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Civil / Saving Shirley Temple: An Attempt to Secure Financial Futures for Child Performers

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Civil

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Code Sections Affected
Family Code §§ 6752, 6753 (new), §§ 771, 6750, 6751, 7500 (amended), §§ 6752, 6753 (repealed).
SB 1162 (Burton); 1999 STAT. Ch. 940

TABLE OF CONTENTS

I. INTRODUCTION

At the beginning of the twentieth century, California law afforded children virtually no protections from unscrupulous employers and parents who sought to

exploit minors for their raw talent.[1] In 1939, California's "Coogan Law," named after Jackie Coogan, was enacted to extend child labor laws to minors involved in the entertainment industry by allowing courts to establish trust funds where the minors' earnings would be deposited.[2] The Coogan Law, however, did not bring many contracts under the court's protection, and did not change the law permitting parents to claim all the child's earnings from the contract.[3] Chapter 940 seeks to change this by bringing more contracts within the scope of the Coogan Law, taking away the parents' rights to any income generated by the child under a Coogan Law contract, and creating a new, mandatory procedure for dealing with income from all Coogan Law contracts.[4]

II. LEGAL BACKGROUND

A. *The Pre-Coogan Law Era*

In the late 1800s, the California Legislature recognized the need to address the growing problems associated with children in the workforce.[5] The Legislature passed laws to protect employers from attempts by minors to disaffirm contracts based on their minority status.[6] However, the Legislature did not recognize the need to protect the rights of minors.[7] Responding to pressure from the burgeoning entertainment industry, the Legislature in 1927 amended the law to specifically address contracts involving young actors.[8] This amendment prevented the minor from canceling the contract if that contract had prior court approval.[9]

B. *The Coogan Law*

In 1938, the inadequacies of the law relating to minors were exposed when child television star Jackie Coogan legally became an adult and discovered that

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1. *See* Marc R. Staenberg & Daniel K. Stuart, *Children as Chattels: The Disturbing Plight of Child Performers*, 32 BEVERLY HILLS B.A. J. 21, 24 (1997) (explaining how employers and parents could control a child performer's income). *See generally id.* at 24-27 (tracing the history of California laws relating to child performers).

2. 1939 Cal. Stat. ch. 637, sec. 1, at 2064 (amending CAL. CIV. CODE § 36). The "Coogan Law" was enacted to forestall such circumstances as befell silent picture actor Jackie Coogan, who earned millions of dollars before his eighteenth birthday, but saw none of the money as an adult because his parents had spent it all. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS of SB 1162, at 2 (Apr. 13, 1999) (recounting the circumstances under which Jackie Coogan's parents squandered Jackie's fortune–legally).

3. 1939 Cal. Stat. ch. 637, sec. 1, at 2064 (amending CAL. CIV. CODE § 36).

4. ASSEMBLY COMMITTEE ON JUDICIARY COMMITTEE ANALYSIS OF SB 1162, at 4 (June 22, 1999).

5. Staenberg & Stuart, *supra* note 1, at 24-25.

6. *See* 1873-74 Cal. Stat. ch. 612, sec. 8, at 183 (amending CAL. CIV. CODE § 36) (removing a child's right to disaffirm an otherwise valid contract entered into during minority).

7. Staenberg & Stuart, *supra* note 1, at 24.

8. 1927 Cal. Stat. ch. 876, sec. 1, at 1917 (amending CAL. CIV. CODE § 36).

9. *Id.* (amending CAL. CIV. CODE § 36).

almost all of his childhood earnings were gone.[10] Coogan's mother had spent his earnings as quickly as he had earned them.[11]

The California Legislature responded to public outrage over Coogan's circumstances by enacting section 36.1 of the Civil Code,[12] which has become known as the Coogan Law.[13] This law did not alter the previous requirements set forth in prior law dealing with the minor and employer relationship, and continued to hold minors accountable for contracts approved by the court.[14] If a contract involved any artistic or creative services, the court would have discretion to require up to half of the child's net earnings to be set aside in a trust fund for the benefit of the minor.[15] The original Coogan Law defined a child's "net earnings" as the income of the child, less taxes, support and care, expenses associated with the contract, and manager's and attorney's fees.[16] The court had continuing jurisdiction over the funds associated with the trust,[17] but the parents of the child retained control over the remaining sums generated by the child's income.[18] The Coogan Law remained unchanged when it was transferred to the newly enacted Family Code in 1992.[19]

Often, children who entered into lucrative employment contracts attempted to void the contracts by claiming incapacity to contract because of their minority status.[20] When children entered the high-paying entertainment industry, employers sought new ways to protect themselves from a minor's power to avoid a contract.[21] The Coogan Law gave employers this protection by creating a procedure whereby a party entering into a contract with a minor could seek a judicial determination of the contract's validity prior to operation of the contract.[22] Such court-approved

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10. Staenberg & Stuart, *supra* note 1, at 25.

11. *Id.*

12. 1939 Cal. Stat. ch. 637, sec. 1, at 2064-65 (enacting CAL. CIV. CODE § 36.1).

13. Staenberg & Stuart, *supra* note 1, at 26.

14. 1939 Cal. Stat. ch. 637, sec. 1, at 2064-65 (enacting CAL. CIV. CODE § 36.1).

15. 1992 Cal. Stat. ch. 162, sec. 10, at 640 (enacting CAL. FAM. CODE § 6752(a)) (repealed by Chapter 940).

16. 1939 Cal. Stat. ch. 637, sec. 1, at 2065 (enacting CAL. CIV. CODE § 36.1).

17. *Id.*, sec. 2, at 2065 (enacting CAL. CIV. CODE § 36.2).

18. *See id.* (granting protection only to the income deposited in the trust, thus leaving the remaining income under the parents' control).

19. 1992 Cal. Stat. ch. 162, sec. 10, at 640-41 (enacting CAL. FAM. CODE §§ 6750-6753) (amended by Chapter 940).

20. *See, e.g.*, Warner Bros. Pictures v. Brodel, 31 Cal. 2d 766, 770-71, 192 P.2d 949, 950-51(1948) (ruling on behalf of the employer against a minor, finding not only that a valid contract existed during the period of the child's minority, but also determining that the contract extended into the age of majority); *see also* CAL. FAM. CODE §§ 6700, 6710, 6712 (West 1994) (declaring that a minor may disaffirm a contract before the age of majority unless the contract is to pay the reasonable value of the minor's support, the payment has already been made, and the child was not under the care of a parent or guardian able to provide for the minor's care).

21. *See generally Warner Bros. Pictures*, 31 Cal. 2d at 771, 192 P.2d at 951 (denying a minor's request that it invalidate a court-approved contract even though the contract may extend into the age of majority).

22. *See* 1939 Cal. Stat. ch. 637, sec. 1, at 2064-65 (amending CAL. CIV. CODE § 36.1 (extending protection to contracts involving minors only if those contracts are first submitted to the court for approval).

contracts could not be disaffirmed because of the child's minority status.[23] The result was that only the employer, not the child, benefitted from this kind of court intervention because the employer's fears, not concern for the child's welfare, initiated the petition for court approval.[24]

Originally, the Coogan Law sought to protect the minor's earnings from being spent before the minor reached the age of majority.[25] The Coogan Law allowed courts to set aside up to fifty percent of the child's net earnings in a trust created for the child's benefit.[26] An inherent problem in the Coogan Law was that only in those contracts actually brought before the court could a trust be created, and even then the decision to establish the trust was left to the judge.[27] As a result, many contracts involving children who deserved protection were not even brought before the court for approval.[28] Typically, employers sought court approval only when they feared that the child might try to avoid the contract at a future date.[29] Consequently, without protection from the courts, many children continued to be victims of their parents' poor money management.[30]

C. *The Need for Change*

As the entertainment industry expanded, problems with the application of the Coogan Law quickly developed.[31] In 1999, an estimated ninety-five percent of contracts involving child entertainers were not receiving court protection.[32] This is

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23. *See* Staenberg & Stuart, *supra* note 1, at 25 (explaining how employers used the courts to gain validation of the contract while ignoring the interests of performers like Jackie Coogan).

24. *See id.* at 26-27 (illustrating how court favored the film industry over young performers who signed court-approved contracts).

25. *See* 1939 Cal. Stat. ch. 637, sec. 1, at 2064-65 (amending CAL. CIV. CODE § 36) (establishing a court-approved set-aside program for the minor's benefit). *See generally* Screen Actor's Guild, *Proposed Coogan Law Revisions: The Need for Change* (visited June 22, 1999) <http://www.sag.com/special/childprotections.html> [hereinafter Screen Actor's Guild] (copy on file with the *McGeorge Law Review*) (explaining that the 1939 Coogan Law was intended to assure that child actors would receive a percentage of their earnings when they reached the age of majority).

26. 1992 Cal. Stat. ch. 162, sec. 10, at 640 (enacting CAL. FAM. CODE § 6752(a)) (repealed by Chapter 940).

27. *Id.* (enacting CAL. FAM. CODE § 6751(c)) (repealed by Chapter 940).

28. *See* Screen Actor's Guild, *supra* note 25 (stating that as few as five percent of minors' contracts are protected by the court under the Coogan Law and that those that are protected represent the employer's attempt to remove the child's right to disaffirm the contract).

29. Staenberg & Stuart, *supra* note 1, at 24-25. *But cf.* 1992 Cal. Stat. ch. 162, sec. 10, at 640 (enacting CAL. FAM. CODE § 6751(b)) (repealed by Chapter 940) (establishing that either party to the contract could petition the court for approval). However, such approval was rarely sought by the contracting minor's parents. Staenberg & Stuart, *supra* note 1, at 27.

30. *See* Staenberg & Stuart, *supra* note 1, at 22-23 (illustrating examples of poor management of several famous child actors' incomes).

31. *See* Screen Actor's Guild, *supra* note 25 (explaining that in the sixty years since the original Coogan Law was passed, 95% of child performers' earnings have been unprotected because the courts leave no standard procedure for paying for the minors' education, taxes, and other expenses).

32. *Id.*

because either the contract was not approved by the court, or the parents' actions had bypassed a court directive.[33] In fact, despite a court order establishing a trust for a child, the child's parent could maintain control over a substantial percentage of the child's income by becoming the child's manager.[34] The parent could then draw a salary from the child's earnings before the net income of the child was calculated as required by the code.[35] Thus, the Jackie Coogans of the world remained at the mercy of their parents.

One of the most famous incidents of financial mismanagement involved the renowned child actor Shirley Temple.[36] As this young film star worked in the industry, her parents used her earnings to support a household of twelve family members.[37] When her career as a child actor was over, Shirley Temple's "only assets were a few thousand dollars and the deed to her dollhouse in the back yard [sic] of her parents' Beverly Hills home."[38] The Coogan Law and the courts failed to protect Ms. Temple and many other child entertainers from the financial squandering of their own guardians.[39]

III. CHAPTER 940

Chapter 940 makes several important changes to the Coogan Law. These changes affect the types of contracts encompassed by the law,[40] the methods used to protect the child's interests,[41] and the responsibilities placed on the child's employer and the child's parents to further those interests.[42]

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33. *Id.*

34. *See* Staenberg & Stuart, *supra* note 1, at 28 (explaining that even after the Coogan Law was passed, the parent still had a right to the child's earnings); *see also* 1992 Cal. Stat. ch. 162, sec. 10, at 640 (enacting CAL. FAM. CODE § 6752(a) (repealed by Chapter 940) (establishing that managerial and other expenses will be deducted from the child's earnings *before* the set-aside amount is calculated by the court, thereby allowing the parents to circumvent the court's protection).

35. 1992 Cal. Stat. ch. 162, sec. 10, at 641 (enacting CAL. FAM. CODE § 6752(c)) (repealed by Chapter 940).

36. *See* Staenberg & Stuart, *supra* note 1, at 22 (discussing the waste of Temple's earnings during her lucrative career).

37. *Id.*

38. *Id.* at 22.

39. *See id.* at 22-23 (giving examples of other entertainers, including Macaulay Culkin, Lee Aaker, and Gary Coleman, whose earnings were spent by their parents while the performers were still minors).

40. *See infra* Part III.A (describing the types of contracts affected).

41. *See infra* Part III.B.1 (examining the interests protected).

42. *See infra* Part III.B.2 (discussing such responsibilities).

A. Types of Coogan Law Contracts

Chapter 940 changes the types of contracts covered by the Coogan Law to better reflect current industry standards.[43] The new law adds to the list of contracts considered "artistic or creative" by including services as a stunt person, voice-over artist, songwriter, and musical producer.[44] Chapter 940 also expands the Coogan Law to include contracts that involve the sale of the minor's likeness, voice recording, performance, or story of incidents from the minor's life.[45] For sports-related employment, Chapter 940 simplifies the list to include all sports and no longer gives illustrative examples.[46]

B. Protecting the Minor's Income

1. Property Rights in the Child's Income

One of the most important changes Chapter 940 makes to the Coogan Law is to provide that any earnings generated under a Coogan Law contract are the sole property of the child.[47] The child's family no longer has the right to claim a portion of the child's earnings for family use.[48] Existing law establishes that parents are entitled to the services and earnings of their children,[49] but Chapter 940 provides an exception to this general rule by excluding from its scope the services and

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43. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1162, at 7 (Apr. 13, 1999) (stating that the proposed changes would cover the numerous fields in which children are employed today).

44. *Compare* 1992 Cal. Stat. ch. 162, sec. 10, at 640 (enacting CAL. FAM. CODE § 6750(a)) (defining artistic or creative services as those involving, "but not limited to," services as an "actor, actress, dancer, musician, comedian, singer, or other performer or entertainer or as a writer, director, producer, production executive, choreographer, composer, conductor, or designer"), *with* CAL. FAM. CODE § 6750(a) (amended by Chapter 940) (defining artistic or creative services to be those performed by an "actor, actress, dancer, musician, comedian, singer, stunt-person, voice-over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer").

45. CAL. FAM. CODE § 6750(b) (amended by Chapter 940).

46. *Compare* 1992 Cal. Stat. ch. 162, sec. 10, at 640 (enacting CAL. FAM. CODE § 6750(c)) (specifying that the law applied to a contract where a "person is employed or agrees to render services as a participant or player in a professional sport, including, but not limited to, services as a professional boxer, professional wrestler, or professional jockey"), *with* CAL. FAM. CODE § 6750(c) (amended by Chapter 940) (indicating that the law as amended applies to a contract under which a "person is employed or agrees to render services as a participant or player in a sport").

47. CAL. FAM. CODE § 771(b) (amended by Chapter 940).

48. *See id.* (amended by Chapter 940) (establishing that all earnings derived from a Coogan Law contract: "shall remain the sole legal property of the minor").

49. 1993 Cal. Stat. ch. 219, sec. 162, at 1668 (enacting CAL. FAM. CODE § 7500) (amended by Chapter 940).

earnings under a Coogan Law contract.[50] The right to those earnings, therefore, does not flow to the parent or guardian of the child.[51]

2. The Income Set-Aside Trust

The primary purpose of Chapter 940 is to protect the income of child performers.[52] To this end, Chapter 940 mandates a procedure for setting aside a portion of a child performer's income under all Coogan Law contracts, regardless of whether or not the contract was approved by a court.[53] Once the child's minority has been established, the employer must set aside at least fifteen percent of the child's gross earnings in a specified trust fund established by a court.[54] The employer must deposit these funds into the specified account within fifteen days of receiving the trust information.[55] The parent or guardian then becomes the trustee of the funds, and must manage them for the child's benefit.[56] The parent or guardian has a fiduciary duty as trustee, and is obligated to pay out of the remainder of the child's income any taxes or fees to maintain the trust.[57] The court, however, maintains jurisdiction over the account, and can alter or terminate the trust if the parties petition for such a change.[58]

Under chapter 940, the types of financial institutions that must be used for the trust fund are banks, credit unions, or other lending institutions registered under the Investment Company Act of 1940.[59] The trust fund cannot be accessed by the minor

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50. CAL. FAM. CODE § 7500(c) (amended by Chapter 940); *id.* § 6750 (amended by Chapter 940) (defining the types of Coogan Law contracts).

51. *See id.* § 7500(a), (c) (amended by Chapter 940) (declaring that a parent or guardian is entitled to the services and earnings of a child, except those services outlined in California Family Code section 6750); *id.* § 6750 (amended by Chapter 940) (defining the types of Coogan Law contracts).

52. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1162, at 2 (Apr. 13, 1999) (stating that Chapter 940 "would finally protect children in the entertainment industry from exploitation by their own parents or guardians").

53. *See* CAL. FAM. CODE § 6752(b)(1) (enacted by Chapter 940) (stating that 15% of earnings from section 6750-type contracts subject to court approval must be set aside in trust for the child); *id.* § 6752(c)(1) (enacted by Chapter 940) (providing that 15% of earnings from section 6750-type contracts *not* subject to court approval must be set aside in trust for the child).

54. *See id.* § 6752(e) (enacted by Chapter 940) (explaining that for employment involving a minor's services as a musician, gross income includes any advances received by the minor before performing); *see also id.* § 6752(c)(1) (enacted by Chapter 940) (indicating the amount to be set aside).

55. *Id.* § 6752(c)(3) (enacted by Chapter 940); *see also id.* § 6750(d) (amended by Chapter 940) (explaining that "extras" and background performers are considered separately because these performers are often hired and paid by casting agencies, and are therefore employees of those agencies for the purposes of this section).

56. *Id.* § 6752(d) (enacted by Chapter 940); *see also id.* § 6752(c)(4) (enacted by Chapter 940) (providing that once the employer deposits the funds in the account, the employer's obligations end).

57. *Id.* § 6752(d) (enacted by Chapter 940).

58. *Id.* § 6752(c)(5) (enacted by Chapter 940).

59. *Id.* § 6753(a) (enacted by Chapter 940); *see* 15 U.S.C.A. 80a-1 - 80a-64 (West 1997) (developing the Investment Companies Act and delineating the requirements for lending institutions).

until he or she reaches the age of eighteen.[60] Until that time, the trustee remains responsible for the account and must submit to the court a written statement, under penalty of perjury, confirming the age and name of the minor, the name of the employer, the name and location of the bank where the trust resides, the trust account number, and other information associated with managing the account.[61] The trustee retains the power to transfer the funds to a different account, to transfer the funds to a different financial institution, or to reinvest the funds in a different investment scheme, as long as the funds and the financial institution satisfy the provisions of Chapter 940.[62] Income generated by any such reinvestment must be deposited in a trust account and remains the property of the minor.[63]

Chapter 940 also specifically defines who may bring suit on behalf of the child or represent the child in any suit brought to alter or terminate the set-aside trust program.[64] Only the child's parent, guardian, or trustee may bring such an action, and the parent or guardian must have legal custody of the child at the time of the proceedings.[65] The court, however, has the power to appoint a different guardian ad litem for the purposes of any proceedings relating to the minor's contract if the substitution will further the best interests of the minor.[66]

IV. ANALYSIS OF THE NEW LAW

The Coogan Law exists to protect a minor's earnings associated with any artistic or creative services without adding restrictive conditions to any Coogan Law contract.[67] Therefore, any contract into which the child and guardian enter that extends beyond the age of minority would remain unaffected, while any obligation extending beyond the age of majority must be performed by the minor.[68] The child's earnings, however, are secured by Chapter 940 until the child reaches the age of majority.[69] The child will not be the slave of either the guardian or the employer, and will be guaranteed the benefits associated with working as an artist.

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60. *Id.* § 6753(b) (enacted by Chapter 940).

61. *Id.* § 6753(c) (enacted by Chapter 940).

62. *Id.* § 6753(e)(1)-(3) (enacted by Chapter 940). The reinvested funds must be placed in a financial institution that satisfies the requirements set forth previously. *Supra* notes 59-60 and accompanying text.

63. *Id.* § 6753(e)(3) (enacted by Chapter 940).

64. *Id.* § 6752(b)(7) (enacted by Chapter 940).

65. *Id.* (amended by Chapter 940).

66. *Id.* § 6751(d) (amended by Chapter 940).

67. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1162, at 2 (Apr. 13, 1999) (explaining the importance of protecting children in the entertainment industry, while also recognizing the major role children play in the industry, for which they gain large salaries as a result).

68. *See, e.g., In re* Loew's Inc. v. Elmes, 31 Cal. 2d 782, 783, 192 P.2d 958, 959 (1948) (affirming a contract between a filmmaker and a 14-year-old actor for an initial one-year term with an option for six additional year-long terms, thus extending the contract into the minor's age of majority).

69. CAL. FAM. CODE § 6753(b) (enacted by Chapter 940).

For some families, however, this may come at a high price. Usually, parents or guardians must be present during the performances, practices, or auditions of a minor child.[70] Those requirements may leave parents with little time in which to generate additional income needed to support the rest of the family.[71] Low-income families may not be able to support a child star's blossoming career without the income generated by that career.[72] The alternatives available to the parents would be to forego the child's career potential or petition the court to amend the trust account, thus initiating expensive and time-consuming litigation.[73] For wealthy families, this does not pose a problem, but for less fortunate families the price of producing a star may become too high.[74]

Another potential problem could arise if the minor, guardian, and employer enter into a contract using the laws of a different state. The changes enacted by Chapter 940 will not affect the laws of different states.[75] Most states already have some form of Coogan Law, but the laws vary as widely as the states themselves.[76] A parent wishing to avoid the stringent requirements of Chapter 940 could involve the minor in a contract beyond the reach of California's laws.[77] Additionally, as more film companies move production sites to less expensive locations outside California, laws of other states will become more important in determining the fate of the child actors.[78]

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70. *See* Jenifer Warren, *California and the West Bill Would Protect Child Stars' Earnings*, L.A. TIMES, Apr. 25, 1999, at A28 (quoting the President of the Screen Actor's Guild regarding the plight of families dealing with the entertainment industry as saying, "When a child works in [the entertainment] industry, a parent is required by law to show up at every audition, every work site").

71. *See id.* (illustrating the substantial amount of effort required by parents who try to foster their children's careers).

72. *Id.*

73. *See* CAL. FAM. CODE § 6752(c)(5) (enacted by Chapter 940) (explaining that to make changes to the trust, all concerned parties must present their requests to the court in charge of the trust for consideration).

74. *See supra* notes 70-73 and accompanying text (illustrating that current law puts restraints on a parent whose child is in the entertainment industry, and that those restraints may cause financial hardship on the entire family if the parents cannot utilize the child's earnings to support the family).

75. Staenberg & Stuart, *supra* note 1, at 29-30.

76. *See id.* (explaining that virtually all states have some form of law to protect child actors from exploitation, but only a few, including California, Florida, New York, and Missouri, have attempted to specifically address the issues presented by the original Coogan Law); *see, e.g.*, FLA. STAT. ANN. § 450.132 (West 1997) (providing for the conditions under which a child can be employed in the entertainment industry); MO. ANN. STAT. § 294.022 (West Supp. 2000) (ordering, in part, that the child working in the entertainment industry must obtain an entertainment work permit, a parent must be present at all times during the work, and the employer must meet additional safety requirements in regards to the child's performance); N.Y. ARTS & CULT. AFF. LAW § 35.01 (McKinney 1984) (establishing permit and safety requirements for children working in the entertainment industry); GA. CODE ANN. § 39-2-18(a) (1995) (stating that "[n]otwithstanding any other provisions of this chapter to the contrary, nothing in this chapter shall apply to any minor employed as an actor or performer in motion pictures or theatrical productions, in radio or television productions").

77. Staenberg & Stuart, *supra* note 1, at 31.

78. *See id.* at (stressing the benefits and the necessity of uniform child employment laws).

V. CONCLUSION

The changes made by Chapter 940 go a long way toward solving the inherent problems not addressed by the Coogan Law.[79] Actors like Shirley Temple and Jackie Coogan himself could have benefitted from the automatic security afforded by the mandatory trust funds Chapter 940 requires.[80] Today's child actors will now have their income secured in a financial institution beyond the control of either the parents or themselves.[81] A set-aside program like this does not come without some risks or shortfalls,[82] but it does represent the most significant attempt to update the Coogan Law in over sixty years.[83] The original aim of the Coogan Law has been achieved by taking into account the lessons learned from so many failed attempts to apply the previous law.[84] More effort is needed, however, to ensure uniform treatment of child performers in all states, in order to guarantee protection for all children in the entertainment industry.[85]

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79. *See supra* notes 3, 10-11, 22-24 and accompanying text (explaining that Chapter 940 seeks to prevent the selective protection given to early Coogan Law contracts, which resulted in most contracts going unprotected).

80. *See, e.g.*, Staenberg & Stuart, *supra* note 1, at 22-23 (giving examples of several young actors who were wronged because they did not have the type of protection afforded by Chapter 940).

81. *See supra* note 53 and accompanying text (noting that all Coogan Law contracts will have a trust established for the child's benefit).

82. *Supra* notes 70-73 and accompanying text.

83. *See supra* note 19 and accompanying text (acknowledging that until Chapter 940's passage, no significant changes were made to the Coogan Law since it was passed in 1939).

84. *See supra* note 39 and accompanying text (giving examples of numerous child actors who entered into contracts after the Coogan Law was passed, but were still not given court protection).

85. *See supra* text accompanying note 77 (noting a parent's ability to circumvent the restrictive Coogan Law by contracting with an employer in a state with less stringent child labor laws).

Embracing Minority Housing and Employment Rights in the New Millennium

Victoria K. Lin

Code Sections Affected

Civil Code § 1352.5 (new); Government Code §§ 12956.1 (new), 12955 (amended).
SB 1148 (Burton); 1999 STAT. Ch. 589
Government Code §§ 12920, 12921, 12926, 12930, 12931, 12935, 12940, 12944, 12955, 12955.8, 12993 (amended); Labor Code § 1102.1 (repealed).
AB 1001 (Villaraigosa); 1999 STAT. Ch. 592

I. INTRODUCTION

With regard to urban housing and employment, the first half of the twentieth century saw racially restrictive covenants garner public attention,[1] while the latter half experienced a focus on sexual orientation discrimination in employment.[2] As the nation enters the twenty-first century, California is demonstrating a growing acceptance of racial differences and homosexual orientation by increasingly frowning upon discrimination on these bases in employment and housing.[3] Indeed, the 1999 California Legislature was busy passing laws prohibiting such discrimination, promulgating Chapters 589 and 592.

Chapter 589 prohibits racially restrictive covenants, and provides steps toward the elimination of existing discriminatory covenants.[4] Chapter 592 strictly prohibits discrimination based upon sexual orientation in the areas of housing and employment.[5] The combination of these new laws evidences a movement toward embracing the rights of minorities in California. This Legislative Note highlights these two measures, ultimately concluding that the new laws will help make the

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1. *See* Leland B. Ware, *Invisible Walls: An Examination of the Legal Strategy of the Restrictive Covenant Cases*, 67 WASH. U. L.Q. 737, 739 (1989).

2. *See, e.g.*, John Cloud, *The Pioneer Harvey Milk*, TIME, June 14, 1999, at 1, 3 (indicating that being a young gay person in the 1970s meant dim career prospects as an adult).

3. *See, e.g.*, CAL. CIV. CODE § 1352.5(a) (enacted by Chapter 589) (asserting that no declaration or governing document shall include a restrictive covenant based upon race or sexual orientation); 1999 Cal. Legis. Serv. ch. 592, sec. 1, at 3424 (providing language of legislative intent to prohibit discrimination in any aspect of employment or housing based on sexual orientation).

4. *See infra* Part III (explaining the provisions of Chapter 589).

5. *See infra* Part IV (summarizing Chapter 592).

State more minority-friendly by ensuring that racial and sexual-orientation minorities will be able to secure housing free from discrimination.

II. LEGAL BACKGROUND

A. *Racially Restrictive Covenants*

In the United States, racially restrictive covenants arose after the "great migration of black families from rural areas to northern and midwestern industrial centers."[6] "Initially, city ordinances prohibited [black] families from renting or purchasing property unless in specified areas."[7] When these ordinances were found to be unconstitutional, neighborhoods turned to restrictive covenants in order to segregate their communities.[8] Discriminatory language was "inserted into deeds by real estate developers at the time of construction or prepared by attorneys retained by neighborhood organizations, executed by individual homeowners, and recorded in the official real estate records of the city and county in question."[9] In *Corrigan v. Buckley*,[10] the United States Supreme Court found that racially discriminatory restrictive covenants were legal because "none of [the Constitutional] Amendments [prohibits] private individuals from entering into contracts respecting the control and disposition of their own property."[11]

Almost seventy-five years have passed since the *Corrigan* decision, and while the fight to abolish racially restrictive covenants has progressed, aging covenants found in some communities maintain the racism of yesteryear.[12] For instance, in 1998, a San Francisco homeowner discovered a racially restrictive covenant in the declaration[13] that governed his home.[14] The agreement prohibited residency by any person other than one of the "White Caucasian Race" (excepting servants).[15] Upon

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6. Ware, *supra* note 1, at 739.
7. *Id.*
8. *Id.*
9. *Id.*
10. 271 U.S. 323 (1926).
11. *Id.* at 330.
12. *See* SENATE RULES COMMITTEE, FLOOR ANALYSIS OF SB 1148, at 4 (Sept. 5, 1999) (explaining that race-based restrictions are still common in many declarations created during the 1930s and 1940s); *cf.* Laura V. Kwiatkowski, *Condominiums; Updating Your CC&Rs*, SAN DIEGO UNION-TRIB., May 23, 1999, at H11 (implying that covenants, codes, and restrictions (CC&Rs) that are more than 20 years old are out of date with respect to certain current anti-discrimination laws).
13. *See* CAL. CIV. CODE § 1351(h) (West Supp. 2000) (defining "declaration" as a document, "however denominated, which contains the information required by Section 1353"); *see also id.* § 1353 (West Supp. 2000) (requiring a declaration to include a legal description of the common interest development and a statement that the development is a "community apartment project, condominium project, planned development, stock cooperative, or combination thereof" along with the name of the association and the restrictions of the use of the development).
14. SENATE RULES COMMITTEE, FLOOR ANALYSIS OF SB 1148, at 4-5 (Sept. 5, 1999).
15. *Id.*

finding this declaration, the homeowner requested that the homeowners' association amend its declaration to remove the racist restriction.[16] The association refused to amend the covenant, leading the homeowner to file a complaint with the United States Department of Housing and Urban Development (HUD).[17] The homeowners' association eventually agreed to make the changes.[18]

After a preliminary search, HUD found that such race-based restrictions are still common in many of the declarations that govern properties developed in the 1930s and 1940s.[19] Consequently, first-time home buyers, title insurance companies, escrow companies, county recorders' offices, real estate offices, and homeowners' associations are regularly given declarations that include race-based barriers.[20]

In 1985, the California Legislature enacted the Davis-Stirling Common Interest Development Act[21] in order to distinguish the interests and legal rights of individual homeowners from those of an association of homeowners in a common interest development.[22] The Act regulates common interest developments and provides definitions for declarations and other documents governing the operation of common interest developments and associations managing the developments.[23] Among other things, the Act prohibits racially discriminatory practices in housing through the use of restrictive covenants.[24] In California, legislators have incorporated such provisions into the California Civil and Government Codes.[25]

B. Sexual Orientation Discrepancy and the Unruh Civil Rights Act

California's Fair Employment and Housing Act[26] (FEHA) protects individuals from housing and employment discrimination based upon race, sex, religion, national origin, or ancestry.[27] However, prior to the enactment of Chapter 592, sexual orientation was not enumerated as a protected classification in the State's

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16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *See* CAL. CIV. CODE § 1350 (West Supp. 2000) (stating that Title 6 of the Acquisition of Property "shall be known and may be cited as the Davis-Stirling Common Interest Development Act").
22. SENATE RULES COMMITTEE, FLOOR ANALYSIS OF SB 1148, at 3 (Sept. 5, 1999); *see also* CAL. CIV. CODE § 1351(a), (c), (e) (West Supp. 2000) (providing definitions for "common interest development," "association," and the "separate interests" of the individual and association of homeowners).
23. CAL. CIV. CODE § 1351(a)-(m).
24. *Id.* § 1352.5(a) (enacted by Chapter 589).
25. *Compare id.* (prohibiting racially restrictive covenants), *with* CAL. GOV'T CODE § 12955(a) (amended by Chapter 592, but set to be repealed Jan. 1, 2005) (prohibiting owners of housing accommodations from discriminating based upon race).
26. CAL. GOV'T CODE § 12900 (West 1992).
27. *Id.* §§ 12900-12966 (West 1992).

statutes.[28] Consequently, homosexuals turned to the Unruh Civil Rights Act,[29] a broader anti-discrimination law, for protection from housing discrimination.[30] This Act springs from early common law decisions that viewed certain enterprises as "public" or "common" callings, and found that these types of businesses had a "duty to serve all customers on reasonable terms without discrimination[,] and . . . to provide the kind of product or service reasonably to be expected from their economic role."[31] In 1897, California legislators incorporated these common law beliefs into the statutory predecessors of the Unruh Civil Rights Act.[32] Eventually, the statute was amended to encompass several places of public accommodation, such as inns, restaurants, and theaters.[33] Today, the Unruh Civil Rights Act declares that all people in California are "free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or disability[,] are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."[34]

On its face, the Act does not provide a safeguard for homosexuals.[35] However, California courts have held that these safeguards apply to homosexuals. For example, in *Stoumen v. Reilly*,[36] the State Board of Equalization suspended Stoumen's license to sell alcohol partly because he was accused of allowing his premises to be used as a "disorderly house."[37] Police officers testified that many of the patrons were homosexuals.[38] The court reasoned that the alcohol license should not have been suspended merely because the restaurant was a meeting place for homosexuals.[39] However, not until its decision in *In re Cox* did the Supreme Court of California ultimately expressly establish that homosexuals are protected under the Unruh Civil Rights Act from "arbitrary discrimination in public accommodations."[40]

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28. Thomas Weathers, *Gay Civil Rights: Are Homosexuals Adequately Protected from Discrimination in Housing and Employment?*, 24 PAC. L.J. 541, 545-46 (1993).

29. *See* CAL. CIV. CODE § 51 (West Supp. 2000) (designating the section as the "Unruh Civil Rights Act").

30. Weathers, *supra* note 28, at 546.

31. *In re* Cox, 3 Cal. 3d 205, 212, 474 P.2d 992, 996, 90 Cal. Rptr. 24, 28 (1970).

32. 1897 Cal. Stat. ch. 108, sec.1, at 137; *see also Cox*, 3 Cal. 3d at 213, 474 P.2d at 996, 90 Cal. Rptr. at 28 (delineating the statutory history of the Unruh Civil Rights Act).

33. 1897 Cal. Stat. ch. 108, sec. 1, at 137 (explaining the types of businesses the Unruh Civil Rights Act has encompassed).

34. CAL. CIV. CODE § 51 (West Supp. 2000).

35. *Id.*

36. 37 Cal. 2d 713, 234 P.2d 969 (1951).

37. *Id.* at 715, 234 P.2d at 970. The State Board of Equalization also accused Stoumen of selling beer to a person under the age of twenty-one years. *Id.* at 715, 234 P.2d at 970.

38. *Id.*, 234 P.2d at 970.

39. *Id.*

40. 3 Cal. 3d 205, 214, 474 P.2d 992, 997, 90 Cal. Rptr. 24, 29 (1970).

III. CHAPTER 589

Chapter 589 prohibits restrictive covenants in declarations and other governing housing documents that discriminate against an individual based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry.[41] The new law requires persons or entities providing deeds or other governing documents to include a cover page or stamp over the document, stating the following:

> If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code.[42]

When a discriminatory covenant is found in a housing agreement, the board of directors of a private housing association, without having to seek approval from the owners, must amend the prejudicial portions of the declaration and rewrite the document without the exclusive arrangement.[43] If an association fails to delete the facially discriminatory provision within 30 days of receiving a written notice as to its existence, then "the Department of Fair Employment and Housing, a city or county in which a common interest development is located, or any person" may seek injunctive relief, and "[t]he court may award attorney's fees to the prevailing party."[44]

The person or entity having an interest in the property may also "require the county recorder to remove any blatant racial restrictive covenant" recorded in the documents relating to the property.[45] The request must be in writing, and the recorder must make the appropriate corrections in a timely fashion.[46]

Furthermore, Chapter 589 specifies that if a person files a document with the express intent of including a racially restrictive covenant, such person is guilty of a misdemeanor.[47] However, the new law does not impose such liability on county recorders who make such a filing pursuant to another's request.[48] Chapter 589

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41. CAL. CIV. CODE § 1352.5(a) (enacted by Chapter 589); CAL. GOV'T CODE § 12955 (amended by Chapter 592, but set to be repealed Jan. 1, 2005, and amended to exclude "source of income" on Jan. 1, 2005, unless a later statute deletes or extends the date).

42. CAL. GOV'T CODE § 12956.1(b) (enacted Chapter 589).

43. CAL. CIV. CODE § 1352.5(b) (enacted by Chapter 589).

44. *Id.* § 1352.5(c) (enacted by Chapter 589).

45. CAL. GOV'T CODE § 12956.1(c) (enacted by Chapter 589).

46. *Id.*

47. *Id.* § 12956.1(d) (enacted by Chapter 589).

48. *Id.*

contains its own statute of limitations, providing that prosecution for a violation must begin within three years of the discovery of the document's filing.[49]

IV. CHAPTER 592

Chapter 592 gives protections to minority groups and specifically includes "sexual orientation" in the State's categories of protected individuals in employment and housing accommodations under the FEHA.[50]

A. *Employment and Housing Discrimination Protections*

Chapter 592 boldly declares that the ability to seek and gain employment free from discrimination based on sexual orientation is a civil right.[51] It defines "employer" as any person "employing five or more persons, or any person acting as an agent of an employer, directly or indirectly," but excludes from this definition non-profit corporations or religious associations.[52] The new law also defines "sexual orientation" as "heterosexuality, homosexuality, and bisexuality."[53] Chapter 592 also recognizes that a licensing board[54] may not make additional requirements that have an adverse impact on an individual's sexual orientation.[55]

Chapter 592 also provides that an owner of any housing accommodation cannot discriminate or harass a person because of sexual orientation or source of income.[56] Actions are deemed unlawful if any notice, statement, or advertisement regarding housing facilities specifically shows "preference, limitation, or discrimination" on the basis of sexual orientation or source of income.[57] In addition, actions discriminating on the basis of sexual orientation or source of income are prohibited in other arenas relating to real estate transactions, such as the loan or mortgage process[58] or a multiple listing service.[59]

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49. *Id.*

50. *Id.* § 12920 (amended by Chapter 592).

51. *Id.* § 12921 (amended by Chapter 592).

52. *Id.* § 12926(d) (amended by Chapter 592).

53. *Id.* § 12926(q) (amended by Chapter 592).

54. *Id.* § 12944(f) (amended by Chapter 592) (defining "licensing board" as "any state board, agency, or authority in the State and Consumer Services Agency that has the authority to grant licenses or certificates" for professional status).

55. *Id.* § 12944(a) (amended by Chapter 592).

56. *Id.* § 12955(a) (amended by Chapter 592, but set to be repealed Jan. 1, 2005); *see id.* § 12955(p)(1) (amended by Chapter 592, but set to be repealed Jan. 1, 2005) (defining "source of income" to mean "lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant").

57. CAL. GOV'T CODE § 12955(c) (amended by Chapter 592, but set to be repealed Jan. 1, 2005).

58. *See id.* § 12955(e) (amended by Chapter 592, but set to be repealed Jan. 1, 2005) (providing that "any person, bank, mortgage company or other financial institution" that discriminates based upon sexual orientation or source of income is committing an unlawful act); *see also id.* § 12955(i) (amended by Chapter 592, but set to be repealed Jan. 1, 2005) (prohibiting discrimination in real estate-related transactions).

59. CAL. GOV'T CODE § 12955(j) (amended by Chapter 592, but set to be repealed Jan. 1, 2005).

B. Chapter 592: A Codification of Case Law

One intention behind Chapter 592's passage is to codify two cases:[60] *Gay Law Students Ass'n v. Pacific Telephone and Telegraph Co.*[61] and *Soroka v. Dayton Hudson Corp.*[62] In *Gay Law Students*, Robert Desantis alleged that his application for employment at Pacific Telephone and Telegraph Company (PT&T) was rejected because of his homosexuality, and Bernard Boyle claimed that anti-homosexual harassment at PT&T led to his resignation.[63] The California Supreme Court held that under California law, the State may not discriminate against homosexuals as such in employment, unless it can show that an individual's homosexual status causes him or her to be unfit for the job in question.[64] The court also held that the equal protection clause of California's Constitution only prohibits arbitrary discrimination on the basis of unrelated work qualifications and not when legitimate judgments are made with regard to employment decisions.[65] The court moreover found that employers could not use their economic powers to interfere with the political activities of their employees.[66] In this case, the court stated that "the struggle of the homosexual community for equal rights, particularly in the field of employment, must be recognized as a political activity."[67] Consequently, employers may not infringe upon the political activities of employees, which infringement includes discriminating against the employees because of their sexual orientation.[68]

In *Soroka v. Dayton Hudson Corp.*,[69] job applicants for Target Store security officer positions were required to take a psychological examination that tested for "good judgment and emotional stability."[70] The test included questions about an applicant's religious views and sexual orientation.[71] The First District Court of Appeal found that the posing of such questions was a violation of an applicant's

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60. 1999 Cal. Legis. Serv. ch. 592, sec. 1, at 3424.

61. 24 Cal. 3d 458, 595 P.2d 592 (1992).

62. 1 Cal. Rptr. 2d 77 (1991), *review granted*, 822 P.2d 1327, 4 Cal. Rptr. 2d 180 (1992), *and review dismissed as moot*, 862 P.2d 148, 24 Cal. Rptr. 2d 587 (1993).

63. *Gay Law Students*, 24 Cal. 3d at 464-65, 595 P.2d at 596, 156 Cal. Rptr. at 18.

64. *Id.* at 467, 595 P.2d at 597, 156 Cal. Rptr. at 19.

65. *See id.* at 474-75, 595 P.2d at 602, 156 Cal. Rptr. at 24 (stressing that California's Equal Protection Clause does not encroach upon a public utility's management the right to exercise legitimate exclusions in employment decisions); *see also* CAL. CONST. art. 1, § 8 (stating that "a person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin").

66. *Gay Law Students*, 24 Cal. 3d at 487, 595 P.2d at 610, 156 Cal. Rptr. at 32.

67. *Id.*, at 488, 595 P.2d at 610, 156 Cal. Rptr. at 32.

68. *See id.*, 595 P.2d at 610, 156 Cal. Rptr. at 32. (stating that an important part of the struggle for gay rights is to permit homosexuals to openly acknowledge their sexuality, and thus an employer may not coerce employees to refrain from doing so).

69. 1 Cal. Rptr. 2d 77 (1991), *review granted*, 822 P.2d 1327, 4 Cal. Rptr. 2d 180 (1992), *and review dismissed as moot*, 862 P.2d 148, 24 Cal. Rptr. 2d 587 (1993).

70. *Id.* at 79.

71. *Id.* at 79-80.

right to privacy under the California Constitution, and that such inquiries were justified only when Target could show a compelling interest and that the test "serv[ed] a job-related purpose."[72] If a means of selection is facially neutral but adversely affects persons on the basis of religion, then the criterion is permissible as long as "the selection process is sufficiently related to an essential function of the job in question to warrant its use."[73] Further, as found in *Gay Law Students*, employers are precluded from adopting policies that infringe upon an employee's political activities or affiliations, which include sexual orientation.[74]

Chapter 592 codifies the California Supreme Court's holding in *Gay Law Students* and the First District Court of Appeal's decision in *Soroka* in order to prohibit discrimination or different treatment "in any aspect of employment or opportunity for employment based on sexual orientation."[75]

V. ANALYSIS OF THE NEW LAWS

The California Legislature enacted Chapter 589 in response to the race-restrictive covenant found in a declaration in San Francisco.[76] After uncovering several other governing documents containing similar language, the author of Chapter 589 sought to minimize the adverse impact of such covenants.[77] In some instances, such restrictions may have been used to intentionally discriminate against minorities.[78] Thus, the new law helps open the doors for minorities to previously segregated neighborhoods.[79] Significantly, Chapter 589 was not opposed by interest groups or lobbyists,[80] which is likely due to "the change in the intellectual community's perceptions of black [and other minority] citizens."[81] Essentially, sociological studies have shown that "the notion of inherent inferiority was scientifically baseless," and that segregation had an adverse impact on both black and white Americans.[82] However, this sentiment is not shared where sexual orientation is concerned.[83]

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72. *Id.* at 86.

73. *Id.* at 87.

74. *Id.* at 87-88.

75. 1999 Cal. Legis. Serv. ch. 592, sec. 1, at 3424.

76. *See supra* notes 14-20 and accompanying text (acknowledging that the new law's backers penned the bill in response to the situation in San Francisco).

77. SENATE RULES COMMITTEE, FLOOR ANALYSIS OF SB 1148, at 4-5 (Sept. 5, 1999) (providing arguments in support of the new law).

78. *Id.*

79. *See id.* (finding that Chapter 589 will "effectively prohibit the existence of discriminatory restrictive covenants in California").

80. *See id.* (listing arguments in support of AB 1148, but providing no opposing views).

81. Ware, *supra* note 1, at 771.

82. *Id.*

83. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1001, at 4-5 (Aug. 17, 1999) (providing examples of religious opposition to the inclusion of sexual orientation in the Government Code by groups such as the Committee on Moral Concerns and the Seventh-Day Adventist Church).

Opposition to Chapter 592 comes primarily from religious groups.[84] As one individual expressed,

> Our nation, state, country and community are being assaulted by those who want their identity to be this chosen behavior and to have it considered on par with race, ethnicity, gender or alienage for minority status privileges. They have the freedom to behave as they choose, but they do not have the right to inhibit the freedoms of others who consider such behavior immoral.[85]

The Committee on Moral Concerns added that "[g]ays and lesbians are not suffering from unemployment and poverty, and they never have suffered the way other minorities have."[86] The Seventh-Day Adventist Church State Council argued that Chapter 592 "poses a grave threat to religious freedom."[87]

Proponents of the new law indicate that they are merely moving the State's existing prohibition of discrimination based on sexual orientation from the Labor Code to the FEHA because additional protections provided by the Labor Code are not yet recognized by the FEHA.[88] Moreover, officials at the Department of Fair Employment and Housing are highly trained regarding discrimination matters, while the Department of Industrial Relations (DIR) normally handles work-related situations such as wage disputes or health and safety complaints.[89] Consequently, the DIR does not provide adequate services with regard to discrimination issues concerning sexual orientation.[90] By eliminating the "dual anti-discrimination statutes," Chapter 592 will be less confusing for employers, especially because employees and attorneys are more familiar with the FEHA than they are with the Labor Code.[91] Ultimately, supporters find that Chapter 592 preserves equity because disparate treatment of individuals in employment contexts is unfair when such disparate treatment is based on conduct unrelated to work.[92] Essentially, the new law "offers no special treatment; it merely provides a remedy against illegal employment practices."[93] Furthermore, as the *Gay Law Students* opinion indicates, homosexuals have been denied employment opportunities just as other minorities

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84. *Id.* at 3-4.
85. *Id.* at 4.
86. *Id.*
87. *Id.* at 4-5.
88. *See id.* at 2-3 (asserting that the difference between Labor Code section 1102.1 and the FEHA is that "all nonprofit organizations are exempted from [the] Labor Code and only nonprofit religious organizations are exempted from [the] FEHA").
89. *Id.* at 3.
90. *Id.*
91. *Id.*
92. *Id.* at 4.
93. *Id.*

have.[94] California courts provide additional justification for Chapter 592, recognizing that employment discrimination based on sexual orientation serves no compelling interest.[95]

VI. CONCLUSION

As a new century dawns, society still struggles with the existence of discrimination.[96] Despite advances in technology and social policy, race-based covenants and employment discrimination based on sexual orientation have proliferated.[97] Ultimately, Chapters 589 and 592 will provide the State of California with an opportunity to begin anew by expressly prohibiting discrimination based upon race and sexual orientation in housing and employment, which will allow the Golden State to embrace the rights of minorities in the twenty-first century.

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94. *See* Gay Law Students Ass'n v. Pacific Tel. Co., 24 Cal. 3d 458, 465, 595 P.2d 592, 596, 156 Cal. Rptr. 14, 18 (1979) (recognizing that arbitrary discrimination includes employment decisions discriminating against homosexuals).

95. *E.g.*, Hubert v. Williams, 133 Cal. App. 3d Supp. 1, 5, 184 Cal. Rptr. 161, 163 (1982).

96. *See, e.g.*, C.W. Nevius, Marc Sandalow, John Wildermuth, *McCain Criticized for Slur: He Says He'll Keep Using Term for Ex-Captors in Vietnam*, S.F. CHRON., Feb. 18, 2000, at A1 (referring to Senator John McCain's use of the term "gooks" to describe "North Vietnamese prison guards who tortured and held him captive during the police action"). The term "gook" was aimed at the Vietnamese during the Vietnam War and is considered a slur toward Asians and Pacific Islanders. *Id.*

97. *See supra* text accompanying notes 14-20 (explaining that several governing documents still contain racist restrictions).