

RESOLUTION 03-01-2019

DIGEST

Requires Elementary Schools to Provide Sanitary Products

Amends Education Code section 35292.6 to require elementary schools, grades 3 through 6, that meet certain pupil poverty thresholds, to provide sanitary products in half of the school restrooms.

TEXT OF RESOLUTION

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

1 §35292.6

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

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

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

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

PROPONENT: Women Lawyers of Sacramento

STATEMENT OF REASONS

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

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

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

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

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

RESOLUTION 03-02-2019

DIGEST

Education: Defibrillation Units for High School Swimming Pools

Amends Education Code section 35179.6 to require school districts or charter schools with pools to acquire automated external defibrillators.

TEXT OF RESOLUTION

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

- 1 §35179.6
- 2 (a) For purposes of this section, an “AED” is an automated external defibrillator.
- 3 (b)(1) Commencing July 1, 2019, if a school district or charter school elects to offer any
- 4 interscholastic athletic program, the school district or the charter school shall acquire at least one
- 5 AED for each school within the school district or the charter school. The school district or the
- 6 charter school is encouraged to ensure that the AED or AEDs are available for the purpose of
- 7 rendering emergency care or treatment within a recommended three to five minutes of sudden
- 8 cardiac arrest to pupils, spectators, and any other individuals in attendance at the athletic
- 9 program’s on campus activities or events and shall ensure that the AED or AEDs are available to
- 10 athletic trainers and coaches and authorized persons at these activities or events.
- 11 (2) Commencing July 1, 2020, if a school district or charter school has an on-site
- 12 swimming pool and elects to offer any interscholastic aquatics athletic program, the school
- 13 district or the charter school shall acquire an AED unit for the swimming pool area. This
- 14 requirement is in addition to the requirement in section 35179.6(b)(1).
- 15 (c) Subdivision (b) of Section 49417 shall apply for the purposes of determining whether
- 16 an employee of a school district is liable for any civil damages resulting from his or her use,
- 17 attempted use, or nonuse of an AED in the rendering of emergency care or treatment pursuant to
- 18 this section.
- 19 (d) Subdivision (c) of Section 49417 shall apply for the purposes of determining whether
- 20 a public school or school district is liable for any civil damages resulting from any act or
- 21 omission in the rendering of emergency care or treatment pursuant to this section.
- 22 (e) Except as provided in subdivision (g), if an employee of a charter school complies
- 23 with Section 1714.21 of the Civil Code in rendering emergency care or treatment through the
- 24 use, attempted use, or nonuse of an AED at the scene of an emergency, the employee shall not be
- 25 liable for any civil damages resulting from any act or omission in the rendering of the emergency
- 26 care or treatment.
- 27 (f) Except as provided in subdivision (g), if a charter school complies with the
- 28 requirements of Section 1797.196 of the Health and Safety Code, the charter school shall be
- 29 covered by Section 1714.21 of the Civil Code and shall not be liable for any civil damages
- 30 resulting from any act or omission in the rendering of the emergency care or treatment.
- 31 (g) Subdivisions (e) and (f) do not apply in the case of personal injury or wrongful death
- 32 that results from gross negligence or willful or wanton misconduct on the part of the person who
- 33 uses, attempts to use, or fails to use an AED to render emergency care or treatment.

34 (h) In order to ensure public safety, each school district or charter school that elects to
35 offer any interscholastic athletic program shall ensure that its AED or AEDs are maintained and
36 regularly tested according to the operation and maintenance guidelines set forth by the
37 manufacturer, the American Heart Association, or the American Red Cross, and according to any
38 applicable rules and regulations set forth by the governmental authority under the federal Food
39 and Drug Administration and any other applicable state and federal authority.
40 (i) This section does not alter the requirements of Section 1797.196 of the Health and
41 Safety Code.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

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

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

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

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

CURRENT OR PRIOR RELATED LEGISLATION

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

AB 1766 (Maienschein, 2018), to require public swimming pools that charge a “direct fee” to provide an AED unit. In addition, AB 1766 requires the State Department of Education, in consultation with the State Department of Public Health to “issue best practices guidelines related to pool safety at K-12 schools.” *See* Health and Safety Code section 116046(a).

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

IMPACT STATEMENT

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

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RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 03-03-2019

DIGEST

Child Abuse: Unsupervised Play for Children

Amends Penal Code section 273a, and Welfare & Institutions Code section 300.4 to permit children to play outdoors unsupervised.

TEXT OF RESOLUTION

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

1 §273a

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

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

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

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

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

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

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

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

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

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

39
40 §300.4

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

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

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

74 (2) The Legislature finds and declares that a child who is sexually trafficked, as
75 described in Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or
76 who is paid to perform, sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and
77 whose parent or guardian failed to, or was unable to, protect the child, is within the description of

78 this subdivision, and that this finding is declaratory of existing law. These children shall be
79 known as commercially sexually exploited children.

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

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

85 (B) Engage in outdoor play;

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

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

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

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

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

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

121 (g) The child has been left without any provision for support; physical custody of the
122 child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code
123 and the child has not been reclaimed within the 14-day period specified in subdivision (g) of that

124 section; the child's parent has been incarcerated or institutionalized and cannot arrange for the
125 care of the child; or a relative or other adult custodian with whom the child resides or has been
126 left is unwilling or unable to provide care or support for the child, the whereabouts of the parent
127 are unknown, and reasonable efforts to locate the parent have been unsuccessful.

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

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

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

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

157 As used in this section, "guardian" means the legal guardian of the child.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

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

"No, no, no! I wait here," replied the boy.

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

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

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

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

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

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

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None.

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RESPONSIBLE FLOOR DELEGATE: B. Douglas Robbins

RESOLUTION 03-04-2019

DIGEST

Water Code: Ban of Oxybenzone and Octinoxate

Adds Water and Code section 86000 to ban the use of oxybenzone and octinoxate to preserve reef, ocean and fresh water wildlife.

TEXT OF RESOLUTION

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

- 1 §86000
2 (a) Beginning January 1, 2021, it shall be unlawful to sell, offer for sale, or distribute for
3 sale in the State any sunscreen that contains oxybenzone or octinoxate, or both, without a
4 prescription issued by a licensed healthcare provider.
5 (b) No county shall enact any ordinance or regulatory restriction to prohibit the sale, use,
6 labeling, packaging, handling, distribution, or advertisement of sunscreens containing
7 oxybenzone or octinoxate, or both, prior to January 1, 2021.
8 (c) For purposes of this section:
9 "Licensed healthcare provider" means a physician or osteopathic physician licensed to
10 California code or an advanced practice registered nurse licensed pursuant to California code.
11 "Octinoxate" refers to the chemical (RS)-2-Ethylhexyl (2E)-3-(4-methoxyphenyl)prop-2-
12 enoate under the International Union of Pure and Applied Chemistry chemical nomenclature
13 registry; that has a chemical abstract service registry number 5466-77-3; the synonyms of which
14 include but are not limited to ethylhexyl methoxycinnamate, octyl methoxycinnamate, Eusolex
15 2292, Neo Heliopan AV, NSC 26466, Parsol MOX, Parsol MCX, and Uvinul MC80; and is
16 intended to be used as protection against ultraviolet light radiation with a spectrum wavelength
17 from 370 nanometers to 220 nanometers in a sunscreen.
18 "Oxybenzone" refers to the chemical (2-Hydroxy-4-methoxyphenyl)-phenylmethanone
19 under the International Union of Pure and Applied Chemistry chemical nomenclature registry;
20 that has a chemical abstract service registry number 131-57-7; the synonyms of which include
21 but are not limited to benzophenone-3, Escalol 567, Eusolex 4360, KAHSCREEN BZ-3,
22 Uvasorb MET/C, Syntase 62, UV 9, Uvinul 9, Uvinul M-40, Uvistat 24, USAF Cy-9,
23 Uniphenone-3U, 4-methoxy-2-hydroxybenzophenone and Milestab 9; and is intended to be used
24 as protection against ultraviolet light radiation with a spectrum wavelength from 370 nanometers
25 to 220 nanometers in a sunscreen.
26 "Prescription" means an order for medication, that is dispensed to or for an ultimate
27 user. "Prescription" shall not include an order for medication that is dispensed for immediate
28 administration to the ultimate user, such as a chart order to dispense a drug to a bed patient for
29 immediate administration in a hospital. "Prescription" includes an order for a sunscreen.
30 "Sunscreen" means a product marketed or intended for topical use to prevent
31 sunburn. Sunscreen does not include products marketed or intended for use as a cosmetic, as
32 defined in section 328-1, for the face."

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

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

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

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

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

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

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

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

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

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RESOLUTION 03-05-2019

DIGEST

Plastic Bag Waste: Ban Use of Plastic Bags With Newspapers

Amends Public Resources Code section 42280 and adds Article 7, section 42289, to ban the use of plastic bags for newspaper products on a daily basis to fight plastic bag waste.

TEXT OF RESOLUTION

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

- 1 §42280
- 2 (a) “Department” means the Department of Resources Recycling and Recovery.
- 3 (b) “Postconsumer recycled material” means a material that would otherwise be destined for
- 4 solid waste disposal, having completed its intended end use and product life cycle. Postconsumer
- 5 recycled material does not include materials and byproducts generated from, and commonly reused
- 6 within, an original manufacturing and fabrication process.
- 7 (c) “Recycled paper bag” means a paper carryout bag provided by a store to a customer at the
- 8 point of sale that meets all of the following requirements:
- 9 (1) (A) Except as provided in subparagraph (B), contains a minimum of 40 percent
- 10 postconsumer recycled materials.
- 11 (B) An eight pound or smaller recycled paper bag shall contain a minimum of 20 percent
- 12 postconsumer recycled material.
- 13 (2) Is accepted for recycling in curbside programs in a majority of households that have access
- 14 to curbside recycling programs in the state.
- 15 (3) Has printed on the bag the name of the manufacturer, the country where the bag was
- 16 manufactured, and the minimum percentage of postconsumer content.
- 17 (d) “Reusable grocery bag” means a bag that is provided by a store to a customer at the point of
- 18 sale that meets the requirements of Section 42281.
- 19 (e) (1) “Reusable grocery bag producer” means a person or entity that does any of the
- 20 following:
- 21 (A) Manufactures reusable grocery bags for sale or distribution to a store.
- 22 (B) Imports reusable grocery bags into this state, for sale or distribution to a store.
- 23 (C) Sells or distributes reusable bags to a store.
- 24 (2) “Reusable grocery bag producer” does not include a store, with regard to a reusable grocery
- 25 bag for which there is a manufacturer or importer, as specified in subparagraph (A) or (B) of paragraph
- 26 (1).
- 27 (f) (1) “Single-use carryout bag” means a bag made of plastic, paper, or other material that is
- 28 provided by a store to a customer at the point of sale and that is not a recycled paper bag or a reusable
- 29 grocery bag that meets the requirements of Section 42281.
- 30 (2) A single-use carryout bag does not include either of the following:
- 31 (A) A bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of
- 32 Division 2 of the Business and Professions Code to a customer purchasing a prescription medication.

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

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

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

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

39 (1) A full-line, self-service retail store with gross annual sales of two million dollars
40 (\$2,000,000) or more that sells a line of dry groceries, canned goods, or nonfood items, and some
41 perishable items.

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

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

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

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

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

57
58 Article 7, § 42289 [Plastic Newspaper Bag Ban]

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

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

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

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

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Plastic newspaper bags, used in California cities, contribute to a large amount of plastic waste every day, no matter whatever weather calls for their use or not. This waste for an example

newspaper's daily circulation, in 2019, The San Francisco Chronicle, amounts to 2000 pounds / 1 ton per day, based on an average calculation of 80 bags = 1 oz, 1280 bags = 1 lb. Adding another reference city, Los Angeles, where the LA Times has a circulation 4 times as much as the San Francisco Chronicle, this would bring the total plastic bag waste to 5 tons per day for just two California cities.

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

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

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

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESPONSIBLE FLOOR DELEGATE: Rae Raucci

RESOLUTION 03-06-2019

DIGEST

Hospitals: Requirement of Estimated Cost of Services

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

TEXT OF RESOLUTION

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

1 §1339.585
2 ~~Upon the request of a person without health insurance, a~~ A hospital shall provide the
3 person without health insurance with a written estimate of the amount the hospital will require
4 the person to pay for the health care services, procedures and supplies that are reasonably
5 expected to be provided to the person by the hospital, based upon an average length of stay and
6 services provided for the person’s diagnosis. The hospital may provide this estimate during
7 normal business office hours, but as soon as practicable after the person is admitted or the
8 hospital has knowledge the person will be admitted. The hospital may not charge the person an
9 amount in excess of the estimate plus five percent of the estimated amount, except for health care
10 services, procedures and supplies provided to the person but not anticipated when the estimate
11 was provided to the person. In addition to the estimate, the hospital shall provide information
12 about its financial assistance and charity care policies and contact information for a hospital
13 employee or office from which the person may obtain further information about these policies. If
14 requested, the hospital shall also provide the person with an application form for financial
15 assistance or charity care. This section shall not apply to emergency services provided to a
16 person pursuant to Section 1317.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

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

The Solution: Health & Safety Code section 1339.585 already requires hospital to provide patients without healthcare insurance an estimate of the cost of the services they will receive. but only upon request of the patient, and few people probably know they have this right. In addition, the statute has no teeth, because nothing limits the patient's ultimate bill to the estimate or anything close to it. The proposed amendments would require the hospital to provide the estimate, whether or not requested, and limit the patient's bill for the estimated service to the estimate amount plus five percent. Under the proposed amendments uninsured patients would not only have advanced information about the estimated cost of their hospital stay but assurance their ultimate bills will be within the range of the estimates they receive. This is little comfort for an uninsured person who requires hospitalization, but some improvement over the current blind hospital pricing procedures.

IMPACT STATEMENT

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

CURRENT OR RELATED LEGISLATION

None known.

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RESOLUTION 03-07-2019

DIGEST

Evidence Code: Revise Code Section to Provide Gender Neutral Language
Amends Evidence Code section 403 to provide gender neutral language.

TEXT OF RESOLUTION

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

- 1 §403
2 (a) The proponent of the proffered evidence has the burden of producing evidence as to
3 the existence of the preliminary fact, and the proffered evidence is inadmissible unless the court
4 finds that there is evidence sufficient to sustain a finding of existence of the preliminary fact,
5 when:
6 (1) The relevance of the proffered evidence depends on the existence of the preliminary
7 fact;
8 (2) The preliminary fact is the personal knowledge of a witness concerning the subject
9 matter of this testimony;
10 (3) The preliminary fact is the authenticity of a writing; or
11 (4) The proffered evidence is of a statement or other conduct of a particular person and
12 the preliminary fact is whether that person made the statement or so conducted ~~himself~~ their self.
13 (b) Subject to Section 702, the court may admit conditionally the proffered evidence
14 under this section, subject to evidence of the preliminary fact being supplied later in the course
15 of the trial.
16 (c) If the court admits the proffered evidence under this section, the court:
17 (1) May, and on request shall, instruct the jury to determine whether the preliminary fact
18 exists and to disregard the proffered evidence unless the jury finds that the preliminary fact does
19 exist.
20 (2) Shall instruct the jury to disregard the proffered evidence if the court subsequently
21 determines that a jury could not reasonably find that the preliminary fact exists.

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

PROPONENT: Probate Attorneys of San Diego

STATEMENT OF REASONS

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

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

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTION 03-08-2019

DIGEST

Private Professional Fiduciary Bureau – Requires Fiduciary Bureau to Stay Investigations
Amends Business and Professions Code section 6580 to require a stay of the Professional Fiduciaries Bureau investigation and sanctions when related to claims in pending litigation.

TEXT OF RESOLUTION

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

- 1 §6580
2 (a) The bureau may upon its own, and shall, upon the receipt of a complaint from any
3 person, investigate the actions of any professional fiduciary, including a person with a license
4 that either restricts or prohibits the practice of that person as a professional fiduciary, including,
5 but not limited to, a license that is retired, inactive, canceled, or suspended. The bureau shall
6 review a professional fiduciary’s alleged violation of statute, regulation, or the Professional
7 Fiduciaries Code of Ethics and any other complaint referred to it by the public, a public agency,
8 or the department, subject to subsection (d) below, may impose sanctions upon a finding of a
9 violation or a breach of fiduciary duty.
10 (b) Sanctions shall include any of the following:
11 (1) Administrative citations and fines as provided in Section 125.9 for a violation of this
12 chapter, the Professional Fiduciaries Code of Ethics, or any regulation adopted under this
13 chapter.
14 (2) License suspension, probation, or revocation.
15 (c) The bureau shall provide on the Internet information regarding any sanctions imposed
16 by the bureau on licensees, including, but not limited to, information regarding citations, fines,
17 suspension, and revocations of licenses or other related enforcement action taken by the bureau
18 relative to the licensee.
19 (d) The bureau shall stay an investigation and imposition of any and all sanctions of any
20 professional fiduciary, including a person with a license that wither restricts or prohibits the
21 practice of that person as a professional fiduciary, including, but not limited to a license that is
22 retired, inactive, canceled, or suspended, when the facts and circumstances substantially related
23 to the complaint made by any person to the bureau forms the basis of an action pending before
24 the court. The bureau may proceed with its investigation, and may impose sanctions upon the
25 court’s finding of a violation or a breach of fiduciary duty.

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

PROPONENT: Probate Attorneys of San Diego

STATEMENT OF REASONS

The Problem: The duties of fiduciaries are codified or impacted by the legislature under the Probate Code, Welfare and Institutions Code, Business and Professions Code, Government Code

and other laws. The bureau does not have the resources, training, nor expertise of the laws that fiduciaries are required to follow to properly, efficiently, and fairly determine imposition of just sanctions and oftentimes the bureau's sanctions are improperly imposed, insufficient, or conflict with the findings of the court. Furthermore, the bureau does not have the authority to require restitution be paid to make a trust or estate whole in the event of a breach.

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

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

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

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RESPONSIBLE FLOOR DELEGATE: Catherine M. McBain

RESOLUTION 03-09-2019

DIGEST

CCBA: Allows Resolutions Committee Dissenting Recommendation Reports

Amends CCBA Rules of Operation and Procedure Article III, Rule 1 to provide for publication of a dissenting report approved by greater than 1/3 of Rescom.

TEXT OF RESOLUTION

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

1 Article III

2 1. Resolutions Committee

3

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

9

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

12

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

14

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

19

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

24

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

28

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

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

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

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

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Resolution 10-01-2018.

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