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Diversion and the Judicial Function

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Civil Code §25.1 (new); §4 of Chapter 38 of the 1972 Statutes (repealed).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

BUSINESS AND PROFESSIONS CODE

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
125.5	(A)	317	10245	(A)	310
2630	(A)	253	10246	(A)	310
4333	(N)	299	10248.1	(N)	310
7026	(A)	250	10248.2	(N)	310
7027	(A)	250	10248.7	(N)	251
7030.5	(A)	234	10248.8	(N)	251
7045	(A)	250	10248.9	(N)	251
7046	(A)	250	11002	(R)	462
7152	(A)	243	11019	(R,N)	462
9884.7	(A)	316	11547	(A)	488
9884.9	(A)	315, 316	16607	(N)	241
9891-9891.44	(N)	257	17534.5	(N)	301
9902	(A)	255	17535.5	(N)	301
10241	(A)	310	18753.5	(N)	320
10241.1	(N)	310	18753.6	(N)	320
10242.5	(N)	310	19162	(N)	318
10242.6	(N)	310	19163	(N)	318
10244.1	(N)	310	23021	(A)	223

CIVIL CODE

25.1	(N)	510	1237	(A)	455
199	(N)	352	1468	(A)	455
226.55	(N)	351	1584.5	(A)	307
232	(A)	364	1689.5	(A)	303
789.5	(A)	457	1689.6	(A)	303
789.10-789.11	(N)	456	1689.7	(A)	303
846.5	(N)	465	1689.8	(R)	303

Table of Code Sections

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
1689.10	(A)	303	3462-3465	(A)	488
1689.11	(A)	303	5101	(R)	352
1689.12	(A)	303	5102	(A)	352
1689.13	(A)	303	5105	(A)	352
1718	(A)	317	5110	(A)	352
1797.3	(A)	308	5113.5	(A)	352
1806.3	(A)	298	5116	(A)	352, 358
1812.30	(N)	358	5117	(A)	352
1812.31	(N)	358	5120	(A)	352
2279.1	(N)	218	5121	(A)	352
2290.1-2290.12	(N)	219	5122	(A)	352
2924	(A)	458	5123	(A)	352
2924c	(A)	458	5124	(A)	352
2954	(A)	305	5125	(A)	352
2981	(A)	297	5127	(A)	352
2981.5	(N)	297	5131	(A)	352
2985.81	(N)	297	5132	(A)	352
3065	(A)	488	5150-5174	(N)	365

CODE OF CIVIL PROCEDURE

340	(A)	268	668	(A)	286
425.20	(R)	287	682	(A)	268
430.10	(A)	287	684	(A)	268
437c	(R,N)	289	690.3	(A)	268
477-478	(N)	268	804	(A)	268
475-505	(R)	268	1013a	(A)	288
509-521	(R)	272	1014	(A)	268
515	(A)	268	1031	(A)	285
511.010-516.040	(N)	272	1051	(R)	296
538.2	(A)	267	1143-1154	(R)	268
539	(A)	268	1168	(R)	268
585	(A)	285	1241	(A)	474
667	(A)	268			

COMMERCIAL CODE

9407.1	(N)	254	9407.3	(N)	254
9407.2	(N)	254			

CORPORATIONS CODE

29500	(A)	226	29504	(N)	226
29500.5	(N)	235	29504.1	(N)	226
29502	(A)	226	20505	(N)	226

Table of Code Sections

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
29506	(N)	226	29537	(A)	226
29507	(N)	226	29537.1	(N)	226
29507.1	(N)	226	29537.2	(N)	226
29508	(N)	226	29538	(A)	226
29508.1	(N)	226	29538.1	(N)	226
29509	(N)	226	29538.2	(N)	226
29510.1	(N)	226	29538.3	(N)	226
29510.2	(N)	226	29539	(A)	226, 235
29510.3	(N)	226	29540	(A)	226
29510.4	(N)	226	29541	(A)	226
29511	(A)	226	29543	(N)	226
29512	(A)	226	29544	(N)	226
29513	(A)	226	29545	(N)	226
29513.1	(N)	226	29551	(A)	226
29513.2	(N)	226	29560	(A)	226
29513.3	(N)	226	29561	(A)	226
29514	(A)	226	29563	(N)	226
29515	(A)	226	29564	(N)	226
29516	(A)	226	29580	(N)	226
29517	(A)	226	29586	(N)	226
29526	(A)	226	29590	(N)	226
29527	(A)	226	29591	(N)	226
29535	(A)	226			

EDUCATION CODE

1102	(A)	383	1165	(A)	387
1104	(A)	383	2365	(A)	377
1111	(A)	383	2366	(A)	377
1111.3	(A)	383	2366.3	(N)	377
1111.4	(A)	383	2366.5	(N)	377
1111.5	(A)	383	9021	(A)	376
1111.7	(A)	383	10601.5	(A)	375
1162	(A)	383, 387	10607.8	(N)	375
1162.5	(N)	387	13443	(A)	375
1163	(A)	387	20904.2	(N)	375
1164	(A)	387	25471.5	(A)	383

ELECTIONS CODE

201	(A)	380	2601	(A)	388
203.5	(N)	386	3524	(N)	385
1611	(A)	380	5010.5	(N)	380
2504	(R,N)	383	6511.5	(N)	379

Table of Code Sections

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
11500-11504	(R,N)	390	11860-11862	(R)	390
11510-11521	(N)	390	11890-11892	(R)	390
11530-11533	(R,N)	390	12053	(R)	390
11550-11565	(N)	390	14217	(A)	380
11560-11568	(R)	390	14629.5	(N)	379
11570	(N)	390	17021	(A)	384
11580-11585	(N)	390	22030	(A)	383
11590-11592	(R)	390	22840.5	(N)	379
11600-11605	(N)	390	23509	(A)	383
11610-11614	(N)	390	23521	(N)	379
11620-11631	(R)	390	29182	(N)	383
11707	(N)	390	29254	(N)	385
11800-11803	(R)	390	29255	(N)	385
11830-11835	(R)	390			

EVIDENCE CODE

1157.5	(N)	266
--------	-----	-----

FINANCIAL CODE

700-711	(N)	223	14601	(A)	239
855	(R)	223	14904	(A)	239
1206	(A)	223	15650	(A)	239
1383	(A)	223	15802	(A)	239
7184	(A)	256	18617.2	(N)	241
7609	(A)	256	18804	(N)	259
9205	(A)	256	18970	(A)	259
11053	(A)	248	18985	(A)	259
14008.1	(N)	239	18997	(N)	259
14451	(A)	239	18999	(N)	259
14455	(N)	239	22011	(A)	248
14600	(A)	239	22012	(N)	248

FISH AND GAME CODE

3960	(A)	416	12016	(R)	415
12004	(A)	415			

FOOD AND AGRICULTURAL CODE

6305	(A)	417	42654	(A)	417
------	-----	-----	-------	-----	-----

GOVERNMENT CODE

202	(A)	268	1091	(A)	470
-----	-----	-----	------	-----	-----

Table of Code Sections

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
1091.5	(A)	470	25210.77d	(A)	498
1120	(A,R)	470, 475	25210.77f	(A)	498
1121	(R)	475	25461	(A)	486
1773	(A)	388	25526.5	(N)	471
3600-3604	(N)	388	25526.6	(N)	471
3600-3607	(R)	388	25828	(A)	498
3610	(N)	388	25831	(A)	498
3625-3627	(N)	388	25845	(A)	498
3700-3704	(N)	388	25846	(N)	468
3706-3711	(N)	388	26681-26684	(R)	268
3750-3754	(R,N)	383, 388	26686	(R)	268
3760	(N)	388	27288.1	(R,N)	460
4153-4154	(N)	487	27491.45	(A)	513
6254.7	(A)	417	27823	(A)	268
7290-7299	(N)	472	34080	(A)	488
9027-9032	(N)	482	34301	(A)	483
11010.5	(A)	487	34303	(A)	483
11011.1	(A)	459	34457	(A)	383
11125	(A)	484	34902	(A)	383
11200.4	(N)	395	35122	(A)	383
11512	(A)	266	35576	(A)	488
11553.4	(N)	395	36503	(A)	383
11554.1	(N)	395	36512.1-36512.3	(N)	389
12532.4	(N)	442	38744	(A)	498
12804.1	(N)	395	50247	(A)	498
13959	(N)	346	53069.85	(N)	484
13960-13966	(R,N)	346	53704-53705	(N)	474
13967	(N)	346	54220-54223	(A)	459
23380	(A)	383	54225	(N)	459
23705	(A)	383	54954.1	(N)	483
23710	(A)	383	61121	(A)	383
23711	(A)	383	66719	(A)	438
23722	(A)	383	66752.5	(N)	438
25131	(N)	471	71265	(A)	268
25210.77a	(A)	498	72050.7	(N)	286

HARBORS AND NAVIGATION CODE

652	(A)	511	657	(A)	511
653	(R)	511	661.6	(R)	501
656	(A)	511	7061	(A)	488

HEALTH AND SAFETY CODE

416	(A)	361	416.14	(A)	361
-----	-----	-----	--------	-----	-----

Table of Code Sections

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
416.15	(A)	361	11377	(A)	320, 332
416.17	(A)	361	11378	(A)	332
416.18	(A)	361	11379	(A)	332
416.23	(A)	361	11380	(A)	332
416.5	(A)	361	11382	(A)	332
416.6	(A)	361	11550	(A)	332
416.7	(A)	361	12081	(A)	395
416.8	(A)	361	13002	(A)	444
416.9	(A)	361	13108	(A)	395
416.95	(N)	361	14912	(A)	498
445	(N)	249	25955	(A)	408
1250-1318	(N)	232	25956	(N)	330
1250-1416	(R)	232	26569.7	(N)	307
1417-1439	(N)	245	38000	(A)	361
1473	(A)	510	38001	(A)	361
5473.5	(A)	498	38003	(A)	361
5473.8	(A)	498	38004	(A)	361
5474.5	(A)	498	38050	(A)	361
5474.6	(A)	498	38051	(A)	361
6447	(A)	383	38054	(A)	361
7151.7	(A)	513	38057	(A)	361
10433	(A)	351	38058	(A)	361
10433.4	(A)	351	38059	(A)	361
11056	(A)	320	38062	(A)	361
11350	(A)	332	38064	(R)	361
11351	(A)	332	38100	(A)	361
11352	(A)	332	38101	(A)	361
11353	(A)	332	38103	(A)	361
11354	(A)	332	38104	(A)	361
11355	(A)	332	38105	(A)	361
11357	(A)	332	38106	(A)	361
11358	(A)	332	38109	(A)	361
11359	(A)	332	38120	(A)	361, 363
11360	(A)	332	38121	(A)	361, 363
11361	(A)	332	38122	(A)	361
11363	(A)	332	38123	(A)	361
11364	(A)	332	38150	(A)	361
11365	(A)	332	38200	(A)	361
11366	(A)	332	38201	(A)	361
11368	(A)	332	38202	(A)	361
11370	(A)	332	38203	(A)	361
11371	(A)	332	38250	(A)	361
11376	(A)	332	38251	(A)	361

Table of Code Sections

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
38252	(A)	361	38300	(A)	361
38253	(A)	361	39261	(A)	413
38255	(A)	361	39297.6	(A)	418
38256	(A)	361	39297.8	(N)	418
38257	(A)	361	39604	(A)	414
38257.1	(A)	361	39636	(N)	414
38258	(A)	361	39637	(N)	414
38260	(A)	361	93615	(A)	414
38291	(A)	361			

INSURANCE CODE

381.2	(N)	443	10125	(N)	442
670	(N)	439	10127	(N)	442
679.70-679.73	(N)	440	11512.5	(N)	442
770.1	(N)	441	11580.07	(N)	439
771	(A)	441			

LABOR CODE

53	(A)	395	148.1	(N)	395
55	(A)	395	142.2	(N)	395
57	(A)	395	148.4	(N)	395
57.1	(N)	395	148.5	(N)	395
140	(A)	395	148.6	(N)	395
141	(A)	395	148.7	(N)	395
142	(A)	395	148.8	(N)	395
142.1	(N)	395	148.9	(N)	395
142.2	(N)	395	149	(N)	395
142.3	(N)	395	155	(N)	395
142.4	(N)	395	156	(N)	395
142.5	(N)	395	351	(A)	410
143	(N)	395	352	(R)	410
143.1	(N)	395	1172	(R)	407
143.2	(N)	395	1173	(A)	407
144	(R,N)	395	1178	(A)	407
144.5	(N)	395	1182	(A)	407
144.6	(N)	395	1185	(A)	407
145	(R,N)	395	1191.5	(A)	407
145.1	(N)	395	1193.5	(A)	407
146	(R,N)	395	1193.6	(A)	407
147	(R,N)	395	1194	(A)	407
147.1	(N)	395	1198	(A)	407
148	(N)	395	1199	(A)	407

Table of Code Sections

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
1411	(A)	405	6321	(R,N)	395
1412	(A)	405	6322	(N)	395
1413	(A)	405	6323	(N)	395
1419	(A)	405	6324	(N)	395
1419.9	(A)	405	6325	(N)	395
1420	(A)	405	6326	(N)	395
1432	(A)	405	6327	(N)	395
1432.5	(N)	405	6327.5	(N)	395
2626.5	(N)	395	6328	(N)	395
3208.1	(A)	505	6329	(N)	395
3361	(A)	509	6330	(N)	395
3361.5	(N)	509	6350	(N)	395
3600.3	(A)	508	6351	(N)	395
4458	(A)	509	6352	(N)	395
4607	(N)	505	6353	(N)	395
4706.5	(A)	507	6354	(N)	395
5411	(A)	505	3655	(N)	395
5412	(A)	505	6400	(R,N)	395
5500.5	(A)	505	6401	(R,N)	395
6300	(R)	395	6401.5	(R,N)	395
6301	(R,N)	395	6402	(R,N)	395
6302	(R,N)	395	6403	(R,N)	395
6303	(R,N)	395	6404	(R,N)	395
6304.1	(N)	395	6404.1	(R,N)	395
6305	(R,N)	395	6405	(R,N)	395
6306	(R,N)	395	6406	(R,N)	395
6307	(R,N)	395	6407	(R,N)	395
6308	(R,N)	395	6408	(R,N)	395
6309	(R,N)	395	6409	(R,N)	395
6310	(R,N)	395	6410	(R,N)	395
6311	(R,N)	395	6411	(R,N)	395
6312	(R,N)	395	6412	(R,N)	395
6313	(R,N)	395	6413	(R)	395
6313.5	(N)	395	6414	(R)	395
6314	(R,N)	395	6415	(R)	395
6315	(R,N)	395	6416	(R)	395, 407
6315.5	(N)	395	6417	(R)	395
6316	(R,N)	395	6418	(R)	395
6317	(R,N)	395	6419	(R)	395
6318	(R,N)	395	6420	(R)	395
6319	(R,N)	395	6421	(R)	395
6319.5	(N)	395	6422	(R)	395
6320	(R,N)	395	6423	(R,N)	395

Table of Code Sections

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
6424	(R)	395	6608	(N)	395
6425	(N)	395	6609	(N)	395
6426	(N)	395	6610	(N)	395
6427	(N)	395	6611	(N)	395
6428	(N)	395	6612	(N)	395
6429	(N)	395	6613	(N)	395
6430	(N)	395	6614	(N)	395
6431	(N)	395	6615	(N)	395
6432	(N)	395	6616	(N)	395
6433	(N)	395	6617	(N)	395
6434	(N)	395	6618	(N)	395
6435	(N)	395	6619	(N)	395
6450	(N)	395	6620	(N)	395
6451	(N)	395	6621	(N)	395
6452	(N)	395	6622	(N)	395
6453	(N)	395	6623	(N)	395
6454	(N)	395	6624	(N)	395
6455	(N)	395	6625	(N)	395
6456	(N)	395	6626	(N)	395
6457	(N)	395	6627	(N)	395
6500	(R,N)	395	6628	(N)	395
6501	(R,N)	395	6629	(N)	395
6502	(R,N)	395	6630	(N)	395
6503	(R,N)	395	6631	(N)	395
6504	(R,N)	395	6632	(N)	395
6505	(R,N)	395	6633	(N)	395
6506	(R,N)	395	6650	(N)	395
6507	(R,N)	395	6651	(N)	395
6508	(R,N)	395	6652	(N)	395
6509	(R)	395	6653	(N)	395
6510	(R)	395	6654	(N)	395
6511	(R)	395	6700	(N)	395
6600	(R,N)	395	6701	(N)	395
6601	(R,N)	395	6702	(N)	395
6602	(R,N)	395	6703	(N)	395
6603	(R,N)	395	6704	(N)	395
6604	(R,N)	395	6705	(N)	395
6605	(N)	395	6706	(N)	395
6606	(N)	395	6707	(N)	395
6607	(N)	395	6708	(N)	395

MILITARY AND VETERANS CODE

987.1 (A) 217

Table of Code Sections

PENAL CODE

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
148.2	(A)	331	1018	(A)	321, 444
190	(R,N)	321	1203.14	(N)	343
190.1	(R,N)	321	1205	(A)	339
190.2	(N)	321	1269b	(A)	334
190.3	(N)	321	1269c	(R,N)	334
209	(R,N)	321	1276	(R)	334
219	(R,N)	321	1318	(A)	344
245.1	(A)	331	1320.5	(R)	334
374b	(A)	444	1329	(A)	347
374e	(A)	444	1370.1	(A)	361
475a	(A)	331	1382	(A)	346
502.7	(A)	333	1392	(A)	346
598a	(N)	320	1396	(A)	444
810	(N)	341	1427	(A)	444
822	(A)	344	2911	(N)	342
869	(A)	341	4024.1	(N)	342
893	(A)	340	4500	(R,N)	321
895	(A)	340	11161.5	(A)	345
905.5	(N)	340	13100-13102	(N)	336
914.1	(A)	339	13125-13127	(N)	336
925a	(N)	339	13150-13153	(N)	336
926	(A)	339	13175-13177	(N)	336
987.3	(N)	338	13200-13202	(N)	336

PROBATE CODE

1120.6	(N)	218	1431	(A)	215
1138.1	(A)	218	1461.5	(N)	361
1430	(A)	215	1510	(A)	215
1430.5	(A)	215	1513	(A)	215

PUBLIC RESOURCES CODE

630-636	(N)	420	4521-4538	(R)	420
630-637	(R)	420	4521.3	(N)	420
636.5	(N)	420	4522	(N)	420
637-648	(N)	420	4522.5	(N)	420
636	(R)	420	4523-4525	(N)	420
645-647	(R)	420	4525.3	(N)	420
4511-4514	(N)	420	4525.5	(N)	420
4514.5	(N)	420	4525.7	(N)	420
4515-4517	(N)	420	4525.9	(N)	420
4521	(N)	420	4526	(N)	420

Table of Code Sections

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
4526.5	(N)	420	4562.7	(N)	420
4527	(N)	420	4568	(R)	420
4527.5	(N)	420	4571	(R)	420
4528	(N)	420	4571-4577	(N)	420
4528.1	(N)	420	4574-4582	(R)	420
4528.3	(N)	420	4581	(N)	420
4528.5	(N)	420	4582	(N)	420
4529	(N)	420	4582.4-4582.7	(N)	420
4529.5	(N)	420	4583	(N)	420
4531	(N)	420	4583.2	(N)	420
4531.5	(N)	420	4584-4588	(N)	420
4532-4540	(N)	420	4585-4594	(R)	420
4541	(R)	420	4590	(N)	420
4542	(R)	420	4591	(N)	420
4551-4555	(R,N)	420	4591.1	(N)	420
4561-4566	(R)	420	4592	(N)	420
4561	(N)	420	4595-4599	(R)	420
4561.1	(N)	420	4601-4618	(R,N)	420
4561.3	(N)	420	4621-4628	(N)	420
4561.5	(N)	420	4650.1	(N)	512
4561.6	(N)	420	5008.7	(A)	444
4562	(R,N)	420	9125	(A)	383
4562.5	(N)	420			

PUBLIC UTILITIES CODE

454	(A)	309	21406	(R)	501
496	(N)	253	22258	(A)	488
1505.5	(N)	491	27011	(A)	383
1733	(A)	489	27426	(A)	383
2962	(A)	383	27502	(A)	383
11641	(A)	383	29681	(A)	383
15761	(A)	383	40501	(A)	383
15951	(A)	383	70210.5	(N)	511
16614	(A)	488	98401	(A)	383
21404	(A)	501	98402	(A)	383

REVENUE AND TAXATION CODE

201.5	(N)	414	532	(A)	495
405	(A)	499	1608.7	(A)	493
456	(A)	495	1609.2	(A)	494
469	(A)	497	1624.4	(N)	494
531.2	(A)	495	4831	(A)	495

Table of Code Sections

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
4834	(A)	495	12834	(A)	488
4836.5	(A)	495	13310	(A)	493
4837	(A)	495	15113	(A)	493
4840	(A)	495	17037	(N)	257
4986	(A)	495	18402.9	(A)	499
4986.9	(N)	495	23060	(N)	257

STREETS AND HIGHWAYS CODE

8734	(A)	488	19090	(A)	383
------	-----	-----	-------	-----	-----

UNEMPLOYMENT INSURANCE CODE

1258.5	(N)	411	2626	(A)	404
1259	(A)	411			

VEHICLE CODE

232	(N)	262	11705	(A)	240, 262
296	(N)	262	11706	(A)	262
297	(N)	262	11708	(A)	262
320	(A)	262	11713	(A)	449
331	(N)	262	11713.1	(N)	262, 319
331.1	(N)	262	11713.2	(N)	262
331.2	(N)	262	11719	(A)	262
350	(N)	262	11723	(A)	262
388	(N)	262	11724	(A)	262
389	(N)	262	11726	(N)	262
507	(N)	262	11727	(N)	262
512	(N)	262	11900	(A)	262
3000	(A)	262	11900-11908	(N)	262
3050	(A)	262	12810.5	(N)	451
3051	(A)	262	13203	(A)	448
3060-3069	(N)	262	13352	(A)	445
9262	(A)	262	13355.5	(R)	448
9550	(A)	262	14401	(N)	449
9552	(A)	262	16372	(R)	447
10003	(A)	444	17158	(A)	501
10652.5	(N)	454	21805	(A)	501
11700	(A)	262	23102	(A)	445
11701	(A)	262	23102.2	(R,N)	445
11702	(A)	262	23105	(A)	445
11703	(A)	262	24010	(A)	446
11703.1	(A)	262	28051	(A)	449
11704	(A)	262	40000.25	(A)	451

Table of Code Sections

<i>Section No.</i>	<i>Effect</i>	<i>Page</i>	<i>Section No.</i>	<i>Effect</i>	<i>Page</i>
40000.28	(N)	451	41103	(A)	450
40000.3	(A)	451	42001	(A)	451
40000.7	(A)	451	42004.5	(N)	346
40802	(A)	452			

WATER CODE

356	(A)	491	37212	(A)	498
1425-1430	(N)	466	55501	(A)	498
12970-12973	(N)	490	55501.5	(A)	498
26225	(A)	461	55507	(A)	498
26229	(A)	461	60111	(A)	383
30291	(A)	383	70270	(A)	488
31132	(R,N)	490	71162	(A)	383
31701-31705	(A)	498	72100	(A)	498
35040-35060	(N)	381	74093	(A)	383

WELFARE AND INSTITUTIONS CODE

536.5	(N)	343	7518	(A)	361
564	(A)	448	11308.6	(A)	411
5326	(A)	362	12101	(A)	352
6000	(A)	361	16300	(A)	232
6000.5	(N)	361	16312	(A)	232
6325.5	(N)	335	17300	(A)	352
6501	(R)	361			

