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Antidysthanasia Contracts: A Proposal for Legalizing Death with Dignity

Jeffrey Alan Smyth

University of the Pacific; McGeorge School of Law

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Miscellaneous

Miscellaneous; age of majority—codification

Civil Code §25.1 (new); §4 of Chapter 38 of the 1972 Statutes (repealed).

SB 211 (Deukmejian); STATS 1973, Ch 278

Section 25.1 has been added to the Civil Code to codify Section 4 of Chapter 38 of the Statutes of 1972. Section 25.1 provides that the legislature intends that any reference to the words "age of majority," "adult," "minor," "age of minority," or words of similar intent in any instrument, order, transfer, or governmental communication made in California shall: (1) before March 4, 1972, make reference to persons 21 years of age and older, or younger than 21 years of age; and (2) on or after March 4, 1972, make reference to persons 18 years of age and older, or younger than 18 years of age. Nothing in this section or in Chapter 1748 of the Statutes of 1971 will prevent the amendment of any court order, will, trust, contract, transfer, or instrument to refer to the new 18-year-old age of majority where the document is: (1) in existence on March 4, 1972; (2) subject to amendment by law and where amendment is allowable or not prohibited by the terms thereof; and (3) otherwise subject to the laws of California.

See Generally:

- 1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 677 (1973).

Miscellaneous; hospital charges

Health and Safety Code §1473 (amended).

AB 209 (Briggs); STATS 1973, Ch 266

Support: Hospital Credit Managers' Association of Southern California

Section 1473 of the Health and Safety Code authorizes county boards of supervisors and such county officers as the board designates to adjust and compromise hospital charges. Prior to this chapter, such adjustment or compromise could only be done according to the financial condition of the patient, his estate, or legally responsible relatives.

Chapter 266 has amended Section 1473 to permit adjustment or compromise of the hospital charges for any of the following reasons: (1) the patient, his estate, or legally responsible relatives are unable to pay the charges; (2) collection of the charges is barred by the statute of limitations or is otherwise legally uncollectible; (3) the cost of administering a collection procedure would exceed the amount of revenue which might reasonably be anticipated to be recovered; or (4) neither the patient nor his legally responsible relatives can be located. These amendments are not to be construed to require that any county adopt standards of indigency or requirements of reimbursement more stringent than those in use by such county immediately prior to the effective date of these amendments.

Miscellaneous; nautical accident reporting procedure

Harbors and Navigation Code §653 (repealed); §§652, 656, 657 (amended); Public Utilities Code §70210.5 (new).

SB 272 (Lagomarsino); STATS 1973, Ch 930

(Effective September 30, 1973)

Support: Department of Navigation and Ocean Development

Prior to the enactment of Chapter 930, Section 656(c) required the operator of any undocumented vessel (any vessel which, pursuant to §651 of the Harbors and Navigation Code, is not required to have a valid marine document issued by the United States Bureau of Customs) to file a report with the Department of Navigation and Ocean Development when involved in an accident causing the death or injury of any person or property damage in excess of \$100. Section 656(c) has been amended to provide that a uniform accident reporting procedure is to be promulgated by the department in conformity with federal casualty and accident reporting procedures as developed by the United States Coast Guard. The requirement that a report is to be made only if the accident involves the death or injury of any person or property damage in excess of \$100 has been deleted. Unless the reporting procedure promulgated by the department provides otherwise, the owner, operator, or other person on board the vessel is required to file a report of *any* accident. Section 656(c), as amended, also requires any peace officer or harbor policeman who receives an initial report of a casualty involving the death or disappearance of a person as a result of a boating accident to forward the report to the department by the quickest means available.

California has jurisdiction over inland waters as defined in Califor-

nia Administrative Code, Title 14, Section 6552(g). Thus the required report only applies to incidents occurring on those waters. However, one provision of this chapter is that the department adopt regulations which will maintain a casualty and accident reporting system which is uniform with that required by the United States Coast Guard, which has jurisdiction over those waters not under the control of the various states. Thus the required report will be the same no matter where the incident occurs.

Chapter 930 will also increase the department's authority to regulate vessels through administrative rule-making. Present law permits the department to make rules on the kind of equipment vessels must carry, but only on that equipment specifically required by statute. Chapter 930 allows the department to promulgate regulations requiring any equipment on vessels.

See Generally:

- 1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 377, 665 (1973).

Miscellaneous; state forest timber sale

Public Resources Code §4650.1 (new).

SB 362 (Collier); STATS 1973, Ch 261

Support: Public Lands Association of California; Western Forest Industries Association

Section 4650.1 has been added to the Public Resources Code to prohibit the sale of timber from state forests to any primary manufacturer, or to any person for resale to a primary manufacturer who makes use of such timber at a plant not located within the United States. This prohibition does not apply to timber sawn on four sides to dimensions not greater than four inches by twelve inches. Section 4650.1 provides that any purchaser of timber from state forests who makes use of such timber in violation of this section shall be prohibited from purchasing state forest timber for a period of five years and may have his license suspended for a period of up to six months. No provision of this act shall be construed to affect any contract entered into prior to the effective date of the act [S.B. 362, CAL. STATS. 1973, c. 261, §2].

COMMENT

The heavy exportation of California timber has been causing several problems: (1) the price of lumber has drastically increased; (2) fewer jobs are available in the timber processing and building industries;

and (3) there has been a detrimental environmental impact on state forests [Senator George Moscone, Press Release, Mar. 29, 1973]. The United States Constitution, Article 1, Section 8, Clause 3 and Section 10, Clause 2 give Congress the power to regulate and tax commerce to foreign countries. This has been held to be an exclusive grant of power beyond the realm of state interference [Di Santo v. Pennsylvania, 273 U.S. 34 (1927)]. Thus even though California has declared the preservation and continued productivity of its forests to be in the public interest, there appears to be nothing the state legislature can do to limit the sales of privately owned timber. However, Chapter 261 may have an influence on sales from state-owned lands.

See Generally:

- 1) 15 AM. JUR. 2d, *Commerce* §6 et seq. (1964) (interpretations under the commerce clause).

Miscellaneous; Uniform Anatomical Gift Act

Government Code §27491.45 (amended); Health and Safety Code §7151.7 (amended).

AB 863 (Priolo); STATS 1973, Ch 483

Support: California Medical Association; Coroners' Association; State Department of Public Health

Chapter 483 has amended Section 27491.45 of the Government Code to authorize a coroner, in his discretion during an authorized autopsy, to remove and provide parts of the body to a licensed physician and surgeon for transplantation or therapy if the following conditions are met: (1) provision of the part will not disfigure the body or interfere with the autopsy; and (2) the coroner has received consent for the donation from the decedent or other person specified in Section 7151.5 of the Health and Safety Code. If the decedent has not made a gift of a part of his body, the coroner, or other person designated by him, is required to make diligent efforts to locate and secure consent within 24 hours of death from an appropriate person specified in Section 7151.5. Section 7151.5 specifies persons authorized to consent to a donation of a part of decedent's body. The consent secured must be based on a full disclosure by the coroner of sufficient information concerning the removal and donation of tissue to allow the consenting party to make an intelligent decision [See *Cobbs v. Grant*, 8 Cal. 3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (1972)].

Section 27491.45 also states that nothing in the section shall be construed as limiting any right provided for in Section 7151.7 of the

Health and Safety Code. Chapter 483 has amended Section 7151.7 to provide that only the decedent shall have the authority to donate any part of his body if it is made known that the deceased, at the time of his death, was a member of a religion, church, sect, or denomination which relies solely upon prayer for the healing of disease or which has religious tenets that would be violated by the disposition of the human body or parts thereof for any purpose enumerated in the Anatomical Gift Act. Prior to the amendment of Section 7151.7, the decedent was required to be a member of a religion, church, sect, or denomination that expressly avowed the curing of disease by prayer in order to have sole authority over disposition.

COMMENT

Chapter 483 will enable the coroner to obtain consent for an organ donation at the time he notifies the relatives of the decedent's death. This may decrease the time required to obtain consent and thus increase the number of organs available for transplant since some are usable for only a short time after death. This amendment does not alter the requirement for a hospital to determine the nonavailability of the relatives as set out in Section 7151.6, nor has it changed the length of the search to determine this nonavailability or negated the *informed* consent of the person making the gift.

See Generally:

- 1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 684 (1973).
- 2) Dukeminier, *Supplying Organs for Transplantation*, 68 MICH. L. REV. 811 (1970).
- 3) Featherstone, *The Uniform Anatomical Gift Act: The Law's Approach to a Human Need*, 110 TRUSTS & ESTATES 468 (1970).
- 4) Kutner, *Due Process of Human Transplants: A Proposal*, 24 U. MIAMI L. REV. 782 (1970).
- 5) Richards, *Medical-Legal Problems of Organ Transplantation: Gifts of Bodies or Parts Thereof*, 21 HAST. L.J. 77 (1969).

Table of Code Sections Affected

The following code sections are noted or discussed in this 1973 Review. Note the symbols preceding the page designation indicating the effect on the code section:

- (N) New Section
- (A) Amended Section
- (R) Repealed Section

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