obligor who satisfies more than his or her share of a claim may seek contribution from the other co-obligors.

This bill extends the existing provisions of law relating to the good faith settlements of joint tortfeasors to co-obligors on a contract debt and, also, provides that:

- 1) The bill does not apply if the co-obligors have "expressly agreed in writing" to an apportionment of liability among themselves.
- 2) The bill applies only to contracts made on or after January 1, 1987.

FISCAL EFFECT

None

COMMENTS

- 1) This bill is sponsored by the State Bar Conference of Delegates and was proposed by the Orange County Bar Association. The primary rationale for the bill is to "encourage settlements in contract actions." As stated by

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the sponsor, one of the primary purposes of Code of Civil Procedure Section 877 is the encouragement of settlements. Promotion of settlements is accomplished by discharging settling tortfeasors from all liability in contribution to any other party.

Existing law (Code of Civil Procedure Section 877.6) subjects settlements to a "good faith" standard. Non-settling parties may petition the court for a hearing on the good faith of a settlement. If the court upholds the settlement, the settling party is discharged from further liability. If the court determines that the settlement was not made in good faith, the settling party remains liable to other potential tortfeasors for contribution.

Recently, the Supreme Court ruled in Tech-built, Inc. vs. Woodward-Clyde & Associates (1985) 38 Cal.3d 488 that when a trial court is determining whether a settlement has been made in good faith, the trial court must inquire:

"whether the amount of the settlement is within the reasonable range of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injuries."

This means that nonsettling defendants now have a greater opportunity to challenge the good faith quality of settlements.

- 2) The Association of California Tort Reform (ACTR) has expressed concern about this bill. Basically, ACTR is concerned that the measure proposes an untested melding of tort and contract principles of law. ACTR argues that the division between tort and contract has become less clear in recent years. The emergence of a cause of action in tort for breach of the covenant of good faith and fair dealing has contributed to this blurring.

While not strictly relevant to the bill, in Seaman's Direct Buying Service, Inc. vs. Standard Oil Co. (1984) 36 Cal.3d 752, the court addressed this issue of conflicting principles of tort and contract law:

"When we move from such special relationships to consideration of the tort remedy in the context of the ordinary commercial contract, we move into largely uncharted and potentially dangerous waters. Here, parties of roughly equal bargaining power are free to shape the contours of their agreement and to include provisions for attorney fees and liquidated damages in the event of breach. They may not be permitted to disclaim the covenant of good faith but they are free, within

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reasonable limits at least, to agree upon the standards by which application of the covenant is to be measured. In such contracts, it may be difficult to distinguish between breach of the covenant and breach of contract, and there is the risk that interjecting tort remedies will intrude upon the expectations of the parties. This is not to say that tort remedies have no place in such a commercial context, but that it is wise to proceed with caution in determining their scope and application."

ACTR is concerned that the bill accelerates the deterioration of the division between contract and tort law and that the consequences of the bill are not fully understood.

- 3) Lastly, with regard to ACTR's argument, it should be noted that one of the objectives of Section 877 is to effect "equitable sharing of costs among the parties at fault." (See Tech-Bilt, supra.)

Even the sponsors of the bill recognize that "in the context of contract obligations there is no similar need to ensure equitable sharing of costs among the parties at fault, as common law clearly establishes how liability shall be apportioned among co-obligors."

Thus, it appears that extending the tort principles embodied in Sections 877 and 877.6 to contract actions only accomplishes one of the objectives of these provisions of law. The bill may promote settlements in contract disputes but, may also frustrate the contractual expectations of the parties by interposing notions of equitable apportionment of fault into clearly established rules of common law.



BILL NUMBER: SB 1395

REFER TO: Judiciary

AUTHOR: Kopp

DATE REFERRED: 06/18/87

RELATING TO: Settlement: co-obligors.

An act to amend ~~Section 1432~~ Sections 1432 and 1543 of the Civil Code, and to amend Sections 877 and 877.6 of the Code of Civil Procedure, relating to settlements.

LEGISLATIVE COUNSEL'S DIGEST

SB 1395, as amended, Kopp. Settlement: co-obligors.

Under existing law, in an action against multiple tortfeasors, if one or more of the alleged tortfeasors settles the action in good faith, it does not discharge the other tortfeasors but reduces the claims against them by the amount stipulated in the settlement or the consideration paid for it, whichever is greater, and it discharges the settling tortfeasor from liability for contribution to other tortfeasors.

This bill would extend those provisions to cover co-obligors mutually subject to contribution rights, unless the co-obligors have expressly agreed to apportionment of liability.

It would not apply to co-obligors with respect to a contract made prior to January 1, 1988.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

STAFF COMMENTS:

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SB 1395 (Kopp)
8/27/87

ASSEMBLY JUDICIARY COMMITTEE
REPUBLICAN ANALYSIS

SB 1395 (Kopp) -- SETTLEMENT: CO-OBLIGORS

Version: 5/28/87 Vice-Chairman: Tom McClintock
Recommendation: Abstain.
Vote: Majority

Summary: Revises contract law to extinguish a contract debtor's obligation to contribution to other contract debtors where the first debtor settles out of court with the contract creditor (plaintiff). The other debtors remain liable for the balance of the debt. Not applicable where co-obligors (co-debtors) expressly agreed in writing to an apportionment of the liability among themselves. Applies only to contracts on or after Jan. 1, 1988. Fiscal effect: Unknown.

Supported by Conference of Delegates of State Bar (source);
Opposed by Association for California Tort Reform.
Governor's position: Unknown.

Comments: A bill to promote settlement of contractual disputes involving joint obligors but with possible inequity to other co-obligors. The application of this policy of tort law to contract law may encourage settlements but may not advance the policy of equitable financial sharing of liability by co-obligors. This could encourage co-obligors to engage in unfair settlement tactics to the detriment of their co-obligors. For example, a plaintiff may settle with the less solvent obligor for less than the obligor's share of the debt and then take the other obligor to trial for more than his contractual share of the debt.

ACTR argues that this bill accelerates the deterioration of the division between contract and tort law and that the consequences are not fully understood.

Senate Republican Floor Vote -- 6/11/87
(23-3) Ayes: All Reps.

Assembly Republican Committee Vote
Judiciary -- 8/19/87

(7-0) Ayes: Mojonnier

Abs.: Leslie, McClintock, Mojonnier

Consultant: Mark Redmond

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EXHIBIT

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Fl., Los Angeles, California 90036-3697.

On November 25, 2008, I served the foregoing document described as: **APPELLANT'S MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDICIAL NOTICE; TWO DECLARATIONS OF MARIA A. SANDERS; AND [PROPOSED] ORDER** on the parties in this action by serving:

Albert T. Liou, Esq.
Richardson & Patel LLP
10900 Wilshire Blvd., Suite 500
Los Angeles, California 90024
**[Attorneys for Plaintiff and
Appellant Aidan Ming-Ho Leung]**


Stuart B. Esner, Esq.
Esner, Chang & Ellis
500 North Brand Boulevard Suite
2210
Glendale, California 91203
**[Attorneys for Plaintiff and
Appellant Aidan Ming-Ho Leung]**

Thomas F. McAndrews, Esq.
Reback McAndrews & Kjar LLP
1230 Rosecrans Avenue, Suite 450
Manhattan Beach, California 90266
**[Attorneys for Defendants and
Respondents Steven Wayne
Nishibayashi, M.D. and Steven
Wayne Nishibayashi, M.D., Inc.]**

(X) BY MAIL: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on November 25, 2008, at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Anita Cole

on December 16, 2008. The present Motion is based on the papers that were filed in the Court of Appeal, consisting of the Motion, Memorandum of Points and Authorities, two declarations of Maria A. Sanders, proposed order and attached documents, all of which are attached to this Motion as Exhibit A; the present Motion is further based on the record on appeal as well as any oral argument as may be entertained as to judicial notice.

Dated: September 7, 2011


Respectfully submitted,

THOMAS and THOMAS LLP

Michael Thomas
Maureen F. Thomas

GREINES, MARTIN, STEIN & RICHLAND LLP

Robert A. Olson
Feris M. Greenberger

By: 
Feris M. Greenberger

Attorneys for Petitioner, Defendant and
Appellant VERDUGO HILLS HOSPITAL

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On September 7, 2011, I served the foregoing document described as: **VERDUGO HILLS HOSPITAL'S MOTION FOR JUDICIAL NOTICE** the parties in this action by serving:

Luan K. Phan
LKP Global Law, LLP
1901 Avenue of the Stars, Suite 480
Los Angeles, California 90067
**[Attorneys for Plaintiff and Appellant
Aidan Ming-Ho Leung]**


Stuart B. Esner
Esner, Chang & Boyer
234 East Colorado Boulevard, Suite 750
Pasadena, California 91101
**[Attorneys for Plaintiff and Appellant
Aidan Ming-Ho Leung]**

Thomas F. McAndrews
Reback McAndrews & Kjar LLP
1230 Rosecrans Avenue, Suite 450
Manhattan Beach, California 90266
**[Attorneys for Defendants and
Respondents Steven Wayne Nishibayashi,
M.D. and Steven Wayne Nishibayashi,
M.D., Inc.]**

(X) BY MAIL: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on September 7, 2011, at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


ANITA F. COLE